

**ANNOTATED
AGENDA
CITY OF ANTIOCH PLANNING COMMISSION
ANTIOCH COUNCIL CHAMBERS
200 "H" STREET

WEDNESDAY, MAY 15, 2019
6:30 P.M.**

**UNLESS THERE IS A VOTE OF THE PLANNING COMMISSION
TO HEAR THE MATTER**

APPEAL

All items that can be appealed under 9-5.2509 of the Antioch Municipal Code must be appealed within five (5) working days of the date of the decision. The final appeal date of decisions made at this meeting is 5:00 p.m. on **WEDNESDAY, MAY 22, 2019**.

If you wish to speak, either during "public comments" or during an agenda item, fill out a Speaker Request Form and place in the Speaker Card Tray. This will enable us to call upon you to speak. Each speaker is limited to not more than 3 minutes. During public hearings, each side is entitled to one "main presenter" who may have not more than 10 minutes. These time limits may be modified depending on the number of speakers, number of items on the agenda or circumstances. No one may speak more than once on an agenda item or during "public comments". Groups who are here regarding an item may identify themselves by raising their hands at the appropriate time to show support for one of their speakers.

ROLL CALL

6:30 P.M.

Commissioners	Turnage, Chair
	Schneiderman, Vice Chair
	Motts
	Martin
	Parsons (<i>absent</i>)
	Soliz
	Zacharatos

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

CONSENT CALENDAR

All matters listed under Consent Calendar are considered routine and are recommended for approval by the staff. There will be one motion approving the items listed. There will be no separate discussion of these items unless members of the Commission, staff or the public request specific items to be removed from the Consent Calendar for separate action.

1. **APPROVAL OF MINUTES:** **April 17, 2019** **APPROVED**

* * * END OF CONSENT CALENDAR * *

STAFF REPORT

CONTINUED PUBLIC HEARING

2. **PD-18-02, UP-18-09, AR-18-09, PW-357-301-19 – Acorn Business Park**– Jim Moita, requests approval of an Initial Study / Mitigated Negative Declaration and Mitigation Monitoring and Report Program for the Project, a rezone to Planned Development District (PD), Use Permit, Design Review, and Minor Subdivision approval of a business park consisting of commercial, self-storage and light industrial uses. The project site is located at the Northwest corner of East Eighteenth Street and Drive-In Way (**APNs 051-052-112 and 051-052-113**).

RESOLUTION NOS. 2019-12, 13, 14

NEW PUBLIC HEARINGS

STAFF REPORT

3. **Z-18-07 – Establishing Regulations for Wireless Communications Facilities –** The City of Antioch is proposing amendments to Chapter 5 of Title 9 of the Antioch Municipal Code to establish regulations for wireless communications facilities. The ordinance would regulate the deployment, construction, installation collocation, modification, operation, relocation, and removal of wireless communication facilities within the City, consistent with and to the extent permitted under federal and California state law. The proposed ordinance would be applicable city-wide. This ordinance has been determined to not be subject to the California Environmental Quality Act (CEQA).

STAFF REPORT

RESOLUTION NO. 2019-15

4. **Z-19-02 – Ordinance Prohibiting the Conversion of Mobilehome Parks from Senior Only to All-Ages Housing –** The City of Antioch is proposing amendments to Chapter 5 of Title 9 of the Antioch Municipal Code to prohibit the conversion of mobilehome parks from senior-only housing to all-ages housing. A moratorium on such conversion has been in place since August 8, 2017. The proposed ordinance would be applicable city-wide. This ordinance has been determined to not be subject to the California Environmental Quality Act (CEQA).

RESOLUTION NO. 2019-16

STAFF REPORT

5. **PD-06-04, UP-06-21, AR-06-17** – Ted Liu of Bedrock Ventures, Inc. requests an amendment to condition of approval number 3 from Resolution 2008/29. The amendment would extend the expiration date of the approvals for the Final Planned Development, Use Permit, and design review to March 20, 2021. The project consists of retail and offices, located at Hillcrest Avenue and East Tregallas Road (APN: 052-100-069 and -068).

CONTINUED

ORAL COMMUNICATIONS

STAFF REPORT

WRITTEN COMMUNICATIONS

COMMITTEE REPORTS

ADJOURNMENT (8:25 pm)

Notice of Availability of Reports

This agenda is a summary of the discussion items and actions proposed to be taken by the Planning Commission. For almost every agenda item, materials have been prepared by the City staff for the Planning Commission's consideration. These materials include staff reports which explain in detail the item before the Commission and the reason for the recommendation. The materials may also include resolutions or ordinances which are proposed to be adopted. Other materials, such as maps and diagrams, may also be included. All of these materials are available at the Community Development Department located on the 2nd floor of City Hall, 200 "H" Street, Antioch, California, 94509, between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday for inspection and copying (for a fee) or on our website at:

<https://www.antiochca.gov/fc/community-development/planning/Project-Pipeline.pdf>

Copies are also made available at the Antioch Public Library for inspection. Questions on these materials may be directed to the staff member who prepared them, or to the Community Development Department, who will refer you to the appropriate person.

Notice of Opportunity to Address the Planning Commission

The public has the opportunity to address the Planning Commission on each agenda item. You may be requested to complete a yellow Speaker Request form. Comments regarding matters not on this Agenda may be addressed during the "Public Comment" section on the agenda.

Accessibility

The meetings are accessible to those with disabilities. Auxiliary aids will be made available for persons with hearing or vision disabilities upon request in advance at (925) 779-7009 or TDD (925) 779-7081.

**CITY OF ANTIOCH
PLANNING COMMISSION**

**Regular Meeting
6:30 p.m.**

**April 17, 2019
City Council Chambers**

Chair Parsons called the meeting to order at 6:30 P.M. on Wednesday, April 17, 2019 in the City Council Chambers. She stated that all items that can be appealed under 9-5.2509 of the Antioch Municipal Code must be appealed within five (5) working days of the date of the decision. The final appeal date of decisions made at this meeting is 5:00 P.M. on Wednesday, April 24, 2019.

ROLL CALL

Present: Commissioners Schneiderman, Motts, Martin, Zacharatos, Vice Chair
Turnage and Chair Parsons
Absent: Commissioner Soliz
Staff: Public Works Director/City Engineer, Jon Blank
Project Manager, Scott Buenting
Assistant Engineer, Tracy Tope
Planning Manager, Alexis Morris
City Attorney, Thomas Smith
Minutes Clerk, Kitty Eiden

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

None.

CONSENT CALENDAR

1. Approval of Minutes: March 6, 2019
March 20, 2019

On motion by Vice Chair Turnage, seconded by Commissioner Zacharatos, the Planning Commission approved the minutes of March 6, 2019, as presented. The motion carried the following vote:

AYES: Schneiderman, Motts, Turnage, Martin, Zacharatos and Parsons
NOES: None
ABSTAIN: None
ABSENT: Soliz

On motion by Commissioner Zacharatos, seconded by Commissioner Martin, the Planning Commission approved the minutes of March 20, 2019, as presented. The motion carried the following vote:

AYES: *Schneiderman, Motts, Turnage, Martin, Zacharatos and Parsons*
NOES: *None*
ABSTAIN: *None*
ABSENT: *Soliz*

NEW PUBLIC HEARING

- 2. W-357-302-19 – Shahrodizadh 2-Lot Minor Subdivision** – Hamid Shahrodizadh requests approval of a Minor Subdivision for a Medium Density Residential property located at 49/51 E. 6th Street (APN 066-032-016)

Public Works Director/City Engineer Blank presented the staff report dated April 17, 2019 recommending the Planning Commission approve the Tentative Parcel Map subject to the conditions contained in the staff report's attached resolution.

In response to Chair Parsons, Public Works Director/City Engineer Blank clarified that if the shed needed to be moved staff would follow up to make sure the work was completed.

Chair Parsons opened the public hearing.

Hamid Shahrodizadh, applicant, stated that if it was determined to be necessary by staff, they would move the shed and remove the existing fence and concrete.

In response to Commissioner Motts, Public Works Director/City Engineer Blank stated that staff would be able to provide an update regarding the status of McElheney Road during the CIP presentation this evening.

Chair Parsons closed the public hearing.

RESOLUTION NO. 2019-09

On motion by Vice Chair Turnage, seconded by Commissioner Zacharatos, the Planning Commission approved the Tentative Parcel Map subject to the conditions contained in the staff report's attached resolution. The motion carried the following vote:

AYES: *Schneiderman, Motts, Turnage, Martin, Zacharatos and Parsons*
NOES: *None*
ABSTAIN: *None*
ABSENT: *Soliz*

3. **D-18-02, UP-18-09, AR-18-09, PW-357-301-19 – Acorn Business Park** – Jim Moita, requests approval of an Initial Study / Mitigated Negative Declaration and Mitigation Monitoring and Report Program for the Project, a rezone to Planned Development District (PD), Use Permit, Design Review, and Minor Subdivision approval of a business park consisting of commercial, self-storage and light industrial uses. The project site is located at the Northwest corner of East Eighteenth Street and Drive-In Way (APNs 051-052-112 and 051-052-113).

Staff recommends this item be continued to May 1, 2019.

On motion by Commissioner Martin, seconded by Commissioner Motts, the Planning Commission continued D-18-02, UP-18-09, AR-18-09, PW-357-301-19 – Acorn Business Park to May 1, 2019. The motion carried the following vote:

AYES:	Schneiderman, Motts, Turnage, Martin, Zacharatos and Parsons
NOES:	None
ABSTAIN:	None
ABSENT:	Soliz

NEW ITEMS

4. **PW-150-19** – The City of Antioch is requesting a determination that the 2019-2024 Capital Improvement Program is consistent with the Antioch General Plan, which includes a determination that any acquisition or disposition of property identified in the project description for each project in the Capital Improvement Program is consistent with the General Plan.

Public Works Director/City Engineer Blank introduced Project Manager Buenting and Assistant Engineer Tope to give the presentation.

Project Manager Buenting gave the PowerPoint presentation and staff report dated April 17, 2019, recommending that the Planning Commission review and determine that the 2019-2024 Capital Improvement Program is consistent with the Antioch General Plan.

In response to Commissioner Zacharatos, Project Manager Buenting explained that the new street light heads would provide better lighting.

Public Works Director/City Engineer Blank added that the street light heads would be 25% brighter for the same wattage and the work would be completed in the next four years.

In response to Commissioner Martin, Public Works Director/City Engineer Blank clarified that they were replacing the induction lights with LED.

Commissioner Martin reported that in the past, the LED light bulbs were placed inside the head and illumination did not spread out from the pole.

Public Works Director/City Engineer Blank responded that Project Manager Buenting would look at changing the existing LED lights if there was insufficient spread.

In response to Commissioner Motts, Project Manager Buenting stated there were no plans to improve McElheney Road because there were major issues with the land involved. He also explained that the Amtrak station rehabilitation/removal was a joint venture with Amtrak and the City would be beautifying the area. He clarified that the Hardhouse project was an effort to secure the facility.

Public Works Director/City Engineer Blank added that they were focused on the preservation of the City's assets such as the Hardhouse, Lynn House and the Carnegie library. He noted shelters would be installed for the passengers at the Amtrak station. He further noted that Amtrak received a grant for \$300k for the demolition and the City was contributing \$100k for landscaping improvements and to insure the station met ADA requirements.

In response to Commissioner Martin, Project Manager Buenting clarified that the Hardhouse was City owned property. Speaking to the Lone Tree Way resurfacing project, Project Manager Buenting clarified that Golf Course Road was included; however, the contractors work was not acceptable and the City was in discussions with them regarding this issue

In response to Commissioner Schneiderman, Project Manager Buenting stated that "L" Street would be expanded to four lanes from Highway 4 to the Marina.

Public Works Director/City Engineer Blank explained that \$65 million in ECRAFFA funds would be going toward the Buchanan Road Bypass project. He noted the City of Pittsburg was working to secure the remaining \$10-15 million in funding to build the roadway.

Commissioner Martin questioned if there was additional rule 20 money to underground "L" Street utilities.

Project Manager Buenting explained that rule 20 money was limited and the "L" Street project would connect to the underground utilities at 10th Street; however, once you get to the freeway it was state property.

Public Works Director/City Engineer Blank clarified that rule 20 money had to be applied for and if approved, it would be a reimbursement. He noted they would attempt to include undergrounding utilities into the "L" Street project.

Vice Chair Turnage questioned if the design for Chichibu Park would reflect the City's relationship with the sister city in Japan.

Project Manager Buenting reported that the design was being worked on through the maintenance yard and that he would look to see if it would draw into that theme.

Public Works Director/City Engineer Blank explained that the Chichibu Park had a large covered play area with rubberized play material. He noted the project design was approved by the Parks

and Recreation Commission. He further noted the colors would be neutral and there would be no cross over into the Sister City.

Vice Chair Turnage commented that Antioch Park in Chichibu, Japan recognized the sister city relationship. He noted he felt a Japanese tie in to the park design would not be cost prohibitive.

Public Works Director/City Engineer Blank responded that an area was designated with new signage to celebrate the sister city; however, spreading that theme into the park was not considered by the Parks and Recreation Commission.

Chair Parsons suggested that the shade structure at Chichibu Park be designed in the sister city theme.

Public Works Director/City Engineer Blank explained that the shade structure was a triangular fabric shade with a support structure to support it.

Vice Chair Turnage requested that the City consider adding a plane feature back into the Jacobson Park design.

Public Works Director/City Engineer Blank stated he would look to see if a manufacturer had an airplane feature that could be included in the park design.

Commissioner Schneiderman suggested that playground equipment in the form of a dragon could be considered for Chichibu Park.

Project Manager Buenting stated he believed a dragon feature was still located in the park and it would be an excellent eagle scout project.

Commissioner Schneiderman stated she felt Antioch was lacking sports complexes especially baseball fields for older boys.

Project Manager Buenting commented that the Antioch Youth Sports Complex was separate from the City; however, they provided soccer and baseball activities. He noted the fairgrounds hosted Little League functions and there were also sports facilities at Worthshaw Park.

Public Works Director/City Engineer Blank thanked the Planning Commission for their interest in the parks.

Chair Parsons suggested seeking input from older members of the community to bring tradition and history back to the park facilities.

Vice Chair Turnage thanked Project Manager Buenting for the detailed report.

RESOLUTION NO. 2019-10

On motion by Vice Chair Turnage, seconded by Commissioner Zacharatos, the Planning Commission reviewed and determined that the 2019-2024 Capital Improvement Program is consistent with the Antioch General Plan. The motion carried the following vote:

AYES: **Schneiderman, Motts, Turnage, Martin, Zacharatos and Parsons**
NOES: **None**
ABSTAIN: **None**
ABSENT: **Soliz**

5. Election of Chair and Vice Chair

Commissioner Motts nominated Vice Chair Turnage as Chair.

On motion by Commissioner Motts, seconded by Chair Parsons, the Planning Commission elected Vice Chair Turnage to serve as Chair of the Planning Commission. The motion carried the following vote:

AYES: **Parsons, Motts, Martin, Schneiderman and Zacharatos**
NOES: **None**
ABSTAIN: **Turnage**
ABSENT: **Soliz**

Commissioner Motts nominated Commissioner Schneiderman as Vice Chair.

On motion by Commissioner Motts, seconded by Chair Parsons, the Planning Commission elected Commissioner Schneiderman to serve as Vice Chair of the Planning Commission. The motion carried the following vote:

AYES: **Parsons, Motts, Martin, Turnage, Schneiderman and Zacharatos**
NOES: **None**
ABSTAIN: **None**
ABSENT: **Soliz**

ORAL COMMUNICATIONS

Commissioner Martin stated that the newspaper recently posted an article regarding the 2008 Building Code change, referenced as Chapter 7A, dealing with intense changes to standards for roofing, sidings, windows, and decks. He questioned if Antioch used chapter 7A of the building code.

Planning Manager Morris stated that the City adopted the California Building Code in the Antioch Municipal Code.

Vice Chair Turnage added that the new code changes go into effect January 1, 2020 as part of Title 24. He noted it would increase the cost of home building by approximately 20%.

WRITTEN COMMUNICATIONS

None.

COMMITTEE REPORTS

Commissioner Motts reported that the TRANSPLAN meeting had been cancelled.



ADJOURNMENT

Chair Parsons adjourned the Planning Commission at 7:28 P.M. to the next regularly scheduled meeting to be held on May 1, 2019.

Respectfully submitted:

KITTY EIDEN, Minutes Clerk

**STAFF REPORT TO THE PLANNING COMMISSION
FOR CONSIDERATION AT THE MEETING OF MAY 15, 2019**

Prepared by: Kevin Scudero, Associate Planner 
Reviewed by: Alexis Morris, Planning Manager 
Date: May 10, 2019
Subject: PD-18-02, UP-18-09, AR-18-09, PW-357-301-19 – Acorn Business Park

RECOMMENDATION

It is recommended that the Planning Commission take the following actions:

1. Approve the resolution recommending that the City Council approve the Acorn Business Park Initial Study / Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program and Errata.
2. Approve the resolution recommending that the City Council approve an ordinance rezoning the project site from Planned Business Center (PBC) and Regional Commercial (C-3) to Planned Development District (PD-18-02).
3. Approve the resolution recommending that the City Council approve a Vesting Tentative Map/Final Development Plan, Use Permit for Subsection B, and Design Review subject to conditions of approval (UP-18-09, AR-18-09, PW-357-301-19).

REQUEST

The applicant, Jim Moita, requests approval of an Initial Study / Mitigated Negative Declaration, a rezone to Planned Development District (PD), Vesting Tentative Map/Final Development Plan, Use Permit, and Design Review approval of a business park consisting of commercial, self storage and light industrial uses located directly northwest of the intersection of East Eighteenth Street and Drive-In Way (APNs 051-052-112 and 051-052-113). Each request is described in detail below:

1. Mitigated Negative Declaration: The Planning Commission must recommend approval of the Initial Study/Mitigated Negative Declaration to City Council prior to taking action on the other resolutions for the project.
2. Rezoning to Planned Development District (PD-18-02): The applicant requests an approval of a rezone of the site from Regional Commercial (C-3) and Planned Business Center (PBC) to Planned Development District (PD).

3. Final Development Plan (PD-18-02): Approval of a Final Development Plan goes hand in hand with the rezoning described above. The Final Development Plan and the PD District effectively become the Zoning Code for the project area.
4. Use permit (UP-18-09): The Zoning Ordinance requires that a use permit be approved prior to the construction of any phase of an approved PD district. The proposed use permit would be for the construction of the self-storage facility only. The future commercial and light industrial sections would be required to submit for use permit approval prior to development.
5. Design review (AR-18-09): Design review of the project's architecture, design and landscaping. The design review approval for building architecture only applies to the self-storage facility. The commercial and light industrial sections of the project will need to submit for design review approval for building architecture prior to development.
6. Vesting Tentative Map (PW 357-301-19): The project requires the approval of a Vesting Tentative Map to allow the subdivision of the site into a maximum of twelve parcels.



ENVIRONMENTAL

In accordance with CEQA, a Mitigated Negative Declaration was prepared for the project that determined that all significant environmental impacts could be mitigated to a less-than-significant level with incorporation of mitigation. A copy of the public review draft of the Initial Study/Mitigated Negative Declaration and Final IS/MND with the response to comment letters, Errata, Mitigation Monitoring and Reporting Program (MMRP) and appendices can be found at the following link:

<https://www.antiochca.gov/community-development-department/planning-division/environmental-documents/>

Potentially significant impacts to air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, noise, traffic and transportation, and tribal cultural resources were identified in the IS/MND. All impacts would be reduced to a less than significant level with the implementation of mitigation measures.

The draft Mitigated Negative Declaration was released for public review from February 14, 2019 to March 15, 2019 and City staff received comment letters from four state agencies and one letter from the applicant. The four state agencies who submitted comments were the Native American Heritage Commission, Central Valley Regional Water Quality Control Board, California Department of Transportation, and California Department of Fish and Wildlife. Responses were prepared for each comment letter and some minor changes were made to the IS/MND as a result. The Final IS/MND consists of the public review draft IS/MND, responses to the comment letters, an Errata document detailing the minor text changes to the IS/MND, and the Mitigation Monitoring and Reporting Program (MMRP). The MMRP is Exhibit A and the Errata (without appendices) is Exhibit B to the attached CEQA resolution (Attachment A).

ANALYSIS

Issue #1: Project Overview

The project proposes to develop 19.75 acres with commercial, self-storage, and light industrial business park uses. The project is divided into the three subsections (A, B and C). The applicant is proposing to construct the self-storage facility on Subsection B while marketing Subsections A and C for future construction by a separate developer(s). The three subsections are designed to function independently of each other and do not require any cross-access agreements or shared parking facilities.

Subsection A

Subsection A is the commercial portion of the development located at the southern end of the property with frontage on East Eighteenth Street. The site is approximately 3.79 acres and the applicant has proposed two site plans for the property to account for potential development opportunities. Both site plans propose subdividing Subsection A into two parcels with one alternative incorporating a hotel on one parcel and a commercial building on the other parcel. The other alternative has a commercial building on each parcel. The lot and building square footage for each alternative is as follows:

Commercial (Hotel Alternative)		
	Building Size	Lot Size
Lot 1 (Hotel Site)	12,136 SF	108,198 SF
Lot 2	11,088 SF	57,008 SF
Total	23,224 SF	165,206 SF
Commercial (No Hotel)		
Lot 1	16,800	84,608 SF
Lot 2	16,800	80,598 SF
Total	33,600	165,206 SF

Subsection B

Subsection B is the self-storage portion of the development located in the middle of the property with a small frontage with access from East Eighteenth Street as well as access from Drive-In Way. The site is approximately 5.44 acres and contains seven self-storage buildings and an office space where the on-site manager will reside. The self-storage facility would have a maximum of 1,025 storage units on site. The square footage of each building is as follows:

Self-Storage	
Building	Size
C	23,440 SF
D	20,448 SF
E	20,388 SF
F	17,490 SF
G	20,540 SF
H	14,575 SF
I (office)	1,200 SF
J	3,900 SF
Total	121,981 SF

Subsection C

Subsection C is the light industrial business park portion of the development located at the northern end of the property with frontage on Drive-In Way and Sakurai Street. The site is approximately 10.52 acres and, similarly to Subsection A, the applicant has proposed two site plans for the property. One site plan proposes subdividing into nine parcels with eight of the parcels each containing a light industrial building and the ninth parcel containing the stormwater detention basin for the development. The alternative site plan proposes subdividing the property into two parcels with one parcel containing a large light industrial building and the other parcel will contain the stormwater detention basin. The lot and building square footage for each alternative is as follows:

Business Park (Alternate A)		
	Building Size	Lot Size
Lot 4	14,112 SF	47,954 SF
Lot 5	14,112 SF	49,298 SF
Lot 6	14,112 SF	53,157 SF
Lot 7	14,112 SF	53,157 SF
Lot 8	14,112 SF	53,296 SF
Lot 9	14,112 SF	52,829 SF
Lot 10	14,112 SF	51,615 SF
Lot 11	14,112 SF	50,186 SF
Lot A (Detention Basin)	N/A	46,740 SF
Total	112,896 SF	458,232 SF
Business Park (Alternate B)		
	Building Size	Lot Size
Lot 4	71,880 SF	358,204 SF
Lot A (Detention Basin)	N/A	100,028 SF
Total	71,880 SF	458,232 SF

Issue #2: General Plan, Zoning and Land Use

The project site has a split General Plan designation of Regional Commercial and Business Park within the Eastern Waterfront Employment Focus Area. The project site is zoned Regional Commercial (C-3) and Planned Business Center (PBC). The project also falls within the boundaries of the East Eighteenth Street Specific Plan, which requires all development to rezone to Planned Development (PD).

The surrounding land uses and zoning designations are noted below:

North: Markstein Beverage Distribution / Planned Development (PD)
 South: Vacant Land (Current Development Application for High Density Residential) and various commercial uses / Planned Business Center (PBC)
 West: Burger King Restaurant, Gas Station, Vacant K-Mart Building / Regional Commercial (C-3)
 East: Vacant Land / Regional Commercial (C-3)

Issue #3: Planned Development Rezone/Vesting Tentative Map

The existing zoning for the site is a combination of Regional Commercial (C-3) and Business Park (PBC). The East Eighteenth Street Specific Plan requires that the site be rezoned to Planned Development (PD). As such, the applicant has requested a zoning map amendment to rezone the entire site to PD to allow for the proposed mix of commercial, self-storage and light industrial uses and to be consistent with the split General Plan designations of Regional Commercial and Business Park. The proposed

Planned Development zone contains development standards and a list of approved uses that effectively serve as the zoning code for the property.

The development standards are generally consistent with the Regional Commercial (C-3) and Light Industrial (M-1) zoning standards in the Antioch Municipal Code. The project has a thirty-foot landscape setback along East Eighteenth Street and a twenty-foot landscape setback along Drive-In Way and Sakurai Street with minimum lot sizes of 20,000 square feet.

The proposed land uses for the commercial portion of the project (Subsection A) permits a range of commercial uses that include retail, office, service commercial and hotel uses that are consistent with the General Plan designation on the property of regional commercial. The light industrial business park portion of the project (Subsection C) permits a range of uses that include warehousing and distribution, light manufacturing, offices uses, and research and development facilities.

For Subsection B the applicant has proposed allowing cell towers on the site up to 110 feet high. Staff is recommending that any cell tower in this Planned Development zoning district be restricted to fifty feet high. This would be consistent with the building height limit in a light industrial zoning district as well as neighboring cell towers in the area. For reference, the adjacent self-storage facility to the northeast of the project site has an existing cell tower on their property that is fifty feet in height. The location and design of any cell tower on the site would be subject to use permit and design review approval.

The proposed development standards and allowed uses are included in the Planned Development Rezone ordinance (Attachment B). The list of uses that the applicant proposed are consistent with the General Plan with one exception. The applicant proposed public and private schools as a use for the light industrial business park. The General Plan does not allow schools in the business park designation; therefore, staff did not include it in the master use list.

The proposed vesting tentative map would subdivide the 19.75-acre parcel into a maximum of twelve parcels. Initially the applicant will subdivide the parcels into the three subsections discussed above with the intent to market Subsections A and C to future developers who will then further subdivide the properties based on which alternative site plan they choose to develop. While Subsection A-C are designed to function independently of each other, developers of the commercial development and the business park will be required to record a mutual access and parking agreement upon further subdivision of their property.

Issue #4: Architecture, Site Design and Landscaping

The applicant is only requesting design review approval for the architecture of the self-storage buildings at this time. While they have provided conceptual elevations of what the future commercial and light industrial business park buildings may look like, the

future developer of those properties would need to obtain design review approval prior to constructing buildings on those sites. Staff has conditioned that the future commercial and light industrial business park buildings be architecturally compatible with the self-storage facility.

The proposed self-storage facility is located in the middle of the proposed development with frontage onto Drive-In Way and a narrow frontage onto East Eighteenth Street. The facility is designed so that the storage buildings function as the perimeter fencing of the property. This is consistent with Section 3.2.13b of the Citywide Design Guidelines for self-storage facilities which states that "In order to prevent views into the facility from the public right-of-way, all activities shall be confined to one building or building massing shall be located around the perimeter of the site."

The applicant provided an east elevation of self-storage building H along Drive-In Way that includes an earth tone color palette. The proposed colors include "Natural Linen" on the building facade, "Antler Velvet" on the tower and wainscot, "Foothills" on the cornice, fascia and arch, and "Marshmallow" on the window trim. Building H is well articulated with a stone veneer, metal awnings, metal trellises, dimensional columns and gabled roof elements used to break up the long blank façade. The proposed office/residence features a similar architectural treatment and also includes a clock tower feature at the top of the building.

While the architectural treatment for building H does comply with the Citywide Design Guidelines, no elevations were provided for the other perimeter buildings. Section 3.2.13c of the Citywide Design Guidelines for self-storage facilities states that "buildings shall be stylistically consistent on all sides and well articulated"; therefore, staff has conditioned that the sections of buildings C, J and G that are adjacent to the property line have a similar architectural treatment as building H. The applicant will be required to submit revised elevations as part of their building permit submittal to demonstrate that this requirement has been met.

The conceptual landscape plan includes a variety of drought tolerant trees, shrubs and ground cover. The proposed conifer and eucalyptus trees are not ideal for commercial properties as they pose long term maintenance issues due to the shedding of needles and leaves and shallow root systems. Appendix A-1 to the Citywide Design Guidelines provides a plant palette with acceptable tree species that could be used as a replacement. Staff has conditioned that a revised landscape plan be submitted with the building permit submittal that replaces the conifer and eucalyptus trees that are consistent with the Citywide Design Guidelines.

Issue #5: Signage

The applicant has submitted a conceptual sign program that includes building and monument signage, as well as a forty-five-foot-tall freeway oriented sign that would serve as signage for the entire business park. The only signage that is being approved as a part of this application is the freeway-oriented sign and the self-storage facility

signage. The future developers of Subsections A and C will be required to submit sign programs as part of their development approvals.

The proposed freeway-oriented sign complies with Antioch Municipal Code § 9-5.508c which states that freeway elevated signs shall not exceed a maximum height of forty-five feet from ground level and shall be within 300 feet of a freeway right of way. The sign is architecturally compatible with the site as it incorporates some of the same architectural features as the building design such as a stone veneer base and gabled roof element. The sign has three panels and while the panel materials are not included in the sign program, the applicant has indicated that the panels are plexiglass and will be internally illuminated. The freestanding monument sign has the same architectural features as the freeway-oriented sign and is four-feet tall with one panel identifying the self-storage business. Staff has conditioned that a revised sign program with these additional details be submitted for Zoning Administrator approval. A copy of the sign program is included as Attachment D to this staff report.

The future developers of subsections A and C would need to include a sign program as part of their design review approval process to construct buildings on their site.

Issue #6: Infrastructure and Off-Site Improvements

The developer is required to provide all infrastructure necessary to serve the site. This includes utility tie-ins such as water, streets, sanitary sewer and storm drainage systems.

The project would connect to the existing water, sewer and storm drain systems in the East Eighteenth Street, Drive-In Way and Sakurai Street right-of-way. In addition, the proposed stormwater system would include a bio-retention facility on the northwest edge of the site that would filter and release the majority of all on-site runoff.

The site currently has a six-foot sidewalk that extends along the entire East Eighteenth Street project frontage and continues approximately 180 feet along Drive-In Way where it ends. Staff has conditioned that the applicant install a six-foot sidewalk along the remaining Drive-In Way frontage, as well as the Sakurai Street frontage.

As part of the environmental analysis of the project, a traffic study was conducted that determined that the traffic generated by the proposed project warranted a traffic signal at the intersection of East Eighteenth Street and Drive-In Way. The study determined that the traffic signal would be necessary either prior to issuance of a certificate of occupancy for the business park or the self-storage facility. Staff has included a condition of approval with this requirement, as well as a provision for the applicant to establish a financing mechanism or reimbursement agreement for the traffic signal improvement so reimbursement is provided when adjacent properties develop.

Issue #7: Commercial Property Maintenance

The project is required to comply with Antioch Municipal Code § 5-1.204 which requires that commercial projects with separate parcels within the project enter into a maintenance agreement that is reflective of the approved standards detailed in Antioch Municipal Code § 5-1.204. The property maintenance agreement ensures that the maintenance of landscaping, litter control, common areas and parking lots, undeveloped parcels, monument signage, and stormwater/erosion control measures are performed in a uniform and consistent manner. Staff has included a condition of approval that all parcels within the development shall enter into one property maintenance agreement that covers all of the parcels within the project.

ATTACHMENTS

- A: Resolution Recommending that the City Council approve the Mitigated Negative Declaration, MMRP and Errata for the Acorn Business Park Project (Exhibit A – MMRP, Exhibit B – Errata)
- B: Resolution Recommending that the City Council approve the Ordinance to Rezone 19.75 Acres (APNs 051-052-112 and 051-052-113) from Regional Commercial (C-3) and Planned Business District (PBC) To Planned Development District (PD-18-02) (Exhibit A – Ordinance) (Exhibit B – Legal Description)
- C: Resolution Recommending that the City Council approve the Vesting Tentative Map/Final Development Plan, Use Permit for Subsection B, and Design Review (PD-18-02, UP-18-09, AR-18-09, PW-357-301-19) for the Acorn Business Park Project.
- D: Sign Program
- E: Self-Storage Building Elevations

ATTACHMENT “A”

**PLANNING COMMISSION
RESOLUTION NO. 2019-****

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
RECOMMENDING THAT THE CITY COUNCIL ADOPT THE MITIGATED NEGATIVE
DECLARATION FOR THE ACORN BUSINESS PARK PROJECT AS ADEQUATE
FOR ADDRESSING THE ENVIRONMENTAL IMPACTS OF THE PROPOSED
PROJECT**

WHEREAS, the City received an application from Jim Moita, for approval of an Initial Study / Mitigated Negative Declaration, a rezone to Planned Development District, a Final Development Plan/Vesting Tentative Map, Use Permit for Subsection B, and Design Review for the development of a business park consisting of commercial, self-storage, and light industrial uses on 19.75 acres (PD-18-02, UP-18-09, AR-18-09, PW-357-301-19). The project site is located directly northwest of the intersection of East 18th Street and Drive-in Way (APNs 051-052-112 and 051-052-113); and,

WHEREAS, the City, as lead agency, prepared an Initial Study and Mitigated Negative Declaration, to evaluate the potential environmental impacts of the Project in conformance with Section 15070 of Title 14 of the California Code of Regulations (the "CEQA Guidelines"); and,

WHEREAS, this document contains the City's CEQA findings supporting adoption of the MND and MMRP. The MND has State Clearinghouse Number of 2019029069; and,

WHEREAS, a draft Initial Study and Mitigated Negative Declaration ("IS/MND") was circulated for a 30-day review period, with the public review period commencing on February 14, 2019 and ending on March 15, 2019. Staff received five comment letters during the review period; and,

WHEREAS, Mitigation measures were added to the MMRP or modified, as appropriate, to address these comments; and,

WHEREAS, the Planning Commission gave notice of public hearing as required by law; and,

WHEREAS, on May 15, 2019, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary and recommended adoption to the City Council of the Final IS/MND, Errata, and MMRP; and,

WHEREAS, the custodian of the Final IS/MND is the Community Development Department and the Final IS/MND is available for public review on the second floor of City Hall in the Community Development Department, Monday - Friday 8:00 am - 5:00 pm. The MMRP, the response to comment letters, and Errata (without appendices) are attached as Exhibit A and Exhibit B respectively to this Resolution.

NOW, THEREFORE, BE IT RESOLVED AND DETERMINED, as follows:

1. The foregoing recitals are true and correct.
2. The Planning Commission of the City of Antioch hereby FINDS, on the basis of the whole record before it (including the Initial Study and all comments received) that:
 - a. The City of Antioch exercised overall control and direction over the CEQA review for the Project, including the preparation of the Final Initial Study, Errata and Mitigated Negative Declaration, and independently reviewed the Final IS/MND, Errata and MMRP; and,
 - b. There is no substantial evidence that the Project will have a significant effect on the environment once mitigation measures have been followed and assuming approval of the Zoning Ordinance amendment; and,
 - c. The Final IS/MND, Errata and MMRP reflect the City's independent judgment and analysis.
3. The Planning Commission hereby RECOMMENDS that City Council of the City of Antioch APPROVE AND ADOPT the Final Initial Study / Mitigated Negative Declaration, Errata (Exhibit B) and Mitigation Monitoring and Report Program (Exhibit A) for the Project. All feasible mitigation measures for the Project identified in the IS/MND, Errata (Exhibit B) and MMRP (Exhibit A) and accompanying studies are hereby incorporated into this approval.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was adopted by the Planning Commission of the City of Antioch at a regular meeting thereof held on the 15th day of May 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

FORREST EBBS
Secretary to the Planning Commission

EXHIBIT A



Acorn Business Park Project

Mitigation Monitoring and Reporting Program

May 2, 2019

Lead Agency:

City of Antioch
Community Development Department
Planning Division
200 H Street
Antioch, CA 94509

Technical Assistance:

Stantec Consulting Services Inc.
1340 Treat Boulevard, Suite 300

1.0 MITIGATION MONITORING AND REPORTING PROGRAM

1.1 INTRODUCTION

The purpose of the Mitigation, Monitoring, and Reporting Program (MMRP) is to briefly describe the roles and responsibilities of government agencies in implementing and enforcing the adopted mitigation measures identified in the Initial Study Mitigated Negative Declaration (ISMND) for the Acorn Business Park Project (proposed project).

Section 21081.6 of the Public Resources Code requires a Lead Agency that approves or carries out a project with potentially significant environmental effects to adopt a “reporting or monitoring program for the changes to the project which it has adopted or made a condition of a project approval to mitigate or avoid significant effects on the environment.” The City of Antioch Community Development Department, Planning Division (City), is the Lead Agency that must adopt the MMRP for the proposed project.

The California Environmental Quality Act (CEQA) Statutes and Guidelines provide direction for clarifying and managing the complex relationships between a Lead Agency and other agencies with respect to implementing and monitoring mitigation measures. In accordance with CEQA Guidelines Section 15097(d), “each agency has the discretion to choose its own approach to monitoring or reporting; and each agency has its own special expertise.” This discretion will be exercised by implementing agencies at the time they consider any of the activities identified in the environmental document.

This MMRP is a working guide to facilitate both the implementation of the mitigation measures and the monitoring, compliance, and reporting activities by the City and any monitors it may designate. If the City adopts the ISMND for the proposed project, it will adopt the MMRP.

1.2 OVERVIEW OF THE MITIGATION MONITORING AND REPORTING PROGRAM

The City and its contractors will be required to comply with this MMRP in all respects. In any instance where non-compliance occurs, the City-designated environmental monitors will issue a warning to the project construction manager and the City’s Project Manager. Any decisions to halt work due to non-compliance will be made by the City. The City’s designated environmental monitors will keep records of any incidents on non-compliance with mitigation measures. Copies of these documents will be supplied to the City.

1.3 MITIGATION MONITORING AND REPORTING PROGRAM

The MMRP is presented in the following table and includes the mitigation measures identified in the ISMND prepared for the proposed project. The purpose of the MMRP is to provide the City with a comprehensive list of the mitigation measures. The mitigation measures will be implemented through verification of required approvals by City staff. The MMRP consists of the following components:

- The list of mitigation measures contained in the ISMND, as adopted by the City.
- The party responsible for implementing the mitigation measures



- The timing for implementation of the mitigation measure
- The agency responsible for monitoring implementation of the mitigation measure
- The monitoring action and frequency

The City will be responsible for ensuring compliance with the mitigation measures applicable to the proposed project. City staff will prepare or require preparation of reports which identify compliance with mitigation measures. Once construction has begun and is underway, the City will carry out monitoring of the mitigation measures associated with construction. The MMRP will be maintained in the City's files for use in construction and operation of the proposed project.



Mitigation Measure	Implementation Party	Timing of Implementation	Monitoring Party and Monitoring Action	Monitoring Frequency	Verification of Implementation	
					Action	Date completed with Signature
Section 3.3: Air Quality						
MM AIR-1 Implement Construction Best Management Practices (BMPs). The applicant shall require all construction contractors to implement the basic construction mitigation measures recommended by the BAAQMD to reduce fugitive dust emissions. Emission reduction measures will include, at a minimum, the following measures. Additional measures may be identified by the BAAQMD or contractor as appropriate: a) all exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) will be watered two times per day; b) all haul trucks transporting soil, sand, or other loose material off-site will be covered; c) all visible mud or dirt track-out onto adjacent public roads will be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited; d) all vehicle speeds on unpaved roads will be limited to 15 mph; e) all roadways, driveways, and sidewalks to be paved will be completed as soon as possible. Building pads will be laid as soon as possible after grading unless seeding or soil binders are used; and f) Idling times shall be minimized either by shutting equipment off when not in use or by reducing the maximum idling time to 5 minutes (as required by the California Airborne Toxics Control Measure Title 13, Section 2485 of CCR. Clear signage shall be provided for construction workers at all access points. g) all construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator. h) post a publicly visible sign with the telephone number and person to contact at the City regarding dust complaints. This person will respond and take corrective action within 48 hours. The BAAQMD's phone number will also be visible to ensure compliance with applicable regulations.	<ul style="list-style-type: none">Project Construction Manager	Prior to issuance of grading permits and during construction.	Monitoring Party: <ul style="list-style-type: none">City of Antioch Community Development Department Monitoring Action: <ul style="list-style-type: none">Confirm construction BMPs are included in project specifications and implemented throughout the construction phase.	Prior to issuance of grading permit and throughout construction as needed.		
Section 3.4: Biological Resources						
MM BIO-1 Special-status species protection measures. The following measures shall be implemented to protect special-status species.						
A. Avoid Disturbance of Nesting Birds. If project activities occur during the nesting season for native birds (February 1 to August 31), the following measures shall be implemented to avoid or minimize the potential for adverse impacts on nesting migratory birds and raptors: Pre-construction nesting bird survey for species protected by the MBTA and California Fish and Game Code will be conducted by a qualified biologist within a 250-foot radius of proposed construction activities for passerines and a 500-foot radius for raptors no more than two weeks prior to the start of construction activities. If active nests are found a qualified biologist shall determine the size of the buffer based on the nesting species and its sensitivity to disturbance (i.e. a buffer measuring from 50 to 100 feet for passerine species and a	<ul style="list-style-type: none">Project Construction ManagerQualified Biologist	Pre-construction: Nesting bird surveys will be conducted no more than two weeks prior to ground disturbing activities and prior to issuance of grading permits.	Monitoring Party: <ul style="list-style-type: none">City of Antioch Community Development Department Monitoring Action: <ul style="list-style-type: none">Confirm selection of qualified biologistConfirm nesting bird surveys are conducted no more than two weeks	Prior to issuance of grading permit and throughout construction as needed.		



Mitigation Measure	Implementation Party	Timing of Implementation	Monitoring Party and Monitoring Action	Monitoring Frequency	Verification of Implementation	
					Action	Date completed with Signature
buffer of 300 feet for raptor species). These buffers may be reduced at the discretion of a qualified biologist, but no construction activities shall be permitted within the buffer if they are demonstrated to disturb nesting birds. Active nest sites shall be monitored periodically to determine time of fledging.			prior to the start of construction activities.			
B. Burrowing Owl Specific Measures. Though the site is currently not occupied by burrowing owls, preconstruction surveys for this species shall be conducted by a qualified biologist within the 30 days prior to construction to ensure that no burrowing owls have occupied the project area. If ground-disturbing activities are delayed or suspended for more than 30 days after the preconstruction survey, the site shall be resurveyed. If owls are subsequently identified within the project area, though are not likely to be directly or indirectly impacted by project construction, then the project proponent shall implement the following measures to minimize disturbance to this species: <div><div>1.</div><div>A buffer area approximately 100 meters (328 feet) in radius will be established around occupied burrows. This radius will be identified by the placement of orange construction fencing.</div><div>2.</div><div>If temporary ground disturbing activities are to occur within 50 to 100 meters (164 to 328 feet) of occupied burrows, then these areas will be restored to their original condition so as to maintain burrowing owl foraging habitat.</div><div>3.</div><div>No disturbance activities should occur within 50 meters (164 feet) of occupied burrows.</div></div>	<div><div>•</div><div>Project Construction Manager</div><div>•</div><div>Qualified Biologist</div></div>	Preconstruction: Burrowing owl surveys will be conducted within 30 days prior to ground disturbing activities and prior to issuance of grading permits.	Monitoring Party: <ul style="list-style-type: none">City of Antioch Community Development Department Monitoring Action: <ul style="list-style-type: none">Confirm selection of qualified biologistConfirm burrowing owl surveys are conducted no more than 30 days prior to the start of construction activities.	Prior to issuance of grading permit and throughout construction as needed.		
C. Swainson’s Hawk Specific Measures. If work must occur during bird breeding season for Swainson's hawk (February 1 st through August 31 st), to ensure that no indirect impacts to active nests occur due construction activities, a qualified biologist will conduct a pre-construction survey for Swainson's hawk nests per the Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley (CDFG 2000). The area to be surveyed will include a 0.5 mile-radius including and surrounding the project site between April 5 to April 20 from sunrise to 1200 and 1630 to sunset (CDFG 2000). One survey shall be conducted during this time because activity at the nest site increases significantly and active nests are more easily identified. If active nests are found, the City will be notified. No construction will occur until appropriate buffers are established, based upon recommendation by the City.	<div><div>•</div><div>Project Construction Manager</div><div>•</div><div>Qualified Biologist</div></div>	Prior to construction pursuant if work is scheduled to occur between February 1 st and August 31 st .	Monitoring Party: <ul style="list-style-type: none">City of Antioch Community Development Department Monitoring Action: <ul style="list-style-type: none">Confirm selection of qualified biologistConfirm Swainson’s hawk surveys have occurred	Prior to issuance of grading permit and throughout construction as needed.		
D. Open Pipes Restriction. All pipes, culverts, or similar structures that are stored at the construction site (either vertically or horizontally) for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to implementation by a Qualified Biologist.	<div><div>•</div><div>Project Construction Manager</div><div>•</div><div>Qualified Biologist</div></div>	During construction	Monitoring Party: <ul style="list-style-type: none">City of Antioch Community Development Department Monitoring Action: <ul style="list-style-type: none">Confirm selection of qualified biologistConfirm biologist is inspecting pipes, culverts, or similar structures			



Mitigation Measure	Implementation Party	Timing of Implementation	Monitoring Party and Monitoring Action	Monitoring Frequency	Verification of Implementation	
					Action	Date completed with Signature
			through submittal of monitoring records.			
E. Fence and Sign Post Restriction. Any fencing posts or signs installed, temporarily or permanently, throughout the course of the project shall have the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife, specifically birds of prey.	<ul style="list-style-type: none">Project Construction Manager	During construction	Monitoring Party: <ul style="list-style-type: none">City of Antioch Community Development Department Monitoring Action: <ul style="list-style-type: none">Confirm inclusion of requirement to be noted on construction contracts as a condition of approval			
F. Water Pollution. Permittee and all contractors shall be subject to the water pollution regulations found in Fish and Game Code Sections 5650 and'12015.	<ul style="list-style-type: none">Project Construction Manager	During construction	Monitoring Party: <ul style="list-style-type: none">City of Antioch Community Development Department Monitoring Action: <ul style="list-style-type: none">Confirm inclusion of requirement to be noted on construction contracts as a condition of approval			
G. Spill Contingency Plan. The permittee shall submit for approval an oil/toxic material spill contingency plan to CDFW prior to commencement of operations. The plan shall identify the location of containment and abatement materials on-site and the notification and cleanup procedures to be followed by Permittee in the event of a spill.	<ul style="list-style-type: none">Project Construction Manager	During construction	Monitoring Party: <ul style="list-style-type: none">City of Antioch Community Development Department Monitoring Action: <ul style="list-style-type: none">Confirm inclusion of requirement to be noted on construction contracts as a condition of approval			
H. Spill Cleanup. The permittee shall begin the cleanup of all spills immediately. CDFW shall be notified immediately by the Permittee of any spills and shall be consulted regarding cleanup procedures. The Permittee shall have all spill clean-up equipment on-site during construction.	<ul style="list-style-type: none">Project Construction Manager	During construction	Monitoring Party: <ul style="list-style-type: none">City of Antioch Community Development Department Monitoring Action: <ul style="list-style-type: none">Confirm inclusion of requirement to be noted on construction contracts as a condition of approval			
Section 3.5: Cultural Resources						



Mitigation Measure	Implementation Party	Timing of Implementation	Monitoring Party and Monitoring Action	Monitoring Frequency	Verification of Implementation	Date completed with Signature
MM CUL-1 Cultural Materials Discovered During Construction. If any cultural resource is encountered during ground disturbance or subsurface construction activities (e.g., trenching, grading), all construction activities within a 50-foot radius of the identified potential historical resource shall cease until an archaeologist who meets the Secretary of the Interior's Standards and Guidelines for Professional Qualifications in archaeology and/or history evaluates the resource for its potential significance and determines whether the resource requires further study. Tribal cultural resources are discussed in Section 3.18. If the qualified archaeologist determines that the cultural resource does not appear to be eligible for inclusion on the CRHR, it will be appropriately documented on Department of Parks and Recreation (DPR) 523 series forms and project activity may resume. If the qualified archaeologist determines that the cultural resource appears eligible for inclusion on the CRHR the archaeologist shall make recommendations to the City of Antioch on the measures to be implemented to protect the discovered resources. The measures may include avoidance, preservation in place, data recovery excavation, or other appropriate measures outlined in PRC Section 21083.2. Any previously undiscovered resources found during construction within the project area should be recorded on appropriate DPR forms and evaluated for significance in terms of CEQA criteria. The applicant shall be responsible for the costs of retaining a qualified archaeologist and the recording of resources on DPR forms. No further grading shall occur within a 50-foot radius of the discovery until the City of Antioch approves the measures to protect these resources. Any archaeological artifacts recovered because of mitigation shall be donated to a qualified scientific institution approved by the City where they would be afforded long-term preservation to allow future scientific study.	<ul style="list-style-type: none">Project Construction ManagerQualified Archaeologist	During construction: During all ground disturbing activities.	Monitoring Party: <ul style="list-style-type: none">City of Antioch Community Development Department Monitoring Action: <ul style="list-style-type: none">Confirm a qualified archaeologist is under contract prior to the start of any ground disturbing activities.Confirm a qualified archaeologist is onsite monitoring ground disturbing activitiesIf cultural resources are discovered during construction confirm activities are halted until appropriate treatment measures are implemented.	Prior to issuance of grading permit and throughout construction as needed.		
MM CUL-2 Worker Awareness Training. Prior to the start of any ground disturbance, all field personnel shall receive worker's environmental awareness training on cultural resources. The training, which may be conducted with other environmental or safety trainings, will provide a description of cultural resources that may be encountered during construction and outline the steps to follow in the event that a discovery is made.	<ul style="list-style-type: none">Project Construction ManagerQualified Archaeologist	Pre-construction: Prior to ground disturbing activities.	Monitoring Party: <ul style="list-style-type: none">City of Antioch Community Development Department Monitoring Action: <ul style="list-style-type: none">Confirm a qualified archaeologist is under contract prior to the start of any ground disturbing activities.Confirm a qualified archaeologist provides worker awareness training prior to start of any ground disturbing activities.	Prior to issuance of grading permit and throughout construction as needed.		



Mitigation Measure	Implementation Party	Timing of Implementation	Monitoring Party and Monitoring Action	Monitoring Frequency	Verification of Implementation	
					Action	Date completed with Signature
<p>MM CUL-3 Human Remains Discovered During Construction. If ground-disturbing activities uncover previously unknown human remains, Section 7050.5 of the California Health and Safety Code applies, and the following procedures shall be followed:</p> <p>There shall be no further excavation or disturbance of the area where the human remains were found or within 50 feet of the find until the Contra Costa County Coroner and the appropriate City representative are contacted. Duly authorized representatives of the Coroner and the City shall be permitted onto the project site and shall take all actions consistent with Health and Safety Code Section 7050.5 and Government Code Sections 27460, et seq. Excavation or disturbance of the area where the human remains were found or within 50 feet of the find shall not be permitted to re-commence until the Coroner determines that the remains are not subject to the provisions of law concerning investigation of the circumstances, manner, and cause of any death. If the Coroner determines the remains are Native American, the Coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours, and the NAHC shall identify the person or persons it believes to be the “most likely descendant” (MLD) of the deceased Native American. The MLD may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98. If the MLD does not make recommendations within 48 hours, the landowner shall reinter the remains in an area of the property secure from further disturbance. If the landowner does not accept the MLD’s recommendations, the owner or the MLD may request mediation by NAHC.</p>	<ul style="list-style-type: none">Project Construction ManagerQualified Archaeologist	During construction: During all ground disturbing activities.	<p>Monitoring Party:</p> <ul style="list-style-type: none">City of Antioch Community Development Department <p>Monitoring Action:</p> <ul style="list-style-type: none">Confirm a qualified archaeologist is under contract prior to the start of any ground disturbing activities.Confirm a qualified archaeologist is onsite monitoring ground disturbing activitiesIf human remains are discovered during construction confirm activities are halted until appropriate treatment measures are implemented.	Prior to issuance of grading permit and throughout construction as needed.		
Section 3.6: Geology and Soils						
<p>MM GEO-1 Implement Geotechnical Report Design Measures. Prior to issuance of grading permits, the applicant shall incorporate all design specifications and recommendations contained within the site-specific soils report into relevant project plans and specifications. These specifications shall pertain to, but are not limited to, building foundations, backfill of excavations, and grading activities. The project site plans shall be submitted to the City and shall be reviewed during the building permit process.</p>	<ul style="list-style-type: none">Applicant	Prior to issuance of grading permits and during construction.	<p>Monitoring Party:</p> <ul style="list-style-type: none">City of Antioch Community Development Department <p>Monitoring Action:</p> <ul style="list-style-type: none">Confirm specifications of the geotechnical report are implemented into the project and conform to the City’s requirements.	Once during the City’s review of site plans.		
<p>MM GEO-2 Procedures for Paleontological Resources Discovered During Construction. If any paleontological resources are encountered during ground disturbing or subsurface construction activities (e.g., trenching, grading), all construction activities within a 50-foot radius of the identified resource shall cease and the City shall immediately be notified. The applicant shall retain a qualified paleontologist (as approved by the City) to evaluate the find and recommend appropriate treatment of the inadvertently discovered paleontological resource. The appropriate treatment of an inadvertently discovered paleontological resource shall be implemented to ensure that impacts to the resource are avoided.</p>	<ul style="list-style-type: none">Project Construction ManagerQualified Paleontologist	During construction: During all ground disturbing activities.	<p>Monitoring Party:</p> <ul style="list-style-type: none">City of Antioch Community Development Department <p>Monitoring Action:</p> <ul style="list-style-type: none">If paleontological resources are uncovered, confirm construction activities are halted until	Prior to issuance of grading permit and throughout construction as needed.		



Mitigation Measure	Implementation Party	Timing of Implementation	Monitoring Party and Monitoring Action	Monitoring Frequency	Verification of Implementation	
					Action	Date completed with Signature
Section 3.9: Hydrology and Water Quality						
<p>MM HYD-1 Prepare a SWPPP. Prior to the issuance of any construction-related permit, the applicant shall prepare and submit a Notice of Intent to the SWRCB and prepare a SWPPP in compliance with the NPDES General Construction Permit requirements. The SWPPP shall include a detailed, site-specific listing of the potential sources of stormwater pollution; pollution prevention measures (erosion and sediment control measures and measures to control non-stormwater discharges and hazardous spills); a description of the type and location of erosion and sediment control BMPs to be implemented at the project site; and a BMP monitoring and maintenance schedule to determine the amount of pollutants leaving the project site. A copy of the SWPPP must be current and remain on the project site. Control measures are required prior to and throughout the rainy season. Water quality BMPs identified in the SWPPP could include, but are not limited to, the following:</p> <ul style="list-style-type: none">• Surface water runoff shall be controlled by directing flowing water away from critical areas and by reducing runoff velocity. Diversion structures such as terraces, dikes, and ditches shall collect and direct runoff water around vulnerable areas to prepared drainage outlets.• Surface roughening, berms, check dams, hay bales, or similar devices shall be used to reduce runoff velocity and erosion.• Sediment shall be contained when conditions are too extreme for treatment by surface protection. Temporary sediment traps, filter fabric fences, inlet protectors, vegetative filters and buffers, or settling basins shall be used to detain runoff water long enough for sediment particles to settle out. Store, cover, and isolate construction materials, including topsoil and chemicals, to prevent runoff losses and contamination of groundwater.• Topsoil removed during construction shall be carefully stored and treated as an important resource. Berms shall be placed around topsoil stockpiles to prevent runoff during storm events.• Fuel and vehicle maintenance areas shall be established away from all drainage courses and these areas shall be designed to control runoff.• Temporary erosion control measures (such as silt fences, staked straw bales, and temporary revegetation) shall be employed for disturbed areas. No disturbed surfaces will be left without erosion control measures in place during the winter and spring months.• A spill prevention and countermeasure plan shall be developed, which will identify proper storage, collection, and disposal measures for potential pollutants (such as fuel, fertilizers, pesticides, etc.) used on-site. The plan would also require the proper storage, handling, use, and disposal of petroleum products.• Construction activities shall be scheduled to minimize land disturbance to the immediate area required for construction during peak runoff periods. Soil conservation practices shall be completed during the fall or late winter to reduce erosion during spring runoff.	<ul style="list-style-type: none">• Applicant• Project Construction Manager	Prior to issuance of grading permits and during construction.	<p>Monitoring Party:</p> <ul style="list-style-type: none">• City of Antioch Community Development Department <p>Monitoring Action:</p> <ul style="list-style-type: none">• Confirm requirements of the approved SWPPP are included in project specifications and implemented throughout the construction phase.	Once at the time of contractor specifications review and throughout the construction phase as needed.		



Mitigation Measure	Implementation Party	Timing of Implementation	Monitoring Party and Monitoring Action	Monitoring Frequency	Verification of Implementation	
Existing vegetation will be retained where possible. To the extent feasible, grading activities shall be limited to the immediate area required for construction.					Action	Date completed with Signature
Section 3.12: Noise						
MM NOI-1 Noise Attenuation. The noise from all mechanical equipment associated with the proposed project shall comply with Paragraph 11.6.1 “Noise Objective” in the City of Antioch General Plan and Article 19 “Noise Attenuation Requirements” in the Antioch Municipal Code.	<ul style="list-style-type: none">Applicant	Post construction: Prior to issuance of final certificate of occupancy.	Monitoring Party: <ul style="list-style-type: none">City of Antioch Community Development Department Monitoring Action: <ul style="list-style-type: none">Confirm the project’s mechanical equipment conforms to the City’s requirements.	Once as part of the City’s site plan review and prior to issuance of final certificate of occupancy.		



Mitigation Measure	Implementation Party	Timing of Implementation	Monitoring Party and Monitoring Action	Monitoring Frequency	Verification of Implementation	
					Action	Date completed with Signature
<p>MM NOI-2 Construction Noise Reduction. Implementation of the following multi-part mitigation plan is required to reduce the potential construction period noise impacts.</p> <ul style="list-style-type: none">Follow all construction noise requirements listed in the City of Antioch General Plan.Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction area.Utilize “quiet” air compressors and other stationary noise sources where technology exists.Construction activities shall be limited to daylight hours between 7 a.m. and dusk. Limit hours of operation of outdoor noise sources through conditions of approval.If construction activities are required outside of the daytime working hours allowed within the conditions of approval, the City would notify residents 48 hours in advance. If after-hours construction is required due to an emergency, the City would notify nearby residents immediately.The construction contractor would prohibit unnecessary idling of internal combustion engines.Where necessary noise-reducing enclosures or temporary barriers would be used around noise-generating equipment. Where feasible existing barrier features (terrain, structures) would be used to block sound transmission especially where sensitive receptors are located less than 50 feet from construction activities and construction noise levels are expected to exceed the maximum exterior noise standard.Post a construction site notice that includes the following information: job site address, permit number, name and phone number of the contractor and owner or owner's agent, hours of construction allowed by code or any discretionary approval for the Site, and City telephone numbers where violations can be reported. The notice shall be posted and maintained at the construction site prior to the start of construction and displayed in a location that is readily visible to the public and approved by the City.	<ul style="list-style-type: none">Project Construction Manager	Prior to issuance of grading permits and during construction.	<p>Monitoring Party:</p> <ul style="list-style-type: none">City of Antioch Community Development Department <p>Monitoring Action:</p> <ul style="list-style-type: none">Confirm noise reduction measures are included in project specifications and implemented throughout the construction phase.	Once during the City's site plan review and throughout the construction phase as needed.		
Section 3.17: Traffic and Transportation						
<p>MM TRANS-1 Traffic Signal. Prior to issuing a certificate of occupancy for any business park use obtaining access from Drive-In Way, the project applicant shall construct or shall pay the City of Antioch to construct a traffic signal at the intersection of Holub Lane/Drive-In Way and East 18th Street. The traffic signal shall be installed when minimum traffic signal warrant criteria is met as determined by the City Traffic Engineer.</p>	<ul style="list-style-type: none">ApplicantCity of Antioch	Post construction: Prior to issuance of final certificate of occupancy.	<p>Monitoring Party:</p> <ul style="list-style-type: none">City of Antioch Public Works Department <p>Monitoring Action:</p> <ul style="list-style-type: none">Confirm payment of fair share or completion of improvements.	Once as part of the City's site plan review and prior to issuance of final certificate of occupancy.		



Mitigation Measure	Implementation Party	Timing of Implementation	Monitoring Party and Monitoring Action	Monitoring Frequency	Verification of Implementation	
					Action	Date completed with Signature
MM TRANS-2 East 18th Street Modifications. To accommodate a right-in/right-out driveway into the self-storage and to minimize potential vehicle conflicts, the following modifications to East 18th Street along the project site should be provided: <ul style="list-style-type: none">Remove the existing merge arrows and stripingInstall right turn pockets at the westernmost and middle project drivewaysStripe a dashed centerline on East 18th Street to denote two travel lanesStripe a buffer between the driveways and right turn pockets along the Project frontage, and after the westernmost driveway, to direct vehicles to the two travel lanes.Install a bike lane between the two travel lanes and the right turn pocketsProvide skip striping for the bike lanes in the transition area between the striped buffer and right turn pocketsIf access is provided from the eastern most driveway, the intersection of East 18th Street and Drive in Way/Holub Lane shall be signalized prior to the opening of the self-storage uses.	<ul style="list-style-type: none">Applicant	Prior to issuance of grading permits.	Monitoring Party: <ul style="list-style-type: none">City of Antioch Public Works Department Monitoring Action: <ul style="list-style-type: none">Confirm the project site plans reflect relocation of the driveway on East 18th Street, or access to the project site is provided through a shared driveway from the commercial/retail parcel.	Once as part of the City's site plan review.		
Section 3.18: Tribal Cultural Resources						
Refer to Mitigation Measures CUL-1, CUL-2, and CUL-3 above.						



EXHIBIT B



Acorn Business Park Project

Final Initial Study Mitigated Negative
Declaration and Response to Comments

PD-18-02

May 2, 2019

Lead Agency:

City of Antioch
Community Development Department
Planning Division
200 H Street
Antioch, CA 94509

Technical Assistance:

Stantec Consulting Services Inc.
1340 Treat Boulevard, Suite 300
Walnut Creek, CA 94597

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1.0 INTRODUCTION

1.1 PURPOSE

This Final Initial Study (IS) and Mitigated Negative Declaration (MND; together, IS/MND) has been prepared for the Acorn Business Park Project ("proposed project") in accordance with the requirements of the California Environmental Quality Act (CEQA) and the State CEQA Guidelines. The City of Antioch ("City") is acting as the Lead Agency as defined by CEQA for the environmental review of the proposed project.

1.2 DESCRIPTION OF THE PROPOSED PROJECT

JMI Properties Corporation (applicant) is seeking entitlements to allow for the development of the Acorn Business Park Project (proposed project) in the City of Antioch, California. The business park could include a range of uses such as hotel, commercial/retail, office, and self-storage facilities. The 19.75-acre project site is currently undeveloped and comprised of Assessor Parcel Numbers 051-052-112 and 051-052-113. The project site would be divided into three subsections as described briefly below.

Subsection A

Subsection A consists of two lots (3.79 acres total) in the southern portion of the project site adjacent to East 18th Street. The proposed project includes two alternative conceptual alternative site plans for this portion of the project site. Alternative A-1 would develop two commercial buildings of 16,800 square feet each with associated parking. Alternative A-2 would develop a 4-story, 95-room hotel of approximately 43,195 square feet and an 11,088-square-foot commercial building with associated parking.

The applicant is only seeking entitlements at this stage and will seek to market Subsection A for future construction by a separate developer.

Subsection B

Subsection B consists of one lot (5.44 acres) in the central portion of the project site approximately 270 feet from East 18th Street. The applicant would develop this portion of the project site with 122,021 square feet of self-storage facilities between eight separate buildings with associated parking. The applicant is considering developing rooftop solar on top of the self-storage buildings when the economics are feasible. In the near-term, the proposed project would develop a 30 kilowatt (kW) facility to offset the electrical load of the self-storage facility.

Subsection C

Subsection C consists of nine lots (10.52 acres total) in the northern portion of the project site adjacent to Sakurai Street and approximately 535 feet from East 18th Street. The proposed project also includes two alternative conceptual site plans for this portion of the project site. Alternative C-1 would develop eight buildings of 14,112 square feet each for a total of 112,896 square feet, associated parking, and a bioretention basin. Alternative C-2 would develop a bioretention basin and one building of 71,880 square feet and associated parking.

The applicant is only seeking entitlements at this stage and will seek to market Subsection C for future construction by a separate developer.



1.2.1 Project Location

The project site is located 0.15 mile west of State Route 160 (SR-160) at the northwest corner of East 18th Street and Drive-In Way in the City of Antioch, California.

1.2.2 Required Permits and Approvals

This ISMND would be used by the City as the Lead Agency to evaluate the potential environmental impacts of the proposed project. For the proposed project to be implemented, a series of actions and approvals would be required from multiple agencies. Anticipated project approvals/actions would include, but are not limited to, the following:

- Rezone to Planned Development District (PD): City of Antioch
- Use Permit: City of Antioch
- Design Review: City of Antioch
- Vesting Tentative Map: City of Antioch
- Adoption of the Mitigated Negative Declaration: City of Antioch

Other ministerial approvals such as building permits, grading permits, and encroachment permits are also anticipated.

Additionally, all work related to improvements and project grading would be subject to the City of Antioch Municipal Code, including the Zoning Ordinance, Building Code, and Fire Code.

1.3 PUBLIC REVIEW PROCESS

On February 14, 2019, the City circulated a Notice of Availability of the Draft IS/MND for a 30-day review and comment period by the public and responsible and reviewing agencies. The review period ended on March 15, 2019.

The Final IS/MND and Draft IS/MND are available for review at:

City of Antioch, Community Development Department
200 H Street Antioch, CA 94509
Monday through Friday 8:00-5:00

The Final IS/MND and Draft IS/MND are also available online at:

<https://www.antiochca.gov/community-development-department/planning-division/environmental-documents/>

1.4 ORGANIZATION OF THE FINAL IS/MND

As required by the State CEQA Guidelines, the Final IS/MND consists of the following elements

Section 1.0: Introduction. This section introduces the proposed project and describes the purpose and organization of this document.

Section 2.0: Response to Comments. This section describes the purpose and need for the proposed project, identifies the project objectives, and provides a detailed description of the proposed project.

Section 3.0: Errata. This section presents specific text changes made to the Draft IS/MND since its publication and public review.

Appendix A. A Mitigation Monitoring and Reporting Program (MMRP), which provides a summary of impacts, mitigation measures, and implementation procedures.

Appendix B. Letters to Tribes Culturally and Traditionally Affiliated with the Project Site

Appendix C. Revised Biological Resources Assessment Report.



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2.0 RESPONSE TO COMMENTS

This section contains the comment letters that were received during the 30-day public-comment period addressing the Draft ISMND. The public comment period started on February 14, 2019 and concluded on March 15, 2019. In accordance with Section 15074(b) of the CEQA Guidelines, when considering whether to approve a project, the lead agency must consider the comments received during its consultation and review periods together with the ISMND. Therefore, these comments and responses are provided along with the Draft ISMND for consideration by the City Planning Commission and City Council.

2.1 COMMENTS RECEIVED ON THE DRAFT ISMND

The City received five comment letters during the public-comment period for the Draft ISMND. Table 2.1-1 indicates the numerical designation for each comment letter, the author and their associated agency, and the date of the comment letter.

Table 2.1-1 List of Commenters

Letter Number	Author of Comment Letter	Date
Individuals		
1	Jim Moita, JMI Properties Corporation	March 15, 2019
Agencies		
2	Gayle Totton, Native American Heritage Commission (NAHC)	February 28, 2019
3	Jordan Hensley, Central Valley Regional Water Quality Control Board	March 8, 2019
4	Patricia Maurice, California Department of Transportation (Caltrans)	March 13, 2019
5	Gregg Erickson, California Department of Fish and Wildlife (CDFW)	March 14, 2019

2.2 COMMENTS AND RESPONSES ON THE DRAFT ISMND

The written individual comments received on the Draft ISMND and the responses to those comments are provided below. All comments are indicated by a line bracket and an identifying number in the margin of the comment letter.



Letter 1

JMI PROPERTIES CORPORATION

BROKERAGE INVESTMENTS DEVELOPMENT

8117 Marsh Creek Road
Clayton, CA 94517
(925) 672-2200 Tel
(925) 672-0288 Fax
jmi-acorn@sbcglobal.net

March 15, 2019

City of Antioch
Attn: Alexis Morris
200 "H" Street
Antioch, CA 94509

RE: Proposed Acorn Business Park – CEQA Comment Letter

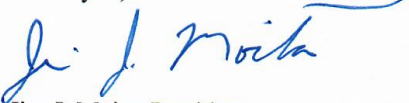
Dear Alexis,

Attached is our comment letter on the Acorn Business Park IS/MND in response to "Impact TRANS-4."

1-1

I would like our to comment to be considered as a replacement for mitigation "MM Trans – 2 Driveway Relocation."

Thank you,



Jim J. Moita, President
JMI Properties Corporation



MEMORANDUM

Date: March 15, 2019
To: Jim Moita
From: Kathrin Tellez and Delia Votsch, Fehr & Peers
Subject: **Acorn Business Park Driveway Evaluation**

WC19-3575

The purpose of this memorandum is to review the location and proposed design of the easternmost driveway for Acorn Business Park development (project). As part of the environmental review process for the project, a transportation impact analysis (TIA) was completed by Stantec dated November 6, 2018. The mitigated negative declaration prepared based on the findings of that analysis recommended that the easternmost project driveway be eliminated due to its proximity to the intersection of Holub Lane/Drive In Way.

The project proposes to construct three driveways along its East 18th Street frontage. All three driveways would be right-in/right-out access only, with the easternmost driveway serving only the self-storage uses, which generates minimal daily and peak hour trips. The easternmost driveway is located approximately 40-feet from the intersection of East 18th Street and Drive In-Way/Holub Lane, which could result in potential vehicle conflicts due to the proximity to the East 18th Street and Drive In-Way/Holub Lane.

Fehr & Peers reviewed the proposed driveway location in combination with the roadway configuration. As East 18th Street provides three westbound travel lanes along the project frontage, and the intersection of East 18th Street and Drive In-Way/Holub Lane is striped to provide two westbound travel lanes through the intersection, there is an opportunity to provide an exclusive right-turn lane into the project site. To accommodate a right-in/right-out driveway into the self-storage and to minimize potential vehicle conflicts, Fehr & Peers recommends East 18th Street along the project site be modified to provide the following:

- Remove the existing merge arrows and striping

Letter 1 (page 3)

Jim Moita
March 15, 2019
Page 2 of 2



- Install a continuous right turn lane along the project frontage on East 18th Street
- Stripe a dashed centerline on East 18th Street to denote two travel lanes
- Stripe a buffer between the driveways and right turn pockets along the Project frontage, and after the westernmost driveway, to direct vehicles to the two travel lanes
- Install a bike lane between the two travel lanes and the right turn pockets
- Provide skip striping for the bike lanes in the transition area between the striped buffer and right turn pockets

In addition to the above geometric changes, the intersection of East 18th Street and Drive in Way/Holub Lane should be signalized prior to the opening of the self-storage uses if access is provided from the eastern most driveway.

This completes our driveway assessment for the Acorn Business Park development project. Please call Kathrin or Delia at (925) 930-7100 if you have questions

Letter 1: Response to Comment from Jim Moita, JMI Properties Corporation

Response 1-1

The comment letter includes a draft memorandum (memo) prepared by Fehr and Peers on March 13, 2019. The commenter would like the following findings of the memo to be considered as a replacement for Mitigation Measure TRANS-2 in the Draft ISMND:

“As East 18th Street provides three westbound travel lanes along the project frontage, and the intersection of East 18th Street and Drive In-Way/Holub Lane is striped to provide two westbound travel lanes through the intersection, there is an opportunity to provide an exclusive right-turn lane into the project site. Therefore, to accommodate a right-in/right-out driveway into the self-storage and to minimize potential vehicle conflicts, Fehr & Peers recommends East 18th Street along the project site be modified to provide the following:

- *Remove the existing merge arrows and striping*
- *Install right turn pockets at the westernmost and middle project driveways*
- *Stripe a dashed centerline on East 18th Street to denote two travel lanes*
- *Stripe a buffer between the driveways and right turn pockets along the Project frontage, and after the westernmost driveway, to direct vehicles to the two travel lanes.*
- *Install a bike lane between the two travel lanes and the right turn pockets*
- *Provide skip striping for the bike lanes in the transition area between the striped buffer and right turn pockets*

In addition to the above geometric changes, the intersection of East 18th Street and Drive in Way/Holub Lane should be signalized prior to the opening of the self-storage uses if access is provided from the eastern most driveway.”

The City has reviewed the technical memo provided by Fehr and Peers and agrees that Mitigation Measure Trans-2 may be revised to reflect the above recommendations. Note that the text of Mitigation Measure TRANS-2 has been revised. This change does not alter the Draft IS/MND's conclusion that the proposed project would not substantially increase hazards due to a design feature or incompatible uses nor does it constitute a “substantial revision” pursuant to CEQA Guidelines Section 15073.5(c), and there is no new impact, therefore, recirculation of the Draft IS/MND is not required.



Letter 2

STATE OF CALIFORNIA
NATIVE AMERICAN HERITAGE COMMISSION
Cultural and Environmental Department
1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691
Phone (916) 373-3710
Email: nahc@nahc.ca.gov
Website: <http://www.nahc.ca.gov>

Gavin Newsom, Governor



February 28, 2019

Alexis Morris
City of Antioch
200 H Street
Antioch, CA 94509

Also sent via e-mail: amorris@ci.antioch.ca.us

RE: SCH# 2019029069, Acorn Business Park Project, City of Antioch; Contra Costa County

Dear Ms. Morris:

2-1

The Native American Heritage Commission (NAHC) has reviewed the Mitigated Negative Declaration prepared for the above referenced project. The review included the Introduction and Project Description; the Environmental Checklist, section 3.5 Cultural Resources and section 3.18, Tribal Cultural Resources; and Appendix C-2, Cultural Resources Report, prepared by Stantec for the City of Antioch. We have the following concern(s):

2-2

1. There is no documentation of **government-to-government consultation by the lead agency** under AB-52 with Native American tribes traditionally and culturally affiliated to the project area as required by statute has taken place, or that possible mitigation measures were developed in consultation with the tribes. This document includes the statement that the City "will initiate" consultation at some future unspecified date.

2-3

2. Mitigation measures do not include contacting tribes for inadvertent finds of Cultural Resources or Tribal Cultural Resources.

2-4

3. The Most Likely Descendant timeline in the Cultural Resources section of the Environmental Checklist and the Cultural Resources report is incorrect. Public Resources Code section 5097.98 specifically states "the descendants shall complete their inspection and make their recommendations or preferences within **48 hours after being allowed access to the site**".

2-5

Agencies should be aware that AB 52 does not preclude them from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52. For that reason, we urge you to continue to request Native American Tribal Consultation Lists and Sacred Lands File searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>. Additional information regarding AB 52 can be found online at http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf, entitled "Tribal Consultation Under AB 52: Requirements and Best Practices".

The NAHC recommends lead agencies consult with all California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources.

2-6

A brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments is also attached.

If you have any questions, please contact me at my email address: gayle.totton@nahc.ca.gov.

Sincerely,

Gayle Totton

Gayle Totton, B.S., M.A., Ph. D
Associate Governmental Program Analyst

Attachment
cc: State Clearinghouse

A29

Letter 2 (page 2)

The California Environmental Quality Act (CEQA)¹, specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment.² If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an environmental impact report (EIR) shall be prepared.³ In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources with the area of project effect (APE).

CEQA was amended in 2014 by Assembly Bill 52. (AB 52).⁴ **AB 52 applies to any project for which a notice of preparation or a notice of negative declaration or mitigated negative declaration is filed on or after July 1, 2015.** AB 52 created a separate category for “tribal cultural resources”⁵, that now includes “a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.”⁶ Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.⁷ Your project may also be subject to **Senate Bill 18 (SB 18)** (Burton, Chapter 905, Statutes of 2004), Government Code §65352.3, if it also involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space. **Both SB 18 and AB 52 have tribal consultation requirements.** Additionally, if your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966⁸ may also apply.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

Pertinent Statutory Information:

Under AB 52:

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a **lead agency** shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice.

A **lead agency** shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project.⁹ and **prior to the release of a negative declaration, mitigated negative declaration or environmental impact report.** For purposes of AB 52, “consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18).¹⁰

The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects.¹¹

1. The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project’s impacts on tribal cultural resources.

If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency.¹²

With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process **shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10.** Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public.¹³

If a project may have a significant impact on a tribal cultural resource, **the lead agency’s environmental document shall discuss** both of the following:

- a. Whether the proposed project has a significant impact on an identified tribal cultural resource.

¹ Pub. Resources Code § 21000 et seq.

² Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b); CEQA Guidelines Section 15064.5 (b)

³ Pub. Resources Code § 21080 (d); Cal. Code Regs., tit. 14, § 15064 subd.(a)(1); CEQA Guidelines § 15064 (a)(1)

⁴ Government Code 65352.3

⁵ Pub. Resources Code § 21074

⁶ Pub. Resources Code § 21084.2

⁷ Pub. Resources Code § 21084.3 (a)

⁸ 154 U.S.C. 300101, 36 C.F.R. § 800 et seq.

⁹ Pub. Resources Code § 21080.3.1, subds. (d) and (e)

¹⁰ Pub. Resources Code § 21080.3.1 (b)

¹¹ Pub. Resources Code § 21080.3.2 (a)

¹² Pub. Resources Code § 21080.3.2 (a)

¹³ Pub. Resources Code § 21082.3 (c)(1)

Letter 2 (page 3)

- b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource.¹⁴

Consultation with a tribe shall be considered concluded when either of the following occurs:

- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.¹⁵

Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 **shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program**, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable.¹⁶

If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, **the lead agency shall consider feasible mitigation** pursuant to Public Resources Code §21084.3 (b).¹⁷

An environmental impact report **may not be certified**, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
- b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
- c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days.¹⁸

This process should be documented in the Tribal Cultural Resources section of your environmental document.

Under SB 18:

Government Code §65352.3 (a) (1) requires consultation with Native Americans on general plan proposals for the purposes of “preserving or mitigating impacts to places, features, and objects described §5097.9 and §5091.993 of the Public Resources Code that are located within the city or county’s jurisdiction. Government Code §65560 (a), (b), and (c) provides for consultation with Native American tribes on the open-space element of a county or city general plan for the purposes of protecting places, features, and objects described in Public Resources Code §5097.9 and §5097.993.

- SB 18 applies to **local governments** and requires them to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. Local governments should consult the Governor’s Office of Planning and Research’s “Tribal Consultation Guidelines,” which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf
- **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a “Tribal Consultation List.” If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.**¹⁹
- **There is no Statutory Time Limit on Tribal Consultation under the law.**
- **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research,²⁰ the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city’s or county’s jurisdiction.²¹
- **Conclusion Tribal Consultation:** Consultation should be concluded at the point in which:
 - The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation.²²

NAHC Recommendations for Cultural Resources Assessments:

- Contact the NAHC for:

¹⁴ Pub. Resources Code § 21082.3 (b)

¹⁵ Pub. Resources Code § 21080.3.2 (b)

¹⁶ Pub. Resources Code § 21082.3 (a)

¹⁷ Pub. Resources Code § 21082.3 (e)

¹⁸ Pub. Resources Code § 21082.3 (d)

¹⁹ (Gov. Code § 65352.3 (a)(2)).

²⁰ pursuant to Gov. Code section 65040.2,

²¹ (Gov. Code § 65352.3 (b)).

²² (Tribal Consultation Guidelines, Governor’s Office of Planning and Research (2005) at p. 18).

Letter 2 (page 4)

- A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
- A Native American Tribal Contact List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
 - The request form can be found at <http://nahc.ca.gov/resources/forms/>.
- Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - If part or the entire APE has been previously surveyed for cultural resources.
 - If any known cultural resources have been already been recorded on or adjacent to the APE.
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - If a survey is required to determine whether previously unrecorded cultural resources are present.
- If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

Examples of Mitigation Measures That May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

- Avoidance and preservation of the resources in place, including, but not limited to:
 - Planning and construction to avoid the resources and protect the cultural and natural context.
 - Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - Protecting the cultural character and integrity of the resource.
 - Protecting the traditional use of the resource.
 - Protecting the confidentiality of the resource.
- Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed.²³
- Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.²⁴

The lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

- Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources.²⁵ In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code section 7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

²³ (Civ. Code § 815.3 (c)).

²⁴ (Pub. Resources Code § 5097.991).

²⁵ per Cal. Code Regs., tit. 14, section 15064.5(f) (CEQA Guidelines section 15064.5(f)).

Letter 2: Response to Comment from Gayle Totton, Native American Heritage Commission

Response 2-1

The Native American Heritage Commission (NAHC) provided an introductory paragraph and noted their comments pertained to their review of the Project Description, the Environmental Checklist Section 3.5 Cultural Resources, Environmental Checklist Section 3.18 Tribal Cultural Resources, and Appendix C-2 Cultural Resources Report prepared by Stantec.

No further response is required because the comment does not comment on the content or approach to the environmental analysis.

Response 2-2

The commenter states there is no documentation of government-to-government consultation by the lead agency under AB-52 with Native American tribes traditionally and culturally affiliated to the project area as required by statute has taken place, or that possible mitigation measures were developed in consultation with the tribes.

As discussed in the Draft IS/MND the Native American Heritage Commission (NAHC) was contacted on October 9, 2018 to request a search of the Sacred Lands File and a list of Native American contacts who might have knowledge of tribal cultural resources at the project site. The NAHC responded on October 18, 2018, stating negative results. The NAHC included a list of six individuals and tribes affiliated with the area. The NAHC recommended contacting those tribes for additional information about any known tribal resources. Certified letters pursuant to Public Resources Code Section 21080.3.1 and 21080.3.2 (a.k.a. AB52) to the tribal representatives were sent on October 26, 2018 by certified mail. The letters were received by the recipients on October 29, 2018 and October 30, 2018. No responses from the tribal representatives have been received to date.

Copies of the certified letters and proof of receipt have been included with this Final IS/MND as Appendix B.

Response 2-3

The commenter states mitigation measures do not include contacting tribes for inadvertent finds of Cultural Resources or Tribal Cultural Resources.

Mitigation measure CUL-1 will be revised to include contacting tribes for inadvertent discoveries of Cultural Resources or Tribal Cultural Resources. This revision does not constitute a "substantial revision" pursuant to CEQA Guidelines Section 15073.5(c), therefore, recirculation of the Draft IS/MND is not required.

Response 2-4

The commenter states the Most Likely Descendant timeline in the Cultural Resources section of the Environmental Checklist and the Cultural Resources report is incorrect. Public Resources Code section 5097.98 specifically states "the descendants shall complete their inspection and make their recommendations or preferences within **48 hours after being allowed access to the site**"

The City will revise Mitigation Measure CUL-3 to note the correction to the Most Likely Descendant timeline is 48 hours from the time access to the site is allowed. This revision does not constitute a "substantial revision" pursuant to

CEQA Guidelines Section 15073.5(b) and recirculation of the Draft IS/MND is not required pursuant to CEQA Guidelines 15073.5(c).

Response 2-5

The commenter stated that AB 52 does not preclude Agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided by AB 52. The commenter provided their recommendation that the City request Native American Tribal Consultation Lists and Sacred Lands File searches from the NAHC. Such consultation early on will avoid inadvertent discoveries of Native American human remains and best protect cultural resources.

The City appreciates the NAHC's comments and reiterates that tribal consultation pursuant to AB 52 and the NAHC's recommendations was conducted for the proposed project. Information on the consultation letters has been provided as an appendix to this Final IS/MND.

Response 2-6

The commenter provided a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resource assessments.

Tribal consultation pursuant to AB 52 and the NAHC's recommendations was conducted for the proposed project. Information on the consultation letters has been provided as an appendix to this Final IS/MND.



Letter 3



Central Valley Regional Water Quality Control Board

8 March 2019

RECEIVED

MAR 14 2019

Alexis Morris
City of Antioch
200 H Street
Antioch, CA 94509

**CITY OF ANTIOCH
COMMUNITY DEVELOPMENT**

CERTIFIED MAIL
7014 2120 0001 4292 3297

COMMENTS TO REQUEST FOR REVIEW FOR THE MITIGATED NEGATIVE DECLARATION, ACORN BUSINESS PARK PROJECT, SCH#2019029069, CONTRA COSTA COUNTY

Pursuant to the State Clearinghouse's 14 February 2019 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Mitigated Negative Declaration* for the Acorn Business Park Project, located in Contra Costa County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

I. Regulatory Setting

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases,

KARL E. LONGLEY SCD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | www.waterboards.ca.gov/centralvalley

RECYCLED PAPER

A35

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Acorn Business Park Project
Contra Costa County

- 2 -

8 March 2019

the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues.

For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:
http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at:
https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_201805.pdf

In part it states:

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan

Letter 3 (page 3)

Acorn Business Park Project
Contra Costa County

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8 March 2019

(SWPPP).

For more information on the Construction General Permit, visit the State Water Resources Control Board website at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml

Phase I and II Municipal Separate Storm Sewer System (MS4) Permits¹

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml

Industrial Storm Water General Permit

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ.

For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml

Clean Water Act Section 404 Permit

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements.

¹ Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

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Contra Costa County

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8 March 2019

If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

Clean Water Act Section 401 Permit – Water Quality Certification

If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications.

For more information on the Water Quality Certification, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/

Waste Discharge Requirements – Discharges to Waters of the State

If USACE determines that only non-jurisdictional waters of the State (i.e., "non-federal" waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/

Dewatering Permit

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Risk General Order) 2003-0003 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Risk Waiver) R5-2013-0145. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Risk General Order and the application process, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf

For more information regarding the Low Risk Waiver and the application process, visit the Central Valley Water Board website at:

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Acorn Business Park Project
Contra Costa County

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8 March 2019

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2013-0145_res.pdf

Regulatory Compliance for Commercially Irrigated Agriculture

If the property will be used for commercial irrigated agricultural, the discharger will be required to obtain regulatory coverage under the Irrigated Lands Regulatory Program. There are two options to comply:

1. **Obtain Coverage Under a Coalition Group.** Join the local Coalition Group that supports land owners with the implementation of the Irrigated Lands Regulatory Program. The Coalition Group conducts water quality monitoring and reporting to the Central Valley Water Board on behalf of its growers. The Coalition Groups charge an annual membership fee, which varies by Coalition Group. To find the Coalition Group in your area, visit the Central Valley Water Board's website at: https://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/regulatory_information/for_growers/coalition_groups/ or contact water board staff at (916) 464-4611 or via email at IrrLands@waterboards.ca.gov.
2. **Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers, General Order R5-2013-0100.** Dischargers not participating in a third-party group (Coalition) are regulated individually. Depending on the specific site conditions, growers may be required to monitor runoff from their property, install monitoring wells, and submit a notice of intent, farm plan, and other action plans regarding their actions to comply with their General Order. Yearly costs would include State administrative fees (for example, annual fees for farm sizes from 11-100 acres are currently \$1,277 + \$8.53/Acre); the cost to prepare annual monitoring reports; and water quality monitoring costs. To enroll as an Individual Discharger under the Irrigated Lands Regulatory Program, call the Central Valley Water Board phone line at (916) 464-4611 or e-mail board staff at IrrLands@waterboards.ca.gov.

Limited Threat General NPDES Permit

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order.

For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf

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Acorn Business Park Project
Contra Costa County

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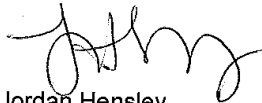
8 March 2019

NPDES Permit

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit.

For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at:
<https://www.waterboards.ca.gov/centralvalley/help/permit/>

If you have questions regarding these comments, please contact me at (916) 464-4812 or Jordan.Hensley@waterboards.ca.gov.



Jordan Hensley
Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento

Letter 3: Response to Comment from Jordan Hensley, Central Valley Regional Water Quality Control Board

Response 3-1

The comment letter provides general information regarding the Central Valley Regional Water Quality Control Board's regulations, required permits, and compliance with required permits. No specific environmental concerns relating to the Draft ISMND analysis were provided. As discussed in Section 3.9, Hydrology and Water Quality, of the ISMND the proposed project would comply with all applicable regulations, required permits, and requirements associated with protecting the quality of groundwater and surface water. No further response is required.

Letter 4

DEPARTMENT OF TRANSPORTATION

DISTRICT 4
P.O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 286-5528
www.dot.ca.gov



*Making Conservation
a California Way of Life!*

March 15, 2019

SCH#2019029069
04-CC-2019-00306
GTS ID # 14518
CC-160-PM 1.335

Alexis Morris, Planning Manager
City of Antioch Planning Division
200 H Street
Antioch, CA 94509

Acorn Business Park Project—Mitigated Negative Declaration

Dear Alexis Morris:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the above-referenced project. In tandem with the Metropolitan Transportation Commission's (MTC) Sustainable Communities Strategy (SCS), Caltrans mission signals a modernization of our approach to evaluating and mitigating impacts to the State Transportation Network (STN). Caltrans' *Strategic Management Plan 2015-2020* aims to reduce Vehicle Miles Travelled (VMT) by tripling bicycle and doubling both pedestrian and transit travel by 2020. Our comments are based on the Mitigated Negative Declaration (MND).

Project Understanding

JMI Properties Corporation is seeking entitlements to allow for development of the Acorn Business Park Project. The business park could include a range of uses such as hotel, commercial/retail, office, and self-storage facilities. The 19.75-acre site is currently undeveloped. The project site would be divided into three subsections (A, B, and C). The applicant is proposing to construct the self-storage facility on Subsection B upon approval of the proposed project by the lead agency. The applicant is seeking entitlements for Subsections A and C but will seek to market Subsections A and C for future construction by a separate developer(s). Regional access is located 770 feet east of the project site at the State Route (SR) 160 and 18th Street interchange.

Multimodal Transportation

The project should be conditioned to ensure connections to existing bike lanes and multi-use trails to facilitate walking and biking to nearby jobs, neighborhood services, and transit. Since the proposed project is adjacent to Tri Delta's 383 bus stop, which provides a connection to Antioch's BART station, the proposed project should provide subsidized transit passes on an ongoing basis for future employees.

Lead Agency

As the Lead Agency, the City of Antioch is responsible for all project mitigation, including any needed improvements to the STN. The project's fair share contribution, financing, scheduling,

*"Provide a safe, sustainable, integrated and efficient transportation
system to enhance California's economy and livability"*

Letter 4 (page 2)

Alexis Morris, City of Antioch
March 13, 2019
Page 2

4-2

implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures, prior to the submittal of an encroachment permit. Potential mitigation measures that include the requirements of other agencies—such as Caltrans—are fully enforceable through permit conditions, agreements, or other legally-binding instruments under the control of the City.

4-3

Encroachment Permit

Please be advised that any sign or work within Caltrans ROW will require an encroachment permit prior to construction. To apply for an encroachment permit, please complete an encroachment permit application, environmental documentation, and six (6) sets of plans clearly indicating State ROW, and submit to the following address: David Salladay, District Office Chief, Office of Permits, California Department of Transportation, District 4 Office of Permits, 111 Grand Avenue, Oakland, CA 94612. Traffic-related mitigation measures should be incorporated into the construction plans prior to the encroachment permit process. See the website link below for more information. <http://www.dot.ca.gov/hq/traffops/developserv/permits>.

Should you have any questions regarding this letter, please contact Michael Casas at (510) 286-5614 or michael.casas@dot.ca.gov.

Sincerely,



PATRICIA MAURICE
District Branch Chief
Local Development - Intergovernmental Review

c: State Clearing House

Letter 4: Response to Comment from Patricia Maurice, California Department of Transportation

Response 4-1

The commenter states the project should be conditioned to ensure connections to existing bike lanes and multi-use trails, and that the project should provide subsidized transit passes on an ongoing basis for future employees due to the project site's proximity to the Tri Delta's 383 bus stop.

Bicycle lanes are currently present along both sides of Viera Avenue between East 18th Street and Wilbur Avenue and along the entire length of Phillips Lane. There is a planned future Low Stress countywide bikeway on East 18th Street. Although the other nearby streets have no striped bike lanes, the low traffic volumes make these roadways conducive to bicycle traffic.

Response 4-2

The commenter states that the City of Antioch is responsible for all project mitigation, including needed improvements to the State Transportation Network (STN). According to the proposed project's traffic study no impacts to the STN would require improvements or mitigation.

Response 4-3

The commenter states construction within Caltrans Right of Way will require an encroachment permit prior to construction and that traffic-related mitigation measures should be incorporated into the construction plans prior to the encroachment permit process. The comment letter provides a link to the encroachment permit application.

The proposed project would not involve any construction activity within a State Right of Way. However, if such activities are required the applicant will obtain an encroachment permit from Caltrans. In addition, the Draft ISMND states on page 2.37, "The project site would be accessed by construction crews from SR-160, East 18th Street, and Drive-In Way. Any construction traffic, lane closures, or street staging would require approved traffic control plans (TCP) and an encroachment permit from the City. Once improvement plans are approved, the construction contractor would prepare a TCP and submit to the City for approval. Temporary lane closures are anticipated to construct proposed driveways and utility connections. Pedestrian walk ways would not be impacted along Drive-In Way as the walk way is on the opposite side of the road. Pedestrian access along East 18th Street would be maintained during construction."



Letter 5



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 14, 2019

Ms. Alexis Morris
City of Antioch
200 H Street
Antioch, CA 94503

Dear Ms. Morris:

Subject: Acorn Business Park Project, Draft Mitigated Negative Declaration,
SCH #2019029069, City of Antioch, Contra Costa County

The California Department of Fish and Wildlife (CDFW) has reviewed the draft Initial Study/Mitigated Negative Declaration (draft IS/MND) for the proposed Acorn Business Park Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines. In accordance with our mandates, CDFW is submitting comments on the draft IS/MND to inform the City of Antioch (City), as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Incidental Take Permit (ITP), a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA ITP must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project (Fish and Game Code, § 2080 et seq.). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as potential significant modification to the Project and mitigation measures may be required to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if the Project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency

Conserving California's Wildlife Since 1870

Letter 5 (page 2)

Ms. Alexis Morris
City of Antioch
March 14, 2019
Page 2

makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires an LSA Notification (Notification), pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourse with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document of the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: Acorn Business Park Project

Objective: Obtain entitlements to allow for the development of the Acorn Business Park Project. The business park could include a range of uses such as hotel, commercial/retail, office, and self-storage facilities. The applicant is proposing to construct the self-storage facility upon approval of the proposed Project by the City but will seek to market the remainder of the Project for future construction by a separate developer(s).

Location: The Project site is located 0.15 miles west of State Route 160 at the northwest corner of East 18th Street and Drive-In Way in the City of Antioch, Contra Costa County, California, Assessor Parcel Number 051-052-112 and 051-052-113.

Timeframe: unknown

Description: The Project proposes to subdivide a currently undeveloped 19.75-acre site into 12 lots from the existing two parcels and construct a business park divided into 3 subsections. Subsection B, consisting of 5.44 acres, would be developed into a self-storage facility by the applicant. The remaining Subsections A and C, at 3.79 and 10.5 acres respectively, would be marketed for future construction by a separate developer(s).

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Comment 1: The draft IS/MND does not mitigate biological impacts to a level of less-than-significant.

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Comment 1a: Biological Resources Assessment lacks impact analysis to Antioch Dunes-endemic species.

5-1

Designated critical habitat for three endangered species endemic to Antioch Dunes, federally-endangered Lange's metalmark butterfly (*Apodemis morma langei*), state and federally endangered Antioch Dunes evening-primrose (*Oenothera deltoids* ssp. *howellii*), and state and federally endangered Contra Costa wallflower (*Erysimum capitatum*), is located less than half a mile to the northwest of the Project site. The Biological Resource Assessment (BRA) lacks an analysis of potential occurrence on the Project site. Additionally, there are recent (2012) California Natural Diversity Database (CNDDB) records of these species outside the designated critical habitat and within less than 0.3 miles of the Project site. Exhibit 5 of the BRA illustrates the Natural Resources Conservation Service soils map soil type of the Project site is identical to and within the same alluvia fan as the soil within the designated critical habitat and has complete connectivity and no soil type aberration from what exists within the designated critical habitat. Additional species known to occur within the habitat associated with the Antioch Dunes critical habitat include, but are not limited to, Northern California legless lizard (*Anniella pulchra*), Antioch Dunes buckwheat (*Eriogonum nudum* var. *psychicola*), Antioch Dunes anthicid beetle (*Anthicus antiochensis*), and redheaded sphecid wasp (*Eucerceris rufficeps*), all species not included in the BRA's analysis. CDFW recommends inclusion of the suite of Antioch Dunes special-status species in an updated impact analysis section in a revised draft IS/MND.

If impacts to protected species are identified and cannot be fully avoided, then CDFW recommends the Project obtain take coverage through an ITP issued by CDFW.

Comment 1b: Exclusion of recent detections of special-status plants from CNDDB indicate a flaw with survey techniques.

5-2

The draft IS/MND impacts analysis on special-status plants is faulty in multiple ways. The analysis occurred after a one-day site visit on June 10, 2018, where linear transects, presence/absence surveys, and visual encounters were conducted. Line or 'strip' transect surveys are used for population estimate studies and monitoring plant abundance and are not appropriate for conducting a botanical inventory. Reference sites are not discussed, which is an important shortcoming given the proximity of the Antioch Dunes critical habitat and the identical soil type at the Project site. Justification for conducting the site visit during June compared to the times of year when special-status plants are in bloom and easier to detect was not provided in the draft IS/MND. A vegetation community map was not included with the BRA, and qualifications of field personnel was not discussed. Finally, there is insufficient information to verify whether the one-day site visit and surveys were performed according to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2009). The CDFW protocols state the following regarding survey methodology:

"When special-status plants are known to occur in the type(s) of habitat present in the project area, observe reference sites (nearby accessible occurrences of the plants) to determine whether those species are identifiable at the time of the survey and to obtain a visual image of the target species, associated habitat, and associated natural community."

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The CDFW protocols state the following regarding negative findings:

"Adverse conditions may prevent investigators from determining the presence of, or accurately identifying, some species in potential habitat of target species. Disease, drought, predation, or herbivory may preclude the presence or identification of target species in any given year. Discuss such conditions in the report. The failure to locate a known special status plant occurrence during one field season does not constitute evidence that this plant occurrence no longer exists at this location, particularly if adverse conditions are present. For example, surveys over a number of years may be necessary if the species is an annual plant having a persistent, long-lived seed bank and is known not to germinate every year"

The lack of discussion or justification in the analysis for the exclusion of special-status plants known to occur within the vicinity of the Project is not consistent with the above statements. CDFW recommends that the special-status plant species impacts analysis in the draft IS/MND be revised to include at least one to two additional years of focused special-status plant surveys conducted according to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2009), and using reference sites to verify the blooming period for species that have been known to historically occupy the Project site habitat type and those that have the potential to occur. In addition, CDFW recommends that the following botanical reporting requirements in the CDFW protocols be included in a revised draft IS/MND impacts analysis:

5-2

- 1) A vegetation map of the Project areas using Survey of California Vegetation Classification and Mapping Standards;
- 2) Names and qualifications of botanical field surveyor(s);
- 3) Total person-hours spent conducting surveys;
- 4) An updated list of special-status plants and sensitive natural communities that includes the Antioch Dunes suite of species;
- 5) Description of reference site(s) visited and the phenological development of special-status plants at those reference sites;
- 6) Detailed data and maps for all special-status plants and sensitive natural communities detected;
- 7) A discussion of the potential for a false negative botanical field survey;
- 8) A discussion of how climatic conditions may have affected the botanical field survey results;
- 9) A discussion of how the timing of botanical field surveys may affect the comprehensiveness of botanical field surveys;
- 10) Any use of existing botanical field surveys and a discussion of their applicability to the Project;
- 11) The deposition locations of voucher specimens, if collected;
- 12) A list of references used, including persons contacted and herbaria visited;
- 13) A discussion of the significance of special-status plant populations in the Project area considering nearby populations and total range and distribution;
- 14) A discussion of the significance of sensitive natural communities in the Project area considering nearby occurrences and natural community distribution;

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5-2

- 15) A discussion of Project related direct, indirect, and cumulative impacts to special-status plants and sensitive natural communities;
- 16) A discussion of the degree and immediacy of all threats to special-status plants, and sensitive natural communities, including those from invasive species;
- 17) A discussion of the degree of impact, if any, of the Project on unoccupied, potential habitat for special-status plants;
- 18) Recommended measures to avoid, minimize, or mitigate impacts to special-status plants and sensitive natural communities.

If the draft IS/MND is not revised to include the above items, then the draft IS/MND should operate under the assumption that the entire Project site is occupied by all special-status plant species that both historically occurred on or adjacent to the site and with the potential to occur on-site.

Comment 1c: Draft IS/MND does not mitigate for impacts to burrowing owl and Swainson's hawk habitats to a level of less-than-significant.

5-3

The draft IS/MND recognizes that burrowing owl and Swainson's hawks have the potential to occur within the vicinity of the proposed Project. The Project has the potential to adversely impact both species through permanent and temporary losses of nesting and foraging habitat. The Project may also result in additional impacts to burrowing owl through nest abandonment, loss of young and reduced health and vigor of chicks (resulting in reduced survival rates) and breeding and foraging disturbance through Project activities. To ensure these impacts are mitigated to a level of less-than-significant, CDFW recommends the draft IS/MND require compensatory mitigation for loss of habitats through specifying compensatory mitigation for loss of habitats at a minimum of a 1:1 mitigation ratio (conservation to loss) for permanent impacts to Swainson's hawk foraging habitat, a 3:1 ratio for permanent impacts to burrowing owl habitats, and a 1:1 ratio for temporary impacts. Conservation lands should be placed under a conservation easement with CDFW listed as a third-party beneficiary and an endowment should be funded for managing the lands for the benefit of the conserved species in perpetuity. Additionally, a long-term management plan should be prepared and implemented by a land manager. The Grantee of the conservation easement should be an entity that has gone through the due diligence process for approval by CDFW to hold or manage conservation lands.

In addition, protocol level surveys and nest buffers for Swainson's hawk nests should be required to avoid Project impacts. To achieve this, the following mitigation measure should be incorporated into the draft IS/MND:

"Pre-Construction Surveys for Swainson's Hawk: If Project Activities are to be conducted between March 1 and July 31, a focused survey for active Swainson's hawk nests shall be conducted by a Qualified Biologist within seven (7) days prior to the beginning of Project Activities. If a lapse in Project Activities of seven (7) days or longer occurs, another focused survey shall be performed, and the results sent to CDFW prior to resuming work. The following criteria for shall be met:

- *Surveys shall be conducted in proposed work areas, staging, and storage areas.*

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- Surveys shall be conducted within 0.5-mile of the Project Site.
- Nest surveys for Swainson's hawks shall be conducted in a manner consistent with the recommended timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. For more information, see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline> located at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>

If an active nest is identified, a 0.5-mile buffer in non-urban settings or a 0.25-mile buffer in urban settings shall be maintained around the nest until the young fledge. If any active Swainson's hawk nests are found within 0.5 miles of the Project site, CDFW shall immediately be contacted and additional measures may be required for Project activities"

The draft IS/MND does not offer compensatory mitigation for the "future" construction of Subsection A or Subsection C with the rationale that these are proposed to be constructed at a future date with yet-to-be-determined developers. To reduce potentially significant impacts from these phases of the Project, CDFW recommends the draft IS/MND specify that compensatory mitigation for special-status species' habitats shall be required using the above mitigation ratios through land lease or purchase, permitting, or other actionable item by the Lead Agency.

Comment 1d: Mitigation Measure BIO-1 insufficient to mitigate impacts to nesting bird to less-than-significant

The Project may adversely impact nesting birds through direct take by development, and indirect take by resulting in nest abandonment, loss of young and reduced health and vigor of chicks (resulting in reduced survival rates), temporary loss of nesting habitat, and breeding and foraging disturbance through Project activities. To ensure impacts to nesting birds are mitigated to a level of less-than-significant, CDFW recommends that Mitigation Measure BIO-1 be revised to include the addition of the following specific and enforceable mitigation measure in the event nesting birds are detected:

"Nesting Bird Assessment and Avoidance: Prior to the initiation of construction, including ground disturbing activities scheduled to occur between February 1 and September 1, a Qualified Biologist shall conduct a habitat assessment and nesting survey for nesting bird species no more than five (5) days prior to the initiation of work. Surveys shall encompass all potential habitats (e.g., grasslands and tree cavities) within 250 feet of the Project site. The Qualified Biologist conducting the surveys shall be familiar with the breeding behaviors and nest structures for birds known to nest in the Project site. Surveys shall be conducted during periods of peak activity (early morning, dusk) and shall be of sufficient duration to observe movement patterns. Survey results, including a description of timing, duration and methods used, shall be submitted to CDFW for review forty-eight hours prior to the initiation of the Project. If a lapse in Project activity of seven days (7) or more occurs, the survey shall be repeated and no work shall proceed until the results have been submitted to CDFW.

If nesting birds are found, then no work shall be initiated until species-specific buffers have been established in consultation with CDFW. The buffer area(s) shall be fenced off from work activities and avoided until the young have fledged, as determined by the Qualified

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5-4

Biologist. Active nests found inside the limits of species-specific buffer zones or nests within the vicinity of the Project site showing signs of distress from Project activity as determined by the Qualified Biologist shall be monitored daily during the duration of the Project for changes in bird behavior. Buffer areas of active nests within the vicinity of the Project site showing signs of distress or disruptions to nesting behaviors from Project activity, as determined by the Qualified Biologist, shall have their buffers immediately adjusted by the Qualified Biologist until no further interruptions to breeding behavior are detectable.

The Permittee or representatives of the Permittee shall not disturb or destroy the nests or eggs of fully protected species or of other birds as per Fish and Game Code Section 3503."

Comment 2: CDFW recommends additional mitigation measures be included in draft IS/MND.

CDFW also recommends the following avoidance and minimization measures to be included in the draft IS/MND:

"Open Pipes Restriction: All pipes, culverts, or similar structures that are stored at the construction site (either vertically or horizontally) for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to implementation by a Qualified Biologist.

Fence and Sign Post Restriction: Any fencing posts or signs installed, temporarily or permanently, throughout the course of the Project shall have the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife, specifically birds of prey.

Water Pollution: Permittee and all contractors shall be subject to the water pollution regulations found in Fish and Game Code Sections 5650 and 12015.

Spill Contingency Plan Required: Permittee shall submit for approval an oil/toxic materials spill contingency plan to CDFW prior to commencement of operations. The plan shall identify the location of containment and abatement materials on-site and the notification and cleanup procedures to be followed by Permittee in the event of a spill.

Spill Cleanup: Permittee shall begin the cleanup of all spills immediately. CDFW shall be notified immediately by the Permittee of any spills and shall be consulted regarding cleanup procedures. The Permittee shall have all spill clean-up equipment on-site during construction."

5-5

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during

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Project surveys to the CNDDDB following the protocol outlined at <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online, or emailed to CNDDDB at the following email address: cnddb@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, CDFW recommends the revisions to mitigation measures, described above, be incorporated as enforceable conditions into the revised draft IS/MND. CDFW appreciates the opportunity to comment on the draft IS/MND to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Jeanette Griffin, Environmental Scientist, at (209) 234-3447 or Jeanette.Griffin@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

ec: State Clearinghouse

Letter 5: Response to Comment from Gregg Erickson, California Department of Fish and Wildlife

Response 5-1

The commenter states the Biological Resources Assessment lacks impact analysis to Antioch Dunes-endemic species. The commenter states that if impacts to protected species are identified and cannot be fully avoided, then recommends the Project obtain take coverage through an Incidental Take Permit issued by CDFW.

Although the project site contains suitable soil (alluvia fan) conditions known to support Antioch Dunes evening-primrose and Contra Costa wallflower, the existing conditions of the site do not support these species based on numerous factors. Review of historical aerial imagery shows the site consisted of agricultural fields (and the surrounding properties) in 1939 and has since been routinely disturbed by disking or tilling since 2002. In 2007 the site was completely graded, and this frequent disturbance has promoted high populations of non-native plant species, primarily non-native grasses. This frequent disturbance and prolonged growth of non-natives grasses have likely led to reduced available habitat for native species, including Antioch Dunes evening-primrose and Contra Costa wallflower. As discussed in the BRA, the site was visited multiple times, walking the entire property and on the April 2019 site visit, the site was recently disked. During these site visits, no special-status plant species were observed, which is likely attributed to frequent disturbances.

Designated critical habitat for both species does occur in close proximity; however, the critical habitat is located along the confluence of the San Joaquin River and Suisan Bay. The project site is located ~1 mile inland, with no habitat connectivity for Antioch Dunes evening-primrose or Contra Costa wallflower. The project is surrounded by residential and commercial properties with no natural habitat communities. Based on habitat requirements provided by online databases including CDFW California Native Diversity Database (CNDDDB) and California native plant society (CNPS), suitable habitat for Antioch Dunes evening primrose is described as “remnant river bluffs and sand dunes east of Antioch and interior dunes.” CNDDDB indicates suitable habitat as “stabilized dunes of sand and clay near Antioch along the San Joaquin River and interior dunes.” According to the BRA, seaside heliotrope (*Heliotropium heliotrope*) was the only species observed that occurs within dune habitat, while all other species consisted of non-native and invasive vegetation typically associated with annual grassland habitat.

Based on review of available online resources, historical aerial imagery and existing conditions, the project site does not support Antioch Dune evening-primrose, Contra Costa wallflower or any other special-status species associated with Antioch Dune habitat. Although soil types in the Project are associated with suitable habitat, frequent historical and recent disturbances have likely contributed to the absence of these species.

Response 5-2

The commenter states the exclusion of recent detections of special-status plants from the California Natural Diversity Database (CNDDDB) indicates a flaw with survey techniques.

Review of online databases including CNDDDB and CNPS was performed to determine the likelihood of occurrences for Antioch Dunes evening-primrose, Contra Costa wallflower, and Lange’s metalmark butterfly, based on suitable site conditions and historical occurrences in proximity to the Project site. Numerous historical and recent observations for Antioch Dunes evening primrose occur within the vicinity of the Project; however, all of the recent occurrences are located within the Antioch Dunes National Wildlife Refuge and Antioch/Oakley Regional Shoreline (Calflora 2019). All other occurrences that are located inland are historical records prior to 1990. According to CNDDDB, the nearest occurrence record (Occurrence No. 3) was initially reported in 1978 as one plant being observed and was updated in

2011 with no plants being observed. This occurrence record also indicates the exact location mapped as unknown, and the mapped location is a best guess by CNDDDB; therefore, it's difficult to determine its exact proximity to the project site.

For Contra Costa wallflower, CNDDDB does not show any occurrence records beyond the shoreline of the San Joaquin River. CNPS indicates two occurrences for Contra Costa wallflower located further inland recorded in 1933 and 1935. Similar to Antioch Dunes evening-primrose, historical and existing site conditions do not support populations of Contra Costa wallflower, even if the soil type is consistent with suitable habitat.

Lange's metalmark butterfly inhabits stabilized dunes along the San Joaquin River and its primary host plant is naked buckwheat (*Eriogonum nudum* var. *auriculatum*) but is also known to feed on nectar of other wildflowers. Based on existing conditions of the site and observed vegetation, the site does not support the host plant (naked buckwheat) and contains minimal wildflowers (observed species consisted primarily of non-native grasses). Stantec received suppressed CNDDDB occurrence records from CDFW for Lange's metalmark butterfly. Results show the nearest occurrence is located 1.5 miles from the project site, within the USFWS Antioch Dunes National Wildlife Refuge.

The USFWS Recovery Plan for this species indicates dispersal for males is less than 30 meters from perches, while females may travel up to 400 meters and both male and female prefer buckwheat flowers as perches and as a nectar source. Based on CNPS occurrence records for naked buckwheat, the project site is approximately two miles from the nearest recorded observations of naked buckwheat (occurrence dated 2015). Furthermore, based on available resources and information, Lange's metalmark butterfly only occurs within its designated USFWS critical habitat and will not be impacted by the proposed project.

Response 5-3

The commenter states the Draft ISMND does not mitigate for impacts to burrowing owl and Swainson's hawk habitats to a level of less-than-significant. Responses to each of these species are provided separately below.

Burrowing owl: This species is a California species of special concern and typically associated with short-grass prairies, grasslands, lowland scrub, agricultural lands, coastal dunes, and desert floors. There were no California ground squirrels observed onsite. Although, two small burrows were observed along the eastern boundary of the property, there were no indication the burrows were utilized by burrowing owls. The burrows were located immediately adjacent to the cemented sidewalk along Drive In Way which is not a suitable burrowing location for the species. Additionally, there were no wildlife signs that indicated burrowing owl activity (i.e., white wash, prey items, berm slopes). Moreover, due to the frequent use of OHV recreational activity (i.e., motorcycles and quad vehicles) observed while onsite the likelihood for this species to occur on the project site is unlikely. The project site is frequently used by the local residents for recreational activities (i.e., motorcycles and quad vehicles). As such, the project does not anticipate impacts to burrowing owl or its habitat; therefore, no compensatory mitigation is proposed.

Swainson's hawk: This species protected under the Migratory Bird Treaty Act (MBTA) and is listed as Threatened by the State. Swainson's hawk are present in California during the breeding season (March through September) and winter in South America and Mexico. The species breeds in grasslands with scattered trees, juniper-sage flats, riparian areas, savannahs, agricultural and ranch land, and fallow fields. Foraging typically occurs in grasslands, or alfalfa or grain fields that support rodent populations (Bechard et al. 2010). During the on-site surveys, a single Swainson's hawk was observed flying and foraging overhead near the project site but not within the project site. Although it's possible Swainson's hawks could use the project site as foraging, the site consists of ruderal vegetation that has minimal potential to support a high abundance of rodent populations and provides marginal foraging habitat for this species due to frequent disturbance that occurs. The project site contains no trees that could be potential



Swainson's hawk nesting locations. Other trees in the vicinity are small or sparse and unlikely to be used for nesting. Therefore, impacts to Swainson's hawk foraging and nesting habitat are not anticipated and no compensatory mitigation is proposed.

Response 5-4

The commenter states Mitigation Measure BIO-1 is insufficient to mitigate impacts to nesting birds to less-than-significant.

Burrowing owl are typically associated with short-grass prairies, grasslands, lowland scrub, agricultural lands, coastal dunes, and desert floors. The project site contains no California ground squirrels or burrow complexes that could provide suitable habitat for burrowing owls. Due to the frequent disturbance from off-road vehicles in the project site, it is unlikely the site provides suitable nesting habitat for burrowing owls. Though the site is currently not occupied by burrowing owls, avoidance and minimization measures including preconstruction surveys for this species shall be conducted by a qualified biologist within the 30 days prior to construction to ensure that no burrowing owls have occupied the project area. If ground-disturbing activities are delayed or suspended for more than 30 days after the preconstruction survey, the site shall be resurveyed. If owls are subsequently identified within the project area, though are not likely to be directly or indirectly impacted by project construction, then the project proponent shall implement the following measures to minimize disturbance to this species:

- a. A buffer area approximately 100 meters (328 feet) in radius will be established around occupied burrows. This radius will be identified by the placement of orange construction fencing.
- b. If temporary ground disturbing activities are to occur within 50 to 100 meters (164 to 328 feet) of occupied burrows, then these areas will be restored to their original condition so as to maintain burrowing owl foraging habitat.
- c. No disturbance activities should occur within 50 meters (164 feet) of occupied burrows.

With the lack of suitable nesting habitat and the implementation of AMMs, the project does not anticipate impacts to burrowing owls or their habitat; therefore, no compensatory mitigation is proposed.

The project site does not provide suitable nesting habitat for Swainson's hawk, as no trees or potential nesting locations for the species occurs onsite or directly adjacent to the site. Swainson's hawk have been observed in the vicinity, but the site only provided marginal foraging habitat with a lack of food sources and frequent disturbances. Impacts to the project site are not considered temporary or permanent impacts to foraging habitat for Swainson's hawk. AMMs to prevent potential direct and indirect impacts to Swainson's hawk and their nesting habitat include pre-construction nesting surveys following CDFW protocols, and measures to implement if an active nest is found. If work must occur during bird breeding season for Swainson's hawk, to ensure that no indirect impacts to active nests occur due construction activities, a qualified biologist will conduct a pre-construction survey for Swainson's hawk nests per the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (CDFG 2000). The area to be surveyed will include a 0.5 mile-radius including and surrounding the project site. If active nests are found, the City will be notified. No construction will occur until appropriate buffers are established, based upon recommendation by the City.

With no suitable nesting and marginal foraging habitat within the project site with the implementation of AMMs, the project does not anticipate impacts to Swainson's hawk or their habitat. Therefore, no compensatory mitigation is proposed.

Response 5-5

The commenter recommends the following avoidance and minimization measures be included in the Draft ISMND:

"Open Pipes Restriction: All pipes, culverts, or similar structures that are stored at the construction site (either vertically or horizontally) for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to implementation by a Qualified Biologist.

Fence and Sign Post Restriction: Any fencing posts or signs installed, temporarily or permanently, throughout the course of the Project shall have the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife, specifically birds of prey.

Water Pollution: Permittee and all contractors shall be subject to the water pollution regulations found in Fish and Game Code Sections 5650 and 12015.

Spill Contingency Plan Required: Permittee shall submit for approval an oil/toxic materials spill contingency plan to CDFW prior to commencement of operations. The plan shall identify the location of containment and abatement materials on-site and the notification and cleanup procedures to be followed by Permittee in the event of a spill.

Spill Cleanup: Permittee shall begin the cleanup of all spills immediately. CDFW shall be notified immediately by the Permittee of any spills and shall be consulted regarding cleanup procedures. The Permittee shall have all spill clean-up equipment on-site during construction."

The above information has been included in the Draft ISMND under MM BIO-1.



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3.0 ERRATA

The following are revisions to the Draft IS/MND. These revisions are minor modifications and clarifications to this document and do not change the significance of any of the environmental issue conclusions within the Draft IS/MND. The revisions are listed by page number. All additions to the text are underlined (underlined) and all deletions from the text are stricken (~~stricken~~).

SECTION 3.4 BIOLOGICAL RESOURCES

Page 3.38, Section 3.4.2 Methodology

Touré Environmental Engineering conducted a Biological Resources Assessment within the entire 19.75-acre project site on June 10, 2018 and April 12, 2019.

A list of special-status species with potential to occur in the project site was compiled by performing a CNDDB query for the U.S. Geological Survey (USGS) quadrangle containing the project site (Antioch ~~South-North~~) and the 8 surrounding quadrangles (Antioch ~~North-South~~, Clayton, Honker Bay, Denverton, Birds Landing, Rio Vista, Jersey Island, and Brentwood) and reviewing species data provided by the USFWS.

Page 3.39, Swainson's hawk

During the on-site surveys, a single Swainson's hawk was observed flying and foraging overhead near the project site but not within the project site. Although it's possible Swainson's hawks could use the project site as foraging, ~~The project site~~ the site consists of ruderal vegetation that has minimal potential to ~~contains~~support a high abundance of rodent populations and provides marginal foraging habitat for this species due to frequent disturbance that occurs. Therefore, impacts to Swainson's hawk foraging habitat is not anticipated. The project site contains no trees ~~and thus that could be~~ potential Swainson's hawk nesting locations. Other trees in the vicinity are small or sparse and unlikely to be used for nesting.

Page 3.40, Mitigation Measures

MM BIO-1 **Special-status species protection measures.** The following measures shall be implemented to protect special-status species.

- A. Avoid Disturbance of Nesting Birds.** If project activities occur during the nesting season for native birds (February 1 to August 31), the following measures shall be implemented to avoid or minimize the potential for adverse impacts on nesting migratory birds and raptors: Pre-construction nesting bird survey for species protected by the MBTA and California Fish and Game Code will be conducted by a qualified biologist within a 250-foot radius of proposed construction activities for passerines and a 500-foot radius for raptors no more than two weeks prior to the start of construction activities.

If active nests are found a qualified biologist shall determine the size of the buffer based on the nesting species and its sensitivity to disturbance (i.e. a buffer measuring from 50 to 100 feet for passerine species and a buffer of 300 feet for raptor species). These buffers may be reduced at the discretion of a qualified biologist, but no construction activities shall be permitted within the buffer if they are demonstrated to disturb nesting birds. Active nest sites shall be monitored



periodically to determine time of fledging.

B. Burrowing Owl Specific Measures. Though the site is currently not occupied by burrowing owls, preconstruction surveys for this species shall be conducted by a qualified biologist within the 30 days prior to construction to ensure that no burrowing owls have occupied the project area. If ground-disturbing activities are delayed or suspended for more than 30 days after the preconstruction survey, the site shall be resurveyed. If owls are subsequently identified within the project area, though are not likely to be directly or indirectly impacted by project construction, then the project proponent shall implement the following measures to minimize disturbance to this species:

1. A buffer area approximately 100 meters (328 feet) in radius will be established around occupied burrows. This radius will be identified by the placement of orange construction fencing.
2. If temporary ground disturbing activities are to occur within 50 to 100 meters (164 to 328 feet) of occupied burrows, then these areas will be restored to their original condition so as to maintain burrowing owl foraging habitat.
3. No disturbance activities should occur within 50 meters (164 feet) of occupied burrows.

C. Swainson's Hawk Specific Measures. If work must occur during bird breeding season for Swainson's hawk (February 1st through August 31st), to ensure that no indirect impacts to active nests occur due construction activities, a qualified biologist will conduct a pre-construction survey for Swainson's hawk nests per the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (CDFG 2000). The area to be surveyed will include a 0.5 mile-radius including and surrounding the project site between April 5 to April 20 from sunrise to 1200 and 1630 to sunset (CDFG 2000). One survey shall be conducted during this time because activity at the nest site increases significantly and active nests are more easily identified. If active nests are found, the City will be notified. No construction will occur until appropriate buffers are established, based upon recommendation by the City.

D. Open Pipes Restriction. All pipes, culverts, or similar structures that are stored at the construction site (either vertically or horizontally) for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to implementation by a Qualified Biologist.

E. Fence and Sign Post Restriction. Any fencing posts or signs installed, temporarily or permanently, throughout the course of the project shall have the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife, specifically birds of prey.

F. Water Pollution. Permittee and all contractors shall be subject to the water pollution regulations found in Fish and Game Code Sections 5650 and 12015.

G. Spill Contingency Plan. The permittee shall submit for approval an oil/toxic material spill contingency plan to CDFW prior to commencement of operations. The plan shall identify the



location of containment and abatement materials on-site and the notification and cleanup procedures to be followed by Permittee in the event of a spill.

- H. Spill Cleanup.** The permittee shall begin the cleanup of all spills immediately. CDFW shall be notified immediately by the Permittee of any spills and shall be consulted regarding cleanup procedures. The Permittee shall have all spill clean-up equipment on-site during construction.

SECTION 3.5 CULTURAL RESOURCES

Page 3.47, Mitigation Measures

MM CUL-1 Cultural Materials Discovered During Construction. If any cultural resource is encountered during ground disturbance or subsurface construction activities (e.g., trenching, grading), all construction activities within a 50-foot radius of the identified potential historical resource shall cease until an archaeologist who meets the Secretary of the Interior's Standards and Guidelines for Professional Qualifications in archaeology and/or history evaluates the resource for its potential significance and determines whether the resource requires further study. Tribal cultural resources are discussed in Section 3.18. If the qualified archaeologist determines that the cultural resource does not appear to be eligible for inclusion on the CRHR, it will be appropriately documented on Department of Parks and Recreation (DPR) 523 series forms and project activity may resume. If the qualified archaeologist determines that the cultural resource appears eligible for inclusion on the CRHR the archaeologist shall make recommendations to the City of Antioch on the measures to be implemented to protect the discovered resources. The measures may include avoidance, preservation in place, data recovery excavation, or other appropriate measures outlined in PRC Section 21083.2. Any previously undiscovered resources found during construction within the project area should be recorded on appropriate DPR forms and evaluated for significance in terms of CEQA criteria. The applicant shall be responsible for the costs of retaining a qualified archaeologist and the recording of resources on DPR forms.

No further grading shall occur within a 50-foot radius of the discovery until the City of Antioch approves the measures to protect these resources. Any archaeological artifacts recovered because of mitigation shall be donated to a qualified scientific institution approved by the City where they would be afforded long-term preservation to allow future scientific study.

SECTION 3.17 TRAFFIC AND TRANSPORTATION

Page 3.131, first paragraph

~~Due to the relatively short distance along East 18th Street between the self-storage facility driveway (east driveway) and Drive-In Way (approximately 40 feet); this short distance results in a potential hazard and a potentially significant impact. It is recommended that the driveway be relocated, or access provided to the commercial retail parcel for use of a shared driveway (center driveway), thereby reducing the total number of driveways along East 18th Street to two. This recommendation has been incorporated into the project mitigation measure TRANS-2.~~



As East 18th Street provides three westbound travel lanes along the project frontage, and the intersection of East 18th Street and Drive In-Way/Holub Lane is striped to provide two westbound travel lanes through the intersection, there is an opportunity to provide an exclusive right-turn lane into the project site. To accommodate a right-in/right-out driveway into the self-storage and to minimize potential vehicle conflicts, the following modifications to East 18th Street along the project site should be provided:

- Remove the existing merge arrows and striping
- Install right turn pockets at the westernmost and middle project driveways
- Stripe a dashed centerline on East 18th Street to denote two travel lanes
- Stripe a buffer between the driveways and right turn pockets along the Project frontage, and after the westernmost driveway, to direct vehicles to the two travel lanes.
- Install a bike lane between the two travel lanes and the right turn pockets
- Provide skip striping for the bike lanes in the transition area between the striped buffer and right turn pockets

In addition to the above geometric changes, the intersection of East 18th Street and Drive in Way/Holub Lane should be signalized prior to the opening of the self-storage uses if access is provided from the eastern most driveway.

Page 3.131, third paragraph

The above modifications have been incorporated into the project as Mitigation Measure TRANS 2. With the implementation of Mitigation Measure TRANS 2 and the installation of the new traffic signal at the intersection of East 18th Street and Drive-In Way, there are no apparent issues regarding conflicting movements, delay and vehicles queueing on Drive-In Way with the nearby and adjacent business/property that has access via Drive-In way.

MM TRANS-2 ~~**Driveway Relocation.** Prior to issuance of grading permits for the self-storage facility, the project applicant shall amend their design review application to relocate the self-storage facility driveway on East 18th Street, or have access provided through a shared driveway from the commercial/retail parcel, thereby reducing the total number of driveways along East 18th Street.~~ **East 18th Street Modifications.** To accommodate a right-in/right-out driveway into the self-storage and to minimize potential vehicle conflicts, the following modifications to East 18th Street along the project site should be provided:

- Remove the existing merge arrows and striping
- Install right turn pockets at the westernmost and middle project driveways
- Stripe a dashed centerline on East 18th Street to denote two travel lanes
- Stripe a buffer between the driveways and right turn pockets along the Project frontage, and after the westernmost driveway, to direct vehicles to the two travel lanes.
- Install a bike lane between the two travel lanes and the right turn pockets
- Provide skip striping for the bike lanes in the transition area between the striped buffer and right turn pockets



- If access is provided from the eastern most driveway, the intersection of East 18th Street and Drive in Way/Holub Lane shall be signalized prior to the opening of the self-storage uses.

SECTION 3.18 TRIBAL CULTURAL RESOURCES

Page 3.134, fourth paragraph

However, subsurface construction activities such as trenching and grading associated with the proposed project could potentially damage or destroy previously undiscovered unique tribal cultural resources. Therefore, Mitigation Measure CUL-1, ~~and Mitigation Measure CUL-2, and Mitigation Measure CUL-3 are proposed, requiring implementation of standard inadvertent discovery procedures and worker awareness training, and procedures to follow in the event human remains are encountered. With the implementation of Mitigation Measure CUL-1, Mitigation Measure CUL-2, and Mitigation Measure CUL-3, to reduce potential impacts to previously undiscovered subsurface unique tribal cultural resources. With the implementation of Mitigation Measure CUL-1 and Mitigation Measure CUL-2,~~ potential impacts would be reduced to a level of less than significant.

Page 3.134, Mitigation Measures

Mitigation Measure CUL-1, Mitigation Measure CUL-2, and Mitigation Measure CUL-3 are required.



ATTACHMENT “B”

**CITY OF ANTIOCH PLANNING COMMISSION
RESOLUTION NO. 2019-****

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
RECOMMENDING THAT THE CITY COUNCIL APPROVE AN ORDINANCE TO
REZONE 19.75 ACRES (APNs 051-052-112, and 051-052-113) TO PLANNED
DEVELOPMENT DISTRICT (PD-18-02)**

WHEREAS, the City received an application from Jim Moita, for approval of an Initial Study / Mitigated Negative Declaration, a rezone to Planned Development District, a Final Development Plan/Vesting Tentative Map, Use Permit, and Design Review for the development of a business park consisting of commercial, self-storage, and light industrial uses on 19.75 acres (PD-18-02, UP-18-09, AR-18-09, PW-357-301-19). The project site is located directly northwest of the intersection of East Eighteenth Street and Drive-in Way (APNs 051-052-112 and 051-052-113); and,

WHEREAS, an Initial Study and Mitigated Negative Declaration, Errata and Mitigation Monitoring and Reporting Program (MMRP) was prepared in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15070, and considered by the Planning Commission on May 15, 2019; and,

WHEREAS, the Planning Commission recommended adoption of the Final Initial Study and Mitigated Negative Declaration, Errata and MMRP to the City Council; and,

WHEREAS, the Planning Commission duly gave notice of public hearing as required by law; and,

WHEREAS, on May 15, 2019, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary; and,

WHEREAS, in consideration of the rezone, the granting of such rezone will not adversely affect the comprehensive General Plan.

NOW THEREFORE BE IT RESOLVED, that the Planning Commission makes the following findings required for approval of the proposed zone change:

1. That the public necessity requires the proposed zone change. The subject property is zoned Planned Business District (PBC) and Regional Commercial (C-3). The proposed project is required, per the East Eighteenth Street Specific Plan, to rezone the subject property to a Planned Development District and adopt development standards.

2. That the subject property is suitable to the use permitted in the proposed zone change. The subject property is relatively flat, undeveloped land adjacent to existing commercial development and is suitable for a business park consisting of commercial, self-storage and light industrial uses.
3. That said permitted use is not detrimental to the surrounding property. The project is consistent with the adjacent commercial development to the east and north.
4. That the proposed zone change is in conformance with the Antioch General Plan. The project conforms to the requirements of the General Plan designations for the property of Regional Commercial and Business Park.

BE IT FURTHER RESOLVED that the Planning Commission does hereby recommend to the City Council APPROVAL of the draft Ordinance (Exhibit A) to rezone the 19.75-acre project site located directly northwest of the intersection of East 18th Street and Drive-In Way (APNs 051-052-112, and 051-052-113).

* * * * *

I HEREBY CERTIFY that the foregoing recommendation was passed and adopted by the Planning Commission of the City of Antioch, at a regular meeting thereof, held on the 15th day of May, 2019 by following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

FORREST EBBS
Secretary to the Planning Commission

EXHIBIT A

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH TO REZONE
TO PLANNED DEVELOPMENT DISTRICT (PD-18-02) FOR THE ACORN BUSINESS
PARK PROJECT (APNs 051-052-112, 051-052-113)**

The City Council of the City of Antioch does ordain as follows:

SECTION 1:

The City Council determined on _____ that, pursuant to Section 15070 of the Guidelines of the California Environmental Quality Act, that the appropriate environmental document for the project is an Initial Study, Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

SECTION 2:

At its regular meeting of May 15, 2019, the Planning Commission recommended that the City Council adopt the Ordinance to rezone the subject property to Planned Development District (PD-18-02) for the Acorn Business Park Project.

SECTION 3:

The real property described in Exhibit A, attached hereto, is hereby rezoned to Planned Development District (PD-18-02) for the Acorn Business Park Project.

SECTION 4:

The development standards, as defined below, for the subject property (**APNs 051-052-112, and -051-052-113**), known as the Acorn Business Park Project, are herein incorporated into this ordinance, and are binding upon said property.

**Development Standards for the Acorn Business Park Planned Development
District (PD-18-02)**

Development Standards for the Acorn Business Park Planned Development District	PD Zoning Standards for Subsection A (Commercial)	PD Zoning Standards for Subsection B (Self-Storage)	PD Zoning Standards for Subsection C (Light Industrial Business Park)
Maximum Building Height	70'	Storage Buildings 18' ; Storage Office 40' ; Cell Towers 50'	50'
Minimum Lot Size	20,000 SF	20,000 SF	20,000 SF
Maximum Lot Coverage	40%	65%	50%
Minimum Lot Width	Lots shall conform to the Vesting Tentative Subdivision Map submitted to the Community Development Department and dated September 14, 2018	Lots shall conform to the Vesting Tentative Subdivision Map submitted to the Community Development Department and dated September 14, 2018	Lots shall conform to the Vesting Tentative Subdivision Map submitted to the Community Development Department and dated September 14, 2018
Minimum Front/Street Side Setbacks	30' along E. 18 th St.	30' along E. 18 th St.; 20' along Drive-In Way	20' along Drive-In Way and Sakurai Street
Minimum Interior Side Yard Setbacks	<u>0'</u>	<u>0'</u>	<u>0'</u>
Minimum Rear Yard Setbacks	<u>10'</u>	<u>0'</u>	<u>0'</u>
Parking and Driveways	Parking provided per approved Final Development Plan or subsequent use permit requirements	Parking provided per approved Final Development Plan.	Parking provided per approved Final Development Plan or subsequent use permit requirements.
Driveway/Drive Aisle Width	Driveway 36' max; Drive Aisle 26' min. Ultimate driveway width subject to City Engineer Approval	Driveways 36' max; Drive Aisles 25' min. Ultimate driveway width subject to City Engineer Approval	36' max; Drive Aisles 26' min. Ultimate driveway width subject to City Engineer Approval
Landscape Requirements	Project landscaping shall be consistent with the Acorn Business Park Landscape Plan submitted to the Community Development Department on September 14, 2018	Project landscaping shall be consistent with the Acorn Business Park Landscape Plan submitted to the Community Development Department on September 14, 2018	Project landscaping shall be consistent with the Acorn Business Park Landscape Plan submitted to the Community Development Department on September 14, 2018

SECTION 5:

The allowed uses, as defined below, for the subject property (APNs 051-052-112 and 051-052-113), known as the Acorn Business Park Project, are herein incorporated into this ordinance, and are binding upon said property.

Similar Use Determination. Additional uses not specifically listed in the following table maybe be allowed where the Community Development Director determines a proposed use is substantially similar to a listed use. Such use would be subject to any reviews and limitations noted herein for the listed use that is identified as similar.

Allowed Uses for the Acorn Business Park Commercial Sub-Section A Planned Development District (PD-18-02)

Allowed Uses		Notes
Merchandise and/or General Retail Sales	Allowed	Broadly includes merchandise and general retail except as otherwise defined herein.
Supermarkets or Grocery	Allowed	Supermarkets and groceries over 5,000 s.f. allowed to have alcohol sales by right
Convenience Store	Allowed	Limited to one store as a permitted use within the project. Any additional convenience store must apply for a conditional use permit. Convenience store defined as a store less than 5,000 s.f. that sells primarily packaged food, household, and personal convenience items. Alcohol sales require a conditional use permit.
Pet supply stores with ancillary uses such as grooming services	Allowed	
Liquor Stores	CUP	Liquor Stores including by way of example, but not limited to, establishments that sell primarily beer, wine, or distilled spirits. No more than one liquor store is allowed within the center.
Cannabis Uses	CUP	All uses allowed in the Antioch Cannabis Overlay District per the Antioch Municipal Code and adopted Cannabis Guidelines
Restaurants (with or without liquor sales)	Allowed	Including, but not limited to: full-service sit-down restaurant establishments; take-out only establishments; delis; and, fast-food with no drive-through.
Bar, sports bar, lounge, nightclub and similar establishments	CUP	No more than one type of on-site sale of beer, wine, or distilled spirits establishment, including establishments which offer food as a secondary use, live entertainment and/or dancing.
Tasting room – beer, wine, distilled spirits	CUP	No more than one of each type (beer, wine, distilled spirits). Serving space may not exceed 30% of total square footage of business with limitation on hours of operation as determined appropriate during CUP review.

Indoor entertainment and recreation	Allowed	Indoor entertainment and recreation facilities such as video arcades, trampoline parks, batting cages and similar uses as approved by the Community Development Director.
Health clubs and fitness studios	Allowed	Ancillary outdoor facilities such as swimming pools or tennis courts require approval of a conditional use permit.
Clubs/Lodges/Cultural Institutions	CUP	Subject to analysis of site access, internal circulation, noise and other issues as identified by the City.
Commercial uses which manufacture and sell their primary product on the premises	Allowed	Uses include, but are not limited to, jewelry, bakeries, coffee roaster, ice cream
Commercial and personal services	Allowed	Broadly includes personal services such as hair salons and day spas and professional offices such as title companies, real estate offices, tutoring centers that provide services to the general public or to other businesses and that do not have the potential to generate noise, odors, fumes or hazards that could adversely impact surrounding uses.
Professional Office	Allowed	Including but not limited to business, institutional, administrative, financial, professional and governmental offices, public and quasi-public offices.
Acute Care/Rehabilitation Care/Psychiatric Care/other general medical care providers and offices	Allowed	
Pet Grooming and Veterinary Clinics	Allowed	Overnight boarding of pets requires an administrative use permit
Childcare/Daycare	CUP	Childcare/daycare smaller than 3,000 SF are allowed by right. Uses larger than 3,000 SF require a use permit approval supported by analysis of site access, internal circulation, noise and other potential impacts identified by the Community Development Director.
Wholesale showrooms and distribution centers	Allowed	Includes the sale of furniture, appliances and similar bulk retail as approved by the Community Development Director.
Medical/Dental/Optical Laboratories	Allowed	
Hotel	Allowed	Includes hotel as well as auxiliary uses and services to hotel such as a hotel bar, restaurant or conference room. Maximum number of rooms shall be determined by the ability to meet the parking requirements for hotels outlined in the Antioch Municipal Code.
Tobacco and Paraphernalia Retailer	Not allowed except as follows	Retail businesses larger than 5,000 square feet may sell tobacco where less than 5% of their sales area devoted to tobacco products.
Check cashing facilities, pawnshops and second-hand sales	CUP	Shall be limited to one such facility within the project. Second-hand sales that do not accept donations on site shall be considered an allowed use.

Outdoor display, dining, and/or sale of merchandise	Allowed with Administrative Use Permit	Outdoor display, dining, and/or sales areas are permitted as ancillary uses to existing tenants or as seasonal events not associated with a tenant, such as Christmas tree lots and pumpkin patches. These uses shall be subject to administrative use permit approval by the Zoning Administrator.
Drive Up Windows for all types of uses (i.e. restaurant, bank, etc.)	CUP	Any drive-through would require amendment of the project approvals per the requirements of § 9-5.2311 and use permit approval, supported by analysis of site access, internal circulation, noise and other potential impacts as identified by the Community Development Department.
Cell Towers	CUP	Subject to the requirements set forth in the Antioch Municipal Code.
Temporary parking lot display and/or sale areas	AUP	Are permitted as ancillary uses to existing tenants. These uses shall be subject to administrative use permit approval by the Zoning Administrator.

**Allowed Uses for the Acorn Business Park Self-Storage Facility Sub-Section B
Planned Development District (PD-18-02)**

Allowed Uses		Notes
Self-Storage	Allowed	Maximum of 1,025 units allowed. Maximum building square footage of 121,981 square feet as depicted on the project plans submitted to the City of Antioch on September 14, 2018. Includes ancillary sales and truck rentals for self-storage customers. Trucks for rent must be parked in approved parking spaces on the interior of the site.
Solar Energy Generation	Allowed	Rooftop solar on self-storage building rooftops. Ground mounted solar is not allowed.
RV Parking	AUP	Utilization of the site for temporary RV parking during the phased construction of the self-storage facility.
Cell Towers	CUP	Subject to the requirements set forth in the Antioch Municipal Code. Maximum height allowed of 50 feet.

**Allowed Uses for the Acorn Business Park Light Industrial Business Park Sub-
Section C Planned Development District (PD-18-02)**

Allowed Uses		Notes
Commissary	Allowed	Commissary uses related to the operation of commercial kitchens and food trucks.
Food and Beverage production	Allowed	Tasting rooms are allowed provided they are ancillary to the production of food and beverages.
Indoor entertainment and recreation	Allowed	Indoor entertainment and recreation facilities such as video arcades, trampoline parks, batting cages, athletic training facilities and similar uses as approved by the Community Development Director. Any outdoor component shall require approval of a conditional use permit.
Health clubs and fitness studios	Allowed	Ancillary outdoor facilities such as swimming pools or tennis courts require approval of a conditional use permit.
Professional Office	Allowed	Including but not limited to business, institutional, administrative, financial, professional and governmental offices, public and quasi-public offices. Professional offices that require the storage of fleet vehicles that leave the site daily such as maid services, ambulance services or repair services shall be considered an allowed use.
Acute Care/Rehabilitation Care/Psychiatric Care/other general medical care providers and offices	Allowed	
Pet Grooming and Veterinary Clinics	Allowed	Such uses must be confined to interior of the building.
Warehousing, distribution and storage	Allowed	Consists of the warehousing and storage of goods and materials for the purpose of distribution. All storage must occur within a building. Self-storage and automotive storage are not allowed.
Light Manufacturing – Production and Assembly	Allowed	Including but not limited to cabinetry, countertop, and furniture fabrication shops. All such uses must occur within a building.
Research and development facilities	Allowed	
Wholesale showrooms and distribution centers	Allowed	Includes the sale of furniture, appliances and similar bulk retail as approved by the Community Development Director.
Medical/Dental/Optical Laboratories	Allowed	
Cannabis Uses	CUP	All uses allowed in the Antioch Cannabis Overlay District per the Antioch Municipal Code and adopted Cannabis Guidelines
Cell Towers	CUP	Subject to the requirements set forth in the Antioch Municipal Code.

Outdoor storage	AUP	Outdoor storage of equipment and materials shall be subject to administrative use permit approval by the Zoning Administrator.
Temporary parking lot display and/or sale areas	AUP	Are permitted as ancillary uses to existing tenants. These uses shall be subject to administrative use permit approval by the Zoning Administrator.

Allowed: Allowed by right, subject to limitations as noted

CUP: Allowed subject to approval of a Conditional Use Permit

AUP: Allowed subject to approval of an Administrative Use Permit

SECTION 6:

The City Council finds that the public necessity requires the proposed zone change that the subject property is suitable to the use permitted in the proposed zone change that said permitted use is not detrimental to the surrounding property, and that the proposed zone change is in conformance with the Antioch General Plan.

SECTION 7:

This ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption and shall be published once within fifteen (15) days upon passage and adoption in a newspaper of general circulation printed and published in the City of Antioch.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was introduced and adopted at a regular meeting of the City Council of the City of Antioch, held on the ____ of _____ and passed and adopted at a regular meeting thereof, held on the ____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

Mayor of the City of Antioch

ATTEST:

City Clerk of the City of Antioch

EXHIBIT B

The land referred to is situated in the County of Contra Costa, City of Antioch, State of California, and is described as follows:

The land referred to is situated in the State of California, in the County of Contra Costa, City of Antioch and in an unincorporated area of the County of Contra Costa, and is described as follows:

PARCEL ONE:

A portion of Parcel A and a portion of Parcel B as shown on the Record of Survey, filed May 3, 1967, in [Book 47 of Licensed Surveyors Maps, Page 50](#), Contra Costa County Records, shown as Parcel Two on that certain Lot Line Adjustment approved by the City of Antioch, recorded on April 6, 2007 in Official Records, under Recorder's Serial Number [2007-100573](#), more particularly described as follows:

Beginning at a point on the West line of Parcel A (47 LSM 50) that bears South 00° 01' 36" West 597.02 feet from the Northwest corner thereof; thence leaving last said West line of Parcel A, North 90° 00' 00" East 707.10 feet to the beginning of a curve concave to the Northwest and having a radius of 20.00 feet; thence Easterly 8.29 feet along said curve through a central angle of 23° 45' 29" to the beginning of a reverse curve concave to the Southwest and having a radius of 98.00 feet; thence Northerly, Easterly and Southerly 235.26 feet along said curve through a central angle of 137° 32' 34" to the beginning of a reverse curve concave to the East and having a radius of 20.00 feet; thence Southerly and Westerly 8.29 feet along said curve through a central angle of 23° 45' 29"; thence South 00° 01' 36" West 153.40 feet to a point on the exterior boundary line of said Parcel A (47 LSM 50); thence along the exterior boundary line of last said Parcel A, South 50° 35' 31" West 44.02 feet; thence South 00° 01' 36" West 536.11 feet; thence South 34° 58' 35" West 62.54 feet to the beginning of a curve concave to the Northwest and having a radius of 466.00 feet, a radial line to the beginning of said curve bears South 84° 53' 57" East; thence Southwesterly 69.12 feet along said curve through a central angle of 8° 29' 55" to the beginning of a reverse curve concave to the Southeast and having a radius of 534.00 feet; thence Southerly 126.50 feet along said curve through a central angle of 13° 34' 22"; thence South 00° 01' 36" West 56.80 feet to the beginning of a curve concave to the Northwest and having a radius of 20 feet; thence Southerly and Westerly 31.11 feet along said curve through a central angle of 89° 08' 16", thence South 01° 59' 45" West 2.43 feet to a point on the Northerly right of way line of East 18th Street; thence along last said right of way line South 88° 25' 31" West 122.73 feet; thence leaving last said right of way line North 00° 00' 00" East 210.89 feet; thence South 89° 09' 10" West 200.00 feet; thence South 00° 00' 00" West 213.43 feet to a point on the Northerly right of way line of East 18th Street; thence South 88° 25' 31" West 404.47 feet to the West line of Parcel A (47 LSM 50); thence along last said West line of Parcel A, North 00° 01' 36" East 1196.94 feet to the Point of Beginning.

EXCEPTING THEREFROM :

Mineral rights reserved in the Deed from William E. Moore, et ux, recorded January 20, 1971, in [Book 6299, in Official Records, Page 157](#), as follows:

"All minerals and mineral rights and all hydrocarbons and rights to hydrocarbons 500 feet beneath the surface of the land without right of surface access thereto from the lands covered by this conveyance."

Being APN: 051-052-113

PARCEL TWO:

Parcel C, as shown on the Record of Survey, filed May 3, 1967, in [Book 47 of Licensed Surveyors Maps, Page 50](#), Contra Costa County Records.

EXCEPTING THEREFROM:

Mineral rights reserved in the Deed from William E. Moore, et ux, recorded January, 20, 1971, in [Book 6299, in Official Records, Page 157](#), as follows:

"All minerals and mineral rights and all hydrocarbons and rights to hydrocarbons 500 feet beneath the surface of the land without right of surface access thereto from the lands covered by this conveyance."

APN: 051-052-112

ATTACHMENT “C”

**PLANNING COMMISSION
RESOLUTION NO. 2019-****

**RESOLUTION OF THE CITY OF ANTIOCH PLANNING COMMISSION
RECOMMENDING THAT THE CITY COUNCIL APPROVE A VESTING TENTATIVE
MAP (PW-357-301-19), FINAL DEVELOPMENT PLAN (PD-18-02), USE PERMIT FOR
SUBSECTION B (UP-18-09), AND DESIGN REVIEW (AR-18-09) FOR THE ACORN
BUSINESS PARK PROJECT**

WHEREAS, the City received an application from Jim Moita, for approval of an Initial Study / Mitigated Negative Declaration, a rezone to Planned Development District, a Final Development Plan/Vesting Tentative Map, Use Permit for Subsection B, and Design Review for the development of a business park consisting of commercial, self-storage, and light industrial uses on 19.75 acres (PD-18-02, UP-18-09, AR-18-09, PW-357-301-19). The project site is located directly northwest of the intersection of East Eighteenth Street and Drive-in Way (APNs 051-052-112 and 051-052-113); and,

WHEREAS, an Initial Study and Mitigated Negative Declaration, Errata and Mitigation Monitoring and Reporting Program (MMRP) was prepared in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15070, and considered by the Planning Commission on May 15, 2019; and,

WHEREAS, the Planning Commission recommended adoption of the Final Initial Study and Mitigated Negative Declaration, Errata and MMRP to the City Council; and,

WHEREAS, on May 15, 2019, the Planning Commission recommended approval of a rezone to Planned Development District (PD-18-02) to the City Council; and,

WHEREAS, the Planning Commission duly gave notice of public hearing as required by law; and,

WHEREAS, on May 15, 2019, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary.

NOW THEREFORE IT BE RESOLVED that the Planning Commission does hereby make the following findings for approval of a Vesting Tentative Map:

1. That the subdivision, design and improvements are consistent with the General Plan, as required by Section 66473.5 of the Subdivision Map Act and the City's Subdivision Regulations. The site is designated Regional Commercial and Business Park in the General Plan and the subdivision will accommodate uses that are consistent with the General Plan on each of the lots created by the subdivision; and,

2. That the subdivision proposed by the Vesting Tentative Parcel Map complies with the rules, regulations, standards and criteria of the City's Subdivision Regulations. The proposed subdivision meets the City's criteria for the parcel map. The City's Planning and Engineering staff have reviewed the Vesting Tentative Map and evaluated the effects of the subdivision proposed and have determined that the Vesting Tentative Map complies with and conforms to all the applicable rules, regulations, standards, and criteria of the City's Subdivision Regulations.
3. The Project's conditions of approval protect the public safety, health and general welfare of the users of the project and surrounding area. In addition, the conditions ensure the project is consistent with all applicable City standards.

NOW THEREFORE BE IT RESOLVED, that the Planning Commission makes the following findings for approval of a Final Development Plan:

1. Each individual unit of the development can exist as an independent unit capable of creating an environment of sustained desirability and stability, and the uses proposed will not be detrimental to present or potential surrounding uses but instead will have a beneficial effect which could not be achieved under another zoning district;
2. The streets and thoroughfares proposed meet the standards of the City's Growth Management Program and adequate utility service can be supplied to all phases of the development because the project will be constructing all the required streets and utilities to serve the project. The Project will be required to pay for all improvements to the site as well as its fair share of impacts to all public services. The project has been reviewed and no significant impacts on utilities or services has been identified;
3. The commercial components of the Project are justified economically at the location proposed;
4. There are no residential components of the project;
5. The industrial component conforms to applicable desirable standards and will constitute an efficient, well organized development with adequate provisions for truck access and necessary storage and will not adversely affect adjacent or surrounding development;
6. Any deviation from the standard zoning requirements is warranted by the design and additional amenities incorporated in the final development plan which offer certain unusual redeeming features to compensate for any deviations that may be permitted. The project is substantially in conformance with zoning

requirements for commercial and light industrial development and the Planned Development District development standards established for the project site;

7. The area surrounding the P-D District can be planned and zoned in coordination and substantial compatibility with the proposed development; because the proposed development is surrounded by properties developed with commercial uses that are consistent with the proposed project and the undeveloped area around the Project will also be required to develop according to the General Plan policies;
8. The Project and the PD District conform to the General Plan of the City in that the commercial, self-storage and light industrial uses are consistent with the General Plan designation and policies of Regional Commercial and Business Park established for the project site.

NOW THEREFORE BE IT RESOLVED, that the Planning Commission does hereby make the following findings for approval of a use permit for Subsection B of the final development plan:

1. The granting of such use permit will not be detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity because the project has been designed to comply with the City of Antioch Municipal Code requirements.
2. The use applied at the location indicated is properly one for which a use permit is authorized because the City of Antioch Zoning Ordinance requires a use permit for all Planned Development District (PD) applications.
3. That the site for the proposed use is adequate in size and shape to accommodate such use, and all yards, fences, parking, loading, landscaping, and other features required, to other uses in the neighborhood. The site plan complies with the Planned Development standards established for the project's Planned Development District.
4. That the site abuts streets adequate in width and pavement type to carry the kind of traffic generated by the proposed use. The project site is located at the intersection of East Eighteenth Street and Drive-In Way. Both streets are adequate in width and pavement type to carry the traffic generated by the proposed use.
5. That the granting of such use permit will not adversely affect the comprehensive General Plan because the proposed uses are consistent with the General Plan designations of Regional Commercial and Business Park.

6. The Conditions of approval protect the public safety, health and general welfare of the users of the project and surrounding area. In addition, the conditions ensure the project is consistent with City standards.

NOW THEREFORE BE IT RESOLVED that the Planning Commission of the City of Antioch does hereby recommend APPROVAL to the City Council of a Vesting Tentative Map, Final Development Plan, Use Permit, and Design Review for the development of a business park consisting of commercial, self-storage, and light industrial uses on 19.75 acres (PD-18-02, UP-18-09, AR-18-09, PW-357-301-19). The project site is located directly northwest of the intersection of East 18th Street and Drive-in Way (APNs 051-052-112 and 051-052-113) subject to the following conditions:

A. GENERAL CONDITIONS

1. This approval expires two years from the date of approval by the Planning Commission (May 15, 2021), unless a building permit has been issued and construction has diligently commenced thereon and has not expired, or an extension has been approved by the Zoning Administrator. Requests for extensions must be received in writing with the appropriate fees prior to the expiration of this approval. No more than one one-year extension shall be granted.
2. The development and all proposed improvements shall comply with the City of Antioch Municipal Code and City Standards, unless a specific exception is granted thereto or approved by the City Engineer.
3. All required easements or rights-of-way shall be obtained by the applicant at no cost to the City of Antioch. Advance permission shall be obtained from any property or easement holders for any work done within such property or easements.
4. City staff shall inspect the site for compliance with conditions of approval prior to final inspection approval.
5. The applicant shall obtain an encroachment permit for all work to be done within the public right-of-way or easement, and peak commute-hour traffic shall not be impeded by construction-related activity.
6. All existing easements shall be identified on the site plan and all plans that encroach into existing easements shall be submitted to the easement holder for review and approval, and advance written permission shall be obtained from any property owner or easement holder for any work done within such property or easement.

B. MAP CONDITIONS

1. Approval of this tentative parcel map ("tentative map") is subject to the City of Antioch Municipal Code and the time lines established in the State of California Subdivision Map Act.
2. Approval of this tentative map shall not constitute approval of any improvements shown on the tentative map.
3. Approval of this tentative map shall not be construed as a guarantee of future extension or re-approvals of this or similar maps, nor is it an indication of future availability of water or sewer facilities or permission to develop beyond the capacities of these facilities.
4. The applicant shall record the parcel map prior to issuance of a building permit.
5. Prior to or concurrent with recordation of the parcel map a mutual access and parking agreement shall be recorded between the parcels in each subsection, as approved by the City Engineer. Mutual access and parking agreements are not required across subsections.
6. Prior to recordation of the parcel map, the applicant shall annex into Street Light and Landscape Maintenance District 2A Zone 3 and accept a level of annual assessments sufficient to maintain street lights and landscaping adjacent to the project. The annual assessment shall cover the actual annual cost of maintenance as described in the Engineer's Report.
7. Prior to issuance of a certificate of occupancy for the self-storage facility or the business park, the applicant shall design and construct a traffic signal and interconnect to adjacent signal(s) (including conduits, wire, and pull boxes) at the intersection of E. 18th Street and Drive-In Way, as approved by the City Engineer. The City will require future developers of adjoining properties to pay their fair share of the traffic signal improvements. The City will cooperate with the developer in establishing a financing mechanism or reimbursement agreement for the traffic signal improvement so reimbursement is provided when adjacent properties develop. Should an adjacent developer construct the traffic signal first, the applicant shall pay 50% (as determined by the traffic impact analysis and approved by the City Engineer) of the cost of design and construction of the traffic signal to the City of Antioch for reimbursement to the adjacent developer(s). The applicant shall acquire and dedicate right-of-way or easements to the City of Antioch for the traffic signal at no cost to the City and to the satisfaction of the City Engineer.

C. CONSTRUCTION CONDITIONS

1. The use of construction equipment shall be as outlined in the Antioch Municipal Code § 5-17.05. Requests for alternative days/times may be submitted in writing to the City Manager for consideration.
2. The project shall comply with and supply all the necessary documentation for AMC § 6-3.2: Construction and Demolition Debris Recycling.
3. Standard dust control methods shall be used to stabilize the dust generated by construction activities. The developer shall post dust control signage with the contact number of the Developer, the Bay Area Air Quality Management District and the City.
4. Driveway access to neighboring properties shall be maintained at all times during construction.

D. UTILITIES

1. All existing and proposed utilities (e.g. transformers and PMH boxes) shall be undergrounded and subsurface in accordance with the Antioch Municipal Code, except existing P.G.& E. towers, if any, or as approved by the City Engineer.
2. Prior to issuance of a building permit, the applicant shall submit hydrologic and hydraulic calculations for review to the City for design and construction of storm drain facilities that adequately collect and convey stormwater entering or originating within the development to the nearest adequate man-made drainage facility or natural watercourse, without diversion of watershed.
3. All storm water flows shall be collected onsite and discharged into an approved public storm drain system.
4. Trash enclosures shall drain to sanitary sewer, subject to the requirements of Contra Costa County Environmental Health, and shall incorporate methods to contain runoff at the front-gate and pedestrian access point to prevent storm water from entering the enclosure.
5. The sewer collection system shall be constructed to function as a gravity system.
6. A reduced pressure backflow preventer assembly shall be installed on all City water meter services.
7. All onsite utilities outside a public utility easement or as determined by the City Engineer shall be privately owned and maintained and connected to public facilities in accordance with City Standards.

8. Double detector check valve backflow assemblies shall be installed at each end of the private fire line and enclosed within easements granted to the City.
9. The developer shall provide adequate water pressure and volume to serve this development, as approved by the City Engineer. This will include a minimum residual pressure of 20 psi with all losses included at the highest point of water service and a minimum static pressure of 50 psi.
10. The applicant shall install all infrastructure to serve the site. Infrastructure for access to the site (sewer, water, storm, joint trench, and surface improvements) shall be completed prior to issuance of a certificate of occupancy for the site.
11. All proposed drainage facilities, including open ditches, shall be constructed of Portland Concrete Cement or as approved by the City Engineer.

E. LANDSCAPING

1. Sight distance triangles shall be maintained per AMC § 9-5.1101, Site Obstructions at Intersections, or as approved by the City Engineer. Landscaping and signage shall not create a sight distance problem.
2. Detailed landscaping and irrigation plans for the entire site shall be submitted to the City for review and approval. All landscaping and irrigation shall be installed in accordance with approved plans prior to the issuance of certificates of occupancy for this building.
3. Landscaping for the project shall be designed to comply with the applicable requirements of City of Antioch Ordinance No. 2162-C-S The State Model Water Efficient Landscape Ordinance (MWELo). Prior to issuance of a building permit, the applicant shall demonstrate compliance with the applicable requirements of the MWELo in the landscape and irrigation plans submitted to the City.
4. Landscape shall show immediate results. Landscaped areas shall be watered, weeded, pruned, fertilized, sprayed, and/or otherwise maintained as necessary. Plant materials shall be replaced as needed to maintain the landscaping in accordance with the approved plans.
5. All trees shall be a minimum 15-gallon size and all shrubs shall be a minimum 5-gallon size.

F. FIRE REQUIREMENTS

1. Provide emergency apparatus access roadways with all-weather (paved) driving surfaces of not less than 20-feet unobstructed width, and not less than 13 feet 6

inches of vertical clearance, to within 150 feet of travel distance to all portions of the exterior walls of every building. Access shall have a minimum outside turning radius of 45 feet, and must be capable of supporting the imposed fire apparatus loading of 37 tons. Access roadways shall not exceed 20% grade. Grades exceeding 16% shall be constructed of grooved concrete per fire district standard. (503) CFC

2. Aerial Fire Apparatus Access is required where the vertical distance between grade plane and the highest roof surface exceeds 30 feet as measured in accordance with Appendix D, Section 105 of the 2016 CFC. Aerial access roads shall have a minimum unobstructed width of 26 feet, exclusive of shoulders, in the immediate vicinity of the building or portion thereof. At least one of the required routes shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to one entire side of the building. Overhead utility and power lines shall not be located over the aerial fire apparatus access road or between the aerial fire apparatus road and building.
3. Access roadways of less than 28 feet unobstructed width shall have signs posted or curbs painted red with the words **NO PARKING-FIRE LANE** clearly marked. (22500.1) CVC, (503.3) CFC
4. Access roadways of 28 feet or greater, but less than 36-foot unobstructed width shall have **NO PARKING-FIRE LANE** signs posted, allowing for parking on one side only or curbs painted red with the words **NO PARKING-FIRE LANE** clearly marked. Parking is permitted only on the side of the road that does not have hydrants. (22500.1) CVC, (503.3) CFC
5. Provide emergency escape and rescue openings in Group R occupancies. Basements and sleeping rooms below the fourth story above grade plane shall have at least one exterior emergency escape and rescue opening. Landscaping, signage and other obstructions must not hinder the positioning of firefighting ground ladders to the rescue windows.
6. Provide a drawing for areas under emergency escape and rescue openings showing clear space under these openings that allow for the placement of ground ladders at a climbing angle of 70 to 75 degrees and a minimum of 18" clearance from the base of the ladder to any obstruction.
7. All new buildings shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communication systems of the jurisdiction at the interior of the building. The building owner shall have the testing conducted and the results submitted to the Fire District prior to the building final. (510.1) CFC

8. For the self-storage facility – A minimum size of 2"x2" means of viewing each sprinkler head shall be installed in each unit to allow for quarterly, annual and five-year inspection of the fire sprinkler system when units are secured.
9. Provide a striping and signing plan.
10. Access gates for Fire District apparatus shall be a minimum of 20-feet wide. Access gates shall slide horizontally or swing inward and shall be located a minimum of 30 feet from the street. Electrically operated gates shall be equipped with a Knox Company key-operated switch. Manually operated gates shall be equipped with a non-casehardened lock or approved Fire District Lock. Contact the Fire District for information on ordering key-operated switch. (D103.5) CFC
11. The developer shall provide an adequate and reliable water supply for fire protection with a minimum fire flow of 4000 GPM. Required flow must be delivered from not more than 4 hydrants flowing simultaneously for a duration of 240 minutes while maintaining 20-pounds residual pressure in the main. (507.1), (B105) CFC
12. The developer shall provide hydrants of the East Bay Type. (C103.1) CFC
13. The developer shall submit a minimum of two (2) copies of full size, scaled site improvement plans indicating all existing or proposed hydrant locations, fire apparatus access, elevations of building, size of building and type of construction for review and approval prior to obtaining a building permit. Final placement of hydrants shall be determined by the Fire District. (501.3) CFC
14. Emergency apparatus access roadways and hydrants shall be installed, in service, and inspected by the Fire District prior to construction or combustible storage on site. (501.4) CFC
 - Note: A temporary aggregate base or asphalt grindings roadway is not considered an all-weather surface for emergency apparatus access. The first lift of asphalt concrete paving shall be installed as the minimum roadway material and must be engineered to support the designated gross weight of 37 tons.
15. The developer shall provide traffic signal pre-emption systems (Opticom) on any new or modified traffic signals installed with this development. (21351) CVC
16. Flammable or combustible liquid storage tanks shall not be located on the site without obtaining approval and necessary permits from the Fire District. (3401.4) CFC
17. The developer shall submit a minimum of two (2) complete sets of building plans and specifications of the subject project, including plans for any of the following

required deferred submittals, to the Fire District for review and approval prior to construction to ensure compliance with minimum requirements related to fire and life safety. Plan review and inspection fees shall be submitted at the time of plan review submittal. (105.4.1) CFC, (901.2) CFC, (107) CBC

- Private underground fire service water mains
- Fire Sprinklers
- Standpipe
- Fire Alarm
- High-pile storage
- Aboveground/underground flammable/combustible liquid storage tanks
- Commercial kitchen hood extinguishing systems
- Special suppression systems
- Photo-voltaic
- Provide safety during construction (Ch.33) CFC

G. FEES

1. The developer shall pay all City fees which have been established by the City Council and as required by the Antioch Municipal Code.
2. The developer shall pay all pass-through fees. Fees include but are not limited to:
 - East Contra Costa Regional Fee and Financing Authority (ECCRFFA) Fee in effect at the time of building permit issuance.
 - Contra Costa County Fire Protection District Fire Development Fee in effect at the time of building permit issuance.
 - Development Impact Fee
 - Traffic Signal Fees
 - Gravity Flow Sewer Assessment Fee
 - School Impact Fees
 - Delta Diablo Sewer Fee
 - Contra Costa Water District Fee
3. Prior to recordation of the parcel map the developer shall pay the Contra Costa County Flood Control District Drainage Area fee in effect at the time of the filing and per the letter dated October 23, 2018, and the Contra Costa County map maintenance fee.

H. GRADING

1. The grading operation shall take place at a time and in a manner so as not to allow erosion and sedimentation. The slopes shall be landscaped and reseeded as soon as possible after the grading operation ceases. Erosion measures shall

be implemented during all construction phases in accordance with an approved erosion and sedimentation control plan.

2. The final grading plan for this development shall be approved by the City Engineer and signed by a California licensed civil engineer. No grading is allowed without a grading permit issued by the Building Department.
3. All elevations shown on the grading and improvement plans shall be on the USGS 1929 sea level datum or NAVD 88 with conversion information, or as approved by the City Engineer.
4. All slopes shall drain to approved drainage facilities as approved by the City Engineer.
5. Wall and fence locations and elevations shall be included on the grading plan.
6. Any existing wells or septic systems on the property shall be properly abandoned under permit from the Contra Costa County Environmental Health Department.
7. All grading shall be accomplished in a manner that precludes surface water drainage across any property line.
8. Swales adjacent to structures shall have a minimum of a 1% slope or as directed by the City Engineer.
9. All off-site grading is subject to the coordination and approval of the affected property owners and the City Engineer. The developer shall submit written authorization to "access, enter, or grade" adjacent properties prior to performing any work.
10. Retaining walls shall be of masonry construction and shall not be constructed in City right-of-way or other City maintained parcels unless approved by the City Engineer.
11. All retaining walls shall be reduced in height to the maximum extent practicable and any walls or signage shall meet the height requirements in the setback and sight distance triangles as required by the City Engineer.

I. CONSERVATION/NPDES

1. Water conservation measures, including low volume toilets, flow restrictors in showers and the use of drought tolerant landscaping, shall be used.
2. That the project shall comply with all Federal, State, and City regulations for the National Pollution Discharge Elimination System (NPDES) (AMC § 6-9). (Note:

Per State Regulations, NPDES Requirements are those in affect at the time of the Final Discretionary Approval.) Under NPDES regulations, the project is subject to provision C.3: New development and redevelopment regulations for storm water treatment. Provision C.3 requires that the project include storm water treatment and source control measures, as well run-off flow controls, so that post-project runoff does not exceed estimated pre-project runoff. C.3 regulations require the submittal of a Storm Water Control Plan (SWCP) that demonstrates how compliance will be achieved. The SWCP shall be submitted simultaneously with the project plans. For the treatment and flow-controls identified in the approved SWCP, a separate Operation and Maintenance Plan (O&M) shall be submitted and approved before the Building Department will issue Certificate of Occupancy permits. Both the approved SWCP and O&M plans shall be included in the project CC&Rs. Prior to building permit final and issuance of a Certificate of Occupancy, the developer shall execute any agreements identified in the Storm Water Control Plan that pertain to the transfer of ownership and/or long-term maintenance of storm water treatment or hydrograph modification BMPs.

3. The following requirements of the federally mandated NPDES program (National Pollutant Discharge Elimination System) shall be complied with as appropriate, or as required by the City Engineer:
 - a. Prior to issuance of permits for building, site improvements, or landscaping, the developer shall submit a permit application consistent with the developer's approved Storm Water Control Plan, and include drawings and specifications necessary for construction of site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control storm water flow and potential storm water pollutants.
 - b. The Storm Water Control Plan shall be certified by a registered civil engineer, and by a registered architect or landscape architect as applicable. Professionals certifying the Storm Water Control Plan shall be registered in the State of California and submit verification of training, on design of treatment measures for water quality, not more than three years prior to the signature date by an organization with storm water treatment measure design expertise (e.g., a university, American Society of Civil Engineers, American Society of Landscape Architects, American Public Works Association, or the California Water Environment Association), and verify understanding of groundwater protection principles applicable to the project site (see Provision C.3.i of Regional Water Quality Control Board Order R2 2003 0022).

- c. Prior to building permit final and issuance of a Certificate of Occupancy, the developer shall submit, for review and approval by the City, a final Storm Water BMP Operation and Maintenance Plan in accordance with City of Antioch guidelines. This O&M plan shall incorporate City comments on the draft O&M plan and any revisions resulting from changes made during construction.
- d. Prior to building permit final and issuance of a Certificate of Occupancy, the developer shall execute and record any agreements identified in the Storm Water Control Plan which pertain to the transfer of ownership and/or long-term maintenance of storm water treatment or hydrograph modification BMPs.
- e. Prevent site drainage from draining across sidewalks and drive aisles in a concentrated manner.
- f. Collect and convey all storm water entering, and/or originating from, the site to an adequate downstream drainage facility without diversion of the watershed. Submit hydrologic and hydraulic calculations with the Improvement Plans to Engineering Services for review and approval.
- g. Prior to issuance of the grading permit, submit proof of filing of a Notice of Intent (NOI) by providing the unique Waste Discharge Identification Number (WDID#) issued from the Regional Water Quality Control Board.
- h. Submit a copy of the Storm Water Pollution Prevention Plan (SWPPP) for review to the Engineering Department prior to issuance of a building and/or grading permit. The general contractor and all subcontractors and suppliers of materials and equipment shall implement these BMP's. Construction site cleanup and control of construction debris shall also be addressed in this program. Failure to comply with the approved construction BMP may result in the issuance of correction notices, citations, or a project stop work order.
- i. Install appropriate clean water devices at all private storm drain locations immediately prior to entering the public storm drain system. Implement Best Management Practices (BMP's) at all times.
- j. Install "No Dumping, Drains to River" decal buttons on all catch basins.
- k. If sidewalks are pressure washed, debris shall be trapped and collected to prevent entry into the storm drain system. No cleaning agent may be discharged into the storm drain. If any cleaning agent or degreaser is used, wash water shall be collected and discharged to the sanitary sewer, subject to the approval of the sanitary sewer District.

- l. Include erosion control/storm water quality measures in the final grading plan that specifically address measures to prevent soil, dirt, and debris from entering the storm drain system. Such measures may include, but are not limited to, hydro seeding, gravel bags and siltation fences and are subject to review and approval of the City Engineer. If no grading plan is required, necessary erosion control/storm water quality measures shall be shown on the site plan submitted for an on-site permit, subject to review and approval of the City Engineer. The developer shall be responsible for ensuring that all contractors and subcontractors are aware of and implement such measures.
 - m. Sweep or vacuum the parking lot(s) a minimum of once a month and prevent the accumulation of litter and debris on the site. Corners and hard to reach areas shall be swept manually.
 - n. Ensure that the area surrounding the project such as the streets stay free and clear of construction debris such as silt, dirt, dust, and tracked mud coming in from or in any way related to project construction. Areas that are exposed for extended periods shall be watered regularly to reduce wind erosion. Paved areas and access roads shall be swept on a regular basis. All trucks shall be covered.
 - o. Clean all on-site storm drain facilities a minimum of twice a year, once immediately prior to October 15 and once in January. Additional cleaning may be required if found necessary by City Inspectors and/or City Engineer.
 - p. Install full trash capture device(s) in storm water catch basins that collect water from the project site. A "full trash capture device" is defined as any device or series of devices that traps all particles retained by a 5mm mesh screen and has a design treatment capacity of not less than the peak flow rate resulting from a one-year, one-hour, storm in the tributary drainage catchment area. Selected devices must be detailed on the building permit plan submittal and approved by Public Works prior to installation.
- 4. All impervious surfaces to be constructed as part of the project, including off-site roadways, are subject to C.3 requirements per State Regulations.

J. PROPERTY MAINTENANCE

- 1. The following requirements shall be the responsibility of the property owners of all parcels within the development:

- a. Maintenance of the storm water detention basin per the requirements of the O&M plan.
 - b. Compliance with all City Codes regarding property maintenance.
 - c. Maintenance of all slopes to property line.
 - d. Maintenance of all onsite and frontage landscaping.
2. A parking lot sweeping program shall be implemented on all parcels within the development that, at a minimum, provides for sweeping immediately prior to the storm season and prior to each storm event.
3. The project shall comply with AMC § 5-1.204. No final landscape and irrigation plans shall be considered complete without an approved maintenance agreement reflective of standards contained in AMC § 5-1.204(G). The approved maintenance agreement shall cover all of the parcels within the development.
4. The property maintenance agreement shall be recorded on all future parcels in the development.
5. The site shall be kept clean of all debris (boxes, junk, garbage, etc.) at all times.

K. FINAL IS/MND AND MITIGATION MONITORING AND REPORTING PROGRAM

1. The applicant shall comply with all mitigation measures identified in the Mitigation Monitoring and Reporting Program.
2. The applicant shall mitigate any impacts on wildlife, including State and Federally listed threatened and endangered species, and their habitat by compliance with one of the following:
 - a. Implementing, or making enforceable commitments to implement, all applicable mitigation measures in the project environmental documents, as well as any additional measures as may be required by the California Department of Fish & Wildlife (CDFW) or the U.S. Fish & Wildlife Service (FWS), and obtaining a letter(s) from CDFW and FWS stating that the project has fulfilled the requirements of applicable State and Federal wildlife protection laws and regulations; or
 - b. Complying with applicable terms and conditions of the ECCC HCP/NCCP, as determined in written "Conditions of Coverage" by the East Contra Costa County Habitat Conservancy (Conservancy), provided that the City has first entered into an agreement with the Conservancy for coverage of impacts to ECCC HCP/NCCP Covered Species; or
 - c. Complying with a habitat conservation plan and/or natural community conservation plan developed and adopted by the City, including payment of applicable fees, provided that CDFW and FWS have approved the conservation plan.

L. PROJECT SPECIFIC CONDITIONS

1. This vesting tentative map, final development plan, use permit and design review approval applies to the development of Acorn Business Park with commercial, self-storage and light industrial business park uses as depicted on the project plans submitted to the Community Development Department dated September 14, 2018. The use permit and design review approval only applies to Subsection B of the development plan. Future phases are required to obtain use permit and design review approval prior to development.
2. The three proposed driveways along the E. 18th Street frontage shall be designated for "right-in/right-out" access only. The applicant shall remove existing merge arrows and striping along the E. 18th Street project frontage and install a continuous right turn lane and dashed centerline to denote two westbound travel lanes. The applicant shall stripe a buffer between the proposed driveways and right turn pockets, and after the westernmost driveway, to direct vehicles to the two travel lanes. The applicant shall install a bike lane between the two travel lanes and the right turn pockets with skip striping for the bike lane in the transition area between the striped buffer and right turn pockets, as approved by the City Engineer.
3. Prior to building permit, the applicant shall submit a detailed plan of the entry gates for review and approval by the City Engineer. The design shall allow for adequate vehicle storage and turnaround. Gated entrances to the site shall include rapid access technology for Fire, Police and other emergency responders.
4. The applicant shall install City standard six-foot (6') wide sidewalk along the Drive-In Way and Sakurai Street frontages, as directed by the City Engineer.
5. All on-site curbs, gutters and sidewalks shall be constructed of Portland cement concrete.
6. Asphalt paving shall be designed for a minimum traffic index (TI) of 6.5 (due to anticipated truck traffic) or as determined during the engineering design process, and shall have a minimum slope of 2%, concrete paving shall have a minimum slope of 0.75%, and asphalt paving for identified accessible parking stalls and access routes may have a minimum slope of 1.5% and a maximum 2% slope, or as approved by the City Engineer.
7. All access drive aisles shall be constructed per current ADA and City standards, subject to review and approval by the City Engineer.
8. The applicant shall install and maintain parking lot and pathway lights and landscaping within the project area at no cost to the City.

9. The parking lot striping and signing plan shall be approved by the City Engineer.
10. All parking spaces shall be double-striped, and all parking lot dimensions shall meet minimum City of Antioch Municipal Code requirements.
11. The applicant shall show a turning template on the site plan verifying that trucks can safely ingress, egress, and successfully maneuver throughout the site.
12. All cracked, broken or damaged concrete curb, gutter and/or sidewalks along 18th Street (in the public right-of-way along the project frontage) shall be removed and replaced as required by the City Engineer and at no cost to the City.
13. The future buildings on Subsections A and C will require use permit and design review approval prior to construction.
14. The approved signage only applies to the self-storage facility and freeway-oriented monument sign. A revised sign program detailing the letters, panel materials, building signage and illumination shall be submitted for Zoning Administrator approval prior to issuance of building permits for the sign.
15. The sections of self-storage buildings C, J and G that are adjacent to the property line shall have a similar architectural treatment as building H. A revised elevation shall be submitted with the building permit submittal and shall be subject to the approval of the Community Development Director.
16. The conifer and eucalyptus trees shown on the landscape plan shall be replaced with drought tolerant trees consistent with the Citywide Design Guidelines plant palette and subject to the approval of the Community Development Director. A revised landscape plan shall be submitted with the building permit submittal

* * * * *

I HEREBY CERTIFY that the foregoing recommendation was passed and adopted by the Planning Commission of the City of Antioch, at a regular meeting thereof, held on the 15th day of May, 2019 by following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

FORREST EBBS

Secretary to the Planning Commission

ATTACHMENT “D”

ACORN BUSINESS PARK

SIGN PROGRAM

TABLE OF CONTENTS

SN - 1	COVER SHEET
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SN - 5	PARCEL 1 - SCHEME B - HOTEL/COMMERCIAL
SN - 6	PARCEL 2 - SELF STORAGE
SN - 7	PARCEL 3 - EMPLOYMENT CENTER


RECEIVED

JUL 31 2018

CITY OF ANTIOCH

COMMUNITY DEVELOPMENT

ACORN BUSINESS PARK

DWG. NO.: SN-1	DATE: 06-11-18	JOB NO.: JM102	920 First Street, Suite 202, Benicia, CA 94510 www.tw-architects.com Tel: (707) 747-1231	
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ACORN BUSINESS PARK

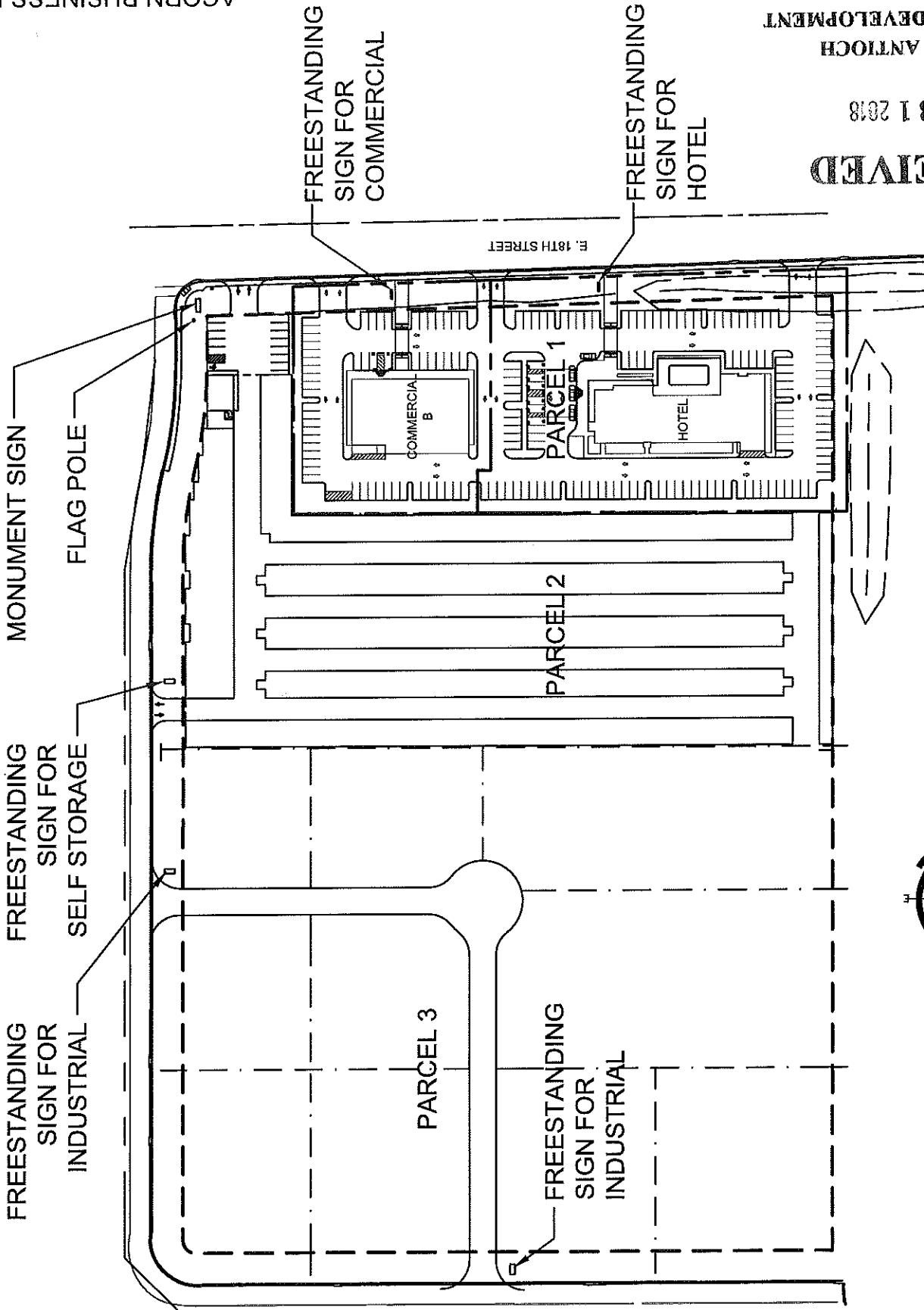
COMMUNITY DEVELOPMENT

CITY OF ANTIOCH

JUL 31 2018

RECEIVED

SITE PLAN



ACORN BUSINESS PARK

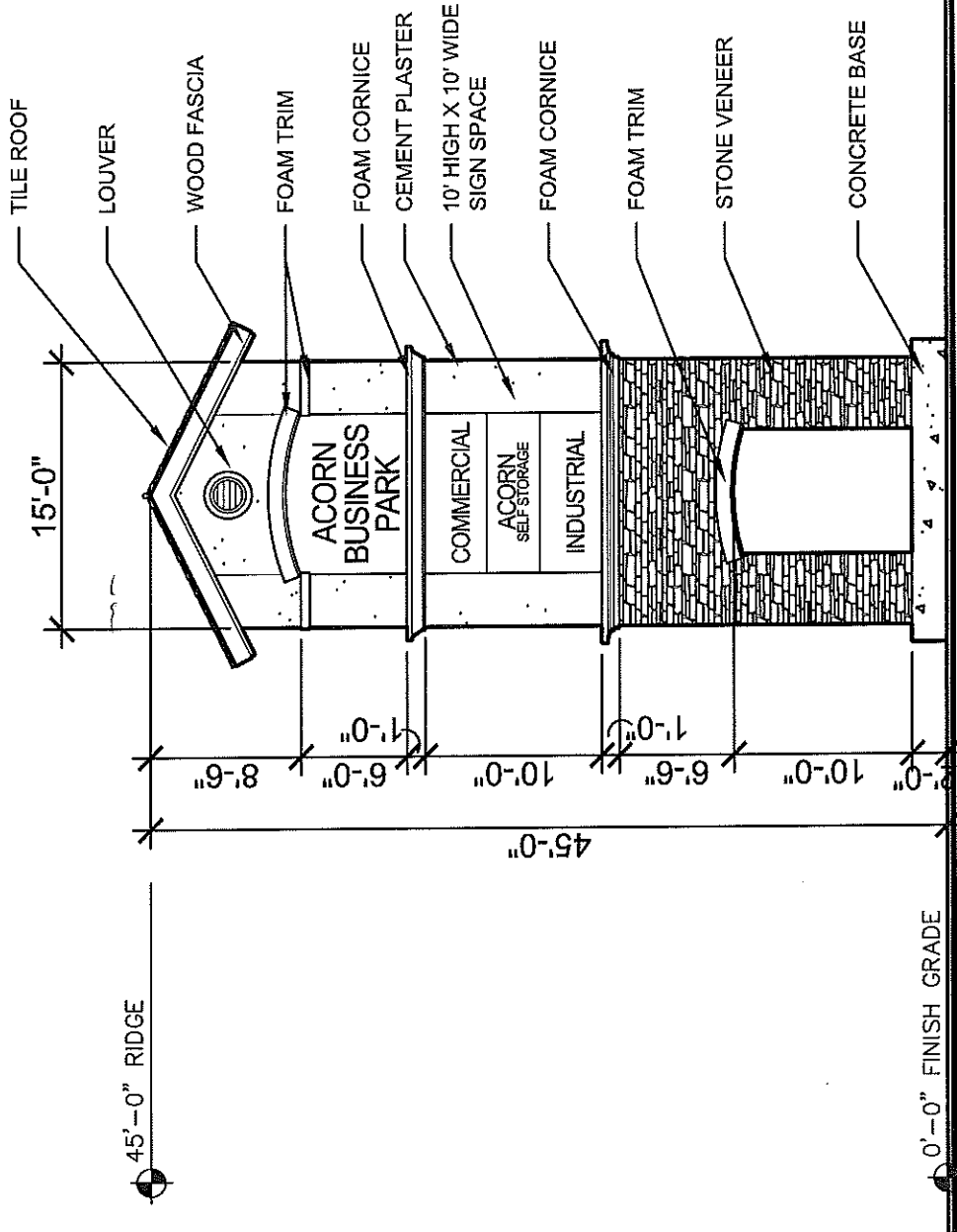
CITY OF ANTIOCH
COMMUNITY DEVELOPMENT

RECEIVED
JUL 31 2018

SIGN CALCULATIONS

ALLOWABLE AREA:
SIGN AREA = 10X10 = 100 S.F.
2 SIDES = 200 S.F. TOTAL

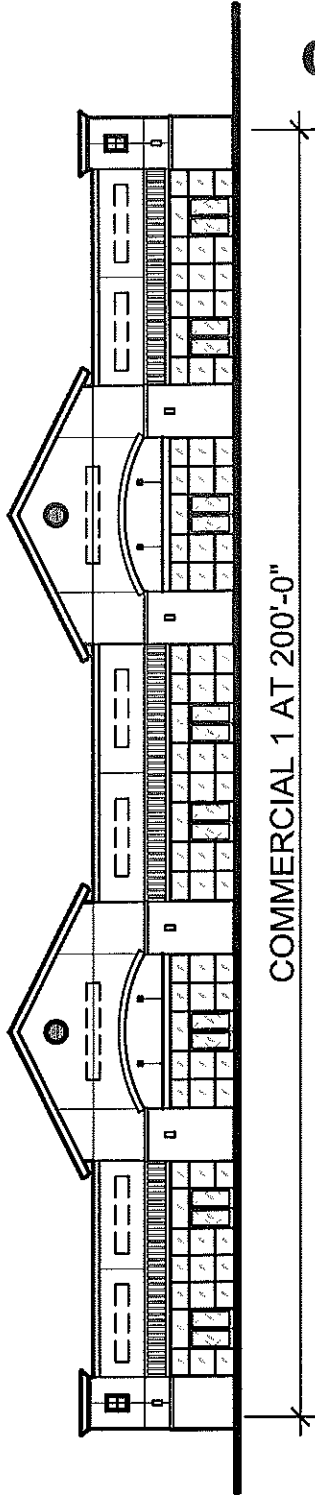
SIGN ALLOCATIONS
PARCEL 1 = 66.7 S.F.
PARCEL 2 = 66.7 S.F.
PARCEL 3 = 66.7 S.F.
TOTAL 200 S.F.



MONUMENT SIGN

SCALE: 3/32" = 1'-0"

PARCEL 1 - SCHEME A - COMMERCIAL



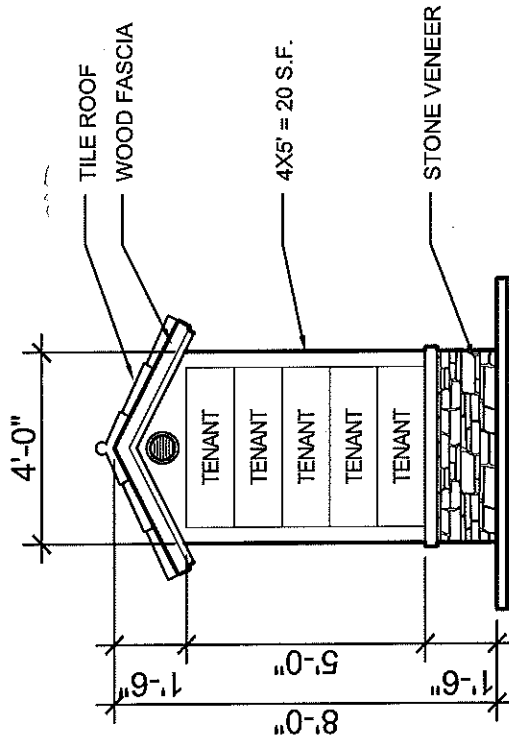
RECEIVED

JUL 31 2018

CITY OF ANTIOCH

COMMUNITY DEVELOPMENT

ACORN BUSINESS PARK



FREESTANDING SIGN

SIGN CALCULATIONS - COMMERCIAL:

ALLOWABLE SIGN AREA PER SECTION 9.5.513:

2 S.F. PER 1 L.F. OF BUILDING FRONTAGE

200 S.F. X 2 = 400 S.F. ALLOWED

PROPOSED SIGN AREA:

BUILDING SIGN = 2 X 18' = 36 S.F.

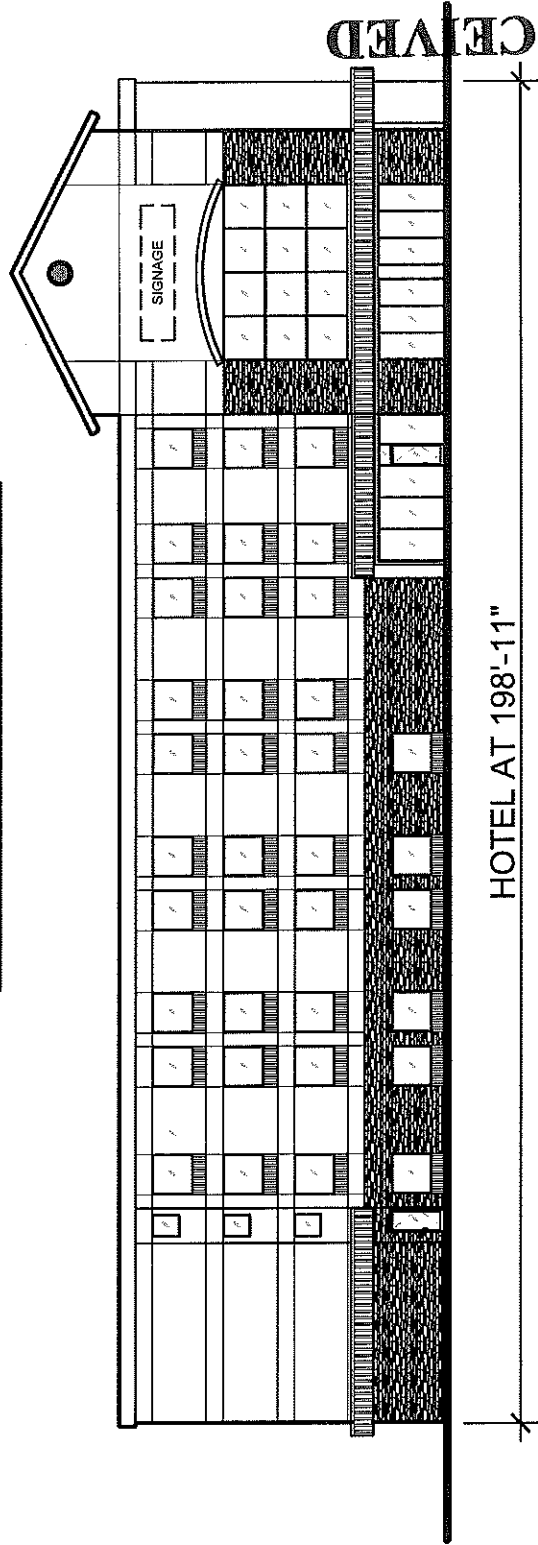
8 X 36 S.F. = 288 S.F.

FREESTANDING SIGN = 4 X 5 = 20 S.F. X 2 SIDES = 40 S.F.

MONUMENT SIGN = 1/3 X 200 S.F. = 67 S.F.

TOTAL SIGNAGE = 395 S.F.

PARCEL 1 - SCHEME B - HOTEL



RECEIVED
JUL 31 2018

CITY OF ANTIOCH

COMMUNITY DEVELOPMENT ACORN BUSINESS PARK

DWG. NO.: SN-5	DATE: 06-11-18	JOB NO.: JMI02	920 First Street, Suite 202, Benicia, CA 94510
			www.tlw-architects.com
			Tel: (707) 747-1231



SIGN CALCULATIONS - HOTEL:

ALLOWABLE SIGN AREA PER SECTION 9.5.513:

2 S.F. FOR 1 L.F. OF FRONTAGE

199 X 2 = 398 S.F. ALLOWED

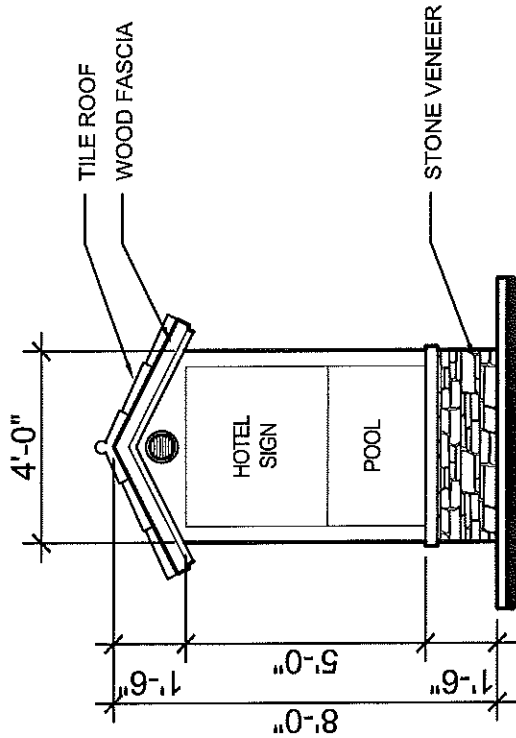
PROPOSED SIGN AREA:

BUILDING SIGN = 5 X 20 = 100 S.F.

FREESTANDING SIGN = 5 X 4 = 20 S.F. X 2 SIDES = 40 S.F.

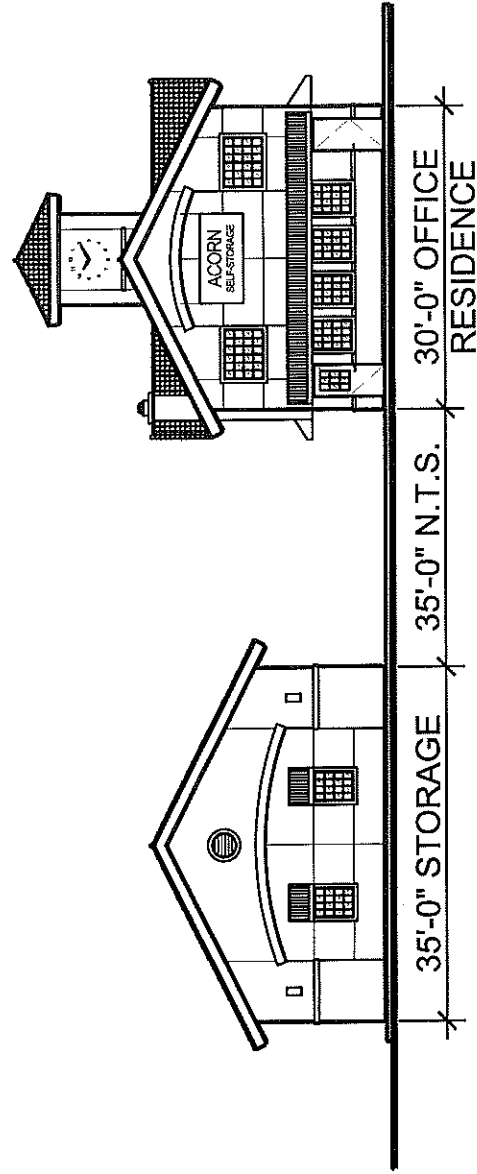
MONUMENT SIGN = 67 S.F.

TOTAL SIGNAGE = 207 S.F.



FREESTANDING SIGN

PARCEL 2 - SELF STORAGE



RECEIVED

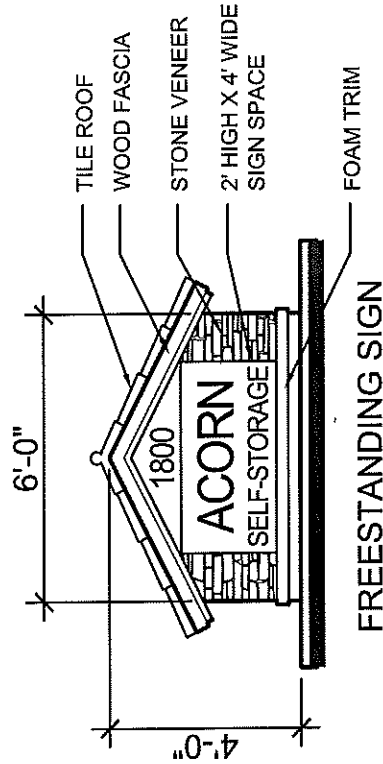
JUL 31 2018

CITY OF ANTIOCH

COMMUNITY DEVELOPMENT

ACORN BUSINESS PARK

DWG. NO.: SN-6	DATE: 06-11-18	JOB NO.: JMI02	920 First Street, Suite 202, Benicia, CA 94510 www.tlw-architects.com Tel: (707) 747-1231
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SIGN CALCULATIONS - SELF STORAGE:

ALLOWABLE SIGN AREA PER SECTION 9.5.514:

2 S.F. PER 1 L.F.

60' X 2 = 120 S.F. ALLOWED

PROPOSED SIGN AREA:

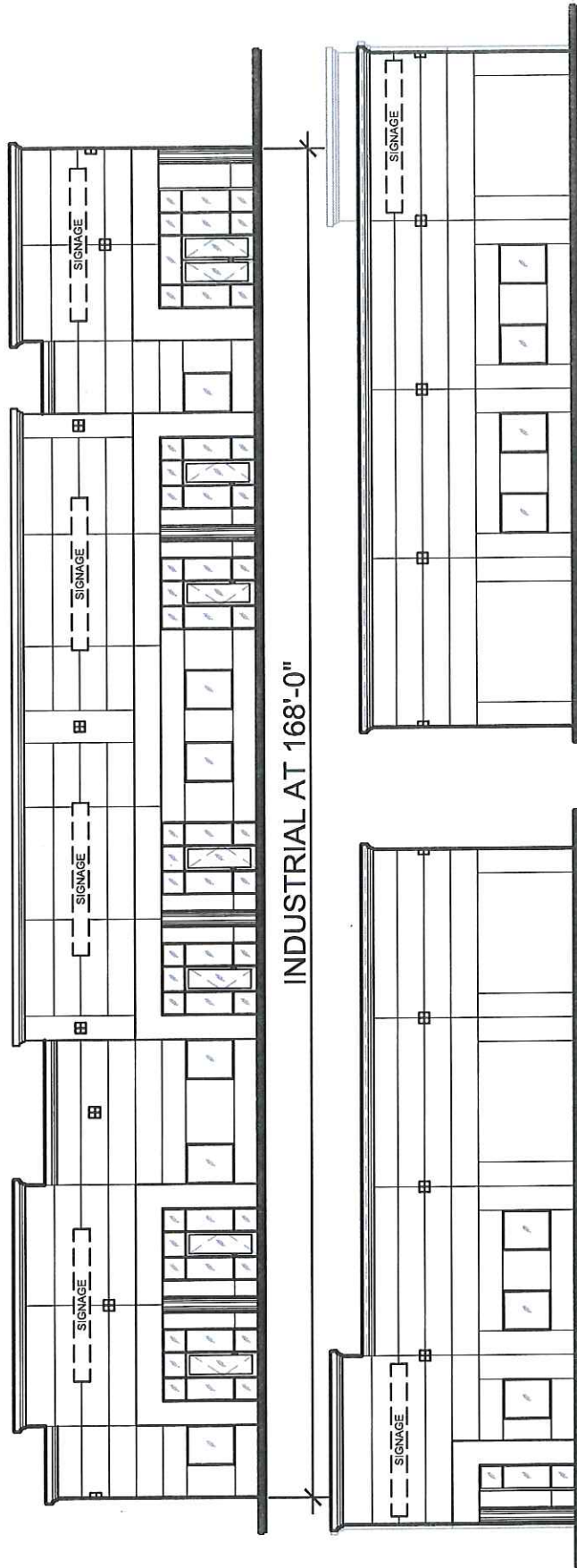
BUILDING SIGN = 2.4 X 5 = 12 S.F.

GROUND SIGN = (2) 2 X 4 = 16 S.F. X 2 SIDES = 32 S.F.

MONUMENT SIGN = 67 S.F.

TOTAL SIGNAGE = 111 S.F.

CITY OF ANTIOCH COMMUNITY DEVELOPMENT 920 First Street, Suite 202, Benicia, CA 94510 Tel: (707) 747-1231 www.tlw-architects.com		JOB NO.: JMI02	DATE: 06-11-18	DWG. NO.: SN-7
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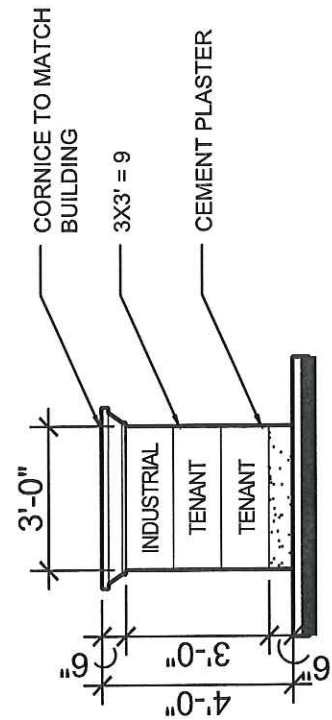
RECEIVED

JUL 1 1968

BUILDING SIGN = 2 X 25 = 50 X 4 = 200 S.F.

MONUMENT SIGN = 67 S.F.

TOTAL SIGNAGE = 331 S.F.



FREESTANDING SIGN

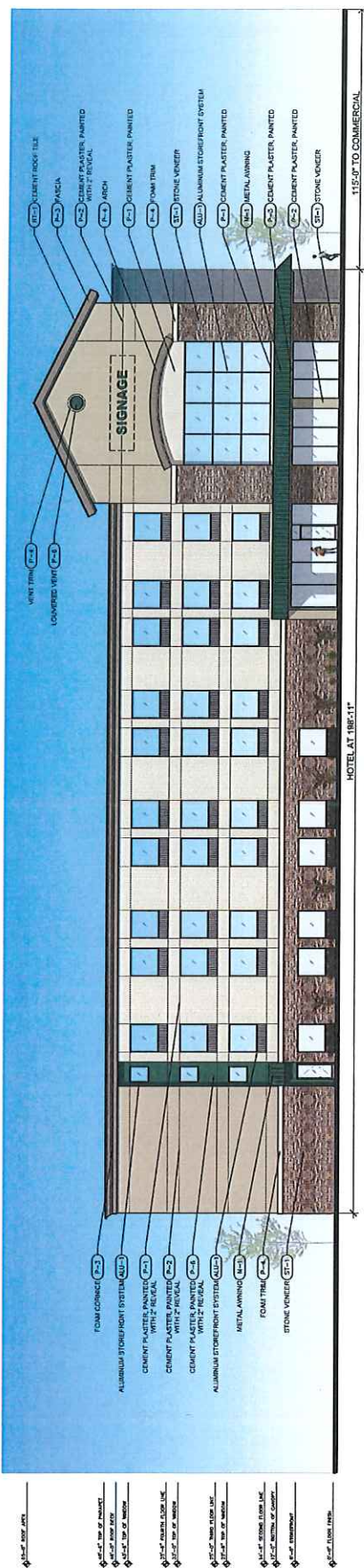
ATTACHMENT “E”

DATE	08/14/2018
REV. NO.	REV. DATE

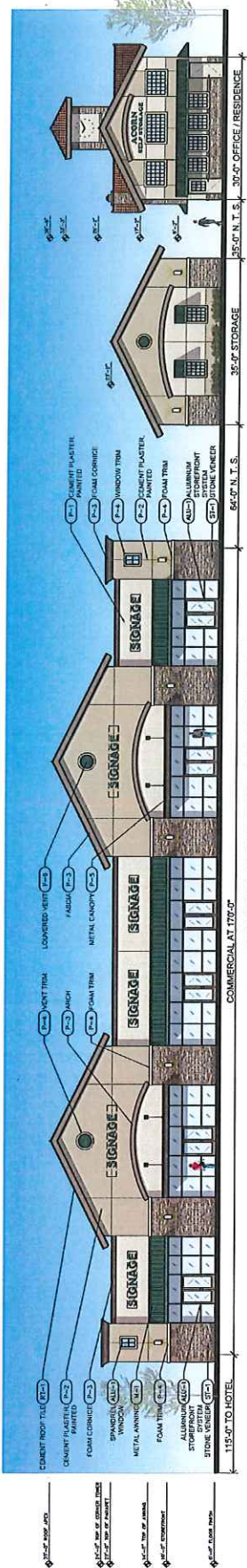
HOTEL - COMM'L
& STORAGE
ELEVATIONS

DR - 4

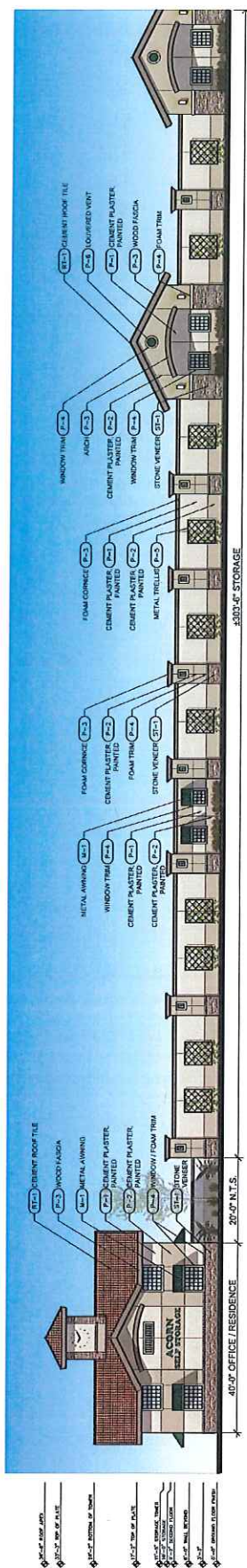
JOB NO.: JMI02



SOUTH ELEVATION - LOT A (EAST 18TH STREET)
SCALE: 3/32" = 1'-0"




SOUTH ELEVATION - LOT B / STORAGE (EAST 18TH STREET)
SCALE: 3/32" = 1'-0"




EAST ELEVATION - STORAGE (DRIVE-IN WAY)
SCALE: 3/32" = 1'-0"

NOTE: REFER TO SHEET DR-7 FOR BUILDING MATERIALS & COLORS.

**STAFF REPORT TO THE PLANNING COMMISSION
FOR CONSIDERATION AT THE MEETING OF MAY 15, 2019**

Prepared by: Zoe Merideth, Associate Planner 
Michael Johnston, Telecom Law Firm

Reviewed by: Alexis Morris, Planning Manager 

Date: May 10, 2019

Subject: Amending Chapter 5 of Title 9 of the Antioch Municipal Code to Establish Regulations for Wireless Communications Facilities (Z-18-07)

RECOMMENDATION

It is recommended that the Planning Commission approve the attached resolution recommending that the City Council adopt the ordinance (Exhibit A to the resolution) amending chapter 5 of title 9 of the Antioch Municipal Code establishing regulations for wireless communications facilities (WCFs).

ENVIRONMENTAL

Pursuant to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, the proposed ordinance is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, the proposed ordinance is not subject to CEQA.

Even if the proposed ordinance qualified as a "project" subject to CEQA, pursuant to CEQA Guidelines § 15061(b)(3) (or the so-called "common sense exemption"), there is no possibility that this project will have a significant impact on the physical environment. The proposed ordinance merely amends the Antioch Municipal Code to authorize the adoption of regulations related to WCFs. The proposed ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new WCF or change to an existing WCF would be subject to additional environmental review on a case-by-case basis. Accordingly, the proposed ordinance would be exempt from CEQA under the common sense exemption.

BACKGROUND

The City of Antioch has never adopted an ordinance specifically regulating wireless communications facilities such as cell towers. Historically, the City has required a Use Permit and Design Review applications for new WCFs located on privately owned property. On City owned property and within the public right-of-way, City staff has

negotiated leases with wireless providers and reviewed and approved the facilities. The City has been using general provisions in the zoning code, such as the maximum height allowed within the subject zoning district, to review proposed WCFs. Over time, WCFs have become smaller and more numerous, telecommunication law has become more complex, and federal regulations have limited local control over WCFs; the City has become increasingly vulnerable to litigation and a loss of local control.

Due to the complexities and changing regulatory landscape surrounding WCFs, the City retained Telecom Law Firm to draft an ordinance and policy that protect the City's aesthetic character while meeting the requirements of state and federal law. Telecom Law Firm and staff worked through a number of drafts of the new ordinance and policy. After creating a final draft of the policy, staff posted the draft to the City's website and invited industry stakeholders to comment. The City received three response comments and made minor changes to the policy in response to these comments. The final draft of the policy is included as Attachment B.

WIRELESS REGULATIONS

Various federal and state laws affect traditionally local land-use discretion over wireless facilities. The following discussion provides a summarized explanation for the key regulations applicable to wireless deployments.

The Telecommunications Act of 1996

In 1996, Congress adopted the Telecommunications Act to, among many other things, preserve state and local land-use authority and at the same time encourage and facilitate the deployment of wireless service facilities. Local governments retain all their traditional authority except that local regulations cannot (1) prohibit or effectively prohibit personal wireless services; (2) unreasonably discriminate among functionally equivalent services; or (3) regulate based on environmental impacts from radiofrequency (RF) emissions.

In addition, local decisions must be made within a reasonable time and any denial requires a written decision based on substantial evidence in the written record. The Federal Communications Commission (FCC) defines a "presumptively reasonable" time, known as the "shot clock," for application review as 90 days for "collocations" and 150 days for non-collocations, after which time the applicant may seek expedited judicial review. As described below, California law provides an additional remedy to applicants in the event that the local reviewing agency fails to act within the designated shot clock. Moreover, the FCC recently adopted new rules with respect to "small wireless facilities" that dramatically shorten the applicable shot clocks and impose new limitations on local regulations.

Section 6409(a)

In 2012, Congress enacted Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act that requires state and local governments to approve collocations and modifications to existing wireless towers and base stations that do not substantially change in the site's physical dimensions. In 2014, the FCC defined key terms in this

provision, including (1) a definition for “substantial change” that preempts all state and local regulations except those related to public health and safety; (2) new limitations on materials and disclosures that municipalities can require for their review; and (3) a deemed-granted remedy for a failure to approve or deny the application within 60 days.

The FCC Small Cell Order

On September 26, 2018, the FCC adopted new rules that further limit local authority to regulate “small wireless facilities” as that term is defined by the FCC. The rules, which became fully effective on April 15, 2019, require the City to review applications for small wireless facilities (or small cells) faster and consistent with the FCC’s national standard for an effective prohibition of personal wireless services. These rules are part of a larger rulemaking that aims to reinterpret the Telecommunications Act of 1996 and prohibit actual and effective local moratoria on infrastructure deployments.

In addition, the FCC provides that a local small cell regulation causes an effective prohibition in violation of federal law unless the regulation is (1) reasonable; (2) no more burdensome than regulations imposed on similar infrastructure deployments; (3) objective; and (4) published in advance. Reasonable regulations are those that are technically feasible and reasonably directed to avoiding or remedying the “intangible public harm” (as described by the FCC) of unsightly or out-of-character deployments. Although the FCC declared that minimum spacing or undergrounding requirements would potentially violate the new test, the FCC provided little guidance as to the scope of specific local regulations that would likely be considered to be preempted. The regulations mean that the City may not prohibit placement of small cells within the public right-of-way or on publicly-owned and operated utility poles but can prescribe reasonable standards for their placement and design.

Applicable California Law

State law further limits local authority over all wireless facilities regardless of the proposed location and grants special rights to applicants that propose facilities in the public rights-of-way. In 2015, the California Legislature adopted AB 57 (Quirk), which automatically deems any non-small wireless facility permit application approved if (1) the local government failed to approve or deny the request within the applicable FCC timeframe and (2) the public notices for the application were satisfied.

With respect to the public rights-of-way, California law grants telephone corporations registered with the Public Utilities Commission a limited right to use public roads in a manner that does not “incommode” the public use of the rights-of-way. This right to use the public rights-of-way is subject to local governments’ reasonable time, place and manner regulations. Both federal and state courts hold that California preserves local authority to regulate against both physical obstructions and aesthetic impacts. Although state law generally preserves local aesthetic authority, municipalities must reconcile their authority with the FCC rules.

PROPOSED ORDINANCE AND POLICY

In order to react to changing technology and regulations, Telecom Law Firm and staff have created a Wireless Communications Ordinance and a referenced City Council Policy for Wireless Communications Facilities. First, the attached Planning Commission resolution (Attachment A) recommends City Council adopt an ordinance (Exhibit A) updating the chapter 5 of title 9 of the Antioch Municipal Code. The proposed language that will be found in the Antioch Municipal Code states that all WCFs are subject to a permit as specified in the City Council Policy for Wireless Communications Facilities. The ordinance also updates the land use table to add a wireless communications facilities use category and amends the height and setback table to address wireless communications facilities. Second, in addition to the ordinance, staff will be asking the City Council to adopt the attached policy by resolution (Attachment B). The proposed City Council Policy includes the design standards and permit requirements for different WCFs, which are described in more detail below.

Telecom Law Firm and staff believe creating a City Council Policy that can be amended by City Council resolution rather than by ordinance will be more prudent in the long-run as wireless communications technology and regulations evolve quickly. For example, since 2012, at least four major changes in state and federal law have occurred, the most recent FCC regulations are pending review in the Court of Appeals for the Ninth Circuit, and the FCC is poised to adopt more rules limiting local authority. In addition, wireless technology and network architecture has begun the shift from 4th generation (or 4G) to 5G. The wireless industry estimates that 300,000 small cells will be deployed nationwide in the next three to four years to support 5G technologies. This is approximately the same total number of wireless facilities in existence prior to small cells. In sum, the policy approach provides flexibility to adopt enforceable regulations in response to changes in law and technology, while preserving public input through the City Council resolution process.

Proposed Policy

The proposed policy is divided into four main sections for the four types of facilities: “macro facilities” on private property and city-owned real property, eligible facilities requests, temporary wireless facilities, and small wireless facilities. To the extent allowed by federal and state law, the proposed policy sets aesthetic and siting standards for WCFs in each of the four sections, arranged by WCF type. The specific standards and procedures found in the policy for each type of facility are discussed below.

- “Macro facilities” have historically been the typical WCF. These are sites that include antenna facilities on towers, monopoles and buildings. Faux pine trees with antennas concealed within the branches and the facilities at the City’s water towers are examples of macro facilities. These facilities provide services to a larger geographic area and number of users.
- Eligible facilities requests are requests to change or add equipment to an existing WCF that meets the specific requirements of Section 6409 of the Middle-Class Tax

Relief and Job Creation Act of 2012. If the proposed modification to the existing facility meets all of the Section 6409 requirements, the City is required to approve the modification.

- Temporary wireless facilities are portable wireless facilities intended to provide services on a temporary or emergency basis, such as during a large-scale special event or during a disaster that disables permanent facilities.
- Small wireless facilities are specifically defined by the FCC and are smaller in size, generally installed closer to ground level, and cover a smaller geographic area than a macro facility. These facilities complement macro facilities and add capacity to a provider's network. Small cells can be mounted on existing utility poles, light poles, and buildings. As the latest 5G technology is deployed, more small cell sites will be needed to meet growing data demands and will become more common. Several small cell sites have already been approved within the City pursuant to existing license agreements to support current 4G networks.

Application Materials

The policy includes the minimum application materials that an applicant must provide. These requirements are tailored to the WCF type. Some of the required items include: a completed application form, applicable fee, a site plan with dimensions, a Radio Frequency compliance report. Due to the limited "shot clock" the City has to review small cell wireless applications under FCC regulations, a number of additional application materials are required, including a site survey, and construction drawings. These additional documents allow staff to fully review and permit the facility while meeting federal requirements.

Approval Process

All new, substantially changed, and eligible facilities would require either an administrative use permit, a use permit and design review, or a 6409 approval. Macro facilities that meet applicable development standards and location preferences would be subject to a use permit and design review with Zoning Administrator review. Macro facilities that are within a discouraged location, that do not meet the design standards, or that are referred to the Planning Commission by the Zoning Administrator would be subject to a use permit and design review with Planning Commission review. Eligible facilities requests would be subject to a 6409 approval through an administrative review process. Temporary wireless facilities would require an administrative use permit, subject to the Zoning Administrator's review and approval. Finally, a small wireless facility would be subject to an administrative use permit and/or an encroachment permit pursuant to a license agreement.

Location Preferences

The proposed policy establishes preferred locations to guide the location of new facilities within the City. When evaluating an application, staff will review if the proposed site is in a preferred location, or if more preferred locations are technically feasible and potentially available. The most preferred locations are industrial districts and industrial uses. Other

preferred locations are public/institutional districts and commercial districts. Discouraged locations for the larger, macro sites are single family residential districts and uses, the Downtown Specific Plan area, and open spaces not owned or controlled by the City. For small cell facilities, residential districts along local roads and any locations in any district within 250 feet of single-family residential uses are the least preferred location. While some locations are less preferred than other locations, the City cannot prohibit WCFs from being placed in a less preferred location if the provider shows that another, more preferred location is not technically feasible.

Design Standards

Design standards provide specific standards to address the appearance of macro and small facilities. Height standards have been tailored to the specific facility type and WCFs must incorporate concealment as part of the design. In the case of small wireless facilities, antennas generally must be shrouded. Macro facilities must incorporate concealment elements, such as mimicking a tree in an open space location or matching architectural features on a building. Landscape standards, site security measures, and lighting are also included in the policy.

Standard Conditions of Approval

Staff and Telecom Law Firm have developed a list of standard conditions of approval for each facility type. These standard conditions have been incorporated into the policy and, as a safeguard, automatically attach to any permit approval whether approved by the City or deemed approved by law. Standard conditions ensure that facilities are subject to the same, high operation and maintenance standards, dependent on the facility type. These conditions include site maintenance, adverse impacts on other properties, compliance with laws, contact information, permit revocation, indemnification, and abandoned wireless facilities.

PUBLIC COMMENTS

On March 26, 2019, the City posted the draft wireless policy online for public comment. The City received three comment letters from representatives of telecommunications companies in response to the draft policy (Attachments C, D, E). Many of the comments received were focused on increasing the allowed height and volume of equipment, increasing the number of locations facilities were encouraged to locate, and relaxing undergrounding equipment requirements. Broadly, these comments are focused on aesthetic character of the WCFs, which state law and the FCC allow cities to regulate. The aesthetic standards in the policy were developed to maintain the aesthetic character of Antioch with guidance from Telecom Law Firm. Therefore, except as outlined below, staff did not update the policy in response to comments regarding aesthetics. A number of the comments were about administrative items, including public noticing and fees. Staff and Telecom Law Firm developed the policy to be consistent with all applicable laws and existing City policies and practices. Therefore, staff did not amend the policy to include the commenters' suggestions.

The following describes the changes that Telecom Law Firm and staff made to the policy in response to suggestions from the comment letters. First, the site survey requirement for small wireless facilities in Policy § VIII(C)(1)(c) was reduced from 250 feet from the project site to 50 feet. This change is consistent with other types of development applications, such as a Planned Development application. Second, in Policy § VIII(H)(2)(a), the height limit for small wireless facilities in the public right-of-way was updated to allow new facilities to extend an additional foot from the previous policy to five feet above existing support structures. Third, to potentially accommodate new 5G technologies, the City may allow unshrouded antennas if evidence is shown that shrouding would be technically infeasible, as described in Policy § VIII(H)(2)(b). Fourth, the small wireless facilities in the right-of-way section in Policy § VIII(H)(2)(k) was updated to allow new aerial lines to be installed if there are already existing aerial lines present. This change will allow the facilities to have the same character as existing facilities in the area. Fifth, Policy § VIII(H)(3)(e) was updated to provide greater flexibility for small wireless facilities outside the public right-of-way that would require installation of new poles to allow a pole's base enclosure diameter to not exceed twenty inches, an increase of four inches over the draft policy. Sixth, staff updated the small cell facilities' location preferences to clarify the type of residential uses that were least preferred for deployment in Policy § VIII(G)(2). Finally, minor grammatical changes and clerical edits were made throughout the document.

ATTACHMENTS

- A. Resolution and Exhibit A
- B. Proposed City Council Policy for Wireless Communications Facilities
- C. AT&T Comment Letter
- D. ExteNet Comment Letter
- E. Verizon Comment Letter

ATTACHMENT “A”

RESOLUTION NO. 2019-**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE
AMENDING CHAPTER 5 OF TITLE 9 OF THE ANTIOCH MUNICIPAL
CODE TO ESTABLISH REGULATIONS FOR WIRELESS
COMMUNICATIONS FACILITIES**

WHEREAS, the Planning Commission of the City of Antioch did receive an application from the City of Antioch requesting text amendments to Chapter 5 of Title 9 of the Antioch Municipal Code (Z-18-07); and,

WHEREAS, pursuant to California Environmental Quality Act (CEQA) Guidelines § 15378 and California Public Resources Code § 21065, the proposed text amendments are not subject to CEQA and not a "project" because their adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Even if the text amendments qualified as a "project" subject to CEQA, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. The text amendments do not directly or indirectly authorize or approve any actual changes in the physical environment and individual applications for wireless facilities would be subject to additional environmental review on a case-by-case basis; and,

WHEREAS, the Planning Commission duly gave notice of public hearing as required by law; and,

WHEREAS, on May 15, 2019, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary.

NOW, THEREFORE BE IT RESOLVED that the Planning Commission, after reviewing the staff report and considering testimony offered, does hereby recommend that the City Council **ADOPT** the attached ordinance (Exhibit A) amending Chapter 5 of Title 9 of the Antioch Municipal Code to establish regulations for wireless communications facilities.

* * * * *

I HEREBY CERTIFY the foregoing resolution was duly adopted by the Planning Commission of the City of Antioch, County of Contra Costa, State of California, at a regular meeting of said Planning Commission held on the 15th day of May, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Forrest Ebbs
Secretary to the Planning Commission

EXHIBIT A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH AMENDING CHAPTER 5 OF TITLE 9 OF THE ANTIOCH MUNICIPAL CODE ESTABLISHING REGULATIONS FOR WIRELESS COMMUNICATIONS FACILITIES

WHEREAS, pursuant to Article XI, section 7 of the California Constitution and sections 36931 *et seq.* of the California Government Code, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws;

WHEREAS, the City of Antioch (the "City") has not previously adopted specific regulations applicable to wireless communications facilities ("WCFs"), but has generally required a use permit consistent with the development standards and procedures in Chapter 5 of Title 9 of the Antioch Municipal Code;

WHEREAS, significant changes in federal and State law that affect local authority over WCFs have occurred, including but not limited to the following:

- On November 18, 2009, the Federal Communications Commission ("FCC") adopted a declaratory ruling (the "Shot Clock"), which established presumptively reasonable timeframes for State and local governments to act on applications for WCFs;
- On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act ("Section 6409(a)"), which mandated that State and local governments approve certain modifications and collocations to existing WCFs;
- On October 17, 2014, the FCC adopted a report and order that, among other things, implemented new limitations on how State and local governments review applications covered by Section 6409(a), established an automatic approval for such applications when the local reviewing authority fails to act within 60 days, and also further restricted generally applicable procedural rules under the Shot Clock. This report and order effectively preempted local moratoria on WCFs by finding that the Shot Clock continues to run even when a valid moratorium is adopted;
- On October 9, 2015, California adopted Assembly Bill No. 57 (Quirk), which deemed approved any WCF applications when the local reviewing authority fails to act within the Shot Clock timeframes;

- On August 2, 2018, the FCC adopted a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled *Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 7705 (rel. Aug. 3, 2018) (the “August Order”), that formally prohibited express and *de facto* moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a) and directed the Wireline Competition Bureau and the Wireless Telecommunications Bureau to hear and resolve all complaints on an expedited basis;
- On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, --- FCC Rcd. ---, FCC 18-133 (rel. Sep. 27, 2018) (the “September Order”), which, among many other things, creates a new regulatory classification for small wireless facilities, alters existing “shot clock” regulations to require local public agencies to do more in less time, establishes a national standard for an effective prohibition that replaces the existing “significant gap” test adopted by the United States Court of Appeals for the Ninth Circuit and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition.

WHEREAS, in addition to the changes described above, local authority may be further impacted by other pending legislative, judicial and regulatory proceedings, including but not limited to:

- On June 28, 2018, United States Senator John Thune introduced and referred to the Senate Committee on Commerce, Science and Transportation the “STREAMLINE Small Cell Deployment Act” (S. 3157) that, among other things, would apply specifically to small cell WCFs and require local governments to review applications based on objective standards, shorten the Shot Clock timeframes, require all proceedings to occur within the Shot Clock timeframes, and provide a “deemed granted” remedy for failure to act within the applicable Shot Clock;
- Further orders and/or declaratory rulings by the FCC from the same rulemaking proceeding as the August Order and September Order; and
- Multiple petitions for reconsideration and judicial review filed by state and local governments against the August Order and September Order, which could cause the rules in either order to change or be invalidated.

WHEREAS, given the rapid and significant changes in federal and State law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with federal and State law, the City Council desires to amend Antioch Municipal Code Title 9, Chapter 5 to allow greater flexibility and responsiveness to new federal and State laws in order to

preserve the City's traditional authority to the maximum extent practicable (collectively, the "Amendments");

WHEREAS, on May 15, 2019, the Planning Commission held a duly noticed public hearing on the Amendments, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record, and recommended that the City Council adopt the Amendments;

WHEREAS, on [month] [day], 2019, the public notice required by Antioch Municipal Code § 9-5.2806 was given;

WHEREAS, on [month] [day], 2019, the City Council held a duly noticed public hearing on the Amendments, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ANTIOCH DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings.

The City Council finds that:

- A. The facts set forth in the recitals in this Ordinance are true and correct and incorporated by reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Ordinance.
- B. The Amendments are consistent with the General Plan, Antioch Municipal Code and applicable federal and State law.
- C. The Amendments will not be detrimental to the public interest, health, safety, convenience or welfare.

SECTION 2. CEQA.

Pursuant to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that this Ordinance is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, this Ordinance is not subject to CEQA.

Even if this Ordinance qualified as a "project" subject to CEQA, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), (the so called "common sense exemption") there is no possibility that this project will have a significant impact on the physical environment. This Ordinance merely amends the Antioch Municipal Code to authorize

the adoption of regulations related to WCFs. This Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new WCF or change to an existing WCF would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this Ordinance would be exempt from CEQA under the common sense exemption.

SECTION 3. Amending Antioch Municipal Code Title 9, Chapter 5.

Antioch Municipal Code 9-5.3846 WIRELESS COMMUNICATIONS FACILITIES is adopted to read as follows:

All wireless communications facilities, and any modifications, collocations, expansions or other changes to existing wireless communications facilities, are subject to a permit as specified in City Council Policy for Wireless Communication Facilities, which may be adopted, amended and/or repealed by City Council resolution. All wireless communications facilities shall comply with City Council Policy for Wireless Communication Facilities.

SECTION 4. Amending Antioch Municipal Code Title 9, Chapter 5, Article 3.

Antioch Municipal Code Table 9-5.3803 is amended to read as follows:

	RE RR	R-4 R-6	R-10	R-20	R-25	R-35	PB C	C-0	C-1	C-2	C-3	MC R	WF	OS	M-1	M-2	H	ES ⁹	CB
RESIDENTIAL USES																			
Day-care centers (§ 9-5.3832)	U	U	U	U	U	U	U	U	U	U	U	U	—	—	U	—	U	*	—
Day-care: large family (§ 9-5.3818)	A	A	A	A	A	A	—	—	—	—	—	—	—	—	—	—	—	*	—
Day-care: small family (§ 9-5.3817)	P	P	P	P	P	P	—	—	—	—	—	—	—	—	—	—	—	*	—
Senior Group Housing	U	U	U	U	U	U	—	—	—	—	—	U	—	—	—	—	U	*	—
Family care home	P	P	P	P			—	—	—	—	—	U	—	—	—	—	—		—
Fraternity-sorority house/dormitory	U	U	U	U	U	U	—	—	—	—	—	U	—	—	—	—	—	*	—
Home occupations	A	A	A	A	A	A						A	—	—	—	—	—	*	—
Hospice ¹⁰	—	—	U	U	U	U	—	U	U	—	—	U	—	—	—	—	U ²	*	—
Manufactured, modular home; mobile home (§ 9-5.3804)	P	P	P	—	—	—	—	—	—	—	—	—	—	—	—	—	—	*	—
Mobile home park	—	—	U	U	U	U	—	—	—	—	—	—	—	—	—	—	—	*	—

Multiple-family: condominium, apartment, town-house (§ 9-5.3820)	—	—	U	U	P _U ¹¹	P _U ¹¹	—	—	—	—	—	U	—	—	—	—	U ²	*	—
Recreational vehicle park (§ 9-5.3830)	—	—	—	—	—	—	—	—	—	—	U	—	U	—	—	U	—	*	—
Residential care facility ¹⁰	—	—	U	U	U	U	—	U	U	—	—	U	—	—	—	—	U	*	—
Residential hotel	—	—	U	U	U	U	—	U	U	U	U	U	—	—	—	—	—	*	—
Room & boarding house	—	—	U	U	U	U	—	U	U	U	U	U	—	—	—	—	—	*	—
Second residential unit (§ 9-5.3805)	A	A	A	A	A	A	—	—	—	—	—	—	—	—	—	—	—	*	—
Single-family dwelling	P	P	U	P ¹	P ¹	P ¹	—	—	—	—	—	U	U	—	—	—	—	*	—
Tobacco and paraphernalia retailers (§ 9-5.3843)	—	—	—	—	—	—	—	—	—	—	U	—	—	—	—	—	—	—	—
Two-family dwelling	—	—	P	P	P	P	—	—	—	—	—	U	—	—	—	—	—	*	—
PUBLIC AND SEMI-PUBLIC USES																			
Bus & transit maintenance facility	—	—	—	—	—	—	—	—	—	—	—	—	U	—	U	U	—	*	—
Bus & train terminal	—	—	—	—	—	—	—	—	—	—	—	—	U	—	U	U	—	*	—
Clubs & Lodges (private & public)	—	U	U	U	U	U	U	U	U	U	U	U	U	—	—	—	U	*	—
Convalescent and Extended Care	—	—	U	U	U	U	—	—	—	—	—	U	—	—	—	—	U	—	—
Correctional facility ¹²	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	—	—
Cultural institutions	—	—	—	—	—	—	U	U	—	U	U	U	U	—	U	—	U	*	—
Government offices	—	—	—	—	—	—	U	P	P	P	P	U	—	—	U	U	—	*	—
Heliport (§ 9-5.3806)	—	—	—	—	—	—	U	—	—	—	—	—	U	—	U	U	U	*	—
Homeless shelter	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	P	—
Hospitals (§ 9-5.3827):																			
Acute care	—	—	—	—	—	—	U	U	—	—	—	U	—	—	U	—	U	*	—
Rehabilitation	—	—	—	—	—	—	U	U	—	—	—	U	—	—	U	—	U	*	—
Psychiatric/ chemical dependency	—	—	—	—	—	—	U	U	—	—	—	U	—	—	U	—	U	*	—
Medical care—urgent	—	—	—	—	—	—	U	U	—	—	—	U	—	—	P	U	P	*	—
Parks	P	P	P	P	P	P	P	P	—	U	U	U	P	P	U	U	—	*	—
Public assembly	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	*	—

Public safety facilities	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	*	—
Public utility yard	—	—	—	—	—	—	—	—	—	—	—	—	U	—	U	U	—	*	—
Religious assembly ³ (§ 9-5.3832)	-	U	U	U	U	U	U	U	U	U	U	U	U	—	—	—	U	*	—
Satellite antenna (§ 9-5.3807)	A	A	A	A	A	A	A	A	A	A	A	A	A	—	A	A	A	*	—
Schools, private and preschools	U	U	U	U	U	U	U	U	U	U	—	U	—	—	U	—	U	*	—
Utility substations	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	*	—
COMMERCIAL USES																			
Adult book stores, motion picture arcades, and model studios (§ 9-5.3808)	—	—	—	—	—	—	—	—	—	U	U	—	—	—	—	—	—	*	—
Adult entertainment, other (§ 9-5.3808)	—	—	—	—	—	—	—	—	—	U	U	—	—	—	—	—	—	*	—
Agricultural uses (§ 9-5.3809)	P	—	—	—	—	—	—	—	—	—	—	—	—	P	—	—	—	*	—
Appliance maintenance & repair services:																			
Major	—	—	—	—	—	—	—	—	—	P	P	P	—	—	P	P	—	*	—
Minor	—	—	—	—	—	—	—	P	P	P	P	P	—	—	P	P	—	*	—
Amusement center (§ 9-5.3813)	—	—	—	—	—	—	—	—	U	U	U	U	U	—	—	—	—	*	—
Animal hospital veterinary clinics	—	—	—	—	—	—	U	—	U	U	U	U	—	—	U	U	—	*	—
Antique store	—	—	—	—	—	—	—	—	—	P	P	A	U	—	U	—	—	*	—
Auto sales, rental	—	—	—	—	—	—	U	—	—	U	U	U	—	—	—	—	—	*	—
Auto storage	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*	—
Auto service station (§ 9-5.3815)	—	—	—	—	—	—	—	—	U	U	U	U	—	—	U	U	—	*	—
Auto repair:																			
Major	—	—	—	—	—	—	U	—	—	—	U	U	—	—	U	P	—	*	—
Minor	—	—	—	—	—	—	U	—	U	U	U	U	—	—	P	P	—	*	—
Bakeries—retail	—	—	—	—	—	—	—	—	P	P	P	P	U	—	P	P	—	*	—
Bank or savings & loan	—	—	—	—	—	—	P	P	P	P	P	P	—	—	—	—	—	*	—
Bar (§ 9-5.3831)	—	—	—	—	—	—	—	—	—	U	U	U	U	—	—	—	—	*	—
Barber & beauty shop	—	—	—	—	—	—	—	—	P	P	P	P	—	—	—	—	—	*	—

Bed and breakfast inns (§ 9-5.3819)	U	U	—	—	—	—	—	—	—	—	—	U	U	—	—	—	—	*	—
Boat repair																			
Major	—	—	—	—	—	—	U	—	—	—	U	U	U	—	U	P	—	*	—
Minor	—	—	—	—	—	—	U	—	U	U	U	U	U	—	P	P	—	*	—
Boat, RV—storage facility (§ 9-5.3810)	—	—	—	—	—	—	—	—	—	—	U	U	U	—	U	P	—	*	—
Bowling alleys (§ 9-5.3831)	—	—	—	—	—	—	—	—	—	U	U	U	—	—	—	—	—	*	—
Cannabis business (§ 9-5.3845.)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U ¹³
Car and vehicle wash	—	—	—	—	—	—	—	—	—	U	U	U	U	—	U	U	—	*	—
Card room	—	—	—	—	—	—	—	—	—	U	U	—	—	—	—	—	—	*	—
Catering services	—	—	—	—	—	—	—	—	—	P	P	P	A	—	U	—	—	*	—
Clothing store	—	—	—	—	—	—	—	—	—	P	P	P	A	—	—	—	—	*	—
Combined residential/commercial structure	—	—	—	—	—	—	—	—	—	—	—	U	U	—	—	—	—	*	—
Communication facilities	U	U	U	U	U	U	U	P	P	P	P	P	P	—	U	P	P	—	*
Computer gaming and internet access business	—	—	—	—			—	—	—	—	U	—	—	—	—	—	—		—
Confectionery stores	—	—	—	—	—	—	—	—	P	P	P	P	A	—	—	—	—	*	—
Dance hall	—	—	—	—	—	—	—	—	—	U	U	U	—	—	U	—	—	*	—
Drive-up window (all uses)	—	—	—	—	—	—	U	U	U	U	U	U	—	—	U	U	U	*	—
Dry cleaning agencies; pick-up and self-serve	—	—	—	—	—	—	—	—	P	P	P	P	—	—	—	—	—	*	—
Florist shop	—	—	—	—	—	—	P	—	P	P	P	P	—	—	—	—	P	*	—
Food stores (§ 9-5.3831):																			
Convenience store	—	—	—	—	—	—	—	—	U	U	U	U	U	—	—	—	U	*	—
Supermarket	—	—	—	—	—	—	—	—	U	P	P	U	—	—	—	—	—	*	—
Fortune-teller's	—	—	—	—	—	—	—	—	—	U	U	U	—	—	—	—	—	*	—
Funeral parlor & mortuary	—	—	—	—	—	—	—	—	U	U	U	U	—	—	—	—	—	*	—
Furniture stores	—	—	—	—	—	—	—	—	—	P	P	U	—	—	—	—	—	*	—

Gift shop	—	—	—	—	—	—	—	—	—	P	P	P	P	—	—	—	—	*	—
Gun sales (§ 9-5.3833)	—	—	—	—	—	—	—	—	—	U	U	U	U	—	—	—	—	*	—
Hardware store	—	—	—	—	—	—	—	—	U	P	P	U	U	—	—	—	—	*	—
Health club/fitness center	—	—	—	—	—	—	U	—	U	P	P	U	—	—	U	—	U	*	—
Hotel & motels	—	—	—	—	—	—	U ⁵	U	—	P	P	P	U	—	U ⁵	—	U	*	—
Jewelry store	—	—	—	—	—	—	—	—	—	P	P	P	U	—	—	—	—	*	—
Kennels	—	—	—	—	—	—	—	—	—	U	U	—	—	—	U	U	—	*	—
Laboratories; medical, dental, optical	—	—	—	—	—	—	P	P	U	U	U	U	—	—	U	—	P	*	—
Launderette	—	—	—	—	—	—	—	—	P	P	P	P	—	—	—	—	—	*	—
Liquor stores (§ 9-5.3831)	—	—	—	—	—	—	—	—	U	U	U	U	—	—	—	—	—	*	—
Live entertainment	—	—	—	—	—	—	—	—	—	U	U	U	U	—	—	—	—	*	—
Marina	—	—	—	—	—	—	—	—	—	—	—	—	U	—	—	—	—	*	—
Miniature golf courses	—	—	—	—	—	—	—	—	—	U	U ⁶	U	—	—	U	—	—	*	—
Mini-storage	—	—	—	—	—	—	—	—	—	—	—	U	U	—	U	P	—	*	—
Nurseries (horticulture) (§ 9-5.3824)	—	—	—	—	—	—	—	—	—	P	P	U	U	—	P	P	—	*	—
Offices:																			
Business & professional	—	—	—	—	—	—	P	P	U	P	P	P	U	—	—	—	P	*	—
Medical (includes clinics)	—	—	—	—	—	—	P	P	U	P	P	P	U	—	—	—	P	*	—
Paint store	—	—	—	—	—	—	—	—	—	P	P	U	—	—	U	—	—	*	—
Parking lot (commercial) (§ 9-5.3837)	—	—	—	—	—	—	A	A	A	A	A	A	A	A	P	P	A	*	—
Pawn shops	—	—	—	—	—	—	—	—	—	U	U	U	—	—	—	—	—	*	—
Pet shop	—	—	—	—	—	—	—	—	P	P	P	P	U	—	—	—	—	*	—
Pharmacy	—	—	—	—	—	—	U	P	P	P	P	P	A	—	P	P	P	*	—
Photographer	—	—	—	—	—	—	—	P	P	P	P	P	A	—	U	—	—	*	—
Printing & blue printing	—	—	—	—	—	—	—	P	P	U	U	U	—	—	P	P	—	*	—
Radio & TV sales & repair	—	—	—	—	—	—	—	—	U	P	P	P	—	—	—	—	—	*	—

Recycling facilities:																		
Reverse vending machines (§ 9-5.3811)	—	—	—	—	—	—	—	—	P	P	P	P	—	—	P	P	—	*
Small collection facility (§ 9-5.3812)	—	—	—	—	—	—	—	—	A	A	A	A	—	—	A	A	—	*
Large collection facility (§ 9-5.3813)	—	—	—	—	—	—	—	—	A	A	A	A	—	—	A	A	—	*
Light processing facility	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*
Heavy processing facility (§ 9-5.3815)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*
Repair service	—	—	—	—	—	—	—	—	—	—	U	U	U ⁷	—	P	P	—	*
Restaurants (§§ 9-5.3823 and 9-5.3831):																		
General	—	—	—	—	—	—	P	P	P	P	P	P	P	—	U ⁵	—	—	*
Fast food	—	—	—	—	—	—	U	—	—	U	U	U	U	—	U ⁵	—	—	*
Outdoor seating & food service	—	—	—	—	—	—	U	U	U	U	U	U	U	—	U ⁵	U	—	*
Take out/delivery	—	—	—	—	—	—	P	U	P	P	P	P	U	—	U ⁵	—	—	*
With bar & live entertainment	—	—	—	—	—	—	—	—	—	U	U	U	U	—	—	—	—	*
Retail; general and specialty	—	—	—	—	—	—	—	—	P	P	P	P	A	—	—	—	—	*
Secondhand sales	—	—	—	—	—	—	—	—	—	—	U	U	—	—	—	—	—	*
Shoe repair shop	—	—	—	—	—	—	—	—	P	P	P	P	—	—	—	—	—	*
Sign shop	—	—	—	—	—	—	—	—	—	U	U	—	—	—	U	—	—	*
Studios (e.g., dance, martial arts)	—	—	—	—	—	—	—	—	—	P	P	P	—	—	—	—	—	*
Tailor shop	—	—	—	—	—	—	—	—	—	P	P	P	—	—	—	—	—	*
Tattoo studio	—	—	—	—	—	—	—	—	—	U	U	U	—	—	—	—	—	*
Theaters	—	—	—	—	—	—	—	—	—	U	U	U	U	—	—	—	—	*
Upholstery shop	—	—	—	—	—	—	—	—	—	U	U	U	—	—	U	P	—	*
Wireless Communications Facilities (§ 9-5.3846)	As subject to § 9-5.3846																	
Variety store	—	—	—	—	—	—	—	—	—	P	P	P	P	—	—	—	—	*

Vehicle/boat/ equipment sales & rental (\$ 9-5.3825)	—	—	—	—	—	—	U ⁸	—	—	U	U	U	U	—	U	U	—	*	—
INDUSTRIAL USES																			
Animal rendering	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—
Bakery-commercial	—	—	—	—	—	—	—	—	—	—	—	—	—	—	P	P	—	*	—
Beverage bottling plant	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	P	—	*	—
Boat building	—	—	—	—	—	—	—	—	—	—	—	—	U	—	U	P	—	*	—
Cement or clay products manufacturing	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*	—
Concrete batch plant	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—
Contractor's storage yard	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	P	—	*	—
Dairy products processing	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	P	—	*	—
Dry cleaners processing	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*	—
Exterminator	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	P	—	*	—
Finished paper production	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*	—
Food processing plant	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	P	—	*	—
Fuel yard; bulk petroleum storage	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—
Garment manufacture	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*	—
Hazardous waste facilities (\$ 9-5.3826):	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—
Small generator (\$ 9-5.3826)	—	—	—	—	—	—	—	—	U	U	U	U	—	—	U	U	—	*	—
Large generator (\$ 9-5.3826)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—
Processor (\$ 9-5.3826)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—
Household hazardous waste facility (\$ 9-5.3826)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*	—
Junk yard/auto wrecking yard	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—
Lumber yard	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*	—
Machine shop	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	P	—	*	—
Manufacturing or storage of explosives, acid, cement, fertilizer,	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—

gas, inflammable fluids, glue, gypsum, lime, plaster of paris																				
Mining & quarry; resource extraction	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*	—	
Oil & gas drilling	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—	
Oil & gas production	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—	
Photographic plants	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*	—	
Plastic fabrication	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*	—	
Research & development	—	—	—	—	—	—	U	—	—	—	—	U	—	—	U	U	—	*	—	
Residual repository (§ 9-5.3826)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—	
Salvage/war surplus yards	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*	—	
Solid waste transfer station	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—	
Smelting or processing of iron, tin zinc or other ore	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—	
Stockyards/ slaughterhouses	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	—	*	—	
Stone monument works	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	P	—	*	—	
Truck terminal yard	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	U	—	*	—	
Truck & tractor repair	—	—	—	—	—	—	—	—	—	—	—	—	—	—	U	P	—	*	—	
Warehousing & wholesaling	—	—	—	—	—	—	U	—	—	—	—	—	—	—	U	P	—	*	—	
TEMPORARY USES																				
Removal of earth (§ 9-5.3822)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	*	—	
Temporary construction building and uses (§ 9-5.3821)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	*	—	
Outdoor display of merchandise (in conjunction with a non-residential use)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	*	—	
Special outdoor events (§§ 9-5.3828 and 9-5.3831)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	*	—	
Christmas tree and pumpkin sale lots (§ 9-5.3829)	—	—	—	—	—	—	A	A	A	A	A	A	—	—	A	A	—	*	—	

1. Single-family dwellings existing prior to the effective date of this section are permitted uses, conforming to the R-20 zone; however, development of new single-family dwelling units, other than replacement of existing single-family dwellings, are prohibited within the R-20 zone.
2. Use may be permitted as an ancillary use if it is incidental to an otherwise permitted or conditionally permitted use within this zoning district.
3. Legally established churches existing prior to the effective date of this section are permitted uses, conforming to the PBC, C-O, C-1, C-2, and C-3 zone; however, development of new religious assembly uses, other than replacement of existing uses, is prohibited within these zoning districts.
4. Funeral services are limited to "J" Street, Fourth Street, and the area between Fourth and Fifth Streets.
5. May be located only on sites adjacent to freeway interchanges.
6. May be located along Somersville Road north of the SR-4 freeway.
7. Marine repair only. Permitted as an ancillary service for waterfront activities.
8. Boat sales and repair only.
9. In the case of the Emergency Shelter Overlay District, where no letter or number is included in the table for a particular land use, the regulations of the base zone apply. Emergency shelters are permitted by right in the Emergency Shelter Overlay District if they meet all standards of § 9-5.3835, Emergency Shelters, of this article.
10. Hospices and residential care facilities providing care for up to six patients are a permitted use in any district where residential uses are allowed.
11. Up to 20 units/acre permitted by right subject to compliance with all other applicable standards.
12. Subject to a conditional use permit on a site at least one quarter mile from any type of residential care facility, social service institution, welfare institution, or a similar type of facility; at least one mile from another correctional facility; and at least 1,000 feet from a school, library, public park, recreation area or any property zoned or used for residential development. See § 9-5.3838, Correctional Facilities, for additional requirements.
13. Cannabis business requires approval of a use permit by the City Council upon recommendation by the Planning Commission. See § 9-5.3845.

SECTION 5. Amending Antioch Municipal Code Title 9, Chapter 5, Article 6.

Antioch Municipal Code Table 9-5.601 is amended to read as follows:

HEIGHT, AREA & SETBACK REGULATIONS FOR PRIMARY STRUCTURE											
Zone	Maximum Height Feet ^b	Minimum Building Site Sq. Ft.	Minimum Lot Width in Feet		Maximum Lot Coverage	Minimum Density Allowed (Units per Gross Developable Acre)	Maximum Density Allowed Units Per Gross Developable Acre ^d	Front Yard Minimum ^{a,k}	Minimum Side Yard Required in Feet ^e		Minimum Rear Yard Required in Feet
			Corner	Interior					Corner	Interior	
RE	TO BE DETERMINED BY CITY COUNCIL THROUGH PLANNED DEVELOPMENT PROCESS										
RR	TO BE DETERMINED BY CITY COUNCIL THROUGH PLANNED DEVELOPMENT PROCESS										
R-4	35	6,000	65	60	40%	NA	4 du/acre	f	f	5 ft.	20 ft.
R-6	35	6,000	65	60	40%	NA	6 du/acre	f	f	5 ft.	20 ft.
R-10	45	6,000	65	60	40%	NA	10 du/acre	f	f	5 ft.	10 ft.
R-20	45	20,000	70	70	40%	NA	20 du/acre	f	f	5 ft.	10 ft.
R-25	45	20,000	70	70	50%	20 du/acre	25 du/acre	f	f	5 ft.	10 ft. ^m
R-35	45	20,000	70	70	50%	30 du/acre	35 du/acre	f	f	5 ft.	10 ft. ^m
PBC	35	20,000	65	60	35%	NA	0	f	f	0 ft.	0 ft.
C-0	35	20,000	65	60	35%	NA	0	f	f	0 ft.	10 ft.
C-1	35	20,000	65	60	35%	NA	0	f	f	0 ft.	10 ft.
C-2	35	20,000	65	60	35%	NA	0	f	f	0 ft.	10 ft.
C-3	70	20,000	65	60	35%	NA	0	f	f	0 ft.	10 ft.
MCR ^l	45	6,500	65	60	50%	NA	20 du/acre	f	f	5 ft.	10 ft.
RTC ^j	50	2,500	25 ^s	25 ^s	100%	NA	20 ^h	0 ⁱ	0 ⁱ	0 ft.	0 ft.
RTR-10	45	3,500	45	45	50%	NA	12	15	10	5 ft.	15 ft.
RTR-20	45	20,000	100	100	50%	NA	20	15	10	5 ft.	10 ft.

HEIGHT, AREA & SETBACK REGULATIONS FOR PRIMARY STRUCTURE											
Zone	Maximum Height Feet ^b	Minimum Building Site Sq. Ft.	Minimum Lot Width in Feet		Maximum Lot Coverage	Minimum Density Allowed (Units per Gross Developable Acre)	Maximum Density Allowed Units Per Gross Developable Acre ^d	Front Yard Minimum ^{a,k}	Minimum Side Yard Required in Feet ^e		Minimum Rear Yard Required in Feet
			Corner	Interior					Corner	Interior	
WF	45	6,500	60	60	60%	NA	0	0	0	0 ft.	0 ft.
M-1	45	40,000	100	100	50%	NA	0	5	5	0 ft.	0 ft.
M-2	70	40,000	100	100	50%	NA	0	5	5	0 ft.	0 ft.
HPD	TO BE DETERMINED BY CITY COUNCIL THROUGH PLANNED DEVELOPMENT PROCESS										
PD	TO BE DETERMINED BY CITY COUNCIL THROUGH PLANNED DEVELOPMENT PROCESS										
RRMP	TO BE DETERMINED BY CITY COUNCIL THROUGH PLANNED DEVELOPMENT PROCESS IN A MANNER CONSISTENT WITH ARTICLE 41 OF THE MUNICIPAL CODE										
TOD	TO BE DETERMINED BY CITY COUNCIL THROUGH PLANNED DEVELOPMENT PROCESS										
H	70	SAME AS C-0 ZONE ^a									
OS	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
S	TO BE DETERMINED BY CITY COUNCIL THROUGH PLANNED DEVELOPMENT PROCESS										
SH	SAME AS UNDERLYING BASE ZONE										
T	SAME AS UNDERLYING BASE ZONE										
^a	Where 40% or more of the frontage (excluding reversed frontage lots) in a block has been improved with buildings, the minimum required front yard for main buildings shall be the average of the improved lots if less than the front yard requirements, but not less than six feet from the property line.										
^b	Height shall mean the vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the structure, excluding below ground basements, to the topmost point of the roof. Exceptions to the specified height limitation shall include the spires, belfries, cupolas and domes of churches, monuments, water towers, fire and hose towers, observation towers, distribution and transmission towers, lines and poles, chimneys, smokestacks, flag poles, radio towers, excluding wireless communications facilities subject to § 9-5.3846, equipment penthouses encompassing less than 20% of total roof area and less than eight feet in height, and parapets less than 30 inches in height, unless otherwise governed by this chapter.										
^c	Minimum lot area in all zones shall not apply to the condominium parcelization of a larger project where land is being divided for individual building envelopes.										

HEIGHT, AREA & SETBACK REGULATIONS FOR PRIMARY STRUCTURE	
^d	Maximum density allowed is defined in the city General Plan as per the maximum developable gross acreage definition found in this chapter.
^e	For at least 25% of the lots in a given subdivision, one side yard of an interior lot shall be 10 feet in width and the other side yard can be five feet. The 10-foot side yard area shall remain as unrestricted open area. This shall also apply to all two-story single-family residential lots. On any parcel of land of an average width of less than 50 feet, which parcel was under one ownership or is shown as a lot on any subdivision map filed in the office of the County Recorder prior to April 11, 1950, when the owner thereof owns no adjoining land, the width of each side yard may be reduced to 10% of the width of such parcel, but in no case to less than three feet.
^f	<p>Front yard and street side setbacks shall be reserved for landscaping only, excluding access and egress driveways and shall be determined on a graduated scale based upon type of street and land use as follows:</p> <ol style="list-style-type: none"> (1) Non-residential uses. Arterial street: minimum 30-foot setback with 30-foot landscaping on all frontages. Collector street: minimum 25-foot setback with 25-foot landscaping. Local street: minimum 20-foot setback with 20-foot landscaping. (2) Single-family detached and two-family dwelling uses. Arterial street: minimum 30-foot setback with 30-foot landscaping on all frontages. Collector street: minimum 25-foot setback and landscaping for front yard and 10-foot street side yard setback with landscaping Local street: minimum 20-foot front yard setback with 20 foot of landscaping and 10-foot street side yard setback with landscaping. (3) Multi-family dwelling uses. Arterial street: minimum 15-foot setback with 15-foot landscaping on all frontages. Collector street: minimum 15-foot setback with 15-foot landscaping. Local street: minimum 10-foot setback with 10-foot landscaping.
^g	New construction with frontage in excess of the minimum lot width shall reflect the pattern of building widths in facade design.
^h	<p>Within the area bounded by the Burlington Northern Santa Fe Railroad, "I" Street, Second Street, and "E" Street, residential density may be increased to 45 dwelling units per acre provided:</p> <ol style="list-style-type: none"> (1) The residential use is part of a mixed use development with the entire first floor devoted to commercial use; (2) The proposed development provides public amenities as described in § 4 (relating to residential use in RTC); and (3) The project has received use permit approval from the Planning Commission.

HEIGHT, AREA & SETBACK REGULATIONS FOR PRIMARY STRUCTURE	
i	Buildings in the RTC district shall be placed on the property line except for: <ol style="list-style-type: none"> (1) Setbacks to accommodate outdoor dining and plazas, provided that such setbacks do not exceed a depth of one-third of the lot depth; (2) Courtyards, promenades, and plazas located on any portion of the site; and (3) Where a setback is necessary to maintain the uniform setback of building facades.
j	The first floor of a building shall extend from property line to property line except: <ol style="list-style-type: none"> (1) In setback areas for outdoor dining, plazas; and (2) For required vehicular or pedestrian access.
k	Notwithstanding any other provisions of this chapter for yard requirements, in any residential district the front of any garage shall be not less than 20 feet from the exterior property line on which such garage faces.
l	For projects that consist of attached single-family dwellings (townhomes), in which each dwelling occupies its own lots, the minimum lot area is 1,800 square feet and the minimum required interior side setback is zero.
m	Where a multi-family dwelling abuts a lot that is zoned RR, RE, R4 or R6, a minimum rear yard of 20 feet shall be provided.

SECTION 6. Conflicts with Prior Ordinances.

If the provisions in this Ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this section, the provisions in this Ordinance will control.

SECTION 7. Publication; Effective Date.

This Ordinance shall take effect and be enforced within thirty (30) days from and after the date of its adoption by the City Council at a second reading and shall be posted and published in accordance with the California Government Code.

SECTION 8. Severability.

Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

* * * * *

I **HEREBY CERTIFY** that the foregoing ordinance was introduced at a regular meeting of the City Council of the City of Antioch held on the ____ day of _____, 2019 and passed and adopted at a regular meeting thereof held on the ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

Sean Wright, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, CMC
City Clerk of the City of Antioch

ATTACHMENT “B”

CITY OF ANTIOCH
CITY COUNCIL POLICY FOR WIRELESS COMMUNICATIONS FACILITIES

STANDARDS AND PROCEDURES FOR WIRELESS COMMUNICATIONS FACILITIES

ADOPTED: _____ Ordinance No. _____

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I. PURPOSE AND INTENT

- A. The City of Antioch intends this policy to establish reasonable, uniform and comprehensive standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City's local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. This policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interest is maintained on a case-by-case basis; (2) protecting the City's visual character from potential adverse impacts or visual blight created or exacerbated by wireless communications infrastructure; (3) protecting and preserving the City's environmental resources; and (4) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.
- B. This policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization

to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.

II. GENERAL DEFINITIONS

- A. **“antenna”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.
- B. **“approval authority”** means the council, commission or official responsible to review permit applications and vested with the authority to approve or deny such applications. The approval authority for an administrative use permit or applications in connection with eligible facilities requests located outside the public rights-of-way shall be the Zoning Administrator. The approval authority for an administrative use permit or applications in connection with eligible facilities requests located within the public rights-of-way shall be the City Engineer. The approval authority for a use permit shall be the Zoning Administrator or Planning Commission, as provided in this policy.
- C. **“arterial road”** means the same as defined in the Antioch General Plan, Circulation Element.
- D. **“batched application”** means more than one application submitted at the same time.
- E. **“collector road”** means the same as defined in the Antioch General Plan, Circulation Element.
- F. **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded.
- G. **“concealed” or “concealment”** means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include, but are not limited to: (1) facade or rooftop mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; (3) equipment cabinets in the public rights-of-way painted or wrapped to match the background; and (4) an isolated or standalone faux-tree.

- H. **“CPCN”** means a “Certificate of Public Convenience and Necessity” granted by the CPUC or its duly appointed successor agency pursuant to California Public Utilities Code §§ 1001 *et seq.*, as may be amended or superseded.
- I. **“CPUC”** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- J. **“decorative pole”** means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public right-of-way in which the pole is located.
- K. **“Director”** means the Community Development Director or his/her designee for applications in connection with wireless facilities located outside the public rights-of-way. Director means the Public Works Director or his/her designee for applications in connection with wireless facilities located within the public rights-of-way.
- L. **“FCC”** means the Federal Communications Commission or its duly appointed successor agency.
- M. **“FCC Shot Clock”** means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended from time to time.
- N. **“local road”** means the same as defined in the Antioch General Plan, Circulation Element.
- O. **“macro wireless facility”** or **“macro wireless facilities”** means any wireless facility that is not a small wireless facility as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded.
- P. **“OTARD”** means any over-the-air reception device subject to 47 C.F.R. §§ 1.4000 *et seq.*, as may be amended or superseded, and which includes satellite television dishes not greater than one meter in diameter.
- Q. **“personal wireless services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
- R. **“personal wireless service facilities”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as facilities that provide personal wireless services.
- S. **“routine maintenance and repair”** means work performed solely to maintain or repair the existing transmission equipment approved in accordance with the

regulatory approvals or permits required at the time the subject wireless facility was constructed or modified. As an illustration, routine maintenance and repair includes fixing the internal components of damaged, inoperable or malfunctioning transmission equipment or replacing such equipment with new equipment of the same make, model and size of the equipment being replaced. Maintenance or repair that involves adding any new transmission equipment, increasing the size or dimensions of any existing transmission equipment, or implementing technology upgrades shall not be considered routine.

- T. **“Section 6409”** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended or superseded.
- U. **“small wireless facility”** or **“small wireless facilities”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded.
- V. **“stealth”** means concealment techniques that completely screen all transmission equipment from public view and integrate the transmission equipment with the surrounding natural and/or built environment such that, given the particular context, the average, untrained observer does not recognize the existence of the wireless facility or concealment technique. These facilities are so integrated and well-hidden that the average, untrained observer would need special knowledge to recognize their existence. Stealth concealment techniques include, but are not limited to: (1) transmission equipment placed completely within existing architectural features such that the installation causes no visible change to the underlying structure and (2) new architectural features that mimic the underlying building in architectural style, physical proportion and quality of construction materials. Architectural features commonly used as stealth concealment include, but are not limited to, church steeples, cupolas, bell towers, clock towers, pitched faux-roofs, water tanks and flagpoles. Further, whether a wireless facility qualifies as a stealth facility depends on the context that exists at a given location and is evaluated on a case-by-case basis.
- W. **“structure”** (or **“support structure”**) means the same as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded.
- X. **“temporary wireless facilities”** means portable wireless facilities intended or used to provide personal wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a confined location or when a disaster disables permanent wireless facilities. Temporary wireless facilities include, without limitation, cells-on-wheels (**“COWs”**), sites-on-wheels (**“SOWs”**), cells-on-light-trucks (**“COLTs”**) or other similarly portable wireless facilities not permanently affixed to site on which is located.
- Y. **“tower”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(9), as may be amended or superseded, which defines that term as any structure built for

the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. Examples include, but are not limited to, monopoles (i.e., a bare, unconcealed pole solely intended to support wireless transmission equipment), mono-trees and lattice towers.

III. APPLICABILITY

- A. **Applicable Wireless Facilities.** Except as expressly provided otherwise in this policy, the provisions in this policy shall be applicable to all existing wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy wireless facilities within the City's jurisdictional and territorial boundaries on private property or within the public rights-of-way.
- B. **Exemptions.** Notwithstanding section III.A, the provisions in this policy will not be applicable to: (1) wireless facilities owned and operated by the City for public purposes; (2) wireless facilities installed on City-owned support structures or other personal property in the public rights-of-way pursuant to a valid license agreement with the City; (3) amateur radio facilities; (4) OTARD antennas; (5) wireless facilities or equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D; and (6) routine maintenance and repair.
- C. **Special Provisions for Eligible Facilities Requests.** All requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 will be reviewed under the standards in section VI. A discretionary permit under section V or section VIII is not required for any request that qualifies for approval pursuant to Section 6409. To the extent that the applicant's request does not qualify for approval under Section 6409, the applicant may submit the same or a substantially similar application for a discretionary permit under section V or section VIII.
- D. **Special Provisions for Temporary Wireless Facilities.** All applications for temporary wireless facilities will be reviewed under the application procedures and standards in section VII. A discretionary permit under section V or section VIII is not required for any temporary wireless facility. To the extent that the application does not meet the required findings for a temporary wireless facility, the applicant may submit the same or a substantially similar application for a discretionary permit under section V or section VIII.

- E. **Special Provisions for Small Wireless Facilities.** All applications for small wireless facilities, as defined by the FCC in 47 C.F.R. § 1.6002(l), will be reviewed under the application procedures and standards in section VIII.

IV. APPLICATIONS AND SUBMITTAL PROCEDURES

- A. **Application Required.** The approval authority shall not approve any request to place, construct or modify any wireless facility except upon a complete and duly filed application consistent with this section IV and any other written rules the City or the Director may establish from time to time in any publicly-stated format. To the extent that any special application requirements or procedures in section VII or section VIII conflict with this section IV, the special application requirements or procedures in those sections will control.
- B. **Application Content.** Except as provided in section VIII, all applications for a use permit, administrative use permit or section 6409 approval (as that term is defined in section VI.B) must include all the information and materials required by the Director for the application. The City Council authorizes the Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this policy. All applications shall, at a minimum, require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions. All applications for wireless facilities in the public rights-of-way shall also contain sufficient evidence (such as a valid CPCN) of the applicant's regulatory status as a telephone corporation under the California Public Utilities Code. The City Council further authorizes the Director to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide applicants with prior notice.
- C. **Voluntary Pre-Submittal Conference.** The City strongly encourages, but does not require, applicants to schedule and attend a pre-submittal conference with the Director and other City staff. This voluntary, pre-submittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing wireless tower or base station, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues. Pre-submittal conferences are especially encouraged when an applicant

seeks to submit one or more batched applications so that the Director may advise the applicant about any staffing or scheduling issues that may hinder the City's ability to meet the presumptively reasonable timeframes under the FCC Shot Clock. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The Planning Division shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the staff time and services rendered in the pre-submittal conference.

- D. **Submittal Appointments.** All applications must be submitted to the City at a pre-scheduled appointment with the Director. Applicants may generally submit one application per appointment, or up to five individual applications per appointment as a batch, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Director shall use reasonable efforts to provide the applicant with an appointment within ten working days after the Director receives a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed unless the applicant received a written exemption from the Director at a pre-submittal conference.
- E. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed under this policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Planning Division within 90 calendar days after the Director deems the application incomplete in a written notice to the applicant. The Director may, in the Director's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.
- F. **Additional Procedures.** The City Council authorizes the approval authority to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the approval authority deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.

V. MACRO WIRELESS FACILITIES ON PRIVATE PROPERTY AND CITY-OWNED REAL PROPERTY

A. Required Permits.

1. **Use Permit – Zoning Administrator Review.** A use permit and minor design review approval, subject to the Zoning Administrator's prior review and approval that complies with all applicable development standards in section V.B is required for construction of any wireless facility proposed in a preferred location in section V.B.1.
2. **Use Permit – Planning Commission Review.** A use permit and design review approval, subject to the Planning Commission's prior review and approval is required for:
 - a. any wireless facility proposed to be located in or within 250 feet, measured from the facility to the parcel line, from a single-family residential district or structure approved for a single-family residential use;
 - b. any wireless facility proposed to be located in a discouraged location under section V.B.2;
 - c. any wireless facility that requires a limited exception pursuant to section V.D.3;
 - d. any wireless facility subject to an administrative review process but that has been referred to the Planning Commission by the Zoning Administrator; and
 - e. any wireless facility not identified as subject to the Zoning Administrator review process in section V.A.1.
3. **Referral to Planning Commission.** Notwithstanding any other provision in this section V.A, the Zoning Administrator may refer any application for a use permit to the Planning Commission when the Zoning Administrator determines that the application raises a significant policy or design issue.
4. **Other Permits and Regulatory Approvals.** In addition to any use permit or other approval required under this section V.A, the applicant must also obtain all other permits and approvals as may be required by any other federal, state or local government agencies, which includes, without limitation, any other permits and/or approvals issued by other City departments or divisions. Furthermore, any permit or approval granted under this section V (or deemed granted or deemed approved by law) shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or approvals.

B. Development Standards.

1. **Preferred Locations.** When evaluating compliance with this section V, the approval authority will take into account whether any or more preferred locations are technically feasible and potentially available. All applicants for a use permit must propose new wireless facilities according to the following preferences, ordered from most preferred to least preferred:
 - a. parcels within industrial districts or approved for an industrial use;
 - b. parcels within public/institutional districts or approved for a public/institutional use;
 - c. parcels within commercial districts or approved for a commercial use.
2. **Discouraged Locations.** The City strongly discourages new wireless facilities in the following locations, ordered from most discouraged to least discouraged, when a technically feasible and potentially available alternative in a “preferred” location exists. Any application for a new wireless facility in the following “discouraged” locations shall not be approved without a limited exception granted by the review authority pursuant to section V.D.3.
 - a. parcels within single-family residential districts or approved for a single-family residential use;
 - b. locations within the Downtown Specific Plan area;
 - c. open spaces not owned or controlled by the City.
3. **General Design Standards.** All new wireless facilities and collocations, modifications or other changes to existing wireless facilities not covered under Section 6409 must conform to the generally applicable design regulations in this section V.B.3.
 - a. **Concealment.** Wireless facilities must incorporate concealment elements, measures and techniques that blend the equipment and other improvements into the natural and/or built environment in a manner consistent and/or compatible with the uses germane to the underlying zoning district and existing in the immediate vicinity. As an illustration and not a limitation, a wireless facility designed to mimic a native tree species or a rock outcrop may be appropriate in an open space or hillside location where other natural elements exist to provide effective camouflaging and/or concealment.
 - b. **Overall Height.** Wireless facilities on private property may not exceed the applicable height limit for structures in the applicable zoning district or

overlay zone; provided, however, that a stealth wireless facility in a preferred location may exceed the applicable height limit by not more than ten (10) feet. If the subject zoning district or overlay zone does not have a height limit, the height of wireless facilities must be consistent with the nearest adjacent structures, but not to exceed 50 feet.

- c. **Setbacks.** Wireless facilities on private property may not encroach into any applicable setback for structures in the subject zoning district.
- d. **Noise.** Wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in Antioch Municipal Code § 9-5.1901, and shall not exceed, either individually or cumulatively, the applicable ambient noise limit. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or strategies whenever necessary to avoid any ambient noise from equipment (such as backup power generators) reasonably likely to exceed the applicable limit. In the event a duly authorized federal, state, county or City official declares an emergency within a region that includes the City in whole or in part, backup power generators may exceed the applicable noise control standards and regulations to the extent reasonably necessary to operate the facility until the declared emergency is lifted or power is restored to the affected facility.
- e. **Lights.** Wireless facilities may not include exterior lights other than (a) as may be required under Federal Aviation Administration, FCC or other applicable governmental regulations; and (b) timed or motion-sensitive lights for security and/or worker safety. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible.
- f. **Landscape Features.** All wireless facilities must include landscape features and a landscape plan when proposed to be placed in a landscaped area or required by the approval authority for screening and/or concealment purposes. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance must be performed in accordance with Antioch Municipal Code § 9-5.1001 *et seq.* The approval authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this policy.
- g. **Site Security Measures.** Wireless facilities may incorporate reasonable and appropriate site security measures, such as fences, walls and anti-climbing devices, to prevent unauthorized access, theft or vandalism. Site

security measures must be designed to enhance concealment to the maximum extent possible, such as installing equipment within an enclosure designed to mimic a trash enclosure or corral. The approval authority may require additional concealment elements as the approval authority finds necessary to blend the security measures and other improvements into the natural and/or built environment. The approval authority shall not approve chain link (unless located in industrial zoning districts and not visible from the public right-of-way), barbed wire, razor ribbon, electrified fences or any similar security measures. The approval authority may permit mini-mesh fences to the extent that they would not be visible from the public right-of-way.

- h. **Backup Power Sources.** The approval authority may approve backup power sources and/or generators on a case-by-case basis. The approval authority shall not approve any diesel generators or other similarly noisy or noxious generators in or within 250 feet, measured from the facility to the parcel line, from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- i. **Signage; Advertisements.** All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
- j. **Future Collocations and Equipment.** To the extent feasible and aesthetically desirable, all new wireless facilities should be designed and sited in a manner that accommodates potential future collocations and equipment installations that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance.
- k. **Utilities.** All cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent feasible in conduits large enough to accommodate future collocated wireless facilities. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost; provided, however, that the approval authority may waive this requirement to the extent the approval of new overhead lines or service drops would amount to a *de minimis* visual change. Microwave

or other wireless backhaul is discouraged when it would involve a separate and unconcealed antenna.

- I. **Parking; Access.** Any equipment or improvements constructed or installed in connection with any wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, wireless facilities should use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements should be the minimum size necessary to reasonably accommodate the proposed use and meet Contra Costa County Fire Protection District requirements.

4. **Towers and Freestanding Wireless Facilities.**

- a. **Tower-Mounted Equipment—In General.** All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its overall visual profile. Applicants must mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors and utility demarcation boxes) directly behind the antennas to the maximum extent feasible. All tower-mounted equipment, cables and hardware must be painted with flat/neutral colors subject to the approval authority's prior approval.
- b. **Ground-Mounted Equipment—In General.** All ground-mounted equipment must be concealed underground, within an existing or new structure or other enclosure(s) subject to the approval authority's prior approval. The approval authority may require additional concealment elements as the approval authority finds necessary or appropriate to blend the ground-mounted equipment, enclosure and/or other improvements into the natural and/or built environment.
- c. **Concealment—In General.** All tower-mounted wireless facilities must be designed to conceal equipment to the extent appropriate for the proposed location through use of faux-architectural or faux-natural features including, without limitation, monopines and faux trees, clock towers, lighthouses, water tanks, flag poles, field light standards, shopping center signs and monuments. All faux-architectural or faux-natural features shall be subject to the approval authority's discretion for compatibility with the surrounding built and/or natural environment. The approval authority will consider criteria which includes, without limitation, (i) architectural compatibility with the underlying support structure; (ii) quality and texture of the construction materials; (iii) natural and/or realistic color and finishes; (iv) proportion and scale with surrounding environment and/or underlying support structure; and (v) the extent to which the proposed concealment accurately, realistically and/or naturally mimics the subject design feature.

d. **Monopines and Faux Trees.**

- i. **Shape and Branching.** Monopines shall be gradually tapered from bottom to top to resemble the natural conical pine-tree shape, with shorter branches at the top and wider branches at the bottom. All monopines shall include a “crown” or “topper” installed above the monopole to create a natural point at the top. Branches shall begin at no greater than 15 feet above ground level and maintain at least 3.5 branches per vertical foot when averaged between the bottom-most branch and the highest point on the monopole (excluding any “crown” or “topper” installed above the monopole). The approval authority may consider other faux tree designs including without limitation mono-eucalyptus trees, monopalms and monocypress trees. The canopy for the faux tree species must be naturally tapered to mimic the particular species. The canopy must completely envelop all tower-mounted equipment and extend beyond the tower-mounted equipment by at least 18 inches.
- ii. **Bark Cladding.** The entire monopole shall be fitted with faux-tree bark cladding, painted or colored with browns or other appropriate earth tones to mimic natural tree bark for the particular species.
- iii. **Equipment Concealment.** All antennas, accessory equipment, cross arms, hardware, cables and other attachments to the monopine or other tree species must be painted or colored with a flat greens, browns or other appropriate earth tones to blend into the faux branches. All antennas, remote radio units, tower-mounted amplifiers and other similar equipment larger than one cubic foot shall be fitted with a faux-pine or broadleaf “sock” with faux-pine needles or other faux-foliage. No tower-mounted equipment shall be permitted to protrude beyond the branch canopy such that it would materially alter the tapered tree shape.
- iv. **Concealment Material Selection and Approval.** All materials and finishes used to conceal the monopine shall be subject to prior approval by the Planning Division. Applicants shall use only high-quality materials to conceal the wireless facility. The applicant shall use color-extruded plastics for elements such as the faux-foliage and faux-bark cladding to prolong the like-new appearance and reduce fading caused by exposure to the sun and other weather conditions.

5. **Building-Mounted Wireless Facilities.**

- a. **Preferred Concealment Techniques.** All applicants should, to the extent feasible, propose new non-tower wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at

ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, when integration with existing building features is not feasible, the applicant should propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks). Facilities must be located behind existing parapet walls or other existing screening elements to the maximum extent feasible.

- b. **Facade-Mounted Equipment.** When wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve facade-mounted equipment in accordance with this subsection. All facade-mounted equipment must be concealed behind screen walls and mounted as flush to the facade as practicable. The approval authority may not approve "pop-out" screen boxes unless the design is architecturally consistent with the original building or support structure. Except in industrial zones, the approval authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade. To the extent feasible, facade-mounted equipment must be installed on the facade(s) along the building frontage that is the least prominent or publicly visible.
- c. **Rooftop-Mounted Equipment.** All rooftop-mounted equipment must be screened from public view from the nearest right-of-way with concealment measures that match the underlying structure in proportion, quality, architectural style and finish. The approval authority may approve unscreened rooftop equipment only when it expressly finds that such equipment is effectively concealed due to its low height and/or setback from the roofline.

C. Notices.

- 1. **General Notice Requirements.** Except as provided in section V.C.2, public notice in accordance with Antioch Municipal Code § 9-5.2702 shall be given for all applications for a use permit governed under this section V.
- 2. **Deemed-Approval Notice.** Not more than 30 days before the applicable FCC Shot Clock expires, and in addition to any public notice required prior to a decision, an applicant for a use permit must provide a posted notice, no smaller than 24" x 36", at the project site in a conspicuous location that contains (1) a statement the project will be automatically deemed approved pursuant to California Government Code § 65964.1 unless the City approves or denies the application or the applicant voluntarily agrees to toll the timeframe for review within the next 30 days; (2) a general description for the proposed project; (3) the applicant's name and contact information as provided on the application

submitted to the City; and (4) contact information for the Planning Division. The public notice required under this section V.C.2 will be deemed given when the applicant delivers written notice to the Planning Division that shows the appropriate notice has been posted at the project site. Notwithstanding anything to the contrary in this policy, the approval authority shall be permitted to act on an application for a use permit at any time so long as any applicable prior public notice in this section V.C.1 has occurred.

3. **Decision Notice.** Within five calendar days after the approval authority acts on a use permit application governed under this policy or before the FCC Shot Clock expires (whichever occurs first), the approval authority or its designee shall send a written notice to the applicant. In the event that the approval authority denies the application (with or without prejudice), the written notice to the applicant must contain (1) the reasons for the decision and (2) instructions for how and when to file an appeal.

D. Decisions and Appeals.

1. **Required Findings.** The approval authority may approve or conditionally approve an application for a use permit submitted under this section V when the approval authority finds all of the following:
 - a. the approval authority can make all the findings required for a use permit in accordance with Antioch Municipal Code § 9-5.2703; and
 - b. the proposed wireless facility complies with all applicable development standards in section V.B; and
 - c. the applicant has demonstrated that its proposed wireless facility will be in compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
 - d. the applicant has proposed to place the wireless facility in the most-preferred location or, if the wireless facility is not proposed in the most-preferred location, the applicant has demonstrated a good-faith effort to identify and evaluate more-preferred alternative locations through a meaningful comparative analysis; and
 - e. the applicant has provided the approval authority with a meaningful comparative analysis that shows all more-preferred alternative designs identified in the administrative record are either technically infeasible or unavailable.
2. **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or California laws, nothing in this policy is intended to limit the approval authority's ability to conditionally approve or deny without

prejudice any use permit application governed under this policy as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the General Plan and any specific plan, the Antioch Municipal Code and/or this policy.

3. **Limited Exception.** In the event that an applicant claims that strict compliance with the development standards in section V.B would effectively prohibit the applicant's ability to provide personal wireless services, the Planning Commission may grant a limited exception from such requirements in accordance with this section V.D.3.
 - a. **Required Findings for a Limited Exception.** The Planning Commission shall not grant any limited exception unless the applicant shows that:
 - i. the proposed wireless facility qualifies as a "personal wireless service facility" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded; and
 - ii. the applicant has provided the Planning Commission with a reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility; and
 - iii. the applicant has provided the Planning Commission with a written statement that contains a detailed and fact-specific explanation as to why the proposed wireless facility cannot be deployed in compliance with the applicable provisions in this policy; and
 - iv. the applicant has provided the Planning Commission with a meaningful comparative analysis with the factual reasons why all alternative locations and/or designs identified in the administrative record (whether suggested by the applicant, the City, public comments or any other source) are not technically feasible or potentially available to reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility; and
 - v. the applicant has demonstrated to the Planning Commission that the proposed location and design is the least non-compliant configuration that will reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility, which includes without limitation a meaningful comparative analysis into multiple smaller or less intrusive wireless facilities dispersed throughout the intended service area.
 - b. **Scope.** Any limited exception shall be narrowly tailored to ensure that any deviations from the development standards in section V.B are no greater than necessary to avoid an effective prohibition of the applicant's personal

wireless services. Limited exceptions shall be based on the facts and circumstances of the applicant, its demonstrated technical service objectives at the time the exception is granted and the proposed wireless facility, and shall not be deemed to establish any precedent for similar deviations for the same or any other applicant, location or wireless facility.

4. **Appeals.** Any interested person or entity may appeal any decision by the approval authority in accordance with the provisions in Antioch Municipal Code § 9-5.2705; provided, however, that appeals from an approval shall not be permitted when based solely on the environmental effects from radio frequency emissions that are compliant with applicable FCC regulations and guidelines.
- E. **Standard Conditions.** In addition to all other conditions adopted by the approval authority, all use permits, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this section V.E. The approval authority (or the appellate authority) shall have discretion to modify or amend any standard conditions of approval on a case-by-case basis as may be necessary or appropriate to protect and promote the public health, safety and welfare, allow for the proper operation of the approved wireless facility, maintain compliance with applicable laws and/or to advance the goals or policies in the General Plan and any specific plan, the Antioch Municipal Code and/or this policy.
1. **Compliance with Approved Plans.** Before the permittee submits any applications to the Building Division required to commence construction in connection with this permit, the permittee must incorporate this permit, all conditions associated with this permit and the approved photo simulations into the project plans (the “**Approved Plans**”). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director’s prior review and approval, who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
 2. **Build-Out Period.** This permit will automatically expire one (1) year from the approval or deemed-granted date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The Zoning Administrator may grant one written extension to a date certain, but not to exceed one (1) additional year, when the permittee shows good cause to extend the limitations

period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.

3. **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
4. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“**Laws**”) applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any Laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee’s obligations to maintain compliance with all Laws. In the event that the City fails to timely notice, prompt or enforce compliance with any applicable provision in the Antioch Municipal Code, any permit, any permit condition or any applicable law or regulation, the applicant or permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the Antioch Municipal Code, any permit, any permit condition or any applicable law or regulation.
5. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee’s or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Antioch Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The Director or the Director’s designee may issue a stop work order for any activities that violates this condition in whole or in part.
6. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City’s officers, officials, staff or other designees may enter onto

the site and inspect the improvements and equipment upon reasonable prior notice to the permittee, or at any time during an emergency. The City's officers, officials, staff or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

7. **Permittee's Contact Information.** The permittee shall furnish the Director with accurate and up-to-date contact information for a person responsible for the wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and immediately provide the Director with updated contact information in the event that either the responsible person or such person's contact information changes.

8. **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and City boards, commissions, agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("**Claims**") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this permit, and (2) other Claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this permit or the wireless facility. In the event the City becomes aware of any Claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this permit, and that such indemnification obligations will survive the expiration or revocation of this permit.

9. **Permit Revocation.** In accordance with Antioch Municipal Code § 9-5.2707.1, the approval authority may recall this permit for review at any time due to complaints about noncompliance with applicable laws or any approval

conditions attached to this permit. At a duly noticed public hearing and in accordance with all applicable laws, the approval authority may revoke this permit or amend these conditions as the approval authority deems necessary or appropriate to correct any such noncompliance.

10. **Record Retention.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee. The permittee may keep electronic records; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form.

11. **Abandoned Wireless Facilities.** The wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Antioch Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to abate the nuisance by removal and restoration, store or sell the facility or any part thereof, with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal, storage and/or restoration activities. In accordance with Antioch Municipal Code Title 5, Chapter 1, Article 3, all costs associated with the abatement in connection with a facility on real property shall be assessed against the property as a lien to be recorded with the County of Contra Costa Recorder's Office. Within 60 calendar days after the lien amount is fully satisfied including costs and interest, the City shall cause the lien to be released with the County of Contra Costa Recorder's Office.

VI. ELIGIBLE FACILITIES REQUESTS

A. Special Definitions for Eligible Facilities Requests.

1. **“base station”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(1), as may be amended or superseded, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.6100(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.6100(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.6100(b)(1)(i)-(ii).
2. **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC’s definition effectively means “to add” and does not necessarily refer to more than one wireless facility installed at a single site. As applicable to any eligible facilities request, the definition of collocation provided in this section controls over the definition of collocation provided in section II.
3. **“eligible facilities request”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

4. **“eligible support structure”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as may be amended, which defines that term as any tower or base station as defined in 47 C.F.R. § 1.6100(b), provided that it is existing at the time the relevant application is filed with the State or local government under 47 C.F.R. § 1.6100.
5. **“existing”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as may be amended, which provides that a constructed tower or base station is existing for purposes of the FCC’s Section 6409 regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
6. **“site”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.
7. **“substantial change”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC’s criteria and thresholds for a substantial change according to the wireless facility type and location.
 - a. For towers outside the public rights-of-way, a substantial change occurs when:
 - i. the proposed collocation or modification increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet (whichever is greater); or
 - ii. the proposed collocation or modification involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower by more than 20 feet or more than the width of the tower structure at the level of the appurtenance (whichever is greater); or
 - iii. the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or

- iv. the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
 - b. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
 - i. the proposed collocation or modification increases the height of the structure by more than 10% or more than 10 feet (whichever is greater); or
 - ii. the proposed collocation or modification involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 feet; or
 - iii. the proposed collocation or modification involves the installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure; or
 - iv. the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are more than ten percent (10%) larger in height or volume than any other ground cabinets associated with the structure; or
 - v. the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
 - c. In addition, for all towers and base stations wherever located, a substantial change occurs when:
 - i. the proposed collocation or modification would defeat the existing concealment elements of the support structure; or
 - ii. the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in 47 C.F.R. § 1.6100(b)(7)(i)-(iv).
- 8. **“transmission equipment”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless

communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

- B. **Required Approval.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for approval under Section 6409 shall require an administrative use permit consistent with all valid and enforceable terms and conditions of the underlying permit or other prior regulatory authorization for the tower or base station (each amendment a “**section 6409 approval**”). Each section 6409 approval shall be subject to the Zoning Administrator’s approval, conditional approval or denial without prejudice pursuant to the standards and procedures in this section VI. However, the applicant may voluntarily elect to seek a discretionary permit subject to the general standards and procedures in section V or section VIII.

C. **Decisions and Appeals.**

1. **Administrative Review.** The approval authority shall review a complete and duly filed application for a section 6409 approval, and may act on such application without prior notice or a public hearing.
2. **Decision Notices.** Within five days after the approval authority acts on an application for a section 6409 approval or before the FCC Shot Clock expires (whichever occurs first), the approval authority shall send a written notice to the applicant. In the event that the approval authority denies the application, the written notice to the applicant must contain (1) the reasons for the decision; (2) a statement that denial will be without prejudice; and (3) instructions for how and when to file an appeal.
3. **Required Findings for Approval.** The approval authority may approve or conditionally approve an application for a section 6409 approval when the approval authority finds that the proposed project:
 - a. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
 - b. does not substantially change the physical dimensions of the existing wireless tower or base station.
4. **Criteria for Denial without Prejudice.** Notwithstanding any other provision in this policy, and consistent with all applicable federal laws and regulations, the approval authority may deny without prejudice any application for a section 6409 approval when the approval authority finds that the proposed project:
 - a. does not meet the findings required in section VI.C.3;

- b. involves the replacement of the entire support structure; or
 - c. violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.
- 5. **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this section VI is intended to limit the approval authority's authority to conditionally approve an application for a section 6409 approval to protect and promote the public health and safety.
- 6. **Appeals.** Any applicant may appeal the approval authority's written decision to deny without prejudice an application for section 6409 approval. The written appeal together with any applicable appeal fee must be tendered to the City Clerk within five working days from the approval authority's written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager or the City Manager's designee (either party, the "**City Manager**") shall be the appellate authority for all appeals from the approval authority's written decision to deny without prejudice an application for section 6409 approval. The City Manager shall review the application *de novo* without notice or a public hearing; provided, however, that the City Manager's decision shall be limited to only whether the application should be approved or denied in accordance with the provisions in this section VI and any other applicable laws. The City Manager shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further administrative appeals.
- D. **Standard Conditions.** In addition to all other conditions adopted by the approval authority, all section 6409 approvals, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this section VI.D. The approval authority (or the appellate authority) shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this section VI.
- 1. **Permit Term.** The City's grant or grant by operation of law of a section 6409 approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station, and will be regarded as a modification to the underlying approval for the subject tower or base station. The City's grant or grant by operation of law of this section 6409 approval will not extend the permit term, if any, for any underlying permit or other underlying prior regulatory authorization. Accordingly, the term for this section 6409 approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station, and any renewals thereof. This condition shall not be applied or interpreted in any

- way that would cause the term of the underlying permit for the modified facility to be less than 10 years in total length.
2. **Compliance Obligations Due to Invalidation.** In the event that any court of competent jurisdiction invalidates all or any portion of Section 6409 or any FCC rule that interprets Section 6409 such that federal law would not mandate approval for any eligible facilities request(s), such approval(s) shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved eligible facilities requests or the Director grants an extension upon written request from the permittee that shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the Director may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated eligible facilities request when it has obtained the applicable permit(s) or submitted an application for such permit(s) before the one-year period ends.
 3. **City's Standing Reserved.** The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409, any FCC rules that interpret Section 6409 or any eligible facilities request.
 4. **Compliance with Approved Plans.** Before the permittee submits any applications to the Building Division required to commence construction in connection with this section 6409 approval, the permittee must incorporate this section 6409 approval, all conditions associated with section 6409 approval and any approved photo simulations into the project plans (the "**Approved Plans**"). The permittee must construct, install and operate the wireless facility in substantial compliance, as determined by the Director, with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director's prior review and approval. The Director may refer the request to the approval authority who may revoke the section 6409 approval if the approval authority finds that the requested alteration, modification or other change may cause a substantial change as that term is defined by the FCC in 47 C.F.R. § 1.6100(b)(7), as may be amended.
 5. **Build-Out Period.** This section 6409 approval will automatically expire one (1) year from the approval or deemed-granted date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The Director may grant one written extension to a date certain, but not to exceed one (1)

additional year, when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.

6. **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

7. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“**Laws**”) applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this section 6409 approval, which includes without limitation any Laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee’s obligations to maintain compliance with all Laws. In the event that the City fails to timely notice, prompt or enforce compliance with any applicable provision in the Antioch Municipal Code, any permit, any permit condition or any applicable law or regulation, the applicant or permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the Antioch Municipal Code, any permit, any permit condition or any applicable law or regulation.

8. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee’s or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Antioch Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The Director or the Director’s designee may issue a stop work order for any activities that violates this condition in whole or in part.

9. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff or other designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee, or at any time during an emergency. The City's officers, officials, staff or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designee while any such inspection or emergency access occurs.

10. **Permittee's Contact Information.** The permittee shall furnish the Director with accurate and up-to-date contact information for a person responsible for the wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and immediately provide the Director with updated contact information in the event that either the responsible person or such person's contact information changes.

11. **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility is installed, shall defend, indemnify and hold harmless the City, City Council and City boards, commissions, agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("**Claims**") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this section 6409 approval, and (2) other Claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this section 6409 approval or the wireless facility. In the event the City becomes aware of any Claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this section 6409 approval, and that such indemnification obligations will survive the expiration or revocation of this section 6409 approval.

12. **Permit Revocation.** The Director may recall this section 6409 approval for review at any time due to complaints about noncompliance with applicable laws or any approval conditions attached to this section 6409 approval after notice and an opportunity to cure the violation is provided to the permittee. If the noncompliance continues after notice and reasonable opportunity to cure the noncompliance, the Zoning Administrator may revoke this section 6409 approval or amend these conditions as the Zoning Administrator deems necessary or appropriate to correct any such noncompliance.

13. **Record Retention.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee. The permittee may keep electronic records; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form.

14. **Abandoned Wireless Facilities.** The wireless facility authorized under this section 6409 approval shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Antioch Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to abate the nuisance by removal and restoration, store or sell the facility or any part thereof, with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal, storage and/or restoration activities. In accordance with Antioch Municipal Code Title 5, Chapter 1, Article 3, all costs associated with the abatement in connection with a facility on real property shall be assessed against the property as a lien to be recorded with the County of Contra Costa Recorder's Office. Within 60 calendar days after the lien amount is fully satisfied including costs and interest, the City shall cause the lien to be released with the County of Contra Costa Recorder's Office.

VII. TEMPORARY WIRELESS FACILITIES

A. Required Permits.

1. **Administrative Use Permit.** An administrative use permit, subject to the Zoning Administrator's prior review and approval in accordance with the procedures and standards in this section VII, is required for any temporary wireless facility, unless deployed in connection with an emergency pursuant to section VII.D.
2. **Other Permits and Regulatory Approvals.** In addition to any administrative use permit required under this section VII, the applicant must also obtain all other permits and approvals as may be required by any other federal, state or local government agencies, which includes, without limitation, any other permits and/or approvals issued by other City departments or divisions. Furthermore, any permit or approval granted under this section VII (or deemed granted or deemed approved by law) shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or approvals.

- B. **Minimum Application Requirements.** Notwithstanding the provisions in section IV, applicants for a temporary wireless facility shall submit at a minimum: (1) an administrative use permit application on the most current form prepared by the Planning Division; (2) the applicable fee for the application; (3) a site plan that shows the proposed temporary wireless facility and its equipment, physical dimensions and placement on the proposed site relative to property lines and existing structures; (4) an RF compliance report in accordance with the City's requirements; and (5) an insurance certificate for general commercial liability that names the City as an additional insured, includes coverage for the time period in which the temporary wireless facility will be placed and a carries at least \$1,000,000 in coverage per occurrence.

C. Decisions and Appeals.

1. **Required Findings for Temporary Wireless Facilities.** The Zoning Administrator may approve or conditionally approve an administrative use permit for a temporary wireless facility only when the Zoning Administrator finds:
 - a. the proposed temporary wireless facility will not exceed the overall zone height limit of the zoning district in which it is located or 50 feet, whichever is less; and
 - b. the proposed temporary wireless facility complies with all setback requirements applicable to the proposed location; and

- c. the proposed temporary wireless facility will not involve any excavation or ground disturbance; and
 - d. the proposed temporary wireless facility will be compliant with all generally applicable public health and safety laws and regulations, which include without limitation maximum permissible exposure limits for human exposure to RF emissions established by the FCC; and
 - e. the proposed temporary wireless facility will not create any nuisance or violate any noise limits applicable to the proposed location; and
 - f. the proposed temporary wireless facility will be identified with a sign that clearly identifies the (i) site operator, (ii) the operator's site identification name or number and (iii) a working telephone number answered 24 hours per day, seven days per week by a live person who can exert power-down control over the antennas; and
 - g. the proposed temporary wireless facility will be removed within 30 days after the Zoning Administrator grants the administrative use permit, or such longer time as the Zoning Administrator finds reasonably related to the applicant's need or purpose for the temporary wireless facility (but in no case longer than one year); and
 - h. the applicant has not been denied an approval for any permanent wireless facility in substantially the same location within the previous 365 days.
2. **Appeals.** Any applicant may appeal the Zoning Administrator's written decision to deny an administrative use permit for a temporary wireless facility. The written appeal together with any applicable appeal fee must be tendered to the City within five working days from the Zoning Administrator's written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager or the City Manager's designee (either party, the "**City Manager**") shall be the appellate authority. The City Manager shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further administrative appeals.

D. Emergency Temporary Wireless Facilities.

1. **Authorization.** Temporary wireless facilities may be placed and operated within the City's jurisdictional and/or territorial boundaries without an administrative use permit only when a duly authorized federal, state, county or City agency or official declares an emergency within a region that includes the City in whole or in part.

2. **Notice.** All temporary wireless facilities deployed in an emergency shall bear a sign that clearly identifies the site operator and the contact information for the person responsible for such temporary wireless facility. Any person or entity that places temporary wireless facilities pursuant to this section VII.D must send a written notice that identifies the approximate site location and person responsible for its operation to the Director as soon as reasonably practicable. One notice may cover multiple temporary wireless facilities.
3. **Removal.** Any temporary wireless facilities placed pursuant to this section VII.D must be removed within 15 days after the date the emergency is lifted. The Director may authorize a longer timeframe for emergency temporary wireless facilities when the Director finds that (1) the temporary wireless facilities were deployed to temporarily replace permanent wireless facilities destroyed or otherwise rendered inoperable in connection with the emergency or (2) removal within the default timeframe would threaten public health, safety or welfare.

VIII. SMALL WIRELESS FACILITIES

A. Applicability.

1. **Applicable Wireless Facilities.** Except as expressly provided otherwise in this policy, the provisions in this section VIII shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy small wireless facilities within the City's jurisdictional and territorial boundaries within the public rights-of-way or on private property.
2. **Other Infrastructure Deployments.** To the extent that other infrastructure deployments, including without limitation any deployments that require approval pursuant to Antioch Municipal Code Title 7, involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements, the department or official responsible to review and approve or deny requests for authorization in connection with such other infrastructure deployment shall apply the provisions in this section VIII unless specifically prohibited by applicable law.

B. Required Permits and Approvals.

1. **Administrative Use Permit.** An administrative use permit subject to the approval authority's prior review and approval, is required for any small wireless facility proposed on an existing, new or replacement support structure.
2. **Request for Approval Pursuant to Section 6409.** Notwithstanding anything in the policy to the contrary, requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 (47 U.S.C. Section 1455(a)) will be subject to the provisions in section VI, as may be amended or superseded.
3. **Other Permits and Approvals.** In addition to an administrative use permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid administrative use permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such administrative use permit may be denied without prejudice. Furthermore, any permit or approval granted under this section VIII shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.

C. **Small Wireless Facility Permit Application Requirements.**

1. **Small Wireless Facility Permit Application Contents.** All applications for an administrative use permit must include all the information and materials required in this subsection C.1, unless exempted by the approval authority.
 - a. **Application Form.** The applicant shall submit a complete, duly executed administrative use permit application on the then-current form prepared by either the Planning Manager or his/her designee (if for a small wireless facility located outside the public rights-of-way) or the Public Works Director (if for a small wireless facility located within the public rights-of-way).
 - b. **Application Fee.** The applicant shall submit the applicable administrative use permit application fee established by City Council resolution. Batched applications must include the applicable permit application fee for each small wireless facility in the batch. If no administrative use permit application fee applicable to small wireless facilities has been established, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to reimburse the City for its reasonable costs incurred in connection with the application.
 - c. **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all structures within 50 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
 - d. **Site Survey.** For any small wireless facility proposed to be located within the public rights-of-way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer. The

survey must identify and depict all existing boundaries, encroachments and other structures within 250 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

- e. **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.
- f. **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a “small wireless facility” as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for an administrative use permit as provided in subsection E.3.
- g. **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- h. **Public Notices.** The applicant shall submit a mailing list and envelopes, stamped and addressed, for all properties and record owners of properties within a 300 foot radius of the project location. Insufficient postage and/or illegible addressing shall be a basis to deem the application incomplete.

- i. **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.
 - j. **Site Agreement.** For any small wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit a partially-executed site agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City's form site agreement except as may be indicated on the form itself. Any unpermitted changes to the City's form site agreement shall be deemed a basis to deem the application incomplete.
 - k. **Title Report and Property Owner's Authorization.** For any small wireless facility proposed to be installed on any private property not owned or controlled by the City, the applicant must submit: (i) a title report issued within 30 days from the date the applicant filed the application; and (ii) if the applicant is not the property owner, a written authorization signed by the property owner identified in the title report that authorizes the applicant to submit and accept an administrative use permit in connection with the subject property.
 - l. **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits as provided in Antioch Municipal Code § 9-5.1901.
2. **Additional Requirements.** The City Council authorizes the approval authority to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the approval authority finds necessary, appropriate or useful for processing any application governed under this section VIII. All such requirements and materials must be in written form and publicly stated to provide all interested parties with prior notice.
- D. **Small Wireless Facility Permit Application Submittal and Completeness Review.**

1. **Application Completeness Review.** Within 10 calendar days after the approval authority receives a duly filed administrative use permit application, the approval authority shall review the application for completeness and, if any application does not contain all the materials required in subsection C.1 or any other publicly stated requirements, send a written notice to the applicant that identifies the missing or incomplete requirements.
2. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the approval authority within 60 calendar days after the approval authority deems the application incomplete in a written notice to the applicant. As used in this subsection D.2, a “substantive response” must include the materials identified as incomplete in the approval authority’s notice.

E. Approvals and Denials; Notices.

1. **Public Notice.** Prior to any approval, conditional approval or denial, public notice shall be mailed to all properties and record owners of properties within a 300 foot radius from the project site. The notice must contain: (1) a general project description; (2) the applicant’s identification and contact information as provided on the application submitted to the City; (3) contact information for the approval authority; (4) a statement that the approval authority will act on the application without a public hearing but will accept written public comments that evaluate the application for compliance with the standards in this section VIII; and (5) a statement that the FCC requires the City to act on administrative use permit applications for small wireless facilities, which includes any administrative appeals, in 60 days for attachments to existing structures and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review.
2. **Administrative Review.** Not less than 10 calendar days after the public notice required in subsection E.1, the approval authority shall approve, conditionally approve or deny a complete and duly filed administrative use permit application without a public hearing.
3. **Required Findings.** The approval authority may approve or conditionally approve a complete and duly filed application for an administrative use permit for small wireless facilities when the approval authority finds:
 - a. the proposed project meets the definition for a “small wireless facility” as defined by the FCC;

- b. the proposed project would be in the most preferred location within 250 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 250 feet would be technically infeasible;
 - c. the proposed project would not be located on a prohibited support structure identified in this section VIII;
 - d. the proposed project would be on the most preferred support structure within 250 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 250 feet would be technically infeasible;
 - e. the proposed project complies with all applicable design standards in this section VIII;
 - f. the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
 - g. all public notices required for the application have been given.
4. **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or California laws, nothing in this section VIII is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any administrative use permit application as may be necessary or appropriate to ensure compliance with this section VIII.
5. **Decision Notices.** Within five calendar days after the approval authority acts on an administrative use permit application or before the FCC Shot Clock expires (whichever occurs first), the approval authority shall notify the applicant by written notice. If the approval authority denies the application (with or without prejudice), the written notice must contain the reasons for the decision.
6. **Appeals.** Any decision by the approval authority shall be final and not subject to any administrative appeals.

F. **Standard Conditions of Approval.**

1. **General Conditions.** In addition to all other conditions adopted by the approval authority for an administrative use permit, all administrative use permits issued under this section VIII shall be automatically subject to the conditions in this subsection F.1.

- a. **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- b. **Build-Out Period.** This permit will automatically expire six (6) months from the approval date (the “build-out period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the small wireless facility or its use. If this build-out period expires, the City will not extend the build-out period but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- c. **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- d. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“laws”) applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee’s obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Antioch Municipal Code, this policy, any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee’s obligation to comply in all respects with all applicable provisions in the Antioch Municipal Code, this policy, any permit, any permit condition or any applicable law or regulation.

- e. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the City of Antioch Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The approval authority may issue a stop work order for any activities that violates this condition in whole or in part.
- f. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- g. **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the small wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.
- h. **Indemnification.** The permittee and, if applicable, the property owner upon which the small wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this permit, and (ii) other claims of any kind or form, whether for personal injury,

death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this permit or the small wireless facility. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this permit.

- i. **Permit Revocation.** Any permit granted under this section VIII may be revoked in accordance with the provisions and procedures in this condition. The approval authority may initiate revocation proceedings when the approval authority has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before the approval authority may conduct a public hearing to revoke any permit granted under this section VIII, the approval authority must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this section VIII may be revoked only by the City Council after a duly notice public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the approval authority shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- j. **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the permit application, permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or

approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the permit (collectively, “records”). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City’s regular files will control over any conflicts between such City-controlled copies or records and the permittee’s electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- k. **Abandoned Wireless Facilities.** The small wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Antioch Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to abate the nuisance by removal and restoration, store or sell the facility or any part thereof, with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal, storage and/or restoration activities. In accordance with Antioch Municipal Code Title 5, Chapter 1, Article 3, all costs associated with the abatement in connection with a facility on real property shall be assessed against the property as a lien to be recorded with the County of Contra Costa Recorder’s Office. Within 60 calendar days after the lien amount is fully satisfied including costs and interest, the City shall cause the lien to be released with the County of Contra Costa Recorder’s Office.
- l. **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee’s direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the

species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

- m. **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.

- 2. **Conditions for Small Wireless Facilities in the Public Rights-of-Way.** In addition to all conditions in subsection F.1, all administrative use permits for small wireless facilities in the public rights-of-way issued under this section VIII shall be automatically subject to the conditions in this subsection F.2.

- a. **Future Undergrounding Programs.** If other public utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must underground its equipment except the antennas, any electric meter and any other equipment that must be placed above ground to function. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- b. **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted

electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.

- c. **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, “City work”). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this permit. If the Public Works Director determines that any City work will require the permittee’s small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee’s small wireless facility within a reasonable time after the Public Works Director’s notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee’s sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee’s small wireless facility without prior notice to permittee when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

G. **Location Requirements.**

1. **Preface to Location Requirements.** This subsection G.1 provides guidance as to how to interpret and apply the location requirements in this section VIII. To better assist applicants and decisionmakers understand and respond to the community’s aesthetic preferences and values, subsections G.2-G.5 set out listed preferences for locations and support structures to be used in connection with small wireless facilities in ordered hierarchies. Applications that involve lesser-preferred locations or structures may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 250 feet from the proposed site; or (2) any more preferred locations or structures within 250 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record.

Subsection G.6 identifies “prohibited” support structures on which the City shall not approve any administrative use permit application for any competitor or potential competitor.

2. **Locations in the Public Rights-of-Way.** The City prefers small wireless facilities in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:
 - a. locations within commercial or industrial districts on or along arterial roads;
 - b. locations within commercial or industrial districts on or along collector roads;
 - c. locations within commercial or industrial districts on or along local roads;
 - d. locations within public/institutional districts on or along arterial roads;
 - e. locations within public/institutional districts on or along collector roads;
 - f. locations within public/institutional districts on or along local roads;
 - g. locations within residential districts on or along arterial roads;
 - h. locations within residential districts on or along collector roads;
 - i. locations within residential districts on or along local roads;
 - j. any location within any district within 250 feet, measured from the facility to the parcel line, from a single-family residential district or structure approved for a single-family residential use.
3. **Locations Outside the Public Rights-of-Way.** The City prefers small wireless facilities outside the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:
 - a. parcels within industrial districts or approved for an industrial use;
 - b. parcels within public/institutional districts or approved for a public/institutional use;
 - c. parcels within commercial districts or approved for a commercial use.
4. **Support Structures in the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:
 - a. existing or replacement streetlight poles;

- b. existing or replacement wood utility poles;
 - c. new, non-replacement streetlight poles;
 - d. new, non-replacement poles for small wireless facilities.
5. **Support Structures Outside the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures outside the public rights-of-way, ordered from most preferred to least preferred, as follows:
- a. existing buildings or other non-tower structures previously approved for use as a support structure for personal wireless service facilities;
 - b. other existing buildings or non-tower structures;
 - c. existing or replacement poles or towers;
 - d. new, non-replacement towers for small wireless facilities.
6. **Prohibited Support Structures.** The City prohibits small wireless facilities to be installed on the following support structures, whether located in the public rights-of-way or not:
- a. decorative poles;
 - b. traffic signals, signs, poles, cabinets and related devices;
 - c. any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the administrative use permit application;
 - d. new, non-replacement wood poles.
- H. **Design Standards.**
1. **General Standards.**
- a. **Noise.** Small wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in Antioch Municipal Code § 9-5.1901, as may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit.
 - b. **Lights.** Small wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under

Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection 1.b shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this section VIII.

- c. **Landscape Features.** Small wireless facilities shall not displace any existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance must be performed in accordance Antioch Municipal Code § 9-5.1001 *et seq.*, as may be amended or superseded.
- d. **Site Security Measures.** Small wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.
- e. **Signage; Advertisements.** All small wireless facilities must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, OSHA or other United States governmental agencies for compliance with RF emissions regulations.
- f. **Compliance with Health and Safety Regulations.** All small wireless facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions.

2. **Small Wireless Facilities in the Public Right-of-Way.**

- a. **Overall Height.** Small wireless facilities may not exceed either (A) the minimum separation from electrical lines required by applicable safety

regulations, plus five feet or (B) five feet above the existing support structure.

b. **Antennas.**

- i. **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure. Applications that involve unshrouded antennas must demonstrate that it would be technically infeasible to shroud the antennas as supported by clear and convincing evidence in the written record.
- ii. **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume and all antennas may not exceed six cubic feet in volume.

c. **Accessory Equipment.**

- i. **Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing utilities are primarily located underground; (ii) on the pole or support structure; or (iii) integrated into the base of the pole or support structure. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.
- ii. **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.
- iii. **Pole-Mounted Accessory Equipment.** All accessory equipment installed, attached or mounted directly to a utility pole or support structure must comply with the provisions of this subsection c.iii. All pole-mounted accessory equipment must be installed in a single equipment shroud, cage or cabinet unless the applicant demonstrates that it would be technically infeasible as supported by clear and convincing evidence in the written record. All pole-mounted accessory equipment must be

installed flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure.

- iv. **Base-Mounted Accessory Equipment.** All accessory equipment installed within a shroud, pedestal or other enclosure that is incorporated with the base of the pole, rather than as a separate, detached element, must comply with the provisions of this subsection c.iv. All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.
- v. **Ground-Mounted Accessory Equipment.** On collector roads and local roads, the City prefers ground-mounted accessory equipment to be concealed as follows: (A) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; and (B) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks. On arterial roads outside underground districts, proposed ground-mounted accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets.
- vi. **Accessory Equipment Volume.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed in a residential district; or (ii) seventeen (17) cubic feet in volume if installed in a non-residential district. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.

- d. **Streetlights.** Applicants that propose to install small wireless facilities on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.
- e. **Wood Utility Poles.** Applicants that propose to install small wireless facilities on an existing wood utility pole must install all antennas at the top of the pole unless the applicant demonstrates that mounting the antennas at the top of the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations. Applicants that propose to install small wireless facilities on a replacement wood utility pole must remove and replace the existing wood utility pole with one that is substantially similar in height and diameter unless the applicant demonstrates that a substantially similar replacement pole would be technically infeasible or violate applicable public safety regulations as supported by clear and convincing evidence in the written record.
- f. **New, Non-Replacement Poles.** Applicants that propose to install small wireless facilities on a new, non-replacement pole must install a new streetlight substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome.
- g. **Strand-Mounted Wireless Facilities.** All small wireless facilities installed on aerial cable strand between two utility poles shall comply with this subsection. No more than one strand-mounted wireless facility may be installed on any single span between two poles. The approval authority shall

not approve any ground-mounted equipment in connection with any strand-mounted wireless facility unless such equipment is a remote power source that delivers power to a cluster of strand-mounted wireless facilities. The remote power source shall not be located along residential frontage and must be fully concealed within landscaping or located along an arterial road. All equipment and other improvements associated with a strand-mounted wireless facility must comply with all applicable health and safety regulations. Strand-mounted wireless facilities shall not exceed one (1) cubic foot in total volume. All strand-mounted equipment shall be finished in a non-reflective grey color. Any accessory equipment mounted on the pole shall be painted and textured to match the underlying pole. “Snow shoes” and other spooled fiber or cables are prohibited.

- h. **Encroachments over Private Property.** Small wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the property owner’s express written consent.
- i. **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.
- j. **Obstructions; Public Safety.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (F) access to any fire escape.
- k. **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as

possible if on a wood pole or other pole without internal cable space. In areas with existing overhead lines, new overhead utility lines or service drops are permitted provided that new communication lines shall be “overlashed” with existing communication lines to the extent feasible. In all other areas, the approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.

- l. **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- m. **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. The approval authority shall not approve a separate ground-mounted electric meter pedestal.
- n. **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.

3. **Small Wireless Facilities Outside the Public Right-of-Way.**

- a. **Overall Height.** Small wireless facilities on private property may not exceed the applicable height limit for structures in the applicable zoning district or overlay zone. If the subject zoning district or overlay zone does not have a height limit, the overall height may not exceed 35 feet.
- b. **Setbacks.** Small wireless facilities on private property may not encroach into any applicable setback for structures in the subject zoning district.
- c. **Backup Power Sources.** The approval authority shall not approve any diesel generators or other similarly noisy or noxious generators in or within 250 feet from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- d. **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new

parking or access improvements must be the minimum size necessary to reasonably accommodate the proposed use.

- e. **Towers, Poles and Other Freestanding Small Wireless Facilities.** All new towers, poles or other freestanding structures that support small wireless facilities must be made from a metal or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole height shall not exceed thirty-five (35) feet or the height limit for the applicable zoning district or overlay zone, whichever is less. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed twenty (20) inches.

4. **Building-Mounted Small Wireless Facilities.**

- a. **Preferred Concealment Techniques.** All applicants must propose new non-tower small wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the applicant may propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).
- b. **Facade-Mounted Equipment.** When small wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve facade-mounted equipment in accordance with this subsection 4.b. All facade-mounted equipment must be concealed behind screen walls and mounted flush to the facade. The approval authority may not approve "pop-out" screen boxes. Except in industrial zones, the approval authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade.

ATTACHMENT “C”

Merideth, Zoe

From: Shank, Aaron M. <AShank@porterwright.com>
Sent: Friday, April 19, 2019 1:21 PM
To: Merideth, Zoe
Cc: SLADE, JEFFREY M (Legal) (JS593D@att.com)
Subject: AT&T Comments on Proposed City Council Policy - Standards and Procedures for Wireless Facilities
Attachments: AT&T Comments April 19 2019.pdf

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Dear Ms. Merideth: Please accept this letter from Jeff Slade on behalf of AT&T to provide comments on the city's draft policy regarding standards and procedures for wireless communications facilities. If you have questions, please feel free to contact us. Thank you.

Aaron M. Shank
Outside Legal Counsel for AT&T

AARON M. SHANK

Porter Wright Morris & Arthur LLP
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END OF NOTICE



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April 19, 2019

Via E-Mail

Zoe Merideth
Associate Planner
City of Antioch – Planning Division
Antioch, CA

Re. AT&T's Comments on City Council Policy Regarding Standards and
Procedures for Wireless Communications Facilities

Dear Ms. Merideth:

I write on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) to provide comments on the City of Antioch's city council policy regarding standards and procedures for wireless telecommunications facilities ("Proposed Policy"). AT&T appreciates that the city recognizes the need to address changes in applicable state and federal laws, including the Federal Communications Commission's *Infrastructure Order*.¹ With more than 70% of Americans relying exclusively or primarily on wireless telecommunications, it is especially important to encourage responsible deployments consistent with applicable law.

Unfortunately, the Proposed Policy would establish new rules at odds with state and federal laws. AT&T respectfully asks that the city consider these and other comments from the wireless industry before adopting the Proposed Policy. AT&T offers the following summary of applicable laws along with specific comments on the Proposed Policy.

Key Legal Concepts

The Federal Telecommunications Act of 1996 ("Act") establishes key limitations on local regulations. The Act defines the scope and parameters of the city's review of AT&T's applications. Under the Act, the city must take action on AT&T's applications "within a reasonable period of time."² The Act also requires that the city's review of AT&T's applications must be based on substantial evidence.³ Under the Act, state and local governments may not unreasonably discriminate among providers of functionally equivalent services.⁴

¹ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) ("*Infrastructure Order*").

² 47 U.S.C. § 332(c)(7)(B)(ii).

³ 47 U.S.C. § 332(c)(7)(B)(iii).

⁴ 47 U.S.C. § 332(c)(7)(B)(i)(I).

The Act also prohibits a local government from denying an application for a wireless telecommunications facility where doing so would “prohibit or have the effect of prohibiting” AT&T from providing wireless telecommunications services.⁵ The FCC has ruled that an effective prohibition occurs when the decision of a local government materially inhibits wireless services.⁶ The FCC explained that the “effective prohibition analysis focuses on the service the provider wishes to provide, incorporating the capabilities and performance characteristics it wishes to employ, including facilities deployment to provide existing services more robustly, or at a better level of quality, all to offer a more robust and competitive wireless service for the benefit of the public.”⁷ Thus, a local government “could materially inhibit service in numerous ways – not only by rendering a service provider unable to provide existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services.”⁸

In September 2018, the FCC issued its small cell deployment order and associated rules, which went into effect on January 14, 2019. Under this *Infrastructure Order*, the FCC established a standard for lawful fees, which requires that: “(1) the fees are a reasonable approximation of the state or local government’s costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.”⁹ Thus, only objectively reasonable costs that are recovered on a nondiscriminatory basis can be included in fees. In addition to establishing a standard for lawful fees, the FCC provides a safe harbor for presumptively reasonable fees: (a) \$500 for non-recurring fees for an application including up to five small cells, plus \$100 for each small cell beyond five, or \$1,000 for non-recurring fees for a new pole to support small cells; and (b) \$270 per small cell per year for all recurring fees.¹⁰ The FCC also established a standard for local aesthetic regulations that they must be (1) reasonable (i.e., has to be technically feasible), (2) no more burdensome than those applied to other infrastructure deployments, and (3) objective and published in advance.¹¹

In 2012, Congress enacted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), which mandates approval of modifications to wireless communications facilities (eligible facilities requests, or EFRs) that do not substantially change the physical dimensions of the existing tower or base station. The FCC’s regulations implementing Section 6409(a) provide details on when a modification meets criteria for

⁵ 47 U.S.C. § 332(c)(7)(B)(i)(II).

⁶ See *Infrastructure Order* (The FCC rejected the significant gap/least intrusive means test for an effective prohibition that many courts, including the Ninth Circuit, have applied to all wireless facilities) at ¶ 40, n. 94; see also, *In the Matter of California Payphone Association Petition for Preemption, Etc.*, Opinion and Order, FCC 97-251, 12 FCC Rcd 14191 (July 17, 1997).

⁷ *Infrastructure Order* at n. 95.

⁸ *Id.* at ¶ 37.

⁹ *Id.* at ¶ 50.

¹⁰ *Id.* at ¶ 79.

¹¹ See *id.* at ¶ 86; the FCC delayed the effective date for this aesthetic standard to April 15, 2019 in order to give local governments time to adopt appropriate regulations.

approval.¹² In addition, with respect to EFRs under Section 6409(a), the city can only require information reasonably related to determining whether a request qualifies as an EFR.¹³ And the city must review EFRs within 60 days, accounting for applicable tolling, or the application is deemed granted upon notice by the applicant.¹⁴

AT&T has a statewide franchise right to access and construct telecommunications facilities in the public rights-of-way. Under Public Utilities Code Section 7901, AT&T has the right to access and construct facilities in public rights-of-way in order to furnish wireless services, so long as it does not “incommode” the public use of the public right-of-way. And under Section 7901.1, AT&T’s right is subject only to the city’s reasonable and equivalent time, place, and manner regulations.

AT&T’s Comments on the Proposed Policy

1. Definition of Collocation. In Section VIII(C)(2) of the Proposed Policy’s provisions for small wireless facilities, the city adopts the FCC’s definition for collocation in 47 C.F.R. § 1.6002(g). The city should adopt this definition throughout the Proposed Policy, except for EFRs, consistent with the FCC’s rulings.
2. Other Permits Required. The Proposed Policy requires an applicant to apply for additional permits and approvals as stated in Section V(A)(4), Section VII(A)(2) and Section VIII(B)(3). The FCC has made clear that all associated permits and approvals are subject to the applicable shot clock.¹⁵
3. Deemed Withdrawn. The Proposed Policy provides that an application is deemed withdrawn when an applicant does not respond to an incomplete notice within 90 calendar days in Section IV(E) or 60 calendar days in Section VIII(E)(2). The city should eliminate this procedure. This is inconsistent with the mechanics of the FCC shot clocks. And it is not uncommon for a delayed response by an applicant to be the result of the applicant and city staff working together to resolve issues, which should be encouraged.
4. Indemnification. The city should not seek indemnity from an underlying property owner, as it does under Sections V(E)(8), VI(D)(11) and VIII(G)(1)(h). Not only does this risk interfering with existing leases, it also has the effect of interfering with prospective economic relations between AT&T and property owners within the city. In addition, the indemnification provisions need to carve out exceptions to indemnity in instances of the city’s own negligence. Finally, AT&T must retain the right to select its own counsel.
5. Undergrounding. Several provisions in the Proposed Policy mandate undergrounding of equipment. These requirements must be revised to the extent necessary to avoid unlawful

¹² See 47 C.F.R. § 1.6100(b)(7) (effective January 14, 2019, former 47 C.F.R. §1.40001 was redesignated as 47 C.F.R. § 1.6100).

¹³ See 47 C.F.R. § 1.6100(c)(1).

¹⁴ See 47 C.F.R. § 1.6100(c)(2)-(4).

¹⁵ See *Infrastructure Order* at ¶¶ 132-137, 144.

discrimination or effectively prohibiting wireless services in violation of the Act. Wireless facilities cannot operate with all equipment underground. For instance, from a technical perspective, radio units must be placed above ground in order to be near enough to the antennas to function properly. Moreover, to comply with the FCC's aesthetic standard, the city cannot impose undergrounding requirements in a more burdensome way than applied to other right-of-way users.¹⁶

6. Concealment. Many of the city's design standards in the Proposed Policy require concealment. But under the FCC's aesthetic standard for small cells, concealment cannot be required to a greater extent than imposed on other infrastructure deployments in the right-of-way. Further, some wireless components cannot be concealed. For example, certain antennas being used for the latest generation of wireless technology cannot propagate an effective signal through concealment. And to avoid effectively prohibiting wireless services any concealment requirements must be limited "to the extent technically feasible."

Specific Comments on the Provisions for Macro Wireless Facilities

1. Discouraged Locations. Under Section V(B)(2)(b), the city strongly discourages new wireless facilities in locations within the city's Downtown Specific Plan area. To the extent the concern about macro facilities in this area is based on aesthetics, the concern is fully addressed by the city's concealment requirements for macro facilities. In addition, the city should not discourage all macro installations in the downtown area because this could result in an effective prohibition.

2. Site Justification Analysis. The city must eliminate its requirement, in Section V(D)(3)(a)(v) for a justification analysis. The city cannot require such a justification of AT&T's needs, such as a defined technical service objective, as the FCC rejected all coverage gap tests.¹⁷

Specific Comment on the Special Provisions for Eligible Facilities Requests

1. Permit Term. AT&T objects to Section VI(D)(1)'s requirement that the term of a section 6409 approval be coterminous with the underlying permit for a site, which conflicts with state law requiring a minimum duration of ten years for a wireless permit.¹⁸

Specific Comments on the Special Provisions for Small Wireless Facilities

1. Site Survey. AT&T objects to Section VIII(D)(1)(d) of the Proposed Policy, which requires applicants to submit a survey identifying and depicting all existing boundaries, encroachments and other structures within 250 feet from the proposed project site. The site survey radius needs to be limited to the immediate area surrounding the facility, as small wireless

¹⁶ See also *id.* at ¶ 86.

¹⁷ See *Infrastructure Order* at ¶ 40, n. 94 (the FCC rejected all "coverage gap" tests, including "the version endorsed by the Second, Third, and Ninth Circuits (requiring applicants to show that the proposed facilities are the 'least intrusive means' for filling a coverage gap)").

¹⁸ See Govt. Code Section 65964(b).

facilities are by definition small and are not out-of-character given existing infrastructure in the right-of-way.

2. Cost Reimbursement. Section VIII(G)(1)(m) states that applicants must “reimburse the city for all costs incurred in connection with the permit.” It also states that the city has the right to withhold any permits or other approvals unless any outstanding costs have been reimbursed to the city by the permittee. This provision must be revised because only objectively reasonable costs that are recovered on a nondiscriminatory basis can be included in fees. To the extent the city’s costs exceed the FCC’s safe harbor for presumptively reasonable fees, the costs are preempted and unlawful. AT&T looks forward to working with the city to ensure its proposed fees comport with state and federal laws.

3. Electric Meter Upgrades. AT&T objects to Section VIII(G)(2)(b). Once AT&T installs a ground-mounted electric meter, the meter is permitted to remain for ten years. AT&T will discuss removal of a ground-mounted electric meter in the context of a permit renewal. And to the extent that power needs to be based on a flat rate, the inability to place meter pedestals will eliminate the ability to use certain small cell technologies. This, in turn, may effectively prohibit wireless service in violation of the Act.

4. Location Preferences. The Proposed Policy, in Section VIII(F)(3)(b)&(d) and Section VIII(H)(1), requires the applicant to demonstrate that a proposed project would be in the most preferred location and on the most preferred support structure that are technically feasible within 250 feet of the proposed location under Sections VII(H)’s location requirements. The city can articulate appropriate location preferences, but AT&T has a legal right to place its facilities in the public rights-of-way, and the city is limited to reasonable and nondiscriminatory regulations. Further, the FCC’s aesthetic standard for small cells precludes the city from requiring this type of analysis for wireless applications when the city does not require it from other infrastructure deployments.

As a practical matter, the city should reconsider its preferences and prohibitions against siting wireless facilities near residential districts. Small cells are low-profile, low-power facilities that need to be placed near customers to provide and improve service. Aesthetic requirements that prohibit installations in large portions of the city will materially inhibit provision of wireless services, which violates the Act.

5. Prohibited Support Structures. The city should strike the proposed ban on the installation of enumerated support structures in Section VIII(H)(6) of the Proposed Policy, which includes decorative poles, traffic signals, signs, poles, cabinets and new, non-replacement wood poles. The FCC made clear that its interpretations apply to all government owned or controlled structures within the right-of-way.¹⁹ Many jurisdictions favor decorative pole designs for small cells, subject to a requirement that new or replacement decorative poles housing small cells are designed to look similar to nearby decorative poles. Further, it makes sense to allow traffic signal installations, for instance, because it permits the wireless provider to cover multiple directions

¹⁹ *Infrastructure Order* at ¶ 69.

from one location, which a mid-block location may not support. And AT&T has the right to place wood poles.

6. Overall Height. Section VIII(I)(2)(a) of the Proposed Policy limits the overall height of small wireless facilities above an existing support structure in the public right-of-way to four feet above the existing support structure. While AT&T appreciates the city's interest in protecting aesthetics, the limit may actually harm aesthetics by preventing AT&T's ability to deploy its most stealthy facilities. For example, AT&T's typical streetlight-top design extends up to six feet above the pole top.

7. Antenna Volume. Section VIII(I)(2)(b)(ii) says "all antennas may not exceed six cubic feet in volume," which is inconsistent with the *Infrastructure Order* and 47 C.F.R. § 1.6002(l)(2) (capping individual antenna volume at three cubic feet but not placing a limit on total antenna volume). This section should be revised to be consistent with the *Infrastructure Order*.

8. Accessory Equipment Installation Preferences. AT&T objects to Section VIII(I)(2)(c)(i) of the Proposed Policy, which provides installation preferences for all non-antenna accessory equipment. These preferences are unlawful to the extent they are more burdensome than restrictions imposed on other infrastructure deployments such as electrical distribution facilities.

9. Concealment Inside the Structure. In multiple sections of the Proposed Policy, the city prefers that providers locate cables, wires and other accessory equipment inside the pole. This type of requirement should be revised by adding "to the extent feasible" to the beginning of such sections. And the city should allow wires encased in cover or conduit outside the pole when internal installation is not feasible.

10. Ground-Mounted Accessory Equipment. In Section VIII(I)(2)(c)(v) the city states that if ground-mounted equipment cannot be concealed using landscaping, AT&T's facilities must be "disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks." This requirement is discriminatory to the extent not applied to other right-of-way users, which is unlawful under the FCC's standards.

11. Accessory Equipment Volume. Section VIII(I)(2)(c)(iv) limits the volume of accessory equipment. This section must be revised to allow up to 28 cubic feet of equipment to be consistent with 47 C.F.R. §1.6002(l)(3).

12. Pole Top Requirement. Sections VIII(I)(2)(d), VIII(I)(2)(e), VIII(I)(2)(f) and VIII(I)(3)(e) require antennas on streetlights, wood utility poles, new, non-replacement poles and other freestanding structures to be installed above the pole. There may, however, be a number of reasons that inhibit installations on the top of the pole. For instance, top-mounted antennas may not be technically feasible or network parameters may prevent pole-top installation. Also, AT&T may only have rights to certain space on the pole, or the pole owner may impose restrictions on AT&T that prevent extending the height of the pole. This requirement should, therefore, be limited to the extent practical and feasible.

13. New, Non-Replacement Poles. Section VIII(I)(2)(f) allows the city to require that a new, non-replacement pole be a streetlight, and if there are no existing streetlights nearby, applicants may only install a metal or composite pole. The city cannot force AT&T to install streetlights, and cannot ban use of other pole materials. AT&T has a state law right to set a poles in the right-of-way under Section 7901. In addition, these requirements steer wireless installations onto city-owned structures in violation of California Government Code Section 65964(c), which prohibits the city from requiring “that all wireless telecommunications facilities be limited to sites owned by particular parties.” And these restrictions are preempted by the FCC’s aesthetic standard for small wireless facilities to the extent they are more burdensome than rules applied to other infrastructure deployments.

14. Pole Diameter. Section VIII(I)(2)(f) and Section VIII(I)(3)(e) state that the pole diameter shall not exceed 12 inches and any base enclosure diameter shall not exceed 16 inches. This requirement is too narrow and, thus, will lead to an effective prohibition.

15. Overall Height for Small Cells Outside the Public Right-of-Way. In Section VIII(I)(3)(a), small wireless facilities cannot exceed 35 feet in height or the applicable height limit for structures in the applicable zoning district or overlay zone, and Section VIII(I)(3)(e) states that pole height cannot exceed 35 feet or the height limit for the applicable zoning or overlay zone, whichever is less. AT&T notes that the city’s 35-foot limitation may not be appropriate in certain places throughout the city. For example, the light standards near the city’s high school football stadium house wireless facilities and are taller than 35 feet.

Conclusion

AT&T appreciates the city’s efforts to adapt its wireless facility siting regulations to accommodate new and emerging technologies and changes in law. By addressing the items we raise here, the city will go a long way toward encouraging deployments consistent with state and federal policies and to the great benefit of the city’s residents and businesses.

Sincerely,

/s/ Jeffrey M. Slade

Jeffrey M. Slade

ATTACHMENT “D”

Merideth, Zoe

From: Lizzy Schneider <lschneider@extenetsystems.com>
Sent: Wednesday, April 10, 2019 12:10 PM
To: Merideth, Zoe
Cc: Charles Lindsay; Mark Jones
Subject: City of Antioch Draft Wireless Policy
Attachments: ExteNet notes 4.10.19 Antioch Ordinance.pdf

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Good afternoon Zoe,

Attached are ExteNet's notes to the proposed wireless facilities ordinance. I have also outlined below, as the copy online is not editable in a very readable manner. Please let me know if you have any questions. Also, I see the ordinance does not address the new FCC set fees and I would suggest including reference in the new ordinance, as you have with the new shot clock deadlines.

III APPLICABILITY

Pg-33 C- "Presubmittal conferences are especially encouraged when an applicant seeks to submit one or more batched applications so that the Director may advise the applicant about an staffing or scheduling issues that may hinder the City's ability to meet the presumptively reasonable timeframes under the FCC" Such meeting shall not waive the FCC shot clock deadlines a mutually negotiated tolling agreement must be executed before such deadlines may be missed.

F. Batched Applications. Applicants may submit up to five individual applications for a small cell permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.

Pg 34- Public Notice- ExteNet would propose a different form of public notice in the form of posted signs on site, door hangers to the surrounding area, or something more feasible than stamped and addressed letters to each resident in a 300 foot radius.

Pg 36- Public notice- same note as above, also consider combining these as they are repetitive. "Prior to any approval, conditional approval or denial, public notice shall be given in the manner established in Sec D (1)(h) to properties within a 300 foot radius.

Pg 40 G. indemnification- The permittee and, if applicable, the property owner upon which the small wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this small cell permit, and (2) other claims of any kind or form, whether for personal injury, death or

property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this small cell permit or the small wireless facility, except where city is solely or grossly negligent.

Pg 44- **2. Locations in the Public rights of way-** remove section. ExteNet has not allowed "preferred small wireless facilities" rankings such as these in any agreement. also removed from similar formatted agreements

Pg 46- **6. Prohibited support structures-** ExteNet would request use of traffic poles and is happy to provide sample install for such poles.

Pg 49- **e. wood utility poles-** ExteNet would suggest this read as follows "Applicants that propose to install small wireless facilities on an existing wood utility pole must install all antennas ~~above the pole~~ at the pole top unless applicant demonstrates that mounting the antennas ~~above the pole~~ at the pole top would be technically infeasible" Is pole top install what the city was getting at?

ExteNet has also seen the TERMS listed in similar ordinances. A sample is below:

- (a) **Permit Term.** This small cell permit will automatically expire ten (10) years and one day with one (1) renewal option of five (5) years from its issuance. Any other permits or approvals issued in connection with any collocation, modification or other change to this small wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. To the extent that this small cell permit is issued in connection with any structure owned or controlled by the City and located in the public rights-of- way, this small cell permit shall be coterminous with the cancellation, termination or expiration of the agreement between the applicant and the City for access to the subject City structure.
- (b) **Permit Renewal.** At least ninety (90), but no more than one hundred eighty (180), days before the expiration of a permit granted under this section, the permittee may apply for permit renewal. The permittee must demonstrate that the subject small wireless facility complies with all the conditions of approval associated with this small cell permit and all applicable provisions in the Lake Oswego Municipal Code and this Policy that exist at the time the decision to renew or not renew the permit is rendered. The City may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with this Policy. Upon renewal, this small cell permit will automatically expire five (5) years and one day from its issuance.

Lizzy Schneider
ExteNet Systems, Inc.
Counsel, Infrastructure
Phone: (720) 379 6414
lschneider@extenetsystems.com

ATTACHMENT “E”

Merideth, Zoe

From: Paul Albritton <pa@mallp.com>
Sent: Thursday, April 18, 2019 5:34 PM
To: Merideth, Zoe
Cc: Smith, Tom
Subject: Verizon Wireless Comments on Draft City Council Policy - Standards and Procedures for Wireless Communications Facilities
Attachments: Verizon Wireless Letter 04.18.19.pdf

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Zoe, attached please find our comments prepared on behalf of Verizon Wireless regarding the draft policy, *Standards and Procedures for Wireless Communications Facilities*. We would be pleased to review a revised policy prior to its introduction to the City Council.

Thank you.

--

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April 18, 2019

VIA EMAIL

Zoe Merideth
Associate Planner
City of Antioch
P.O. Box 5007
Antioch, California 94531

Re: Draft City Council Policy
Standards and Procedures for Wireless Communications Facilities

Dear Zoe:

We write on behalf of Verizon Wireless to provide comment on the draft City Council Policy, *Standards and Procedures for Wireless Communications Facilities* (the “Draft Policy”). While Verizon Wireless appreciates administrative review of small cells, several Draft Policy requirements contradict the recent Federal Communications Commission (“FCC”) order addressing appropriate small cell approval criteria. Requirements for public notice invite subjectivity, whereas the FCC requires objective review of small cells. Design standards that are technically infeasible are unreasonable according to the FCC. Other provisions contradict state law granting telephone corporations the right to use any right-of-way, notably the location restrictions. We urge staff to revise the Draft Policy prior to consideration by the City Council.

To expedite deployment of small cells and new wireless technology, the FCC adopted its September order to provide guidance on approval criteria for small cells. *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) (the “Small Cells Order”). Among other topics, the FCC addressed appropriate aesthetic criteria for of qualifying small cells, concluding that they must be: “(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.” *Id.*, ¶ 86. “Reasonable” standards are “technically feasible” and meant to avoid “out-of-character deployments.” *Id.*, ¶ 87. Objective standards must “incorporate clearly-defined and ascertainable standards, applied in a principled manner.” *Id.*, ¶ 88.

As we explain, several requirements of the Draft Policy contradict the FCC's directives or state law, and these must be removed or revised. Our comments are as follows.

Public Notice Is Inappropriate for Review Under Objective Standards.

While administrative approval of small cells is appropriate, soliciting public comment through notice procedures would introduce subjectivity and the illusory impression that personal concerns would override objective standards. Draft Policy §§ VIII(D)(1)(h), VIII(F)(1), VIII(F)(3)(g). The FCC determined that small cells must be reviewed under objective criteria, and for this reason, requirements for public notice should be stricken. Public comment is not necessary to assist in evaluation of compliance with objective standards, which should be straightforward and routine for staff. Subjective personal concerns cannot be a factor for objective standards which must be published in advance. *At most, notice should be provided to neighboring property owners for informational purposes.*

Location Preferences Should Be Revised to Encourage Small Cells in All Rights-of-Way and on Existing Utility Poles.

The ranking of right-of-way locations by preference could eliminate numerous stretches of right-of-way from consideration in conflict with state law. Draft Policy § VIII(H)(2). Public Utilities Code Section 7901 grants telephone corporations such as Verizon Wireless the right to place their equipment along *any* public road or highway, and it does not favor certain types of roads (such as arterial/collector roads or commercial/industrial/public zones) over others (such as local roads or residential zones). The preference list does not include local roads in residential zones, and it disfavors locations within 250 feet of a residence, both of which may exclude numerous rights-of-way in direct conflict with Section 7901. *At a minimum, Item (i) of this list should be stricken, and local roads in residential zones should be added to the list.*

The location and structure preferences should not favor City-owned street lights. Draft Policy §§ VIII(H)(4). If strictly applied, the top preference for City-owned assets would contradict California Government Code Section 65964(c) which bars local governments from limiting wireless facilities to sites owned by particular parties. Verizon Wireless has the right to place its telephone equipment on joint utility poles as a member of the Northern California Joint Pole Authority. Support structure preferences should be relaxed to accommodate use of joint utility poles where they are found along the right-of-way, giving them a preference equal with street light poles. Small cell equipment is not "out-of-character" on utility poles, given existing utility lines and other infrastructure, and structure preferences used to deny this option would be unreasonable. *We suggest that the right-of-way structure preferences simply favor the existing structures in the proposed list over new poles.*

Height Increase Limits Should Be Expanded by Two Feet To Accommodate Typical Small Cells.

The Draft Policy limits antennas in the right-of-way to four feet above either a pole itself or any separation distance required by Public Utilities Commission General Order 95 (six feet over electric supply conductors). Draft Policy § VIII(I)(2)(a). These height limits contradict the height allowances included in the FCC's definition of small cell, which are no less than 50 feet. 47 C.F.R. § 1.6002(I)(1).

For the right-of-way, the height limit is unreasonable as it would prohibit use of typical four-foot antennas on utility poles. Antennas above utility poles require a mount underneath the antenna that attaches the antenna to the pole or pole-top extension. Antenna mounts are conical in shape, one to two feet in height, and conceal cables. As elements associated with antennas, the mounts are also subject to separation requirements of General Order 95 Rule 94. The proposed four-foot limit will not accommodate four-foot antennas *and* their mounts, limiting wireless carriers to two-foot antennas which generally have a smaller coverage footprint. This will lead to the unintended consequence of more facilities required to serve an area.

For street light poles, a four-foot height limit may not accommodate an antenna, mounting hardware, and small network components within a tapered shroud. *We suggest revising Draft Policy Section VIII(I)(2)(a) with a modest expansion of the four foot limit to six feet.*

Requiring replacement utility poles to be of similar height to the original pole is technically infeasible where the replacement is required to elevate antennas six feet above pole-top electric supply conductors in compliance with General Order 95. Draft Policy § VIII(I)(2)(e). *The last sentence of this provision should be revised to allow additional height if required to comply with General Order 95.*

Unreasonable Requirements for Underground Equipment and New Poles Must Be Revised.

The FCC determined that undergrounding requirements, similar to aesthetic requirements, must be reasonable, non-discriminatory and objective. Small Cells Order, ¶¶ 86, 90. The Draft Policy requires that accessory equipment be placed underground in rights-of-way where utilities are primarily underground. Draft Policy § VIII(I)(2)(c)(i). While there is an exception if evidence shows that undergrounding is technically infeasible, this standard is unreasonable nonetheless. Undergrounding is generally infeasible due to sidewalk space constraints and undue environmental and operational impacts for required active cooling and dewatering equipment. Feasibility aside, this requirement is also unreasonable because small equipment boxes on the side of a pole are not "out-of-character" among typical infrastructure in the right-of-way, including on

street light poles. *To allow for typical small cell equipment required for service, the City should permit up to five cubic feet of accessory equipment on the side of a street light pole in such areas before any undergrounding is considered.*

For new poles in the right-of-way, the City cannot require Verizon Wireless to install a street light fixture on a new pole. Draft Policy § VIII(I)(2)(f). This clearly contradicts Verizon Wireless's right under Public Utilities Code Section 7901 to erect new poles in the right-of-way solely to elevate telephone equipment. The City's limited aesthetic review extends to wireless facility equipment, but lighting is not a functional requirement for wireless service. The alternate integrated pole option is technically infeasible given the limited 12- and 16-inch diameter pole and base sizes. Remote radio units, other Verizon Wireless network equipment and mounting hardware cannot fit within these dimensions. As noted, pole-mounted equipment components are not "out-of-character" in the right-of-way. *The City must allow new poles with antennas and radio boxes mounted onto the pole, or, at a minimum, expand the allowed size of the integrated pole base.*

Technically Infeasible Design Standards Must Be Revised to Be Reasonable.

For facilities on utility poles, including shrouds or other concealment devices in equipment volume calculations would reduce the volume available for required radio units, particularly for those small cells mounted to utility poles. With adequate accessory equipment, small cells on utility poles provide expanded service, and fewer such facilities are needed to serve an area. *The second-to-last sentence of Draft Policy Section VIII(I)(2)(c)(vi) including shrouds or other concealment in volume calculations should be stricken.*

The requirement to cover pole-mounted accessory equipment with a shroud or cage cannot extend to electric equipment such as a meter and disconnect switch, which may be exposed if required by the electric provider. Draft Policy § VIII(I)(2)(c)(iii). *Rather than requiring applicants to demonstrate the technical infeasibility of this in each case, the provision should simply exempt such electric equipment.*

Similarly, a shrouded meter cannot be required if that option is not available from the electric provider. Draft Policy § VIII(I)(2)(m). The requirement would be technically infeasible in that case. *We recommend deleting "shrouded" from this provision.*

Requiring new utility connections to be placed underground is unreasonable with respect to utility poles. Draft Policy § VIII(I)(2)(k). New aerial utility lines are not "out-of-character" where there are existing electrical and/or communication lines between poles. This requirement is unreasonable for small cells on utility poles and cannot apply to such installations. *This provision should be revised to allow new aerial lines if there are already existing aerial lines attached to a pole or in the vicinity.*


To avoid discriminatory treatment, standards for wireless carriers' ground-mounted cabinets must be equivalent to those for other utilities that have placed cabinets in Antioch. Draft Policy § VIII(I)(2)(c)(v). The requirement to disguise cabinets as street furniture on collector or local roads is excessive. *This standard should be revised to apply the cabinet criteria for arterial roads ("similar in appearance to existing ground-mounted accessory equipment cabinets") to all rights-of-way.*

The blanket requirement for shrouding of all small cell antennas is infeasible for antennas that cannot be covered. Draft Policy §§ VIII(I)(2)(b)(i), VIII(I)(2)(d-f). Shrouds or radomes impede frequencies recently licensed from the FCC for new wireless technology including 5G service, rendering them technically infeasible and the requirement unreasonable. Any antenna standards for right-of-way facilities must accommodate new higher-frequency facilities that integrate antennas and radios in one small box, and cannot impose shrouding which impedes signal propagation. *Draft Policy Sections VIII(I)(2)(b)(i) and VIII(I)(2)(d-f) should be revised to excuse antenna shrouding requirements if technically infeasible for signal propagation.*

The Draft Policy limits cumulative antenna volume to six cubic feet. While the FCC defined small cell to specify individual antennas up to three cubic feet, it did not limit the total antenna volume. Draft Policy § VIII(I)(2)(b)(ii); 47 C.F.R. § 1.6002(l). *The cumulative volume limit must be stricken.*

We note that if no application fee has been adopted by the Council, the Draft Policy may require small cell applicants to reimburse the City for any "reasonable" processing costs with no limit specified. Draft Policy § VIII(D)(1)(b). This suggests that application fees will be calculated after submittal or a decision. The FCC ruled that presumptively fair and reasonable permit application fees are: \$500 for up to five small cells (which may be in one batch), plus \$100 for each additional small cell, or \$1,000 for a new pole. Small Cells Order, ¶¶ 78-79. These fee amounts are considered a "safe harbor" for cities to charge absent satisfactory justification. *Id.*, ¶ 80. Application fees should be determined in advance. *We encourage the City to adopt a small cell permit fee that complies with the FCC's guidance.*

The Draft Policy includes several provisions that contradict the FCC's new Small Cells Order or state law. We urge staff to make needed revisions prior to review by the City Council.

Very truly yours,

Paul B. Albritton

cc: Thomas Smith, Esq.

**STAFF REPORT TO THE PLANNING COMMISSION
FOR CONSIDERATION AT THE MEETING OF MAY 15, 2019**

Submitted by: Thomas Lloyd Smith, City Attorney **TLS**

Date: May 10, 2019

Subject: Ordinance Prohibiting the Conversion of Senior Mobilehome Parks to All Ages Mobilehome Parks

RECOMMENDATION

It is recommended that the Planning Commission take the following actions:

1. Adopt the resolution recommending approval of an ordinance prohibiting the conversion of senior mobilehome parks.

REQUEST

Staff requests that the Planning Commission provide a recommendation in favor of an ordinance prohibiting the conversion of senior mobilehome parks. This recommendation will be forwarded to the City Council for formal action.

BACKGROUND

In July 2017, the City Council enacted a moratorium on the conversion of senior mobilehome parks to all-ages facilities. The moratorium was enacted under Government Code section 65858 for a period 45 days. In September 2017, the Council extended the moratorium for one year, 10 months, and 15 days (effectively, for two years from the date of the first moratorium).

Under the moratorium, "senior" mobilehome parks are those in which 80% or more of the mobilehome units are occupied by persons aged 55 or over. "All ages" mobilehome parks, in contrast, are those in which more than twenty (20) percent of the units are occupied by persons younger than 55.

At the time of the moratorium, two mobilehome parks, Vista Diablo Mobile Estates (Somerville Road) and Delta Vista Estates (Strasbourg Lane), were operating as senior mobilehome parks. The effect of the moratorium was to prevent these mobilehome parks from converting to all-ages parks.

When the City Council considered the moratorium and its extension, the Council heard from numerous mobilehome occupants about the need to preserve opportunities for senior housing. Several speakers noted the difficulty seniors had in finding affordable housing in eastern Contra Costa County. These speakers explained that mobilehome

parks provide some of the best housing opportunities for persons over 55, who often lived on fixed incomes, due to relative affordability. Speakers advised that when mobilehome parks convert to all ages, units occupied by seniors are often acquired by younger and family tenants as the seniors' leases end. Seniors do not immediately lose their mobilehome spaces when parks are converted, in part due to tenant protections required by state law concerning termination of leases, but they are ultimately pushed out because of the higher rents younger tenants are able to pay.

The current moratorium will expire in July of this year unless extended by permanent ordinance.

CEQA

The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines") through the general rule, that it can be found with certainty that the project will have no potential for significant impact on the environment.

PROPOSAL

The attached ordinance would effectively make the current prohibition on conversion of senior mobilehome parks permanent. The ordinance would enact a new article in the City Zoning Code, Article 42, that would prohibit the conversion of existing senior mobilehome parks to all-ages parks and effectively prohibit the two parks that are currently senior-only parks from converting to all-ages parks.

The proposed ordinance would impose this prohibition for as long as these establishments continue to be used as mobilehome parks. To that end, the ordinance notes that the prohibition would remain in effect until either the park undergoes a "change of use," which under California law includes the closure of the park, and the institution of some other land use. For such changes, mobilehome park operators must provide a minimum of 12 months' notice to tenants of the closure and other tenant protections. Thus, to the extent any of the mobilehome parks were to close, they would be required to minimize the impact of such closure on their existing tenant populations.

SUMMARY

The purpose of this action is to recommend to the City Council whether it is advisable to permanently enact the prohibition on conversion of senior mobilehome parks to all-ages parks.

ATTACHMENT

- A. Resolution with Ordinance

ATTACHMENT “A”

**PLANNING COMMISSION
RESOLUTION NO. 2019-****

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
RECOMMENDING TO THE CITY COUNCIL APPROVAL OF AN ORDINANCE
PROHIBITING THE CONVERSION OF SENIOR MOBILEHOME PARKS TO ALL-
AGES MOBILEHOME PARKS**

WHEREAS, there is a great need for affordable housing in City limits and in Eastern Contra Costa County, particularly for senior populations, whose members are often retired and/or must live within limited, fixed incomes;

WHEREAS, mobilehomes provide an important source of housing opportunities for senior populations due to the relative cost of mobile homes compared to housing in single-family and multifamily developments;

WHEREAS, there presently are mobilehome parks within the City of Antioch that provide senior-only mobilehome housing;

WHEREAS, when senior mobilehome parks are converted to all-ages parks, the leases of senior tenants are often not renewed because mobilehome parks are able to secure higher rental payments from all-age mobilehome tenants;

WHEREAS, seniors who must relocate from formerly senior-only mobilehome parks face limited opportunities for relocating and must bear significant expenses associated with moving their mobilehomes that they often cannot afford;

WHEREAS, for the above reasons, the City Council enacted a moratorium in July 2017 prohibiting the conversion of senior mobilehome parks to all ages mobilehome parks and the Council extended that moratorium in September 2017;

WHEREAS, the Planning Commission has considered the proposed ordinance, which would make the prohibition on conversion of senior-only mobilehome parks permanent;

WHEREAS, the Planning Commission finds that continuing the prohibition on conversion would preserve affordable housing opportunities for seniors and, to that end, is consistent with the goals and policies of the City's General Plan, including its Housing Element;

WHEREAS, the Planning Commission finds that continuing the prohibition on conversion would preserve the public health, safety, and welfare;

WHEREAS, on May 15, 2019, the Planning Commission duly held a public hearing regarding this proposed ordinance, and received and considered evidence, both oral and written; and

WHEREAS, the approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines") through the general rule that it can be found with certainty that the project will have no potential for significant impact on the environment.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission does hereby recommend that the City Council approve the draft Ordinance (Exhibit A) to amend the Zoning Ordinance regarding the conversion of senior mobilehome parks to all-ages mobilehome parks.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the Planning Commission of the City of Antioch at a regular meeting thereof held on the 15th day of May, 2019.

AYES:

NOES:

ABSENT:

ABSTAIN:

FORREST EBBS
Secretary to the Planning Commission

EXHIBIT A

ORDINANCE NO. ____-C-S

AN ORDINANCE OF THE CITY OF ANTIOCH PROHIBITING CONVERSION OF MOBILEHOME PARKS FROM SENIOR-ONLY TO ALL-AGES HOUSING

The City Council of the City of Antioch does ordain as follows:

Section 1.

Article 42 is added to Chapter 5 of Title 9 of the Antioch Municipal Code (the Antioch Zoning Code) as follows:

ARTICLE 42: PROHIBITION ON CONVERSION OF SENIOR MOBILEHOME PARKS

§ 9-5.4201. Purpose and Intent.

- A. Mobilehome parks represent one of a few affordable housing options left to senior citizens that permit exclusive residence in a detached dwelling by those individuals over the age of 55 years.
- B. Senior mobilehome parks afford seniors the ability to live in their own homes rather than in apartments and provide a senior living community in low-rise setting that typically provides a clubhouse for community events and socializing as well as recreation facilities inside the park so that the residents can easily walk to these facilities and event. Many of the seniors living in senior mobilehome parks enjoy having their grandchildren visit them in the parks, but they, like the seniors without grandchildren, purchased mobilehomes in a senior park in order to live in a quieter community with others in their own age group and purchased their homes in these parks because they were senior parks that only accepted prospective purchasers of homes in the park if at least one occupant of the mobilehome being purchased was 55 years or older.
- C. Residents of senior mobilehome parks relied upon the representation of the park management and park owners that only seniors could purchase homes in those parks and obtain tenancies in those parks. These representations were set forth in the leases or rental agreements they were required to sign upon purchasing a mobilehome in the parks and moving into the parks and in the rules of those parks, which the residents were also required to sign and acknowledge. Now some owners of senior mobilehome parks have indicated that they can, and are already attempting to, change their parks from senior mobilehome parks to family parks, over the objections of their senior residents, by changing park rules using the procedure in Civil Code Section 798.25.
- D. While the seniors now living in senior mobilehome parks could remain in a park after it changes to an all ages mobilehome park, those seniors would no longer enjoy the companionship of a senior community and would likely lose the quiet

environment generally exists within these communities. A limited supply of senior parks exists and allowing conversion of those parks would most likely result in diminished supply and fewer housing options for senior citizens. Moreover, since mobilehomes are not mobile in any practical sense due to the high cost of moving a home, the risk of damage to the home in moving, the loss of improvements such as porches, patios, carports, and landscaping, which cannot be moved, and the lack of available rental spaces in senior parks, or in any mobilehome park in the City or surrounding areas that will accept re-locating homes, senior residents of a mobilehome park that becomes an all ages mobilehome park would have to sell the homes in which they have lived for many years and in which they have invested both financial and personal resources in order to move to another senior facility. After selling their mobilehomes, these seniors may no longer have sufficient funds to purchase a mobilehome in another senior park or senior facility. The aforementioned factors make it unlikely that seniors would be able to relocate to another Senior Mobilehome Community if the park owner converted their senior mobilehome park to an all ages mobilehome park.

- E. Article XI, Section 7 of the California Constitution authorizes cities to adopt local police, sanitary, and other ordinances not in conflict with general laws.
- F. The California Legislature has authorized cities to provide zoning for senior-only mobilehome parks pursuant to Health and Safety Code section 18300.
- G. Prior to the adoption of this Ordinance, the City Council determined that an urgency ordinance was necessary to protect the public health, safety, and welfare of the citizens of the City, and further determined upon that basis that an urgency ordinance was necessary to prohibit conversions of senior-only mobilehome park conversions within the City. Accordingly, an initial urgency ordinance was approved on August 8, 2017, which was effective for 45 day from the date of that adoption (i.e., until September 22, 2017). Then, the City Council approved a second urgency ordinance, which was effective for 22 months and 15 days from the expiration of the first urgency ordinance (i.e., until August 7, 2019).
- H. Prior to the expiration of the moratorium, the City Council adopted this Ordinance, finding that the permanent extension of the prohibition on conversion of Senior Mobilehome Parks to all-ages mobilehome parks was necessary to protect the supply of affordable housing for seniors within city limits and, thus, was necessary to protect the public health, safety, and welfare.

§ 9-5.4202. Definitions.

- A. For purpose of this Article, the term “**change of use**” shall have the same meaning as stated in California Civil Code section 798.10.
- B. For purpose of this Article, the term “**mobile home park**” shall have the same meaning as stated in California Health and Safety Code section 18214.

- C. For purpose of this Article, the term “**senior mobilehome park**” shall mean any mobilehome park where, on the effective date of this Ordinance, at least 80% of the full-time residents were individuals aged 55 years of age and older
- D. For purpose of this Article, the term “**all ages mobilehome park**” shall mean any mobilehome park where, on the effective date of this Ordinance, the number of full-time residents younger than 55 years of age comprised 20.01% or more of the total number of residents in the mobilehome park.

§ 9-5.4203. Prohibition on Conversion.

No senior mobilehome park existing on the effective date of this Ordinance shall, from the effective date of this Ordinance and thereafter, convert to or become an all-ages mobilehome park. This prohibition shall be effective for any mobile home park subject to this Ordinance until such time as the mobile home park has complied with California Civil Code section 798.56(g) and all other applicable statutes, regulations, and ordinances regarding the change of use of the property in which the mobile home park is located.

Section 2. CEQA Finding.

This project is exempt from environmental analysis under the requirements of the California Environmental Quality Act (“**CEQA**”) pursuant to CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that the proposed amendments will not have a significant effect on the environment.

Section 3. Severability.

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in force and effect.

Section 4. Effective Date.

This ordinance is enacted under California Government Code sections 65853 through 65857. This ordinance shall become effective 30 days after its date of adoption by the City Council.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was passed at a regular meeting thereof, held on the 25th day of June 2019, by the following vote:

AYES:

NOES:

ABSENT:

Sean Wright, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

**STAFF REPORT TO THE PLANNING COMMISSION
FOR CONSIDERATION AT THE MEETING OF MAY 15, 2019**

Prepared by: Alexis Morris, Planning Manager

Reviewed by: Forrest Ebbs, Community Development Director

Date: May 10, 2017

Subject: PD-06-04, UP-06-21, AR-06-17 – Hillcrest Summit Amendment

RECOMMENDATION

It is recommended that the Planning Commission deny a request to extend the approvals of the Final Development Plan, Use Permit, and Design Review for the Hillcrest Summit project.

REQUEST

Ted Liu of Bedrock Ventures, Inc. requests a two-year extension of the approvals for the Hillcrest Summit project. The extension would extend the expiration date of the approvals for the Final Planned Development, Use Permit, and design review to March 11, 2021. The project consists of retail and offices, located at Hillcrest Avenue, Shaddick Drive, and East Tregallas Road (APN: 052-100-069 and -068).



BACKGROUND

On January 16, 2008, the Planning Commission recommended that the City Council approve the Hillcrest Summit project and adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program. On January 23, 2008, the Design Review Board reviewed and approved the subject project. On March 11, 2008, the City Council approved a rezone to Planned Development, a Final Development Plan, a Use Permit, and design review to construct a mixed use development consisting of offices and retail on approximately 4.94 acres. The proposed development includes 15,000 s.f. of retail and 35,000 s.f. of office (Attachment A).

The applicant has previously requested four extensions of the project approvals. On April 6, 2011, the Planning Commission approved an amendment to the conditions of approval extending the project approvals until March 11, 2013. On May 15, 2013 the Planning Commission again approved an amendment to the conditions of approval extending the project approvals until March 11, 2015. On March 18, 2015 the Planning Commission approved an amendment to the conditions of approval extending the project approvals until March 11, 2017. On April 5, 2019 the Planning Commission approved an amendment to the conditions of approval extending the project approvals until March 11, 2019. In 2017, staff recommended that the extension be the last for the project and that the applicant submit building permits for the project prior to the new 2019 expiration date. Staff's recommendation was not included as a condition of approval by the Planning Commission. No building permits have been submitted for the project to date.

ENVIRONMENTAL

On March 11, 2008, the City Council adopted a Mitigated Negative Declaration (MND) with a Mitigation Monitoring and Reporting Program for this project in conformance with the California Environmental Quality Act. Mitigation measures were proposed for impacts relating to air quality, historical and archeological resources, biological resources, soil erosion, noise, and traffic.

Adopting the attached resolution denying the extension of the approvals is not an action subject to CEQA because CEQA does not apply to projects that are disapproved.

ANALYSIS

Issue #1: Project Overview

The project consists of three buildings, one 15,000 s.f. building containing multi-tenant retail and two office buildings totaling 35,000 s.f. The total proposed square footage is 50,000 s.f. The proposed retail building is located closest to Hillcrest Avenue, one office building is located in the eastern corner of the site and the other is located closer to Shaddick Drive. The project site consists of two parcels that would either need to be merged or a lot line adjustment would need to be approved prior to the development of

the project site. A lot merger or lot line adjustment have not been requested for the site to date.

The subject property is zoned Planned Development (PD). The surrounding land uses and zoning designations are as noted below:

North: A gas station, church and State Route 4 / Convenience Commercial (C-1) and High Density Residential (R-20)
South: Single family residential / Low Density Residential (R-6)
West: Single family residential / Low Density Residential (R-6)
East: Existing Commercial shopping center and gas station/ Neighborhood Community Commercial (C-2)

Issue #2: Approval Expiration

On April 5, 2017, the Planning Commission approved a two-year extension of the subject project approvals until March 11, 2019 (Attachment B). The applicant is now returning to the Planning Commission to request an additional two-year extension of the project approvals, which would extend them until March 11, 2021. The applicant is requesting additional time to act on the project approvals due to unfavorable economic conditions since the project was initially approved. The applicant is hopeful that with the completion of the BART station they will be able to initiate the project.

The Antioch Municipal Code allows the final development plan approval to be extended by the Planning Commission for up to two years or an alternate time specified as a condition of approval. A use permit and design review expires after one year from the date of approval or at an alternative time specified as a condition of approval. As stated above, the project approvals have been extended four times for a total of 11 years.

Issue #3: Extension Request

The Zoning Ordinance requires expirations of project approvals after one or two years primarily because the context of a development can change significantly over time as can the policies and regulations of the City and other agencies. For example, since this project was approved in 2008:

- there are new, much stricter stormwater regulations that every eligible project in the City must comply with to prevent violations to the City's National Pollutant Discharge Elimination (NPDES) permit with the State of California;
- a General Plan amendment was approved for the nearby Wildflower Station project, which adds 120 residential units to the project area that were not anticipated or analyzed when the Hillcrest Summit project was approved; and,
- Highway 4 was widened, the Highway 4 interchange was redesigned, and the BART station opened in 2018, all of which have resulted in major changes to the traffic volumes, circulation patterns, and air quality emissions in the project area.

Because the project was granted four extensions over the course of 11 years and no building permits were ever pursued for the project; because the baseline conditions of the original environmental analysis, particularly related to traffic and air quality, have changed significantly; and because the stormwater regulations have changed significantly, staff can no longer make the findings required for an extension of the project approvals. Therefore, staff is recommending that no future extensions should be considered and the entitlements should expire. If the project approvals are allowed to expire, any new development on the project site will be required to process a new entitlement application and comply with CEQA.

If the Planning Commission would like to approve the applicant's request for a two-year extension, then the item would need to be continued to the next available Planning Commission hearing date to allow staff time to prepare the appropriate resolution and findings.

ATTACHMENTS

- A: Resolution
- B. Staff Report and Minutes from the March 11, 2008 City Council Meeting
- C: Planning Commission Resolution No. 2017-06

ATTACHMENT “A”

**CITY OF ANTIOCH PLANNING COMMISSION
RESOLUTION NO. 2019-****

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
DENYING A REQUEST FOR A TWO-YEAR EXTENSION OF THE APPROVALS FOR
THE HILLCREST SUMMIT PROJECT**

WHEREAS, the City of Antioch did receive a request from Ted Liu of Bedrock Ventures, Inc. for a two-year extension of the approvals for the Hillcrest Summit project. The extension would extend the expiration date of the approvals for the Final Planned Development, Use Permit, and design review to March 11, 2021. The project consists of retail and offices, located at Hillcrest Avenue, Shaddick Drive and East Tregallas Road (APN: 052-100-069 and -068); and,

WHEREAS, a Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program was prepared and adopted by the City Council on March 11, 2008 in conformance with CEQA; and,

WHEREAS, on March 11, 2008 the City Council duly held a public hearing, received and considered evidence, both oral and documentary and was able to make all of required findings for approval of a Final Planned Development and Use Permit; and,

WHEREAS, on April 6, 2011, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary and approved a two-year extension of the project approvals to March 11, 2013 by modifying City Council Resolution 2008/29; and,

WHEREAS, on May 15, 2013, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary and approved a two-year extension of the project approvals to March 11, 2015; and,

WHEREAS, on March 18, 2015, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary and approved a two-year extension of the project approvals to March 11, 2017; and,

WHEREAS, on April 5, 2017, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary and approved a two-year extension of the project approvals to March 11, 2019; and,

WHEREAS, the Planning Commission duly gave notice of public hearing as required by law; and,

WHEREAS, on May 15, 2019, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary; and,

NOW THEREFORE BE IT RESOLVED, that the Planning Commission of the City of Antioch could not make all of the required findings for approval of a Final Planned Development:

- A. Each individual unit of the development cannot exist as an independent unit capable of creating an environment of sustained desirability and stability, and the uses proposed could be detrimental to present and potential surrounding uses and will not have a beneficial effect which could not be achieved under another zoning district;

The project's 11-year-old development plan does not incorporate the latest State standards related to stormwater management and control and therefore the project's stormwater runoff could be detrimental to surrounding uses and development of the project will not have a beneficial effect.

- B. The streets and thoroughfares proposed may not meet the standards of the city's Growth Management Program and adequate utility service can be supplied to all phases of the development;

The baseline traffic and circulation conditions around the project site have changed significantly since the project was approved in 2008 and the assumptions and impacts analyzed in the project's traffic impact analysis may no longer be applicable. Therefore, the streets and thoroughfares surrounding the project may not meet the standards of the City's Growth Management Program once the project is developed.

- C. Any commercial component is justified economically at the location(s) proposed;

The General Plan allows for commercial uses at the project site and the project site is surrounded by commercial and residential development and developed infrastructure. Therefore, development of the site with commercial uses should be an economically viable use of the property.

- D. Any residential component will be in harmony with the character of the surrounding neighborhood and community and will result in densities no higher than that permitted by the General Plan;

There is no residential component of the project.

- E. Any industrial component conforms to applicable desirable standards and will constitute an efficient, well-organized development with adequate provisions for railroad and/or truck access and necessary storage and will not adversely affect adjacent or surrounding development;

There is no industrial component of the project.

- F. Any deviation from the standard zoning requirements is not warranted by the design and additional amenities incorporated in the final development plan which does not offer certain unusual redeeming features to compensate for any deviations that may be permitted;

The project's 2008 stormwater control plan contains major deviations from the standard zoning requirements that require a stormwater plan be approved that complies with the Contra Costa Clean Water Program Stormwater C.3 Guidebook. Significant new stormwater management requirements have been put in place since the project's 2008 approvals.

- G. The area surrounding the P-D District cannot be planned and zoned in coordination and substantial compatibility with the proposed development; and,

The project was approved over 11 years ago and the area surrounding the proposed project has changed significantly. The compatibility of the proposed project with the area surrounding the PD District cannot be determined without updated environmental analyses.

- H. The P-D District conforms with the General Plan of the city.

The commercial nature of the PD district is consistent with the Neighborhood Commercial General Plan designation.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Antioch could not make all of the required findings for approval of a Use Permit:

- A. That the granting of such use permit may be detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity;

The project has not been designed to comply with the most recent version of the Contra Costa Clean Water Program Stormwater C.3 Guidebook that requires both treatment of stormwater and control of the rate of release of stormwater into the storm water system. Inadequate stormwater management could result in increased pollutant discharge and high volumes of stormwater runoff that would be detrimental to public health and in violation section C.3 of the City's MS4 NPDES permit from the State of California.

- B. That the use applied for at the location indicated is properly one for which a use permit is authorized;

The commercial use applied for are properly one for which a use permit is authorized because the Zoning Ordinance (§9-5.2307(C)) requires a use permit prior to construction of any phase of an approved PD District.

- C. That the site for the proposed use is not adequate in size and shape to accommodate such use, and all yards, fences, parking, loading, landscaping, and other features required, to other uses in the neighborhood.

The project site is an irregular shape and contains steep slopes. The project's site plan does not incorporate the latest Contra Costa Clean Water Program Stormwater C.3 Guidebook, which can reduce the developable area of a site. The site may not be adequate in size to accommodate 50,000 s.f. of buildings, associated impervious surfaces for parking and pedestrian access and also provide an adequate amount of space for proper management of the project's stormwater.

- D. That the site abuts streets and highways that may not be adequate in width and pavement type to carry the kind of traffic generated by the proposed use.

The site abuts Hillcrest Avenue, Shaddick Drive, and Tregallas Road. The baseline conditions of the project's 2008 traffic study have changed significantly due to the opening of the BART station to the north, the redesign of the Hillcrest Avenue interchange and the introduction of new development projects to the area. It cannot be determined if the street network adjacent to the project is adequate in width and pavement type without additional traffic analysis of the project with the current existing conditions and new cumulative conditions.

- E. That the granting of use permit will not adversely affect the comprehensive General Plan.

The project is consistent with the General Plan designation of Neighborhood Commercial.

NOW THEREFORE BE IT RESOLVED that the Planning Commission of the City of Antioch does hereby **DENY** a request for a two-year extension of the approvals for the Hillcrest Summit project.

* * * * *

I HEREBY CERTIFY the foregoing resolution was duly adopted by the Planning Commission of the City of Antioch, County of Contra Costa, State of California, at a regular meeting of said Planning Commission held on the 15th day of May, 2019.

AYES:

NOES:

ABSTAIN:

ABSENT:

Forrest Ebbs
Secretary to the Planning Commission

ATTACHMENT “B”

**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF MARCH 11, 2008**

Prepared by: Mindy Gentry, Associate Planner *MG*
Reviewed by: Tina Wehrmeister, Deputy Director of Community Development *TW*
Approved by: Joseph G. Brandt, Director of Community Development *JGB*
Date: March 7, 2008
Subject: PD-06-04, UP-05-31 – Final Development Plan, and Use Permit for Retail and Offices

RECOMMENDATION

It is recommended that the City Council take the following actions:

1. Motion to approve the resolution adopting the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program; and,
2. Motion to read the ordinance by title only; and,
3. Motion to introduce the ordinance rezoning 4.94 acres making up the project site to the Planned Development District (PD); and,
4. Motion to adopt the resolution approving the Final Development Plan and Use Permit.

REQUEST

Bedrock Ventures, Inc. requests approval of a rezone to Planned Development and approval of a Final Development Plan and Use Permit to construct a mixed use development consisting of offices and retail on approximately 4.94 acres. The proposed development includes 15,000 s.f. of retail and 35,000 s.f. of office. The project site is located approximately 250 feet south of the intersection of Hillcrest Avenue and East Tregallas Road (APN: 052-100-055 and -056).

Each requested entitlement is discussed below:

Rezone to Planned Development district (PD): The project site is within an existing Planned Development District. It is therefore required that the project site be rezoned as its own PD according to the Planned Development review process established by the Municipal Code.

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B1

Approval of a Final Development Plan: Approval of a Final Development Plan goes hand in hand with the rezoning described above. The Final Development Plan and the PD district effectively become the zoning code for the project area. In this case, the Final Development Plan would allow for the construction of one 15,000 s.f. retail building and two office buildings, one 25,000 s.f. and the other 10,000 s.f.

Use Permit: The applicant is requesting approval of a Use Permit. The requested uses are attached (Attachment "C").

BACKGROUND INFORMATION

On January 16, 2008, the Planning Commission recommended (7-0 vote) the City Council approve the subject project and adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program. The only concern raised by the Planning Commission was the circular drive aisle between Buildings 'A' and 'B' being a one way (Attachment "D"). The applicant has modified the plan so the circular drive aisle can now accommodate a two way traffic flow.

On January 23, 2008, the Design Review Board reviewed and approved (3 ayes, 1 no, and 1 absent) the subject project (Attachment "E"). The majority of the Board members lauded the architecture and design of the project.

ENVIRONMENTAL

A Mitigated Negative Declaration (MND) with a Mitigation Monitoring and Reporting Program has been prepared for this project in conformance with the California Environmental Quality Act (Attachment "B"). The public review period was from January 11, 2008 to January 30, 2008. The Community Development Department did not receive any comments on the MND. Mitigation measures are proposed for impacts relating to air quality, historical and archeological resources, biological resources, soil erosion, noise, and traffic. All potential impacts are mitigated to a less than significant level.

ANALYSIS

Issue #1: Project Overview

The applicant is proposing to construct three buildings, one containing multi-tenant retail which is 15,000 s.f. and two containing offices totaling 35,000 s.f. The total square footage is proposed at 50,000 s.f. The proposed retail building is closest to Hillcrest Avenue providing tenant desired visibility, while the two office buildings sit back from Hillcrest Avenue. One is located in the eastern corner of the site while the other is located closer to Shaddick Drive.

The front setback at the smallest distance is approximately 19 feet from the Hillcrest Avenue property line. Due to the configuration of the site, the 19 foot setback is only at one point and the setback increases in size to the south and the north, with an average

setback of 33 feet. The roof of Building 'A' is setback 20 feet from the Hillcrest Avenue property line and again because of the site configuration the setback increases to the north and the south. Typically, the required setback for an arterial street such as Hillcrest Avenue is 30 feet. The setback on Shaddick Drive is approximately 15 feet from the property line. The typical setback on Shaddick Drive would be 20 feet. Since the project is a Planned Development, it allows for more flexibility in the setback requirements. Staff feels the proposed setbacks on the site are appropriate because of the site's unusual shape and the steep hillside along the rear of the property. The applicant has taken into consideration the building layout, site circulation, and parking which has produced a design that Staff believes works well for the encumbered site.

The applicant is proposing to construct the project in three phases, which are as follows:

Phase 1: Q4 2008 – Q1 2009

- Project site work, parking lot, landscaping
- Building A

Phase 2: Q4 2009 – Q1 2010

- Building B

Phase 3: Q4 2010 – Q1 2011

- Building C

The subject property is zoned Planned Development (PD). The surrounding land uses and zoning designations are as noted below:

North:	A gas station and State Route 4 (C-1)
South:	Single family residential (R-6)
West:	Single family residential (R-6)
East:	Commercial shopping center with various inline retail and a gas station (C-2)

Issue #2: General Plan, Zoning Consistency, and Land Use

The General Plan designation is Neighborhood Commercial and the zoning designation is Planned Development (PD). Neighborhood Commercial allows for office and retail uses; therefore, the project is consistent with the General Plan. Since the project is Planned Development, the applicant has provided a proposed list of uses for both the office and retail components. The proposed uses are included as Attachment "C".

Staff has a few concerns regarding the proposed uses for the office component and one concern on the retail component of the Master Use List. Staff concerns are with the animal hospitals/veterinary clinics and any type of assembly use which could potentially include clubs, lodges, churches, and cultural institutions. Animal hospitals and veterinary clinics typically board animals overnight and tend to be louder than a typical office use. Assembly uses have different requirements in the building code than office

uses and many have unique operating characteristics such as late hours and music. Therefore, staff is recommending that animal hospitals/veterinary clinics and assembly uses or uses with assembly as part of the use be subject to a supplemental use permit with approval from the Planning Commission. The supplemental use permit will allow for further review of these particular uses and provide the opportunity to add conditions of approval if necessary. The last concern of staff relating to office uses is day-care centers. Day-care centers require outdoor space and Staff feels it is not appropriate at this location; however Staff would be supportive of adding a tutoring center to replace day-care. A condition of approval has been added reflecting this. See condition numbers 75 and 76 regarding the discussion above.

The concern that Staff has regarding the retail uses is the Food Stores which encompass both convenience stores and grocery stores. The Zoning Ordinance defines a convenience store as an establishment with a sales area of 5,000 s.f. or less which sells primarily food, household items, and personal convenience items. Since the applicant is only providing 15,000 s.f. of retail, a convenience store will be more likely than a grocery store to locate in this project.

The City Council amended the Zoning Ordinance in April of 2005 as it pertains to Convenience Stores and required a Use Permit for such uses. Staff feels that Council's intent is to review each convenience store independently. Therefore staff recommends that Convenience Stores wishing to locate in this development require a supplemental use permit. If Council feels it is appropriate, they may also strike Food Stores from the Master Use List. Staff has placed a condition of approval (condition number 75) stating that convenience stores will require a supplemental use permit with review and approval by the Planning Commission.

Issue #3: Parking and Circulation

Per the Zoning Ordinance, the parking requirement for retail is 5 spaces per 1,000 s.f. of gross floor area, which equates to 75 parking spaces for the retail portion (15,000 s.f.) of the project. For business and professional office, the requirement is 250 s.f. of gross floor area which equates to 140 parking spaces; however, the applicant has identified medical and dental office as a potential use. The parking requirement for medical office is 1 space per 225 s.f. of gross floor area. During the Planning Commission hearing the applicant agreed to add additional parking to accommodate medical office uses. The original parking count only allowed for professional offices. The applicant added a total of 5 parking spaces after the Planning Commission hearing, which allows for 12,465 s.f. of medical office space. A condition of approval has been placed on the project restricting the amount of medical office space to 12,465 s.f. due to the limited number of parking spaces (condition number 74).

There are two driveways proposed to serve the subject site. One driveway is on Hillcrest Avenue. The driveway will be a right in and right out. The second ingress and egress is located on Shaddick Drive, which allows vehicles to enter from either direction on Shaddick Drive and depart the site in either direction.

Delivery trucks serving the site are not expected to be larger than a 30' box truck; therefore, the driveways and turns must have adequate radii to accommodate the trucks. The applicant has provided a truck turning template showing that a 30' box truck can successfully navigate the site.

The traffic study has also indicated the applicant will be responsible for the following mitigation measures:

- Payment of the proportionate fair share for the improvements to the intersections of Hillcrest Avenue and State Route 4 westbound ramps and Hillcrest Avenue, Davison Drive, and Deer Valley Road, which will be satisfied through the traffic fees paid at the time of building permit issuance.
- Payment of the proportionate fair share for the lengthening of the Hillcrest Avenue northbound left-turn pocket. Based on an estimated construction cost of \$100,000, the project's 18.9% share is \$18,900.
- Payment of the proportionate fair share to widen East Tregallas Road to accommodate a left-turn lane to total 275 feet. The signal timing shall also be modified for protected left-turn phasing for the East Tregallas Road/Larkspur Drive approaches. Based on an estimated construction cost of \$150,000 the project's 28.6% share is \$42,900.

In a letter provided by Tri Delta Transit (Attachment "F"), they have recommended adding a bus turnout or adding a wide right turn lane into the development on Hillcrest Avenue; either option will provide the opportunity for buses to pull out of flow of traffic to load and unload passengers. Tri Delta Transit is requesting either of these options due to the increase of traffic on Hillcrest Avenue. Staff has not added the bus turnout as a condition of approval because the traffic in lane three on Hillcrest Avenue is lighter than the other two lanes as most vehicles are making their way over to either make a left and continue on Hillcrest Avenue or to continue straight on Deer Valley Road. To verify the numbers, the City of Antioch Traffic Division conducted a study to get accurate counts during the AM and PM peak. This study was done before the Bypass was opened which is important to note since the traffic on Hillcrest further to the south has been measured as reduced by almost 50%. During the AM peak, which was from 7:30 AM to 9:19 AM, 173 vehicles were in lane three as opposed to 601 in lane two and 733 in lane one. During this time, no buses made a stop at the bus stop in front of the subject property. During the PM peak, 4:30 PM to 6:00 PM, 377 cars utilized lane three while 1,058 vehicles were in lane two and 1,137 vehicles in lane one. Five buses made stops in front of the subject property during the PM peak. Furthermore, approximately 14 feet behind the property is a retaining wall 6' in height. If a bus stop was added to the project, the retaining wall would significantly increase in height by cutting into the slope for the bus stop. The heightened wall would be adjacent to Hillcrest Avenue, an arterial street, and would decrease the landscaped area. If the City Council feels it is appropriate, they may add a condition of approval to have the applicant construct the bus turnout as well as dedicate the land required for the bus turnout to the City of Antioch.

Issue #4: Grading and Retaining Walls

There are five proposed retaining walls on site. There are three on the backside of the project due the steep slope between the residential properties and the proposed development. The retaining wall that is closest to the residential properties ranges in height from approximately 0.5 feet on the eastern end to a maximum of 6.75 feet and then declines again to 0.5 feet in height. The wall runs a total of 565 lineal feet. The middle retaining wall ranges from 0.5 feet to a maximum height of 6.7 and then descends to 1 foot in height. The third retaining wall or the one closest to the proposed development ranges in height from approximately 0.5 feet to a maximum of 6.7 feet in height and then descends to a height of 3 feet. The middle retaining wall runs a total of 620 lineal feet and the third retaining wall runs a total of 640 lineal feet. The retaining walls located on the backside will mainly be hidden by the buildings and are not expected to be very visible from the street. The three retaining walls provide for a terraced hillside and prevent higher walls from being constructed.

The fourth retaining wall on site, which runs for 250 lineal feet, faces Hillcrest Avenue and then wraps around to face the ingress and egress as well as part of the parking area. The retaining wall ranges in height from less than a foot to 6 feet in height. The fifth retaining wall runs a total of 418 lineal feet and starts adjacent to the northeastern side of the ingress and egress on Shaddick Drive. The wall continues northeast along Shaddick Drive and then wraps around the perimeter of the property parallel with the property line for the Valero gas station. The wall ranges in height from approximately one foot to 4.5 feet. The project has been conditioned to locate all retaining walls outside of the street right-of-way and to minimize the height of the walls to the maximum extent practicable.

The design of the retaining walls consists of a keystone wall. The color of the wall is a gray stone motif. There are four different stone sizes the wall is comprised of, a large, medium, and small unit as well as a cap.

Issue #5: Architecture and Landscaping

The architecture of the buildings is in the Craftsman style with materials consisting of composition roof shingles, cement board siding, and stucco. The retail building uses an 8' wide arcade along the façade of the building to create a comfortable pedestrian walkway. The office buildings have a 5' wide arcade on the front and side of the buildings (Attachment "G").

The applicant is proposing a combination of small decorative trees and large street trees. The interior of the site contains the small decorative trees and in the parking lot, away from the buildings larger trees such as Sequoia Sempervirens (Coast Redwood) are used.

The hillside between Buildings 'A' and 'B' and the residential homes contains a variety of trees and shrubs. As the vegetation gets closer to the fence line of the homes, the

tree type is smaller and more shrubs and groundcover are used so as not to obstruct the view of the residences. The tree that is utilized is a Rhus Lancea (African Sumac), which reaches a maximum height of 30' and due to the grade change, will not impact the view.

Tree Removal

According to the biological assessment, there are five small coast live oaks and one big leaf maple present on the site. The biological assessment does not say how large the trees are; however, the assessment recommends the trees be retained as part of the site's landscape. According to the applicant, there is only one tree to be removed from the site because it is located where the driveway is proposed. Prior to the issuance of building permits the applicant shall provide documentation identifying the tree type and size. The tree that is to be removed, or if any others will be removed during construction, shall be replaced with two 24" box trees. The remainder of the trees shall be protected through the setup of an exclusion zone or orange barrier fencing around the tree at a distance greater than the drip line of the tree. No heavy machinery should pass through or park within this zone and debris or materials should not be placed within the exclusion zone around the drip line or leaning against the trunk.

Issue #6: Other Issues

Lot Line Adjustment or Lot Merger

Currently the proposed project spans over two separate properties which are owned by the same entity. Because one of the parcels could theoretically be sold to another owner, the development would not be sustainable the way the current property lines fall. The applicant will be required to process a lot line adjustment to the satisfaction of the City Engineer prior to the issuance of building permits.

Another option would be to merge the two lots, which is currently not proposed and would need the Planning Commission's approval. Since this option has not been brought forward by the applicant, the project has been conditioned to process a lot line adjustment. If the applicant decides a lot merger is appropriate it will be required to be heard before the Planning Commission.

Refuse Enclosure

There are three refuse enclosures, one for each proposed building. The trash enclosures have been architecturally incorporated into the buildings. The roofline has been extended from the buildings to appear the enclosure is part of the building architecturally.

Community Meeting

On January 3, 2008, the applicant held a community meeting for the adjacent residential property owners in order to address any concerns or to hear feedback from the neighbors. Two residents were in attendance and had questions regarding the potential impacts to their homes. The homeowners were satisfied with the applicant's response regarding their concerns. The homeowners were concerned with the obstruction of the

views by the proposed buildings, the architecture of the buildings, and the proposed uses.

FINANCIAL IMPACT

The project will result in additional sales tax revenue for the City of Antioch.

OPTIONS

1. Continue the project with direction to staff regarding additional information.
2. Deny the project.

ATTACHMENTS

- A: Vicinity Map
- B: Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan
(This attachment was distributed only to the City Council members due to size.
A copy is available for public review at the Community Development Department.)
- C: Applicant's List of Proposed Uses
- D: Staff Report and Minutes from the January 16, 2008 Planning Commission Hearing
- E: Staff Report and Minutes from the January 23, 2008 Design Review Board Hearing
- F: Letter from Tri Delta Transit dated August 3, 2006
- G: Applicant's Project Description

ORDINANCE NO. 2014-C-S

AN ORDINANCE OF THE CITY COUNCIL REZONING 4.94 ACRES, MAKING UP THE HILLCREST SUMMIT PROJECT SITE, TO THE PLANNED DEVELOPMENT DISTRICT (PD) (052-100-055 and 056)

The City Council of the City of Antioch does ordain as follows:

SECTION 1:

The City Council determined on March 11, 2008 that, pursuant to Section 15074 of the Guidelines of the California Environmental Quality Act, and after full consideration of the Initial Study prepared for the project, and on the basis of the whole record before it, the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Hillcrest Summit project should be adopted.

SECTION 2:

At its regular meeting of January 16, 2008, the Planning Commission recommended that the City Council adopt the Ordinance to rezone the subject property to the Planned Development District (PD).

SECTION 3:

The real property described in Exhibit A, attached hereto, is hereby rezoned to, and the zoning map is hereby amended accordingly, Planned Development District (PD). The Final Development Plan, with attachments consisting of various maps, written documents, and renderings of the proposed development along with all conditions imposed by the City of Antioch are hereby incorporated by reference and made a part of this zoning change. These documents are on file at the City of Antioch Community Development Department.

SECTION 4:

This ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption and shall be published once within fifteen (15) days upon passage and adoption in a newspaper of general circulation printed and published in the City of Antioch.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was introduced at a regular meeting of the City Council of the City of Antioch, held on the 11th day of March and passed and adopted at a regular meeting thereof, held on the 25th day of March, 2008 by the following vote:

AYES: Council Member Davis, Moore, Simonsen and Mayor Freitas

NOES: None

RESUSED: Council Member Kalinowski

s/ DONALD P. FREITAS
Mayor of the City of Antioch

ATTEST:

s/ L. JOLENE MARTIN
City Clerk of the City of Antioch

EXHIBIT A
LEGAL DESCRIPTION

"PARCEL ONE" and "PARCEL TWO", as shown on the Record of Survey filed August 10, 1990, in Book 95 of Licensed Surveyors Maps, Page 19, Contra Costa County Records.

RESOLUTION NO. 2008/29

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH ADOPTING THE
MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING
PROGRAM AND APPROVING A FINAL PLANNED DEVELOPMENT AND USE PERMIT FOR
THE HILLCREST SUMMIT PROJECT**

WHEREAS, the City Council of the City of Antioch received a request from Bedrock Ventures, Inc. for approval of a planned development rezone, a final planned development and use permit to construct one 15,000 s.f. retail building and two office buildings totaling 35,000 s.f. on a vacant 4.94 acre parcel. The project site is located approximately 250 feet south of the intersection of Hillcrest Avenue and East Tregallas Road (Z-08-01, PD-06-04, UP-06-21) (APN: 052-100-055 and -056); and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan has been prepared and duly circulated for a period of 20 days from January 11 to January 30, 2008. All potential impacts were identified and mitigated to a less-than-significant level; and

WHEREAS, the Planning Commission on January 16, 2008, duly held a noticed public hearing, received and considered evidence, both oral and documentary, and recommended approval of the project to the City Council; and

WHEREAS, the Design Review Board on January 23, 2008 duly held a public hearing, received and considered evidence, both oral and documentary, and recommended approval of the project to the City Council; and

WHEREAS, the City Council duly gave notice of public hearing as required by law; and,

WHEREAS, on March 11, 2008 the City Council duly held a public meeting, received and considered evidence, both oral and documentary; and,

WHEREAS, the City Council did consider the request to rezone the project site to Planned Development (PD).

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Antioch makes the following required findings for approval of a Final Development Plan:

1. Each individual unit of the Hillcrest Summit development can exist as an independent unit capable of creating an environment of sustained desirability and stability because each building has independent access and parking. The uses proposed in the Master Use List will not be detrimental to present and potential surrounding uses but instead will have a beneficial effect which could not be achieved under another zoning district due to allowing the encumbered site flexibility in setbacks while providing uses that are compatible with the surrounding commercial area and the General Plan. In addition, the project will have the convenience of having established uses allowing for tenants with approved uses not spend the time going through a public hearing; and
2. The project site is served by streets and thoroughfares that meet the standards of the City's Growth Management Program and adequate utility service can be

supplied to all phases of the development because the project is an infill development with access to existing utilities; and

3. The commercial components of the Hillcrest Summit project are justified economically at the location proposed because they are consistent with the General Plan; and
4. Any industrial component conforms to applicable desirable standards and will constitute an efficient, well-organized development with adequate provisions for railroad and/or truck access and necessary storage and will not adversely affect adjacent or surrounding development; and
5. Any deviation from the standard zoning requirements is warranted by the compatible design of the encumbered site and additional amenities such as a pedestrian walkway and seating areas have been incorporated in the final development plan which offer certain unusual redeeming features to compensate for any deviations that may be permitted; and
6. The area surrounding the Hillcrest Summit project can be planned and zoned in coordination and substantial compatibility with the proposed development because the development is in line with the surrounding neighborhood and has a Master Use List compatible with the General Plan; and
7. The Project conforms with the General Plan of the City because the proposed use is commercial and the General Plan designation is Neighborhood Commercial.

BE IT FURTHER RESOLVED that the City Council does hereby make the following findings for approval of a Use Permit:

1. That the granting of such use permit will not be detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity because the project has been designed to be sensitive to the surrounding community by having a large setback between the commercial buildings and the adjacent residential uses and the project complies with the City of Antioch requirements;
2. That the commercial use applied for at the location indicated is properly one for which a use permit is authorized because the General Plan designation is Neighborhood Commercial;
3. That the site for the proposed use is adequate in size and shape to accommodate such use, and all yards, fences, parking, loading, landscaping, and other features required, to other uses in the neighborhood. The site plan complies with the City standards and where they have deviated has been compensated by the design and additional amenities;
4. That the site abuts streets and highways adequate in width and pavement type to carry the kind of traffic generated by the proposed use. The site abuts to both a

local street and an arterial street, which meet the City standard for width and are paved with an all weather surface; and

5. That the granting of use permit will not adversely affect the comprehensive General Plan because the proposed uses and design are compatible with the General Plan.

BE IT FURTHER RESOLVED that the City Council, after reviewing the staff report and considering testimony offered, does hereby adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and APPROVE the request for a Final Development Plan and Use Permit to allow the construction of three buildings, 15,000 square feet of retail and 35,000 square feet of office, totaling 50,000 square feet, located approximately 250 feet south of the intersection of Hillcrest Avenue and East Tregallas Road, subject to the following conditions:

STANDARD CONDITIONS

1. That the project shall comply with the Antioch Municipal Code.
2. That conditions required by the Planning Commission or City Council, which call for a modification or any change to the site plan submitted, be corrected to show those conditions and all standards and requirements of the City of Antioch prior to any submittal for a building permit. No building permit will be issued unless the site plan meets the requirements stipulated by the Planning Commission and the standards of the City.
3. That this approval expires two years from the date of approval (Expires: March 11, 2010), unless a building permit has been issued and construction has diligently commenced thereon and has not expired, or an extension has been approved by the Zoning Administrator. Requests for extensions must be received in writing with the appropriate fees prior to the expiration of this approval. No more than one, one year extension shall be granted.
4. That City staff inspect the site for compliance with conditions of approval prior to final building inspection.
5. That the applicant obtains an encroachment permit for all work to be done within the public right-of-way.
6. That any required easements or rights-of-way for off-site improvements are to be obtained by the developer, at no cost to the City of Antioch.
7. That advance permission be obtained from any property or easement holders for any work done within such property or easements.
8. That the developer pay all fees required by the City Council.
9. That the building be clearly identified and an exterior lighting plan be submitted for Police Department review and approval.

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10. That this approval supersedes previous approvals that have been granted for this site.
11. That building permits shall be secured for all proposed construction associated with this facility, including any interior improvements not expressly evident on the plans submitted.
12. That all construction conform to the requirements of the Uniform Building Code and City of Antioch standards.
13. That the Regional Traffic Impact Fee be paid, as well as all other applicable fees.
14. That the developer pay all required City fees at the time of building permit issuance.
15. That the use of construction equipment be restricted to weekdays between the hours of 8:00 am to 5:00 pm or as approved by the City Engineer.
16. That traffic signal fees be paid.
17. That the project be in compliance with and supply all the necessary documentation for AMC6-3.2: Construction and demolition debris recycling.
18. That the applicant shall defend, indemnify and hold harmless the City in any action brought by a third party to challenge the land use entitlement.
19. No buildings or refuse enclosures shall be built on any easements.
20. That any work that would obstruct a City street not be conducted during peak commute hours, as approved by the City Engineer.
21. That landscaping and signing not create a sight distance problem.
22. That there be a minimum of five (5) feet clear between any proposed trees and any concrete or asphalt paving belonging to the City of Antioch. Trees closer than ten (10) feet to such concrete or asphalt paving shall use approved root guards.
23. That detailed landscaping and irrigation plans for the entire site shall be submitted to the City for review and approval. All landscaping and irrigation shall be installed in accordance with approved plans prior to the issuance of certificates of occupancy for this building.
24. That asphalt paving shall have a minimum slope of 2%, and concrete paving have a minimum slope of 0.75%.
25. That all on site curbs, gutters, and sidewalks shall be constructed of Portland cement concrete.
26. That all mechanical and roof equipment be screened from public view.

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27. That all parking lot dimensions and striping shall meet City standards.
28. That all parking and access meet the ADA/Title 24 requirements as determined by the Chief Building Official using Checklist #1, Parking, CA Title 24, Sections 1129B.1 and 1130B. The location of such spaces shall provide safe and convenient access to the building as determined by the Chief Building Official.
29. That any cracked or broken sidewalks be replaced as required by the City Engineer.
30. That the City Engineer shall determine if it is necessary to engage soils and structural engineers as well as any other professionals deemed necessary to review and verify the adequacy of the building plans submitted for this project. If deemed necessary by the City, this may be extended to include field inspections by such professional to verify implementation of the plans. Cost of these services shall be born by the developer.
31. That a lighting plan be submitted to staff for review and approval prior to the issuance of building permits. All lighting shall be installed on site in accordance with approved plans, and prior to the issuance of certificates of occupancy for this building.
32. All existing and proposed public utilities (e.g. transformers, PMH boxes) shall be placed underground and subsurface or screened from public view 30' from the property line, in accordance with the Antioch Municipal Code or as approved by the City Engineer.
33. That all storm water flows be collected on site and discharged into an approved public storm drain system.
34. That a reduced backflow prevention device be installed on all City water meter services.
35. That the applicant shall comply with all requirements and conditions, and pay all fees set forth by the Delta Diablo Sanitation District.
36. That street lighting shall be provided in accordance with the Antioch Municipal Code.
37. That improvements and fees that are required by the Contra Costa County Flood Control District be implemented, as approved by the City Engineer.
38. That the developer shall provide adequate water pressure and volume to serve this development, as approved by the City Engineer.
39. That the sewer collection system be constructed to function as a gravity system.
40. That a parking lot sweeping program be implemented which provides for sweeping, at minimum immediately prior to and once during, storm season.
41. That standard dust control methods be used to stabilize the dust generated by construction activities.
42. That no illegal signs, pennants, banners, balloons, flags, or streamers are to be used on this site at any time.

43. That no signs be installed on this site without prior City approval.
44. That the site be kept clean of all debris (boxes, junk, garbage, etc.) at all times.
45. The project shall conform to Antioch Municipal Code Section 9-5.1001.1 concerning the landscape maintenance of non-residential projects. In addition, all landscape areas shall be maintained at Level A.
46. That water conservation measures, including low volume toilets and the use of drought tolerant landscaping be used.
47. That a trash enclosure is required. The trash enclosure shall be covered by a roof structure to prevent runoff and that the interior be plumbed to the sanitary sewer.
48. That the project shall comply with all Federal, State and City regulations for the National Pollution Discharge Elimination System (NPDES) (AMC§6-9). Under those NPDES regulations, this project is subject to provision C.3: New development and redevelopment regulations for storm water treatment. As such, a Storm Water Control Plan is required to be submitted simultaneously with project plans.
49. That the following requirements of the Federally mandated NPDES program be complied with, or as required by the City Engineer:
 - a) That an application for a State of California "General Construction Activity Storm Water Permit" be submitted to the Regional Resources Control Board, and a copy of the Notice of Intent be submitted to the City, prior to any construction activity on this site;
 - b) Limiting construction access routes and stabilizing access points;
 - c) Stabilizing areas denuded due to construction (prior to wet season, October 1 through May 1) by using suitable practices including, but not limited to, temporary or permanent seeding, mulching, sod stabilization, vegetative buffer strips, protection of trees, plastic covering, application of ground base on areas to be paved;
 - d) Protecting adjacent properties by appropriate use of vegetative buffer strips, sediment barriers or filters, dikes or mulching, or by a combination of these measures or other appropriate measures;
 - e) Delineating clearing limits, easements, setbacks, sensitive or critical areas and their buffers, trees and drainage courses by marking them in the field;
 - f) Stabilizing and preventing erosion from temporary conveyance channels and outlets;
 - g) Using sediment controls and filtration to remove sediment from water generated by dewatering;

- h) Using proper construction materials and construction waste storage, handling and disposal practices;
- i) Using proper vehicle and equipment cleaning, fueling and maintenance practices;
- j) Controlling and preventing discharge of all potential pollutants, including but not limited to, pesticides, petroleum products, nutrients, solid wastes, and construction chemicals, that occur on site during construction;
- k) Preparing a contingency plan in the event of unexpected rain or BMP failure including but not limited to, an immediate response plan, storing extra or alternative control materials on-site (stakes, fences, hay bales), notifying the local agency, etc.;
- l) Education and Training – For developments with no property owner association or community association, practical information materials on good housekeeping of hazardous products, proper use and disposal for hazardous products, and prohibited discharge practices and materials must be provided, initially by the developer, to the first occupant/tenants, and thereafter by the City public education program.
- m) Labeling Storm Drain Facilities – The phrase “No Dumping – Drains to River” must be embossed/stamped on all new storm drain inlets to alert the public to the destination of storm water and to prevent direct discharge of pollutants into the storm drain. Water courses should be similarly labeled by posting signs.
- n) Runoff Control – To the extent practicable, maintain post-development peak runoff rate and average volume of runoff at levels that are similar to pre-development levels. The developer must design the proposed project accordingly.

50. All requirements of the Contra Costa County Health Department shall be met.

51. That all requirements of the Contra Costa County Fire Protection District be met.

52. That the applicant shall pay the Contra Costa Fire Protection District Fire Development fee in place at the time of permit issuance.

53. The applicant shall comply with the following conditions provided by the Contra Costa County Fire District:

- a) Provide emergency apparatus access roadways with all-weather driving surfaces of not less than 20-feet unobstructed width, and not less than 13 feet 6 inches of vertical clearance, to within 150 feet of travel distance to all portions of the exterior walls of every building. Access roadways shall not exceed 16% grade, shall have a minimum outside turning radius of 45 feet, and an inside turning radius of 25 feet, and must be capable of supporting the imposed loads of fire apparatus, i.e., 37 tons. (902.2) CFC, 22500.1 CVC

- i) Access roadways of less than 28 feet unobstructed width shall have NO PARKING – FIRE LANE signs posted and curbs painted red with the words NO PARKING – FIRE LANE clearly marking.
 - ii) Access roadways of 28 feet or greater, but less than 36 feet unobstructed width shall have NO PARKING – FIRE LANE signs posted, allowing for parking on one side only and curbs painted red with the words NO PARKING – FIRE LANE clearly marked.
 - iii) Access roadways 36 feet or greater of unobstructed width allowing for parking on both sides.
- b) Emergency apparatus access roadways and hydrants shall be installed, in service, and inspected by the Fire District prior to construction or combustible storage on site. (8704.1) CFC. Gravel roads are not considered all-weather roadways for emergency apparatus access. A minimum of the first lift of asphalt concrete paving (with curb and gutter if proposed) shall be installed as the minimum subbase material and capable of supporting the designated gross vehicle weight specified above.
 - c) Premises identification shall be provided. Such numbers shall contrast with their background and be a minimum of four inches high with ½ -inch stroke or larger as required to be readily visible from the street. (901.4.4) CFC.
 - d) The developer shall provide traffic signal pre-emption systems (Opticom) on any new or modified traffic signals installed with the development. (21351) CVC.
 - e) The developer shall provide fire hydrants of the East Bay type. Hydrant locations will be determined by this office upon submittal of three copies of complete site improvement plans or utility plans. (903.3) CFC. Hydrants shall be spaced a maximum of 300 feet on center.
 - f) The developer shall provide an adequate and reliable water supply for fire protection with a minimum flow of 4,000 GPM. Required flow shall be delivered from not more than four hydrants flowing simultaneously for duration of 240 minutes while maintaining 20-pounds of residual pressure in the main. (903.3) CFC. This includes the reduction for the installation of automatic fire sprinklers.
 - g) The developer shall submit three copies of site improvement plans indicating all existing or proposed utilities, turnaround and turnout areas, and fire apparatus access roadways for review and approval prior to construction. Indicate any water mains to be installed in any of the newly aligned roadways. (902.2.2.1) CFC. This submittal shall be used to locate the above required hydrants.
 - h) The buildings shall be protected with an approved automatic sprinkler system if require by the California Building Code. Submit three sets of plans to this office for review and approval prior to installation. (1003.1) CFC.

- i) The developer shall provide an adequate and reliable water supply for fire protection with a minimum fire flow of 2,750 GPM. Required flow shall be delivered from not more than three (3) hydrants flowing simultaneously for a duration of 240 minutes while maintaining 20-pounds residual pressure in the main. This includes the reduction for the installation of automatic fire sprinklers. (903.3) CFC
- j) The developer shall submit three complete sets of plans and specifications of the subject project, including any of the following required built-in fire protection systems, to the Fire District for review and approval prior to construction to ensure compliance with minimum requirements related to fire and life safety. Plan review fees will be assessed at that time. (103.3.2.4) CFC, (106.3.2) CBC
 - i. Private underground fire service water mains
 - ii. Building construction plans
 - iii. Fire sprinklers
 - iv. Fire alarm
 - v. Commercial kitchen hood extinguishing systems
- k) Plan review and inspection fees shall be submitted at the time of plan review submittal. Checks may be made payable to Contra Costa County Fire Protection District (CCCFPD).
- l) Submit plans to: Contra Costa County Fire Protection District
2010 Geary Road
Pleasant Hill, CA 94523
- m) To schedule field inspections and tests call (925) 941-3323 prior to 3 p.m. a minimum of two working days in advance.

PROJECT SPECIFIC CONDITIONS

- 54. A lot line adjustment shall be processed to the satisfaction of the City Engineer prior to the issuance of building permits.
- 55. The applicant shall submit a final plan showing the delivery truck route and turning radii on the site plan demonstrating that the trucks can successfully enter, exit, and maneuver on the site, as approved by the City Engineer.
- 56. Bicycle racks shall be installed per the City of Antioch Municipal Code.
- 57. Retaining walls shall be prohibited within the street right-of-way and shall be reduced in height to the maximum extent practical on-site as required by the City Engineer.
- 58. Truck deliveries shall be limited to 7:00 AM to 7:00 PM.
- 59. No overnight parking of vehicles shall be allowed on site.

60. That no outdoor storage shall be allowed.
61. No outdoor sales or display of merchandise shall occur on the site without a supplemental administrative use permit, in accordance with the City of Antioch Municipal Code.
62. The light standards shall be limited to a maximum height of 25 feet and light shall not spill from the subject site onto adjacent roadways and properties.
63. A photometric plan shall be submitted for Staff review and approval.
64. That the project C-3 drainage collection system be connected to the City storm drain system at a new or existing catch basin.
65. That the project shall comply with all mitigation measures identified in the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
66. Existing trees that are to be removed shall be replaced at a ratio of 2:1 with the replacement trees being 24" box in size. Prior to the issuance of building permits, the trees to be removed shall be identified with an indication of the species and size. The trees that are to remain onsite shall be protected as recommended in the biological assessment or as approved by the City Engineer.
67. The existing fire hydrant on Hillcrest Avenue shall be relocated outside the new driveway to the satisfaction of the City Engineer.
68. Public sewer and water easements shall be provided for each parcel or provision of separate laterals with meters and cleanouts to each building.
69. Compact parking spaces shall not be clustered or as approved by the City Engineer.
70. The applicant shall prepare and record Conditions, Covenants, & Restrictions (CC&R's) that provide among other City requirements: common access and parking easements, compliance with Antioch Municipal Code Section 5-1.204, "Commercial Property Maintenance," a joint landscape contractor, and compliance with the operating and maintenance requirements of the Stormwater Pollution Prevention Program/NPDES. The CC&R's shall be subject to review and approval of the City Attorney and Community Development Director and shall be recorded prior to the issuance of the certificate of occupancy.
71. The driveway on Hillcrest Avenue shall be a right in/right out with the appropriate directional signage placed in the median as required by the City Engineer.
72. Grading contours shall transition smoothly into existing slopes.
73. The project shall connect to the drain inlet on Hillcrest Avenue southeast of the property line, as approved by the City Engineer.

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74. Medical offices uses shall be limited to 12,465 s.f.
75. Animal hospitals/veterinary clinics, food stores (including convenience stores), assembly uses, and uses with assembly components such as clubs/lodges, churches, and cultural institutions shall require a supplemental use permit from the Planning Commission.
76. Tutoring centers shall replace day-care centers on the office portion of the Master Use List.
77. The applicant shall submit a revised Master Use List as directed by the City Council which shall be reviewed and approved by staff prior to the issuance of the certificate of occupancy, with such list attached and incorporated as exhibit "A" Permitted Uses in the conditions of approval.
 - Prohibit retail establishments that primarily sells tobacco, tobacco related products and paraphernalia
 - Prohibit check cash store
 - Eliminate Variety Store
 - Prohibit Adult Boutiques
78. The applicant shall pay their proportionate fair share of the mitigation measures for the transportation issues as outlined in the CEQA document, including:
 - a. Payment of the proportionate fair share for the improvements to the intersections of Hillcrest Avenue and State Route 4 westbound ramps and Hillcrest Avenue, Davison Drive, and Deer Valley Road, which will be satisfied through the traffic fees paid at the time of building permit issuance;
 - b. Payment of the proportionate fair share for the lengthening of the Hillcrest Avenue northbound left-turn pocket. Based on an estimated construction cost of \$100,000, the project's 18.9% share is \$18,900, which shall be paid prior to the issuance of building permits; and
 - c. Payment of the proportionate fair share to widen East Tregallas Road to accommodate a left-turn lane to total 275 feet. The signal timing shall also be modified for protected left-turn phasing for the East Tregallas Road/Larkspur Drive approaches. Based on an estimated construction cost of \$150,000, the project's 28.6% share is \$42,900, which shall be paid prior to the issuance of building permits.
79. The applicant shall enter into an agreement with the City for the operation and maintenance of the stormwater treatment facilities which are required under the C.3 provision

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* * * * *

I HEREBY CERTIFY that the foregoing resolution was duly passed and adopted by the City Council of the City of Antioch, California, at a regular meeting thereof held on the 11th day of March 2008, by the following vote:

AYES: Council Member Davis, Simonsen and Mayor Freitas

NOES: None

ABSENT: Council Member Moore

RECUSED: Council Member Kalinowski


L. JOLENE MARTIN, City Clerk

EXHIBIT A

Hillcrest Summit – Master Use List

APPROVED USES (NOT REQUIRING A SUPPLEMENTAL USE PERMIT)

OFFICE BUILDINGS

- Banks and Savings & Loans
- Business & Medical Offices
- Financial Services (Taxes, Accounting, Mortgage, Investment Brokerage, etc.)
- Government Offices
- Laboratories (Medical/Dental/Optical)
- Legal Services
- Medical & Dental Clinics
- Photography Studios
- Real Estate Services (Brokerage, Title, etc.)
- Tutoring Centers

RETAIL BUILDING

- Antique Stores
- Bakeries
- Banks and Savings & Loans
- Barber & Beauty Shops
- Clothing Stores
- Confectionery Stores
- Dry Cleaning Services
- Financial Services (Taxes, Accounting, Mortgage, Investment Brokerage, etc.)
- Florist Shops
- Furniture Stores
- Gift & Stationery Shops
- Hardware Stores
- Health Clubs & Fitness Centers
- Jewelry Stores
- Paint Stores
- Pet Shops
- Pharmacies
- Photography Studios
- Printing Shops
- Restaurants (General/Sit-Down/Take-Out & Delivery)
- Retail Stores (General & Specialty)
- Sign Shops
- Studios (Dance, Martial Arts, etc.)
- Upholstery Shops

EXHIBIT A


USES REQUIRING A SUPPLEMENTAL USE PERMIT

- Animal Hospitals/Veterinary Clinics
- Food Stores (including convenience stores)
- Assembly Uses
- Uses with assembly components such as clubs/lodges, churches, and cultural institutions

EXPLICITLY PROHIBITED USES

- Retail Establishments that primarily sell tobacco and tobacco-related products and paraphernalia
- Adult Boutiques
- Check-Cashing Stores

ANTIOCH CITY COUNCIL


 Regular Meeting
7:00 P.M.

March 11, 2008
Council Chambers

5:30 P.M. - CLOSED SESSION

1. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** – This Closed Session is authorized by California Government Code §54956.9(a): Whiteside Construction Corporation v. J.K. Merz Construction, Inc., Antioch Public Golf Corporation and the City of Antioch, et al.; Davidson Plastering, Inc. v. J.K. Merz Construction, Inc., Contra Costa Superior Court, Case No. Consolidated C06-00730, City of Antioch, Travelers Casualty and Surety Company of America, et al.; J.K. Merz Construction, Inc., v. First Republic Bank, et al., San Francisco Superior Court, Case No. CGC06-454761

2. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** – This Closed Session is authorized by California Government Code §54956.9(a). Administrative Civil Liability Complaint No. R5-2006-0512 issued by the California Regional Water Quality Control Board - Central Valley Region to the City of Antioch and Somersville-Gentry, Inc.; SPPI-Somersville, Inc. et al. v. TRC Companies, Inc. et al, Case No. C04-2648 SI, United States District Court, Northern District of California.

 Mayor Freitas called the meeting to order at 7:05 P.M., and City Clerk Martin called the roll.

Present: Council Members Kalinowski, Davis, Simonsen and Mayor Freitas
Absent: Councilmember Moore

Mayor Freitas announced Councilmember Moore was excused due to his participation at a Transportation Conference in Washington D.C.


PLEDGE OF ALLEGIANCE

Councilmember Davis led the Council and audience in the Pledge of Allegiance.

Mayor Freitas reported the City Council had been in Closed Session and there was no reportable action.

ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS

Nancy Brandt, on behalf of Wayne Steffen, herself, and the numerous volunteers who participated in building the Community Playground, invited the public to attend the Grand Opening of the playground scheduled for April 5, 2008 at 12:00 P.M. She announced etched bricks and tiles for making hand prints would be available to purchase.

 Mayor Freitas, on behalf of the City and Council thanked Ms. Brandt, Mr. Steffen and all those involved in making the playground become a reality.

Barbara Sobálvarro, Friends of Animal Services President, speaking on behalf of animals announced their spring adoption days would be taking place March 17-24, 2008. Additionally, they would be hosting a Spring Hospitality Day on March 22, 2008 from 11:00 A.M – 2:00 P.M. at the Antioch Animal Shelter. Contact information was given for anyone wishing to receive additional information.

ANNOUNCEMENTS OF BOARDS AND COMMISSION OPENINGS

City Clerk Martin announced the following openings:

Parks and Recreation Commission – 3 expired terms and 1 unexpired term of office
Filing deadline was March 21, 2008

Contact information was given for anyone wishing to apply.

PUBLIC COMMENTS

Nancy Brandt reported she had served as Team Captain of the Mayors Team for *Relay For Life* for the past five years; she introduced Crime Prevention Commissioner Hans Ho would replace her as the new Captain.

Hans Ho spoke to his personal experience and having been diagnosed with Cancer. He announced the American Cancer Society was hosting the *Relay for Life on June 21-22, 2008* to raise funds for research. He appealed to all Council, Board, Commission members and staff to participate in the Relay for Life event. He provided the City Council with instructions for signing up for the event.

Chip Stein, Antioch resident, stated he felt the City was in violation of federal law to be in compliance with the ADA as it related to City buildings.

Ken Lee, Antioch resident, supported an urgency ordinance to restrict paraphernalia sales at Cigarette Stores. He suggested Cigarette Stores participate in the We Card Program.

Gary Agopian, Antioch resident, stated he looked forward to working with the Council, public and County to create safe neighborhoods, protect home values, enhance education outcomes, end the transportation issues and protect the environment. Additionally, he noted he was advocating for fiscal realism.

COUNCIL RESPONSE TO PUBLIC COMMENTS - None

1. COUNCIL CONSENT CALENDAR

- A. APPROVAL OF COUNCIL MINUTES FOR FEBRUARY 13, 2008 (#301-02)**
- B. APPROVAL OF COUNCIL WARRANTS (#401-01)**
- C. LEGISLATION AND ADVOCACY (#701-04)**

- D. ORDINANCE NO. 2013 C-S REZONING APPROXIMATELY 38 ACRES, COMPRISING THE DEER VALLEY ESTATES MASTER PLAN FROM STUDY ZONE (S) TO THE PLANNED DEVELOPMENT DISTRICT (PD) BOUNDED BY DEER VALLEY ROAD, WELLNESS WAY AND KAISER HOSPITAL (APN 057-022-013), FILE: MDP-06-02 (#202-03)
- E. CITY MANAGER'S EMPLOYMENT AGREEMENT (#502-01)
- F. CITY ATTORNEY'S EMPLOYMENT AGREEMENT (#502-01)
- G. RESOLUTION NO. 2008/26 ACCEPTING WORK AND AUTHORIZING CITY ENGINEER TO FILE A NOTICE OF COMPLETION FOR THE WATER TREATMENT PLANT SOLIDS HANDLING FACILITIES AND PLANT B EXPANSION (P.W. 551-4) (#1202-01)
- H. REQUEST FOR OVERNIGHT TRAVEL (TWO NIGHTS) TO THE LEAGUE OF CALIFORNIA CITIES FOR 5 PLANNING COMMISSIONERS (#301-01)
- I. AGREEMENT FOR PROCUREMENT AND DELIVERY OF SOIL MATERIAL FOR THE MARKLEY CREEK REMEDIATION #814-01
- J. RESOLUTION NO. 2008/27 ACCEPTING COMPLETED IMPROVEMENTS FOR BLACK DIAMOND RANCH UNIT 2, TRACT NO. 8585, PW 512-2 (DISCOVERY BUILDERS) (#802-02)
- K. RESOLUTION NO. 2008/28 ACCEPTING COMPLETED IMPROVEMENTS FOR BLACK DIAMOND RANCH UNIT 3, TRACT NO. 8586, PW 512-3 (DISCOVERY BUILDERS) (#802-02)

On motion by Councilmember Davis, seconded by Councilmember Simonsen, the Council unanimously approved the Council Consent Calendar.

PUBLIC HEARINGS

- 3. ALMONDRIDGE HOME SIZE MODIFICATIONS / KB HOMES SOUTH BAY, INC. REQUESTS APPROVAL OF MODIFICATIONS TO THE SINGLE FAMILY HOME PRODUCTS AT THE 81 UNIT ALMONDRIDGE DEVELOPMENT LOCATED ON THE EAST SIDE OF PHILLIPS LANE, APPROXIMATELY 700 FEET SOUTH OF EAST EIGHTEENTH STREET (APN: 051-200-015 AND 051-200-053) ON FEBRUARY 20, 2008 THE PLANNING COMMISSION VOTED 5-2 TO RECOMMEND DENIAL TO AMEND THE USE PERMIT TO MODIFY THE SINGLE FAMILY HOME PRODUCTS AT ALMONDRIDGE FILE: UP-04-30 (#202-10)

On motion by Councilmember Simonsen, seconded by Councilmember Davis, the City Council members present unanimously continued the item to March 25, 2008.

Mayor Freitas declared a recess at 7:24 P.M. The meeting reconvened at 7:31 P.M. with all Councilmembers present with the exception of Councilmember Moore who was excused.

2. **HILLCREST SUMMIT / BEDROCK VENTURES, INC. REQUESTS APPROVAL OF A PLANNED DEVELOPMENT REZONE AND USE PERMIT FOR A MIXED USE DEVELOPMENT CONSISTING OF RETAIL AND OFFICES 15,000 S.F. OF RETAIL AND 35,000 S.F. OF OFFICES ON FIVE (5) ACRES LOCATED APPROXIMATELY 250 FEET SOUTH OF THE INTERSECTION OF HILLCREST AVENUE AND EAST TREGALLAS ROAD. (APN'S: 052-100-055 AND -056). ADOPTION OF A MITIGATED NEGATIVE DECLARATION WILL ALSO BE CONSIDERED. ON JANUARY 16, 2008 THE PLANNING COMMISSION VOTED 7-0 TO RECOMMEND ADOPTION OF THE MITIGATED NEGATIVE DECLARATION, MITIGATION MONITORING AND REPORTING PLAN, APPROVAL OF THE PLANNED DEVELOPMENT REZONE AND USE PERMIT. FILE: PD-06-04, UP-06-21, AR-06-17, S-08-01 (#202-03)**

Mayor Freitas announced Councilmember Kalinowski had indicated he had a conflict of interest with the item and would recuse himself from the item. Councilmember Kalinowski left the dais.

Associate Planner Gentry presented the staff report dated March 7, 2008 recommending the City Council: 1) adopt the Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program; 2) introduce the ordinance by title only; 3) introduce the ordinance rezoning 4.94 acres making up the project site to the Planned Development District (PD); and, 4) adopt the resolution approving the Final Development Plan and Use Permit.

Mayor Freitas opened the Public Hearing.

Ted Lui, applicant, introduced himself and his associates.

William Wood, Project Architect, gave a brief history of the project and explained the architectural design of the building plan.

Jim Diggins, Civil Engineer, reported they had prepared the preliminary grading and drainage plan as well as the C3 drawing in compliance with standard codes.

Mr. Lui stated he was in agreement with all project specific conditions except #74, which limits the office use to medical.

Mayor Freitas closed the public hearing.

In response to Mayor Freitas, Associate Planner Gentry stated in terms of the retail building the applicant had indicated he was going to attempt to do his best to bring in "high-end" tenants. Furthermore, in terms of restricting Check Cashing establishments, the Council could put a restriction on that specific use.

Mayor Freitas stated he was willing to put a moratorium on all PD development until the City Council resolved the issue.

Associate Planner Gentry clarified the applicant could provide enough parking for 12,465 s.f. of medical offices and if the applicant wanted more medical office space, he could request a variance.

Mayor Freitas stated as a policy issue, he was opposed to compact parking spaces.

Councilmember Simonsen requested the wording in Project Specific Condition #62 indicating the light standards shall be limited to less than 25 feet.

City Attorney Nerland, addressing *Attachment "C" Antioch Commons - Proposed Uses*, indicated should Council object to a specific use, they could call the use out and subject it to a use permit.

Mr. Lui stated he would not object to specifically prohibiting tobacco stores, check cashing and adult boutiques noting it was his intent to bring in higher classed tenants.

Councilmember Simonsen stated he would support granting a variance for parking to allow for more medical office uses.

Mayor Freitas stated he would oppose granting of a variance as he felt the City codes should be adhered to as adopted:

- Prohibit retail establishments that primarily sells tobacco, tobacco related products and paraphernalia
- Prohibit check cash store
- Eliminate Variety Store
- Prohibit Adult Boutiques

Mayor Freitas declared a recess at 8:17 P.M. The meeting reconvened at 8:21 P.M. with all Councilmembers present, with the exception of Councilmember Moore who was excused, and Councilmember Kalinowski who had recused himself from the item.

Mr. Lui acknowledged the changes to conditions # 70, 78(b), 78(c), and 79 as indicated on the memorandum dated March 11, 2008 as being acceptable.

RESOLUTION NO. 2008/29

On motion by Councilmember Simonsen, seconded by Councilmember Davis the City Council 1) adopt the Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program; 2) introduce the ordinance by title only; and, 3) introduce the ordinance rezoning 4.94 acres making up the project site to the Planned Development District (PD); and, 4) adopt the resolution approving the Final Development Plan and Use Permit. With the amendments submitted by staff dated March 11, 2008 to project specific conditions #70, 78(b), 78(c), and 79 and project specific condition #77 revised to read:

#77 The applicant shall submit a revised Master Use List as directed by the City Council which shall be reviewed and approved by staff prior to the issuance of the certificate of occupancy, with such list attached and incorporated as exhibit "A" Permitted Uses in the conditions of approval.

- Prohibit retail establishments that primarily sells tobacco, tobacco related products and paraphernalia
- Prohibit check cash store
- Eliminate Variety Store
- Prohibit Adult Boutiques

The motion carried by the following vote:

Ayes: Freitas, Simonsen, Davis

Absent: Moore

Recused: Kalinowski

COUNCIL REGULAR AGENDA

4. INFORMATIONAL PRESENTATION ON YOUTH INTERVENTION NETWORK #1301-01

Chief Hyde presented the staff report dated March 4, 2008 recommending the City Council receive and file the report.

Iris Archeletta reported Dr. Simms, Superintendent of Antioch Schools, was unable to attend the meeting, due to a conflicting obligation. She gave a brief overhead presentation of the Youth Intervention Network – A Comprehensive Strategy for Antioch and East County updating the following items:

- Network growth
- Funding and partnerships
- Philosophical approach
- Community and Agency Facilitation
- Data collection and case management methodology
- Data collection progress and commitments

Councilmember Kalinowski stated he was impressed, adding the information presented had provided some optimism there would be progress in the community. He voiced his appreciation to Iris and Keith Archeletta for their dedication to the program and offered his support.

Councilmember Davis thanked Ms. Archeletta for the presentation and stated he had faith the program would succeed.

Councilmember Simonsen suggested the program consider youth attending Antioch schools but live in other cities as well as youth living in Antioch who had issues in other jurisdictions. He spoke in support of the YIN and strategies set forth.

Chief Hyde commented it was a system wide approach through the various stakeholders to address youth in crisis. He noted they had developed a strategy to maintain confidentiality and collect data to address those issues.

Mayor Freitas voiced his support for the program. He expressed concern regarding the sustainability of the program and requested an action plan for the 5-10 year period of time. He suggested bringing in the business community who may be a resource financially and through job creation. Additionally, before expansion, he suggested the program focus on Antioch.

Ms. Archeletta reported they were currently working on a long term plan for sustainability.

Chief Hyde reported the program was being developed to work in Antioch before expanding to other jurisdictions. He discussed the involvement of Vespers in the program.

PUBLIC COMMENTS - None

STAFF COMMUNICATIONS

City Manager Jakel announced the Quality of Life Forum would be held on March 29, 2008 at the Nick Rodriguez Community Theater from 9:00 A.M - 12:00 P.M.

City Attorney Nerland announced the City would be holding Ethics Training on September 16, 2008; anyone wishing to take the course online may do so through the League of California Cities.

Mayor Freitas requested City Attorney Nerland email a reminder of the Ethics Training to the City Council.

COUNCIL COMMUNICATIONS

Councilmember Simonsen reported he had emailed the City Council and staff a report from the Legislative Analyst Office regarding Governor Schwarzenegger's proposal on the Delta, which could have an impact on Antioch and neighboring Cities.

Councilmember Kalinowski stated he may bring a request to agendize a resolution in opposition to the ruling on the Home Based Schooling.

In response to Mayor Freitas, City Manager Jakel reported there would be a Study Session scheduled for April 15, 2008.

With no further business, Mayor Freitas adjourned the meeting at 9:04 P.M. to the next regular Council meeting on March 25, 2008.

Respectfully submitted:




L. JOLENE MARTIN, CMC
City Clerk

Approved:



DONALD P. FREITAS, Mayor

Attest:



L. JOLENE MARTIN, CMC
City Clerk

ATTACHMENT “C”

**CITY OF ANTIOCH PLANNING COMMISSION
RESOLUTION NO. 2017-06**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
APPROVING AN AMENDMENT OF CONDITION OF APPROVAL NUMBER 3 OF
CITY COUNCIL RESOLUTION 2008/29**

WHEREAS, the City of Antioch did receive a request from Ted Liu of Bedrock Ventures, Inc. for an amendment to condition of approval number 3 from City Council Resolution 2008/29. The amendment would extend the expiration date of the approvals for the Final Planned Development, Use Permit, and design review to March 11, 2019. The project consists of retail and offices, located at Hillcrest Avenue and East Tregallas Road. (APN: 052-100-069 and -068) and,

WHEREAS, a Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program was prepared and adopted by the City Council on March 11, 2008 in conformance with CEQA; and

WHEREAS, a subsequent environmental document does not need to be prepared because 1) no changes to the project are proposed requiring revisions to the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects, 2) no substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects, and 3) no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence or at the time the previous MND was adopted.

WHEREAS, on March 11, 2008 the City Council duly held a public hearing, received and considered evidence, both oral and documentary and was able to make all of required findings for approval of a Final Planned Development and Use Permit; and

WHEREAS, on April 6, 2011, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary and approved a two-year extension of the project approvals to March 11, 2013 by modifying City Council Resolution 2008/29; and

WHEREAS, on May 15, 2013, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary and approved a two-year extension of the project approvals to March 11, 2015 by modifying City Council Resolution 2008/29; and

WHEREAS, on March 18, 2015, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary and approved a

two-year extension of the project approvals to March 11, 2017 by modifying City Council Resolution 2008/29; and

WHEREAS, the Planning Commission duly gave notice of public hearing as required by law; and,

WHEREAS, on April 5, 2017, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary; and

NOW THEREFORE BE IT RESOLVED, that the Planning Commission of the City of Antioch can still make the following required findings for approval of a Final Planned Development:

1. Each individual unit of the Hillcrest Summit development can exist as an independent unit capable of creating an environment of sustained desirability and stability because each building has independent access and parking. The uses proposed in the Master Use List will not be detrimental to present and potential surrounding uses but instead will have a beneficial effect which could not be achieved under another zoning district due to allowing the encumbered site flexibility in setbacks while providing uses that are compatible with the surrounding commercial area and the General Plan. In addition, the project will have the convenience of having established uses allowing for tenants with approved uses not to spend the time going through a public hearing; and
2. The project site is served by streets and thoroughfares that meet the standards of the City's Growth Management Program and adequate utility service can be supplied to all phases of the development because the project is an infill development with access to existing utilities; and
3. The commercial components of the Hillcrest Summit project are justified economically at the location proposed because they are consistent with the General Plan; and
4. Any industrial component conforms to applicable desirable standards and will constitute an efficient, well-organized development with adequate provisions for railroad and/or truck access and necessary storage and will not adversely affect adjacent or surrounding development; and
5. Any deviation from the standard zoning requirements is warranted by the compatible design of the encumbered site and additional amenities such as a pedestrian walkway and seating areas have been incorporated in the final development plan which offer certain unusual redeeming features to compensate for any deviations that may be permitted; and

6. The area surrounding the Hillcrest Summit project can be planned and zoned in coordination and substantial compatibility with the proposed development because the development is in line with the surrounding neighborhood and has a Master Use List compatible with the General Plan; and
7. The Project conforms to the General Plan of the City because the proposed use is commercial and the General Plan designation is Neighborhood Commercial.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Antioch can still make the following required findings for approval of a Use Permit:

1. That the granting of such use permit will not be detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity because the project has been designed to be sensitive to the surrounding community by having a large setback between the commercial buildings and the adjacent residential uses and the project complies with the City of Antioch requirements;
2. That the commercial use applied for at the location indicated is properly one for which a use permit is authorized because the General Plan designation is Neighborhood Commercial;
3. That the site for the proposed use is adequate in size and shape to accommodate such use, and all yards, fences, parking, loading, landscaping, and other features required, to other uses in the neighborhood. The site plan complies with the City standards and where they have deviated has been compensated by the design and additional amenities;
4. That the site abuts streets and highways adequate in width and pavement type to carry the kind of traffic generated by the proposed use. The site abuts to both a local street and an arterial street, which meet the City standard for width and are paved with an all weather surface; and
5. That the granting of use permit will not adversely affect the comprehensive General Plan because the proposed uses and design are compatible with the General Plan.

NOW THEREFORE BE IT RESOLVED that the Planning Commission of the City of Antioch does hereby **APPROVE** an amendment to condition of approval number 3 of City Council Resolution 2008/29 for the Hillcrest Summit project, extending the Final Planned Development, Use Permit, and design review until March 11, 2019.

* * * * *

I HEREBY CERTIFY the foregoing resolution was duly adopted by the Planning Commission of the City of Antioch, County of Contra Costa, State of California, at a regular meeting of said Planning Commission held on the 5th day of April, 2017.

AYES:	Parsons, Zacharatos, Mason, Turnage and Conley
NOES:	None
ABSTAIN:	None
ABSENT:	Husary, Motts



Forrest Ebbs
Secretary to the Planning Commission