

**CITY OF BUELLTON**  
**Planning Commission Agenda Staff Report**

Planning Director Review:   4    
Planning Commission Agenda Item No:   AK  

To: The Honorable Chair and Commission Members

From: Andrea Keefer, Planning Director

Date: January 5, 2023

Subject: Resolution No. 22-13 relating to the Conditional Use Permit and Sign Exemption for a new drive-through restaurant (In-N-Out) located at 515 McMurray Road, Assessor’s Parcel Number 137-170-046

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**BACKGROUND**

Dian Gran, property owner, and Marc Levun, agent (“Applicant”), with Chaser Capital as the developer, have submitted a proposed project consisting of a Conditional Use Permit (21-CUP-02) for the development of a new drive-thru fast food restaurant for In-N-Out Burger and a Sign Exemption (22-EXP-01) for additional signage above the maximum allowed for the site. The +/- 1.48 acre project site is located at 515 McMurray Road, Assessor’s Parcel Number 137-170-046 (**Attachment 1 – Vicinity Map**). The Marriott hotel is to the north, Hwy 101 to the west, McDonald’s restaurant to the south, and a vacant parcel planned for future hotel development across McMurray Road to the east. The property has a zoning designation of CR (General Commercial).

At the November 17, 2022 Planning Commission Public Hearing for the project (**Attachment 2 – November 17<sup>th</sup> Meeting Minutes**), Staff brought a resolution for denial of the project based upon concerns with traffic impacts that are likely to occur as a result of this project. Planning Commission reviewed the detailed plans for the proposed project, considered public testimony, and directed staff to return with a resolution for approval of the project. Since then, Staff has been working diligently to bring back such a resolution for the Planning Commission to consider. The item was originally scheduled to be brought back to the Planning Commission on December 15<sup>th</sup>; however, due to requested changes of the applicant, the item was rescheduled to January 5, 2023.

**DISCUSSION**

Due to traffic impacts which are likely to result from the project, the applicant has proposed to implement several roadway improvements. The proposed traffic improvements were developed as part of a traffic study conducted by the applicant’s consultant, Ganddini Group, dated September 30, 2022. These proposed improvements have been included as Conditions of Approval for the project, which are listed in the draft approval Resolutions (more on this below). Although a detailed analysis of both the proposed physical roadway improvements, as well as the effect these improvements will have on circulation in the surrounding areas has not been provided, staff has reviewed the information that is currently available in order to determine the likely feasibility of the proposed improvements. It is important to note that because several of the proposed improvements involve physical changes to Highway 246 and the immediate adjacencies, Caltrans approval will be required. The applicant will be required to coordinate with Caltrans to obtain any necessary approvals for the improvements over which the agency has jurisdiction. In the coming weeks, the

City will also be coordinating with Caltrans to begin discussions on the feasibility of the proposed roadway improvements.

At the November 17<sup>th</sup> public hearing on the project, Planning Commission directed staff to bring back a resolution for approval. At that time, staff indicated that efforts would be made to bring back such a resolution with findings and conditions that address the issues brought up by staff as best as possible. Staff has drafted a Resolution for approval, with draft findings and conditions; however, staff still has concerns with the adequacy of the conditions of approval and findings proposed, specifically as they relate to traffic impacts. Therefore, Staff has also provided two additional draft resolutions for the Planning Commission to consider. A total of three separate proposed resolutions are provided for the consideration of the Planning Commission:

Resolution for approval

- Planning Commission's November 17<sup>th</sup> request

Resolution recommending approval to the City Council

- If the Planning Commission finds that *the promotion of efficient and sound planning principles or protection of the public welfare and safety require that the City Council exercise final decision jurisdiction.*

Resolution for denial

- Staff's original recommendation

Staff recognizes that it is unusual to bring multiple resolutions to the Planning Commission for consideration. However, in order to streamline the process and enable the Planning Commission to come to a decision on this project at this meeting, staff has provided the three above-listed options for the Planning Commission to consider. The Planning Commission should first consider the resolution approving the project, as that was specifically requested of staff at the hearing on November 17<sup>th</sup>. The other resolutions should be considered if the Planning Commission is uncertain as to its ability to make the required findings. Ultimately, the decision of the Planning Commission as to which resolution to adopt should be based upon careful review and consideration of the proposed findings and conditions listed in each resolution.

The original resolution brought to the Planning Commission on November 17<sup>th</sup> did not include a full list of project conditions, as it was a resolution for denial. A full list of project conditions of approval has now been included in the draft versions in Resolution No. 22-13 which do not result in denial of the project.

The resolution for approval and recommendation for approval to City Council include all of the best proposed conditions of approval and proposed findings for approval that staff could craft. For both of these resolutions, the proposed conditions of approval are the same. The findings however, are slightly modified for each resolution, depending on which findings the Commission is able to make. The Planning Commission should review the proposed conditions of approval and separate proposed findings for each resolution, and determine 1) whether or not all of the findings can be made in each resolution, and based upon that, 2) which resolution the Planning Commission will adopt. If the Planning Commission is unable to make the findings for either resolution, the Planning Commission should deny the project. The findings that are important to focus on, in particular, for the Resolution for Planning Commission Approval are listed below.

Proposed Findings for Planning Commission Approval:

Conditional Use Permit (21-CUP-02):

- i. *That the site for the project is adequate in size, shape, location and physical characteristics to accommodate the density and intensity of development proposed. With the imposition of conditions of approval, the project site is adequate for the level of development of the proposed project.*
- ii. *That the streets and highways are adequately and properly designed pursuant to the requirements of the City Engineer. With the imposition of conditions of approval and required roadway improvements to McMurray Road and Highway 246, intersection operations will be brought to acceptable levels.*
- iii. *That the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and the proposed uses will be compatible with the surrounding area. With the imposition of conditions of approval, impacts to adjacent uses and businesses, including but not limited to McDonald's, the Marriott Hotel and Chumash Employment Resource Center, will be minimal.*
- iv. *That the project is in conformance with the applicable provisions of Title 19 (Zoning) of the Municipal Code and the General Plan because with the inclusion of proposed roadway improvements as conditions of approval, traffic impacts to the surrounding area will be reduced to acceptable levels (C-5 and C-8). Additionally, this project will expand the visitor-serving sector of the local economy (L-25), attract new business and encourage economic development activities that provide opportunities for employment of local residents and increased municipal revenue (E-3).*

The proposed findings that are important to focus on, in particular, for the Recommendation of Approval to City Council are listed below.

Proposed Findings for Recommendation of Approval to City Council:

Conditional Use Permit (21-CUP-02):

- i. *That the site for the project is adequate in size, shape, location and physical characteristics to accommodate the density and intensity of development proposed. With the imposition of conditions of approval, the project site is adequate for the level of development of the proposed project.*
- ii. *That the streets and highways are adequately and properly designed pursuant to the requirements of the City Engineer. With the imposition of conditions of approval and required roadway improvements to McMurray Road and Highway 246, intersection operations will be brought to acceptable levels. However, the improvements may require substantial changes to the intersection and roadways such that the promotion of efficient and sound planning principles or protection of the public welfare and safety require that the City Council exercise final decision authority.*
- iii. *That the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and the proposed uses will be compatible with the surrounding area. With the imposition of conditions of approval, impacts to adjacent uses and businesses, including but not limited to McDonald's, the Marriott Hotel and Chumash Employment Resource Center, will be minimal. However, the imposition of these conditions raises issues such that the promotion of efficient and sound planning principles or protection of the public welfare and safety require that the City Council exercise final decision jurisdiction authority on their imposition.*

- iv. *That the project is in conformance with the applicable provisions of Title 19 (Zoning) of the Municipal Code and the General Plan because with the inclusion of proposed roadway improvements as conditions of approval, traffic impacts to the surrounding area will be reduced to acceptable levels (C-5 and C-8). Additionally, this project will expand the visitor-serving sector of the local economy (L-25), attract new business and encourage economic development activities that provide opportunities for employment of local residents and increased municipal revenue (E-3). However, given that the importance of the circulation impacts (C-5 and C-8) and the imposition of conditions of approval to address those involve matters both within and outside the specialty of the Planning Commission, the promotion of efficient and sound planning principles or protection of the public welfare and safety require that the City Council exercise final decision jurisdiction authority.*

If the Planning Commission can make the findings for the approval resolution with the conditions of approval that have been included, Planning Commission can adopt Resolution No. 22-13 for approval by the Planning Commission.

If the Planning Commission finds that the promotion of efficient and sound planning principles or protection of the public welfare and safety require that the City Council exercise final decision authority, Planning Commission should adopt Resolution No. 22-13, recommending approval to the City Council, and allow the City Council to make the final decision on the project.

If the Planning Commission cannot make the findings for approval of the project under either of the above circumstances, then Resolution No. 22-13 for Denial should be adopted.

Below is a list of the proposed findings for denial:

- i. *That notwithstanding the conditions proposed to be imposed on the project, the site for the project is **not** adequate in size, shape, location, and physical characteristics to accommodate the density and intensity of development proposed due to the location of the site on McMurray Road and project's impact on adjacent businesses and residential neighborhood.*
- ii. *That notwithstanding the conditions proposed to be imposed on the project, streets and highways are **not** adequate and properly designed pursuant to the requirements of the City Engineer, due to the limited queueing capacity and infrastructure of SR 246 and McMurray Road that are not able to accommodate the traffic and circulation impacts of the project.*
- vi. *That the project **will** be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and the proposed uses will **not** be compatible with the surrounding area despite the conditions proposed to be imposed on the project. The adjacent businesses of McDonald's, the Marriott Hotel, and Chumash Employment Resource Center have significant concerns with the traffic and circulation posed by the intensity of the proposed project use. Concerns from McDonald's have not been adequately addressed and will be detrimental to general welfare of McDonald's, as McDonald's patrons would not have safe, comfortable, and convenient access onto their site. Residents and businesses in the surrounding neighborhood would be impacted by substantial traffic impacts that cannot be adequately addressed.*

- vii. *That the project, even as proposed to be conditioned, is **not** in conformance with the applicable provisions of Title 19 (Zoning) of the Municipal Code and the General Plan. The project conflicts with Policies L-11, C-5, and C-8 of the General Plan Circulation Element.*

### **ENVIRONMENTAL**

If the Planning Commission either approves this project or recommends approval to the City Council, the following environmental determination applies:

In accordance with the requirements of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections 15000 et seq., and the Environmental Impact Report Guidelines of the City of Buellton (collectively, “CEQA”), the proposed Project is exempt from environmental review, as it meets the criteria for a Class 32 Categorical Exemption (Infill Project) pursuant to the California Environmental Quality Act.

### **RECOMMENDATION**

Staff recommends that the Planning Commission consider the adoption of one of the following:

Resolution No. 22-13 – “ A Resolution of the Planning Commission of the City of Buellton, California, Approving a Conditional Use Permit (21-CUP-02) and Sign Exemption (22-EXP-01) for a New Drive-Through Restaurant Located at 515 McMurray Road, Assessor’s Parcel Number 137-170-046, and Making Findings in Support Thereof”

Resolution No. 22-13 – “A Resolution of the Planning Commission of the City of Buellton, California, Recommending City Council Approval of a Conditional Use Permit (21-CUP-02) and Sign Exemption (22-EXP-01) for a New Drive-Through Restaurant Located at 515 McMurray Road, Assessor’s Parcel Number 137-170-046, and Making Findings in Support Thereof”

Resolution No. 22-13 – “ A Resolution of the Planning Commission of the City of Buellton, California, Denying a Conditional Use Permit (21-CUP-02) and Sign Exemption (22-EXP-01) for a New Drive-Through Restaurant Located at 515 McMurray Road, Assessor’s Parcel Number 137-170-046, and Making Findings in Support Thereof”

### **ATTACHMENTS**

Planning Commission Resolution No. 22-13 (Approval)

Planning Commission Resolution No. 22-13 (Recommend Approval to City Council)

Planning Commission Resolution No. 22-13 (Denial)

Attachment 1 – Vicinity Map

Attachment 2 – November 17<sup>th</sup>, 2022 PC Meeting Minutes

**PLANNING COMMISSION RESOLUTION NO. 22-13**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BUELLTON, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT (21-CUP-02) AND SIGN EXEMPTION (22-EXP-01) FOR A NEW DRIVE-THROUGH RESTAURANT LOCATED AT 515 MCMURRAY ROAD, ASSESSOR'S PARCEL NUMBER 137-170-046, AND MAKING FINDINGS IN SUPPORT THEREOF**

**BE IT RESOLVED** by the Planning Commission of the City of Buellton as follows:

**SECTION 1:** Pursuant to the Zoning Ordinance of the City of Buellton, an application has been filed by Dian Gran, property owner, and Marc Levun, In-N-Out Burger, agent, hereinafter referred to as “Applicant”, requesting approval to demolish an existing commercial structure and develop a new drive-through restaurant on a 1.48-acre parcel located on land at 515 McMurray Road (APN 137-170-046). The subject property is planned and zoned for CR (General Commercial).

**SECTION 2:** The proposed Project consists of:

- A. Conditional Use Permit (21-CUP-02):** Approval of a new 3,885 square foot building with drive-through for In-N-Out Burger. The proposed development would include:
- 55 parking spaces
  - Drive-through with capacity for 25 vehicles
  - Demolition of existing pavement and structures
- B. Sign Exemption (22-EXP-01):** Approval of one 45 foot high freestanding sign, and 395 square feet of total building signage area (125 additional square feet than the maximum allowed).

**SECTION 3:** All proceedings having been duly taken as required by law, and upon review of the information provided in the staff report, consideration of the testimony given at the public hearing, as well as other pertinent information, the Planning Commission finds the following:

- A. Record.** Prior to rendering a decision on the Project, the Planning Commission considered the following:
1. All public testimony, both written and oral, received in conjunction with that certain public hearing conducted by the Planning Commission on November 17, 2022 (“PC Public Hearing”).
  2. All oral, written and visual materials presented in conjunction with that certain PC Public Hearing.

3. All oral, written and visual materials presented in conjunction with the Planning Commission meeting of November 17, 2022.
4. The following informational documents, which by reference, are incorporated herein:
  - a. The project file for 21-CUP-02 and 22-EXP-01, as well as the set of project plans dated October 4, 2022.
  - b. The staff report dated November 17, 2022.
  - c. The staff report dated January 5, 2023.

**B. Public Review.** On the basis of evidence hereinafter listed, all administrative procedures and public participation requirements prescribed in the Buellton Zoning Ordinance have been lawfully satisfied:

1. A notice of PC Public Hearing was published in a newspaper of general circulation on November 3, 2022 (the “PC Public Notice”), a minimum of 10 days in advance of the PC Public Hearing conducted on November 17, 2022.
2. The PC Public Notice was mailed to the Applicant, affected public agencies, persons owning property within 300 feet of the Project site and others known to be interested in the matter on November 3, 2022, a minimum of 10 days in advance of the PC Public Hearing.
3. The PC Public Notice was posted in two public locations on November 3, 2022, a minimum of 10 days in advance of the PC Public Hearing.
4. The matter was continued to the date of December 15, 2022 and the matter was further continued to January 5, 2023 due to requested changes by the applicant.

**C. Environmental Review.** Pursuant to the California Environmental Quality Act (CEQA), the proposed project meets the criteria for a Class 32 Categorical Exemption (infill project), and is thereby exempt from further environmental review. The following describes the consistency of the project with the required findings:

1. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
2. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
3. The project site has no value as habitat for endangered, rare or threatened species.
4. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
5. The site can be adequately served all required utilities and public services.

**D. Consistency Declarations.** Based on (i) the evidence presented in the project file and staff reports (incorporated herein by reference), (ii) consultations with affected City Departments, and (iii) testimony and comments received in connection with the PC Public Hearing, the Planning Commission does hereby declare as follows:

**1. Conditional Use Permit (21-CUP-02)**

**a. Findings:**

- i.** That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the density and intensity of development proposed. With the imposition of conditions of approval, the project site is adequate for the level of development of the proposed project.
- ii.** That the significant environmental impacts are mitigated to the maximum extent feasible as the project qualifies for a Class 32 Categorical Exemption.
- iii.** That streets and highways are adequate and properly designed pursuant to the requirements of the City Engineer. With the imposition of conditions of approval and required roadway improvements to McMurray Road and Highway 246, intersection operations will be brought to acceptable levels.
- iv.** That there are adequate public services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the Project.
- vi.** That the Project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and the proposed uses will be compatible with the surrounding area. With the imposition of conditions of approval, impacts to adjacent uses and businesses, including but not limited to McDonald's, the Marriott Hotel and Chumash Employment Resource Center will be minimal.
- vii.** That the project is in conformance with the applicable provisions of Title 19 (Zoning) of the Municipal Code and the General Plan because with the inclusion of proposed roadway improvements as conditions of approval, traffic impacts to the surrounding area will be reduced to acceptable levels (C-5 and C-8). Additionally, this project

will expand the visitor-serving sector of the local economy (L-25), attract a new business and encourage economic development activities that provide opportunities for employment of local residents and increased municipal revenues (E-3).

- viii. That the proposed development is in conformance with the Community Design Guidelines.

**b. Findings for Drive-Through Facilities:**

- i. The drive-through facility is found to have no greater adverse impact upon air quality than the same use without the drive-through facility, according to the Air Quality Study conducted for the project.

**2. Sign Exemption (22-EXP-01)**

**a. Findings:**

- i. The existing standards do not allow for effective business identification due to a special (physical) circumstance applicable to the site, due to the topography of the site, and proximity to Highway 101.
- ii. All other alternatives within the established sign standards have been examined, and the results would still not provide effective business identification.
- iii. The resulting sign proposal is visually compatible with the existing site and surroundings, and meets the intents and purposes of Chapter 19.04 (Sign Title).

**SECTION 4:** Based on the findings set forth in Sections 2 and 3, the Planning Commission hereby recommends approval of the Conditional Use Permit (21-CUP-02) and Sign Exemption (22-EXP-01) for a new drive-through restaurant located at 515 McMurray Road.

**PASSED, APPROVED and ADOPTED** this 5<sup>th</sup> day of January 2023.

\_\_\_\_\_  
Patty Hammel  
Chair

ATTEST:

\_\_\_\_\_  
Cara Miralles  
Assistant Planner

**STATE OF CALIFORNIA** )  
**COUNTY OF SANTA BARBARA** ) **SS**  
**CITY OF BUELLTON** )

I, Cara Miralles, Assistant Planner of the City of Buellton, do hereby certify that the foregoing Resolution No. 22-13 was duly approved by the Planning Commission of the City of Buellton at a meeting held on the 5<sup>th</sup> day of January 2023, by the following vote, to wit.

AYES: ( )

NOES: ( )

ABSENT: ( )

NOT VOTING: ( )

**IN WITNESS WHEREOF**, I have hereunto set my hand this 5<sup>th</sup> day of January, 2023.

\_\_\_\_\_  
Cara Miralles, Assistant Planner

**CONDITIONS OF APPROVAL**  
**IN-N-OUT DRIVE-THROUGH RESTAURANT**  
**CONDITIONAL USE PERMIT (21-CUP-02) & SIGN EXEMPTION (22-EXP-01)**

1. **Project Description.** The approval granted herein is based upon and limited to compliance with the Project Description contained in the November 17, 2022 and January 5, 2023 staff reports, the application received October 4, 2022, and the conditions of approval set forth below. The Project Description is as follows: The Project is a request by Marc Levun, on behalf of In N Out Burger (the “Applicant”) for a Conditional Use Permit (21-CUP-02) and Sign Exemption (21-EXP-01) for the development of a new drive-thru fast food restaurant for In-N-Out Burger (the “Project”) located at 515 McMurray Road, Assessor’s Parcel Number 137-170-046 (the “Property”). The proposed project includes: demolition of an existing 10,053 two-story commercial building and site improvements (previously Parks Plaza Theater), and development of a new 3,885 square foot one-story building, outdoor dining area, landscaping, and parking areas with 55 parking spaces and a 25-car capacity drive-through queue. Hours of operation would be Friday and Saturday 10:30 am – 1:30 am and Sunday to Thursday 10:30 am – 1:00 am, with a total estimated staff of 20. A Sign Exemption is proposed for a 45 foot high freestanding sign and 125 square feet of additional signage above the maximum allowed for the site. An exception to the required loading space is requested. Any deviations from the Project Description, exhibits or conditions must be reviewed and approved by the City for conformity with this approval. Deviations may require formal modification of the approval and/or further environmental review. Deviations without the above-described authorization will constitute a violation of this approval.
  
2. **Terminology.** Except where otherwise noted, the terms appearing throughout the conditions of approval set forth herein shall have the meanings as defined below. Capitalization is used to identify defined terms and shall have the meanings as set forth below unless the context in which they are used clearly requires otherwise.
  - a. **“Applicant”** means Marc Levun, agent on behalf of In-N-Out Burger, and Dian Gran, property owner, and includes all agents, subdividers, developers, contractors, workers and personnel employed on the Project.
  - b. **“Building Department”** means the Building and Safety Division of the County (and all successors and assigns thereof), on behalf and under contract to the City to perform building plan check and inspection services.
  - c. **“City”** means the City of Buellton and includes the City Manager, City Engineer, Planning Director and all other duly appointed officials having responsibility for land use matters, as well as their respective assignees (e.g., Department staff members). Unless otherwise indicated, the Planning Department shall be the primary point of contact for the City.
  - d. **“County”** means the County of Santa Barbara.
  - e. **“Final Building Inspection Clearance”** means acknowledgement by the Building and Safety Division of the County that construction of the

Project has been completed in full compliance with plans and specifications approved by the Building and Safety Division of the County. Such acknowledgement is typically evidenced by signature of appropriate Building and Safety Division staff on the building permit inspection form.

- f. **“Fire Department”** means the Fire Department of the County (and all successors and assigns thereof), furnishing fire prevention and protection services to the City by operation of a special district.
- g. **“Entitlement”** means the type of land use permit required by the Buellton Municipal Code in connection with the Project for which approval is granted herein.
- h. **“Project”** means and includes all of the actions described in the Project Description above.
- i. **“Project Inspection”** means a field inspection and documentation review performed by the Planning Director at the time of Final Building Inspection Clearance to verify that the Project has been completed in full compliance with the terms and conditions of approval. The Project Inspection shall be performed upon completion of construction and the Project must be fully compliant with all terms and conditions of approval prior to and as a condition precedent to obtaining Final Building Inspection Clearance.
- j. **“Project Manager”** means person or personnel of the City assigned to oversee and administer the Permit.
- k. **“Property”** means the land and improvements identified in the Project Description.
- l. **“Property Owner”** means Dian Gran and includes all persons and entities possessing fee title (in full or in part) to the site of the Project.
- m. **“Zoning Clearance”** means approval granted pursuant to 19.08.100 of the Buellton Municipal Code requisite to issuance of a building permit for authorized construction or land development activities.

3. **Additional Permits Required.** Before using any land or structure, or commencing any work pertaining to the erection, moving, alteration, enlarging, or rebuilding of any building, structure, or improvement, the Applicant shall: (i) obtain a Zoning Clearance (hereinafter defined below); and (ii) obtain all other permits and approvals that may be required by operation of the Buellton Municipal Code (e.g., grading permit, building permit, encroachment permit, etc.). Before any Zoning Clearance will be issued by the City, the Applicant must obtain written clearance from all departments having jurisdiction; such clearance shall indicate that the Applicant has satisfied all pre-construction conditions of approval. To the extent any condition or provision of the approval set forth herein is incompatible with or at variance with any other permit for the Project, the most restrictive condition and provision shall prevail.

4. **Interpretations and Exceptions.** The Planning Director is authorized to render decisions as to the applicability or interpretation of the conditions set forth herein, including minor changes, when the strict application of the conditions conflicts with the

underlying purpose of the conditions or creates undue hardship or administrative burden. Any administrative change granted shall be subject to such conditions as will: (i) assure that the adjustment thereby authorized shall appropriately implement purposes and objectives of the original conditions; and (ii) not change or compromise the effectiveness of the original conditions. As an example, and for illustrative purposes only, the Planning Director may modify the implementation timing of specific conditions at the mutual convenience of the City and Applicant. Minor changes authorized pursuant to this condition shall not require separate processing of a formal amendment.

5. **Indemnity.** The Applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures) (collectively “Actions”), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, arising from or in connection with the approval, decision or action of the City Council, Planning Commission, or other decision-making body, or staff action concerning the Project, including but not limited to writ proceedings, claims for inverse condemnation, personal injury, property damage, and/or breach of a mandatory duty, challenges under the California Environmental Quality Act, and/or any action that attacks, challenges, or seeks to set aside, void, or annul all or any part of the approvals, decisions, or actions concerning the Project. City shall promptly notify the applicant of any Action brought and request that the applicant defend the City. It is expressly agreed that applicant may select legal counsel providing the applicant’s defense and the City shall have the right to approve separate legal counsel providing the City’s defense. The applicant shall reimburse City for any attorneys’ fees, costs and expenses directly and necessarily incurred by the City in the course of the defense.
6. **Legal Challenge.** In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the Applicant in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided for by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action.
7. **Approval Limitations.** This approval is issued pursuant to the provisions of Title 19 of the Buellton Municipal Code and is subject to the foregoing conditions and limitations. Failure to comply with said conditions of approval may subject the Applicant to remedies and penalties specified in the Buellton Municipal Code.
8. **Enforcement Costs.** In the event the City determines that it is necessary to take legal action to enforce any of the conditions of approval herein, and such legal action is taken, the Applicant shall be required to pay any and all costs of such legal action, including reasonable attorney’s fees, incurred by the City, even if the matter is not prosecuted to a final

judgment or is amicably resolved, unless the City should otherwise agree with the Applicant to waive said fees or any part thereof.

9. **Failure to Comply.** In the event that the Applicant fails to comply with any order of the City issued hereunder or any injunction of the Superior Court, it shall be liable in accordance with the provision of Section 1.32 of the Buellton Municipal Code.
10. **Access to Records and Facilities.** As to any condition that requires for its effective enforcement the inspection of records or facilities by City or its agents, the Applicant shall make such records available or provide access to such facilities upon reasonable notice from City
11. **Payment of Fees.** All applicable fees associated with development of the Project shall be paid by the Applicant at the time such fees become payable as provided by Buellton Municipal Code or otherwise stipulated in this approval (whichever date is sooner), and the amount payable shall be based on the fee schedules adopted by the City and then in effect at the time such fees become payable.
12. **Acceptance of Conditions.** The Applicant shall acknowledge and agree to all conditions of this approval within 60 days of the notice of final action, evidenced by the Applicant's signature on the space provided at the end of this document. The Applicant, and all successors or assignees, are responsible for complying with all conditions of approval. Any zoning violations concerning the installation, operation, and/or abandonment of the Project are the responsibility of the Applicant, and all successors or assignees.

## **B. PUBLIC WORKS/ENGINEERING CONDITIONS**

### **PRIOR TO ZONING CLEARANCE ISSUANCE**

13. **Can and Will Serve Letter.** A Can and Will Serve Letter is required to be completed and signed prior to Zoning Clearance issuance.
14. **Fat, Oils and Grease (FOG) Permit Required.** An application for a modified Fats Oils and Grease (FOG) Permit is required for the new restaurant use and must be submitted to the Wallace Group and an initial plan review completed prior to Zoning Clearance issuance. Proposed plumbing plans shall be submitted as part of this application.
15. **Measures to Direct Vehicles.** Applicant shall apply to Caltrans for inclusion of applicant's logo on existing Caltrans specific service signs. to direct vehicles on southbound Hwy 101 to exit at 140B Avenue of Flags and on northbound Hwy 101 to exit at 140B McMurray Rd/Ave of Flags, to the satisfaction of the Public Works Director. Verification of said request to Caltrans shall be provided to the City prior to issuance of Zoning Clearance.

### **PRIOR TO GRADING PERMIT ISSUANCE**

16. **Improvement Plans.** Applicant shall cause to be prepared by a Civil Engineer, registered in the State of California, grading and utilities improvement plans, including, but not limited to, street, water, sewer, and storm drain improvements. An engineering cost estimate shall be submitted with the grading and improvement plans along with any calculations, signed/stamped certifications and plan check processing fees.
17. **Improvement Plan Requirements.** Plans for the full street width frontage improvements shall be drawn by a California Registered Civil Engineer. Drawings shall be prepared on 24-inch by 36-inch mylar (4 mil) showing all proposed improvements including, but not limited to, curbs, gutters, sidewalks, paving, driveway cuts, storm drains, street lights, utilities, and street trees.
18. **McMurray Improvements.** A flashing beacon, striped pedestrian crosswalk and appurtenant ADA compliant ramps at sidewalk across McMurray Road (at or near the intersection of Valley Vineyard north) shall be installed to the satisfaction of the City Engineer, and shown on project plans prior to grading permit issuance.
19. **Public Improvement Plans.** Public improvements (adjacent and off-site) should be submitted on separate plans to the City Engineer for approval. Driveway, sidewalk and any other improvements made within the public right-of-way shall be shown on a separate sheet. These improvements shall utilize City of Buellton standard details and provide for ADA access. Driveway alignment, pedestrian crossing improvements and other requirements of the Traffic Study shall be incorporated into the project improvement plans to the satisfaction of the City Engineer.
20. **Utility Plans.** Utility Plans shall be provided for water, sewer and storm drain. Plans and details shall conform to City of Buellton standards, Public Works Greenbook, and AWWA standards.
21. **Soils Report.** At the time that Improvement Plans and/or Grading and Drainage Plans are submitted for review and approval by the City Engineer, two copies of a Soils Report, prepared by a California Registered Geologist or Soils Engineer, shall be submitted. The Report shall address soils engineering and compaction requirements, R-values, and other soils and geology related issues (including liquefaction) and shall contain recommendations as to foundation design, and paving sections, where applicable for the project.
22. **Erosion Control Plan.** Erosion Control Plans shall be completed and submitted to the City Engineer for review and approval. Appropriate BMP measures shall be undertaken at all times. This shall be in compliance with the Regional Water Quality Control Board requirements. NOI shall be filed. A SWPPP shall be developed for the project site; draft copy shall be submitted for review prior to issuance of the grading permit. SWPPP shall be on-site at all times.
23. **Hydrology Report.** At the time that Improvement and/or Grading and Drainage Plans are submitted for review and approval by the City Engineer, a complete hydrology/hydraulic report shall be submitted by the applicant's engineer determining the adequacy of the

proposed drainage system and the adequacy of the existing downstream system. A rain fall frequency of twenty-five (25) years shall be used for sizing piping and inlet structures. If no overland escape is available, 100-year flows shall be used as the basis of design. Santa Barbara County Engineering Design Standards shall be used. The report shall include a flood study the reviews pre-development and post development flood conditions, recommendations to be implemented to minimize or resolve flood issues that may impact the proposed development and recommendations to be implemented that minimize or resolve flood issues outside of the development property that results from the proposed development. These recommendations shall be incorporated in the project improvement plans.

24. **Stormwater.** Development shall be undertaken in accordance with conditions and requirements of the State of California Regional Water Quality Control Board. Project Grading and Storm Drain Improvement Plans shall identify and incorporate Best Management Practices (BMPs) appropriate to the uses conducted on-site and during construction to effectively mitigate storm water pollution during construction as well as post-construction.

Stormwater management shall be incorporated in the improvement plans (low impact development). This project is subject to Post Construction Requirements as outlined in the City's Stormwater Technical Guide for a Tier 4 project.

A Storm Water Control Plan that analyzes the potential flows, run-off and drainage management area's and proposed lid improvements to address run-off and water quality, including a maintenance/water quality control plan, shall be submitted. This document shall include an owner's statement that maintenance of facilities will occur regularly (at least annually) and will be ongoing. The plan shall include an annual maintenance report which must be signed/certified by the QSD/QSP, property owner and contractor and submitted to the Public Works Department.

25. **Fire Department Review.** Applicant shall submit improvement plans for concurrent review with the Santa Barbara County Fire Department and shall provide documentation of submittal along with grading and utility improvement plans to the City Engineer. A copy of the Fire Department approval shall be submitted prior to issuance of grading permit.
26. **Mylars.** Upon approval of the final plans, the applicant shall furnish original stamped mylars to the City Engineer for signature and reproduction for permitting purposes. A final Engineer's estimate shall be prepared (updated from the original submittal and shall utilize prevailing wage rates) and permit/inspection fees paid.
27. **Sureties.** A faithful performance and labor/material bond for the grading and utilities and also for the public improvements (each to be equal to 100% of the final City Engineer's estimate of costs, which shall include a 20% contingency), or equivalent form of guarantee, shall be posted by the applicant. The bonds shall remain in effect until the completion of the project and a certificate of occupancy has been issued, at which time,

10% of the bond shall be retained for a warranty period of 1 year after acceptance of improvements by the and until receipt of As-built Record Drawings.

#### **PRIOR TO BUILDING PERMIT ISSUANCE**

28. **Grading Permit.** The applicant shall obtain a grading permit from the City Engineer prior to obtaining a building permit.
29. **Rough Grading.** Rough grading certification by the geotechnical engineer shall be approved by the City Engineer prior to obtaining a building permit.

#### **PRIOR TO OCCUPANCY CLEARANCE**

30. **Social Media and Directional Mapping Services to Direct Vehicles.** Efforts shall be made and appropriately documented to encourage patrons via social media and other directional apps and platforms to utilize exit 140B Avenue of Flags when driving on Highway 101 southbound and exit 140B McMurray Rd/Avenue of Flags when driving on Highway 101 northbound. Language to be used shall be approved by the City prior to occupancy.
31. **Mitigation Fees.** The applicant shall pay water and sewer utilities connection fees and all traffic mitigation fees from the Public Works Department prior to occupancy.
32. **Easements.** All public easements for utilities or grants of ROW must be submitted for City Engineer review and approval. All grant deeds must be accepted by the City Council prior to occupancy.
33. **Right-of-Way Dedication.** Should right-of-way dedication be required as part of traffic mitigation measures, applicant shall be responsible for acquisition and dedication to the City or Caltrans as appropriate.
34. **As-Built Record Drawings.** The applicant shall complete all required improvements to the satisfaction of the City Engineer. The applicant shall furnish the mylar or a reproducible copy of the improvement plans to the City Engineer, modified to reflect field changes made during construction and stamped "As-Built Record Drawings."
35. **Plan Check Fees.** All fees and any unpaid balances from plan check or inspection and permits, shall be paid in full.

#### **GENERAL CONDITIONS**

36. **Public Improvement Standards.** Unless superceded by Caltrans all public improvements shall be designed and constructed in conformance with The City of Buellton Standards, and when applicable, the Santa Barbara County Standards.
37. **Utility Easements.** Existing and proposed easements for all utilities shall be located and described on the engineering plans.

38. **Utility Locations.** All other utilities shall be shown on the plans.
39. **Traffic Study Recommendations.** Recommendations from the Traffic Study conducted by Ganddini Group dated September 30, 2022, shall be made part of the project conditions, as listed below. Applicant is required to design and install the improvements. Applicant shall process appropriate permit applications through Caltrans for those improvements that are within Caltrans jurisdiction. In the event that any of the following improvements are determined to be infeasible or are otherwise not approved by agencies with jurisdiction over the improvements, other improvements which mitigate traffic concerns and are acceptable to Caltrans and the City shall be required.
  - a) Install northbound right turn overlap signal phasing at Avenue of Flags (NS) at Highway 246 (EW)
  - b) Install southbound right turn overlap signal phasing at McMurray Road (NS) at Highway 246 (EW)
  - c) Either re-stripe the northbound through/right turn lane to a shared left/through/right turn lane; or widen McMurray Road and restripe the northbound approach to consist of one left turn lane, one through lane, and one dedicated right turn lane.
40. **Construction Work Site Traffic Control Plan.** A construction work site traffic control plan shall comply with State standards set forth in the California Manual of Uniform Traffic Control Devices and shall be submitted to the City for review and approval prior to the issuance of grading permits or start of construction. The plan shall identify any roadway, sidewalk, bike route, or bus stop closures and detours as well as haul routes and hours of operation. All construction related trips shall be restricted to off-peak hours to the extent possible.
41. **Improvements in Accordance With Applicable Standards.** All on-site and off-site roadway design, traffic signing and striping, and traffic control improvements relating to the proposed project shall be constructed in accordance with applicable State/Federal engineering standards and to the satisfaction of the City of Buellton and Caltrans.
42. **Site-Adjacent Roadways.** Site-adjacent roadways shall be constructed or repaired at their ultimate half-section width, including landscaping and parkway improvements in conjunction with development, or as otherwise required by the City of Buellton.
43. **Emergency Vehicle Access.** Adequate emergency vehicle access shall be provided to the satisfaction of the Santa Barbara County Fire Department.
44. **Compliance with Sight Distance Requirements.** The final grading, landscaping, and street improvement plans shall demonstrate that sight distance requirements are met in accordance with applicable City of Buellton/California Department of Transportation sight distance standards.

45. **Drive-Through Lane Management.** In-N-Out shall employ all necessary drive-through lane management measures to maintain adequate on-site circulation and to ensure that any overflow does not cause site access obstructions.
46. **Overflow Management Plan.** Implementation of drive through lane overflow management plan shall include implementation of the alternative vehicle turning path as shown in Figure 29 of the September 30, 2022 traffic impact analysis by Ganddini Group.
47. **Third Grill.** A third grill shall be used during periods of high volume to ensure a more efficient flow of cars going through the drive thru.
48. **Wireless-Handheld Ordering System.** If drive thru queue extends beyond the menu board, the wireless-handheld ordering system shall be implemented.
49. **Pedestrian Crossing.** Installation of a high-visibility pedestrian crossing and ADA-compliant curb ramps on the south leg of the intersection of Valley Vineyard Circle (North) and McMurray Road is required.
50. **Cost of Improvements.** All improvements listed are to be installed at the sole expense of the project applicant, with the exception of improvement (a.), above, for which the applicant shall contribute a pro-rata “fair share” amount of 6.3% of the total improvement cost, to be determined by the Public Works Director. The City is not responsible for the cost of any of the required roadway improvements.
51. **Alternative Improvements.** In the event that any of the listed improvements are determined to be infeasible or unacceptable to Caltrans or the City, other improvements may be agreed to by all parties, including the City, Caltrans and the applicant.
52. **Caltrans Approval.**
  - a) **Requirement to Submit Plans.** Prior to issuance of Zoning Clearance, applicant shall submit a complete set of roadway improvement plans to Caltrans for review.
  - b) **Requirement to Obtain Approvals.** Prior to issuance of Building Permit, all necessary approvals for all required roadway improvements shall be obtained from Caltrans and/or the City of Buellton.
  - c) **Requirement to Install Improvements.** Prior to issuance of Certificate of Occupancy, all roadway improvements shall be installed in accordance with approved plans, to the satisfaction of Caltrans and the City of Buellton.
  - d) **Cost of Obtaining Caltrans Approvals.** Any costs associated with obtaining any of these approvals shall be at the sole expense of the applicant.

## **D. PLANNING CONDITIONS**

### **GENERAL**

53. **Conditional Use Permit & Sign Exemption.** Approval of the Conditional Use Permit (Case No. 21-CUP-02) and Sign Exemption (Case No. 21-EXP-01) (the “Permit”) is granted to the Applicant for the Property as identified in the Project Description. Except or unless indicated otherwise herein, all buildings, driveways, parking areas, and other facilities or features shall be located and maintained substantially as shown on the exhibits accompanying the application for the Project.
54. **Development Time Frame.** Conditional use permits shall expire five years after approval unless, prior to the expiration date, the applicant, or applicant’s successor, has completed substantial physical construction on the development or applied to the planning commission for a time extension. An applicant, or applicant’s successor, may apply for two one-year time extensions, which the planning commission or city council may approve upon a showing of good cause. Upon expiration of a conditional use permit and any time extension, an applicant, or applicant’s successor, must apply for a new minor or conditional use permit in order to proceed with the development.
55. **Fire Department.** The Project is located within the jurisdiction of the County Fire Department and shall comply with all applicable standards of that agency.
56. **Building Standards.** All building construction shall be designed and performed in accordance with the currently adopted California Building Code, and all other appropriate sections of the Buellton Municipal Code, State of California energy conservation standards and Title 24 handicap accessibility standards. All necessary plans and documentation shall be submitted at time of plan check including, but not limited to, complete architectural plans and appropriate engineering calculations prepared by a California Licensed Architect or Engineer.
57. **Grading and Drainage.** All building construction, grading and drainage shall be designed and performed in accordance with the currently adopted Excavation and Grading Code and all other appropriate sections of the Buellton Municipal Code and Santa Barbara Flood Control Design Standards dealing with grading, drainage and public improvements. Prior to construction, necessary plans and documentation shall be submitted for review and approval by the City Engineer including, but not limited to, complete civil engineering drawings, public improvement plans, utility specifications and appropriate engineering calculations prepared by a California Registered Civil Engineer.
58. **Performance Standards.** The design, operation, and use of the Project and Property shall comply with all outdoor storage, trash collection design, performance standards, landscaping requirements, and lighting provisions of the Buellton Municipal Code. All exterior lighting shall be located and designed so as to avoid creating substantial off-site glare, light spillover onto adjacent properties, or upward illumination into the sky. In addition, the Property shall be maintained in strict compliance with the following additional standards:
  - a. Use Limitations. No building or other improvement upon the Property shall be constructed, maintained, or used for any purpose other than that which is allowed

by the Buellton Municipal Code or otherwise stipulated in the conditions of approval herein. Furthermore, the Property shall be maintained in strict compliance with the following additional standards:

- (1) Unobstructed Access. All driveways and areas designated for off-street parking shall remain accessible at all times. Except as allowed by revocable license approved by the City, parking shall not be allowed on driveways at any time.
  - (2) Vehicle Repair. No disassembly, repair or any other work shall be performed on any vehicle, machine, motor, appliance or other similar device shall be allowed on any portion of the Property except or unless such work and device is wholly removed from public view.
  - (3) Exterior Storage. No storage of any goods, materials or equipment shall be permitted on the Property except within the confines of fully enclosed buildings.
- b. Prohibited Activities. No person owning, leasing, occupying or having charge or possession of the Property, or any portion thereof, shall maintain or use the premises in such a manner that any of the conditions listed below are found to exist. Conditions listed below that are consistent with a typical drive-thru fast food restaurant are not prohibited.
- (1) Fire and Explosion Hazards. Storage and transportation of flammable or explosive materials, as defined by the County of Santa Barbara Fire Department, which are provided without adequate safety devices against the hazard of fire and explosion and adequate firefighting and fire-suppression equipment and devices, standard in the industry.
  - (2) Fissionable, Radioactivity or Electrical Disturbance. Storage or use of fissionable or radioactive material, if their use or storage results at any time in the release or emission of any fissionable or radioactive material into the atmosphere, the ground, or sewage systems, or any activities which emit electrical disturbances, affecting the operation at any point of any equipment other than that of the creator of such disturbance.
  - (3) Glare, Humidity, Heat and Cold. Direct or sky-reflected glare, whether from floodlights or from high temperature processes, or humidity, heat or cold that is produced and is perceptible without instruments by the average person at the Property line.
  - (4) Liquid and Solid Wastes. Discharge at any point into any public sewer, private sewage disposal system, or stream, or into the ground, of any material 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 accordance with standards approved by the California Department of Public Health or such other governmental agency as shall have jurisdiction over such activities.

- (5) Odors. Emissions of odorous gases or other odorous matter that is produced in nuisance quantities at the Property line.
- (6) Particulate Matter and Air Contaminants. Emissions, including but not limited to, fly ash, dust, fumes, vapors, gases, and other forms of air contaminants which are produced from any facility or activity which are readily detectable without instrument by the average person at the Property line which can cause any damage to health, animals, vegetation or other forms of property, or which can cause excessive soiling at any point.
- (7) Vibration. Ground vibration that is produced and is discernible without instruments to the average person at the Property line. Ground vibration caused by motor vehicles, trains, aircraft, and temporary construction or demolition work is exempted from this standard.
- (8) Prohibition of Dangerous Elements. Land or buildings which are used or occupied in any manner so as to create any dangerous, noxious, injurious or otherwise objectionable fire, explosive or other hazard; noise or vibration; glare; liquid or solid refuse or waste; or other dangerous or objectionable substance, condition, or element in such a manner or such an amount as to adversely affect other uses.
- (9) Noise. Unless otherwise conditionally allowed, no person shall operate or cause to be operated any source of sound at or on the Property, or allow the creation of any noise on the Property owned, leased, occupied or otherwise controlled by such person which causes the noise level when measured on any receiving property to exceed the noise level limits set forth by the Buellton Municipal Code as adopted and amended.

59. **Property Maintenance.** The Project and Property, including the landscaping and parking spaces, shall be maintained in a continuous state of good condition and repair, in full compliance with all approved plans, specifications and conditions of approval. Corrective improvements shall be undertaken as necessary to continuously conform with and implement conditions of Project approval including, as applicable, repair, repainting and/or replacement of Project components as needed. Where a Project is found to be non-compliant, the Applicant shall adhere to City recommendations to bring the Project into compliance.

60. **Hours of Operation.** Hours of operation are limited to Friday and Saturday 10:30 am – 1:30 am and Sunday to Thursday 10:30 am – 1:00 am. No outdoor dining shall be permitted outside the hours of operation.

61. **Delivery Hours.** No loading area has been included on the Project site, and an exception to this requirement has been requested. Therefore, regular deliveries for the restaurant shall take place outside of the hours of operation.
62. **Architectural Design.** The Project shall be in conformance with the Community Design Guidelines. The architectural design of the buildings shall conform to that shown on the architectural elevations and color boards for the project with a design style of Agrarian.

#### **PRIOR TO ZONING CLEARANCE ISSUANCE**

63. **Driveway Entrance Improvements.** Driveway at McMurray Road shall be widened to a minimum of 32 feet and a maximum of 36 feet (or to the satisfaction of the Public Works Director) and shall accommodate three permanent lanes. Two lanes shall be ingress, and of these, one shall be dedicated to the drive-through lanes. One lane shall be egress, for both right and left hand turns. The project plans shall be revised to this effect, to the satisfaction of the Public Works Director, prior to Zoning Clearance issuance.
64. **Design of Roadway Improvements.** All design plans for all required roadway improvements shall be submitted to the City and Caltrans.
65. **Drive-Through Exit Path.** Prior to Zoning Clearance issuance, applicant shall modify site plan with additional landscaping and signage to direct vehicles exiting the drive through to exit to the left and onto primary access road.
66. **Turning Path into the Drive-Through.** Vehicle turning path into the drive-through lanes shall accommodate at minimum a 20-foot-long pickup truck. This accommodation shall be depicted on the project plans prior to Zoning Clearance issuance.
67. **Landscape and Irrigation Plans.** The final landscape and irrigation plans shall include a signed statement by a licensed landscape architect stating that the plans comply with the City's Water Efficient Landscaping Ordinance (MWELo) and utilize species from the City's Approved Tree Planting List or to the satisfaction of the City Planning Director.
68. **MarBorg.** A letter from MarBorg shall be provided indicating that the location and design of the trash enclosure is consistent with their requirements prior to Zoning Clearance issuance.
69. **Construction and Demolition Waste.** A Materials Management Plan is required to be completed prior to Zoning Clearance issuance.
70. **Signage.** A building permit for the proposed signage is required. Signage on the building plans submitted for Zoning Clearance shall be in substantial conformance the Project plans date-stamped October 4, 2022.
71. **Exterior Lighting.** All exterior lighting fixtures shall comply with the design requirements of the Community Design Guidelines and shall protect dark skies. All

exterior lighting, including but not limited to the parking lot lighting, bollards, and wall-mounted lighting shall be 3000K or less, with bulbs recessed or flush with the lighting housing to be fully shielded, and shown on the plans as such prior to Zoning Clearance issuance. All lighting shall be LED or Inductive technology or other energy efficient type of lighting, consistent with what is indicated in the lighting specifications included with the project plan dated on October 4, 2022.

#### **PRIOR TO GRADING PERMIT ISSUANCE**

72. **Dust Control Monitor.** The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holiday and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the Air Pollution Control District prior to land use clearance for finish grading for the structure.
73. **Dust Control Requirements.** The applicant shall include, as a note on a separate informational sheet to be recorded with map, all dust control procedures in Condition 66. All requirements shall be shown on grading and building plans.

#### **PRIOR TO BUILDING PERMIT ISSUANCE**

74. **Zoning Clearance.** As a condition precedent to obtaining building permits, and prior to improving any portion of the Property or commencing any work pertaining to the Project approved herein, the Applicant shall obtain Zoning Clearance from the Planning Director. Zoning Clearance shall only be granted upon satisfying all conditions precedent to construction as stated in these conditions of approval.
75. **Landscape Surety.** Prior to issuance of a building permit, a surety for installation of the landscaping and irrigation, and for maintenance for one year, shall be posted in a form acceptable to the City. The surety estimate shall be submitted as part of the building permit submittal.
76. **Landscape Maintenance Agreement.** The Applicant shall acknowledge and sign the City's Landscape and Maintenance Agreement prior to issuance of the building permit. The Applicant, and all successors or assignees, are responsible for complying with all conditions of the Agreement. Any violations of the Landscape and Maintenance Agreement may result in Code Enforcement action.
77. **SBAPCD Permits.** Prior to building permit issuance, Santa Barbara County Air Pollution Control District (SBAPCD) Authority to Construct permits must be obtained for all equipment that requires an SBAPCD permit. Proof of receipt of the required SBAPCD permits shall be submitted by the Applicant to planning staff. SBAPCD Authority to Construct permits are required for diesel engines rated at 50 brake horsepower and greater (e.g., firewater pumps and emergency standby generators) and boilers/large water heaters whose combined heat input rating exceeds 2.0 million British thermal units per hour (Btu/hr). Advisories: (1) In the case of a diesel-fired emergency

generator, an equipment-specific Health Risk Assessment may be required as part of SBAPCD permit issuance. The applicant should refer to the SBAPCD website at [www.ourair.org/dice-atcm](http://www.ourair.org/dice-atcm) for more information on diesel engine permitting. (2) The SBAPCD permit process can take several months. To avoid delay, the applicant is encouraged to submit their Authority to Construct permit application to the SBAPCD as soon as possible, see [www.ourair.org/permit-applications](http://www.ourair.org/permit-applications) to download the necessary permit application(s).

## **DURING CONSTRUCTION**

78. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday. Equipment maintenance and servicing shall be confined to the same hours. Weekend construction and other exceptions shall require special approval from the Planning Director, in consultation with the City Engineer, and be limited to the hours of 9:00 a.m. to 4:00 p.m. Prior to issuance of building permit, the Developer shall provide proof that all construction equipment utilizing internal combustion engines have mufflers that are in good condition.
79. **Standard Dust Control Procedures.** During clearing, grading, earth moving, or excavation operation, excessive fugitive dust emissions shall be controlled by regular watering, paving construction roads, or other dust preventive measures such as using the following procedures:
- During construction, use water trucks or sprinkler systems to keep all areas of vehicle movement damp enough to prevent dust from leaving the site. At a minimum, this should include wetting down such areas in the late morning and after work is completed for the day. Increased watering frequency should be required whenever the wind speed exceeds 15 mph. Reclaimed water should be used whenever possible.
  - Minimize amount of disturbed area and reduce on site vehicle speeds to 15 miles per hour or less.
  - Gravel pads must be installed at all access points to prevent tracking of mud on to public roads.
  - If importation, exportation and stockpiling of fill material are involved, soil stockpiled for more than two days shall be covered, kept moist, or treated with soil binders to prevent dust generation. Trucks transporting fill material to and from the site shall be tarped from the point of origin.
  - After clearing, grading, earth moving or excavation is completed, treat the disturbed area by watering, or revegetating, or by spreading soil binders until the area is paved or otherwise developed so that dust generation will not occur.
80. **Application of Standard CBACT.** Best available control technology for construction equipment (CBACT) shall be applied to the piece of construction equipment estimated to cause the highest level of combustion emissions during any proposed construction, based

on APCD standards. CBACT technology may include the following: fuel injection timing retard of 2 degrees; installation of high pressure injectors; coating of internal combustion surfaces (cylinder head, pistons, and valves); and/or use of reformulated diesel fuel.

81. **Standard Ozone Precursor Controls.** At all times, ozone precursor emissions shall be controlled not only through the routine maintenance of all construction equipment, but construction activities shall also be required to utilize new technologies to control ozone precursor emissions including:

- Heavy-duty diesel-powered construction equipment manufactured after 1996 (with federally mandated "clean" diesel engines) should be utilized wherever feasible.
- The engine size of construction equipment shall be the minimum practical size.
- The number of construction equipment operating simultaneously shall be minimized through efficient management practices to ensure that the smallest practical number is operating at any one time.
- Construction equipment shall be maintained in tune per the manufacturer's specifications.
- Construction equipment operating onsite shall be equipped with two to four degree engine timing retard or precombustion chamber engines.
- Catalytic converters shall be installed on gasoline-powered equipment, if feasible.
- Diesel catalytic converters, diesel oxidation catalysts and diesel particulate filters as certified and/or verified by EPA or California shall be installed, if available.
- Diesel powered equipment should be replaced by electric equipment whenever feasible.
- Construction worker trips should be minimized by encouraging carpooling and by providing for lunch onsite.

82. **Compliance with Air Quality Regulations.** The project shall comply with APCD Rule 345 and related air quality requirements, as described below, which would ensure that construction emissions would remain less than significant.

- a. No person shall engage in any construction or demolition activity or earth moving activities subject to this rule in a manner that causes discharge into the atmosphere beyond the property line visible dust emissions of 20% opacity or greater for a period or periods aggregating more than 3 minutes in any 60 minute period.
- b. No person, including facility or site owner or operator of source, shall load or allow the loading of bulk materials or soil onto outbound trucks unless at least one of the following dust prevention techniques is utilized:
  1. Use properly secured tarps or cargo covering that covers the entire surface area of the load or use a container-type enclosure.

2. Maintain a minimum of 6 inches of freeboard below the rim of the truck bed where the load touches the sides of the cargo area and ensure that the park of the load does not extend above any part of the upper edge of the cargo area.
  3. Water or otherwise treat the bulk material to minimize loss of material to wind or spillage.
  4. Other effective dust prevention control measures approved in writing by the Control Officer.
- c. Visible roadway dust as a result of active operations, spillage from transport trucks, erosion, or track-out/carry-out shall be controlled as outlined below:
1. Visible roadway dust shall be minimized by the use of any of the following track-out/carry-out and erosion control measures that apply to the project or operations: track-out grates of gravel beds at each egress point, wheel-washing at each egress point during muddy conditions, soil binders, chemical soil stabilizers, geotextiles, mulching, or seeding; and

Visible roadway dust shall be removed at the conclusion of each work day when bulk material removal ceases, or every 24 hours for continuous operations. If a street sweeper is used to remove any track-out/carry-out, only a PM<sub>10</sub>-Efficient Street Sweeper shall be used. The use of blowers for removal of track-out/carry-out is prohibited.

83. **SBAPCD Rule 360 Emissions Compliance.** Boilers, water heaters, and process heaters rated between 75,000 and 2.0 million British thermal units per hour (Btu/hr) must comply with the emission limits and certification requirements of SBAPCD Rule 360. Note: Units fired on fuel(s) other than natural gas still need to be certified under Rule 360. Please see [www.ourair.org/wp-content/uploads/rule360.pdf](http://www.ourair.org/wp-content/uploads/rule360.pdf) for more information.

#### **PRIOR TO FINAL BUILDING INSPECTION/OCCUPANCY CLEARANCE**

84. **Parking.** A total of 55 parking spaces must be provided for the Project as shown on the Plan. All parking spaces shall be striped in accordance with City of Buellton standards prior to the final building inspection.
85. **Landscape Installation.** Prior to obtaining Final Building Inspection Clearance, all landscaping and irrigation shall be completed and fully installed in accordance with the approved landscape plan. A letter from the landscape architect shall be submitted verifying compliance with the plans. The landscape and irrigation surety, less the one year maintenance portion, can be released at this time.
86. **Project Inspections.** Upon completion of construction and prior to occupancy or use, the Planning Director shall conduct a Project Inspection prior to and as a condition precedent to obtaining Final Building Inspection Clearance. Compliance with all conditions of approval is a pre-requisite to obtaining the Final Building Inspection Clearance.

87. **Final Occupancy Clearance.** No Final Building Inspection Clearance or release of occupancy will be granted for any building on the Property until all construction is completed and all improvements and landscaping associated with the Project are installed in accordance with the plans approved and the conditions specified herein. Exceptions to this requirement may be granted subject to: (i) approval of the City Engineer and Planning Director; (ii) assurance that unfinished items will be completed within a reasonable period of time (including, but not limited to, the posting of appropriate performance security to assure such completion); (iii) essential infrastructure necessary to serve the entire Project is fully installed; and (iv) public safety and convenience is appropriately protected.

#### **FOLLOWING FINAL BUILDING INSPECTION/OCCUPANCY CLEARANCE**

88. **Landscape Maintenance.** Following installation, all landscaping shall be continuously maintained thereafter for a period of not less than one year or until such time that all plant material has been completely established. The Planning Director shall inspect or cause to be inspected all landscaped areas after the one year maintenance period. If the landscaping is healthy and established, the one year maintenance portion of the surety may be released.

#### **E. SANTA BARBARA COUNTY FIRE DEPARTMENT CONDITIONS**

##### **ADVISORY**

The following Fire Department advisory conditions are imposed with the understanding that the Fire Protection Certificate application(s) may involve modifications, which may determine additional conditions. The Fire Prevention Division must be notified of any changes to the project proposal. A change in the project description may cause conditions to be imposed.

89. All standard fire department conditions and current codes shall apply at time of development.

##### **PRIOR TO CONSTRUCTION**

90. One new fire hydrant shall be installed. The fire department shall have on file a set of approved fire hydrant plans prior to any work being started.
- a. Commercial fire hydrants shall consist of one 4-inch outlet and two 2-1/2 inch outlets.
  - b. A set of approved fire hydrant plans, stamped and dated by the fire department shall be kept at the job site and available upon request.
  - c. Water systems shall be installed exactly as the approved fire hydrant plans dictate. No changes or modifications to these plans shall take place without prior fire department approval.
  - d. No work shall be covered or otherwise rendered inaccessible or unviewable prior to inspection by a fire department representative.

## **PRIOR TO OCCUPANCY CLEARANCE**

91. Designated fire lanes shall include red curbs and signs indicating “Fire Lane – No Stopping” placed as required by the fire department. Refer to current adopted California Fire Code.
92. Portable fire extinguishers are required and shall be in accordance with the current adopted Santa Barbara County Code Chapter 15.
93. Address numbers shall be a minimum height of 12 inches.
94. A Knox Box entry system shall be installed for the building. A spare key shall be provided for the Knox Box entry system.
  - e. To obtain a Knox Authorization Order Form and instructions, email [pe.inquiries@countyofsb.org](mailto:pe.inquiries@countyofsb.org). Please note, review is required prior to submission to Knox Company, as an authorized fire agency signature must be included on your order form. Do not send order forms to Knox Company directly.

## **F. SANTA BARBARA COUNTY BUILDING DEPARTMENT CONDITIONS**

### **ADVISORY**

95. Incorporate the Flood Plain Administrator conditions of approval and all mitigation measures on the cover sheet of the building plans.
96. Incorporate any project conditions of approval including any Department condition letters into the plans.
97. Plans to detail compliance with the CA Codes and local ordinances in effect at the time of submittal.

## **G. FINANCE DEPARTMENT CONDITIONS**

98. **Outstanding Fees.** The Applicant shall pay all fees including, but not limited to, outstanding balances for processing by the City Engineer, Planning Department, Building Department, traffic mitigation fees, water connection fees, sewer fees, school fees, Fire Department mitigation fees, and any additional processing deposits as required prior to zoning clearance.

## **Project Applicant/Property Owner Acknowledgement of Required Conditions of Approval**

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Property Owner Signature

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Date

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Project Applicant/Agent/Representative Signature

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Date

**PLANNING COMMISSION RESOLUTION NO. 22-13**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BUELLTON, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVAL OF A CONDITIONAL USE PERMIT (21-CUP-02) AND SIGN EXEMPTION (22-EXP-01) FOR A NEW DRIVE-THROUGH RESTAURANT LOCATED AT 515 MCMURRAY ROAD, ASSESSOR'S PARCEL NUMBER 137-170-046, AND MAKING FINDINGS IN SUPPORT THEREOF**

**BE IT RESOLVED** by the Planning Commission of the City of Buellton as follows:

**SECTION 1:** Pursuant to the Zoning Ordinance of the City of Buellton, an application has been filed by Dian Gran, property owner, and Marc Levun, In-N-Out Burger, agent, hereinafter referred to as “Applicant”, requesting approval to demolish an existing commercial structure and develop a new drive-through restaurant on a 1.48-acre parcel located on land at 515 McMurray Road (APN 137-170-046). The subject property is planned and zoned for CR (General Commercial).

**SECTION 2:** The proposed Project consists of:

- A. Conditional Use Permit (21-CUP-02):** Approval of a new 3,885 square foot building with drive-through for In-N-Out Burger. The proposed development would include:
- 55 parking spaces
  - Drive-through with capacity for 25 vehicles
  - Demolition of existing pavement and structures
- B. Sign Exemption (22-EXP-01):** Approval of one 45 foot high freestanding sign, and 395 square feet of total building signage area (125 additional square feet than the maximum allowed).

**SECTION 3:** All proceedings having been duly taken as required by law, and upon review of the information provided in the staff report, consideration of the testimony given at the public hearing, as well as other pertinent information, the Planning Commission finds the following:

- A. Record.** Prior to rendering a decision on the Project, the Planning Commission considered the following:
1. All public testimony, both written and oral, received in conjunction with that certain public hearing conducted by the Planning Commission on November 17, 2022 (“PC Public Hearing”).

2. All oral, written and visual materials presented in conjunction with that certain PC Public Hearing.
3. All oral, written and visual materials presented in conjunction with the Planning Commission meeting of November 17, 2022.
4. The following informational documents, which by reference, are incorporated herein:
  - a. The project file for 21-CUP-02 and 22-EXP-01, as well as the set of project plans dated October 4, 2022.
  - b. The staff report dated November 17, 2022.
  - c. The staff report dated January 5, 2023.
  - d. The request by the Planning Director, written in the staff report dated January 5, 2023 and verbally discussed at the meeting of that date, to refer the matter to the City Council pursuant to Buellton Municipal Code section 19.01.080 (A).

**B. Public Review.** On the basis of evidence hereinafter listed, all administrative procedures and public participation requirements prescribed in the Buellton Zoning Ordinance have been lawfully satisfied:

1. A notice of PC Public Hearing was published in a newspaper of general circulation on November 3, 2022 (the “PC Public Notice”), a minimum of 10 days in advance of the PC Public Hearing conducted on November 17, 2022.
2. The PC Public Notice was mailed to the Applicant, affected public agencies, persons owning property within 300 feet of the Project site and others known to be interested in the matter on November 3, 2022, a minimum of 10 days in advance of the PC Public Hearing.
3. The PC Public Notice was posted in two public locations on November 3, 2022, a minimum of 10 days in advance of the PC Public Hearing.
4. The matter was continued to the date of December 15, 2022 and the matter was further continued to January 5, 2023 due to requested changes by the applicant.

**C. Environmental Review.** Pursuant to the California Environmental Quality Act (CEQA), the proposed project meets the criteria for a Class 32 Categorical Exemption (infill project), and is thereby exempt from further environmental review. The following describes the consistency of the project with the required findings:

1. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
2. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

3. The project site has no value as habitat for endangered, rare or threatened species.
4. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
5. The site can be adequately served all required utilities and public services.

**D. Consistency Declarations.** Based on (i) the evidence presented in the project file and staff reports (incorporated herein by reference), (ii) consultations with affected City Departments, and (iii) testimony and comments received in connection with the PC Public Hearing, the Planning Commission does hereby declare as follows:

**1. Conditional Use Permit (21-CUP-02)**

**a. Findings:**

- i.** That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the density and intensity of development proposed. With the imposition of conditions of approval, the project site is adequate for the level of development of the proposed project.
- ii.** That the significant environmental impacts are mitigated to the maximum extent feasible as the project qualifies for a Class 32 Categorical Exemption.
- iii.** That streets and highways are adequate and properly designed pursuant to the requirements of the City Engineer. With the imposition of conditions of approval and required roadway improvements to McMurray Road and Highway 246, intersection operations may be brought to acceptable levels. However, the improvements may require substantial changes to the intersection and *roadways such that the promotion of efficient and sound planning principles or protection of the public welfare and safety require that the City Council exercise final decision authority.*
- iv.** That there are adequate public services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the Project.
- vi.** That the Project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and the proposed uses will be compatible with the surrounding area. With the imposition of

conditions of approval, impacts to adjacent uses and businesses, including but not limited to McDonald's, the Marriott Hotel and Chumash Employment Resource Center will be minimal. However, the imposition of these conditions raises issues *such that the promotion of efficient and sound planning principles or protection of the public welfare and safety require that the City Council exercise final decision jurisdiction authority on their imposition.*

- vii. That the project is in conformance with the applicable provisions of Title 19 (Zoning) of the Municipal Code and the General Plan because with the inclusion of proposed roadway improvements as conditions of approval, traffic impacts to the surrounding area will be reduced to acceptable levels (C-5 and C-8). Additionally, this project will expand the visitor-serving sector of the local economy (L-25), attract a new business and encourage economic development activities that provide opportunities for employment of local residents and increased municipal revenues (E-3). However, given that the importance of the circulation impacts (C-5 and C-8) and the imposition of conditions of approval to address those involves matters both within and outside the specialty of the Planning Commission, *the promotion of efficient and sound planning principles or protection of the public welfare and safety require that the City Council exercise final decision jurisdiction authority.*
- viii. That the proposed development is in conformance with the Community Design Guidelines.

**b. Findings for Drive-Through Facilities:**

- i. The drive-through facility is found to have no greater adverse impact upon air quality than the same use without the drive-through facility, according to the Air Quality Study conducted for the project.

**2. Sign Exemption (22-EXP-01)**

**a. Findings:**

- i. The existing standards do not allow for effective business identification due to a special (physical) circumstance applicable to the site, due to the topography of the site, and proximity to Highway 101.

- ii. All other alternatives within the established sign standards have been examined, and the results would still not provide effective business identification.
- iii. The resulting sign proposal is visually compatible with the existing site and surroundings, and meets the intents and purposes of Chapter 19.04 (Sign Title).

**SECTION 4:** Based on the findings set forth in Sections 2 and 3, the Planning Commission hereby recommends approval of the Conditional Use Permit (21-CUP-02) and Sign Exemption (22-EXP-01) for a new drive-through restaurant located at 515 McMurray Road.

**PASSED, APPROVED and ADOPTED** this 5<sup>th</sup> day of January 2023.

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Patty Hammel  
Chair

ATTEST:

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Cara Miralles  
Assistant Planner

**STATE OF CALIFORNIA** )  
**COUNTY OF SANTA BARBARA** ) **SS**  
**CITY OF BUELLTON** )

I, Cara Miralles, Assistant Planner of the City of Buellton, do hereby certify that the foregoing Resolution No. 22-13 was duly approved by the Planning Commission of the City of Buellton at a meeting held on the 5<sup>th</sup> day of January 2023, by the following vote, to wit.

AYES: ( )

NOES: ( )

ABSENT: ( )

NOT VOTING: ( )

**IN WITNESS WHEREOF**, I have hereunto set my hand this 5<sup>th</sup> day of January, 2023.

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Cara Miralles  
Assistant Planner

**CONDITIONS OF APPROVAL**  
**IN-N-OUT DRIVE-THROUGH RESTAURANT**  
**CONDITIONAL USE PERMIT (21-CUP-02) & SIGN EXEMPTION (22-EXP-01)**

1. **Project Description.** The approval granted herein is based upon and limited to compliance with the Project Description contained in the November 17, 2022 and January 5, 2023 staff reports, the application received October 4, 2022, and the conditions of approval set forth below. The Project Description is as follows: The Project is a request by Marc Levun, on behalf of In N Out Burger (the “Applicant”) for a Conditional Use Permit (21-CUP-02) and Sign Exemption (21-EXP-01) for the development of a new drive-thru fast food restaurant for In-N-Out Burger (the “Project”) located at 515 McMurray Road, Assessor’s Parcel Number 137-170-046 (the “Property”). The proposed project includes: demolition of an existing 10,053 two-story commercial building and site improvements (previously Parks Plaza Theater), and development of a new 3,885 square foot one-story building, outdoor dining area, landscaping, and parking areas with 55 parking spaces and a 25-car capacity drive-through queue. Hours of operation would be Friday and Saturday 10:30 am – 1:30 am and Sunday to Thursday 10:30 am – 1:00 am, with a total estimated staff of 20. A Sign Exemption is proposed for a 45 foot high freestanding sign and 125 square feet of additional signage above the maximum allowed for the site. An exception to the required loading space is requested. Any deviations from the Project Description, exhibits or conditions must be reviewed and approved by the City for conformity with this approval. Deviations may require formal modification of the approval and/or further environmental review. Deviations without the above-described authorization will constitute a violation of this approval.
  
2. **Terminology.** Except where otherwise noted, the terms appearing throughout the conditions of approval set forth herein shall have the meanings as defined below. Capitalization is used to identify defined terms and shall have the meanings as set forth below unless the context in which they are used clearly requires otherwise.
  - a. **“Applicant”** means Marc Levun, agent on behalf of In-N-Out Burger, and Dian Gran, property owner, and includes all agents, subdividers, developers, contractors, workers and personnel employed on the Project.
  - b. **“Building Department”** means the Building and Safety Division of the County (and all successors and assigns thereof), on behalf and under contract to the City to perform building plan check and inspection services.
  - c. **“City”** means the City of Buellton and includes the City Manager, City Engineer, Planning Director and all other duly appointed officials having responsibility for land use matters, as well as their respective assignees (e.g., Department staff members). Unless otherwise indicated, the Planning Department shall be the primary point of contact for the City.
  - d. **“County”** means the County of Santa Barbara.

- e. **“Final Building Inspection Clearance”** means acknowledgement by the Building and Safety Division of the County that construction of the Project has been completed in full compliance with plans and specifications approved by the Building and Safety Division of the County. Such acknowledgement is typically evidenced by signature of appropriate Building and Safety Division staff on the building permit inspection form.
  - f. **“Fire Department”** means the Fire Department of the County (and all successors and assigns thereof), furnishing fire prevention and protection services to the City by operation of a special district.
  - g. **“Entitlement”** means the type of land use permit required by the Buellton Municipal Code in connection with the Project for which approval is granted herein.
  - h. **“Project”** means and includes all of the actions described in the Project Description above.
  - i. **“Project Inspection”** means a field inspection and documentation review performed by the Planning Director at the time of Final Building Inspection Clearance to verify that the Project has been completed in full compliance with the terms and conditions of approval. The Project Inspection shall be performed upon completion of construction and the Project must be fully compliant with all terms and conditions of approval prior to and as a condition precedent to obtaining Final Building Inspection Clearance.
  - j. **“Project Manager”** means person or personnel of the City assigned to oversee and administer the Permit.
  - k. **“Property”** means the land and improvements identified in the Project Description.
  - l. **“Property Owner”** means Dian Gran and includes all persons and entities possessing fee title (in full or in part) to the site of the Project.
  - m. **“Zoning Clearance”** means approval granted pursuant to 19.08.100 of the Buellton Municipal Code requisite to issuance of a building permit for authorized construction or land development activities.
3. **Additional Permits Required.** Before using any land or structure, or commencing any work pertaining to the erection, moving, alteration, enlarging, or rebuilding of any building, structure, or improvement, the Applicant shall: (i) obtain a Zoning Clearance (hereinafter defined below); and (ii) obtain all other permits and approvals that may be required by operation of the Buellton Municipal Code (e.g., grading permit, building permit, encroachment permit, etc.). Before any Zoning Clearance will be issued by the City, the Applicant must obtain written clearance from all departments having jurisdiction; such clearance shall indicate that the Applicant has satisfied all pre-construction conditions of approval. To the extent any condition or provision of the approval set forth herein is incompatible with or at variance with any other permit for the Project, the most restrictive condition and provision shall prevail.

4. **Interpretations and Exceptions.** The Planning Director is authorized to render decisions as to the applicability or interpretation of the conditions set forth herein, including minor changes, when the strict application of the conditions conflicts with the underlying purpose of the conditions or creates undue hardship or administrative burden. Any administrative change granted shall be subject to such conditions as will: (i) assure that the adjustment thereby authorized shall appropriately implement purposes and objectives of the original conditions; and (ii) not change or compromise the effectiveness of the original conditions. As an example, and for illustrative purposes only, the Planning Director may modify the implementation timing of specific conditions at the mutual convenience of the City and Applicant. Minor changes authorized pursuant to this condition shall not require separate processing of a formal amendment.
5. **Indemnity.** The Applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures) (collectively “Actions”), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, arising from or in connection with the approval, decision or action of the City Council, Planning Commission, or other decision-making body, or staff action concerning the Project, including but not limited to writ proceedings, claims for inverse condemnation, personal injury, property damage, and/or breach of a mandatory duty, challenges under the California Environmental Quality Act, and/or any action that attacks, challenges, or seeks to set aside, void, or annul all or any part of the approvals, decisions, or actions concerning the Project. City shall promptly notify the applicant of any Action brought and request that the applicant defend the City. It is expressly agreed that applicant may select legal counsel providing the applicant’s defense and the City shall have the right to approve separate legal counsel providing the City’s defense. The applicant shall reimburse City for any attorneys’ fees, costs and expenses directly and necessarily incurred by the City in the course of the defense.
6. **Legal Challenge.** In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the Applicant in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided for by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action.
7. **Approval Limitations.** This approval is issued pursuant to the provisions of Title 19 of the Buellton Municipal Code and is subject to the foregoing conditions and limitations. Failure to comply with said conditions of approval may subject the Applicant to remedies and penalties specified in the Buellton Municipal Code.
8. **Enforcement Costs.** In the event the City determines that it is necessary to take legal action to enforce any of the conditions of approval herein, and such legal action is taken, the

Applicant shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with the Applicant to waive said fees or any part thereof.

9. **Failure to Comply.** In the event that the Applicant fails to comply with any order of the City issued hereunder or any injunction of the Superior Court, it shall be liable in accordance with the provision of Section 1.32 of the Buellton Municipal Code.
10. **Access to Records and Facilities.** As to any condition that requires for its effective enforcement the inspection of records or facilities by City or its agents, the Applicant shall make such records available or provide access to such facilities upon reasonable notice from City
11. **Payment of Fees.** All applicable fees associated with development of the Project shall be paid by the Applicant at the time such fees become payable as provided by Buellton Municipal Code or otherwise stipulated in this approval (whichever date is sooner), and the amount payable shall be based on the fee schedules adopted by the City and then in effect at the time such fees become payable.
12. **Acceptance of Conditions.** The Applicant shall acknowledge and agree to all conditions of this approval within 60 days of the notice of final action, evidenced by the Applicant's signature on the space provided at the end of this document. The Applicant, and all successors or assignees, are responsible for complying with all conditions of approval. Any zoning violations concerning the installation, operation, and/or abandonment of the Project are the responsibility of the Applicant, and all successors or assignees.

## **B. PUBLIC WORKS/ENGINEERING CONDITIONS**

### **PRIOR TO ZONING CLEARANCE ISSUANCE**

13. **Can and Will Serve Letter.** A Can and Will Serve Letter is required to be completed and signed prior to Zoning Clearance issuance.
14. **Fat, Oils and Grease (FOG) Permit Required.** An application for a modified Fats Oils and Grease (FOG) Permit is required for the new restaurant use and must be submitted to the Wallace Group and an initial plan review completed prior to Zoning Clearance issuance. Proposed plumbing plans shall be submitted as part of this application.
15. **Measures to Direct Vehicles.** Applicant shall apply to Caltrans for inclusion of applicant's logo on existing Caltrans specific service signs. to direct vehicles on southbound Hwy 101 to exit at 140B Avenue of Flags and on northbound Hwy 101 to exit at 140B McMurray Rd/Ave of Flags, to the satisfaction of the Public Works Director. Verification of said request to Caltrans shall be provided to the City prior to issuance of Zoning Clearance.

## **PRIOR TO GRADING PERMIT ISSUANCE**

16. **Improvement Plans.** Applicant shall cause to be prepared by a Civil Engineer, registered in the State of California, grading and utilities improvement plans, including, but not limited to, street, water, sewer, and storm drain improvements. An engineering cost estimate shall be submitted with the grading and improvement plans along with any calculations, signed/stamped certifications and plan check processing fees.
17. **Improvement Plan Requirements.** Plans for the full street width frontage improvements shall be drawn by a California Registered Civil Engineer. Drawings shall be prepared on 24-inch by 36-inch mylar (4 mil) showing all proposed improvements including, but not limited to, curbs, gutters, sidewalks, paving, driveway cuts, storm drains, street lights, utilities, and street trees.
18. **McMurray Improvements.** A flashing beacon, striped pedestrian crosswalk and appurtenant ADA compliant ramps at sidewalk across McMurray Road (at or near the intersection of Valley Vineyard north) shall be installed to the satisfaction of the City Engineer, and shown on project plans prior to grading permit issuance.
19. **Public Improvement Plans.** Public improvements (adjacent and off-site) should be submitted on separate plans to the City Engineer for approval. Driveway, sidewalk and any other improvements made within the public right-of-way shall be shown on a separate sheet. These improvements shall utilize City of Buellton standard details and provide for ADA access. Driveway alignment, pedestrian crossing improvements and other requirements of the Traffic Study shall be incorporated into the project improvement plans to the satisfaction of the City Engineer.
20. **Utility Plans.** Utility Plans shall be provided for water, sewer and storm drain. Plans and details shall conform to City of Buellton standards, Public Works Greenbook, and AWWA standards.
21. **Soils Report.** At the time that Improvement Plans and/or Grading and Drainage Plans are submitted for review and approval by the City Engineer, two copies of a Soils Report, prepared by a California Registered Geologist or Soils Engineer, shall be submitted. The Report shall address soils engineering and compaction requirements, R-values, and other soils and geology related issues (including liquefaction) and shall contain recommendations as to foundation design, and paving sections, where applicable for the project.
22. **Erosion Control Plan.** Erosion Control Plans shall be completed and submitted to the City Engineer for review and approval. Appropriate BMP measures shall be undertaken at all times. This shall be in compliance with the Regional Water Quality Control Board requirements. NOI shall be filed. A SWPPP shall be developed for the project site; draft copy shall be submitted for review prior to issuance of the grading permit. SWPPP shall be on-site at all times.

23. **Hydrology Report.** At the time that Improvement and/or Grading and Drainage Plans are submitted for review and approval by the City Engineer, a complete hydrology/hydraulic report shall be submitted by the applicant's engineer determining the adequacy of the proposed drainage system and the adequacy of the existing downstream system. A rain fall frequency of twenty-five (25) years shall be used for sizing piping and inlet structures. If no overland escape is available, 100-year flows shall be used as the basis of design. Santa Barbara County Engineering Design Standards shall be used. The report shall include a flood study the reviews pre-development and post development flood conditions, recommendations to be implemented to minimize or resolve flood issues that may impact the proposed development and recommendations to be implemented that minimize or resolve flood issues outside of the development property that results from the proposed development. These recommendations shall be incorporated in the project improvement plans.
  
24. **Stormwater.** Development shall be undertaken in accordance with conditions and requirements of the State of California Regional Water Quality Control Board. Project Grading and Storm Drain Improvement Plans shall identify and incorporate Best Management Practices (BMPs) appropriate to the uses conducted on-site and during construction to effectively mitigate storm water pollution during construction as well as post-construction.  
  
Stormwater management shall be incorporated in the improvement plans (low impact development). This project is subject to Post Construction Requirements as outlined in the City's Stormwater Technical Guide for a Tier 4 project.  
  
A Storm Water Control Plan that analyzes the potential flows, run-off and drainage management area's and proposed lid improvements to address run-off and water quality, including a maintenance/water quality control plan, shall be submitted. This document shall include an owner's statement that maintenance of facilities will occur regularly (at least annually) and will be ongoing. The plan shall include an annual maintenance report which must be signed/certified by the QSD/QSP, property owner and contractor and submitted to the Public Works Department.
  
25. **Fire Department Review.** Applicant shall submit improvement plans for concurrent review with the Santa Barbara County Fire Department and shall provide documentation of submittal along with grading and utility improvement plans to the City Engineer. A copy of the Fire Department approval shall be submitted prior to issuance of grading permit.
  
26. **Mylars.** Upon approval of the final plans, the applicant shall furnish original stamped mylars to the City Engineer for signature and reproduction for permitting purposes. A final Engineer's estimate shall be prepared (updated from the original submittal and shall utilize prevailing wage rates) and permit/inspection fees paid.
  
27. **Sureties.** A faithful performance and labor/material bond for the grading and utilities and also for the public improvements (each to be equal to 100% of the final City Engineer's estimate of costs, which shall include a 20% contingency), or equivalent form of

guarantee, shall be posted by the applicant. The bonds shall remain in effect until the completion of the project and a certificate of occupancy has been issued, at which time, 10% of the bond shall be retained for a warranty period of 1 year after acceptance of improvements by the and until receipt of As-built Record Drawings.

### **PRIOR TO BUILDING PERMIT ISSUANCE**

28. **Grading Permit.** The applicant shall obtain a grading permit from the City Engineer prior to obtaining a building permit.
29. **Rough Grading.** Rough grading certification by the geotechnical engineer shall be approved by the City Engineer prior to obtaining a building permit.

### **PRIOR TO OCCUPANCY CLEARANCE**

30. **Social Media and Directional Mapping Services to Direct Vehicles.** Efforts shall be made and appropriately documented to encourage patrons via social media and other directional apps and platforms to utilize exit 140B Avenue of Flags when driving on Highway 101 southbound and exit 140B McMurray Rd/Avenue of Flags when driving on Highway 101 northbound. Language to be used shall be approved by the City prior to occupancy.
31. **Mitigation Fees.** The applicant shall pay water and sewer utilities connection fees and all traffic mitigation fees from the Public Works Department prior to occupancy.
32. **Easements.** All public easements for utilities or grants of ROW must be submitted for City Engineer review and approval. All grant deeds must be accepted by the City Council prior to occupancy.
33. **Right-of-Way Dedication.** Should right-of-way dedication be required as part of traffic mitigation measures, applicant shall be responsible for acquisition and dedication to the City or Caltrans as appropriate.
34. **As-Built Record Drawings.** The applicant shall complete all required improvements to the satisfaction of the City Engineer. The applicant shall furnish the mylar or a reproducible copy of the improvement plans to the City Engineer, modified to reflect field changes made during construction and stamped "As-Built Record Drawings."
35. **Plan Check Fees.** All fees and any unpaid balances from plan check or inspection and permits, shall be paid in full.

### **GENERAL CONDITIONS**

36. **Public Improvement Standards.** Unless superceded by Caltrans all public improvements shall be designed and constructed in conformance with The City of Buellton Standards, and when applicable, the Santa Barbara County Standards.

37. **Utility Easements.** Existing and proposed easements for all utilities shall be located and described on the engineering plans.
38. **Utility Locations.** All other utilities shall be shown on the plans.
39. **Traffic Study Recommendations.** Recommendations from the Traffic Study conducted by Ganddini Group dated September 30, 2022, shall be made part of the project conditions, as listed below. Applicant is required to design and install the improvements. Applicant shall process appropriate permit applications through Caltrans for those improvements that are within Caltrans jurisdiction. In the event that any of the following improvements are determined to be infeasible or are otherwise not approved by agencies with jurisdiction over the improvements, other improvements which mitigate traffic concerns and are acceptable to Caltrans and the City shall be required.
  - a) Install northbound right turn overlap signal phasing at Avenue of Flags (NS) at Highway 246 (EW)
  - b) Install southbound right turn overlap signal phasing at McMurray Road (NS) at Highway 246 (EW)
  - c) Either restripe the existing shared left/through lane to a shared left/through/right turn lane at US Highway 101 NB ramps (NS) at Highway 246 (EW); or widen McMurray Road and restripe the northbound approach to consist of one left turn lane, one through lane, and one dedicated right turn lane.
40. **Construction Work Site Traffic Control Plan.** A construction work site traffic control plan shall comply with State standards set forth in the California Manual of Uniform Traffic Control Devices and shall be submitted to the City for review and approval prior to the issuance of grading permits or start of construction. The plan shall identify any roadway, sidewalk, bike route, or bus stop closures and detours as well as haul routes and hours of operation. All construction related trips shall be restricted to off-peak hours to the extent possible.
41. **Improvements in Accordance With Applicable Standards.** All on-site and off-site roadway design, traffic signing and striping, and traffic control improvements relating to the proposed project shall be constructed in accordance with applicable State/Federal engineering standards and to the satisfaction of the City of Buellton and Caltrans.
42. **Site-Adjacent Roadways.** Site-adjacent roadways shall be constructed or repaired at their ultimate half-section width, including landscaping and parkway improvements in conjunction with development, or as otherwise required by the City of Buellton.
43. **Emergency Vehicle Access.** Adequate emergency vehicle access shall be provided to the satisfaction of the Santa Barbara County Fire Department.
44. **Compliance with Sight Distance Requirements.** The final grading, landscaping, and street improvement plans shall demonstrate that sight distance requirements are met in

accordance with applicable City of Buellton/California Department of Transportation sight distance standards.

45. **Drive-Through Lane Management.** In-N-Out shall employ all necessary drive-through lane management measures to maintain adequate on-site circulation and to ensure that any overflow does not cause site access obstructions.
46. **Overflow Management Plan.** Implementation of drive through lane overflow management plan shall include implementation of the alternative vehicle turning path as shown in Figure 29 of the September 30, 2022 traffic impact analysis by Ganddini Group.
47. **Third Grill.** A third grill shall be used during periods of high volume to ensure a more efficient flow of cars going through the drive thru.
48. **Wireless-Handheld Ordering System.** If drive thru queue extends beyond the menu board, the wireless-handheld ordering system shall be implemented.
49. **Pedestrian Crossing.** Installation of a high-visibility pedestrian crossing and ADA-compliant curb ramps on the south leg of the intersection of Valley Vineyard Circle (North) and McMurray Road is required.
50. **Cost of Improvements.** All improvements listed are to be installed at the sole expense of the project applicant, with the exception of improvement (a.), above, for which the applicant shall contribute a pro-rata “fair share” amount of 6.3% of the total improvement cost, to be determined by the Public Works Director. The City is not responsible for the cost of any of the required roadway improvements.
51. **Alternative Improvements.** In the event that any of the listed improvements are determined to be infeasible or unacceptable to Caltrans or the City, other improvements may be agreed to by all parties, including the City, Caltrans and the applicant.
52. **Caltrans Approval.**
  - a) **Requirement to Submit Plans.** Prior to issuance of Zoning Clearance, applicant shall submit a complete set of roadway improvement plans to Caltrans for review.
  - b) **Requirement to Obtain Approvals.** Prior to issuance of Building Permit, all necessary approvals for all required roadway improvements shall be obtained from Caltrans and/or the City of Buellton.
  - c) **Requirement to Install Improvements.** Prior to issuance of Certificate of Occupancy, all roadway improvements shall be installed in accordance with approved plans, to the satisfaction of Caltrans and the City of Buellton.
  - d) **Costs of Obtaining Caltrans Approvals.** Any costs associated with obtaining any of these approvals shall be at the sole expense of the applicant.

## D. PLANNING CONDITIONS

### GENERAL

53. **Conditional Use Permit & Sign Exemption.** Approval of the Conditional Use Permit (Case No. 21-CUP-02) and Sign Exemption (Case No. 21-EXP-01) (the “Permit”) is granted to the Applicant for the Property as identified in the Project Description. Except or unless indicated otherwise herein, all buildings, driveways, parking areas, and other facilities or features shall be located and maintained substantially as shown on the exhibits accompanying the application for the Project.
54. **Development Time Frame.** Conditional use permits shall expire five years after approval unless, prior to the expiration date, the applicant, or applicant’s successor, has completed substantial physical construction on the development or applied to the planning commission for a time extension. An applicant, or applicant’s successor, may apply for two one-year time extensions, which the planning commission or city council may approve upon a showing of good cause. Upon expiration of a conditional use permit and any time extension, an applicant, or applicant’s successor, must apply for a new minor or conditional use permit in order to proceed with the development.
55. **Fire Department.** The Project is located within the jurisdiction of the County Fire Department and shall comply with all applicable standards of that agency.
56. **Building Standards.** All building construction shall be designed and performed in accordance with the currently adopted California Building Code, and all other appropriate sections of the Buellton Municipal Code, State of California energy conservation standards and Title 24 handicap accessibility standards. All necessary plans and documentation shall be submitted at time of plan check including, but not limited to, complete architectural plans and appropriate engineering calculations prepared by a California Licensed Architect or Engineer.
57. **Grading and Drainage.** All building construction, grading and drainage shall be designed and performed in accordance with the currently adopted Excavation and Grading Code and all other appropriate sections of the Buellton Municipal Code and Santa Barbara Flood Control Design Standards dealing with grading, drainage and public improvements. Prior to construction, necessary plans and documentation shall be submitted for review and approval by the City Engineer including, but not limited to, complete civil engineering drawings, public improvement plans, utility specifications and appropriate engineering calculations prepared by a California Registered Civil Engineer.
58. **Performance Standards.** The design, operation, and use of the Project and Property shall comply with all outdoor storage, trash collection design, performance standards, landscaping requirements, and lighting provisions of the Buellton Municipal Code. All exterior lighting shall be located and designed so as to avoid creating substantial off-site glare, light spillover onto adjacent properties, or upward illumination into the sky. In

addition, the Property shall be maintained in strict compliance with the following additional standards:

- a. Use Limitations. No building or other improvement upon the Property shall be constructed, maintained, or used for any purpose other than that which is allowed by the Buellton Municipal Code or otherwise stipulated in the conditions of approval herein. Furthermore, the Property shall be maintained in strict compliance with the following additional standards:
  - (1) Unobstructed Access. All driveways and areas designated for off-street parking shall remain accessible at all times. Except as allowed by revocable license approved by the City, parking shall not be allowed on driveways at any time.
  - (2) Vehicle Repair. No disassembly, repair or any other work shall be performed on any vehicle, machine, motor, appliance or other similar device shall be allowed on any portion of the Property except or unless such work and device is wholly removed from public view.
  - (3) Exterior Storage. No storage of any goods, materials or equipment shall be permitted on the Property except within the confines of fully enclosed buildings.
- b. Prohibited Activities. No person owning, leasing, occupying or having charge or possession of the Property, or any portion thereof, shall maintain or use the premises in such a manner that any of the conditions listed below are found to exist. Conditions listed below that are consistent with a typical drive-thru fast food restaurant are not prohibited.
  - (1) Fire and Explosion Hazards. Storage and transportation of flammable or explosive materials, as defined by the County of Santa Barbara Fire Department, which are provided without adequate safety devices against the hazard of fire and explosion and adequate firefighting and fire-suppression equipment and devices, standard in the industry.
  - (2) Fissionable, Radioactivity or Electrical Disturbance. Storage or use of fissionable or radioactive material, if their use or storage results at any time in the release or emission of any fissionable or radioactive material into the atmosphere, the ground, or sewage systems, or any activities which emit electrical disturbances, affecting the operation at any point of any equipment other than that of the creator of such disturbance.
  - (3) Glare, Humidity, Heat and Cold. Direct or sky-reflected glare, whether from floodlights or from high temperature processes, or humidity, heat or cold that is produced and is perceptible without instruments by the average person at the Property line.

- (4) Liquid and Solid Wastes. Discharge at any point into any public sewer, private sewage disposal system, or stream, or into the ground, of any material 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 accordance with standards approved by the California Department of Public Health or such other governmental agency as shall have jurisdiction over such activities.
  - (5) Odors. Emissions of odorous gases or other odorous matter that is produced in nuisance quantities at the Property line.
  - (6) Particulate Matter and Air Contaminants. Emissions, including but not limited to, fly ash, dust, fumes, vapors, gases, and other forms of air contaminants which are produced from any facility or activity which are readily detectable without instrument by the average person at the Property line which can cause any damage to health, animals, vegetation or other forms of property, or which can cause excessive soiling at any point.
  - (7) Vibration. Ground vibration that is produced and is discernible without instruments to the average person at the Property line. Ground vibration caused by motor vehicles, trains, aircraft, and temporary construction or demolition work is exempted from this standard.
  - (8) Prohibition of Dangerous Elements. Land or buildings which are used or occupied in any manner so as to create any dangerous, noxious, injurious or otherwise objectionable fire, explosive or other hazard; noise or vibration; glare; liquid or solid refuse or waste; or other dangerous or objectionable substance, condition, or element in such a manner or such an amount as to adversely affect other uses.
  - (9) Noise. Unless otherwise conditionally allowed, no person shall operate or cause to be operated any source of sound at or on the Property, or allow the creation of any noise on the Property owned, leased, occupied or otherwise controlled by such person which causes the noise level when measured on any receiving property to exceed the noise level limits set forth by the Buellton Municipal Code as adopted and amended.
59. **Property Maintenance.** The Project and Property, including the landscaping and parking spaces, shall be maintained in a continuous state of good condition and repair, in full compliance with all approved plans, specifications and conditions of approval. Corrective improvements shall be undertaken as necessary to continuously conform with and implement conditions of Project approval including, as applicable, repair, repainting and/or replacement of Project components as needed. Where a Project is found to be non-

compliant, the Applicant shall adhere to City recommendations to bring the Project into compliance.

60. **Hours of Operation.** Hours of operation are limited to Friday and Saturday 10:30 am – 1:30 am and Sunday to Thursday 10:30 am – 1:00 am. No outdoor dining shall be permitted outside the hours of operation.
61. **Delivery Hours.** No loading area has been included on the Project site, and an exception to this requirement has been requested. Therefore, regular deliveries for the restaurant shall take place outside of the hours of operation.
62. **Architectural Design.** The Project shall be in conformance with the Community Design Guidelines. The architectural design of the buildings shall conform to that shown on the architectural elevations and color boards for the project with a design style of Agrarian.

#### **PRIOR TO ZONING CLEARANCE ISSUANCE**

63. **Driveway Entrance Improvements.** Driveway at McMurray Road shall be widened to a minimum of 32 feet and a maximum of 36 feet (or to the satisfaction of the Public Works Director) and shall accommodate three permanent lanes. Two lanes shall be ingress, and of these, one shall be dedicated to the drive-through lanes. One lane shall be egress, for both right and left hand turns. The project plans shall be revised to this effect, to the satisfaction of the Public Works Director, prior to Zoning Clearance issuance.
64. **Design of Roadway Improvements.** All design plans for all required roadway improvements shall be submitted to the City and Caltrans.
65. **Drive-Through Exit Path.** Prior to Zoning Clearance issuance, applicant shall modify site plan with additional landscaping and signage to direct vehicles exiting the drive through to exit to the left and onto primary access road.
66. **Turning Path into the Drive-Through.** Vehicle turning path into the drive-through lanes shall accommodate at minimum a 20-foot-long pickup truck. This accommodation shall be depicted on the project plans prior to Zoning Clearance issuance.
67. **Landscape and Irrigation Plans.** The final landscape and irrigation plans shall include a signed statement by a licensed landscape architect stating that the plans comply with the City's Water Efficient Landscaping Ordinance (MWELo) and utilize species from the City's Approved Tree Planting List or to the satisfaction of the City Planning Director.
68. **MarBorg.** A letter from MarBorg shall be provided indicating that the location and design of the trash enclosure is consistent with their requirements prior to Zoning Clearance issuance.
69. **Construction and Demolition Waste.** A Materials Management Plan is required to be completed prior to Zoning Clearance issuance.

70. **Signage.** A building permit for the proposed signage is required. Signage on the building plans submitted for Zoning Clearance shall be in substantial conformance the Project plans date-stamped October 4, 2022.
71. **Exterior Lighting.** All exterior lighting fixtures shall comply with the design requirements of the Community Design Guidelines and shall protect dark skies. All exterior lighting, including but not limited to the parking lot lighting, bollards, and wall-mounted lighting shall be 3000K or less, with bulbs recessed or flush with the lighting housing to be fully shielded, and shown on the plans as such prior to Zoning Clearance issuance. All lighting shall be LED or Inductive technology or other energy efficient type of lighting, consistent with what is indicated in the lighting specifications included with the project plan dated on October 4, 2022.

#### **PRIOR TO GRADING PERMIT ISSUANCE**

72. **Dust Control Monitor.** The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holiday and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the Air Pollution Control District prior to land use clearance for finish grading for the structure.
73. **Dust Control Requirements.** The applicant shall include, as a note on a separate informational sheet to be recorded with map, all dust control procedures in Condition 66. All requirements shall be shown on grading and building plans.

#### **PRIOR TO BUILDING PERMIT ISSUANCE**

74. **Zoning Clearance.** As a condition precedent to obtaining building permits, and prior to improving any portion of the Property or commencing any work pertaining to the Project approved herein, the Applicant shall obtain Zoning Clearance from the Planning Director. Zoning Clearance shall only be granted upon satisfying all conditions precedent to construction as stated in these conditions of approval.
75. **Landscape Surety.** Prior to issuance of a building permit, a surety for installation of the landscaping and irrigation, and for maintenance for one year, shall be posted in a form acceptable to the City. The surety estimate shall be submitted as part of the building permit submittal.
76. **Landscape Maintenance Agreement.** The Applicant shall acknowledge and sign the City's Landscape and Maintenance Agreement prior to issuance of the building permit. The Applicant, and all successors or assignees, are responsible for complying with all conditions of the Agreement. Any violations of the Landscape and Maintenance Agreement may result in Code Enforcement action.
77. **SBAPCD Permits.** Prior to building permit issuance, Santa Barbara County Air Pollution Control District (SBAPCD) Authority to Construct permits must be obtained

for all equipment that requires an SBAPCD permit. Proof of receipt of the required SBAPCD permits shall be submitted by the Applicant to planning staff. SBAPCD Authority to Construct permits are required for diesel engines rated at 50 brake horsepower and greater (e.g., firewater pumps and emergency standby generators) and boilers/large water heaters whose combined heat input rating exceeds 2.0 million British thermal units per hour (Btu/hr). Advisories: (1) In the case of a diesel-fired emergency generator, an equipment-specific Health Risk Assessment may be required as part of SBAPCD permit issuance. The applicant should refer to the SBAPCD website at [www.ourair.org/dice-atcm](http://www.ourair.org/dice-atcm) for more information on diesel engine permitting. (2) The SBAPCD permit process can take several months. To avoid delay, the applicant is encouraged to submit their Authority to Construct permit application to the SBAPCD as soon as possible, see [www.ourair.org/permit-applications](http://www.ourair.org/permit-applications) to download the necessary permit application(s).

## DURING CONSTRUCTION

78. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday. Equipment maintenance and servicing shall be confined to the same hours. Weekend construction and other exceptions shall require special approval from the Planning Director, in consultation with the City Engineer, and be limited to the hours of 9:00 a.m. to 4:00 p.m. Prior to issuance of building permit, the Developer shall provide proof that all construction equipment utilizing internal combustion engines have mufflers that are in good condition.
79. **Standard Dust Control Procedures.** During clearing, grading, earth moving, or excavation operation, excessive fugitive dust emissions shall be controlled by regular watering, paving construction roads, or other dust preventive measures such as using the following procedures:
- During construction, use water trucks or sprinkler systems to keep all areas of vehicle movement damp enough to prevent dust from leaving the site. At a minimum, this should include wetting down such areas in the late morning and after work is completed for the day. Increased watering frequency should be required whenever the wind speed exceeds 15 mph. Reclaimed water should be used whenever possible.
  - Minimize amount of disturbed area and reduce on site vehicle speeds to 15 miles per hour or less.
  - Gravel pads must be installed at all access points to prevent tracking of mud on to public roads.
  - If importation, exportation and stockpiling of fill material are involved, soil stockpiled for more than two days shall be covered, kept moist, or treated with soil binders to prevent dust generation. Trucks transporting fill material to and from the site shall be tarped from the point of origin.
  - After clearing, grading, earth moving or excavation is completed, treat the disturbed

area by watering, or revegetating, or by spreading soil binders until the area is paved or otherwise developed so that dust generation will not occur.

80. **Application of Standard CBACT.** Best available control technology for construction equipment (CBACT) shall be applied to the piece of construction equipment estimated to cause the highest level of combustion emissions during any proposed construction, based on APCD standards. CBACT technology may include the following: fuel injection timing retard of 2 degrees; installation of high pressure injectors; coating of internal combustion surfaces (cylinder head, pistons, and valves); and/or use of reformulated diesel fuel.
81. **Standard Ozone Precursor Controls.** At all times, ozone precursor emissions shall be controlled not only through the routine maintenance of all construction equipment, but construction activities shall also be required to utilize new technologies to control ozone precursor emissions including:
- Heavy-duty diesel-powered construction equipment manufactured after 1996 (with federally mandated "clean" diesel engines) should be utilized wherever feasible.
  - The engine size of construction equipment shall be the minimum practical size.
  - The number of construction equipment operating simultaneously shall be minimized through efficient management practices to ensure that the smallest practical number is operating at any one time.
  - Construction equipment shall be maintained in tune per the manufacturer's specifications.
  - Construction equipment operating onsite shall be equipped with two to four degree engine timing retard or precombustion chamber engines.
  - Catalytic converters shall be installed on gasoline-powered equipment, if feasible.
  - Diesel catalytic converters, diesel oxidation catalysts and diesel particulate filters as certified and/or verified by EPA or California shall be installed, if available.
  - Diesel powered equipment should be replaced by electric equipment whenever feasible.
  - Construction worker trips should be minimized by encouraging carpooling and by providing for lunch onsite.
82. **Compliance with Air Quality Regulations.** The project shall comply with APCD Rule 345 and related air quality requirements, as described below, which would ensure that construction emissions would remain less than significant.
- a. No person shall engage in any construction or demolition activity or earth moving activities subject to this rule in a manner that causes discharge into the atmosphere beyond the property line visible dust emissions of 20% opacity or greater for a period or periods aggregating more than 3 minutes in any 60 minute period.
  - b. No person, including facility or site owner or operator of source, shall load or allow the loading of bulk materials or soil onto outbound trucks unless at least one of the following dust prevention techniques is utilized:

1. Use properly secured tarps or cargo covering that covers the entire surface area of the load or use a container-type enclosure.
  2. Maintain a minimum of 6 inches of freeboard below the rim of the truck bed where the load touches the sides of the cargo area and ensure that the park of the load does not extend above any part of the upper edge of the cargo area.
  3. Water or otherwise treat the bulk material to minimize loss of material to wind or spillage.
  4. Other effective dust prevention control measures approved in writing by the Control Officer.
- c. Visible roadway dust as a result of active operations, spillage from transport trucks, erosion, or track-out/carry-out shall be controlled as outlined below:
1. Visible roadway dust shall be minimized by the use of any of the following track-out/carry-out and erosion control measures that apply to the project or operations: track-out grates of gravel beds at each egress point, wheel-washing at each egress point during muddy conditions, soil binders, chemical soil stabilizers, geotextiles, mulching, or seeding; and

Visible roadway dust shall be removed at the conclusion of each work day when bulk material removal ceases, or every 24 hours for continuous operations. If a street sweeper is used to remove any track-out/carry-out, only a PM<sub>10</sub>-Efficient Street Sweeper shall be used. The use of blowers for removal of track-out/carry-out is prohibited.

83. **SBAPCD Rule 360 Emissions Compliance.** Boilers, water heaters, and process heaters rated between 75,000 and 2.0 million British thermal units per hour (Btu/hr) must comply with the emission limits and certification requirements of SBAPCD Rule 360. Note: Units fired on fuel(s) other than natural gas still need to be certified under Rule 360. Please see [www.ourair.org/wp-content/uploads/rule360.pdf](http://www.ourair.org/wp-content/uploads/rule360.pdf) for more information.

#### **PRIOR TO FINAL BUILDING INSPECTION/OCCUPANCY CLEARANCE**

84. **Parking.** A total of 55 parking spaces must be provided for the Project as shown on the Plan. All parking spaces shall be striped in accordance with City of Buellton standards prior to the final building inspection.
85. **Landscape Installation.** Prior to obtaining Final Building Inspection Clearance, all landscaping and irrigation shall be completed and fully installed in accordance with the approved landscape plan. A letter from the landscape architect shall be submitted verifying compliance with the plans. The landscape and irrigation surety, less the one year maintenance portion, can be released at this time.
86. **Project Inspections.** Upon completion of construction and prior to occupancy or use, the Planning Director shall conduct a Project Inspection prior to and as a condition precedent

to obtaining Final Building Inspection Clearance. Compliance with all conditions of approval is a pre-requisite to obtaining the Final Building Inspection Clearance.

87. **Final Occupancy Clearance.** No Final Building Inspection Clearance or release of occupancy will be granted for any building on the Property until all construction is completed and all improvements and landscaping associated with the Project are installed in accordance with the plans approved and the conditions specified herein. Exceptions to this requirement may be granted subject to: (i) approval of the City Engineer and Planning Director; (ii) assurance that unfinished items will be completed within a reasonable period of time (including, but not limited to, the posting of appropriate performance security to assure such completion); (iii) essential infrastructure necessary to serve the entire Project is fully installed; and (iv) public safety and convenience is appropriately protected.

#### **FOLLOWING FINAL BUILDING INSPECTION/OCCUPANCY CLEARANCE**

88. **Landscape Maintenance.** Following installation, all landscaping shall be continuously maintained thereafter for a period of not less than one year or until such time that all plant material has been completely established. The Planning Director shall inspect or cause to be inspected all landscaped areas after the one year maintenance period. If the landscaping is healthy and established, the one year maintenance portion of the surety may be released.

#### **E. SANTA BARBARA COUNTY FIRE DEPARTMENT CONDITIONS**

##### **ADVISORY**

The following Fire Department advisory conditions are imposed with the understanding that the Fire Protection Certificate application(s) may involve modifications, which may determine additional conditions. The Fire Prevention Division must be notified of any changes to the project proposal. A change in the project description may cause conditions to be imposed.

89. All standard fire department conditions and current codes shall apply at time of development.

##### **PRIOR TO CONSTRUCTION**

90. One new fire hydrant shall be installed. The fire department shall have on file a set of approved fire hydrant plans prior to any work being started.
- a. Commercial fire hydrants shall consist of one 4-inch outlet and two 2-1/2 inch outlets.
  - b. A set of approved fire hydrant plans, stamped and dated by the fire department shall be kept at the job site and available upon request.

- c. Water systems shall be installed exactly as the approved fire hydrant plans dictate. No changes or modifications to these plans shall take place without prior fire department approval.
- d. No work shall be covered or otherwise rendered inaccessible or unviewable prior to inspection by a fire department representative.

#### **PRIOR TO OCCUPANCY CLEARANCE**

91. Designated fire lanes shall include red curbs and signs indicating “Fire Lane – No Stopping” placed as required by the fire department. Refer to current adopted California Fire Code.
92. Portable fire extinguishers are required and shall be in accordance with the current adopted Santa Barbara County Code Chapter 15.
93. Address numbers shall be a minimum height of 12 inches.
94. A Knox Box entry system shall be installed for the building. A spare key shall be provided for the Knox Box entry system.
  - e. To obtain a Knox Authorization Order Form and instructions, email [pe.inquiries@countyofsb.org](mailto:pe.inquiries@countyofsb.org). Please note, review is required prior to submission to Knox Company, as an authorized fire agency signature must be included on your order form. Do not send order forms to Knox Company directly.

#### **F. SANTA BARBARA COUNTY BUILDING DEPARTMENT CONDITIONS**

##### **ADVISORY**

95. Incorporate the Flood Plain Administrator conditions of approval and all mitigation measures on the cover sheet of the building plans.
96. Incorporate any project conditions of approval including any Department condition letters into the plans.
97. Plans to detail compliance with the CA Codes and local ordinances in effect at the time of submittal.

#### **G. FINANCE DEPARTMENT CONDITIONS**

98. **Outstanding Fees.** The Applicant shall pay all fees including, but not limited to, outstanding balances for processing by the City Engineer, Planning Department, Building Department, traffic mitigation fees, water connection fees, sewer fees, school fees, Fire Department mitigation fees, and any additional processing deposits as required prior to zoning clearance.

**Project Applicant/Property Owner Acknowledgement of Required Conditions of Approval**

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Property Owner Signature

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Date

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Project Applicant/Agent/Representative Signature

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Date

**PLANNING COMMISSION RESOLUTION NO. 22-13**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BUELLTON, CALIFORNIA, DENYING A CONDITIONAL USE PERMIT (21-CUP-02) AND SIGN EXEMPTION (22-EXP-01) FOR A NEW DRIVE-THROUGH RESTAURANT LOCATED AT 515 MCMURRAY ROAD, ASSESSOR'S PARCEL NUMBER 137-170-046, AND MAKING FINDINGS IN SUPPORT THEREOF**

**BE IT RESOLVED** by the Planning Commission of the City of Buellton as follows:

**SECTION 1:** Pursuant to the Zoning Ordinance of the City of Buellton, an application has been filed by Dian Gran, property owner, and Marc Levun, In-N-Out Burger, agent, hereinafter referred to as “Applicant”, requesting approval to demolish an existing commercial structure and develop a new drive-through restaurant on a 1.48-acre parcel located on land at 515 McMurray Road (APN 137-170-046). The subject property is planned and zoned for CR (General Commercial).

**SECTION 2:** The proposed Project consists of:

- A. Conditional Use Permit (21-CUP-02):** Approval of a new 3,885 square foot building with drive-through for In-N-Out Burger. The proposed development would include:
- 55 parking spaces
  - Drive-through with capacity for 25 vehicles
  - Demolition of existing pavement and structures
- B. Sign Exemption (22-EXP-01):** Approval of one 45 foot high freestanding sign, and 395 square feet of total building signage area (125 additional square feet than the maximum allowed).

**SECTION 3:** All proceedings having been duly taken as required by law, and upon review of the information provided in the staff report, consideration of the testimony given at the public hearing, as well as other pertinent information, the Planning Commission finds the following:

- A. Record.** Prior to rendering a decision on the Project, the Planning Commission considered the following:
1. All public testimony, both written and oral, received in conjunction with that certain public hearing conducted by the Planning Commission on November 17, 2022 and January 5, 2023 (“PC Public Hearings”).
  2. All oral, written and visual materials presented in conjunction with those certain PC Public Hearings.

3. All oral, written and visual materials presented in conjunction with the Planning Commission meetings of November 17, 2022 and January 5, 2023.
4. The following informational documents, which by reference, are incorporated herein:
  - a. The project file for 21-CUP-02 and 22-EXP-01, as well as the set of project plans dated October 4, 2022.
  - b. The staff report dated November 17, 2022.
  - c. The staff report dated January 5, 2023.

**B. Public Review.** On the basis of evidence hereinafter listed, all administrative procedures and public participation requirements prescribed in the Buellton Zoning Ordinance have been lawfully satisfied:

1. A notice of PC Public Hearing was published in a newspaper of general circulation on November 3, 2022 (the “PC Public Notice”), a minimum of 10 days in advance of the PC Public Hearing conducted on November 17, 2022.
2. The PC Public Notice was mailed to the Applicant, affected public agencies, persons owning property within 300 feet of the Project site and others known to be interested in the matter on November 3, 2022, a minimum of 10 days in advance of the PC Public Hearing.
3. The PC Public Notice was posted in two public locations on November 3, 2022, a minimum of 10 days in advance of the PC Public Hearing.
4. The matter was continued to the date of December 15, 2022 and the matter was further continued to January 5, 2023 due to requested changes by the applicant.

**C. Consistency Declarations.** Based on (i) the evidence presented in the project file and staff reports (incorporated herein by reference), (ii) consultations with affected City Departments, and (iii) testimony and comments received in connection with the PC Public Hearing, the Planning Commission does hereby declare as follows:

**1. Conditional Use Permit (21-CUP-02)**

**a. Findings:**

- i. That notwithstanding the conditions proposed to be imposed on the project, the site for the project is **not** adequate in size, shape, location, and physical characteristics to accommodate the density and intensity of development proposed due to the location of the site on McMurray Road and project’s impact on adjacent businesses and residential neighborhood.

- ii. That notwithstanding the conditions proposed to be imposed on the project, streets and highways are **not** adequate and properly designed pursuant to the requirements of the City Engineer, due to the limited queueing capacity and infrastructure of SR 246 and McMurray Road that are not able to accommodate the traffic and circulation impacts of the project.
- iii. That there are adequate public services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the Project.
- vi. That the project **will** be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and the proposed uses will **not** be compatible with the surrounding area despite the conditions proposed to be imposed on the project. The adjacent businesses of McDonald's, the Marriott Hotel, and Chumash Employment Resource Center have significant concerns with the traffic and circulation posed by the intensity of the proposed project use. Concerns from McDonald's have not been adequately addressed and will be detrimental to general welfare of McDonald's, as McDonald's patrons would not have safe, comfortable, and convenient access onto their site. Residents and businesses in the surrounding neighborhood would be impacted by substantial traffic impacts that cannot be adequately addressed.
- vii. That the project, even as proposed to be conditioned, is **not** in conformance with the applicable provisions of Title 19 (Zoning) of the Municipal Code and the General Plan. The project conflicts with Policies L-11, C-5, and C-8 of the General Plan Circulation Element.
- viii. That the proposed development is in conformance with the Community Design Guidelines.

**b. Findings for Drive-Through Facilities:**

- i. The drive-through facility is found to have no greater adverse impact upon air quality than the same use without the drive-through facility, according to the Air Quality Study conducted for the project.

**2. Sign Exemption (22-EXP-01)**

**a. Findings:**

- i.** The existing standards do not allow for effective business identification due to a special (physical) circumstance applicable to the site, due to the topography of the site, and proximity to Highway 101.
- ii.** All other alternatives within the established sign standards have been examined, and the results would still not provide effective business identification.
- iii.** The resulting sign proposal is visually compatible with the existing site and surroundings, and meets the intents and purposes of Chapter 19.04 (Sign Title).
- iv.** If the Conditional Use Permit for the project is not approved, then a sign exemption should not be approved.

**SECTION 4:** Based on the findings set forth in Sections 2 and 3, the Planning Commission hereby denies the Conditional Use Permit (21-CUP-02) and Sign Exemption (22-EXP-01) for a new drive-through restaurant located at 515 McMurray Road.

**PASSED, APPROVED and ADOPTED** this 5<sup>th</sup> day of January, 2023.

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Patty Hammel  
Chair

ATTEST:

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Cara Miralles  
Assistant Planner

**STATE OF CALIFORNIA** )  
**COUNTY OF SANTA BARBARA** ) **SS**  
**CITY OF BUELLTON** )

I, Cara Miralles, Assistant Planner of the City of Buellton, do hereby certify that the foregoing Resolution No. 22-13 was duly approved by the Planning Commission of the City of Buellton at a meeting held on the 5<sup>th</sup> day of January 2023, by the following vote, to wit.

AYES: ( )

NOES: ( )

ABSENT: ( )

NOT VOTING: ( )

**IN WITNESS WHEREOF**, I have hereunto set my hand this 5<sup>th</sup> day of January, 2023.

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Cara Miralles  
Assistant Planner

# Attachment 1 - Vicinity Map



**APN 137-170-046**  
**515 McMurray Road**



0 120 240 480 Feet

# CITY OF BUELLTON

## PLANNING COMMISSION MEETING MINUTES

November 17, 2022 – 6:00 p.m.

City Council Chambers, 140 West Highway 246  
Buellton, California

### CALL TO ORDER

Chair Hammel called the meeting to order at 6:00 p.m.

### PLEDGE OF ALLEGIANCE

Chair Hammel led the Pledge of Allegiance.

### ROLL CALL

Present: Commissioners Bob Blokdyk, Aaron Liggett, Marcilo Sarquilla,  
Vice Chair Art Mercado and Chair Patty Hammel

Staff: City Manager Scott Wolfe, Planning Director Andrea Keefer,  
Public Works Director Rose Hess, Assistant Planner Cara Miralles  
and Staff Assistant/Planning Technician Clare Barcelona,

### REORDERING OF AGENDA

None

### PRESENTATIONS

Buellton Chief of Police Lt. Mark Valencia introduced himself and Deputy Miguel Lozano who will be serving the Buellton area.

### APPROVAL OF MINUTES

#### 1. Minutes of the regular Planning Commission meeting of November 3, 2022

##### MOTION:

Vice Chair Mercado moved and Commissioner Sarquilla seconded the motion to approve the Minutes of November 3, 2022.

##### VOTE:

Motion passed with 4-0 voice vote with abstention by Commissioner Blokdyk due to his absence from the meeting.

**PUBLIC COMMENTS**

None

**CONSENT CALENDAR**

None

**CONTINUED PUBLIC HEARINGS**

None

**NEW PUBLIC HEARINGS**

2. **Resolution No. 22-11 – “A Resolution of the Planning Commission of the City of Buellton, California, Approving the Mitigated Negative Declaration (22-MND-01) and Mitigation Monitoring and Reporting Program for the Buellton Garden Apartments Project Located at 10 McMurray Road, Assessor’s Parcel Number 137-200-087 and Making Related Findings Under the California Environmental Quality Act”;**

And

3. **Resolution No. 22-12 - “A Resolution of the Planning Commission of the City of Buellton, California, Approving a Final Development Plan (21-FDP-01) and Tentative Parcel Map (31063) for the Buellton Garden Apartments, an 89-unit Affordable Apartment Project Located at 10 McMurray Road, Assessor’s Parcel Number 137-200-087, and Making Findings in Support Thereof”**

**STAFF REPORT**

Assistant Planner Cara Miralles presented the Staff Report and noted a revision to one of the Standard Conditions of Approval regarding project time frames. The revision extends the expiration date of the Tentative Parcel Map to coincide with the expiration date of the Final Development Plan.

**DOCUMENTS:**

Staff report with attachments.

**SPEAKERS/DISCUSSION**

Jacqueline Pollino, Lead Project Manager for People’s Self Help Housing gave a brief introduction and shared a little about People’s Self Help Housing’s work in the Central Coast and management of their housing developments.

Alicia King, Project Architect from Ravatt Albrecht & Associates, introduced herself and Greg Ravatt, Principal, stating they are available to answer any questions.

The Commission requested shielding on the lights behind the Albertson’s building, additional screening on the chain link fence and concurred that this would be a good project for Buellton.

Chair Hammel opened the Public Hearing at 6:39 pm.

Suzanne Lilly, Buellton, voiced concerns regarding increased traffic on McMurray Road.

Chair Hammel closed the Public Hearing at 6:41 pm.

**MOTION:**

Vice Chair Mercado moved and Commissioner Liggett seconded the motion to adopt Resolution No. 22-11 – “A Resolution of the Planning Commission of the City Of Buellton, California, Approving the Mitigated Negative Declaration (22-MND-01) and Mitigation Monitoring at 10 McMurray Road, Assessor’s Parcel Number 137-200-087 and Making Related Findings Under the California Environmental Quality Act”

And

Resolution No. 22-12 - “A Resolution of the Planning Commission of the City of Buellton, California, Approving a Final Development Plan (21-FDP-01) and Tentative Parcel Map (31063) for the Buellton Garden Apartments, an 89-unit Affordable Apartment Project Located at 10 McMurray Road, Assessor’s Parcel Number 137-200-087, and Making Findings in Support Thereof”

**VOTE:**

Motion passed by a roll call vote of 5-0.

Vice Chair Mercado – Yes

Commissioner Liggett – Yes

Commissioner Blokdyk – Yes

Vice Chair Mercado – Yes

Chair Hammel - Yes

4. **Resolution No. 22-13 - “A Resolution of the Planning Commission of the City of Buellton, California, Denying a Conditional Use Permit (21-CUP-02) and Sign Exemption (22-EXP-01) for a New Drive-Through Restaurant Located at 515 McMurray Road, Assessor’s Parcel Number 137-170-046, and Making Findings in Support Thereof”**

**STAFF REPORT**

Assistant Planner Cara Miralles presented the Staff Report.

**DOCUMENTS:**

Staff report with attachments.

**SPEAKERS/DISCUSSION**

Marc Levun, Applicant, representing In n Out Burger, presented a slide show and stated that if you take out the traffic concerns, there wouldn’t be much disagreement that In n Out would be a benefit to Buellton with increased jobs, tax revenue and high quality affordable meals. Mr. Levun noted improvements that were made to increase the capacity of the drive through lanes and the parking areas and increased the width of the driveway

isle. He went into detail regarding his disagreement with the City's traffic study and stated that In n Out would be agreeable to necessary mitigation measures.

Commissioner Sarquilla suggested a separate access entrance to the north rather than sharing an access driveway with McDonalds.

Chair Hammel opened the Public Hearing at 7:26 pm.

Jerret Gran, Property Owner, gave a history of the theater site stating that a theater use is no longer viable. He stated that the property is very important to his family and encouraged staff to work with the Applicant and grant the Conditional Use Permit.

Tom Davidson, Representing the Property Owner, stated that the traffic study is based on assumptions. Stating it took ten months to get peer review. Denying this project would send a negative message to businesses and developers looking to build in Buellton.

Chair Hammel, Vice Chair Mercado and Commissioner Blokdyk all stated that they had ex parte communications with Tom Davidson.

Bob Gran, Property Owner, stated how the Pandemic wiped out the theater business and due to the costs involved in renovating the existing theater investors are not interested.

Rose Deters, Buellton, read a letter to the Commission recommending denial of the project.

Carla Mead, Buellton, opposed the project stating traffic concerns.

Kathy Vreeland, Buellton, stated that Buellton is a business friendly city and that we should work with the applicant to find a solution and approve the project.

Kellen Tobin, Buellton, stated that he has lived in many cities with an In n Out, traffic concerns are real and there will be increased traffic. The location is not feasible.

Lucy Padilla, Buellton, addressed the Commission voicing concerns including traffic, delays in emergency response due to traffic and the proposed late hours.

Chair Hammel announced that several letters from residents have been received; they will not be read aloud tonight but will be entered into the public record.

Chair Hammel closed the Public Hearing at 7:55 pm.

Marc Levun addressed the comments regarding directional signage to R.T. Buell Drive, homelessness; stating it is not an issue due to outdoor lighting and cameras. The property is categorically exempt from CEQA and that an air quality study has been submitted.

Chair Hammel stated the major traffic concern is at the 101 North off ramp to Hwy 246 and suggested traffic get directed to the R.T. Buell exit and asked the Applicant why they pushed for the Public Hearing without adequately addressing the traffic concerns.

Marc Levun answered that yes, they can redirect traffic to R.T. Buell Drive and that the Public Hearing date was chosen out of frustration that the traffic study was taking so long.

Commissioner Liggett stated that he loves In n Out but traffic is a major concern, he can't approve the project as submitted.

Commissioner Sarquilla stated that the theater also had a lot of traffic going in and out and doesn't see traffic as a problem.

Vice Chair Mercado thanked everyone and stated that he is in favor of the project.

Chair Hammel thanked the Applicant and mentioned that she has seen other In n Out locations mitigate their traffic issues and urged the Applicant to work with staff to resolve the traffic concerns.

**MOTION:**

Chair Hammel moved to continue the Public Hearing for 60 days to work out the traffic issues.

The motion died for lack of a second.

Vice Chair Mercado moved to continue the Public Hearing for 45 days.

The motion died for lack of a second.

Vice Chair Mercado moved to continue the Public Hearing to December 15, 2022.

The motion died for lack of a second.

Marc Levun, Applicant asked the Commission to just go ahead with a vote.

**MOTION:**

Commissioner Liggett moved and Commissioner Blokdyk seconded the motion to adopt Resolution No. 22-13 - "A Resolution of the Planning Commission of the City of Buellton, California, Denying a Conditional Use Permit (21-CUP-02) and Sign Exemption (22-EXP- 01) for a New Drive-Through Restaurant Located at 515 McMurray Road, Assessor's Parcel Number 137-170-046, and Making Findings in Support Thereof

**VOTE:**

Motion was denied by a roll call vote of 2-3.

Commissioner Liggett – Yes

Commissioner Blokdyk – Yes

Commissioner Sarquilla – No

Vice Chair Mercado – No

Chair Hammel – No

The Commission directed staff to make findings in support of the project and bring back a Resolution for approval on December 15, 2022.

**OTHER BUSINESS**

None

**WRITTEN COMMUNICATIONS**

None

**COMMITTEE REPORTS**

None

**PLANNING COMMISSIONER COMMENTS**

Commissioners Liggett and Blokdyk both announced that they will not be re-applying for the Planning Commission and that they enjoyed serving and learning the process.

**PLANNING DIRECTOR REPORT**

Planning Director Keefer reminded the Commission of the three openings on the Planning Commission and stated that the status of the Waypoint Bowling Alley project would be on an agenda in December for discussion.

**ADJOURNMENT**

Chair Hammel adjourned the meeting at 8:32 p.m. The next regular meeting of the Planning Commission will be held on Thursday, December 1, 2022 at 6:00 p.m.

\_\_\_\_\_  
Chair Patty Hammel

ATTEST:

\_\_\_\_\_  
Clare Barcelona, Planning Commission Secretary

**An audio CD of this Planning Commission Meeting is available upon request.**

**A video of this meeting can be seen on YouTube at:**

**[https://cityofbuellton.com/government/cityTV.php?vid=LkR8w\\_UIybU](https://cityofbuellton.com/government/cityTV.php?vid=LkR8w_UIybU)**