



Job No. 20032-13
May 16, 2023

Mr. Kevin Scudero
Senior Planner
Community Development – Planning Division
City of Antioch
200 H Street
Antioch, CA 94509-1285

Re: The Ranch – Vesting Tentative Map – Large Lot Plan – Subdivision 9571 – Non-compliance with Circulation Element of 2003 General Plan.

Dear Kevin,

Our office (Milani & Associates) represents Zeka Ranch with regard to their extensive property (640 acres) at the western end of the San Creek Focus Area ("Zeka Ranch Property"), and immediately adjacent to The Ranch Property.

We understand a hearing on certain applications ("Applications") for The Ranch development ("The Ranch Development") on The Ranch Property has been scheduled for the City of Antioch ("City") Planning Commission Meeting on Wednesday, May 17, 2023:

Our office and the Zeka Ranch development team have reviewed the staff report for "The Ranch Development," being item 7-2 on the published agenda. The Zeka Development Team has also reviewed the following plans which will be considered under this agenda item:

1. The Vesting Tentative Map – Large Lot Plan – The Ranch – Subdivision 9571
2. Master Development Plan – The Ranch

The Zeka Ranch development team has also reviewed the current City of Antioch General Plan 2003 Circulation element – Figure 7.1.

First, and most importantly, we note that the referenced Plans for The Ranch Development do not clearly provide for all access (vehicle, pedestrian, and utilities (dry and wet), hereinafter "access") over The Ranch Property to the Zeka Ranch Property adjacent to the west. As set forth herein, the City is absolutely required to provide access to the Zeka Ranch Property as part of any approvals of The Ranch Development.

As the City is well aware, the City in 2006 closed Empire Mine Road (along the eastern border of the Zeka Ranch Property) for certain public health and safety reasons. The City confirmed at the time of closing Empire Mine Road that alternative access would thereafter necessarily be provided through The Ranch Development. From 2006 to the present, the City has consistently confirmed to Zeka Ranch that access to development on the Zeka Ranch Property would be provided as part of City approval of The Ranch Development.

The Zeka Ranch owners have been a long-time participant and funding source in all City planning for the Sand Creek Focus Area and Zeka Ranch, including all general and specific plans and studies. In all such planning, the City has continually confirmed that access to the Zeka Ranch would be through The Ranch Property and The Ranch Development.

This letter serves as a request that the City confirm that the City will, as part of its approval of The Ranch Development, preserve and protect future access through The Ranch Development to the Zeka Ranch Property.

As noted above, the City has continually confirmed access to the Zeka Ranch and that access would be provided through Richland's The Ranch Property and The Ranch Development. The application currently under consideration by the City Planning Commission appears to be in conflict with the current City of Antioch General Plan prepared by LSA dated November 24, 2003. Your attention is directed to the nine (9) attached Exhibits, attached herewith and made a part thereof:

- 1) Exhibit "A" – Figure 7.1 Circulation Element GP 2003,
- 2) Exhibit "A-1" - Amended Figure 7.1 Circulation– The Ranch GPA
- 3) Exhibit "B" – Figure 1-13: Overall Circulation Diagram of The Ranch MDP Plan
- 4) Exhibit "B-1" – Prior Vehicular Circulation Diagram circulated as part of the Ranch EIR
- 5) Exhibit "C" - Vesting Tentative Map – Large Lot Plan – The Ranch – Tract 9571.
- 6) Exhibit "D" – M&A Letter to Alexis Morris dated April 25, 2018
- 7) Exhibit "E" – Hanson Bridgett Letter to Milanka Scheiderman dated June30, 2020
- 8) Exhibit "F" – Regional Circulation exhibit – Zeka Ranch & Ranch prepared by the Dahlin Group
- 9) Exhibit "G" – Infrastructure and Facilities For the Sand Creek Specific Plan (Higgins (now Zeka Ranch & FUA1 prepared by McGill, Martin Self.

Exhibit "A" comprises Figure 7.1, Circulation Plat being a portion of the Circulation plan for the currently adopted 2003 General Plan. This exhibit clearly indicates that a major street collector will be extended to the east property line of the current planning limit for the proposed Zeka Ranch. The major street collector road alignment contained within the red circle on the attached Exhibit "A" falls within the proposed development limits of the "The Ranch" – Tract 9571. The 2003 General Plan Circulation element was utilized by McGill, Martin Self (MMS), the City's consultant that was engaged to prepare the master infrastructure and facilities plan for the Sand Creek Specific Plan (Higgins & FUA 1). Exhibit "G" is the composite plan reflecting the master road and infrastructure plan developed by MMS. This document is dated July 31, 2000. This exhibit further documents the City's long history in its intent to provide access to all participating properties in the Higgins/FUA development footprint, including Zeka Ranch (formerly Higgins Ranch).

Exhibit "A-1" comprises amended Figure 7.1, Circulation Plat, prepared by Carlson, Barbee & Gibson, Inc., being a component of the approved General Plan Amendment for Richland's The Ranch Development. This exhibit focused on the internal road/utility circulation within The Ranch development, specifically the finalized Sand Creek Road crossings which were controlled by environmental/biological constraints. The exhibit does not reflect road/utility connects to the South or to the West (Zeka Ranch) as no changes to those future connection points were proposed.

Exhibit “B” comprises Figure 1-13 – Overall Circulation Diagram for “The Ranch” development, Tract 9571 which is part of the agenda package for the May 17, 2023, Planning Commission Hearing. Exhibit B reflects the amended circulation elements approved under The Ranch General Plan Amendment and further reflects the extension of those proposed Road/Utility extensions to future development to the South and to the East which were not reflected on the final approved Ranch GPA Amended Figure 7.1, Circulation Plat discussed under Exhibit A-1 above. Exhibit B reflects that access, specifically designated as Street “C,” a designated collector street, has been extended westerly toward the Zeka Ranch east property line but terminated approximately three hundred feet easterly of the Zeka Ranch/The Ranch shared property line. Exhibit “B” reflects Street C terminating at what appears to be a staging area and vehicle parking lot for potential trail access. **The Zeka Development team does not object to the location of the staging area but does object to the termination of Street C approximately three hundred feet easterly of the east line of Zeka Ranch. Street C, access to Zeka Ranch, needs to be extended westerly to the shared Zeka Ranch/Ranch property line as is done for future development properties to the East and to the South. This modification will bring The Ranch MDA in compliance with the current 2003 General Plan, specifically the approved circulation element as reflected in Exhibit A and as amended under the Ranch General Plan Amendment. Exhibit B has been redlined to reflect the necessary plan revisions for compliance.**

Exhibit “C” comprises the Vesting Tentative Map – Large Lot Plan – The Ranch – Subdivision 9571 which is part of the agenda package for the May 17, 2023, Planning Commission Hearing. Exhibit “C” contains redlines and redlined comments to reflect the necessary changes to the VTM to reflect: 1) the dedication of Street B and Street C (Necessary Zeka Ranch access), with its westerly extension to the east line of the Zeka Ranch and 2) additional dedications of private access and utility easements (necessary Zeka Ranch access) for those portions of Sand Creek Road and Street B situated north of Sand Creek. These access dedications are necessary to provide Zeka Ranch Access independent of the Ranch Development phasing schedule.

Our office voiced concern with initial planning exhibits that were processed as part of the EIR for The Ranch as the exhibits did not reflect access through The Ranch Development to the benefit of the Zeka Ranch Development. Our team letters dated April 25, 2018, to Alexis Morris, the then Planning Manager for the City and June 3, 2020, to Milanka Schneiderman, the then Chair of the City Planning Commission documented our access concerns as Richland’s “Ranch Development” navigated through the City’s entitlement process.

I have attached copies of the referenced letters prepared by this office and the offices of Hanson Bridgett, as Exhibits “D” & “E” respectively, with the appurtenant sections highlighted, for your consideration. In addition, the Dahlin Group prepared an alternative circulation exhibit for consideration as part of the Draft EIR review. This alternative circulation exhibit addressed road crossing concerns of Sand Creek and reflected access/circulation to adjoining developments to the east, south and west (Zeka Ranch). The Dahlin exhibit is attached as Exhibit “F.”

Our office expressed further concern when Measure T was brought forward under a voter sponsored initiative process. The initiative proposed 1) very restrictive development opportunities for the Zeka Ranch property and 2) proposed an open space buffer along the westerly edge of “The Ranch Development (Zeka’s easterly property line), severing any public roadway access/utility extensions to service the future Zeka Ranch development. Alexis Morris addressed the Zeka Development Team concern that a public roadway/utility right-of-way corridor to service the Zeka Ranch development was provided through the proposed 300’ open space corridor, thus provided access/utilities through the adjoining Ranch development. Fortunately, Measure T was overturned by the Courts and is no longer an issue.

On behalf of the Zeka Ranch Property owner, I and all members of the Zeka Ranch Development team request that appropriate conditions of approval be established requiring the applicant to dedicate the required access through the Ranch Development on the Vesting Tentative Map – Large Lot Plan – Subdivision 9571 (VTM) Exhibit “C” recommends the necessary notes and additional access corridors to be added to the VTM that the Zeka Development Team consider are in keeping with the City’s ongoing obligations to preserve and protect access to all properties within the incorporated limits of the City.

I trust this provides you with the documentation that you require. If you need any additional information, please contact me at this office.

Sincerely Yours,

Michael Milani

Michael Milani

Project Manager – Milani & Associates

MEM:

Enclosures: Exhibit “A” – Figure 7.1 Circulation Element GP 2003,
Exhibit “A-1” - Amended Figure 7.1 Circulation– The Ranch GPA
Exhibit “B” – Figure 1-13: Overall Circulation Diagram of The Ranch MDP Plan
Exhibit “B-1” – Prior Vehicular Circulation Diagram circulated as part of the Ranch EIR
Exhibit “C” - Vesting Tentative Map – Large Lot Plan – The Ranch – Tract 9571.
Exhibit “D” – M&A Letter to Alexis Morris dated April 25, 2018
Exhibit “E” – Hanson Bridgett Letter to Milanka Scheiderman dated June30, 2020
Exhibit “F” – Regional Circulation exhibit – Zeka Ranch & Ranch prepared by the Dahlin Group
Exhibit “G” – Infrastructure and Facilities For the Sand Creek Specific Plan (Higgins (now Zeka Ranch & FUA1 prepared by McGill, Martin Self.

Cc: Louisa Kao, Zeka Group
Laveille Voss, Zeka Group
Allan Moore, Law Office of Allan Moore, A.P.C.
Andrew A. Bassak – Hanson Bridgett LLP
Ritu Raj Sharma – Dahlin Group

Exhibit "A"

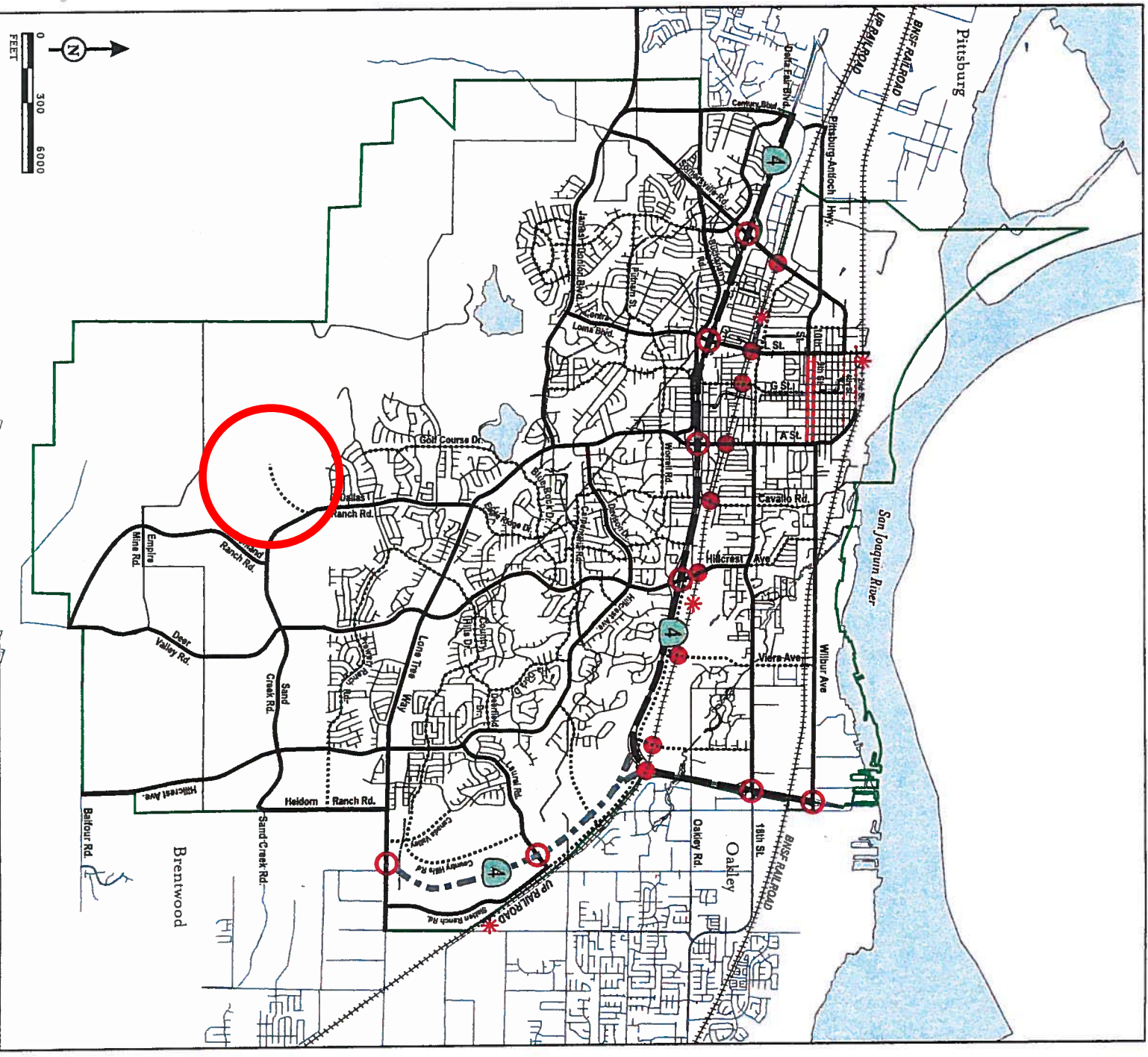
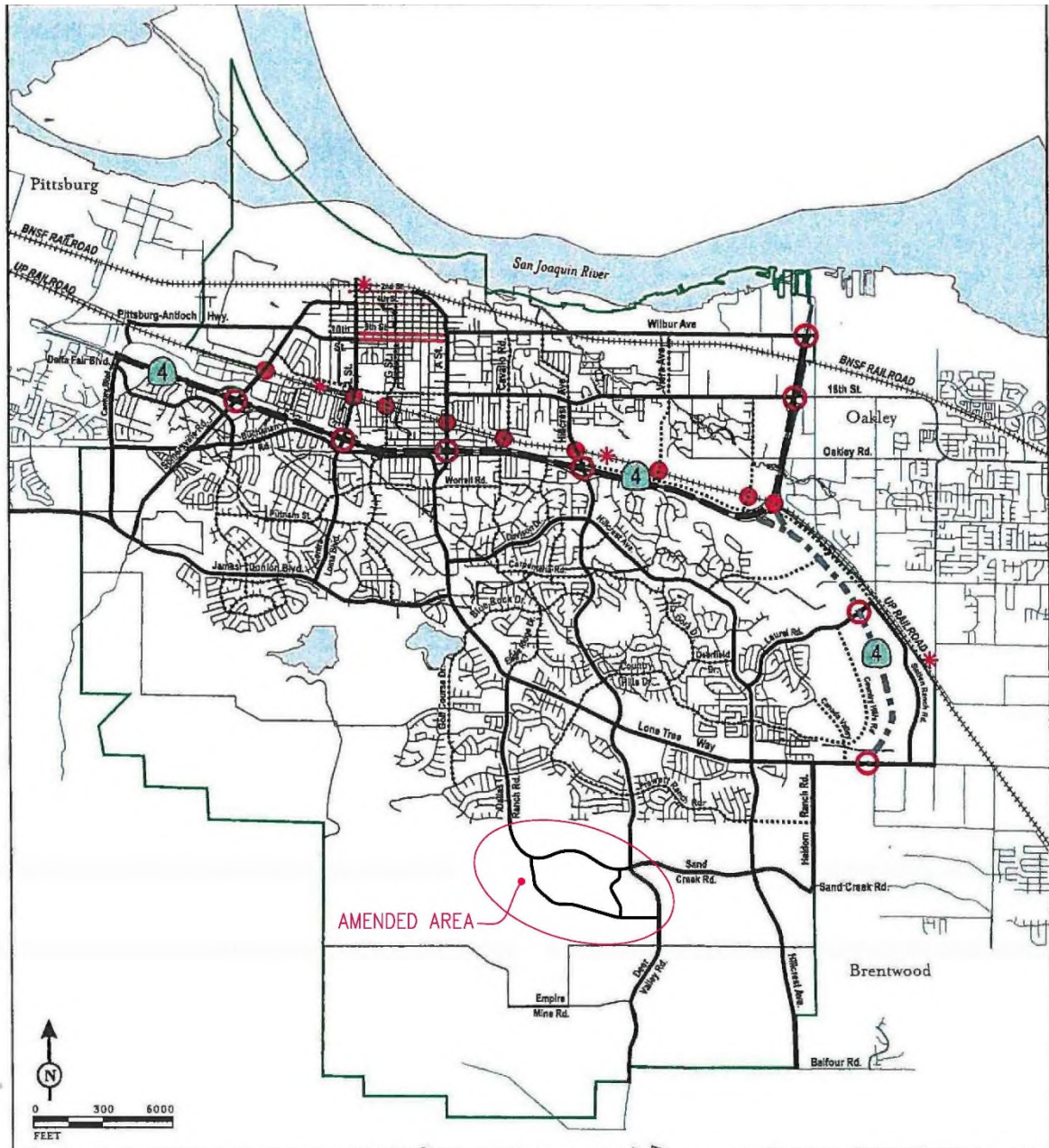


FIGURE 7.1

- | | | | |
|--|----------------------------|--|---------------------------|
| | FREEWAYS | | RAIL |
| | ARTERIALS | | PROPOSED FREEWAY |
| | ARTERIAL (COUPLETT) | | RAILROAD GRADE SEPARATION |
| | MAJOR COLLECTOR | | RAIL TRANSIT STATION |
| | MAJOR COLLECTOR (COUPLETT) | | FREEWAY INTERCHANGE |

City of Antioch
General Plan
Circulation

Exhibit "A-1"



LSA

- CITY OF ANTIOCH
- PLANNING AREA BOUNDARY

- FREEWAYS
- ARTERIALS
- ARTERIAL (COUPLET)
- MAJOR COLLECTOR
- MAJOR COLLECTOR (COUPLET)

- RAIL
- PROPOSED FREEWAY
- RAILROAD GRADE SEPARATION
- RAIL TRANSIT STATION
- FREEWAY INTERCHANGE

FIGURE 7.1

City of Antioch
General Plan
Circulation

R:\CAN030\Graphics\gen plan\circulation.cdr (03/27/06)

AMENDED FIGURE 7.1 CIRCULATION

CITY OF ANTIOCH CONTRA COSTA COUNTY CALIFORNIA
DATE: APRIL 26, 2018

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
www.cbgsd.com

SAN RAMON, CALIFORNIA (925) 885-0322
SACRAMENTO, CALIFORNIA 1877

C25

Exhibit "B"

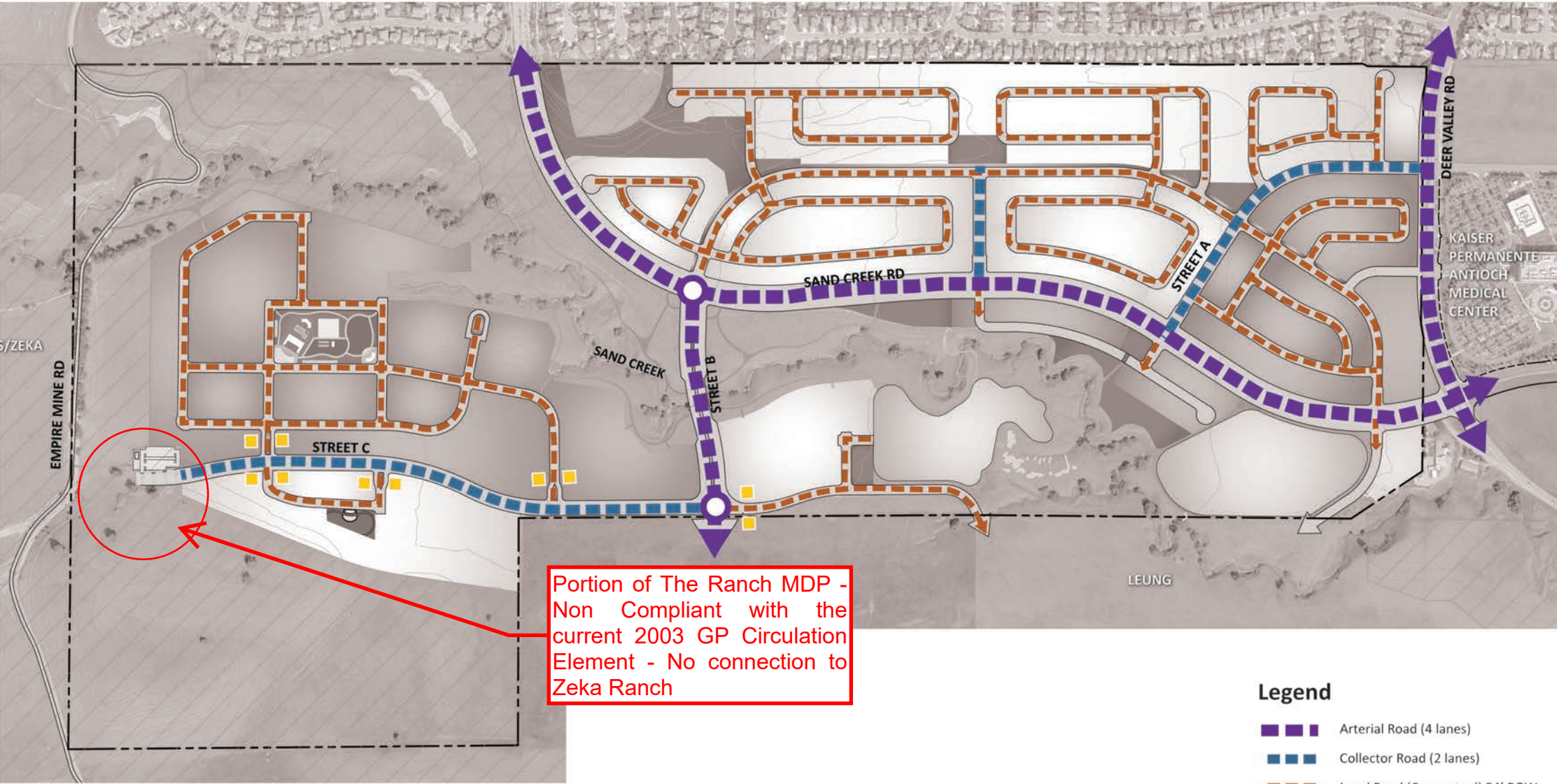
D.2 VEHICULAR CIRCULATION

The Ranch will include 4-lane arterial roads; 2-lane collector roads with no on-street parking; 2-lane local roads with on-street parking; and private lanes / alleys to service the medium density residential parcels where applicable.

Sand Creek Road serves as the primary access into The Ranch, and it will have limited intersections respecting the larger regional role that it serves within the City of Antioch. However, slightly slower design speeds and signalized intersections are proposed between Deer Valley Road and the roundabout to allow for safer pedestrian access to the Sand Creek open space lands from the neighborhoods to the north. A second roadway from Deer Valley Road at Wellness Way will enter the Ranch allowing for easier access into the northern neighborhoods. Several different edge conditions are presented along the length of Sand Creek Road through The Ranch in Chapter 4 Neighborhood Guidelines. A sound wall may be required in lieu of a private yard fence in some locations pending noise studies performed as part of the project Environmental Impact Report (EIR).

All of the neighborhoods south of Sand Creek may have gated entries controlling access.

Figure I-13: Overall Circulation Diagram

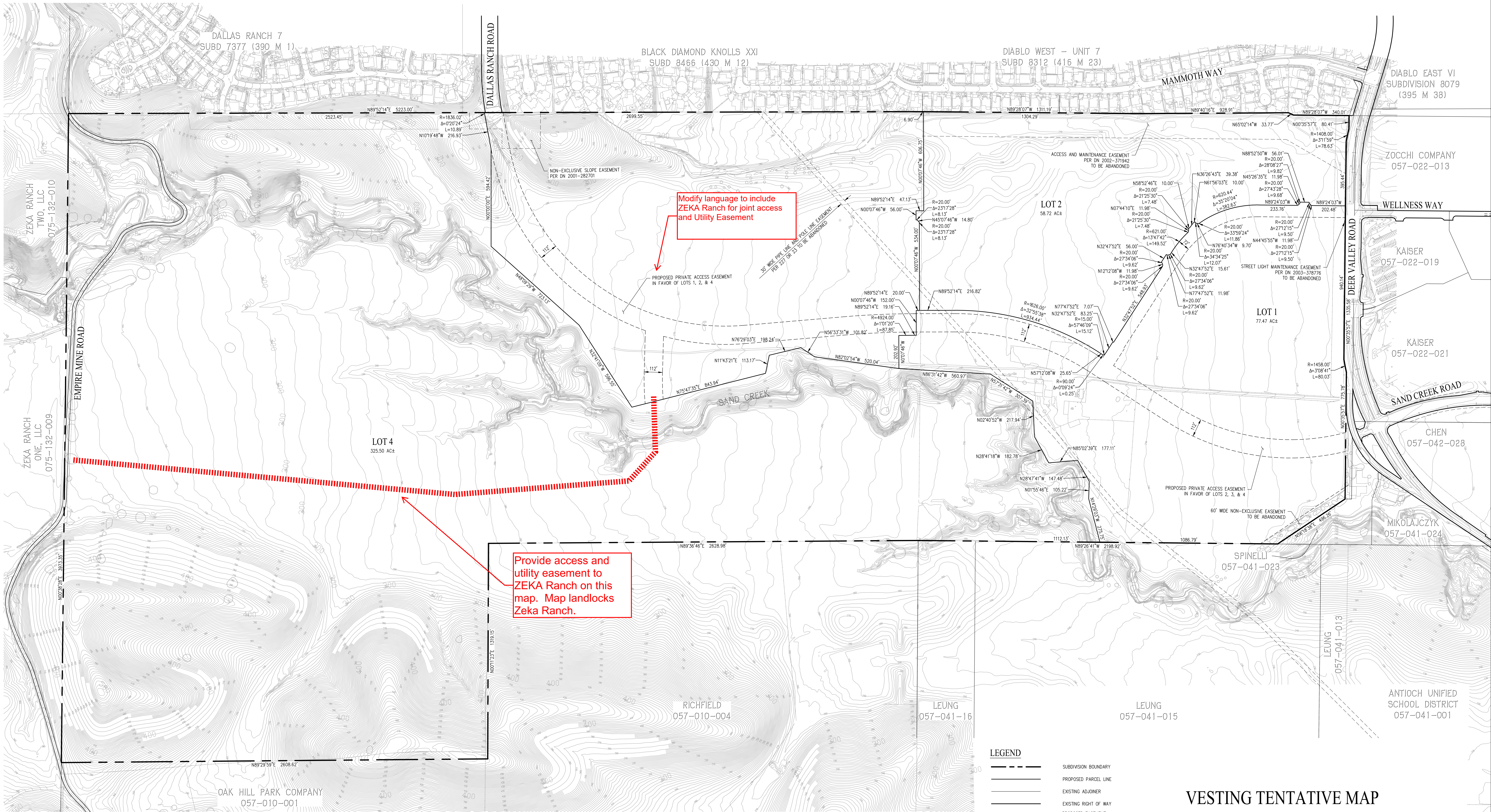


Note: Neighborhood access points, roundabouts, and local roadways are illustrated for conceptual purposes. Final locations and alignments, as well as individual street sections, will be determined at the time of the Tentative Maps.

Note: Street B is shown at its maximum possible dimensions to accommodate up to a four lane arterial road. Depending on the ultimate buildout of FUA 1 and the traffic study, only two lanes may be needed to support The Ranch’s construction.

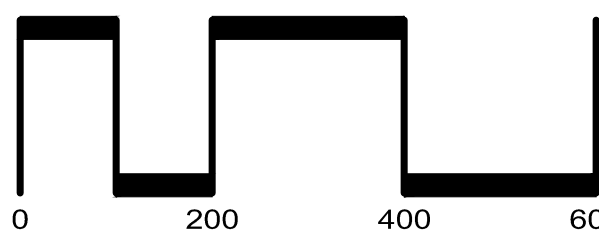
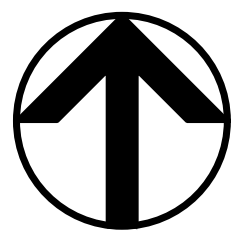


Exhibit "C"



VESTING TENTATIVE MAP
LARGE LOT PLAN
THE RANCH
SUBDIVISION 9571

CITY OF ANTIOCH CONTRA COSTA COUNTY CALIFORNIA
SCALE: 1"=200' DATE: APRIL 28, 2023



SAN RAMON • (925) 866-0322
ROSEVILLE • (916) 788-4456
WWW.CBANDG.COM

CIVIL ENGINEERS • SURVEYORS • PLANNERS

JOB NO.: 1133-021

SHEET NO.
2
OF 8 SHEETS

Exhibit D



April 25, 2018

VIA EMAIL [amorris@ci.antioch.ca.us]

Alexis Morris
Planning Manager
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007

Re: The Ranch Project Draft EIR

Dear Ms. Morris:

I am writing for and on behalf of THE ZEKA GROUP INC., General Manager of Zeka Ranch One-Five, LLC (“TZG”) to provide comments on the Draft EIR (“DEIR”) for The Ranch project (the “Project”). TZG owns the 640 acre Zeka Ranch property located immediately west of the Project site.

On behalf of TZG, I submitted a comment letter on the Notice of Preparation of the DEIR dated September 11, 2017. (A copy of that letter is attached hereto as Exhibit A and incorporated herein by reference.) TZG’s primary comments related to ensuring that: (1) the EIR’s cumulative impact analysis assumes a residential development of at least 314 units on Zeka Ranch, (2) all proposed road crossings of Sand Creek be extensively evaluated for optimum locations, and (3) the proposed roadway alignment to Zeka Ranch shown in the current General Plan Circulation Element be evaluated with the same level of detail as the alternative alignment proposed by Richland. Unfortunately, the DEIR does not appear to have responded to any of these comments and thus we reiterate them here for consideration and analysis in the Final EIR (“FEIR”).

First, it is imperative that the EIR assume as a cumulative project in its traffic, water, sewer, and other analysis a residential development of at least 314 units on Zeka Ranch. While acknowledging the Zeka Ranch is planned for future residential development, the DEIR does not list Zeka Ranch as a cumulative project (DEIR, Table 5-1), and it unclear whether the analysis assumed and analyzed the impacts of appropriately-sized utilities to Zeka Ranch.¹ Providing clarity on this issue is critically important, especially in light of Project Objective 10, which reads:

¹ The DEIR does refer to the potential construction of a 2.5 million gallon water tank and/or a booster pump station on the Zeka Ranch property. (DEIR, pp. 3-18, 3-19, 4.11-34.). However, the DEIR also states that should other parcels remain undeveloped, “the traffic volumes on Sand Creek Road are not likely to warrant a four-lane cross-section.” (DEIR, p. 4.12-44.)

“Provide a comprehensive infrastructure system, including parks, open space, storm water quality facilities, public services, roadways, and utilities infrastructure *sized to serve the project and adjacent properties in the Sand Creek Focus Area . . .*” (DEIR, p. 3-7 [emphasis added].)

Second, all proposed road crossings of Sand Creek should be extensively evaluated for optimum location(s). The Project proposes substantial modifications to the current General Plan Circulation Element in regard to orientation, alignment, and the elimination of one of the original planned Sand Creek road crossings, specifically the roadway serving the Zeka Ranch project. The proposed crossing locations need to address biological constraints as well as geotechnical constraints which typically impact the need for larger span bridge crossings, creek bank armoring, and possible creek realignment.

Third, the proposed roadway alignment to Zeka Ranch shown in the current General Plan Circulation Element must also be evaluated with the same level of detail as the alternative alignment proposed by Richland. The Ranch’s proposed alternative alignment is longer, less direct, and may not be developed until the final phases of the Project. Because the Project’s proposed amendment to the General Plan Circulation Element could result in adverse environmental impacts, a full analysis of the existing alignment is needed for comparison purposes.

In closing, it is very important to emphasize that Zeka Ranch is and should be recognized as a viable development parcel which will develop in tandem with the adjoining development of The Ranch Project.

Thank you for your consideration of TZG’s comments on the DEIR. Should you need any additional information please contact me at this office.

Sincerely yours,

MILANI & ASSOCIATES
CIVIL ENGINEERS/SURVEYORS/PLANNERS

Michael Milani

Michael E. Milani
President

cc: Louisa Kao, The Zeka Group
Ron Bernal, City Manager, City of Antioch
Lori Ogorchock, City Council Member, City of Antioch

Exhibit E

ANDREW A. BASSAK
PARTNER
DIRECT DIAL (415) 995-5006
DIRECT FAX (415) 995-3477
E-MAIL abassak@hansonbridgett.com



June 30, 2020

VIA E-MAIL AND U.S. MAIL planning@ci.antioch.ca.us

Milanka Schneiderman, Chair
Antioch Planning Commission
200 H Street
Antioch, CA 94531

Re: Antioch Planning Commission Meeting July 1, 2020; Comments of the Zeka Group to
The Proposed Ranch Project (GP-20-01 & MDP-20-01; State Clearinghouse No. 2019060012)

Dear Chair Schneiderman and Honorable Commissioners:

My law firm and I represent The Zeka Group Incorporated (the "Zeka Group"), the owner of the 640-acre Zeka Ranch property located adjacent to the Ranch Project in the southwestern portion of the City. I write in advance of the City Planning Commission meeting regarding the proposed Ranch Project currently scheduled for July 1, 2020.

The Zeka Group's Preliminary Application Under SB 330.

Last week, the Zeka Group submitted a complete Preliminary Application, together with all requisite supporting information regarding Zeka Group's Property and proposed development project, pursuant to Government Code Section 65941.1 added by the Housing Crisis Act of 2019 and effective January 1, 2020 ("SB 330"). By law Zeka Group's Preliminary Application (1) is subject only to the local policies, ordinances and standards in effect as of the date of the Preliminary Application, (2) is deemed complete upon submission to the City for purposes of the vesting protections, and (3) will be followed by an application for the development project at Zeka Ranch within 180 calendar days.

Consistent with the City's General Plan, the Preliminary Application vests rights in Zeka Group to develop an upscale housing development project with a total of 338 residential units on the 639-acre site, each with a minimum of two covered parking spaces and two driveway parking spaces. The proposed housing development will include Large Lot Residential uses comprised of 54 Hillside Estate Housing units north of Sand Creek, on lots of at least 20,000 square feet, and 284 Executive Estate Housing units south of Sand Creek within the flatter valley floor area of the Property, on lots of at least 12,000 square feet. All of the upland woodland areas and ridge line complex to the south as well as a predominant portion of the east-west ridge line complex to the north are to be preserved.

Given Zeka's SB 330 superior vested rights to develop its project, the proposed amendments to the City's General Plan text, General Plan Land Use Map, Circulation Element, and Housing Element to be discussed on July 1 at the Planning Commission cannot be approved as presented. Myriad aspects of The Ranch Project will need to be harmonized with Zeka Group's project in order to ensure principles of sound land use planning and environmental review are followed. For instance, the proposed realignment of Dallas Ranch Road will need to be

Hanson Bridgett LLP

425 Market Street, 26th Floor, San Francisco, CA 94105 hansonbridgett.com

modified, and other infrastructure, utility, and road locations will need to be revised to efficiently serve all development contemplated by the City's General Plan, including the now vested Zeka Ranch project.

The City Should Continue the July 1, 2020, Planning Commission Meeting To a Future Date.

The City will appreciate the material reordering of the development rights within the Sand Creek area occasioned by The Zeka Group's SB 330 Preliminary Application. The items to be reviewed at the July 1 meeting simply are not approvable in their current form. As The Zeka Group will be submitting its application for its development project at Zeka Ranch within a mere 180 calendar days, it makes no sense for the Planning Commission to move forward now. The Zeka Group requests that the Planning Commission continue the scheduled July 1 meeting, and return to the necessary approvals for both The Ranch Project and The Zeka Group's project together only after such time as the material inconsistencies have been resolved. Rescheduling the meeting for a future date after the projects have been reconciled will conserve considerable City resources and avoid the need for further litigation.

If the City Declines To Continue Wednesday's Hearing, The Zeka Group Requests The City Deny Certification Of The EIR And All Discretionary Entitlements For The Ranch Project.

The Zeka Group urges the Planning Commission to recommend that the City Council deny certification of the Environmental Impact Report ("EIR"), and to deny the applications for discretionary entitlements for Richland Planned Communities' proposed residential development, known as "The Ranch" ("Project"). As currently proposed, the Project would consist of a master planned residential community with 1,177 residential units on 253.50 acres of a 551.50-acre site in the City of Antioch's ("City") western Sand Creek Focus Area.

As we will explain in further detail below, the City has prepared a substantially defective EIR that fails to comply with the requirements of the California Environmental Quality Act ("CEQA;" Pub. Resources Code, § 21000 et seq.) and the State CEQA Guidelines ("Guidelines;" Cal. Code Regs., tit. 14, § 15000 et seq.). The EIR fails to disclose, evaluate, and mitigate direct, indirect, and cumulative Project impacts on the environment and on human beings. Furthermore, the proposed General Plan amendment and rezoning constitute impermissible spot zoning.

Given the Project's scale, intensity, and projected lifespan, it is imperative for the City to take this opportunity to correct the serious deficiencies in this Project's environmental review. The Project will dramatically re-shape Antioch for generations to come, and it is crucial that the this City's leaders adequately inform its residents of the Project's environmental effects. At the very least, this City should recirculate the Project's EIR to allow the public the meaningfully comment on significant, new information that has been presented to the City following the circulation of the Draft EIR, including The Zeka Group's development project.

1. Background Regarding The Ranch Project

As noted above, the Project would construct nearly 1200 residential units on largely undeveloped land in the City's Sand Creek Focus Area. Under the City's General Plan, the Project site is designated as "Golf Course Community/Senior Housing/Open Space," "Hillside and Estate Residential," and "Public/Quasi Public." (See EIR at p. 2-2.) In addition to the residential housing, the Project would also construct a 5.00-acre "Village Center" with commercial, office, and retail space. (See *id.* at p. 2-5.) Residential uses would cover

approximately 46 percent of the total project site. (*Ibid.*) To carry out this project, the developers and project proponents seek a range of discretionary entitlements, including General Plan Amendments (map, text, Circulation Element, Housing Element), Zoning Code amendment, Master Development Plan, Design Review to adopt Design Guidelines, Resource Management Plan, and a Development Agreement.

2. The Project's Environmental Impact Report Fails to Comply with CEQA and the State CEQA Guidelines.

"The EIR has been aptly described as the 'heart of CEQA.' [Citations.] . . . Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government.' [Citation.]" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, original emphasis.) "The foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.)" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 ["*Laurel Heights*"].)

CEQA compliance "serve[s] an important purpose in helping to shape and inform [public officials'] exercise of discretion." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 122.) To that end, "the public and decision-makers, for whom the EIR is prepared, should . . . have before them the basis for [EIR conclusions] so as to enable them to make an *independent, reasoned judgment*." (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831, emphasis added.) Even if City staff or the EIR drafters already know how the Project will impact the environment, to paraphrase *Laurel Heights*, "the critical point" is that the public and the City Council "must be equally informed." (47 Cal.3d at p. 404.) In other words, the EIR is a "document of accountability." (*Id.* at 392; *accord, Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164-1165.)

"[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA." [Citation.]" (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 88.) "CEQA is enforced with powerful remedies to ensure that the review process is completed appropriately and the various findings are made before projects go forward. Litigants, including members of the public, may apply to courts to order agencies to void, either in whole or in part 'any determination, finding, or decision . . . made without compliance' with CEQA. [Citations.]" (*Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 713.)

To be adequate, an EIR must do more than disclose a project's environmental impacts; it must also meaningfully evaluate the level of environmental significance of such impacts. (*Poet, LLC v. State Air Resources Bd.* (2017) 12 Cal.App.5th 52, 64; see *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514-515 [an EIR must "reasonably describe the nature and magnitude of the adverse effect"]; Pub. Resources Code, § 21083, subd. (b).) This includes impacts that are "potentially" significant since CEQA defines "a significant environmental impact . . . as 'a substantial, or *potentially substantial*, adverse change in the environment.'" (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of*

Rancho Cordova (2007) 40 Cal.4th 412, 448 & fn. 17, original emphasis ["*Vineyard*"], quoting Pub. Resources Code, § 21068; see also *id.* at § 21100, subd. (d).)

While "perfection" isn't necessary, the EIR "must be 'prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.'" (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712, quoting Guidelines, § 15151.) "The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project." (*Vineyard, supra*, 40 Cal.4th at 442.)¹

As we will show in further detail below, many aspects of the EIR fall far short of the standards required by CEQA and the Guidelines.

a. Failure to Provide an Adequate and Stable Project Description

An EIR must provide a description of "the project's technical, economic, and environmental characteristics" (Guidelines § 15124, subd. (c).) "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.)

Here, the EIR provides an incomplete and inconsistent description of the physical development that would occur as part of the Project. Although the EIR provides a conceptual site plan that shows the general location of planned residential housing, parks, and the planned commercial development at the "Village Center" (see Draft EIR Exhibit 2-8 ["Site Plan"]), the EIR provides no details about the specific orientation, location, size, or layout of physical structures that would be constructed.² This is a substantially defective project description that denies City decisionmakers and members of the public a meaningful opportunity to scrutinize the Project's environmental effects. Indeed, there is no way for members of the public or decisionmakers to determine whether structures will be oriented or clustered in a manner that will exacerbate effects on traffic, noise, geological hazards, or other aspects of the physical environment.

Courts have held that such extreme lack of specificity is a fatal legal error. In a decision published last year, for example, the Court of Appeal held that an EIR was defective because it did not "contain site plans, cross-sections, building elevations, or illustrative massing to show what buildings would be built, where they would be sited, what they would look like, and how many there would be." (*Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 19.) The EIR at issue here suffers from the exact same flaw.

¹ To enable government officials and the public to fully understand the environmental consequences of project approvals, and to further assure the public that those consequences have been taken into account, the EIR "must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made." (*Vineyard, supra*, 40 Cal.4th at 449-450.)

² The site plans in the Draft EIR and Final EIR also indicate that a portion of the "Village Center" will be constructed *outside* the boundary of the Project site. The Project description should be revised to show the correct Project boundaries. We also note that portions of the EIR sometimes refer to the conceptual site plan as "Exhibit 2-6" in the Draft EIR rather than "Exhibit 2-8" (see, e.g., Draft EIR at p. 3.10-8).

To make matters worse, the site plan at Exhibit 2-8 is also inconsistent with similar site plans shown later in the EIR. For example, Exhibit 3.14-20 shows a different orientation and alignment for the roads south of Sand Creek Road on the eastern portion of the Project site. Exhibit 2-8 shows the roads bisecting Sand Creek Road, while Exhibit 3.14-20 shows a road that runs parallel to Sand Creek Road but ends in a *cul de sac*. The location of the medium density residential development is also inconsistent. Furthermore, Attachment A to Appendix D shows a separate conceptual site plan without any road south of Sand Creek Road (Sand Creek Road is labelled "Dallas Creek Road" in this version of the conceptual site plan). The inconsistencies were neither corrected nor clarified in the Final EIR.

These inconsistent disclosures and descriptions undermine and frustrate the EIR's ability to accurately assess the full extent of environmental impacts. For example, the Biological Resources Assessment assumes that there will be no new road to the south of Sand Creek Road on the eastern portion of the project site, and based on that assumption, the EIR shows that the "impacted area" for biological resources only extends to the edge of the medium density residential development, rather than the edge of the new road (which would be located south of the medium density residential development).

Many key questions about the Project's scope, layout, design, and operation remain unanswered. These questions include (but are not limited to) the following:

- What are the specific heights of new physical structures at the project site?³
- What types of building materials will be used, and what are the roofing materials?
- Will there be any illuminated signage at the Project site?
- Where (specifically) will on-street parking be located, and how will residents access off-street parking from the new roadways?
- Where (specifically) will signalized pedestrian and bicycle crossings be located?
- To what extent will retail spaces be affordable to low- and moderate-income members of the public?
- Will there be a specific location for taxis and ridesharing services to queue outside of the Village Center?
- What species of street trees will be selected for inclusion at the Project site, and where will those specific trees be located?

The EIR also fails to provide a stable project description. In last-minute errata published in the final EIR, the project description was amended to include a new description of "Open Space Uses" at the project site. (See Final EIR at p. 3-24.) The errata now discloses, for the first time, that the trail system "will be located well outside the 125-foot set back from centerline of Sand Creek (on both sides)." (*Ibid.*) But this disclosure conflicts with prior disclosures (and site illustrations) that show a trail passing across Sand Creek in the southeastern portion of the Project site. (See Draft EIR Exhibit 2-10.) This change in the project description is significant new information, as it could substantially change the scope of impacts to environmental resources (including, among other things, biological and hydrological resources).

³ Leaving this question unanswered will make it difficult to determine aesthetic impacts.

The changes to the project description in the final EIR also reveal, for the first time, that "trails will be lined with post and cable (or other suitable) fencing and signage (all subject to regulatory approvals from the resource agencies) to keep people and pets out of the sensitive open space area." (See Final EIR at p. 3-24.) Again, this is significant new information, as it will likely impede the effectiveness of mitigation measures that are specifically designed to facilitate wildlife movement across preserved areas of the Project site. In fact, the Draft EIR's conclusions regarding impacts to biological resources *assume* that the Project will not have cumulatively significant impacts on wildlife movement corridors because no exclusionary fencing will be installed at the project site. (See Draft EIR at p. 3.4-77 ["MM BIO-4 would prohibit any exclusionary fencing from being installed along the creek corridor which could prohibit migration throughout the open space corridor provided."].) The EIR should be revised and recirculated to correct this contradiction.

Ultimately, the changes to the Project description and other new significant information in the final EIR necessitate recirculation. Under CEQA, if a Public Agency makes significant changes to an EIR after the close of the public comment period, the EIR must be recirculated to allow the public and other public agencies a meaningful opportunity to comment on the EIR. (See Guidelines § 15088.5, subds. (a) & (b).)

b. Failure to Provide an Adequate Description of the Project's Environmental Setting

"An EIR must include a description of the physical environmental conditions in the vicinity of the project This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines § 15125, subd. (a).) "Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project." (*Id.* at subd. (c).) Here, the EIR fails to provide a legally adequate description of the Project's environmental setting.

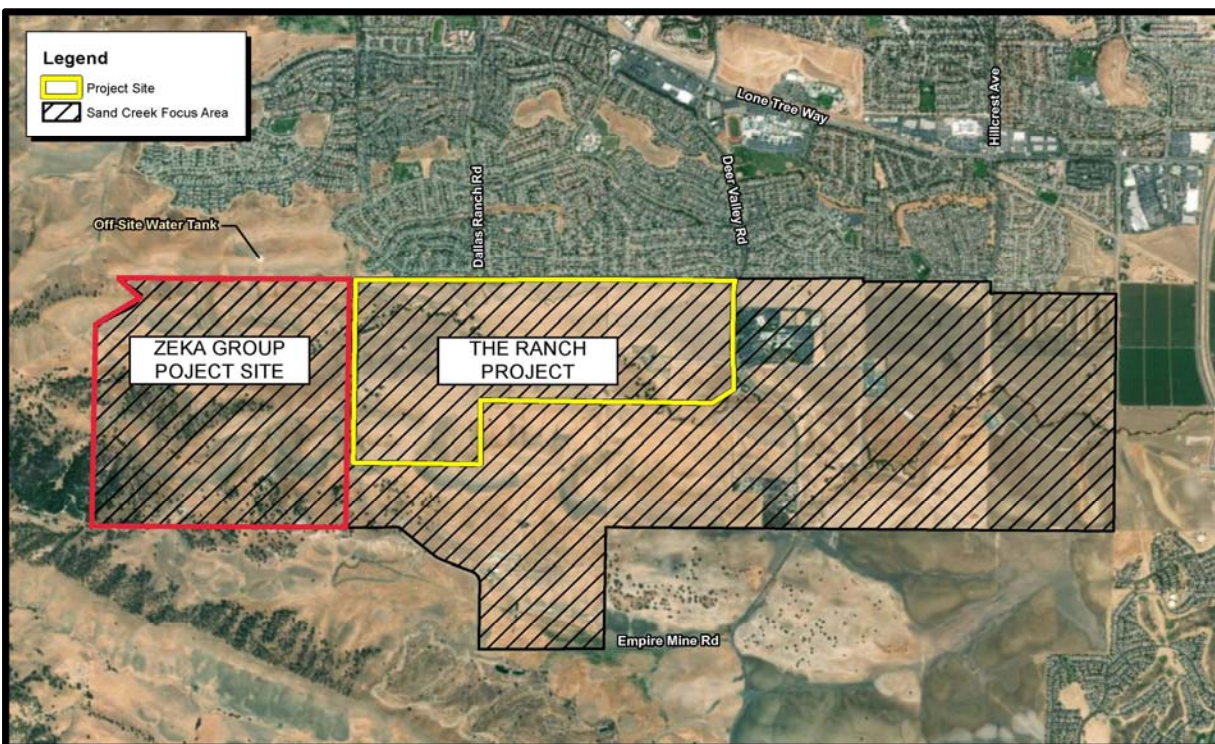
In its discussion of a project's environmental setting, an EIR must disclose the existence of related projects. An EIR must do so to account for the fact that "[t]he possible effects of a project [may be] individually limited but cumulatively considerable." (Pub. Resources Code, § 21083, subd. (b)(2).) Consequently, an EIR must discuss cumulative, incremental impacts caused by a project when effects are combined with the effects of other, closely related past, present, and reasonably foreseeable future projects. (*Id.*; see *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647,682; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721 [EIR held inadequate where it "improperly focused upon the individual project's relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality"].)

Here, the EIR states that the Project site is adjacent to "undeveloped land and Empire Mine Road to the west." (Draft EIR at p. 2-1; see also *id.* at p. 2-4 [site is bordered by "a continuation of undeveloped Sand Creek Focus Area land to the west"].) The EIR completely omits the fact that the Zeka Group has submitted a preliminary application to construct a new residential project at its 640-acre Zeka Ranch property, which is located immediately adjacent of the Project site on the western side of Empire Mine Road (a map showing the relative location of the Zeka Group's project and Richland Planned Communities' Project is included below as "Figure 1"). The City and Richland Planned Communities have been aware of this proposed

development for years, and the complete omission of this project from the environmental setting fundamentally undermines the adequacy of the EIR's disclosures. The City had an opportunity to correct this omission in the final EIR when it updated the table of related projects, but it failed to do so. (See Final EIR at p. 3-26.)

The complete omission of information about the Zeka Group's project frustrates the EIR's ability to accurately disclose and analyze cumulative environmental impacts. Furthermore, because the new residential housing units at the Zeka Project will be considered sensitive receptors for certain impacts (e.g. air quality, noise; see Draft EIR at p. 3.3-15 [discussing the definition of sensitive receptors]), the EIR fails to disclose and mitigate the full extent and severity of the Project's environmental impacts. At the very least, now that the City has been made aware of the existence of the Zeka Group's project, the EIR should be revised and recirculated to address this significant new information. (See Guidelines § 15088.5, subs. (a) & (b).)

Figure 1: Location of Zeka Group Project Site



c. Failure to Disclose, Evaluate, and Mitigate Impacts to Air Quality

As noted above, the EIR completely omits any disclosure of impacts to sensitive receptors at the planned residential housing located at the Zeka Group's project west of Empire Mine Road. By failing to provide any information about the direct, indirect, and cumulative air quality impacts to these sources, it is impossible to formulate meaningful mitigation measures that will adequately protect or minimize impacts to human beings at these residential buildings. (See Pub. Resources Code, § 21081.) This omission also downplays the severity of cumulative impacts on humans living and working in other locations, and additional mitigation will likely be required to offset these cumulative impacts.

d. Failure to Disclose, Evaluate, and Mitigate Impacts to Biological Resources

As noted above, the Draft EIR's conclusions regarding impacts to biological resources assume that the Project will not have cumulatively significant impacts on wildlife movement corridors because no exclusionary fencing will be installed at the project site. (See Draft EIR at p. 3.4-77 ["MM BIO-4 would prohibit any exclusionary fencing from being installed along the creek corridor which could prohibit migration throughout the open space corridor provided."].) But in the final EIR, the project description was modified so that "trails will be lined with post and cable (or other suitable) fencing and signage (all subject to regulatory approvals from the resource agencies) to keep people and pets out of the sensitive open space area." (See Final EIR at p. 3-24.) This fencing is an exclusionary barrier that will prevent wildlife from moving across the creek corridor, and we can therefore assume that MM BIO-4 will be ineffective.⁴

e. Failure to Disclose, Evaluate, and Mitigate Impacts to Cultural and Tribal Resources

In the final EIR, after receiving recommendations from the Wilson Rancheria, the City updated its mitigation measures for impacts to cultural and tribal resources. (See Final EIR at pp. 2-69 to 2-72.) However, the proposed mitigation is impermissibly vague and lacks performance standards and guidelines that will ensure they will be effective. For example, in MM CUL-2, a qualified archeologist will only "prepare and implement a research design and archaeological data recovery plan" *after* resources are discovered. (See Final EIR at pp. 2-70 to 2-71.) This plan should be developed and disclosed now so that decisionmakers and members of the public can reasonably assess whether it will function as effective mitigation.

In *Save the Agoura Cornell Knoll*, the Court of Appeal held that similar mitigation measures were defective. The court wrote:

"[The mitigation measure] simply provides a generalized list of measures to be undertaken by a qualified archaeologist and Native American monitor, but it does not set forth any performance standards or guidelines to ensure that these measures will be effective. For instance, the program calls for the future 'preparation of a technical report' that 'shall include a mitigation monitoring and reporting plan.' Yet the [CEQA document] does not explain how the undefined monitoring and reporting plan would mitigate the potentially significant effects on the site's cultural resources, nor does it specify any criteria for evaluating the efficacy of that plan. There is also no indication in the record that it was impractical or infeasible for the City to articulate specific performance criteria for these data recovery measures at the time of project approval."

(46 Cal.App.5th 665, 688.) Indeed, in our present case, the City has provided no evidence to show that the preparation of a research design and archaeological data recovery plan is infeasible or impractical at this time.

⁴ The EIR also completely fails to disclose, evaluate, and mitigate the ways in which the presence of pets on trails and in residential housing will impact the distribution or viability of biological resources in and around the Project site.

f. Failure to Disclose, Evaluate, and Mitigate Impacts to Geology and Soils

Although "the majority of slopes in the southwest corner of the City are considered unstable or moderately unstable" (Draft EIR at p. 3.6-9), the EIR fails to provide detailed and specific grading plans. Without these grading plans, it is impossible for decisionmakers and members of the public to substantiate and scrutinize the EIR's conclusion that "the potential for lateral spreading, landslide, subsidence, and liquefaction is low to negligible" at the Project site. (See Draft EIR at p. 3.6-20.)

Additionally, like the proposed mitigation measures for impacts to cultural and tribal resources, the City's proposed mitigation for paleontological resources also impermissibly defers creation of performance standards and guidelines. Specifically, MM GEO-3 requires "the creation and implementation of a paleontological monitoring program" in the future. (Draft EIR at p. 3.6-22.) Again, the City has provided no evidence to show that the preparation of a paleontological monitoring program is infeasible or impractical at this time.

g. Failure to Disclose, Evaluate, and Mitigate Impacts to Hazards, Hazardous Materials, and Wildfires

Once again, the City has impermissibly deferred formation of performance standards and guidelines for its mitigation measures. Specifically, mitigation measure MM HAZ-2f "requires a Soil Management Plan ["SMP"] to be prepared to address potential impacted soil within the single-family residence structure" (see Draft EIR at p. 3.8-27), but the City has provided no evidence to show that the preparation of the SMP is infeasible or impractical at this time.

The EIR also fails to disclose how sensitive receptors (i.e. residential housing) at the adjacent Zeka Group project will be impacted by exposure to hazardous materials and substances during phased construction. Without this information, it is impossible to determine whether the Project will "impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan" (impact HAZ-6) or "expose people or structures, either directly or indirectly to a significant risk of loss, injury or death involving wildland fires" (impact HAZ-7). The absence of these disclosures is especially relevant and prejudicial because the portion of the Project that is closest to the Zeka Group's project (the "South of Sand Creek Development Area") will be built during the final phase of construction ("Phase 3"), which won't even begin until Spring 2027, at the earliest. (See Draft EIR at p. 2-39 and Exhibit 2-9.)

Finally, the EIR fails to provide any details about the specific location of emergency ingress and egress points for residents and emergency service providers (see Draft EIR at pp. 3.8-32 to 3.8-34 [the EIR notes that access points "would be provided" but fails to identify exact locations].) Without these disclosures, it is impossible to determine the severity of impacts related to wildfire hazards.

h. Failure to Disclose, Evaluate, and Mitigate Impacts to Hydrology and Water Quality

The EIR's disclosures, analyses, and proposed mitigation for hydrology and water quality impacts are severely deficient. Errors include, but are not limited to, the following:

i. Inconsistent Description of Impacts Caused by Increased Impervious Surfaces

The EIR's disclosures regarding hydrologic and water quality impacts contain a number of contradictory statements. On one hand, the EIR states that the Project "would not result in exceedance of storm drain capacity or create additional sources of runoff." (Draft EIR at p. 3.9-25.) Later, the EIR discloses that the Project "involves a total net increase of 7,731,723 square feet of new of impervious surfaces compared to existing conditions" and that the addition of these new impervious surfaces "could increase stormwater runoff rates and volumes." (*Id.* at p. 3.9-26.) This inconsistency should be clarified.

ii. Failure to Provide Legally Adequate Mitigation

The EIR also fails to provide a meaningful and specific plan for mitigating erosion and stormwater impacts in the preserve in and around Sand Creek. The EIR discloses that increased impervious surfaces will increase these impacts: "[E]roded soils and pollutants could enter storm drainage systems and enter Sand Creek, increasing sedimentation and degrading downstream water quality." (Draft EIR p. 3.9-18) The EIR also notes that "the proposed project would result in an increase of impervious surfaces on the project site and in turn generate stormwater runoff, which may carry pollutants such as pesticides, fertilizers, and deposits of fluids and metals from motor vehicles into Sand Creek or allow seepage of such pollutants into the associated groundwater table." (*Id.* at p. 3.9-19.)⁵ To mitigate these impacts, the EIR proposes to construct five drainage management areas ("DMAs") where stormwater would be conveyed to bio-retention facilities. (See Draft EIR at p. 3.9-25.) But neither the EIR nor the stormwater control plan (included as "Appendix H" to the Draft EIR) provide any details about *how* stormwater will be conveyed or channelized or *where* of stormdrains and catchbasins will be located. Without this information, it is impossible for decisionmakers and members of the public to make informed decisions about proposed mitigation.

To complicate things further, the EIR discloses that stormwater facilities will be owned and managed by a future homeowners association ("HOA"), and the HOA will "provide a comprehensive Stormwater Control Operations and Maintenance Plan ["OMP"] to the City and County for review and approval prior to the issuance of any building permits." (Stormwater Control Plan at p. 14.) Deferring formulation of this OMP is improper. As the Court of Appeal explained in *Endangered Habitats League, Inc. v. County of Orange* (2005): "This is inadequate. No criteria or alternatives to be considered are set out. Rather, this mitigation measure does no more than require a report be prepared and followed, or allow approval by a county department without setting any standards." (131 Cal.App.4th 777, 794; see also CEQA Guidelines, § 15126.4, subd. (a)(1)(B).)

⁵ In their comments on the Draft EIR, the East Bay Chapter of the California Native Plant Society noted that the East Contra Costa County Habitat Conservation Plan requires local agencies to "divert urban runoff from [habitat] preserve boundaries" and that the EIR needs to provide a specific management plan for controlling stormwater runoff that will impact the preserve along Sand Creek. Their comment letter also noted that specific mitigation strategies are required by the City's General Plan. (See Policy 4.4.6.7t ["Adequate buffer areas adjacent to the top of banks along Sand Creek to protect sensitive plant and amphibian habitats and water quality shall be provided."].)

i. Failure to Disclose, Evaluate, and Mitigate Impacts to Human Health

When disclosing and assessing a project's environmental effects, an EIR must also assess "human health and safety." (*California Building Industry Assn. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369,386; § 21083 (b)(3); see *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1372 [human health is among the many "environmental values" protected by CEQA and the Guidelines].) Additionally, "CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present." (*California Building Industry Assn., supra*, 62 Cal.4th at p. 388.)

Here, although the EIR discusses impacts of ambient airborne pollutants on human health, the EIR fails to disclose, evaluate, or mitigate other adverse effects on human health. Likewise, the EIR fails to disclose, evaluate, or mitigate the ways in which Project impacts could exacerbate existing conditions on the Project site that adversely affect human health. For example, the EIR should have assessed (among other things):

- Whether the vegetation at the Project site could potentially serve as habitat for vermin or insects that act as disease vectors in the region;
- Whether traffic conflict between vehicles, pedestrians, bicycles, or other shared mobility devices create an unacceptable risk of injury;
- Whether (and the extent to which) Project traffic and circulation impacts may adversely affect the human health of drivers who are forced to spend more time in their cars while commuting to and from destinations;
- Whether (and the extent to which) Project noise and vibration impacts may adversely affect the health of residents and the Project site and in surrounding neighborhoods;⁶ and
- Whether (and the extent to which) light pollution from the project site may adversely affect human health.

By failing to disclose and assess these potential impacts, the City has abdicated its duty to formulate and provide feasible mitigation measures that could protect human health and safety.

j. Failure to Disclose, Evaluate, and Mitigate Impacts to Land Use

An "EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans." (CEQA Guidelines, § 15125, subd. (d).) Here, the EIR fails to adequately disclose, analyze, or mitigate project inconsistencies with respect to City and State land use policies, including elements of the General Plan.

"[T]he requirement of consistency is the linchpin of California's land use and development laws. It is the principle which infused the concept of planned growth with the force of law." (*Debottari v. City of Norco* (1985) 171 Cal.App.3d 1204,1213.) Our high court thus articulated the hierarchical consistency principle in *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52

⁶ See *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714,734 (significant impact caused by noise from temporary events at winery estate located near wildlife habitat established by studies indicating that noise may induce stress-related illness in mountain lions and bobcats, and their displacement from favored habitats)

Cal.3d 553: "[T]he keystone of regional planning is consistency - between the general plan, its internal elements, subordinate ordinances, and all derivative land-use decisions. [Citations.]" (*Id.* at 572-573; see Gov. Code, § 65567; *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184 ["permit action taken without compliance with the hierarchy of land use laws is ultra vires as to any defect implicated by the uses sought by the permit"]; *Save El Toro Assn. v. Days* (1977) 74 Cal.App.3d 64, 73.)

The EIR essentially assumes that new development will achieve General Plan consistency by amending the General Plan and General Plan maps to accommodate the proposed residential, commercial, and recreational uses that would be constructed at the Project site. (See Draft EIR at p. 3.10-22.) But the EIR fails to provide a map showing the proposed revisions to the General Plan, and it is therefore impossible to determine whether the orientation and alignment of new development at the Project site will be consistent with the General Plan. Nor does the EIR disclose, evaluate, or mitigate how the proposed General Plan amendments will cumulatively or indirectly impact other, neighboring projects in the area.

Finally, the EIR ignores inconsistencies with other aspects of the General Plan, including (among other things) requirements for roadways to "eliminate unnecessary vehicle travel, and to improve emergency response." (See General Plan § 4.4.3.2, subd. (e).)

k. Failure to Disclose, Evaluate, and Mitigate Impacts to Noise

As noted above, the EIR completely fails to disclose the presence of sensitive receptors at the adjacent Zeka Group project that will be constructed to the west of the Project site. By failing to do so, the EIR fails to accurately describe the severity and intensity of impacts from noise at the Project site. Indeed, it is highly likely that noise generated by construction equipment during "Phase 3" of construction (at the portion of the Project site closest to the Zeka Group project) will cause direct, significant impacts to sensitive receptors.

The EIR also fails to assess other types of feasible, meaningful mitigation that will reduce overall noise impacts, including (but not limited to) re-orienting or aligning the placement of structures at the Project site, reducing the scope of the Project, extending the time of construction periods to limit the hours of noise disturbances, and adding additional vegetation to screen noise from the Project site.

I. Failure to Disclose, Evaluate, and Mitigate Impacts to Public Services and Recreation

Here, the EIR ignores potentially feasible mitigation measures that would decrease new and additional burdens that the Project would place on emergency services in the area. These mitigation measures include (but are not limited to) re-orienting or aligning the placement of structures at the Project site, reducing the scope of the Project, extending the time of construction periods to limit the potential for multiple simultaneous workplace accidents, and incorporating alternative programs for community policing or public safety.

m. Failure to Disclose, Evaluate, and Mitigate Impacts to Transportation and Circulation

Because the EIR completely omits any mention of the adjacent Zeka Group project to the west of Empire Mine Road, the EIR's analysis of traffic and circulation impacts ignore the cumulative effect of both these projects (and other related projects) on roadways and circulation systems in the area. In particular, the Project will need to offer additional fair-share mitigation that realistically and meaningfully addresses increased traffic congestion on Empire Mine Road, Dallas Ranch Road, and other impacted roadways in the area. The EIR's cumulative impact assessment will also need to address increased total public transit demands that will result from the construction of the Zeka Group's project.

Additionally, the EIR completely fails to disclose, evaluate, or mitigate how the extension and orientation of Dallas Ranch Road towards the east (merging into Sand Creek Road) will impact traffic circulation and access to future residents at neighboring developments, including the Zeka Group's project. If Dallas Ranch Road is extended to the east, as proposed by this Project, additional burdens will be placed on other, parallel roads by individuals travelling to the Zeka Group project. These impacts should have been disclosed, evaluated, and mitigated in this Project's EIR. Effective mitigation will likely require reconfiguration of the Project site to allow traffic from Dallas Ranch Road to travel west.

Finally, as noted above, the EIR provides no information about the specific location of emergency ingress and egress points at the Project site. Without this information, it is impossible to determine whether the Project will provide inadequate emergency access. (See Draft EIR at p. 3.14-97.) Likewise, it is impossible to determine whether potential impacts are sufficiently mitigated. The EIR should be revised so that it maps and illustrates the specific locations of these emergency access points.

n. Failure to Disclose, Evaluate, and Mitigate Impacts to Utilities and Service Systems

The EIR's disclosures, analyses, and proposed mitigation for utilities and service system impacts are severely deficient. Surprisingly, the EIR provides no illustrations or diagrams that show the future location of utility systems (i.e. electrical, water, and wastewater lines and pipes). Nor does the EIR disclose the location of catchbasins that will direct wastewater and stormwater runoff to appropriate treatment facilities. Without this information, it is impossible to determine whether the siting or location of these systems will cause significant environmental impacts. Furthermore, it is crucial that the EIR mitigate cumulative impacts by ensuring that the alignment of utility systems accommodates the need for utility connections from related, neighboring projects in the area, including the Zeka Group's project.

o. Failure to Disclose, Evaluate, and Mitigate Cumulative Impacts

CEQA and the Guidelines require EIRs to disclose and evaluate a project's cumulative impacts and lead agencies may not, *ipso jure*, equate individually minor effects with cumulatively minor effects. Rather, CEQA mandates "a finding that a project *may* have 'a significant effect on the environment' " where the "possible effects of a project are individually limited but cumulatively considerable." (Pub. Resources Code, § 21083, subd. (b), emphasis added; Guidelines, § 15065, subd. (a)(3).) "[C]umulatively considerable means that the incremental effects of an

individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (Pub. Resources Code, § 21083, subd. (b)(2).)

Cumulative impacts may compound or increase other environmental impacts, and an EIR must inquire into and discuss the incremental impacts of a project, such as incremental water or air pollution, incremental demands on water supply and other public services, or habitat loss, when added to closely related past, present, and reasonably foreseeable probable future development projects taking place over a period of time. (Guidelines, §§ 15130, 15355, 15358; see *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 682; *Kings County Farm Bureau, supra*, 221 Cal.App.3d at p. 721.) "An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in [Guidelines] section 15065(a)(3)." (Guidelines, § 15130, subd. (a).)

Even when a combined cumulative impact associated with a project's incremental effect and the effects of other related projects is not significant, the EIR still must "briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR." (Guidelines, § 15130, subd. (a)(2).) "A Lead Agency shall identify facts and analysis supporting the lead agency's conclusion that the cumulative impact is less than significant." (*Ibid.*)

Here, the EIR's complete omission of any reference to the Zeka Group's project undermines the accuracy of the EIR's cumulative impact analyses in all subject areas. At the very least, the EIR should be recirculated to correct this significant error.

p. Failure to Disclose and Analyze a Reasonable Range of Project Alternatives

The EIR fails to assess a reasonable range of alternatives that reduce adverse impacts on sensitive receptors in the neighborhood, and it fails to assess alternatives that allow for the Project to direct road traffic and utility services toward the west, rather than the east. Furthermore, the analysis of Alternative 3 states that Alternative 3 would have fewer impacts on biological resources than the proposed Project, but the EIR does not disclose which aspects of the environmental impacts will be less significant than the Project. (Draft EIR at p. 6-17.) Without this information, it is impossible to determine whether Alternative 3 is substantially superior or only marginally superior than the proposed Project.

q. Failure to Provide Feasible Mitigation Measures and Impermissible Deferral of Mitigation

"A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures." (Pub. Resources Code, § 21081.6, subd. (b); see Guidelines, §§ 15091, subd. (d), 15126.4, subd. (a)(2).) When making the findings required by Public Resources Code section 21081, subdivision (a)(1), to the effect that changes have been required in or incorporated into a project, mitigating or avoiding each significant effect identified in the final EIR, "[t]he public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment." (Pub. Resources Code, § 21081.6, subd. (a)(1).) "The reporting or monitoring program shall be designed to ensure compliance during project implementation." (*Id.*)

Furthermore, because it has significant impacts even after mitigation, disapproval of the Project is required unless there are no feasible mitigation measures or alternatives, and specific benefits outweigh the significant impact. (Pub. Resources Code, § 21081.) That is because CEQA requires public agencies to deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects. (Pub. Resources Code, § 21002; *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30,41.) The Legislature has stated:

"The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. . . . The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof."

(Pub. Resources Code, § 21002.) CEQA mandates that:

"Pursuant to the policy stated in [Public Resources Code] Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the Project is approved or carried out unless [¶] Specific economic, legal, social, technological, or other considerations. . . make infeasible the mitigation measures or alternatives identified in the environmental impact report."

(Pub. Resources Code § 21081.) The Guidelines that implement CEQA restate this requirement. (Guidelines, § 15091, subd. (a)(3).) Specifically, mitigation measures must be "required in, or incorporated into" the project. (Pub. Resources Code, § 21081, subd. (a)(I); *Federation of Hillside and Canyon Assoc. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252,1261.) Deferral of the analysis of the feasibility and adoption of mitigation measures violates CEQA. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296,306-308.) In this case, many of the mitigation measures are no more than a vague promise to "comply with the law." These measures do not meet CEQA's mandate for effective, enforceable mitigation measures, and it is a prejudicial abuse of discretion for the City to rely on same in approving the Project's discretionary entitlements.

3. The Proposed General Plan Amendment and Zone Change Constitute Impermissible Spot Zoning

" 'A spot zone results when a small parcel of land is subject to more or less restrictive zoning than surrounding properties.' " (*Foothill Communities Coalition v. County of Orange* (2014) 222 Cal.App.4th 1302, 1312, citing Hagman et al., Cal. Zoning Practice (Cont. Ed. Bar 1969) § 5.33, p. 152; italics omitted.) "[A]n amendment to a zoning ordinance that singles out a small parcel of land for a use different from that of the surrounding properties and for the benefit of the owner of the small parcel and to the detriment of other owners is spot zoning." (*Id.* at p. 1314.)

Here, the proposed General Plan amendment and proposed rezoning of the Project site provide benefits that uniquely favor the Project proponents. Those benefits are not provided to

neighboring land uses. Therefore, the proposed General Plan amendments and rezoning constitute impermissible spot zoning.

4. Conclusion

The proposed amendments to the City's General Plan text, General Plan Land Use Map, Circulation Element, and Housing Element to be discussed on July 1 at the Planning Commission are not consistent with Zeka Group's superior vested development rights, and cannot be approved as presented. Additionally, myriad aspects of The Ranch Project will need to be modified to be made consistent with Zeka Group's development plan. Accordingly, The Zeka Group requests that the Planning Commission continue the July 1 Planning Commission meeting, and revisit the necessary approvals for both The Ranch Project and The Zeka Group's project together once the material inconsistencies have been resolved. There is no reason to rush through this approval process. The development of the Sand Creek area is simply too consequential, and interested stakeholders cannot afford errors in its environmental review.⁷

If the Planning Commission goes forward on July 1 as scheduled, Zeka Group urges the Planning Commission and the City to deny approval of the discretionary entitlements for the Project and to deny certification of the EIR. At the very least, the EIR should be recirculated to allow the public to comment on significant new information and new, feasible mitigation strategies that were provided after the Draft EIR was circulated for public review.

Very truly yours,



Andrew A. Bassak

cc: Thomas Lloyd Smith, Esq., Antioch City Attorney (via email only)
Forrest Ebbs, Community Development Director (via email only)
Derek Cole, Esq. (via email only)
Louisa Zee Kao, Zeka Ranch (via email only)
Kristina D. Lawson, Esq. (via email only)

⁷ Please note that this letter is not intended to provide a complete description of all errors in the EIR or proposed entitlements for the Project. We reserve the right to submit additional evidence and legal arguments in the future.

Exhibit F



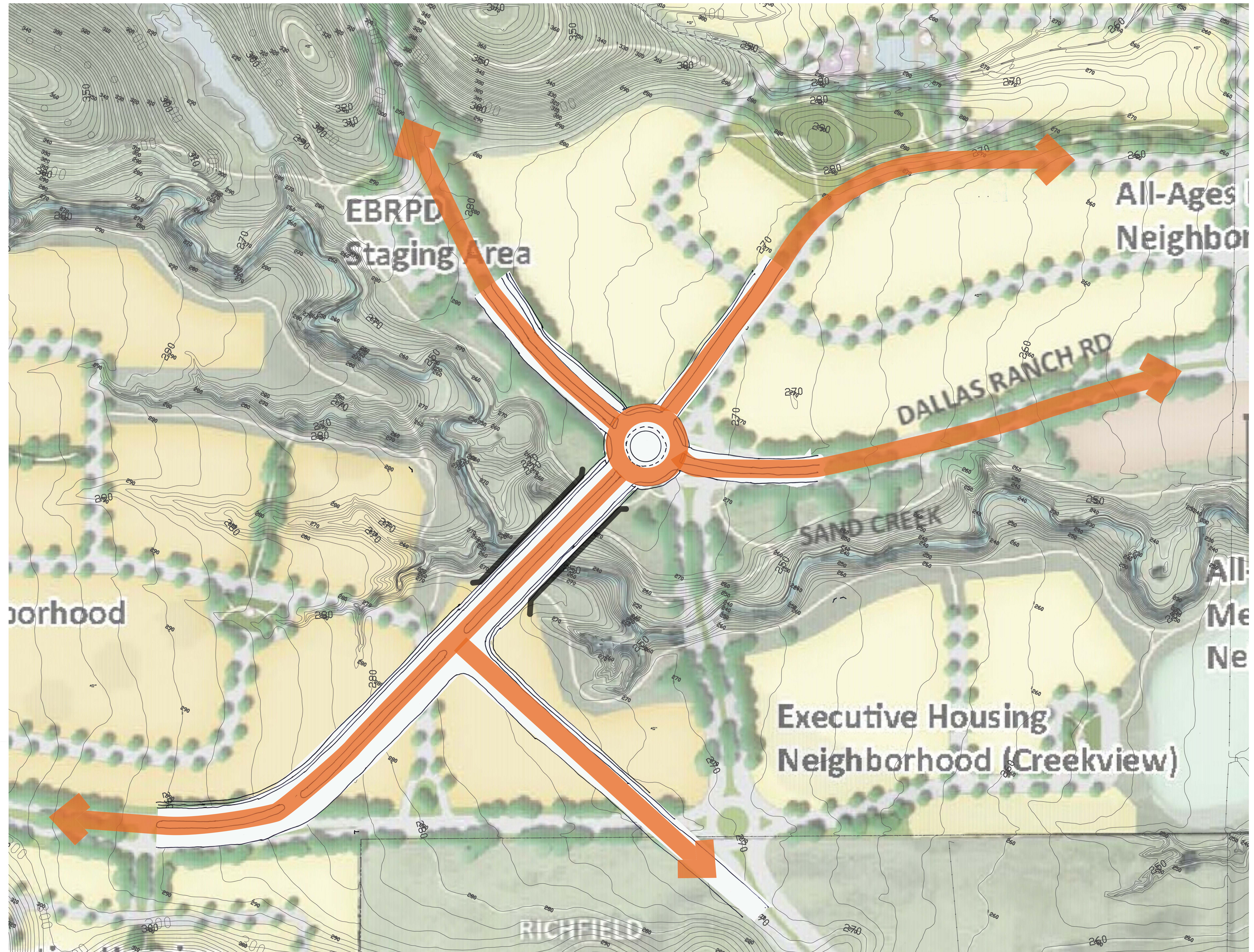
REGIONAL CIRCULATION

ZEKA RANCH, ANTIOCH



JOB NO. 1399.001
DATE 11-15-2017
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200





ALTERNATIVE SAND CREEK CROSSING

ZEKA RANCH, ANTIOCH

0 100 200 400

DAHLIN

JOB NO. 1399.001
DATE 11-15-2017
5865 Owens Drive
Pleasanton, CA 94588
925-251-7200



INFRASTRUCTURE AND FACILITIES FOR THE SAND CREEK AND SPECIFIC PLAN (HIGGINS & FVA1)

- LEGEND**
- SPECIFIC PLAN BOUNDARY
 - RAW WATER
 - EXISTING RAW WATER
 - STORM DRAIN LINES
 - EXISTING STORM DRAIN LINES
 - SEWER LINES
 - EXISTING SEWER LINES
 - WATER LINES
 - EXISTING WATER LINES
 - WATER TANK
 - EXISTING WATER TANK
 - PUMP STATION
 - UTILITY RELOCATION
 - EXISTING UTILITY RELOCATION
 - COMMUNITY RECREATION
 - ROADWAYS
 - EXISTING ROADWAYS

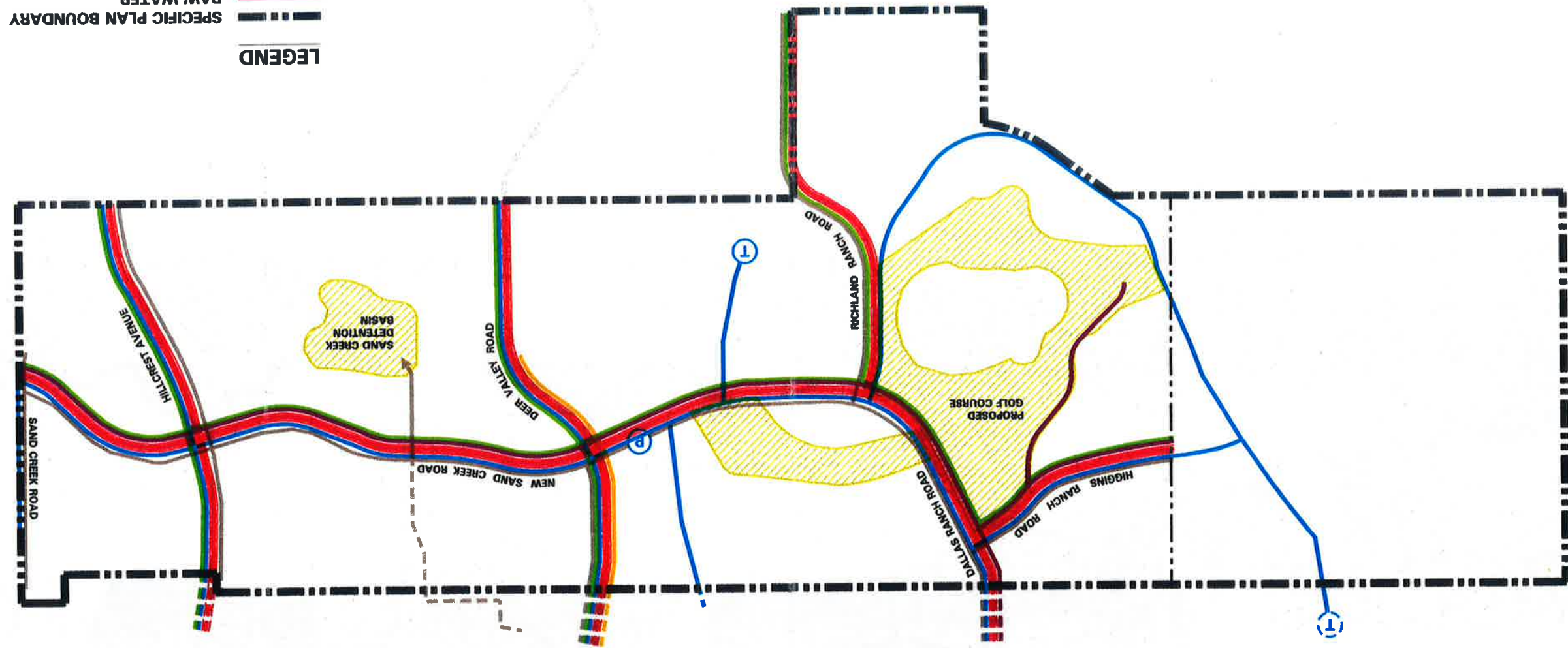


Exhibit C

McGILL MARTIN SELF, INC.
Civil Engineering Land Planning Surveying
1500 Newell Avenue, Suite 700
Walnut Creek, CA 94596-5180
Tel: 925.988.9188
Fax: 925.988.0170

