



Council Chambers
200 H Street
Antioch, CA 94509

Closed Session - 6:15 P.M.
Regular Meeting - 7:00 P.M.

ANNOTATED AGENDA

for

December 10, 2013

Antioch City Council
Regular Meeting

Wade Harper, Mayor
Mary Helen Rocha, Mayor Pro Tem
Gary Agopian, Council Member
Monica E. Wilson, Council Member
Tony Tiscareno, Council Member
Arne Simonsen, City Clerk
Donna Conley, City Treasurer
Jim Jakel, City Manager
Lynn Tracy Nerland, City Attorney

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Notice of Availability of Reports

This agenda is a summary of the actions proposed to be taken by the City Council. For almost every agenda item, materials have been prepared by the City staff for the Council's consideration. These materials include staff reports which explain in detail the item before the Council 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 City Clerk's Office, located on the 3rd Floor of City Hall, 200 H Street, Antioch, CA 94509, during normal business hours for inspection and (for a fee) copying. 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 City Clerk's Office, who will refer you to the appropriate person.

Notice of Opportunity to Address Council

The public has the opportunity to address the Council on each agenda item. To address the Council, fill out a yellow Speaker Request form, available on each side of the entrance doors, and place in the Speaker Card Tray. See the Speakers' Rules on the inside cover of this Agenda. Comments regarding matters not on this Agenda may be addressed during the "Public Comments" section.

6:15 P.M. ROLL CALL for Closed Sessions – *All Present*

PUBLIC COMMENTS for Closed Sessions – *None*

CLOSED SESSIONS:

- 1) **PUBLIC EMPLOYEE APPOINTMENT** pursuant to Government Code section 54957 and **LABOR NEGOTIATIONS** with prospective employee pursuant to Government Code section 54957.6: Title: City Manager; Negotiators: Mayor Harper, Council Member Wilson, City Manager, City Attorney and Recruiter Phil McKenney.
No action taken

- 2) **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** pursuant to California Government Code section 54956.9(d)(2): *City of Brentwood v. Campbell*, California Court of Appeal, First District, Case Number A138268.

Direction given to City Attorney to continue to January 2014

7:04 P.M. ROLL CALL for Council Members – *All Present*

PLEDGE OF ALLEGIANCE

PROCLAMATIONS – *In Honor of City Manager Jim Jakel's Retirement*

ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS

ANNOUNCEMENTS OF BOARD AND COMMISSION OPENINGS

(Deadline date to apply 01/30/2014)

➤ *Parks and Recreation Commission: 4 Full-Term Vacancies*

PUBLIC COMMENTS—*Only unagendized issues will be discussed during this time*

CITY COUNCIL SUBCOMMITTEE REPORTS

MAYOR'S COMMENTS

COUNCIL REGULAR AGENDA

3. NEW CITY MANAGER RECRUITMENT

Approved appointment and agreement with Steven Duran as City Manager and approved appointment of Ron Bernal as Acting City Manager from 12/31/13 until Mr. Duran begins his employment, 5/0

Action: The action before the City Council is to adopt a motion: appointing Steven Duran as City Manager; approving the Agreement with Steven Duran for City Manager Services and authorizing the Mayor to sign it; and appointing Ron Bernal as Acting City Manager from December 31, 2013 until Mr. Duran begins

STAFF REPORT

1. CONSENT CALENDAR

A. APPROVAL OF COUNCIL MINUTES FOR NOVEMBER 12, 2013 AND NOVEMBER 26, 2013

Continued 11/12/13 Minutes and 11/26/13 Minutes, 5/0

Recommended Action: Motion to approve the minutes for November 12, 2013 and continue the minutes for November 26, 2013

MINUTES

B. APPROVAL OF COUNCIL WARRANTS

Approved, 5/0

Recommended Action: Motion to approve the warrants

STAFF REPORT

C. ADOPTION OF AN ORDINANCE AMENDING THE ZONING CODE TO ALLOW FORTUNE-TELLERS TO BE PERMITTED BY RIGHT IN CERTAIN COMMERCIAL ZONING DISTRICTS (Introduced on 11/26/13)

Ord No. 2077-C-S, 4/1-A

Recommended Action: Motion to adopt the ordinance

STAFF REPORT

D. RESOLUTION ACCEPTING WORK AND AUTHORIZING THE PUBLIC WORKS DIRECTOR/CITY ENGINEER TO FILE A NOTICE OF COMPLETION FOR THE DEER VALLEY ROAD/DAVISON DRIVE/SUNSET LANE PAVEMENT REHABILITATION PROJECT (P.W. 392-28)

Reso No. 2013/69, 5/0

Recommended Action: Motion to adopt the resolution accepting work, authorizing the Public Works Director/City Engineer to File a Notice of Completion and authorizing the Director of Finance to make a final payment of \$624,678.49 plus retention of \$93,778.42 to be paid 35 days after recordation of the Notice of Completion

STAFF REPORT

E. RESOLUTION APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ANTIOCH AND THE ANTIOCH POLICE SWORN MANAGEMENT ASSOCIATION (AP SMA)

Reso No. 2013/70, 5/0

Recommended Action: Motion to adopt the resolution

STAFF REPORT

CONSENT CALENDAR — Continued

- F. APPROVAL OF THE FIRST AMENDED OUT OF AGENCY SERVICE AGREEMENT TO EXTEND THE PREVIOUSLY APPROVED OUT OF AGENCY SERVICE AGREEMENT WITH PG&E FOR THE PG&E POWER PLANT CURRENTLY IN OPERATION LOCATED AT 3225 WILBUR AVE

Reso No. 2013/71, 5/0

Recommended Action: Motion to adopt the resolution approving the First Amended Out of Agency Service Agreement with PG&E to extend for a one (1) year period the previously extended and previously approved "Out of Agency Service Agreement" between the City of Antioch and PG&E for the PG&E Gateway Generating Facility located at 3225 Wilbur Ave and authorize the City Manager to execute it

STAFF REPORT

END OF CONSENT CALENDAR

PUBLIC HEARING

2. GP-13-02, Z-13-07, PD-08-01, PW 608, UP-08-01: THE POINTE – DISCOVERY BUILDERS REQUESTS THE APPROVAL OF A GENERAL PLAN AMENDMENT (GPA) FROM LOW DENSITY RESIDENTIAL TO INCLUSION IN THE SOMERSVILLE ROAD CORRIDOR FOCUS AREA AND TO ADD LANGUAGE TO THE GENERAL PLAN WAIVING THE REQUIREMENTS OF CERTAIN APPLICABLE SECTIONS OF THE GENERAL PLAN RELATED TO HILLSIDE DEVELOPMENT; A REZONE FROM HILLSIDE PLANNED DEVELOPMENT (HPD) DISTRICT TO PLANNED DEVELOPMENT (PD) DISTRICT; AN AMENDMENT TO THE ZONING ORDINANCE TO PROVIDE THE CITY COUNCIL WITH THE DISCRETION TO DETERMINE IF THE HILLSIDE PLANNED DEVELOPMENT POLICIES APPLY TO A PROJECT; A VESTING TENTATIVE MAP; A FINAL PLAN DEVELOPMENT; AND A USE PERMIT IN ORDER TO CREATE 60 LOTS INTENDED FOR SINGLE FAMILY HOMES. THE PROJECT IS GENERALLY LOCATED WEST OF THE INTERSECTION OF SOMERSVILLE ROAD AND JAMES DONLON BOULEVARD (APN: 089-160-010). AN INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION ARE ALSO BEING CONSIDERED FOR ADOPTION. THE PLANNING COMMISSION DID NOT ACT ON THE IS/MND AND BY WAY OF A 5-0 VOTE, WITH ONE VACANCY AND ONE COMMISSIONER ABSENT, RECOMMENDED THE CITY COUNCIL DENY THE GENERAL PLAN AMENDMENT, REZONE, FINAL DEVELOPMENT PLAN, VESTING TENTATIVE MAP, AND USE PERMIT.

STAFF REPORT

STAFF REPORT

5/0

Motion to continue the matter and

- ***Direct staff to respond to comments on Mitigated Negative Declaration***
- ***Direct staff to provide information regarding prior application of hillside ordinance in considering development projects;***
- ***Encourage developer to meet with stakeholders and determine if changes to project can be made to better conform with hillside ordinance and General Plan***
- ***When the matter comes back to Council, direct to staff to bring resolutions to approve and deny project***

Recommended Action: 1) Motion to adopt the resolution denying the General Plan amendments.
2) Motion to adopt the resolution denying the rezone of the subject property from Hillside Planned Development (HPD) to Planned Development (PD).
3) Motion to adopt the resolution denying the Final Planned Development, Tentative Map, and Use Permit.

COUNCIL REGULAR AGENDA – Continued

4. IMPLEMENTATION OF THE SALES TAX ORDINANCE (MEASURE C)

Recommendation: With the City Council’s adoption of the Sales Tax Ordinance on June 12, 2013 and the voters’ approval of the Ordinance (Measure C), the following implementation steps are recommended:

Reso No. 2013/72, 5/0

- 1) Motion to adopt a Resolution Authorizing the City Manager to Execute Agreements with the State Board of Equalization for Implementation of a Local Transactions and Use Tax
 - a. Agreement for Preparation to Administer and Operate City’s Transactions and Use Tax Ordinance
 - b. Agreement for State Administration of City Transactions and Use Taxes

Reso No. 2013/73 to include the following procedures, 5/0

- **4 Members to fill 4-year terms**
- **3 Members to fill 2-year terms**
- **Members can serve on other Boards/Commissions, etc.**
- **Director of Finance will be the Liaison**
- **Mayor and Budget Committee member (or other Council Member if not available) will conduct the interviews**
- **Committee shall shall meet publicly at least (3) three times the first year, and then at least publicly twice the subsequent years; and**
- **1 Member shall have a finance, audit background**

- 2) Motion to adopt a Resolution Establishing Procedures for the Sales Tax Citizens’ Oversight Committee

Applications due by 5:00 p.m. on 01/16/2014, 5/0

- 3) Motion to direct Staff to Solicit Applications for the Sales Tax Citizens’ Oversight Committee

STAFF REPORT

5. ADOPTION OF A REVISED ORDINANCE TITLE 6, CHAPTER 1, OF THE ANTIOCH MUNICIPAL CODE REGARDING ANIMALS

To 01/14/2014 for adoption, 5/0

- Recommended Action:
- 1) Motion to read the ordinance by title only; and
 - 2) Motion to introduce an ordinance amending in its entirety Title 6, Chapter 1, Animals, of the Antioch Municipal Code

STAFF REPORT

PUBLIC COMMENT

STAFF COMMUNICATIONS

COUNCIL COMMUNICATIONS

ADJOURNMENT – 11:08 *p.m.*

CITY COUNCIL MEETING

Regular Meeting
7:00 P.M.

November 12, 2013
Council Chambers

6:30 P.M. - CLOSED SESSION

1. **CONFERENCE WITH LABOR NEGOTIATORS** – This Closed Section is authorized by California Government Code Section 54957.6. City designated representatives: Michelle Fitzer, Denise Haskett, and Glenn Berkheimer; Employee organizations: Management and Confidential Units

City Attorney Nerland reported the City Council had been in Closed Session and gave the following report: **#1 CONFERENCE WITH LABOR NEGOTIATORS**, Direction given to the Labor Negotiator.

Mayor Harper called the meeting to order at 7:03 P.M., and Minutes Clerk Eiden called the roll.

Present: Council Members Wilson, Rocha, Tiscareno, Agopian and Mayor Harper

PLEDGE OF ALLEGIANCE

Black Diamond Middle School Students, Veronica and Anna Maria Bytlak, led the Council and audience in the Pledge of Allegiance.

ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS

Donald Freitas, Antioch resident, announced a benefit barbeque would be held on November 21, 2013 at Roddy Ranch with all proceeds to help the Agopian family to defray out-of-pocket medical expenses and support the National Brain Tumor Society's research to find a cure. Contact information was provided for anyone wishing to purchase tickets or make donations.

ANNOUNCEMENTS OF BOARD AND COMMISSION OPENINGS

Mayor Harper announced the following Board and Commission openings:

- *Board of Administrative Appeals: Two (2) vacancies – One (1) Board Member (partial term expiring March 2016) and One (1) Alternative Board Member (2-year term); deadline date is November 21, 2013*
- *Contra Costa Mosquito & Vector Control Board of Trustees: One (1) Antioch Representative vacancy; deadline date is November 21, 2013*
- *Contra Costa County Library Commission: One (1) Antioch Representative vacancy; deadline date is November 21, 2013*

PUBLIC COMMENTS

Fred Hoskins, Antioch resident, expressed concern non-citizens of Antioch influenced the outcome of Measure C.

Mark Jordan, Antioch resident, expressed concern regarding a book he read *Confronting Suburban Poverty in America* and suggested the City consider implementing a livable minimum wage for Antioch.

Mark Mokski, Executive Director for the Kids' Club Preschool, gave a brief update on the services they provide and announced they were awarded High Scope accreditation. He reported they had a contract expansion that could not be activated because they had been unable to secure a building. He noted their current funding was also in jeopardy and requested the City, School District, and business community participate in discussions to determine if they would be able to maintain a program in Antioch.

Mayor Harper stated he would like to keep services in Antioch and urged Mr. Mokski to schedule an appointment with the City to discuss this issue.

Michelle Rand gave a brief personal history and discussed her desire to regain custody of her children.

Greg Enholm, Contra Costa Community College District, invited everyone to attend the College District's 65th anniversary celebration from 12:00 P.M. – 4:00 P.M. on December 7, 2013 at the Universal Sports Academy in Martinez.

COUNCIL SUBCOMMITTEE REPORTS - None

MAYOR'S COMMENTS

Veronica and Anna Maria Bytlak read their leadership essays.

Mayor Harper thanked Veronica and Anna Maria Bytlak for their presentations and on behalf of the City, presented them gifts of appreciation.

COUNCIL CONSENT CALENDAR

- A. APPROVAL OF COUNCIL MINUTES FOR OCTOBER 22, 2013**
- B. APPROVAL OF SPECIAL MEETING/CLOSED SESSION MINUTES FOR NOVEMBER 4, 2013**
- C. APPROVAL OF COUNCIL WARRANTS**

- D. **FOUR PERSON TREE TRIMMING CREW BID AWARD (BID NO. 988-1016-13A)**
- E. **RESOLUTION NO. 2013/62 ACCEPTING WORK AND AUTHORIZING THE PUBLIC WORKS DIRECTOR/CITY ENGINEER TO FILE A NOTICE OF COMPLETION FOR THE ANTIOCH COMMUNITY PARK SYNTHETIC TURF FIELDS (P.W. 394-7F)**
- F. **RESOLUTION NO. 2013/63 ACCEPTING WORK AND AUTHORIZING THE PUBLIC WORKS DIRECTOR/CITY ENGINEER TO FILE A NOTICE OF COMPLETION FOR THE PREWETT FAMILY WATER PARK FILTER REPLACEMENT AND RESURFACING (P.W. 567-5)**
- G. **AMEND THE FISCAL YEAR 2014 BUDGET FOR CONSULTANT SERVICES CONTRACTS**

On motion by Councilmember Tiscareno, seconded by Councilmember Rocha, the City Council unanimously approved the Council Consent Calendar.

COUNCIL REGULAR AGENDA

2. KELLY'S CARD ROOM

Chief Cantando presented the staff report dated November 6, 2013. He reported since the publishing of the staff report, the City had received a faxed letter from Remcho, Johansen & Purcell, LLP Attorneys at Law, regarding this matter. He stated after review of the letter, if the City Council was considering approving Mr. Keslinke's request, he recommended they consider adding some of the license conditions provided in that letter in addition to the ones already suggested by staff.

City Attorney Nerland announced copies of the faxed letter had been placed on the dais and were also available in Council Chambers and on the City's website. She explained the procedures for how the staff report, public comments and deliberation would be conducted given the number of people in the audience.

APPLICANT

Tony Keslinke, applicant, stated he was excited for the opportunity to become the future owner of Kelly's Restaurant. He stated he had worked extensively with staff to bring a recommendation to the City Council for approval of his project. He noted they had also received a recommendation for approval from the Planning Commission [use permit application] as well as a unanimous vote from the California Gambling Control Commission to allow time to determine if Antioch could support his application for a card room license moving forward. He thanked staff. He stated he understood the concerns of staff and he will continue to work to address all the issues. He expressed concern if the Council does not act to indicate to the California Gambling Control Commission that there may be a license at a future date, the makeup of the Council could change and he may not be able to move forward with the project. He requested the Council vote to

approve a license at the local level subject to the conditions of approval and conditioned upon State approval from the California Gambling Control Commission. He stated they would be restoring the building, creating jobs, and making an investment in downtown Antioch. He presented a petition in support of the project, signed by residents and businesses in the area. He stated their application does not violate State law and the Council was within their rights to allow a license to go forward contingent upon State action. He introduced his compliance officer and advisor and spoke to their qualifications. He noted the majority of the Rivertown Preservation Society supported the project. He stated he had proposed changes to the conditions of approval.

PROPOSERS

Mayor Harper read written comment from Cecile Hermida in support of the project and Mr. Keslinke.

Ade Adeyemi, Antioch resident, spoke in support of Mr. Keslinke and his safe business practices in Antioch.

Diane Gibson – Gray and Ken Gray, Antioch residents, spoke in support of reopening Kelly's Restaurant and Card Room and the applicant, Tony Keslinke. They encouraged the City to impose realistic and fair conditions with periodic review to determine if they were feasible.

Joy Motts, Rivertown Preservation Group and Phil Robinson, Antioch resident, spoke in support of reopening Kelly's Restaurant and Card Room and the applicant Tony Keslinke's efforts to invest in Antioch's economic recovery efforts. She encouraged the Council to be equitable with rules and regulations and support development and job creation in downtown Antioch.

Kimberly Kittell, Sandra Padilla, Edna Esposito, Angelina Sandoval, Jason Gonzalez, Keith Pace, Rajnil V. Lal, Antioch residents, and Juan Chen-Olsen and Ruthie Riley-Evans, Antioch business owners, spoke in support of reopening Kelly's Restaurant and Card Room and the applicant, Tony Keslinke.

Ms. Chen-Olsen read a letter from Antioch resident, Hans Ho, in support of reopening Kelly's Card Room and the applicant, Tony Keslinke.

Brian Bellante, member of the Antioch Chamber of Commerce, Antioch resident, and business owner, spoke in support of reissuing of the license for Kelly's Restaurant and Card Room and the applicant Tony Keslinke. He encouraged Council to facilitate the revitalization of downtown Antioch.

Martha Parsons, Antioch resident, read written comment from Antioch resident Nancy Kelly, in support of the reopening of Kelly's Restaurant and Card Room and the applicant Tony Keslinke.

Dr. Sean Wright, Antioch Chamber of Commerce, spoke in support of the applicant Tony Keslinke and the importance of the project for Antioch's future economic development.

Charles Davis, Antioch resident, spoke in support of the applicant Tony Keslinke.

Richard Asadourian, President of the Contra Costa County Board of Education, Neighborhood Watch Captain, Economic Development Commissioner, speaking as an Antioch resident, urged the City Council to support the reopening of Kelly's Restaurant and Card Room. He commended Mayor Harper for the manner in which he conducted the meeting.

City Attorney Nerland reported there were two (2) actions before the City Council; staff recommended the City Council adopt the resolution memorializing the expiration of the City's Card Room License associated with Kelly's Card Room at 408 O Street held by Albert Cianfichi. With regards to the second action, she noted staff was not making a recommendation for or against Mr. Keslinke's application to operate a Card Room as ancillary to a full-service restaurant at 408 O Street.

RESOLUTION NO. 2013/64

On motion by Councilmember Rocha, seconded by Councilmember Agopian, the Council unanimously adopted the resolution memorializing the expiration of the City's Card Room License associated with Kelly's Card Room at 408 O Street held by Albert Cianfichi.

Chief Cantando stated if Council was prepared to approve the Card Room application, he recommended they consider adding license conditions number 1-5, contained on pages 12 and 13 of the faxed letter from Remcho, Johansen & Purcell, LLP Attorneys at Law.

In response to an inquiry, City Attorney Nerland presented staff's recommended revision to the conditions of approval. She clarified that the City could not grant a Card Room license that was not contingent upon a State license being granted. She stated if the Council wanted to approve a license prior to the State, the question was whether the applicant needed to have a temporary or permanent license from the State, prior to operating.

In response to Mayor Harper, Chief Cantando responded that the City's initial background check was cursory and the State's background check would be much more comprehensive.

In response to the State license issue, City Attorney Nerland suggested Council consider adding a condition that should Mr. Keslinke not obtain a permanent State license within 24 months, after operations had commenced, he would agree the temporary license be automatically revoked. She clarified it continued to be staff's recommendation that the business not operate until the State had completed a full vetting and issued a permanent license.

Mr. Keslinke commented that many jurisdictions had Card Rooms that operated on a temporary license. He suggested Council consider extending the timeline for the issuance of the permanent State license to 36 months.

In response to a Council question, City Attorney Nerland reported that the Acting Chief Counsel for Gambling Control Commission had informed her that he was not aware of a prior example of a City granting an applicant a gambling control license prior to the State. She added that he had indicated it was not a legal requirement for the City to issue a license first and if the City did, he indicated that there was a question as to whether it was legal. The City Attorney noted that the

risk to the City of Antioch would be that a lawsuit could be filed however; there was a condition of approval indicating that the applicant indemnified the City, should that occur.

Councilmember Agopian voiced his support for Kelly's Restaurant and Card Room. He suggested the Council to address the issues, come to an agreement on the conditions of approval and then vote on whether to approve the project subject to those conditions.

On motion by Councilmember Rocha, seconded by Councilmember Tiscareno, the Council unanimously supported preliminarily granting a local Card Room License for Kelly's Card Room **contingent upon** the following:

- The State issuing a temporary Card Room license
- The State issuing a permanent Card Room license within 36 months of the City Council's approval
- Further action by the City Council on all other conditions of approval

Mayor Harper declared a recess at 9:30 P.M. The meeting reconvened at 9:43 P.M. with all Councilmembers present. Speaking to the Kelly's Card Room item, he stated he had requested staff discuss the conditions of approval with the applicant, and bring back a recommendation for Council consideration. With Council's consensus, Public Hearing Item 5 was heard as the next item of business.

PUBLIC HEARING

5. FY 2012-13 REVIEW OF CDBG-FUNDED ACCOMPLISHMENTS

CDBG Consultant House presented the staff report dated November 12, 2013 recommending the City Council: 1) Motion to receive and file accomplishment data presented in the FY 2012-13 Consolidated Annual Performance and Evaluation Report. 2) Motion to receive public comment on the needs of lower income Antioch residents for public services, infrastructure, economic development, housing and other categories for use in developing the 2014-15 Action Plan and the 2015-19 Consolidated Plan.

Mayor Harper opened the Public Hearing.

Laurna Bloxom, Antioch Senior Center Recreation Coordinator, Laine Lawrence, Contra Costa Senior Legal Services, Alissa Friedman, Opportunity Junction, Quincy Hardin, Antioch Chamber Community Foundation, Jennifer Baha, SHELTER Inc. – Emergency Housing Services, Arturo Castillo, Contra Costa Health Services – Homeless Shelter, Adam Poe, Bay Area Legal Aid – Fair Housing Services and Bay Area Legal Aid – Tenant/Landlord Counseling, gave a brief overview of the programs and services offered to the community and updated the Council on their achievements for the last fiscal year. They thanked the City for supporting and funding their organizations.

Mayor Harper read written comments from the Providers of Youth Services – City of Antioch Youth Scholarships, and Community Violence Solutions – Child Sexual Assault Intervention.

Councilmember Wilson stated she had the opportunity of speaking at an Opportunity Junctions Commencement Ceremony and she thanked Ms. Friedman for providing services in Antioch.

Mayor Harper closed the Public Hearing.

The Council thanked CDBG Consultant House for the comprehensive report and working with the non-profit and governmental agencies that provided programs and services to Antioch residents.

On motion by Councilmember Tiscareno, seconded by Councilmember Agopian, the Council unanimously 1) Received and filed the report, and 2) Received public comments.

COUNCIL REGULAR AGENDA

3. PROPOSED LEASE OF CITY-OWNED PROPERTY LOCATED AT THE NORTHEAST CORNER OF CENTURY AND DELTA FAIR BOULEVARDS (APN 074-080-029) BY MESA OUTDOOR

Economic Development Analyst Nunnally presented the staff report dated November 6, 2013 recommending the City Council motion to approve the lease of City-owned property.

Mike McCoy, Mesa Outdoor, thanked staff for working constructively on the lease terms and design elements of the project. He announced they had California Department of Transportation (CALTRANS) and Planning Commission approval of the lease agreement. He stated they look forward to doing business in Antioch.

On motion by Councilmember Agopian, seconded by Councilmember Tiscareno, the Council unanimously approved the lease of City-owned property.

Mayor Harper stated the City was excited for the economic development opportunity and encouraged staff to continue working to bring in these type of ideas forward.

4. ADOPTION OF THE CALIFORNIA BUILDING STANDARDS CODES AND AMENDMENTS TO THE CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING ORDINANCE

Community Development Director Wehrmeister presented the staff report dated November 7, 2013 recommending the City Council: 1) Motion to read the ordinances by title only; 2) Motion to introduce an ordinance amending and adding specific Local Amendments to chapters of Title 8 of the Antioch Municipal Code, adopting by reference the California Code of Regulations Title 24, 2013 Edition of the California Building Standards Codes and related model codes and amending Chapters 1 through 19 of Title 8 of the Antioch Municipal Code with Appendices and Amendments. 3) Motion to introduce an ordinance amending Article II, Chapter 3, of Title 6 of the Antioch Municipal Code, dealing with Construction and Demolition Debris Recycling.

In response to Mayor Harper, Community Development Director Wehrmeister clarified staff would be sending a letter out, pending Council's decision this evening, to developers notifying them of the changes.

On motion by Councilmember Rocha, seconded by Councilmember Agopian, the Council unanimously 1) Read the ordinances by title only; 2) Introduced an ordinance amending and adding specific Local Amendments to chapters of Title 8 of the Antioch Municipal Code, adopting by reference the California Code of Regulations Title 24, 2013 Edition of the California Building Standards Codes and related model codes and amending Chapters 1 through 19 of Title 8 of the Antioch Municipal Code with Appendices and Amendments. 3) Introduced an ordinance amending Article II, Chapter 3, of Title 6 of the Antioch Municipal Code, dealing with Construction and Demolition Debris Recycling.

PUBLIC HEARING

6. ORDINANCE ESTABLISHING ZONING REGULATIONS FOR COMPUTER GAMING AND INTERNET ACCESS BUSINESSES

Director of Community Development Wehrmeister presented the staff report dated November 7, 2013 recommending the City Council: 1) Motion to read the ordinances by title only; 2) Motion to introduce an ordinance establishing zoning regulations for computer gaming and internet access businesses. The Planning Commission recommended adoption of the proposed ordinance on October 16, 2013 by a 5-0 vote with one absence. 3) Motion to introduce an ordinance amending Title 5, Chapter 11 regarding refinements to the licensing requirements for computer gaming and internet access businesses.

Mayor Harper opened and closed the public hearing, with no speakers requesting to speak.

On motion by Councilmember Agopian, seconded by Councilmember Wilson, the Council unanimously 1) Read the ordinances by title only; 2) Introduced an ordinance establishing zoning regulations for computer gaming and internet access businesses. 3) Introduced an ordinance amending Title 5, Chapter 11 regarding refinements to the licensing requirements for computer gaming and internet access businesses.

PUBLIC COMMENTS - None

STAFF COMMUNICATIONS

City Manager Jakel announced the next City Council meeting would be held on November 26, 2013. He reported on his attendance at the Board of Supervisors meeting noting the Northeast Antioch Annexation was discussed and he believed an agreement had been reached on the outstanding issues. He noted that matter would be coming back to the City Council on November 26, 2013, for action. He announced BART had officially determined the station in Antioch would be called the Antioch BART station. He reported the Mesa agreement approved this evening would yield in excess of \$1.5M, which was highly beneficial to the City.

COUNCIL REGULAR AGENDA - Continued

2. KELLY'S CARD ROOM

City Attorney Nerland stated she had consulted with the applicant and Chief Cantando and they had come to an agreement on the conditions of approval. She reviewed and recommended the City Council approve the conditions with amendments (revised exhibit A to attachment B of the staff report) attached to these November 12, 2013 minutes.

Mayor Harper thanked staff and the applicant for working cooperative to bring a project that would improve economic development and provide jobs in the City.

RESOLUTION NO. 2013/65

On motion by Councilmember Rocha, seconded by Councilmember Agopian, the Council unanimously adopted a resolution approving Anthony Keslinke's application to operate a Card Room as ancillary to a full-service restaurant at 408 O Street with no more than 6 card tables subject to conditions of approval and approving a Parking Lot Lease between Anthony Keslinke and the City of Antioch for APN 066-124-002, with the conditions of approval (revised exhibit A to attachment B of the staff report) attached to these November 12, 2013 minutes and read into the record.

COUNCIL COMMUNICATIONS

Mayor Harper thanked the community for their support of Measure C and requested staff bring back for Council consideration, the composition of the Advisory Committee and the establishment of a policy for the use of the funds.

Councilmember Tiscareno concurred with Mayor Harper's comments.

With the consensus of the City Council, City Manager Jakel stated he would agendize the implementation of Measure C, for a future meeting.

Mayor Harper suggested revenue generated as a result of Measure C be placed in a separate account with a report out regarding the use of all of the funds.

City Attorney Nerland responded that Finance Director Merchant would be bringing back that information for Council consideration.

Mayor Harper stated he was proud of the City Council for their community outreach.

The City Council wished Director of Community Development Wehrmeister and City Manager Jakel a happy birthday.

Councilmember Agopian thanked Mayor Harper for his vision regarding a safe Antioch and stated Measure C had been a group effort of the City.

ADJOURNMENT

With no further business, Mayor Harper adjourned the meeting at 11:05 P.M. to the next regular Council meeting on November 26, 2013.

Respectfully submitted:

Kitty Eiden

KITTY EIDEN, Minutes Clerk

Exhibit A

**Kelly's
2013 Local Card Room License and Conditions**

The following operational requirements and conditions have been established by the City Council of the City of Antioch in accordance with the authority granted in Title 5, Chapter 4 of the Antioch Municipal Code (the "Code") and the California Gambling Control Act (Business and Professions Code Division 8, Chapter 5, the "State Law"). The Applicant, Anthony Keslinke, agrees that each and every one of the provisions and conditions set forth in this Resolution and this Exhibit A and is done so specifically pursuant to the authority cited above and generally pursuant to the City's police power as conferred by Article XI, Section 7 of the California Constitution.

These operational requirements and conditions apply to the business known as "Kelly's" located at 408 "O" Street, Antioch, California. The license shall not apply to any other location without the approval of the City Council.

Conditions of Approval

1. Conditions to Card Room License becoming Effective. Local Card Room License for Kelly's at 408 O Street, Antioch is not and shall not become effective until all of the following conditions are met:
 - a. The State has issued a temporary or permanent Card Room License to Applicant Anthony Keslinke and Applicant has purchased Kelly's -from the prior owner, both within one year from the City Council's approval of this License.
 - b. Applicant submits the list of ~~kKey personnel~~Employees (as that term is defined in the California Gambling Control Act) of the Card Room, including the key personnel for the other operations at Kelly's as applicable, and they each obtain a license from the State.
 - c. Applicant enters into the Parking Lot Lease with the City of Antioch for APN 066-124-002 at O and Fifth Streets, Antioch, with such agreement recorded.
 - d. The restaurant at Kelly's is operating fully under the conditions below for at least 30 days.
 - ~~e. The Local Card Room License will cease to be effective, and will automatically be revoked and null and void, if Anthony Keslinke does not acquire a permanent State Card Room License within 36 months from the City Council's approval of -this Local Card Room License-~~

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2. Operational Standards

- a. Card room must be incidental to the restaurant and bar use, as reasonably determined by the Community Development Director based on documentary evidence and/or physical observation, and in accordance with Antioch Municipal Code Section 5-4.05, which provides: "In addition to the other requirements contained in this chapter, no license shall be issued for a card room other than in an established place of business of sufficient size and volume that the already established business is the major business of the place rather than the business of operating such card room."
 - i. At all times there shall be restaurant seating capacity for no less than 50, exclusive of seating at the bar or card room.
 - ii. Kitchen, restaurant dining room and bar shall occupy at least 55% of the square footage of the building.
 - iii. Hot food service, which does not include just microwaved food or meals, shall be available to patrons at all times that the bar or card room is open;
 - iv. The restaurant must offer sit-down, table served meal service at least twice a day, seven days a week with full menu options as approved by the Director of Community Development.

- b. The card room shall be responsible and liable for its patrons' safety and security in and around the card room. The card room shall adopt and implement an "Operations, Security and Surveillance Plan" (the "Plan") as set forth in the Planning Commission's approval of UP-13-02 to provide for the safety and security of patrons, after the plan has been approved by the Chief of Police, in the Chief's sole and reasonable discretion. The Chief shall review the Plan no less than once every year, upon written application by the Applicant for such review, which application must be submitted by the Applicant no later than the anniversary date of this License approval. Applicant shall comply at all times with every provision of the adopted Operations, Security and Surveillance Plan, which at a minimum shall include:
 - i. ~~Two~~One (2) State-licensed, uniformed and armed guards, ~~one inside the card room and one patrolling the parking areas~~, shall be present at all times that the card room is in operation and will patrol the inside of the card room and the parking areas. An additional State-licensed, uniformed and armed guard shall be present from 6:00 p.m. to 6:00 a.m. or until close of business, whichever occurs earlier, and whenever there are three (3) or more active table games in operation, or a tournament or special event with more than 30 players.
 - ii. -The name of the Security Company, proof of liability insurance including a copy of all exceptions, their State license number, the guard registration numbers and training records for the employed guards.;
 - iii. Digital security cameras shall be installed inside, covering all areas of the business, the rear, front and leased parking areas. Said cameras shall record

onsite activities. Recordings shall be kept on hand for no less than 30 days and be made available to the City of Antioch upon demand.

- iv. ~~Metal detectors/wanding will be available at all times to the security personnel and as required by the~~ of patrons after 10:00 p.m. unless deemed unnecessary by the Police Chief for wanding patrons, given history of calls for service after operation for one year. The Police Chief may require additional hours of metal detectors/wanding at any time.
 - v. A dress code for patrons.
 - vi. An identified security station located at the entrance to the card room.
 - vii. Prior to commencing operations, Applicant shall submit and obtain approval from the Chief of Police and City Engineer for an outdoor lighting plan to ensure that all areas of the parking lot, leased parking lot and building are illuminated.
 - viii. Notwithstanding the yearly review set forth in condition of approval above, the Chief of Police may at any time upon a showing of need require revisions to the Plan to protect the safety of the card room's patron and the general public.
- c. For at least the first 12 months of operation of the Card Room, Applicant Anthony Keslinke shall be required to be physically present at the card room site no less than ~~three~~ one (31) days per week, for no less than five (5) hours per day during regular operating hours, ~~including at least 2 hours on a weekend night each week,~~ for a minimum of ~~485~~ weeks per year. He shall provide time logs under penalty of perjury to the Police Chief monthly. In addition, for at least the first 12 months of operation, Applicant must have at least one Key Employee as defined in the Gambling Control Act (Business and Professions Code) present at the Card Room at all times when it is open who has permanent, or not interim, Key Employee license status.
- d. No live entertainment and no amplified music, unless a special event permit is obtained in advance from the City.
 - e. No one under the age of 21 shall be allowed in the card room or bar at any time and no one under the age of 21 shall be allowed in the restaurant after 10:00 p.m.
 - e. After ~~109:00~~ 10:00 p.m. and until closing, all patrons of the business shall be verified using a license scanner/reader to ensure patrons are of lawful age and not using altered or false identification. The scanner database shall be retained for no less than 30 days and shall be made available to the Antioch Police Department upon demand. Applicant shall provide a procedure, approved by the Police Chief, from checking the identification of those already in the business at 10:00 p.m.

- f. No adult entertainment as defined in section 9-5.203 of the Antioch Municipal Code. This is to include, but not limited to, “go-go” dancers, exotic dancers, strippers, lingerie shows, etc.
- g. All activities shall be conducted entirely inside the building. Loitering is prohibited. Business shall post conspicuous signs stating “No loitering, no open containers, no drinking, no littering” on the building, parking lot and City’s parking lot.
- h. No intoxicated person shall be permitted in the card room. All alcohol beverage servers must attend and successfully complete a Responsible Beverage Server Course which is sponsored by ABC within 6 months of employment.

3. Gambling Standards

- a. The Applicant, every Key Employee and every person financially interested in the card room and every Card Room Employee as defined in Sections 5-4.01 and 5-4.03(B)(1) of the Antioch Municipal Code shall obtain the required State License and Work Permit and comply at all times with all applicable provisions of Title 5, Chapter 4 of the Code.
- b. Card room- shall only be open when the restaurant is open. The Police Chief retains the absolute discretion to limit the hours of the card room.
- c. The number of card tables allowed under this License is 6.
- d. The number of players permitted at one card table shall be as prescribed by State law.
- e. The card room shall be open to police inspection during all hours of operation.
- f. Each card table, during the time of play at such table, shall have assigned to it a person holding a valid work permit. Such person shall be in charge of, supervise, and conduct the game strictly in accordance with the laws of the State and the provisions of Title 5, Chapter 4 of the Antioch Municipal Code.
- g. Only games authorized by State law to be played shall be permitted to be played in any card room.
- h. No player in shall be permitted to wager or raise a wager by more than the following amounts:
 - i. \$200 for individual bets in Blackjack or California games that feature a rotating player-dealer position, except for games described in division (c) which shall have higher limits;
 - ii. \$200 for individual bets in Limit Poker games;
 - iii. \$500 for individual bets in No Limit and Double Hand Poker games; and

- iv. \$50 for individual bets in any other card room game permitted by California law.
- i. Only table stakes shall be permitted.
- j. No person under the age of 21 shall be permitted at any card table, or participate in any game, or enter the card room.
- k. The Applicant shall post in every card room, in letters plainly visible throughout the room, signs stating the hourly rate or cost per hand charged for the use of the tables in such card room and each other of the regulations set forth in this section as the Chief of Police may require.
- l. During hours of operation, the card room shall clearly post the wagering limit rules at the tables where the games are offered, to provide patrons adequate notice of those rules.
- m. No computer gaming or internet access business, as defined in the Antioch Municipal Code as it may be amended, shall operate at the business (not in the card room, restaurant or bar).

n. All Agreements with third-party bankers and any person receiving payments directly or indirectly- related to revenues or profits of the Card Room (e.g. proposition players) shall be approved in advance by the State Gambling Control Commission with the agreement and approval letter sent promptly to the Police eChief.

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4. Site Standards

- a. Applicant shall comply with all applicable provisions of the Antioch Municipal Code, including but not limited to stormwater management and discharge control (Title 6, Chapter 9) building, electrical and plumbing code requirements and fire code regulations (Title 8).
- b. Unless otherwise approved by the Police Chief, All windows providing a line of sight into any area where card tables are located shall be clear glass so as to allow viewing of gaming activities by Public Safety personnel from outside of the building housing the card room; and, the outside doors shall also be clear glass with -an unobstructed to allow Public Safety personnel to view inside.
- c. Parking Requirements: Applicant shall comply at all times with parking requirements and regulations imposed pursuant to UP-13-02, including but not limited to the requirement to enter into a Parking Lot Lease Agreement with the City of Antioch for the use of the City's lot at APN 066-124-002. Prior to commencing operations, Applicant shall submit a modified parking plan that includes striping, signage and landscaping for the Applicant's on-site parking and the City's parking lot to be approved by the Community Development Director and City Engineer. Actions shall be taken and signs

posted to allow the Police Department to enforce the Antioch Municipal Code and other laws in the parking lots.

- d. In addition to the requirements above, Applicant shall make available to patrons of the card room and the restaurant and bar valet parking starting at 6:00 p.m. until closing and Friday and Saturday, every day preceding a federal holiday, and every day when Applicant has a special event or tournament. The required licensed, armed security guard may also act as a valet, unless prohibited by the Police Chief in his absolute discretion. Vehicles parked by the valet service attendants may be parked on site at the Property or in the City's parking lot; at no time shall vehicles be parked or stored in the public right of way. Signs shall be posted to notify customers about the valet parking.
- e. Applicant shall identify and cordon off according to plans and with materials approved by the Community Development Director a designated and suitable location outside the building for smokers to engage in legal smoking activities. Such area shall be taken into consideration in the Security and Surveillance Plan.
- f. Applicant shall remove or caused to be removed any and all graffiti found on the Property within 48 hours of discovery or report of such graffiti.
- g. Applicant shall maintain the perimeter fencing and shall include an additional deterrent to prevent people from climbing over it such as razor wire.
- h. The site shall be kept clean of all debris (boxes, junk, garbage, etc) at all times.
- i. All requirements of the Contra Costa County Fire Protection District shall be satisfied. At no time shall the posted occupancy limit be exceeded.
- j. All other codes and regulations of the City of Antioch Municipal Code shall be complied with.
- k. Prior to commencing operations, Applicant shall submit and obtain approval from the Chief of Police and City Engineer for an outdoor lighting plan ensure that all areas of the parking lot, leased parking lot and building are illuminated.

5. Miscellaneous Provisions

- a. In accordance with Section 5-4.09 of the Code, the City Council may suspend or revoke a card room license on any of the grounds set forth in Section 5-4.04 of the Code, on the ground that the card room business has become the main business of the establishment, or on the ground that the Applicant has violated a provision of Chapter 5-4. For purposes of this License, any of the following occurrences is deemed evidence that (i) the applicant or any person financially interested in the business is not of good moral character, or (ii) the proposed location for the card room is incompatible with the uses being made of the property in the immediate vicinity and injurious to the health, safety, or morals of the people of the city:

- i. The Applicant's State license is suspended or revoked for any reason by the Commission or other regulatory agency with jurisdiction over the card room;
 - ii. Any law enforcement or regulatory agency for any reason closes the card room for any period of time except a building code violation that is resolved within 90 days;
 - iii. The card room is operating as a public nuisance;
 - iv. The card room is operating in violation to any condition of approval, including but not limited to any requirement of the Operations, Security and Surveillance Plan, or any local, state or federal ordinance or statute or law;
 - v. The Applicant is no longer the sole owner of the business, including being the sole owner of the Card Room, restaurant and bar or fails to submit evidence annually of his continuing ownership interest to the City.
 - vi. The Applicant or any Key Employee or anyone having an ownership interest in the card room, restaurant or bar is arrested for any felony, or a misdemeanor relating to loan sharking, drugs, embezzlement, extortion, theft, prostitution, money laundering, robbery or weapons violations.
- b. Applicant must pay a business license tax based on gross receipts pursuant to Chapter 1 of Title 3 of the Code, as it may be amended from time-to-time, as well as any regulatory fee established by the Police Department in the City's Master Fee Schedule.
- c. Applicant acknowledges the provisions of Section 5-4.08 of the Code with respect to the non-transferability of this License. The License is personal to Anthony Keslinke and he will annually submit to the Police Chief a statement under penalty of perjury indicating his sole ownership of the business, including being the sole owner of the Card Room, restaurant and bar. Should anyone else become financially interested in the business (Card Room, restaurant or bar) including any corporate or limited liability company, then a new Card Room application must be submitted and the City retains the discretion to grant or deny it.
- d. If the Antioch Police Department determines that the conditions of approval of the license or use permit are not met or the use has become a public nuisance or otherwise a threat to the public health, safety or welfare, the Police Chief may shut down the business and it will not be reopened until the Police Chief determines that all issues have been resolved. The Applicant shall be responsible for the costs of such Police response. Failure to pay such costs shall be grounds for immediate revocation of the Card Room license.
- e. The Applicant releases the City of Antioch from any claims related to this card room license or use permit and shall defend, indemnify and hold harmless the City, its agents, officers and employees from any claim, action or proceeding to challenge, set aside or void the license or any approval granted by the City. Applicant shall enter into an agreement to effectuate this condition of approval as required by the City Attorney, which shall include advance deposit for reasonably anticipated staff, legal and other costs for two months that may be incurred by the City. For 18 months following the

commencement of the operations at the Card Room, Applicant shall also be responsible for election costs, including staff costs, if a referendum (if applicable) or initiative petition is presented related to this card room license or use permit.

If a referendum or initiative is filed, then the City Council will consider placing it on a consolidated ballot in accordance with the California Elections Code provisions, but the Applicant acknowledges the City Council's sole and absolute discretion to determine the timing of the election and whether to place the referendum or initiative on a consolidated ballot.

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f. Applicant and Key Employees must report to the Police Chief any reasonably known violation of the conditions of approval for this license and/or the use permit to the Chief of Police within 5 business days.

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g. Applicant and Key Employees must report to the Police Chief within 5 business days any notices, advisories, notices of violation, warning letters, accusations, gaming activity approvals or denials or any other action directed to them or Kelly's Card Room by the Attorney General, California Gambling Control Commission, any other state or federal agency or the District Attorney's Office.

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h. Upon the Police Chief's request, within 5 days of submitting financial reports or statements to the Attorney General or Gambling Control Commission, Applicant shall provide copies to the Police Chief.

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Exhibit B
Parking Lot Lease
(attach next page)

CITY OF ANTIOCH
 CLAIMS BY FUND REPORT
 FOR THE PERIOD OF
 NOVEMBER 21 - DECEMBER 4, 2013
 FUND/CHECK#

100 General Fund

Non Departmental

348431	CONTRA COSTA WATER DISTRICT	FACILITY RESERVE FEES	92,796.00
348432	CONTRA COSTA WATER DISTRICT	TREATED WATER CAPACITY FEE	21,306.22
348481	ECC REG FEE AND FIN AUTH	ECCRFFA-RTDIM	180,234.00
348485	GRIFFIN NOTHUM, CAROL	CHECK REPLACEMENT	35.00
348527	DELTA DENTAL	PAYROLL DEDUCTIONS	606.56
348572	MOORE K9 SERVICES	K9 POST CERTIFICATION	1,376.59
920754	ZUMWALT ENGINEERING GROUP INC	PROFESSIONAL SERVICES	3,002.00

City Council

202880	NATURES BOUNTY	MEETING EXPENSE	12.25
348537	EDD	UNEMPLOYMENT CLAIMS	814.00

City Attorney

348495	XEROX CORPORATION	COPIER LEASE/USAGE	104.30
348554	JARVIS FAY AND DOPORTO LLP	LEGAL SERVICES	9,325.63
348562	LEXISNEXIS	ONLINE LEGAL RESEARCH	76.50
348602	SHRED IT INC	SHRED SERVICES	50.96

City Manager

348423	CA SHOPPING CART RETRIEVAL CORP	SHOPPING CART RETRIEVAL	162.00
348474	DANIELS, SHARON P	EXPENSE REIMBURSEMENT	38.10
348495	XEROX CORPORATION	COPIER LEASE/USAGE	104.30
348509	PUBLIC MANAGEMENT ASSOCIATION	ANNUAL DUES	156.00
920831	KARSTE CONSULTING INC	CONSULTING SERVICES	1,080.00

City Clerk

348495	XEROX CORPORATION	COPIER LEASE/USAGE	105.58
348535	ECS IMAGING INC	ANNUAL SUPPORT MAINTENANCE	664.59
348537	EDD	UNEMPLOYMENT CLAIMS	328.00

City Treasurer

348483	GARDA CL WEST INC	ARMORED CAR PICK UP	210.12
348582	PFM ASSET MGMT LLC	ADVISORY SERVICES	7,268.42

Human Resources

348495	XEROX CORPORATION	COPIER LEASE/USAGE	322.86
348535	ECS IMAGING INC	ANNUAL SUPPORT MAINTENANCE	664.59
348602	SHRED IT INC	SHRED SERVICES	30.80

Economic Development

348495	XEROX CORPORATION	COPIER LEASE/USAGE	104.30
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	525.51

Finance Administration

348444	OFFICE MAX INC	OFFICE SUPPLIES	227.80
348495	XEROX CORPORATION	COPIER LEASE/USAGE	316.21
348535	ECS IMAGING INC	ANNUAL SUPPORT MAINTENANCE	1,043.78

Finance Accounting

348444	OFFICE MAX INC	OFFICE SUPPLIES	93.32
348602	SHRED IT INC	SHRED SERVICES	50.96
920892	SUNGARD PUBLIC SECTOR INC	MONTHLY ASP SERVICE	12,732.85

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Finance Operations

348495 XEROX CORPORATION	COPIER LEASE/USAGE	1,846.23
348620 UNITED PARCEL SERVICE	WEEKLY PRINTER SERVICE FEE	2.00

Non Departmental

203221 MCR INTERNATIONAL INC	BUS LIC APP FEE REFUND	30.00
203222 CULLIGAN SOFT WATER SERVICE	BUS LIC OVERPAYMENT REFUND	75.62
348443 MUNICIPAL POOLING AUTHORITY	UNMET LIABILITY DEDUCTIBLE	9,775.50
348466 WAGeworks	ADMIN FEES	150.00
348476 DELTA DIABLO SANITATION DISTRICT	GOLF COURSE WATER-AUG-OCT13	31,135.63
348586 PERS	NON ELIGIBLE ADMIN FEE	1,144.80
920820 RETIREE	PPPA	1,654.43

Public Works Maintenance Administration

348495 XEROX CORPORATION	COPIER LEASE/USAGE	40.57
348609 STATE OF CALIFORNIA	LICENSE RENEWAL-BERNAL	115.00

Public Works General Maintenance Services

348495 XEROX CORPORATION	COPIER LEASE/USAGE	108.18
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Public Works Street Maintenance

348414 ANTIOCH BUILDING MATERIALS	ASPHALT	14,814.41
348461 SUBURBAN PROPANE	PROPANE	974.57
348528 DELTA FENCE CO	FENCE REPAIR	845.00
348529 DELTA GRINDING CO INC	EQUIPMENT RENTAL	2,650.00
348565 M & L SERPA TRUCKING INC	TRUCK RENTAL	10,266.40
348601 SHERWIN WILLIAMS CO	PAINT	384.20
920895 TELFER OIL COMPANY	SUPPLIES	3,700.00

Public Works-Signal/Street Lights

348520 CONTRA COSTA COUNTY	TRAFFIC SIGNAL MAINTENANCE	32,488.68
348580 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	4,989.86
348607 STATE OF CALIFORNIA	TRAFFIC SIGNAL MAINTENANCE	5,096.74
348625 WESCO RECEIVABLES CORP	SUPPLIES	6,510.00
920827 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	1,292.10

Public Works-Striping/Signing

348412 ACE HARDWARE, ANTIOCH	STENCIL	8.38
348413 ANTIOCH AUTO PARTS	SUPPLIES	24.22
348553 INTERSTATE SALES	SUPPLIES	443.11
348612 SUBURBAN PROPANE	PROPANE	75.00
348631 ZAP MANUFACTURING INC	SIGN	1,782.67

Public Works-Facilities Maintenance

348419 BAY CITIES PYROTECTOR	FIRE SYSTEM TESTING	600.00
348430 CCC TAX COLLECTOR	PROPERTY TAX	1,645.50
348475 DELTA 2000	PGE REIMBURSEMENT	499.79
348477 DREAM RIDE ELEVATOR	ELEVATOR SERVICE	240.00
348487 HONEYWELL INTERNATIONAL INC	MAINTENANCE SERVICES	26,151.00
348548 HONEYWELL INTERNATIONAL INC	HVAC SERVICE	561.05
348576 OFFICE MAX INC	OFFICE SUPPLIES	13.65
348580 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	11,633.58
920759 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	160.61

Prepared by: Georgina Meek
 Finance Accounting

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920760 LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	2,494.82
920809 GRAINGER INC	SUPPLIES	299.65
Public Works-Parks Maint		
348412 ACE HARDWARE, ANTIOCH	SUPPLIES	52.19
348430 CCC TAX COLLECTOR	PROPERTY TAX	5,608.96
348447 PACHECO BROTHERS GARDENING INC	LANDSCAPE SERVICES	41,057.17
348569 MIRACLE PLAY SYSTEMS INC	PLAYGROUND REPAIR PARTS	1,921.46
348580 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	811.71
348604 SPECIALIZED GRAPHICS	FREIGHT	30.00
348611 STEWARTS TREE SERVICE	TREE SERVICE	3,075.00
920827 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	267.68
Public Works-Median/General Land		
348412 ACE HARDWARE, ANTIOCH	PVC FITTINGS	52.96
348448 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	7,645.00
348537 EDD	UNEMPLOYMENT CLAIMS	135.00
348579 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	5,415.00
348580 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	1,630.29
348614 TARGET SPECIALTY PRODUCTS	CHEMICALS	4,482.33
Public Works-Work Alternative		
348413 ANTIOCH AUTO PARTS	SUPPLIES	6.50
Police Administration		
203093 NUNES, HECTOR	VIDEO FEE REFUND	41.00
203101 COMCAST	CABLE	59.55
348409 BANK OF AMERICA	RECRUITMENT EXPENDITURE	3,036.67
348410 BANK OF AMERICA	MEMBER DUES	2,164.99
348411 BANK OF AMERICA	BUSINESS EXPENSES	129.31
348444 OFFICE MAX INC	OFFICE SUPPLIES	2,244.34
348452 PORAC LAW ENFORCEMENT NEWS	RECRUITING AD	1,550.00
348465 VERIZON WIRELESS	AIR CARDS	76.02
348495 XEROX CORPORATION	COPIER LEASE/USAGE	1,868.51
348496 AMERICAN RIVER COLLEGE	TRAINING-BITTNER	7.00
348498 ARROWHEAD 24 HOUR TOWING INC	TOWING SERVICES	180.00
348515 CONCORD UNIFORMS LLC	UNIFORMS	520.80
348516 CONTRA COSTA COUNTY	TRAINING FEES	195.00
348522 COPWARE INC	SITE LICENSE	1,025.00
348525 CSI FORENSIC SUPPLY	EVIDENCE SUPPLIES	194.95
348535 ECS IMAGING INC	ANNUAL SUPPORT MAINTENANCE	772.92
348536 EIDEN, KITTY J	MINUTES CLERK	126.00
348558 LANGUAGE LINE SERVICES	TRANSLATION SERVICES	21.75
348584 PITNEY BOWES INC	EQUIPMENT RENTAL	331.35
348599 SAN DIEGO POLICE EQUIPMENT CO	AMMUNITION	3,427.89
348602 SHRED IT INC	SHRED SERVICES	1,124.99
348615 TEMPLERS AUTO BODY INC	EVIDENCE TOWING SERVICE	160.00
920758 HUNTINGTON COURT REPORTERS INC	TRANSCRIPTION SERVICES	3,588.19
920825 HUNTINGTON COURT REPORTERS INC	TRANSCRIPTION SERVICES	689.78
920828 IMAGE SALES INC	BADGES	30.25

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920853 MOBILE MINI LLC	PORTABLE STORAGE CONTAINERS	458.80
Police Community Policing		
348541 EMPLOYEE	PENSION PAYMENT	3,999.00
348549 HUNT AND SONS INC	FUEL	110.15
348551 IBS OF TRI VALLEY	BATTERIES	520.26
348572 MOORE K9 SERVICES	K9 POST CERTIFICATION	5,123.41
348586 PERS	PAYROLL DEDUCTIONS	4,365.75
348624 EMPLOYEE	PENSION PAYMENT	3,999.00
Police Investigations		
348495 XEROX CORPORATION	COPIER LEASE/USAGE	752.99
348518 CONTRA COSTA COUNTY	LAB TESTING	2,907.45
348519 CONTRA COSTA COUNTY	EXTRADITION FEES	350.00
348521 CONTRA COSTA COUNTY	LAB TESTING	13,347.50
348608 STATE OF CALIFORNIA	FINGERPRINTING	194.00
348617 THOMSON WEST	ONLINE DATABASE	637.37
Police Communications		
348416 AT AND T MCI	PHONE	372.05
348497 AMERICAN TOWER CORPORATION	TOWER RENTAL	219.17
348500 AT AND T MOBILITY	HIGH SPEED WIRELESS	2,711.36
348507 BLUE SHIELD LIFE	PAYROLL DEDUCTIONS	28.99
348527 DELTA DENTAL	PAYROLL DEDUCTIONS	151.64
348537 EDD	UNEMPLOYMENT CLAIMS	8,279.00
348542 GLOBALSTAR	SATELLITE PHONE	87.22
920749 COMPUTERLAND	COMPUTER SUPPLIES	83.53
Police Community Volunteers		
348410 BANK OF AMERICA	OFFICE SUPPLIES	51.44
Police Facilities Maintenance		
348419 BAY CITIES PYROTECTOR	FIRE SYSTEM TEST	1,200.00
348424 CAMALI CORP	MAINTENANCE SERVICE	345.00
348430 CCC TAX COLLECTOR	PROPERTY TAX	658.20
348477 DREAM RIDE ELEVATOR	ELEVATOR SERVICE	80.00
348487 HONEYWELL INTERNATIONAL INC	MAINTENANCE SERVICES	14,466.00
348501 AUTOMATIC DOOR SYSTEMS INC	DOOR REPAIR	231.28
348548 HONEYWELL INTERNATIONAL INC	HVAC REPAIR SERVICE	3,209.68
348580 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	18,954.78
920760 LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	4,411.17
Community Development Administration		
348495 XEROX CORPORATION	COPIER LEASE/USAGE	315.27
Community Development Land Planning Services		
348492 LOEWKE PLANNING ASSOCIATES	CONSULTING SERVICES	1,550.00
348535 ECS IMAGING INC	ANNUAL SUPPORT MAINTENANCE	664.59
348585 PMC	PROFESSIONAL SERVICES	11,134.50
348590 RANEY PLANNING & MANAGEMENT INC	PROFESSIONAL SERVICES	2,250.50
920896 TESTING ENGINEERS INC	TESTING SERVICES	2,351.25
Community Development Neighborhood Improvement		
348535 ECS IMAGING INC	ANNUAL SUPPORT MAINTENANCE	1,109.04

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PW Engineer Land Development

348490 KIMLEY HORN AND ASSOCIATES INC	PROFESSIONAL SERVICES	277.50
348495 XEROX CORPORATION	COPIER LEASE/USAGE	168.22
348535 ECS IMAGING INC	ANNUAL SUPPORT MAINTENANCE	1,136.55

Community Development Building Inspection

203183 EDM PUBLISHERS	SUBSCRIPTION	98.78
348444 OFFICE MAX INC	OFFICE SUPPLIES	17.94
348535 ECS IMAGING INC	ANNUAL SUPPORT MAINTENANCE	1,109.01

Capital Imp. Administration

203046 DS WATERS OF AMERICA	WATER	26.82
348495 XEROX CORPORATION	COPIER LEASE/USAGE	30.42

Community Development Engineering Services

348495 XEROX CORPORATION	COPIER LEASE/USAGE	228.07
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213 Gas Tax Fund

Streets

348493 PARSONS BRINCKERHOFF INC	WILBUR AVE PROJECT	70,945.63
348533 DSS COMPANY DBA KNIFE RIVER	PAVEMENT REHAB PROJECT	1,157,111.40
348580 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	23,005.33
920761 PROVEN MANAGEMENT INC	WILBUR AVE PROJECT	654,788.15
920896 TESTING ENGINEERS INC	DEER VALLEY/DAVISON PROJECT	12,388.80

214 Animal Control Fund

Animal Control

348495 XEROX CORPORATION	COPIER LEASE/USAGE	265.68
348499 ASR - BRICKER MINCOLA	UNIFORMS	103.69
348546 HILLS PET NUTRITION	ANIMAL FOOD	568.19
348580 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	997.62
920760 LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	435.75

215 Civic Arts Fund

Civic Arts

348471 ARTS & CULTURAL FOUNDATION	FY13/14 SPONSORSHIP	8,550.00
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219 Recreation Fund

Non Departmental

348557 KING, WILLIAM	DEPOSIT REFUND	1,000.00
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Recreation Admin

348487 HONEYWELL INTERNATIONAL INC	MAINTENANCE SERVICES	10,812.50
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Senior Programs

348580 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	1,145.12
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Recreation Classes/Prog

348434 CPR FAST	CONTRACTOR PAYMENT	268.80
348441 MUIR, ROXANNE	CONTRACTOR PAYMENT	150.48
348478 DUGAND, KARINA	CONTRACTOR PAYMENT	222.00
348537 EDD	UNEMPLOYMENT CLAIMS	2,130.00
348594 ROBERTS, NANCY	CONTRACTOR PAYMENT	448.80

Recreation Sports Programs

348421 BSN SPORTS	SUPPLIES	56.37
348489 KIDZ LOVE SOCCER INC	SOCCER CAMP	3,130.80

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348514	CONCORD SOFTBALL UMPIRES	UMPIRE FEES	1,196.00
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	3,145.40
Recreation Concessions			
348511	COCA COLA BOTTLING CO	CONCESSION SUPPLIES	568.37
348583	PITCHER, JUSTIN WILLIAM	EXPENSE REIMBURSEMENT	45.49
Recreation-New Comm Cntr			
348440	MARLIES CLEANING SERVICE	CLEANING SERVICE	345.00
348447	PACHECO BROTHERS GARDENING INC	LANDSCAPE SERVICES	2,818.34
348487	HONEYWELL INTERNATIONAL INC	MAINTENANCE SERVICES	19,860.50
348495	XEROX CORPORATION	COPIER LEASE/USAGE	327.59
348537	EDD	UNEMPLOYMENT CLAIMS	110.00
348564	LSA ASSOCIATES INC	MONITORING SERVICES	451.21
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	9,231.87
348597	ROYAL WHOLESALE ELECTRIC	LIGHTING SUPPLIES	156.42
226 Solid Waste Reduction Fund			
Solid Waste			
348422	BUSCH SYSTEMS INTERNATIONAL INC	RECYCLING BINS	3,440.00
348488	KATHY KRAMER CONSULTING	CONSULTING SERVICES	450.00
229 Pollution Elimination Fund			
Channel Maintenance Operation			
348417	ATLANTIS DIVING AND SALVAGE CO	TIDE GATES INSPECTION	2,500.00
348530	DEPT OF PESTICIDE REGULATION	RENEWAL-PORTER	60.00
348570	MJH EXCAVATING INC	OPERATED EQUIPMENT RENTAL	8,230.45
348576	OFFICE MAX INC	OFFICE SUPPLIES	12.38
920895	TELFER OIL COMPANY	COCONUT MATTING	911.40
238 PEG Franchise Fee Fund			
Non Departmental			
348473	CORE MICROSYSTEMS	EQUIPMENT	16,620.80
251 Lone Tree SLLMD Fund			
Lonetree Maintenance Zone 1			
348575	ODYSSEY LANDSCAPE CO INC	LANDSCAPE SERVICES	2,800.00
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	795.44
Lonetree Maintenance Zone 2			
348575	ODYSSEY LANDSCAPE CO INC	LANDSCAPE SERVICES	5,000.00
348578	PACHECO BROTHERS GARDENING INC	LANDSCAPE SERVICES	3,800.00
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	701.36
Lonetree Maintenance Zone 3			
348578	PACHECO BROTHERS GARDENING INC	LANDSCAPE SERVICES	3,800.00
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	1,138.59
Lonetree Maintenance Zone 4			
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	304.20
252 Downtown SLLMD Fund			
Downtown Maintenance			
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	363.76

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253 Almondridge SLLMD Fund		
Almondridge Maintenance		
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC 204.86
254 Hillcrest SLLMD Fund		
Hillcrest Maintenance Zone 1		
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC 839.29
Hillcrest Maintenance Zone 2		
348448	PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES 2,055.00
348579	PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES 2,995.00
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC 723.18
Hillcrest Maintenance Zone 4		
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC 603.20
255 Park 1A Maintenance District Fund		
Park 1A Maintenance District		
348416	AT AND T MCI	PHONE 16.49
348447	PACHECO BROTHERS GARDENING INC	LANDSCAPE SERVICES 160.00
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC 143.77
256 Citywide 2A Maintenance District Fund		
Citywide 2A Maintenance Zone 3		
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC 75.23
Citywide 2A Maintenance Zone 4		
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC 295.07
Citywide 2A Maintenance Zone 5		
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC 410.03
Citywide 2A Maintenance Zone 6		
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC 210.14
Citywide 2A Maintenance Zone 8		
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC 301.21
Citywide 2A Maintenance Zone 9		
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC 467.86
Citywide 2A Maintenance Zone10		
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC 128.48
259 East Lone Tree SLLMD Fund		
Zone 1-District 10		
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC 63.41
311 Capital Improvement Fund		
Public Buildings & Facilities		
348503	BEALS ALLIANCE INC	CONSULTING SERVICES 1,603.29
348605	SPORTSFIELD SPECIALTIES	SUPPLIES 1,264.40
376 Lone Diamond Fund		
Assessment District		
348520	CONTRA COSTA COUNTY	TRAFFIC SIGNAL MAINTENANCE 261.72
348587	PUBLIC STORAGE	STORAGE FEES 576.00
920751	TESTING ENGINEERS INC	PROFESSIONAL SERVICES 1,140.00

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569 Vehicle Replacement Fund

Equipment Maintenance

348460 STATEWIDE SAFETY AND SIGNS INC	FREIGHT	400.00
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570 Equipment Maintenance Fund

Non Departmental

348549 HUNT AND SONS INC	FUEL	8,097.32
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Equipment Maintenance

348412 ACE HARDWARE, ANTIOCH	SUPPLIES	4.47
348413 ANTIOCH AUTO PARTS	BRAKE PARTS	184.47
348418 BAY AREA AIR QUALITY MGMT DIST	PERMIT FEES	268.00
348467 WALNUT CREEK FORD	AUTO PARTS STOCK	629.71
348479 EAST BAY TIRE CO	TIRES	511.22
348480 EAST BAY TRUCK CENTER	OIL COOLER	2,065.85
348495 XEROX CORPORATION	COPIER LEASE/USAGE	49.58
348576 OFFICE MAX INC	OFFICE SUPPLIES	16.71
348580 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	566.57
348588 PURSUIT NORTH	EQUIPMENT REMOVAL	350.00
348613 SUPERIOR AUTO PARTS	BRAKE PARTS	10.68
348618 TRED SHED, THE	TIRES	2,397.07
920746 A1 TRANSMISSION	AUTO REPAIR SERVICE	882.16
920755 EVERGREEN OIL INC	SUPPLIES	595.00

573 Information Services Fund

Network Support & PCs

348416 AT AND T MCI	PHONE	384.11
348420 BEAR DATA SOLUTIONS INC	SUPPORT MAINTENANCE	11,980.74
348512 COMCAST	INTERNET SERVICE	238.91
348535 ECS IMAGING INC	ANNUAL SUPPORT MAINTENANCE	1,208.33

Telephone System

203073 AMERICAN MESSAGING	PAGER	12.28
348415 AT AND T MCI	PHONE	16.97
348416 AT AND T MCI	PHONE	2,189.48

Office Equipment Replacement

348486 HEWLETT PACKARD COMPANY	COMPUTER EQUIPMENT	5,292.42
920749 COMPUTERLAND	COMPUTER EQUIPMENT	396.43

577 Post Retirement Medical-Police Fund

Non Departmental

348506 RETIREE	MEDICAL AFTER RETIREMENT	1,219.06
348508 RETIREE	MEDICAL AFTER RETIREMENT	500.50
348540 RETIREE	MEDICAL AFTER RETIREMENT	1,184.56
348560 RETIREE	MEDICAL AFTER RETIREMENT	842.00
348573 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
348586 PERS	MEDICAL AFTER RETIREMENT	4,163.88
348596 RETIREE	MEDICAL AFTER RETIREMENT	219.32
348603 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
348619 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
348630 RETIREE	MEDICAL AFTER RETIREMENT	461.74

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920762	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920763	RETIREE	MEDICAL AFTER RETIREMENT	219.32
920767	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920769	RETIREE	MEDICAL AFTER RETIREMENT	1,111.84
920772	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920781	RETIREE	MEDICAL AFTER RETIREMENT	1,088.53
920782	RETIREE	MEDICAL AFTER RETIREMENT	810.00
920784	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920786	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920797	RETIREE	MEDICAL AFTER RETIREMENT	1,090.04
920801	RETIREE	MEDICAL AFTER RETIREMENT	810.00
920802	RETIREE	MEDICAL AFTER RETIREMENT	219.32
920816	RETIREE	MEDICAL AFTER RETIREMENT	173.37
920819	RETIREE	MEDICAL AFTER RETIREMENT	219.32
920822	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920823	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920824	RETIREE	MEDICAL AFTER RETIREMENT	130.73
920835	RETIREE	MEDICAL AFTER RETIREMENT	173.37
920852	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920855	RETIREE	MEDICAL AFTER RETIREMENT	553.63
920866	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920867	RETIREE	MEDICAL AFTER RETIREMENT	1,473.52
920868	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920870	RETIREE	MEDICAL AFTER RETIREMENT	887.95
920880	RETIREE	MEDICAL AFTER RETIREMENT	553.63
920891	RETIREE	MEDICAL AFTER RETIREMENT	173.32
920897	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920901	RETIREE	MEDICAL AFTER RETIREMENT	553.63
920911	RETIREE	MEDICAL AFTER RETIREMENT	553.63
920913	RETIREE	MEDICAL AFTER RETIREMENT	193.61
920915	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26

578 Post Retirement Medical-Misc Fund

Non Departmental

348504	RETIREE	MEDICAL AFTER RETIREMENT	239.69
348526	RETIREE	MEDICAL AFTER RETIREMENT	239.69
348531	RETIREE	MEDICAL AFTER RETIREMENT	121.69
348532	RETIREE	MEDICAL AFTER RETIREMENT	387.26
348534	RETIREE	MEDICAL AFTER RETIREMENT	594.38
348555	RETIREE	MEDICAL AFTER RETIREMENT	239.69
348568	RETIREE	MEDICAL AFTER RETIREMENT	239.69
348577	RETIREE	MEDICAL AFTER RETIREMENT	121.69
348586	PERS	MEDICAL AFTER RETIREMENT	6,099.58
348589	RETIREE	MEDICAL AFTER RETIREMENT	121.69
348593	RETIREE	MEDICAL AFTER RETIREMENT	594.38
348595	RETIREE	MEDICAL AFTER RETIREMENT	121.69
348600	RETIREE	MEDICAL AFTER RETIREMENT	239.69

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348622	RETIREE	MEDICAL AFTER RETIREMENT	238.42
348623	RETIREE	MEDICAL AFTER RETIREMENT	519.26
920764	RETIREE	MEDICAL AFTER RETIREMENT	255.43
920765	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920766	RETIREE	MEDICAL AFTER RETIREMENT	146.32
920768	RETIREE	MEDICAL AFTER RETIREMENT	358.51
920771	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920775	RETIREE	MEDICAL AFTER RETIREMENT	239.69
920777	RETIREE	MEDICAL AFTER RETIREMENT	239.69
920779	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920785	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920787	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920791	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920793	RETIREE	MEDICAL AFTER RETIREMENT	239.69
920796	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920799	RETIREE	MEDICAL AFTER RETIREMENT	173.37
920800	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920804	RETIREE	MEDICAL AFTER RETIREMENT	173.37
920808	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920810	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920812	RETIREE	MEDICAL AFTER RETIREMENT	531.64
920813	RETIREE	MEDICAL AFTER RETIREMENT	163.02
920818	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920821	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920829	RETIREE	MEDICAL AFTER RETIREMENT	239.69
920830	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920834	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920837	RETIREE	MEDICAL AFTER RETIREMENT	239.69
920839	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920842	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920845	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920847	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920851	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920862	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920863	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920872	RETIREE	MEDICAL AFTER RETIREMENT	239.69
920875	RETIREE	MEDICAL AFTER RETIREMENT	239.69
920879	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920884	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920894	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920898	RETIREE	MEDICAL AFTER RETIREMENT	255.43
920900	RETIREE	MEDICAL AFTER RETIREMENT	173.37
920904	RETIREE	MEDICAL AFTER RETIREMENT	709.38
920910	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920912	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920914	RETIREE	MEDICAL AFTER RETIREMENT	84.28

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920916 RETIREE	MEDICAL AFTER RETIREMENT	121.69
579 Post Retirement Medical-Mgmt Fund		
<i>Non Departmental</i>		
348502 RETIREE	MEDICAL AFTER RETIREMENT	239.69
348510 RETIREE	MEDICAL AFTER RETIREMENT	964.95
348523 RETIREE	MEDICAL AFTER RETIREMENT	179.69
348539 RETIREE	MEDICAL AFTER RETIREMENT	121.69
348544 RETIREE	MEDICAL AFTER RETIREMENT	239.69
348550 RETIREE	MEDICAL AFTER RETIREMENT	400.00
348561 RETIREE	MEDICAL AFTER RETIREMENT	358.38
348571 RETIREE	MEDICAL AFTER RETIREMENT	759.38
348581 RETIREE	MEDICAL AFTER RETIREMENT	121.69
348586 PERS	MEDICAL AFTER RETIREMENT	9,054.57
348592 RETIREE	MEDICAL AFTER RETIREMENT	255.43
348616 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920770 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920773 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920774 RETIREE	MEDICAL AFTER RETIREMENT	256.89
920776 RETIREE	MEDICAL AFTER RETIREMENT	179.70
920778 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920780 RETIREE	MEDICAL AFTER RETIREMENT	898.90
920783 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920789 RETIREE	MEDICAL AFTER RETIREMENT	625.86
920790 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920792 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920794 RETIREE	MEDICAL AFTER RETIREMENT	474.38
920795 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920798 RETIREE	MEDICAL AFTER RETIREMENT	255.43
920803 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920805 RETIREE	MEDICAL AFTER RETIREMENT	898.90
920807 RETIREE	MEDICAL AFTER RETIREMENT	121.69
920811 RETIREE	MEDICAL AFTER RETIREMENT	860.52
920814 RETIREE	MEDICAL AFTER RETIREMENT	408.20
920815 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920817 RETIREE	MEDICAL AFTER RETIREMENT	461.74
920826 RETIREE	MEDICAL AFTER RETIREMENT	315.64
920832 RETIREE	MEDICAL AFTER RETIREMENT	724.38
920833 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920836 RETIREE	MEDICAL AFTER RETIREMENT	255.43
920838 RETIREE	MEDICAL AFTER RETIREMENT	594.38
920840 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920841 RETIREE	MEDICAL AFTER RETIREMENT	358.38
920843 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920844 RETIREE	MEDICAL AFTER RETIREMENT	239.69
920846 RETIREE	MEDICAL AFTER RETIREMENT	239.69
920848 RETIREE	MEDICAL AFTER RETIREMENT	159.02

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920849	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920850	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920854	RETIREE	MEDICAL AFTER RETIREMENT	964.95
920856	RETIREE	MEDICAL AFTER RETIREMENT	173.37
920857	RETIREE	MEDICAL AFTER RETIREMENT	255.43
920859	RETIREE	MEDICAL AFTER RETIREMENT	146.32
920860	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920861	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920864	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920865	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920869	RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
920871	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920873	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920874	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920876	RETIREE	MEDICAL AFTER RETIREMENT	239.69
920877	RETIREE	MEDICAL AFTER RETIREMENT	146.32
920878	RETIREE	MEDICAL AFTER RETIREMENT	379.69
920881	RETIREE	MEDICAL AFTER RETIREMENT	898.90
920882	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920883	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920885	RETIREE	MEDICAL AFTER RETIREMENT	255.43
920886	RETIREE	MEDICAL AFTER RETIREMENT	625.86
920888	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920889	RETIREE	MEDICAL AFTER RETIREMENT	594.38
920890	RETIREE	MEDICAL AFTER RETIREMENT	759.38
920893	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920899	RETIREE	MEDICAL AFTER RETIREMENT	255.43
920902	RETIREE	MEDICAL AFTER RETIREMENT	2,051.22
920903	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920905	RETIREE	MEDICAL AFTER RETIREMENT	358.38
920906	RETIREE	MEDICAL AFTER RETIREMENT	1,111.84
920907	RETIREE	MEDICAL AFTER RETIREMENT	121.69
920908	RETIREE	MEDICAL AFTER RETIREMENT	1,623.44
920909	RETIREE	MEDICAL AFTER RETIREMENT	255.43

611 Water Fund

Non Departmental

348444	OFFICE MAX INC	OFFICE SUPPLIES	3,534.00
348621	USA BLUE BOOK	INSULATED STORM BOOTS	429.50
348626	WILCO SUPPLY	LOCKS	587.77

Water Supervision

348545	GUMAS, PETE AND NADINE	CHECK REPLACEMENT	54.51
348598	RT LAWRENCE CORP	LOCKBOX PROCESSING FEE	721.97

Water Production

348412	ACE HARDWARE, ANTIOCH	SUPPLIES	43.44
348416	AT AND T MCI	PHONE	66.66
348433	CONTRA COSTA WATER DISTRICT	RAW WATER	1,062,539.19

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348468	WALTER BISHOP CONSULTING	PROFESSIONAL SERVICES	825.00
348495	XEROX CORPORATION	COPIER LEASE/USAGE	2.85
348505	BEVERAGE MARKETING CORP	CONSULTING SERVICES	9,000.00
348517	CONTRA COSTA COUNTY	FY1314 CUPA FEE	270.00
348538	FEDEX	SHIPPING	23.87
348559	LAW OFFICE OF MATTHEW EMRICK	LEGAL SERVICES	2,635.50
348566	MCCAMPBELL ANALYTICAL INC	TESTING SERVICES	282.60
348567	METTLER TOLEDO INC	CALIBRATION SERVICE	313.50
348576	OFFICE MAX INC	SUPPLIES	39.49
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	146,309.58
348606	STATE BOARD OF EQUALIZATION	WATER RIGHTS FEES	153.05
348620	UNITED PARCEL SERVICE	SHIPPING	31.19
348629	WILO USA LLC	EQUIPMENT	8,537.50
920752	TRANSDYN INC	ENGINEERING SERVICES	10,550.00
920756	GENERAL CHEMICAL CORP	ALUM	6,052.94
920760	LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	658.60
920788	CONSOLIDATED ELECTRICAL DIST INC	SUPPLIES	232.55
920806	GENERAL CHEMICAL CORP	ALUM	3,051.74
920831	KARSTE CONSULTING INC	CONSULTING SERVICES	960.00
920858	OLIN CHLOR ALKALI PRODUCTS	CAUSTIC	5,746.80
920887	SIERRA CHEMICAL CO	CHLORINE	4,412.94
Water Distribution			
348412	ACE HARDWARE, ANTIOCH	SUPPLIES	10.73
348435	CREATIVE SUPPORTS	OFFICE WORK STATION	1,508.13
348476	DELTA DIABLO SANITATION DISTRICT	RECYCLED WATER	8,433.22
348482	FASTENAL CO	SMALL TOOLS	222.60
348495	XEROX CORPORATION	COPIER LEASE/USAGE	126.21
348524	COTTIER, CAROL	TRAINING-LOWE/DE OLIVERA	1,650.00
348537	EDD	UNEMPLOYMENT CLAIMS	139.00
348552	INFOSEND INC	PRINT/MAIL SERVICES	4,051.10
348576	OFFICE MAX INC	OFFICE SUPPLIES	195.02
920757	GRAINGER INC	SUPPLIES	481.31
Public Buildings & Facilities			
348491	KOCH AND KOCH INC	CAMBRIDGE BOOSTER PUMPING	8,063.13
348563	LOZANO SMITH LLP	LEGAL SERVICES	16,443.73
Warehouse & Central Stores			
348430	CCC TAX COLLECTOR	PROPERTY TAX	329.10
348495	XEROX CORPORATION	COPIER LEASE/USAGE	146.71
348620	UNITED PARCEL SERVICE	WEEKLY PRINTER SERVICE FEE	2.00
920757	GRAINGER INC	SUPPLIES	3.70
621 Sewer Fund			
Non Departmental			
348484	GIOVANNI, FRANK	CHECK REPLACEMENT	45.00
Sewer-Wastewater Supervision			
348495	XEROX CORPORATION	COPIER LEASE/USAGE	126.21

Prepared by: Georgina Meek
 Finance Accounting

CITY OF ANTIOCH
 CLAIMS BY FUND REPORT
 FOR THE PERIOD OF
 NOVEMBER 21 - DECEMBER 4, 2013
 FUND/CHECK#

Sewer-Wastewater Collection

348413	ANTIOCH AUTO PARTS	AIR TOOL	5.41
348435	CREATIVE SUPPORTS	OFFICE WORK STATION	1,508.13
348552	INFOSEND INC	PRINT/MAIL SERVICES	4,051.08
348566	MCCAMPBELL ANALYTICAL INC	TESTING SERVICES	649.80
348570	MJH EXCAVATING INC	OPERATED EQUIPMENT RENTAL	1,260.00
348576	OFFICE MAX INC	OFFICE SUPPLIES	38.62
348598	RT LAWRENCE CORP	LOCKBOX PROCESSING FEE	721.97
348610	STATE WATER RESOURCES BOARD	ANNUAL PERMIT FEE	10,405.00

631 Marina Fund

Non Departmental

348494	STATE BOARD OF EQUALIZATION	SALES TAX	143.47
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Marina Administration

202820	RIVERVIEW LODGE	MEETING EXPENSE	45.65
348430	CCC TAX COLLECTOR	PROPERTY TAX	6,079.52
348495	XEROX CORPORATION	COPIER LEASE/USAGE	2.85
348580	PACIFIC GAS AND ELECTRIC CO	GAS	3,000.66
348591	REAL PROTECTION INC	SYSTEM SERVICE	283.00

Marina Maintenance

920760	LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	1,355.14
920809	GRAINGER INC	SUPPLIES	124.17

641 Prewett Water Park Fund

Non Departmental

348547	HINOJOSA, CARMEN	DEPOSIT REFUND	1,000.00
348627	WILLIAMS, ALISHA	DEPOSIT REFUND	500.00
348628	WILLIAMS, CHENOA	DEPOSIT REFUND	1,000.00

Recreation Water Park

203214	GARDA CL WEST INC	ARMORED CAR PICK UP	95.40
348425	COLE SUPPLY CO INC	SUPPLIES	67.49
348426	COMCAST	MONTHLY DMX SERVICE	101.75
348447	PACHECO BROTHERS GARDENING INC	LANDSCAPE SERVICES	1,879.16
348449	PACIFIC GAS AND ELECTRIC CO	GAS	1,548.13
348487	HONEYWELL INTERNATIONAL INC	MAINTENANCE SERVICES	4,778.00
348495	XEROX CORPORATION	COPIER LEASE/USAGE	253.62
348513	COMMERCIAL POOL SYSTEMS INC	CHEMICALS	14,790.53
348537	EDD	UNEMPLOYMENT CLAIMS	109.00
348556	KELLY MOORE PAINT CO	PAINT	237.14
348576	OFFICE MAX INC	SUPPLIES	191.10
348580	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	8,298.78
348597	ROYAL WHOLESALE ELECTRIC	LIGHTING SUPPLIES	2,779.95

Recreation Community Center

348574	NEW PIG CORPORATION	EXIT SIGNS	255.04
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Rec Prewett Concessions

721 Employee Benefits Fund

Non Departmental

348428	CONTRA COSTA COUNTY	PAYROLL DEDUCTIONS	50.00
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Prepared by: Georgina Meek
 Finance Accounting

12/5/2013

CITY OF ANTIOCH
 CLAIMS BY FUND REPORT
 FOR THE PERIOD OF
 NOVEMBER 21 - DECEMBER 4, 2013
 FUND/CHECK#

348429	CONTRA COSTA COUNTY	PAYROLL DEDUCTIONS	400.00
348436	DELTA PARK ATHLETIC CLUB	PAYROLL DEDUCTIONS	37.00
348437	DELTA VALLEY ATHLETIC CLUB	PAYROLL DEDUCTIONS	54.00
348438	IN SHAPE HEALTH CLUBS	PAYROLL DEDUCTIONS	854.00
348439	LINA	PAYROLL DEDUCTIONS	4,597.22
348442	MUNICIPAL POOLING AUTHORITY	PAYROLL DEDUCTIONS	2,420.48
348445	OPERATING ENGINEERS LOCAL NO 3	PAYROLL DEDUCTIONS	2,223.00
348446	OPERATING ENGINEERS TRUST FUND	PAYROLL DEDUCTIONS	3,252.16
348450	PARS	PAYROLL DEDUCTIONS	3,166.18
348451	PERS LONG TERM CARE	PAYROLL DEDUCTIONS	56.90
348453	PERS	PAYROLL DEDUCTIONS	305,825.13
348454	PUBLIC EMPLOYEES UNION LOCAL 1	PAYROLL DEDUCTIONS	2,064.25
348455	SOLAR SWIM AND GYM	PAYROLL DEDUCTIONS	27.00
348456	STANDARD LIFE INSURANCE	PAYROLL DEDUCTIONS	1,025.10
348457	STATE OF CALIFORNIA	PAYROLL DEDUCTIONS	200.00
348458	STATE OF CALIFORNIA	PAYROLL DEDUCTIONS	200.00
348459	STATE OF FLORIDA DISBURSE UNIT	PAYROLL DEDUCTIONS	150.00
348462	TEXAS CHILD SUPPORT DISBURSE UNIT	PAYROLL DEDUCTIONS	422.77
348463	RECIPIENT	PAYROLL DEDUCTIONS	112.15
348464	US DEPT OF EDUCATION	PAYROLL DEDUCTIONS	277.47
348469	XTREME FITNESS	PAYROLL DEDUCTIONS	104.00
348470	AFLAC	PAYROLL DEDUCTIONS	7,459.04
348472	EMPLOYEE	CHECK REPLACEMENT	1,110.41
348507	BLUE SHIELD LIFE	PAYROLL DEDUCTIONS	1,944.74
348527	DELTA DENTAL	PAYROLL DEDUCTIONS	25,297.09
348586	PERS	PAYROLL DEDUCTIONS	257,715.65
920747	ANTIOCH PD SWORN MGMT ASSOC	PAYROLL DEDUCTIONS	536.75
920748	APOA	PAYROLL DEDUCTIONS	11,610.67
920750	NATIONWIDE RETIREMENT SOLUTIONS	PAYROLL DEDUCTIONS	41,419.22
920753	VANTAGEPOINT TRANSFER AGENTS	PAYROLL DEDUCTIONS	5,467.13

752 Storm Drain Deposits Fund

Non Departmental

348427	CONTRA COSTA COUNTY	DRAINAGE FEES	241.24
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**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF DECEMBER 10, 2013**

Prepared by: Mindy Gentry, Senior Planner *MA*
Approved by: Tina Wehrmeister, Community Development Director *TW*
Date: December 5, 2013
Subject: Fortune Telling Ordinance – Z-13-06

RECOMMENDATION

It is recommended the City Council adopt the attached ordinance amending the zoning ordinance to allow fortune-tellers to be permitted by right in certain commercial zoning districts.

BACKGROUND INFORMATION

The attached ordinance was introduced by the Council on November 26, 2013. The Council made no changes to the ordinance at this meeting.

FINANCIAL IMPACT

None.

OPTIONS

None, the recommended action is consistent with the City Council's introduction of the ordinance on November 26, 2013.

ATTACHMENTS

None.

12-10-13

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH AMENDING MUNICIPAL CODE TITLE 9 TO PERMIT FORTUNETELLING BY RIGHT IN CERTAIN COMMERCIAL AND OFFICE ZONING DISTRICTS

SECTION 1. Findings. The Antioch City Council hereby finds, determines and declares as follows:

A. The City of Antioch holds the right to make and enforce all laws and regulations not in conflict with general laws, and the City holds all rights and powers established by state law.

B. The Planning Commission conducted a duly noticed public hearing on October 16, 2013 at which it adopted a resolution to initiate and recommend to the City Council that this ordinance regarding fortunetelling be adopted. The City Council held a duly noticed public hearing on November 26, 2013 at which all interested persons were allowed to address the Council regarding adoption of this ordinance.

C. The California Supreme Court has determined that the practice of "fortunetelling" for fee or compensation constitutes constitutionally protected speech that cannot be completely prohibited, and municipal regulation of such activity is subject to heightened judicial scrutiny.

D. Fortunetelling has similar land use impacts as professional and medical office uses as well as general retail.

E. 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 2. Section 9-5.3803 Table of Land Use Regulations is hereby amended to permit fortunetelling by right in PBC, C-O, C-1, C-2, C-3, MCR, and RTC:

	RE	R-4	R-	R-		C-												
	RR	R-6	10	20	PBC	0	C-1	C-2	C-3	MCR	WF	OS	M-1	M-2	H	RTC	RTR-10	RTR-20
Fortuneteller's	--	--	--	--	P	P	P	P	P	P	--	--	--	--	--	P	--	--

SECTION 3. CEQA.

This Ordinance is subject to the CEQA exemption contained in CEQA Guideline section 15061 because it can be seen with certainty to have no possibility of a significant effect on the environment. The ordinance is merely bringing the City of Antioch Municipal Code in compliance with Federal and State law as it pertains to free speech.

SECTION 4. Publication; Effective Date.

This Ordinance shall take effect and be enforced 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 5. 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 26th day of November and adopted at a regular meeting thereof, held on the 10th day of December, by the following vote:

AYES:

NOES:

ABSENT:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch

**STAFF REPORT TO THE MAYOR AND CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF DECEMBER 10, 2013**

PREPARED BY: Scott Buenting, Associate Engineer, Capital Improvements Division 

APPROVED BY: Ron Bernal, Public Works Director/City Engineer 

DATE: November 26, 2013

SUBJECT: Resolution Accepting Work and Authorizing the Public Works Director/City Engineer to File a Notice of Completion for the Deer Valley Road/Davison Drive/Sunset Lane Pavement Rehabilitation Project, (P.W. 392-28)

RECOMMENDATION

It is recommended that the City Council adopt the attached resolution accepting work, authorizing the Public Works Director/City Engineer to File a Notice of Completion and authorizing the Director of Finance to make a final payment of \$624,678.49 plus retention of \$93,778.42 to be paid 35 days after recordation of the Notice of Completion.

BACKGROUND INFORMATION

On July 30, 2013, the City Council awarded a contract to Knife River Construction in the amount of \$1,895,127.00 for the pavement rehabilitation of Deer Valley Road from Lone Tree Way to Mammoth Drive, Davison Drive from Hillcrest Avenue to Lone Tree Way and Sunset Lane from Davison Drive to Lone Tree Way. The work included the removal and replacement of the asphalt concrete over the full width of the streets, reinstallation of traffic sign facilities and placement of new traffic striping and pavement markings.

On November 18, 2013, the contractor completed all work associated with this project.

FINANCIAL IMPACT

The final construction contract price for this project is \$1,893,861.32. The project will be funded as follows: \$1,488,864.00 from the Prop 1B Grant and \$404,997.32 from the Gas Tax Fund.

OPTIONS

No options are suggested at this time.

ATTACHMENTS

- A: Resolution Accepting Work
- B: Notice of Completion

RESOLUTION NO. 2013/**

**RESOLUTION ACCEPTING WORK AND DIRECTING
THE PUBLIC WORKS DIRECTOR/CITY ENGINEER
TO FILE A NOTICE OF COMPLETION AND AUTHORIZING FINAL
PAYMENT TO KNIFE RIVER CONSTRUCTION FOR THE DEER VALLEY
ROAD/DAVISON DRIVE/SUNSET LANE PAVEMENT REHABILITATION
(P.W. 392-28)**

WHEREAS, the Public Works Director/City Engineer, has certified the completion of all work provided to be done under and pursuant to the contract between the City of Antioch and Knife River Construction and;

WHEREAS, it appears to the satisfaction of this City Council that said work under said contract has been fully completed and done as provided in said contract and the plans and specifications therein referred to;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Antioch, that:

1. The above-described work is hereby accepted.
2. The Public Works Director/City Engineer is directed to execute and file for record with the County Recorder, County of Contra Costa, a Notice of Completion thereof.
3. The Director of Finance is hereby directed to pay the Contractor a final payment of \$624,678.49 plus retention of \$93,778.42 to be paid 35 days after recordation of the Notice of Completion.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof held on the 10th day of December, 2013 by the following vote:

AYES:

NOES:

ABSENT:

**ARNE SIMONSEN
CITY CLERK OF THE CITY OF ANTIOCH**

Recorded at the request
of and for the benefit
of the City of Antioch

When recorded, return
to City of Antioch
Capital Improvements Division
P.O. Box 5007
Antioch, CA 94531-5007

NOTICE OF COMPLETION

FOR

**DEER VALLEY ROAD/DAVISON DRIVE/SUNSET LANE
PAVEMENT REHABILITATION
(P.W. 392-28)**

NOTICE IS HEREBY GIVEN that the work and improvements hereinafter described, the contract for which was entered into by and between the City of Antioch and Knife River Construction was completed on November 18, 2013.

The surety for said project was Liberty Mutual Insurance Company.

The subject project consisted of pavement rehabilitation of Deer Valley Road, Davison Drive and Sunset Lane in Antioch, California.

**THE UNDERSIGNED STATES UNDER PENALTY OF
PERJURY THAT THE ABOVE IS TRUE AND CORRECT**

Date

RON BERNAL, P.E.
Public Works Director/City Engineer

**STAFF REPORT TO THE MAYOR AND CITY COUNCIL FOR CONSIDERATION AT
THE COUNCIL MEETING OF DECEMBER 10, 2013**

FROM: Michelle Fitzer, Human Resources/Economic Development Director 

DATE: December 4, 2013

**SUBJECT: RESOLUTION APPROVING THE MEMORANDUM OF
UNDERSTANDING BETWEEN THE CITY OF ANTIOCH AND THE
ANTIOCH POLICE SWORN MANAGEMENT ASSOCIATION (APSMA)**

RECOMMENDATION

It is recommended that the City Council adopt a resolution approving the Memorandum of Understanding (MOU) between the City and the Antioch Police Sworn Management Association (APSMA), and authorize the City Manager to execute the document.

BACKGROUND

The APSMA had an MOU covering the period of November 1, 2007 – October 31, 2014. With the economic crisis, the City requested that APSMA reopen their contract to make financial concessions. Subsequent Letters of Understanding (LOU) were negotiated and approved in February 2011 and June 2012. The agreement term was extended to February 28, 2017.

At the time, the LOUs were brought to Council for approval, but a clean, comprehensive MOU was not prepared or approved. Staff has been working with the APSMA representatives to develop a new MOU, incorporating the changes reflected in the LOU documents. In addition, there were some areas of discrepancy between the MOU, LOU, and the negotiation records that needed to be cleaned up. Finally, all relevant negotiation terms were moved within the document, so that they appear before the signature page, reducing any future possibility of discrepancies or misunderstandings.

Current staff's preference is to have the Council approve the entire MOU document, which is a large part of why this action is being requested. Bringing the entire agreement to Council, rather than simply the LOU indicating changes, makes the terms clear to the City, the APSMA, and the public. For future negotiations with APSMA, and all of the other bargaining units, staff will be bringing forward the full MOU for Council consideration and approval.

FINANCIAL IMPACT

Approving a comprehensive MOU document does not change the financial impacts previously provided regarding the negotiated agreement.

ATTACHMENTS

- A. Resolution Approving Amendments to the Classification and Compensation Plans for Management Bargaining Unit Classes
- B. APSMA Memorandum of Understanding

E
12/10/13

RESOLUTION NO. 2013/XX

RESOLUTION APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ANTIOCH AND THE ANTIOCH POLICE SWORN MANAGEMENT ASSOCIATION (APSMA)

WHEREAS, the City and APSMA had a Memorandum of Understanding (MOU) covering the period of November 1, 2007 – October 31, 2014; and

WHEREAS, with the economic crisis, the City requested that APSMA reopen their contract to make financial concessions; and

WHEREAS, subsequent Letters of Understanding (LOU) were negotiated and approved by Council in February 2011 and June 2012; and the agreement term was extended to February 28, 2017; and

WHEREAS, staff has been working with the APSMA representatives to develop a new comprehensive MOU, incorporating the changes reflected in the LOU documents, and cleaning up some areas of discrepancy between the MOU, LOU, and the negotiation records; and

WHEREAS, staff's preference is to have the Council approve the full MOU, rather than simply changes reflected in an LOU.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Antioch as follows:

Section 1. That the comprehensive Memorandum of Understanding between the City of Antioch and the Antioch Police Sworn Management Association (APSMA) is approved, and the City Manager is authorized to execute it.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 10th day of December, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ARNE SIMONSEN
CITY CLERK OF THE CITY OF ANTIOCH

MEMORANDUM OF UNDERSTANDING

Between

CITY OF ANTIOCH

And

**ANTIOCH POLICE SWORN MANAGEMENT
ASSOCIATION**

NOVEMBER 1, 2007 – FEBRUARY 28, 2017

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PREAMBLE

MEMORANDUM OF UNDERSTANDING

between

CITY OF ANTIOCH

and

ANTIOCH POLICE SWORN MANAGEMENT ASSOCIATION

This Memorandum of Understanding is entered into pursuant to the provisions of Section 3500 et seq. of the Government Code of the State of California.

The parties have met and conferred in good faith regarding wages, hours and other terms and conditions of employment for the employees in said representational unit, and have freely exchanged information, opinions and proposals and have reached agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

This Memorandum of Understanding shall be presented to the City Council of the City of Antioch as the joint recommendation of the undersigned parties for salary and employee benefit adjustments. Except as provided herein, this Memorandum of Understanding shall cover the period commencing November 1, 2007 and ending February 28, 2017.

Negotiations shall commence no later than thirty (30) days and no sooner than one hundred and twenty (120) days prior to the expiration of this MOU. Either party may commence negotiations within this time period after written notification to the other party. Nothing herein contained shall prevent the parties from mutually agreeing to meet and confer on any subject.

1. RECOGNITION

1.1 Association Recognition

Antioch Police Sworn Management Association, hereinafter referred to as the "APSMA", is the recognized employee organization for the classifications represented by this Unit.

1.2 City Recognition

The Municipal Employee Relations Officer of the City of Antioch or any person or organization duly authorized by the Municipal Employee Relations Officer, is the representative of the City of Antioch, hereinafter referred to as the "City" in employer-employee relations.

2. COMPENSATION

All Salary adjustments shall become effective on the first day of the pay period closest to the effective date of the adjustment.

A. Salaries

Effective November 1, 2007 and for the duration of this MOU, employees in this bargaining unit shall receive the following salaries as listed below.

B. Salary Relationships

Effective the first full payroll period after November 1, 2007, salaries shall be increased by five percent (5%).

Effective the first full payroll period after March, 2008 salaries shall be increased based upon the existing four-city formula of Concord, Pittsburg, Richmond, and Walnut Creek and the City shall calculate the salary increase to bring members into second place (median between 1 and 3), effective March 1, 2008.

Effective the first full payroll period after November 1, 2008, salaries shall be increased between a minimum of two percent (2%) and a maximum of five percent (5%) based upon the existing four-city formula of Concord, Pittsburg, Richmond and Walnut Creek and the City shall calculate the salary increase to bring members into second place (median between 1 and 3), effective November 1, 2008.

Effective the first full pay period after June 1, 2012, the salaries shall be increased by 6.0%.

Effective the first full pay period after March 1, 2013, salaries shall be increased by 3.0%.

Effective the first full pay period after September 1, 2013, salaries shall be increased by 4.0%.

Effective the first full payroll period after September 1, 2014, salaries shall be increased between a minimum of two percent (2.0%) and a maximum of four and one-quarter percent (4.25%) based upon the existing four-city formula of Concord, Pittsburg, Richmond and Walnut Creek and the City shall calculate the salary increase to bring members into second place (median between 1 and 3), effective September 1, 2014.

Effective the first full payroll period after September 1, 2015, salaries shall be increased between a minimum of two percent (2.0%) and a maximum of five percent (5.0%) based upon the existing four-city formula of Concord, Pittsburg, Richmond and Walnut Creek and the City shall calculate the salary increase to bring members into second place (median between 1 and 3), effective September 1, 2015.

Effective the first full payroll period after September 1, 2016, salaries shall be increased between a minimum of two percent (2.0%) and a maximum of five percent (5.0%) based upon the existing four-city formula of Concord, Pittsburg, Richmond and Walnut Creek and the City shall calculate the salary increase to bring members into second place (median between 1 and 3), effective September 1, 2016.

For the purpose of the four city formula calculations, the City will use the comparison City's known Monthly Top Step Captain and Lieutenant Salary as of the effective date (e.g. the first measure is for March 1, 2008 and the published salary as of March 1, 2008 for Concord, Pittsburg, Richmond, and Walnut Creek will be used). This formula is for salary only and should any of the employers from the four cities in this formula not pay the employees PERS contribution the percentage paid by the employee shall be subtracted to reflect a true salary.

C. Increases Within Pay Ranges

Normally, and as a general rule, upon progress and productivity, employees in the merit system shall be considered for a step advancement according to the following general plan:

1. Steps. The letters A, B, C, D, and E, respectively, denote the various salary steps in the pay range.
2. Step A. Step "A" shall normally be paid upon initial employment into a 5-step pay range.
3. Step B. An eligible employee shall be considered for advancement to Step "B" 13 bi-weekly pay periods (approximately six months) following the date of hire.
4. Exception. If employed at other than Step "A" in a 5-step pay range for the class, then consideration for advancement to the next salary step will take place 26 bi-weekly pay periods (approximately one year) following the date of hire.

5. Advancement Beyond Step B. Consideration for each subsequent step advancement shall be after 26 bi-weekly pay periods (approximately one year).

6. Reinstatement or Re-employment at Above Entrance Step. In the case of an employee who is reinstated at any step above Step "A" in the pay range for the class, said employee may be advanced to the next higher step in the pay range no sooner than 26 bi-weekly pay periods (approximately one year) from the anniversary date of the employment or reinstatement.

D. Step Advancement Not Automatic

No advance in salary steps shall be automatic upon completion of the periods of service outlined above, and all increases shall be made on the basis of merit as established by the employee's work performance and after written recommendation of his/her Department Head and approved by the City Manager. Step advancement may be withheld in cases of inferior work performance or lack of application.

E. Special Salary Adjustments

In order to correct gross inequities, or to reward outstanding achievement and performance, the City Manager may, upon recommendation of the Department Head and the Human Resources Director, adjust the salary step of an incumbent of a particular position to any higher step within the pay range for the class to which the position was allocated.

F. Applicable Salary Rates Following Pay Range Increases and Decreases

When a pay range for a given class is revised upward or downward, the incumbents of positions in classes affected shall have their existing salary adjusted to the same relative step in the new pay range (Step B to Step B, Step C to Step C, etc) and their anniversary date shall not be changed.

G. Pay Range Change on Anniversary Date

In the event that a pay range change becomes effective on an employee's anniversary date, the employee shall first receive any within-range adjustment to which entitled and then receive the corresponding step adjustment.

H. Pay Range Change on Date of Promotion

In the event that a pay range change becomes effective on the date an employee is promoted to a higher class, the employee shall first receive any corresponding step adjustments to which entitled in the lower class, and then the next higher step in conjunction with the promotion.

Acting Pay

1. Management employees who are required to work in a higher classification are entitled to, after having previously worked in the higher class for a cumulative total of forty (40) hours, a minimum of five percent (5%) additional compensation, but not to exceed the maximum of the range established for the higher classification. To be entitled to acting pay, employee must assume substantially all of the day-to-day duties of the higher position for a period of at least forty (40) continuous hours. (Resolution 80/234 and administrative application).

J. Special Assignment Pay

The City Manager may authorize either two and one-half percent (2-1/2%) or five percent (5%) to any employee designated to be on special assignment.

K. Holiday Pay – Sworn Management

AP SMA members assigned to work on a holiday including a previously scheduled floating holiday, shall receive time and one half pay in addition to their regular rate of pay.

L. Shift Differential – Sworn Management

2-1/2% for swing shift when the majority of the shift is scheduled after 1600 hours.

5% for graveyard shift when the majority of the shift is scheduled after 2000 hours

M. Senior Officer Pay

Effective the first full payroll period after November 1, 2007 in recognition of a sworn peace officer establishing seniority in the profession, the City will pay each officer an additional amount based on the officer's tenure as a full time sworn peace officer in the State of California. This shall only apply to Peace Officers defined in Chapter 4.5, Section 830 of the California Penal Code who were employed as full time peace officers with a City Police Agency, County Sheriff Department or California Highway Patrol.

Employment as a full time sworn peace officer defined in Section 830.6 of the California Penal Code will not be included in determining tenure.

The additional amount shall be based on the formula below.

Total months of service as a sworn peace officer in the State of California	Additional pay as a % of the officers base monthly pay
Beginning the 108 through the 167 month	2.5 %
Beginning the 168 through the 227 month	5.0 %
Beginning the 228 month	7.5 %
Beginning the 288 month	10.0%

The City and the Association reserve the right to request additions to full time sworn peace officers defined in Chapter 4.5 of the California Penal Code, which will be included in determining tenure. Additionally, this may be done on a case by case basis for individual applicants.

Only those additions, which are mutually agreed upon by both the City and the Association shall be added.

The above amounts are non-compounding.

3. HEALTH & WELFARE BENEFITS

A. Medical Insurance

1. The City contracts with the Public Employees' Retirement System (PERS) and the Local 3 Public Sector Health and Welfare Trust for the purpose of providing medical insurance benefits for active employees and eligible retired employees. Eligibility of active and retired employees and the dependents of active and retired employees to participate in this program shall be in accordance with regulations promulgated by PERS and the City's Medical-After-Retirement Policy.
2. The City shall pay the PERS Minimum Employer Contribution (MEC) per month on behalf of each active and retired employee who subscribes for coverage.
3. Except as provided herein, represented employees shall purchase medical insurance through the PERS Medical Program. Represented employees who have medical insurance coverage from another source may, by providing written proof of such alternative coverage to the City, opt out of the PERS Medical Program. Employees who opt out of the PERS Medical Program shall be required to provide written confirmation of alternative coverage annually thereafter, by the first day of the PERS open enrollment period. If such confirmation is not provided, the employee shall be required to enroll in the PERS Medical Program.

B. Dental Insurance

1. The City shall make available to active employees and the eligible dependents of active employees, dental insurance coverage equivalent to the Delta Dental Premier Plan which includes a \$3,000 lifetime maximum orthodontia benefit.
2. Except as provided herein, represented employees shall be required to enroll in the Dental Plan. Represented employees who have dental insurance coverage from another source may, by providing written proof of such alternative coverage to the City, opt out of the Dental Plan. Employees who opt out of the Dental Plan shall be required to provide written confirmation of alternative coverage annually thereafter, by the first day of the Dental Plan open enrollment period. If such confirmation is not provided, the employee shall be required to enroll in the Dental Plan.

C. Life Insurance

1. The City shall make available a group life insurance policy for each employee in an amount equal to two times (2x) the employee's base salary up to a maximum of \$250,000, effective on the first day of the month following the date of hire. Employees may elect to waive the life insurance benefit amount in excess of \$50,000. Employees shall be required to enroll in this life insurance policy and pay the premium through the cafeteria plan. At separation from the City, employee will be offered the opportunity to convert their group life insurance policy to an individual policy.
2. Supplemental life insurance shall be available. Enrollment in the supplemental life insurance program is optional.

D. Long-Term Disability Insurance Sworn Members

1. The Association shall make available to represented employees Long-Term Disability (LTD) Insurance. All members shall purchase Long-Term Disability Insurance through the Association LTD program.
2. In no event shall an employee receive disability benefits in combination with sick leave, vacation, comp time, floating holidays or any other paid leave that will exceed his/her gross monthly salary.

E. Vision Care Insurance.

1. The City shall make available to employees and the dependents of employees Options I, II, and III of the City of Antioch Vision Plan administered by Medical Eye Services, Inc.
2. Enrollment in the Vision Care program is optional.

F. Employee Assistance Program.

1. The City shall make available to employees the City's current Employee Assistance Program (EAP), which is administered by MHN.
2. Enrollment in the EAP is mandatory.

G. Flexible Benefits (Cafeteria) Plan

The City will continue the flexible benefits plan as constituted on July 1, 2007.

1. Effective January 1, 2008, and for the duration of this Memorandum of Understanding the City shall make the following contributions to the Flexible Benefits Plan on behalf of represented employees.
 - a. For an employee who is eligible for employee only medical coverage, the City shall contribute the PERS Kaiser single Bay Area rate, subject to A.2 above and f. below.
 - b. For an employee who is eligible for two (2) party medical coverage, the City shall contribute the PERS Kaiser two (2) party Bay Area rate, subject to A.2 above and f. below.
 - c. For an employee who is eligible for family medical coverage, the City shall contribute the PERS Kaiser Family Bay Area rate, subject to A.2 above and f. below.
 - d. City shall contribute to the most densely populated dental plan at the appropriate employee's benefit enrollment level; 1 party, 2 party or Family
 - e. The City shall contribute to the most densely populated vision plan at the appropriate employee's benefit enrollment level; 1 party, 2 party or Family.
 - f. Effective January 1, 2008 and each January 1 thereafter for the duration of this agreement, the amounts specified in Section G., 2., a., b. and c. of this Article will be increased by the percentage amounts determined by the PERS Bay Area Kaiser service provider to provide said benefit up to a maximum increase of ten percent (10.0%) per year. In the event the increase that year is more than ten percent, the City will pay fifty percent (50%) of such increase and the employee will be responsible for the other fifty percent (50%) of such increase over the ten percent (10.0%).
 - g. The City will contribute up to the full ten percent (10%) to reduce the burden on the employee from the previous year should the increase in the previous year be greater than ten percent (10%). (Example: twelve percent (12%) increase one year, employee pays one percent (1%).

Board indicate that such contributions are taxable income subject to withholding. The City shall treat any cash payments to the employee as compensation subject to applicable local, State and Federal tax regulations and shall withhold and report such taxes as required by law. Each employee shall be solely and personally responsible for any Federal, State or local tax liability of the employee that may arise out of the implementation of this section.

H. Alternative Services

The City and the Association may, by mutual agreement, re-open discussions at anytime during the term of this Agreement to discuss alternative health and welfare benefit programs and/or service providers.

The City also reserves the right to offer optional alternative health and welfare benefit programs.

I. Non-Industrial Disability

1. Medical, dental and life insurance shall be paid by the City during the first six (6) months of an unpaid leave of absence.

J. Industrial Disability

1. Compensation benefits shall be determined and paid in accordance with the Workers' Compensation Laws of the State of California. If an employee exhausts their full year of "4850 time" prior to a permanent and stationary determination for such disability, the employee may use accumulated sick leave in conjunction with Workers' Compensation benefits to extend full salary. Employee may also choose to use accumulated vacation or compensatory time for such purposes. The employee may be eligible for long-term disability insurance benefits in conjunction with Workers' Compensation benefits. Long-term disability benefits shall be paid in accordance with the provisions of the long-term disability plan
2. Medical, dental and life insurance premiums shall be paid by the City for up to one year during an industrial injury leave.

4. RETIREMENT BENEFITS

A. PERS

The City shall provide coverage for all APSMA members at 3% @ 50 Formula for Safety members. In addition, the City shall provide Single Highest Year Compensation, Employee Paid Member Contribution (EPMC), 1959 level two survivor benefit, Military Service Credit Buy Back, and any other items for which the City has contracted effective with the start of this contract.

Effective the first full payroll period after March 1, 2011 the employee shall pay 3.0% of the City's PERS contributions in a tax deferred manner.

Effective the first full payroll period after March 1, 2012 the employee shall pay 5.0% of the City's PERS contributions in a tax deferred manner.

Effective the first full payroll period after June 1, 2012 the employee shall pay 9.0% of the City's PERS contributions in a tax deferred manner.

B. Deferred Compensation

During the term of this agreement the City shall not make any contributions to the employees deferred compensation account.

C. Medical-After-Retirement

PLAN A

I. Eligibility

- A.** This Plan A is available to bargaining unit members of the Antioch Police Sworn Management Association (APSMA) who have been employed by the City of Antioch Police Department for ten (10) years and retire(d) from the City of Antioch with a PERS retirement after November 1st 2004 and begin to draw PERS retirement benefits effective upon the date of separation from the City.
- B.** The spouse and dependents of eligible participants will be covered under this plan and eligible for coverage at the same level as the retiree. The spouse and dependents of a deceased retiree shall continue coverage at the same level except that such coverage will cease for the spouse upon his/her remarriage.
- C.** Dependents that lose dependent status shall have conversion rights or such continuation rights as exist under Federal law and subject to the rules of the group medical plans. At such time as the person loses dependent status, he/she should contact the City within the legally prescribed time from the date the coverage ends to make arrangements for conversion continuation.
- D.** The City will pay the premium costs for health insurance, as specified in IV, for the survivors of a member of APSMA who dies while employed by the City, provided that the employee has completed a minimum of five (5) years of employment with the City of Antioch.



II. Enrollment Period

Upon retirement, an employee who is eligible for benefits pursuant to this Plan A must satisfy the enrollment requirements of the City's current health insurance provider(s) in order to be enrolled in City-sponsored medical insurance.

Nothing in this section is intended to prevent an eligible retired employee from obtaining health insurance from an alternative provider. Retirees or spouses who chose alternative medical coverage and who are age 65 or above are subject to provisions of Section III. B.

If a retiree chooses to enroll in an alternative health insurance plan not provided by the City, such enrollment must be made within thirty (30) days of the date the employee's retirement becomes effective. A retiree who does not enroll in a City sponsored health insurance plan within the above thirty (30) days of his retirement, may enroll in a City sponsored plan at a later date.

Should a retiree, spouse, or qualified dependent who is enrolled in this Plan allow a lapse of coverage to occur, that person(s) will be dropped from this Plan. Such retiree, spouse or qualified dependent may re-enroll in this Plan. Actual enrollment in City sponsored medical insurance shall be subject to the limitations of the insurance provider (i.e. open enrollment periods).

III. Coverage

- A.** A retiree, widowed spouse or dependents may enroll in one of the medical insurance plans offered by the City to active employees, subject to the enrollment requirements of the carrier, or may seek alternative medical insurance pursuant to II above.

If insurance providers available for active City employees are changed, the City will make provisions to cover retirees.

- B.** A retiree and his/her spouse who attain age 65 and who are also enrolled in the City sponsored medical insurance must comply with the Medicare Supplement rules of the City's medical insurance plans. The City may also provide Medicare supplemental plans.

The City recognizes there may be some employees who are covered under this plan and who may not be eligible for Medicare. The City will provide medical insurance plans for those employees. Eligible retirees, spouses and dependants

who are not covered by Medicare will continue to receive coverage using the same medical insurance plans offered by the city to active employees.

IV. Minimum Employer Contribution

Each year, prior to open enrollment, the Employer Contribution cap will be set using the active employee's Kaiser Rate structure. Such cap will take into account the PEMCHA required Employer minimum.

For an employee only it will be the single party rate.

For an employee plus one dependent it will be the two party rate.

For an employee plus two or more dependents it will be the family rate.

(e.g. In 2008 the PEMHCA Kaiser single rate for Bay Area is \$470.67 per month.

The City's contribution toward a single party retiree in 2008 thus is the PEMHCA required minimum of \$97.00 plus \$373.67 for a total of \$470.67 per month.)

V. Payments

Any medical premium cost above the cap in IV above will be the responsibility of the retiree or his/her widowed spouse or dependents and shall be deducted from his/her PERS retirement check. The retiree or his/her widowed spouse or dependents will be responsible for authorizing these deductions.

Should an employee elect alternative medical coverage, reimbursement will be based on the out of pocket expense of the alternative coverage; however, it is not to exceed the employer contribution cap.

This Plan A is subject to any and all applicable State and Federal regulations. Changes to this Plan A necessary to comply with such regulations shall be made by the parties.

PLAN B

Bargaining Unit Employees Hired by the City after September 1, 2007 will be covered solely by Plan B.

For employees hired after September 1, 2007, the City will contribute One point Five percent (1.5%) of the employee's base monthly salary toward the Medical-After-Retirement Account (MARA). In the event the employee makes a contribution, if permitted by the IRS, of up to Two point Five percent of the employee's base monthly salary toward the Medical- After-Retirement Account, the City will match such contribution up to One percent (1.0%). The City's total contribution toward any employee will not exceed Two point Five percent (2.5%).

Employees in plan B shall have proprietary right to their individual plan and upon separation from the City shall maintain such right.

The parties agree to participate in a City wide committee to implement the new Medical After Retirement Account program. Among the topics to be considered, but not limited to, will be the following;

- The ability of current employees to switch to the new MARA.
- The ability of all employees to contribute additional monies to the MARA.

D. Retire/Rehire Program

The City shall implement a Retire/Rehire Program for this bargaining unit and it shall remain in place until February 28, 2016. APSMA members will be afforded the opportunity to work between 480 and 960 hours each fiscal year for two fiscal years.

To be eligible for the Retire/Rehire Program an individual must meet the following:

Must be age 50 or older.

Must have a minimum of 20 years of service with the City of Antioch.

Any eligible individual shall have retired from the City of Antioch with a service retirement from Cal PERS.

The rate of pay will be limited to the employee's current salary range and step prior to retirement. The return position will be hourly only; no benefits or other payments except those mandated by law.

Any employee who is participating in the Retire/Rehire Programs shall not be eligible for further participation on March 1, 2016, unless the employee's participation is extended by the City.

Any employee participating in the Retire/Rehire program shall meet with the Department to determine the individual's schedule.

The Retire/Rehire Program shall comply with all PERS rules and regulations.

5. LEAVES

A. Holidays

The City shall observe the following holidays:

<u>Holiday</u>	<u>Date</u>
New Year's Day	January 1st
Martin Luther Kings Jr.'s Birthday	3rd Monday, January
Lincoln's birthday	February 12th
Washington's Birthday	3rd Monday, February

Memorial Day	Last Monday, May
Independence Day	July 4th
Labor Day	1st Monday, September
Veteran's Day	November 11th
Thanksgiving	4th Thursday, November
Day after Thanksgiving	Day after Thanksgiving
Christmas Eve	December 24th
Christmas Day	December 25th

AP SMA members will have the observed holiday off at the discretion of the Chief of Police. If required to work, employees will receive holiday pay. If a holiday falls on a Saturday, the preceding work day shall be observed; if the holiday falls on a Sunday, the following work day shall be observed.

B. Floating Holidays

The City shall provide floating holidays in accordance with the table below except that employees with less than six (6) months' service in a calendar year but at least two (2) months' service are eligible for only one. Floating holidays must be taken within the calendar year earned and in full-day increments. The City shall grant floating holiday in accordance with the table below:

Calendar Year	Current FH	Supplemental FH	Total FH
2011	2	4	6
2012	2	3	5
2013	2	2	4
2014	2	2	4
2015	2	2	4
2016	2	2	4
2017	2	1	3

C. Vacation

- Police Captains and Police Lieutenants with original City hire dates after March 1, 1992, shall earn vacation leave as follows:
 - 3.385 hours per bi-monthly pay period from the date of initial hire through the fourth year of service.
 - 4.615 hours per pay period from the start of the fifth year through the ninth year of service.
 - 5.539 hours per pay period from the start of the tenth year through the fourteenth year of service.
 - 6.154 hours per pay period from the start of the fifteenth year through the nineteenth year of service.

7.692 hours per pay period from the start of the twentieth year of service.

2. Police Captains and Police Lieutenants, with original City hire dates prior to March 1, 1992, shall earn annual vacation leave as follows:

4.923 hours per bi-monthly pay period from the date of initial hire through the fourth year of service.

6.153 hours per pay period from the start of the fifth year through the ninth year of service.

7.077 hours per pay period from the start of the tenth year through the fourteenth year of service.

7.692 hours per pay period from the start of the fifteenth year through the nineteenth year of service.

9.230 hours per pay period from the start of the twentieth year of service.

3. New members of APSMA hired from outside the City of Antioch shall complete six (6) months of service with the City before being eligible to take vacation time.
4. Employees may earn vacation credit up to a maximum accumulation for 24-months (2-years) service. At that point, the employee earns no further vacation credit until the employee uses some of the accumulated credit. If such accumulation of credit involves two different rates of accumulation, such as would occur on the 5th, 10th, and 20th years of service, the higher rate of accumulation will be used for the 24-month figure. (Memo dated 5/10/76 to all Department Heads).
5. APSMA members will be allowed to cash out up to one (1) week of their annual vacation accrual during each calendar year. Election must be made no later than December 1 of each year.

D. Sick Leave

1. Sick leave is a privilege granted to regular and probationary employees to allow the continuation of pay and fringe benefits in case of personal illness or emergency for family. Sick leave is not an earned right to be taken as earned vacation. Sick leave is accumulated at the rate of 3.692 hours per bi-weekly pay period with unlimited accumulation.
2. Sick leave may not be used before it is earned.

3. If sick leave is used for purposes other than legitimate illness, it constitutes an abuse of privilege and can be considered employee dishonesty.
4. In order to receive compensation when absent on sick leave, the employee shall notify his/her immediate supervisor as close as possible to the time set for beginning the work duties.
5. Where leave abuse or excess is suspected, employee may be required to furnish reasonable acceptable evidence, including a doctor's certificate or other agreed upon form of verification, when the employee has been given prior written notice of excessive use of sick leave or the City can show cause to dispute the validity of the sick leave claim.
6. Sick leave may be used only in the following situations:
 - a. When the illness, injury or disability of the employee prevents the employee from performing his/her regular duties.
 - b. When the employee must provide emergency care for his/her spouse, child or dependent, living within the employee's household.
 - c. Sick leave may be used for medical and dental appointments when other arrangements cannot be made.

Sick Leave Upon Separation

An employee who separates with at least ten (10) years of consecutive service shall receive payment for forty percent (40%) of his/her unused sick leave up to a maximum of 320 hours.

Conversion

At the end of each calendar year if the employee has used less than forty (40) hours of sick leave, he/she may convert up to ninety-six (96) hours of current unused sick leave to vacation or cash on a 3-1 ratio providing such conversion does not reduce the sick-leave balance to less than two-hundred fifty (250) hours. Sick leave not converted shall continue to accumulate to the member's account.

E. Family and Medical Care Leave

Family and Medical Care Leave shall be as mandated by State and Federal Law and as provided by the City of Antioch Family Care and Medical Leave Policy, on file in the Human Resources Department.

F. Leave Without Pay

1. City Manager may grant a regular employee a leave of absence without pay. No leave shall be granted except upon written request of the employee. Approval shall be in writing. Leave may not exceed one year. Failure on the part of the employee to return promptly at its expiration without just cause shall be cause for termination.
2. Vacation and sick leave shall not accrue during a leave of absence without pay and the employee's anniversary date shall be deferred by the length of such leave.
- 3.. When a leave of absence is due to illness or injury, the City shall pay medical, dental, and life, insurance premiums for up to six (6) months.

G. Military Leave

Military leave shall be granted in accordance with State and Federal law.

H. Jury Duty

1. Any employee legally required to serve as a juror or witness in any judicial proceedings on a regularly scheduled work day shall be entitled to full pay for any period of time actually so served. However, this provision shall not apply if the employee is required to appear in court for a personal and/or non-work related issue.

A judicial proceeding is defined as, but is not limited to, coroners' inquests and hearings held pursuant to actions pending in either Justice, Municipal, Superior or Federal Courts or other official proceedings to which an employee is subpoenaed in relation to his/her City employment.

2. Any per diem compensation received by an employee for such service performed on a regularly scheduled work day shall be immediately remitted to the City. Any mileage payments received by such employee shall be retained by the employee. All employees shall promptly report any pending or probable absence due to such service and must report immediately the termination of such service. A copy of jury summons or subpoena will be filed with the City by the employee.
3. No employee shall be entitled to full pay for such service when rendered pursuant to an action or proceeding in which such employee or member of the immediate family thereof is a party to such action or proceeding, excepting there from actions initiated by the City and having some connection with such employee's employment by said City.

I. Funeral Leave

1. Time off with pay to arrange and attend funerals and related services of immediate family members (spouse, domestic partner, children, father, mother, brothers, sisters, mother-in-law, father-in-law, sisters-in-law, brothers-in-law, grandparents, spouse's grandparents and grandchildren) shall be allowed.
2. The amount of time off shall depend on the individual circumstances, but in no case shall it exceed three (3) days. The department head involved must be notified immediately.

J. Administrative Leave

- 1 Each January, APSMA members will receive 80 hours of administrative leave.
- 2 Administrative leave under this policy is not subject to being cashed out or "rolled over" and administrative leave is recorded exclusively on a "use it or lose it" basis for each calendar year.
- 3 Hours taken must be approved by the Department Head prior to use, consistent with work schedules and responsibilities.
- 4 The Department Head may recommend, and the City Manager may approve, additional hours on a case-by-case basis for FLSA exempt employees who work an extraordinary work assignment or occurrence. In January of each year, the City Manager will prepare a report to the City Council identifying any positions that received additional hours for the prior year and the related reasons.
- 5 New exempt management employees shall receive Administrative Leave identified in Paragraph (1) on a proportional or prorated basis for the calendar year.

6. MISCELLANEOUS

A. Vehicles, Mileage and Meals

APSMA members who use their own vehicles and who do not receive a car allowance shall receive reimbursement at the rate established by the Internal Revenue Service (IRS). This rate shall be adjusted when the IRS changes the rate.

For the term of this MOU the employees in this bargaining unit will be governed by the same Mileage and Meal provisions of the employees that they supervise. Those conditions are as provided for in the POA MOU Article XI D.

B. Uniforms

Effective November 1, 2007, members shall receive a uniform allowance of Eight Hundred Sixty Dollars and No/100ths (\$860.00) per year paid at the rate of Seventy-one Dollars and 67/100ths (\$71.67) per month.

Effective each November 1 thereafter for the duration of this Agreement, the uniform allowance for APSMA Members shall be increased by Twenty Dollars and No/100ths (\$20.00) per year, paid on a monthly basis.

C. Safety Equipment

1. Ballistic Vests

The City shall provide all APSMA members with a ballistic vest upon employment. Should such vest become unserviceable due to normal wear and tear, or defects, or the manufacturer's warranty date expires, the City shall replace the vest at no cost to the employee.

- a. The City reserves the right to determine the ballistic vest specifications including, but not limited to, manufacturer, design, threat level, etc.
- b. Members may, of their choosing, opt to purchase their own vest provided the chosen vest either meets or exceeds the ballistic vest specifications utilized by the Department. Should the cost of the vest exceed the cost of the City-issued vest, the City will reimburse the employee's expense, not to exceed the cost of the City-issued vest.

D. Educational Incentive

1. The City will reimburse employees for books, tuition, and mileage for approved college classes in accordance with Administrative Memo based on a first-come, first-served basis. (Administrative Memo 5, amount amended by Administrative Memo 56).
2. APSMA members are eligible for educational incentive pay under the current Police Educational Incentive Program. Specifically two and one half (2 ½ %) percent for an AA Degree; and five (5%) percent for a BA Degree.

7. GRIEVANCE PROCEDURES

The following grievance procedure is in accordance with the City of Antioch Personnel Rules.

A. Grievance Procedure

1. A grievance is any dispute between the City and an employee or employees, or employee organizations with respect to the meaning, interpretation, application or enforcement of merit system rules and regulations or Memorandum of Understanding.
2. It is the intent of the City to anticipate and diminish causes of grievances and settle any which arise informally at the lowest practical level of supervision as fairly and promptly as possible. Therefore, there must be time limits between the initiation of the grievance and its occurrence, between steps of the grievance procedure, and the time in which each answer must be given. Any grievance not initiated or pursued by the employee or the City, as the case may be, within these time limits, will be considered settled on the basis of the last timely demand or answer by either party, as the case may be, unless the time limit is extended by written agreement of both parties.

At each step of the grievance procedure, the City shall make available any records relied upon to sustain the action which gave rise to the grievance and any other information necessary and pertinent to the processing of the grievance, except for any materials which, in the City Manager's discretion, must, in the public interest, be kept confidential or which is intimate and private to the grieving employee.

- 3 Any employee in the merit system shall have the right to use the grievance procedure. Every employee or employee organization shall be able to use this grievance procedure free from restraint, discrimination, pressure of reprisal from any other employee, supervisor, division head, department head, or representative of employee organizations. Employee shall have the right to present grievances individually or through his/her employee organization. An employee shall have the right to withdraw the grievance at any step in the procedure. An employee shall have the right to designate a representative of an employee organization at the second step, or any succeeding step, of this grievance procedure. If the employee is represented by a representative of the employee organization, the employee filing the grievance shall also be present during the discussions and all steps of the grievance procedure.
4. Grievances will be processed in the following manner and within the stated time limits:
 - a. If an employee has a grievance he or she shall first discuss the matter alone with his or her immediate supervisor. The grievance must be presented within ten (10) working days following the occurrence of the

event or discovery of the event upon which the grievance is based. The supervisor shall make a thorough investigation of the reported grievance and render his or her decision within three (3) working days. Most grievances should be solved at this employee-supervisor level.

- b. If the employee is not satisfied with the decision of the supervisor in the first step and wishes to appeal the decision, the employee, either individually or by instructing the representative or the employee organization, can appeal to the Department Head. Such appeal must be presented in writing on the official City of Antioch Grievance Form and must be filed within five (5) working days after the supervisor's decision is given.

At this step of the grievance procedure, a supervisor or employee, individually or through his or her designated employee organization representative, shall have the opportunity to provide evidence from witnesses. The Department Head in this step shall make a thorough investigation of the reported grievance and render his or her decision in writing within five (5) working days.

- c. If the employee is not satisfied with the decision of the Department Head in the second step and wishes to appeal the decision, the employee individually or by instructing the designated representative of the employee organization, can appeal to the City Manager. The appeal shall be in writing and filed with the City Manager within five (5) working days of the date the decision was rendered by the Department Head in the preceding step. The written appeal shall include a detailed statement of the grievance. The City Manager or designee shall make a thorough investigation of the reported grievance and render his or her decision in writing within five (5) working days after the close of the investigation. The City may initiate its grievances at this step of the procedure. Such grievances shall be filed with the employee organization president and if not settled at this step, shall proceed to step d

- d. If the Association is not satisfied with the City Manager's or designee's decision at step (c.) of the disciplinary appeal or grievance procedure, the Association may require that the disciplinary appeal or grievance be referred to an impartial arbitrator by notifying the City Manager within ten (10) days of the conclusion of step (c.) The impartial arbitrator shall be designated by mutual agreement between the Association and the City Manager. The fees and expenses of the arbitrator and of a court reporter shall be shared equally by the Association and the City. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Arbitrator decisions on matters properly before them which pertain to the disciplinary actions involving the suspension, demotion, pay reduction or discharge of an employee or to a grievance shall be final and binding on both parties.

No Arbitrator shall entertain, hear or decide any dispute involving a position over which a recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as hereinabove set forth in paragraph A.1. of this Section.

B. Appeal from Disciplinary Action

1. Any employee in the merit system shall have the right to appeal to an Arbitrator any formal disciplinary action taken against him/her. Formal disciplinary action includes suspension, demotions, reductions in merit step and terminations. Failure to successfully complete a probationary period or to obtain a merit increase are not a disciplinary action and are not subject to appeal.
2. Within fifteen (15) calendar days after notice of discharge, demotion, reduction in merit step, suspension, the employee or the APSMA, may file an appeal in writing to the Human Resources Director. If the 15th day falls on a weekend or holiday, the deadline shall be 5:00 p.m. of the next City Hall working day.
3. Resignation before decision. Whenever any person who has requested a hearing resigns before final action has been taken, no further action shall be taken.

C. Disciplinary Action - Suspension

An employee may be suspended for disciplinary purposes and/or cause for a period not exceeding thirty (30) working days. Such suspension shall carry with it a loss of salary for the period of suspension.

D. Purging of Evaluations, Letters of Counseling and Letters of Reprimand from Personnel Files

1. While it is recognized by the City and the APSMA that Performance Evaluations, Letters of Counseling and Letters of Reprimand are not subject to the grievance procedures outlined in Section 7 of the MOU between the City and APSMA, it is agreed between the City and the APSMA a system be established which will allow for the purging of Letters of Counseling and Letters of Reprimand from individual employee personnel files on a case-by-case basis. Performance evaluations are not subject to purging.
2. Letters of Counseling and Reprimand are defined as follows:

Letters of Counseling - are non-disciplinary in nature. They are designed to inform employee(s) of unsatisfactory job performance and/or non-compliance to departmental policies, procedures or practices. Letters of Counseling are designed exclusively to improve unsatisfactory job performance by educating and training the employee(s) as to specific acceptable job standards.

Letters of Reprimand - are disciplinary action imposed upon an employee which formally documents an employee(s)' unsatisfactory job performance and/or non-compliance to departmental policies, procedures or practices.

3. APSMA members who incur Letters of Counseling or Reprimand may apply to the Chief of Police to have said Letters purged from their personnel files as follows:
 - a. Letters of Counseling may be purged following a period of two (2) years from the date issued, except Letters of Counseling resulting from a formal citizen's complaint will not be given consideration for purging until five (5) years from the date the Letter was issued.
 - b. Letters of Reprimand may be purged following a period of five (5) years from the date the Letter was issued.
 - c. All requests for the purging of Letters of Counseling or Reprimand shall be made in writing from the affected employee to the Chief of Police.
 - d. The Chief of Police maintains sole discretion in the decision of whether or not to purge Letters from an employee's personnel file. A decision not to purge a Letter of Counseling or Reprimand may be based on, but not limited to, the following reasons:
 - The Letter represents documentation of an improper pattern or practice by an employee, which continued over a significant period of time.
 - The employee has a pending internal investigation(s) which has not been resolved as of the date of the request.
 - Since the Letter was issued, the employee has incurred further discipline.
 - The City and/or the employee is involved in litigation to which the Letter may have some bearing.
 - The employee has a prior disciplinary suspension(s).

No changes in the Memorandum of Understanding or interpretations thereof will be recognized unless agreed to by the City Manager and the APSMA in writing.

8. LAYOFF

The City shall not furlough, demote an employee for non-disciplinary reasons or layoff Sworn APSMA members from January 1, 2011 to February 28, 2016. The parties may mutually agree to amend or modify this.

9. SEPARABILITY OF PROVISIONS

Should any article, clause or provision of this Memorandum of Understanding be declared illegal by final judgment of a court of competent jurisdiction, such invalidation of such article, clause or provision shall not invalidate the remaining portions hereof, and such remaining portions shall remain in full force and effect for the duration of this Memorandum of Understanding.

Upon such invalidation, the parties agree to meet and confer concerning substitute provisions rendered or declared illegal.

The provisions of this Memorandum of Understanding are subject to the Fair Labor Standards Act as it is applied to public jurisdictions.

10. REOPENER

During the term of this agreement, either party can initiate negotiations regarding the elements contained in this agreement, by providing the other party a written notice requesting the other party to meet and confer. The parties will begin negotiations within thirty (30) days of the written request. The City and APSMA are required to negotiate in good faith regarding all issues, including maintaining the appropriate differential between the top step Sergeant (APOA classification) and the top step of the Lieutenant (APSMA classification). Formerly the City maintained a 25% differential between the top step of each classification.



11. TERM OF AGREEMENT

This Memorandum of Understanding is for a term commencing, November 1, 2007 through February 28, 2017.

CITY OF ANTIOCH

ANTIOCH POLICE SWORN MANAGEMENT

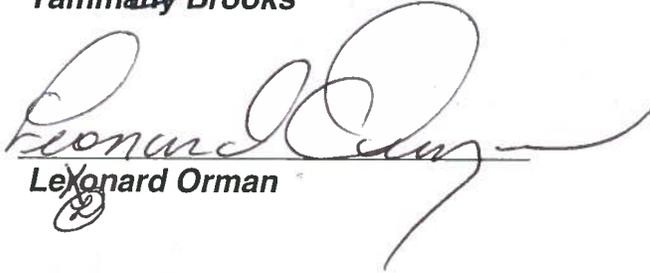
Jim Jakel
City Manager



John VanderKlugt



Tammany Brooks



Leonard Orman

Date

12/4/13

Date

APPENDIX A

**MEDICAL COMPONENT ONLY WORK SHEET FOR CAFETERIA BENEFIT PLAN AND
RETIREE PAYMENT CALCULATION**

Using the Kaiser Single Party as an example

	Calculations		Calculations
Kaiser 2007 rate PERS Bay Area	\$ 431.17	Kaiser 1-1- 2008 rate PERS Bay Area	\$ 470.67
PEMCA minimum 2007 (paid by City separately to PERS)	\$ 80.80	PEMCA minimum 2008 (paid by City separately to PERS)	\$ 97. 00
City contribution toward single party medical component of Cafeteria plan or retiree medical base number	\$350.37	City contribution toward single party medical component of Cafeteria plan or retiree medical base number	\$373.67 + \$97.00 (from above) = \$470.67

Using the Kaiser Two Party as an example

	Calculations		Calculations
Kaiser 2007 rate PERS Bay Area	\$ 862.34	Kaiser 1-1- 2008 rate PERS Bay Area	\$ 941.34
PEMCA minimum 2007 (paid by City separately to PERS)	\$ 80.80	PEMCA minimum 2008 (paid by City separately to PERS)	\$ 97. 00
City contribution toward two party medical component of Cafeteria plan or retiree medical base number	\$781.54	City contribution toward two party medical component of Cafeteria plan or retiree medical base number	\$844.34 + \$97.00 (from above) = \$941.34

Using the Kaiser Family as an example

	Calculations		Calculations
Kaiser 2007 rate PERS Bay Area	\$1,121.04	Kaiser 1-1- 2008 rate PERS Bay Area	\$1,223.74
PEMCA minimum 2007 (paid by City separately to PERS)	\$ 80.80	PEMCA minimum 2008 (paid by City separately to PERS)	\$ 97. 00
City contribution toward family medical component of Cafeteria plan or retiree medical base number	\$1,040.24	City contribution toward family medical component of Cafeteria plan or retiree medical base number	\$1,126.74 + \$97.00 (from above) = \$1,223.74

AV

**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF DECEMBER 10, 2013**

Prepared by: Victor Carniglia, City Consultant 
Approved by: Jim Jakel, City Manager 
Date: December 3, 2013
Subject: Approval of the First Amended Out of Agency Service Agreement to Extend the Previously Approved Out of Agency Service Agreement with PG&E for the PG&E Power Plant Currently in Operation Located at 3225 Wilbur Ave

RECOMMENDATION

Staff recommends that the City Council take the following action:

- Adopt the attached resolution approving the First Amended Out of Agency Service Agreement with PG&E to extend for a one (1) year period the previously extended and previously approved "Out of Agency Service Agreement" between the City of Antioch and PG&E for the PG&E Gateway Generating Facility located at 3225 Wilbur Avenue and authorize the City Manager to execute it (Attachment "A").

PG&E representatives have already approved and signed the First Amended Out of Agency Service Agreement as contained in Attachment "A".

BACKGROUND INFORMATION

On April 9, 2008, LAFCO (Local Agency Formation Commission) authorized the City of Antioch to execute an "Out of Agency Service Agreement" with PG&E for the purpose of providing water and sewer collection services for the Gateway Generating Facility, which was at the time nearing completion. This Agreement was subsequently approved by the City Council and executed by both the City and PG&E on September 9, 2008. The term of the agreement was for a one (1) year period. The Northeast Antioch annexation process was not completed within that one year timeframe, and a one year extension to the Agreement was granted by City Council on September 8, 2009, with no changes to the Agreement other than adding a year to the term of the Agreement. Attached is a copy of the original Out of Agency Services Agreement (Attachment "B").

As events have subsequently borne out, the annexation process has taken much longer than anyone could have reasonably expected, as the Tax Sharing and Infrastructure Agreements were just adopted over the last month by the County and the City. Subsequent extensions to the Out of Agency Service Agreement were not actively pursued by PG&E or the City given the belief by both parties that the annexation would be completed in the near future, rendering an extension unnecessary.

While the original Out of Agency Service Agreement addressed a number of issues relating to the annexation process, the Agreement also requires PG&E to indemnify the City in the event legal challenges are made to the City's Northeast Antioch Annexation request (see Attachment

"B" Section 10: d and e). As City Council is aware, LAFCO requires that the City indemnify LAFCO for legal challenges to the City's annexation request. This indemnity question has been complicated by the controversy over whether the residents of Area 2b can vote on the issue of annexation. LAFCO has to date taken the position that Area 2b residents cannot vote due to the fact that Area 2b is considered to be an island under current State LAFCO law and local LAFCO policies. This question of indemnity therefore becomes even more critical given these potential legal issues.

In order to eliminate any uncertainty about the current legal status of the PG&E Out of Agency Service Agreement and to ensure that the important indemnity provisions of the Agreement continue in full effect, staff recommends that the First Amended Out of Service Agreement be approved to extend the Agreement for an additional year period. It is important to note that the indemnity provisions of the Agreement will continue to be in effect post annexation.

ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration, which addressed the Out of Agency Service Agreement, was previously adopted by City Council in March 2008, and was updated in June 2012, adequately addresses any environmental impacts of the extension.

ANALYSIS:

The First Amended Out of Agency Service Agreement changes the existing Out of Agency Agreement in the following respects:

- The title of Agreement is changed from "Out of Agency Service Agreement" to "First Amended Out of Agency Service Agreement";
- Several of the original recitals have been removed, and several new recitals have been added to: (a) update and correct the facts that have transpired since the execution of the original Agreement and the first extension of the original Agreement; and (b) to clarify and confirm that the indemnity that is being provided by PG&E applies to legal challenges arising from the LAFCO proceedings relating to all three annexation areas. This latter clarification is considered important because at the time the parties signed the original Agreement, the City had only submitted one annexation application to LAFCO, for Area 1. Since then, the City submitted applications for Areas 2a and 2b, and PG&E has confirmed that the indemnity provisions are intended to cover challenges to all three annexation processes for the entire Northeast Annexation Area.
- The original Section 5 of the Agreement has been removed because it described certain requirements that PG&E was to meet before the City would provide sewer and water service to the site. Since that time, PG&E complied with all these requirements and the City commenced sewer and water service to the site. Consequently, these provisions have been removed to avoid any possible confusion about whether they may still apply. The removal of Section 5 changed the numbering all subsequent sections.
- Minor changes were made to the new Section 6 (formerly Section 7) to ensure consistency with the revised recitals and clarify that the indemnity applies to legal challenges to the entire Northeast Annexation Area, including Area 1, Area 2a, and Area 2b.
- The new Section 10 (formerly Section 11) was changed to give effect to the new, one (1) year extension of the City's Out of Agency Service obligations. As revised, the City's service obligation would expire on December 31, 2014. As Council is aware the annexation is

expected to be completed well before this expiration date, with a LAFCO hearing on the annexations tentatively scheduled for January 8, 2014.

- Minor changes were made to new Section 12 (formerly Section 13) to provide that the Agreement may, but need not, be recorded by the City. The language of the existing Agreement stated that it "shall" be recorded; however, it was not recorded, and PG&E has expressed a preference for not recording the new Agreement because of the potential implications on its title to the property. Because the Agreement will automatically expire upon completion of the annexation process, and because the City retains the ability to record the Agreement if the annexation process is not completed in the anticipated time frame, Staff believes this is a reasonable compromise and accommodation to PG&E's concern.

All other provisions of the original and extended Out of Agency Service Agreements would remain the same under the proposed First Amended Out of Agency Service Agreement.

FISCAL IMPACTS

Extending the Out of Agency Service Agreement ensures that the legal protections built into the Agreement will be in full effect as the Northeast Antioch Annexation process moves forward in the coming months to a decision by LAFCO, which is anticipated to occur in early 2014. While the court costs of any potential future litigation are by nature highly variable, these costs could be substantial.

OPTIONS

The City could deny the extension of the Out of Agency Service Agreement. This would have a negative impact on the question of indemnity.

ATTACHMENTS

- A: Proposed First Amended Out of Agency Service Agreement with PG&E
- B: Previously approved Out of Agency Service Agreement with PG&E

RESOLUTION NO. 2013/**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDED OUT OF AGENCY SERVICE AGREEMENT TO EXTEND THE PREVIOUSLY APPROVED OUT OF AGENCY SERVICE AGREEMENT WITH PG&E FOR THE PG&E GENERATING FACILITY CURRENTLY IN OPERATION AT 3225 WILBUR AVE

WHEREAS, State Government Code Section 56133 allows a jurisdiction to enter into an "Out of Agency Service Agreement" to permit the provision of services on a temporary basis to property located outside of the boundaries of the jurisdiction, subject to the approval of such a request by LAFCO, and

WHEREAS, the City Council on March 28, 2008 authorized City staff to execute an Out of Agency Service Agreement with PG&E for the Gateway Generating Facility located at 3225 Wilbur Ave, and

WHEREAS, LAFCO on April 9, 2008 authorized the City to execute an Out of Agency Service with PG&E for the Gateway Power Plant, and

WHEREAS, the Out of Agency Service Agreement was executed by City staff and PG&E representatives on September 9, 2008, and

WHEREAS, the City Council on September 8, 2009 approved a one year time extension to the Out of Agency Service Agreement with PG&E as a result of the length of time involved in processing the annexation involving the PG&E facility, referred to as the Northeast Antioch Annexation, and

WHEREAS, a further extension to the Out of Agency Service Agreement is now necessary due to the extensive amount of time it has taken to move the annexation process forward toward completion, and

WHEREAS, a number of changes are necessary to the text of the original Out of Agency Service Agreement with PG&E due to the change in circumstances that have occurred from the time the original Out of Agency Service Agreement was executed on September 9, 2008 to the present day, and

WHEREAS, the City is authorized to submit an application for an Out of Agency Service Agreement for the Delta Diablo Sanitation District (DDSD) given the City's Co Annexation Agreement with DDSD, and

WHEREAS, a Mitigated Negative Declaration has been prepared and previously approve by City Council, which adequately addresses any environmental impacts of the project.

NOW THEREFORE BE IT RESOLVED that the City Council makes the following determination:

RESOLUTION NO. 2013/**

December 10, 2013

Page 2

1. The City Manager is hereby authorized to execute the First Amended Out of Agency Service Agreement to extend the previously approved Out of Agency Service Agreement with PG&E for the PG&E power generating facility currently in operation at 3225 Wilbur Ave, subject to the stipulations as contained in the Agreement, attached herein as Exhibit 1 to this Resolution.

* * * * *

I **HEREBY CERTIFY** that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 10th day of December, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ARNE SIMONSEN
CITY CLERK OF THE CITY OF ANTIOCH

ATTACHMENT "A"

RECORDED AT THE REQUEST OF AND
WHEN RECORDED MAIL TO:

Lynn Tracy Nerland, City Attorney
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007

APN _____

(Space above reserved for Recorder's use only)

FIRST AMENDED OUT OF AGENCY SERVICE AGREEMENT

THIS FIRST AMENDED OUT OF AGENCY SERVICE AGREEMENT (this "**Agreement**") dated as of the ___th day of December, 2013 (the "**Effective Date**"), is between the City of Antioch, California (the "**City**"), and Pacific Gas & Electric Company, a California corporation ("**PG&E**").

WITNESSETH:

WHEREAS, Pacific Gas & Electric Company ("**PG&E**") desires to annex its property at 3225 Wilbur Avenue in unincorporated Contra Costa County near northeast Antioch as further described as Assessors Parcel Number _____ to the City of Antioch to receive City services, and to Delta Diablo Sanitation District ("**DDSD**"), Zone 3, to receive sewer treatment service; and

WHEREAS, between June 2007 and August 2013, the City filed three applications with the Contra Costa County Local Agency Formation Commission ("**LAFCO**") to annex to the City and to the **DDSD** three distinct areas currently located in unincorporated Contra Costa County near northeast Antioch, which applications were designated as **LAFCO** Proposals Numbers 07-17, 13-07, and 13-08 and together constitute the "**Northeast Annexation**." Collectively, the three areas subject to **LAFCO** Proposals Numbers 07-17, 13-07, and 13-08 are commonly referred to, and are referred to herein, as the "**Northeast Annexation Area**," and the **Northeast Annexation Area** includes the subject property owned by **PG&E** at 3225 Wilbur Avenue; and

WHEREAS, **PG&E** completed construction of a power plant located at 3225 Wilbur Ave. (the "**Gateway Power Plant**" or the "**Project**") within the **Northeast Annexation Area** prior to the City's completion of the **LAFCO** process for annexation of the **Northeast Annexation Area** to the City, including the construction and dedication to the City of certain potable water and sewer collection facilities necessary to allow the City and **DDSD** to provide potable water service and sewer collection treatment services to the **Project**, and **PG&E** required the City and **DDSD** to commence providing such services in order for the **Project** to become operational; and

WHEREAS, on April 9, 2008, LAFCO approved, and on September 9, 2008, the City and PG&E entered into, an "Out of Agency Services Agreement," as provided by California Government Code Section 56133, to allow the City to commence providing potable water and sewer collection services to the Project; and

WHEREAS, the City and PG&E desire to renew and extend the term of the Out of Agency Services Agreement to (a) document the City's and PG&E's agreement that PG&E will indemnify the City for all costs incurred by the City arising from or relating to any litigation that may be filed against LAFCO to challenge LAFCO actions on the City's pending annexation applications for the Northeast Annexation Area, and (b) permit the City to continue to provide potable water and sewer services to the Gateway Power Plant until such time as the City completes the annexation process for the Northeast Annexation Area, or until the parties mutually agree to further extend the Out of Agency Services Agreement.

NOW THEREFORE, in consideration of the agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- 1) The City will provide potable water and sewer collection service to PG&E at the Gateway Power Plant of the same nature and on the same terms and conditions that it provides potable water and sewer collection service to comparable facilities located within the City. The City retains the right to suspend such service to the Gateway Power Plant in the event the City determines PG&E has not complied with any of the terms of this Agreement, or in the event this Agreement expires.
- 2) PG&E shall be responsible at its sole cost for designing, permitting (including any necessary City Encroachment Permits), funding, and constructing the sewer and water lines, including any inspection costs, to serve the Gateway Power Plant, and PG&E shall pay all required connection and usage fees and charges.
- 3) The plans for the sewer and water extensions for the Gateway Power Plant shall be prepared by PG&E, and must be reviewed and approved by the City Engineer prior to the initiation of construction. All required permits shall be secured by PG&E, including any required encroachment permits, prior to the initiation of construction, or as determined by the Director of Community Development.
- 4) PG&E shall be responsible for the cost of any environmental mitigation required for Project, including the construction of the sewer and water lines, and including any costs incurred to appropriately remediate any contaminants and/or environmental hazards revealed during the construction of the sewer and water lines.
- 5) PG&E shall be responsible for negotiating and executing an agreement with DDSD authorizing PG&E to connect the sewer line to the Bridgehead Pump Station for sewer treatment services.
- 6) PG&E agrees to continue to support the annexation of the Gateway Power Plant to the City of Antioch and Delta Diablo Sanitation District as part of the Northeast Annexation Area annexation process initiated by the City of Antioch, or subsequent annexation

applications filed in the future by the City of Antioch. PG&E agrees not to file an application to annex the Gateway Power Plant to DDSD or support any annexation of the Gateway Power Plant to DDSD that does not include a concurrent annexation to the City of Antioch.

- 7) PG&E agrees to pay to the City required annexation fees at the time the Gateway Power Plant is annexed to the City of Antioch.
- 8) The completed sewer and water improvements for the Project located within the City right of way to serve the Gateway Power Plant shall be owned by the City, free and clear of any liens or encumbrances.
- 9) PG&E shall indemnify, protect, defend, and hold the City harmless from and against:
 - a) Any and all loss, damage, claims, demands, causes of action or contentions, including costs of litigation and attorney's fees, consulting and expert fees resulting from or related to the design and construction of the sewer and water lines.
 - b) Any and all loss, damage, claim, causes of action or contentions including cost of litigation including attorneys fees, consulting, and expert fees brought by or on behalf of any third party arising out of the actions, injury, disease or death of any person(s), including employees of PG&E and employees of PG&E's contractors and subcontractors, or damage to property directly or indirectly resulting from actions of PG&E, its agents, contractors, subcontractors and employees, or on behalf of or at PG&E's direction from the construction of the sewer and water lines and/or any remediation activities associated with the construction of such lines. PG&E hereby waives rights of subrogation and workers' compensation immunity with respect to workers' compensation liability and shall require such waivers from all subcontractors.
 - c) Any and all loss, damage, claims, demands, causes of action or contentions, including attorneys' fees and costs, and consulting and expert fees resulting from any misrepresentation, breach of warranty or covenant, or non-fulfillment of any representation, covenant or agreement on the part of PG&E pursuant to this Agreement.
 - d) Any and all loss, damage, claims, demands, causes of action or contentions, including attorney's fees and costs and consulting and expert fees arising from this Agreement or the Northeast Annexation.
 - e) Any and all loss, damage, claims, demands, causes of action or contentions, including attorneys' fees and costs, consulting and expert fees incident to, or incurred in connection with the foregoing subsections or the enforcement of any of the indemnity obligations contained in this Agreement.
 - f) In the event the indemnities set forth herein are found to be unenforceable, the Parties agree to negotiate, in good faith, a substitute indemnity provision that

embodies the intent of the original indemnity without the objectionable provisions which made it unenforceable. It is the intent of the Parties that the indemnity provisions contained herein shall survive the termination of this Agreement, unless termination occurs prior to the consummation of the transactions contemplated herein.

- g) The foregoing indemnity of PG&E shall not apply to the extent that any claims, causes of action or damages are caused solely by the gross negligence or intentional misconduct of the City, but shall apply if any claims or damages are occasioned by the joint negligence of PG&E and other persons, including the City.
 - h) PG&E shall provide adequate insurance pursuant to the City's encroachment permit.
- 10) This Agreement is temporary, and shall expire on December 31, 2014, unless both parties mutually agree to extend the term of this Agreement. This Agreement will terminate upon annexation of the PG&E Gateway Power Plant to the City of Antioch. The provisions in Section 10 of this Agreement shall survive expiration or termination.
 - 11) This Agreement shall be governed by, and construed in accordance with, the laws of the State of California and the United States, as appropriate. The parties agree that the Superior Court of the State of California, in and for the County of Contra Costa, is the proper and exclusive forum for resolution of any disputes that might arise hereunder.
 - 12) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. PG&E may not assign any aspect of this Agreement to any third party without the prior written consent of the City, which consent shall not be unreasonably withheld. The provisions of this Agreement may be recorded against the subject property on which the Gateway Power Plant is located, with the language in the recording caption subject to the approval of the City Attorney. Such recording may take place within 90 days of the execution of this Agreement.
 - 13) If any term, covenant, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.
 - 14) This Agreement, constitutes the entire understanding among the parties hereto with respect to the transactions contemplated herein and all prior to contemporaneous agreements, understandings, representations, and statements, whether oral or written, are deemed merged into this Agreement. Neither this Agreement, nor any provisions hereof may be waived, modified, amended, discharged, or terminated except by instrument in writing signed by all parties and then only to the extent set forth in such agreement.
 - 15) This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Execution of duplicates and delivery by facsimile will be binding upon the

Parties hereto.

IN WITNESS WHEREOF, the parties have signed this First Amended Out of Agency Service Agreement as of the date signified below.

CITY OF ANTIOCH

PACIFIC GAS& ELECTRIC COMPANY

By: _____

By: _____

Name: Jim Jakel

Name: Steve G. Royall

Title: City Manager, City of Antioch

Title: Gateway Generating Station, Plant Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

Attest:

Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "B"

OUT OF AGENCY SERVICE AGREEMENT

THIS OUT OF AGENCY SERVICE AGREEMENT (this "Agreement") dated as of the 9th day of September, 2008 (the "Effective Date"), is between the City of Antioch, California (the "City"), and Pacific Gas & Electric Company, a California corporation ("PG&E").

WITNESSETH:

WHEREAS, Pacific Gas & Electric Company ("PG&E") desires to annex to the City of Antioch to receive City services, and annex to Delta Diablo Sanitation District (DDSD), Zone 3, to receive sewer treatment service. The Project shall be referred to herein as the Gateway Generating Station Project (hereinafter "the Project"). The Project includes, without limitation, PG&E's design and construction of a sewer line to provide effluent to the DDSD's Bridgehead Pump Station, the design and construction of a backwater mitigation structure, and the design and construction of a potable water line; and

WHEREAS, the City of Antioch has initiated the reorganization process and intends to proceed with the annexation process through the statutory processes set forth in the Cortese-Knox Reorganization Act of 1985, as amended from time to time ("the Act"), and complete said annexation as expeditiously as possible; and

WHEREAS, the City Council on June 26, 2007 authorized City staff to submit an application to LAFCO for the annexation of the area referred to as Area 1, which includes the subject property owned by PG&E on which the Gateway Power Plant is located; and

WHEREAS, the City staff subsequently filed an application with LAFCO for the annexation of Area 1, hereby referred to as the "Northeast Annexation"; and

WHEREAS, while the Northeast Annexation has proceeded through the LAFCO review process, the Tax Transfer Agreement between the City and Contra Costa County remains to be completed; and

WHEREAS, it is the policy of the Contra Costa County LAFCO not to deem an annexation application complete until the Tax Transfer Agreement is negotiated and executed; and

WHEREAS, PG&E is nearing completion of a power plant located at 3225 Wilbur Ave. (the "Gateway Power Plant") within the Northeast Annexation Area, and the Gateway Power Plant requires the provision of City potable water and sewer collection services, and sewer treatment services from the Delta Diablo Sanitation District (DDSD) in order to become operational; and

WHEREAS, California Government Code Section 56133 allows a jurisdiction to enter into an "Out of Agency Services Agreement" to permit the provision of services on a temporary basis to property located outside of the boundaries of the jurisdiction in anticipation of annexation. Such a Out of Agency Services Agreement was approved by LAFCO on April 9, 2008, and

WHEREAS, a Negative Declaration has been prepared and was adopted by the Antioch City Council on March 25, 2008, which adequately addresses the environmental impacts of the

Northeast Antioch Annexation, with the scope of this Negative Declaration being sufficient to address the Out of Agency Agreement between the City of Antioch and PG&E; and

WHEREAS, the Antioch City Council on March 25, 2008 authorized the City Manager to execute an Out of Agency Agreement with PG&E for the Gateway Power Plant for sewer and water service in advance of annexation pursuant to the terms of this Agreement, and

WHEREAS, on April 9, 2008 the Contra Costa County LAFCO gave approval to the City of Antioch to extend service outside of the City's jurisdictional boundary to PG&E for the Gateway Power Plant.

NOW THEREFORE, in consideration of the agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- 1) The City will provide potable water and sewer collection service to PG&E at the Gateway Power Plant of the same nature and on the same terms and conditions that it provides potable water and sewer collection service to comparable facilities located within the City. The City retains the right to suspend such service to the Gateway Power Plant in the event the City determines PG&E has not complied with any of the terms of this agreement, or in the event this agreement expires.
- 2) PG&E shall be responsible at its sole cost for designing, permitting (including any necessary City Encroachment Permits), funding, and constructing the sewer and water lines, including any inspection costs, to serve the Gateway Power Plant, and PG&E shall pay all required connection and usage fees and charges.
- 3) The plans for the sewer and water extensions for the Gateway Power Plant shall be prepared by PG&E, and must be reviewed and approved by the City Engineer prior to the initiation of construction. All required permits shall be secured by PG&E, including any required encroachment permits, prior to the initiation of construction, or as determined by the Director of Community Development.
- 4) PG&E shall be responsible for the cost of any environmental mitigation required for Project, including the construction of the sewer and water lines, and including any costs incurred to appropriately remediate any contaminants and/or environmental hazard's revealed during the construction of the sewer and water lines.
- 5) PG&E agrees that in order for the sewer and water lines to be accepted by the City, PG&E must:
 - a) Construct the VCP/Ductile iron gravity sewer line per the approved drawings.
 - b) Install a gate valve with electric actuator/operator at the Bridgehead Pumping Station to prevent backup of the line while DDS is conducting maintenance.
 - c) Provide the City of Antioch with a copy of the operations procedure and emergency contact information that DDS and Gateway operations personnel develop in support of the maintenance outages at Bridgehead.

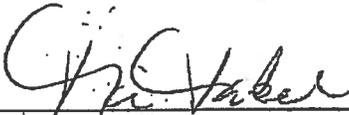
- d) Install a grinder pump at the Plant Services Bldg. lift station to further minimize solids in the line.
- e) Upon acceptance PG&E agrees to reimburse the City of Antioch within 30 days on a T&M basis for cleaning of the sewer line from PG&E's Gateway facility to DDS's Bridgehead Pumping Station until such time as it is determined by the City there are sufficient flows in the line to ensure proper scouring of solids. The City of Antioch will not be responsible for stoppages or maintenance on PG&E's property. Responsibility for reimbursement for cleaning of the line will cease at such time additional customers are added to the west of the Gateway Plant, as determined by the City. Additionally, if service connections are added to the east of the Gateway Plant, PG&E shall only be responsible for the portion of the main line that is solely utilized by PG&E (i.e. from the Gateway Power Plant to the first connection to the east).
- 6) PG&E shall be responsible for negotiating and executing an agreement with DDS authorizing PG&E to connect the sewer line to the Bridgehead Pump Station for sewer treatment services.
- 7) PG&E agrees to continue to support the annexation of the Gateway Power Plant to the City of Antioch and Delta Diablo Sanitation District as part of the Northeast Annexation process initiated by the City of Antioch, or subsequent annexation application filed in the future by the City of Antioch. PG&E agrees not to file an application to annex the Gateway Power Plant to DDS or support any annexation of the Gateway Power Plant to DDS that does not include a concurrent annexation to the City of Antioch.
- 8) PG&E agrees to pay to the City required annexation fees at the time the Gateway Power Plant is annexed to the City of Antioch.
- 9) The completed sewer and water improvements for the Project located within the City right of way to serve the Gateway Power Plant shall be owned by the City, free and clear of any liens or encumbrances.
- 10) PG&E shall indemnify, protect, defend, and hold the City harmless from and against:
 - a) Any and all loss, damage, claims, demands, causes of action or contentions, including costs of litigation and attorney's fees, consulting and expert fees resulting from or related to the design and construction of the sewer and water lines.
 - b) Any and all loss, damage, claim, causes of action or contentions including cost of litigation including attorneys fees, consulting, and expert fees brought by or on behalf of any third party arising out of the actions, injury, disease or death of any person(s), including employees of PG&E and employees of PG&E's contractors and subcontractors, or damage to property directly or indirectly resulting from actions of PG&E, its agents, contractors, subcontractors and employees, or on behalf of or at PG&E's direction from the construction of the sewer and water lines and/or any remediation activities associated with the construction of such lines. PG&E hereby waives rights of subrogation and workers' compensation immunity with respect to workers' compensation liability and shall require such waivers from all subcontractors.

- c) Any and all loss, damage, claims, demands, causes of action or contentions, including attorneys' fees and costs, and consulting and expert fees resulting from any misrepresentation, breach of warranty or covenant, or non-fulfillment of any representation, covenant or agreement on the part of PG&E pursuant to this Agreement.
 - d) Any and all loss, damage, claims, demands, causes of action or contentions, including attorney's fees and costs and consulting and expert fees arising from this Agreement or the Northeast Annexation.
 - e) Any and all loss, damage, claims, demands, causes of action or contentions, including attorneys' fees and costs, consulting and expert fees incident to, or incurred in connection with the foregoing subsections or the enforcement of any of the indemnity obligations contained in this Agreement.
 - f) In the event the indemnities set forth herein are found to be unenforceable, the Parties agree to negotiate, in good faith, a substitute indemnity provision that embodies the intent of the original indemnity without the objectionable provisions which made it unenforceable. It is the intent of the Parties that the indemnity provisions contained herein shall survive the termination of this Agreement, unless termination occurs prior to the consummation of the transactions contemplated herein.
 - g) The foregoing indemnity of PG&E shall not apply to the extent that any claims, causes of action or damages are caused solely by the gross negligence or intentional misconduct of the City, but shall apply if any claims or damages are occasioned by the joint negligence of PG&E and other persons, including the City.
 - h) PG&E shall provide adequate insurance pursuant to the City's encroachment permit.
- 11) This Agreement is temporary, and shall expire one year of the date it is executed by both parties, unless both parties mutually agree to extend the term of this Agreement. This Agreement will terminate upon annexation of the PG&E Gateway Power Plant to the City of Antioch. The provisions in Section 10 of this Agreement shall survive expiration or termination
- 12) This Agreement shall be governed by, and construed in accordance with, the laws of the State of California and the United States, as appropriate. The parties agree that the Superior Court of the State of California, in and for the County of Contra Costa, is the proper and exclusive forum for resolution of any disputes that might arise hereunder.

- 13) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. PG&E may not assign any aspect of this Agreement to any third party without the prior written consent of the City, which consent shall not be unreasonably withheld. The provisions of this Agreement shall be recorded against the subject property on which the Gateway Power Plant is located, with the language in the recording caption subject to the approval of the City Attorney. Such recording shall take place within 90 days of the execution of this Agreement.
- 14) If any term, covenant, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.
- 15) This Agreement, constitutes the entire understanding among the parties hereto with respect to the transactions contemplated herein and all prior to contemporaneous agreements, understandings, representations, and statements, whether oral or written, are deemed merged into this Agreement. Neither this Agreement, nor any provisions hereof may be waived, modified, amended, discharged, or terminated except by instrument in writing signed by all parties and then only to the extent set forth in such agreement.
- 16) This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Execution of duplicates and delivery by facsimile will be binding upon the Parties hereto.

IN WITNESS WHEREOF, the parties have signed this Out of Agency Service Agreement as of the date signified below.

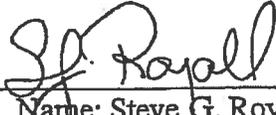
CITY OF ANTIOCH

By: 

Name: JIM JAKER

Title: City MANAGER

PACIFIC GAS & ELECTRIC
COMPANY

By: 

Name: Steve G. Royall

Title: Gateway Generating Station,
Plant Manager

**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF DECEMBER 10, 2013**

Prepared by: Mindy Gentry, Senior Planner *MA*
Approved by: Tina Wehrmeister, Community Development Director *TW*
Date: December 5, 2013
Subject: GP-13-02, Z-13-07, PD-08-01, PW 608, UP-08-01
The Pointe Subdivision 9017 ("Pointe Project")

RECOMMENDATION/ACTIONS

It is recommended that the City Council uphold the Planning Commission's decision and deny the project (Attachment "A"). CEQA does not apply to project denials; therefore, it is further recommended that the City Council take no action on the Initial Study/Mitigated Negative Declaration (IS/MND) for the Project.

1. Adopt the resolution denying the General Plan amendments.
2. Adopt the resolution denying the rezone of the subject property from Hillside Planned Development (HPD) to Planned Development (PD).
3. Adopt the resolution denying the Final Development Plan, Vesting Tentative Map, and Use Permit for 60 single family units.

OPTIONS

1. If the City Council desires to consider further action on the project, including possible approval, then the Council should:
 - a. Direct staff to: (i) respond to comments received on the IS/MND; OR (ii) prepare an environmental impact report; and
 - b. Direct staff to prepare proposed resolutions reflecting the Council's direction.

APPLICATION

Discovery Builders, a company run by Albert Seeno III, requests approval of the following: (1) General Plan amendments (GPA) to: (a) remove the subject property's and Black Diamond Ranch's current designation of Low Density Residential and instead to include the properties in the Somersville Road Corridor Focus Area and (b) add language to the General Plan waiving the requirements of certain applicable sections of the General Plan related to hillside development; (2) a rezone from Hillside Planned Development (HPD) District to Planned Development (PD) District; (3) an amendment to the zoning ordinance to provide the City Council with the discretion to determine if the Hillside Planned Development District policies apply to a project; (4) a Vesting Tentative Map; (5) a Final Plan Development; and (6) a Use Permit in order to create 60 lots intended for single family homes. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010) ("Pointe Project") (Attachment "B").

Each requested action/entitlement is discussed below:

IS/MND & MMRP: An Initial Study/Mitigated Negative Declaration has been prepared for the project and it was available for public review from October 8, 2013 to October 28, 2013.

General Plan Amendment: The applicant is requesting General Plan amendments to remove the General Plan designation of Low Density Residential from both the Pointe Project site and the Black Diamond Ranch subdivision and instead to include them into the Somersville Road Corridor Focus Area and to waive the requirements of the General Plan Section 5.4.14 for residential properties within the Somersville Road Corridor Focus Area subject to the Planned Development process.

While the applicant did not request this, staff is recommending the City Council also consider adding the following to the applicant's request: adding a Residential designation to the Project site and to the Black Diamond Ranch subdivision in order to maintain consistency within the Focus Area as well as add General Plan Section 4.4.1.1 and Policy 10.3.2, which pertain to development on steep sites, to the aforementioned waiver language in order to maintain internal consistency within the General Plan.

Rezone to Planned Development (PD) District: The project site is currently zoned with a designation of Hillside Planned Development (HPD) and the proposed rezoning is to Planned Development (PD).

Amendment to the Zoning Ordinance: The applicant is proposing to add language to Article 24 of the Zoning Ordinance to provide the City Council with the discretion to determine if the provisions of the Hillside Planned Development policies apply to a project. This amendment would not be necessary if the project is rezoned to Planned Development (PD), which is discussed in further detail below.

Vesting Tentative Subdivision Map (PW 608): A major subdivision is being requested to create the lots for the 60 single-family dwelling units and additional common/residual parcels.

Approval of Final Development Plan: Approval of the Final Development Plan goes hand in hand with the rezoning described above. The Final Development Plan and the PD district effectively become the zoning for the project area. In this case, the Final Development Plan will be for 60 single family homes, which includes 51 lots in a gated community and nine lots within the existing Black Diamond Ranch subdivision. The plan also includes an approximately 10,000 square foot pocket park and two open space parcels (Parcel A – 2.5 acres and Parcel B – 1.4 acres), which are to be maintained by the Homeowners Association (HOA).

Use Permit: Per the Zoning Code, in order to implement the Final Development Plan a use permit is required. The developer is requesting a use permit for 60 single-family homes, a pocket park, and two open space parcels.

The design and architectural elements, including landscaping, are not being considered at this time. If the project is approved, the developer would seek design review approval from the Planning Commission subsequently.

BACKGROUND INFORMATION

The subject site was originally part of the Black Diamond Ranch subdivision, which is the adjacent 286 unit single family housing development with lots ranging in size between 4,000 to

6,000 s.f., with publicly maintained roads. The subject site had a designation of "Open Space" on the Black Diamond Ranch tentative map and was to be deeded to the City. In 2005, the applicant requested the opportunity to develop "executive/estate" housing on this parcel and, in November 2005, the City Council re-designated the Open Space area as "Owner/Developer Remainder Parcel" (Attachment "C"). While the reclassification of the parcel removed the requirement for the developer to dedicate the parcel to the City, it did not guarantee any development rights. One of the conditions of approval on the reclassification of the parcel was that the applicant make an irrevocable offer of dedication to the City. However, this condition also provided that if the City approved a future development proposal on this parcel, then the City would decline the dedication. If the development proposal was denied then the City would be required to consider acceptance of the dedication. The other condition of approval required a development application to be submitted within three years of the date of the City Council approving the re-designation to "Owner/Development Remainder Parcel". Otherwise the Council would consider acceptance of the offer of dedication.

Preliminary Development Plan (PDP)

The applicant originally provided a Preliminary Development Plan with 72 lots for single family homes; however based on direction provided by the Planning Commission on February 21, 2007 and staff, the applicant resubmitted a preliminary development plan for a 60 lot subdivision. The direction from the Planning Commission was to redesign the site and to take the Hillside Planned Development policies into consideration: the streets shall follow the natural contours of the hillside and the lots should be larger with more useable space, to name a few (Attachment "D").

The Council provided feedback on the 60 residential units PDP on June 12, 2007 and directed staff to take the project through the RDA process, a process that has been substantially modified since then. (Attachment "E").

Residential Development Allocation (RDA)

On August 20, 2007, the Residential Development Allocation Committee, based on a satisfactory score of 308.8 points (Attachment "F"), recommended approval of 60 residential development allocations (Attachment "G"). On September 19, 2007, the Planning Commission heard the applicant's request for 60 allocations and subsequently recommended denial of the project to the City Council (5-0, with 2 absent). The Planning Commission's reasons for denying the project were as follows: violation of the General Plan and Hillside Planned Development Ordinance, the layout and small lots were not typical of executive housing, lack of amenities, and incompatible architectural features and design. While the Planning Commission's reasons for denial varied, the majority stated the project was in violation of the General Plan and Hillside Planned Development Ordinance (Attachment "H").

On January 22, 2008 the City Council heard and approved the applicant's request for 60 residential development allocations. Following the Planning Commission hearing, the applicant had revised the offered community benefits, which are reflected in the Council resolution included as Attachment "I". The RDA process has changed considerably since the approval in 2008 and City staff is currently working on a Development Impact Fee study; therefore, if the Council rejects the Planning Commission's recommendation to deny the Project, staff recommends that it consider adding, as a proposed condition to the project, that the applicant either pay all financial contributions as approved in 2008 or the Development Impact Fee.

Final Planned Development, Use Permit, and Design Review Application/CEQA Document

Subsequent to the City Council hearing, on January 29, 2008, the applicant submitted an application for a Final Planned Development, Vesting Tentative Map, Use Permit, and design review. Since that time, City staff has been working with the applicant to usher the project through the California Environmental Quality Act (CEQA) and entitlement processes. In May 2010, the City's environmental document consultant determined through the Initial Study process there would be significant and unavoidable impacts to Aesthetics and Land Use Planning and that therefore an Environmental Impact Report would be required (Attachment "J"). City staff agreed with this assessment unless the proposed project was modified to avoid any potential significant environmental impacts. On August 2, 2010, Staff provided the applicant with three options of moving forward: 1) proceed with the project as proposed, finalize the Initial Study and prepare an EIR, 2) submit General Plan and Zoning Code amendment applications for the project, which could address the significant impacts that are triggering the EIR, or 3) amend the project such that all significant impacts are avoided and the Initial Study would be revised accordingly.

On August 11, 2010, the applicant filed an appeal of the staff decision regarding the requirement of preparing an EIR to address the significant and unavoidable impacts. As allowed per the Municipal Code, Mayor Davis appealed the matter directly to the City Council. While the appeal was pending, meetings and other communications occurred with the applicant, resulting in the applicant deciding to amend its project and file General Plan and Zoning Code amendments in December 2011. Following the amendments, the Initial Study/Mitigated Negative Declaration was revised and completed in March 2013. Following completion of that environmental document, staff has been attempting to address concerns regarding the site plan. The applicant addressed certain issues regarding storm water facilities, but requested that the remaining issues be addressed via the conditions of approval.

To provide the Council with a timeline for the Project's lengthy course, a letter from the City to the applicant, dated September 27, 2011, illustrates the path of the Project (Attachment "K").

November 6, 2013 Planning Commission Hearing

The proposed project was heard before the Planning Commission on November 6, 2013 and resulted in a 5-0 vote, (one absent and one vacancy) recommending the City Council deny the project. No action was taken by the Planning Commission on the IS/MND. Several residents, Save Mt. Diablo, and the East Bay Regional Park District submitted oral and/or written comments expressing concerns regarding the project. The concerns included safety, traffic, massive grading, drainage issues, aesthetic issues, and putting a gated community within the existing community (Attachment "L"). The Planning Commission expressed concerns regarding the adequacy of the environmental document given the extent of the construction as well as concerns regarding the requested exceptions for the Project; the Project's incompatibility with the City's policies and standards; the precedent it could set for encouraging this type of development within the City; and that the community was not involved in the design process. Based on the aforementioned, the Planning Commission recommended denial of the Project.

ENVIRONMENTAL

In compliance with the California Environmental Quality Act, an Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared for the project. The IS/MND was circulated for a 20-day public review period from October 8, 2013 to October 28, 2013. The IS/MND was provided to the City Council on October 23, 2013 and is available on the second floor of City Hall in the

Community Development Department, and can also be found on the City's website at: <http://www.ci.antioch.ca.us/CityGov/CommDev/PlanningDivision/Environmental-docs.htm>.

The IS/MND identified the following as environmental factors that would be potentially affected by the proposed project: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology/Soils, Hydrology/Water Quality, Land Use/Planning, Noise, Public Services, Utilities/Service Systems, and Mandatory Findings of Significance. The IS/MND identified mitigation measures that it stated would reduce all project impacts to a less-than-significant level and a Mitigation Monitoring and Reporting Program (MMRP) has been prepared for the project. These are described in detail in the environmental document.

At the close of the comment period on October 28, 2013, the City received four comment letters on the IS/MND (Attachment "M"), but due to the timeline for getting the Planning Commission's staff report to publication, the City did not formally respond to these letters. Following, the Commission's recommendation to not act on the IS/MND and a recommendation of denial to the City Council; staff did not engage the City's environmental consultant to pursue a response to these letters due to concerns about expending time and funds for work that may not be necessary. If the City Council desires further consideration of the project, then staff recommends responding to comments received on the IS/MND or to direct staff to prepare an Environmental Impact Report (EIR) based on the comments received on the IS/MND.

A letter was also received by the City from Save Mt. Diablo requesting a delay of the project because the IS/MND was not sent to the State Office of Planning and Research and because a formal response to comments has not been released by the City (Attachment "N"). The subject project is not considered a project of regional significance; therefore was not required to be sent to the State. Responses to comments on an IS/MND are not required by CEQA. However, the City's protocol is to formally provide written responses to all comments received regardless of the type of environmental document. As stated above, if the City Council is considering further action on this project, then staff is recommending a formal response to comments be drafted or the Council to direct staff to prepare an EIR.

ANALYSIS

Issue #1: Project Overview

The proposed project consists of 60 single family one-story and two-story homes to be constructed on an approximately 21 acre site at the western edge of the City and adjacent to the Black Diamond Ranch subdivision. The majority of these homes, 51, would be located within a gated community accessed from the neighboring Black Diamond Ranch subdivision via Summit Way. The remaining 9 homes would be incorporated into the Black Diamond Ranch subdivision, interspersed with the homes along Country Side Way and Torgensen Court. The 51 homes are separated from the rest of Black Diamond Ranch by two open space parcels, A and B. The two parcels circumvent the base of the hillside in three directions, where parcel A is approximately 2.6 acres and Parcel B is approximately 1.4 acres.

The project would require extensive grading of the site, requiring cuts up to 104 feet and fills of less than 10 feet. Approximately 16.7 acres of the 21 acre site would be developed with roads and homes, with about a 50 to 100 foot buffer encircling the gated community, and a centrally located park, totaling about 4.3 acres.

The proposed parcels within the private community would have an average size of 10,537 square feet (s.f.) and would range in size from 10,000 s.f. to 14,371 s.f., while the nine lots in

Black Diamond Ranch would average 10,004 s.f. and range from 6,616 s.f. to 21,495 s.f. According to the applicant, the proposed development would result in an overall density of 2.9 acres. However, that calculation includes developable and undevelopable land. The General Plan considers any lands generally over a 25 percent slope to be undevelopable, so the density would be considerably higher if undevelopable land was not included in the calculation because 78 percent of the project site has slopes that exceed 25 percent. Accordingly, after discussing this issue with staff, the applicant has requested that the Council approve a General Plan amendment to waive the requirements of this section of the General Plan. This request is discussed in further detail below.

Lot 60, located on Torgensen Court, would be the largest lot at 21,495 s.f. but would also contain the emergency vehicle access easement and road connecting Torgensen Court with Summit Place to provide secondary emergency access to the 51 gated homes.

The private subdivision, of 51 homes, would be configured on three terraced levels, each served by a private street, which would be maintained by the HOA. Each street, separated by a grade difference of about 20 vertical feet, would terminate in a cul-de-sac.

The surrounding land uses are as follows:

- North: Single family residential subdivision (Black Diamond Ranch)
- South: Single family residential subdivision (Black Diamond Ranch) and undeveloped land within the East Bay Regional Park District - Black Diamond Mines
- West: City of Pittsburg - Undeveloped land, however Sky Ranch II, a 415 unit single family subdivision has been entitled
- East: Single family residential (Black Diamond Ranch)

Issue #2: General Plan Amendments

As discussed above in the Background section of the staff report, it was determined the Project would require an EIR unless modifications were made to the application. On October 11, 2010, following an appeal of staff's decision that an EIR would be required based on the Project's significant and unavoidable impacts as well as numerous discussions between the applicant and the City, the applicant submitted an amendment to their application to include a General Plan Amendment (Attachment "O"). The amendment to the application proposed the following text amendment to the General Plan, "Parcel A of Subdivision 8586 is exempt from all goals and policies outlined in section 5.4.14 of the Antioch General Plan and is also exempt from Article 24, Hillside Development District, of the Antioch Municipal Code." Staff raised concerns to the applicant regarding the exemption of one parcel from the City's General Plan and the fact that the request lacked a zoning code amendment.

Subsequently, on November 5, 2010, the applicant submitted another amendment to their application, this time with a request to amend the zoning code as well as a rezone (Attachment "P"). The General Plan amendment request remained the same and the proposed amendment to the zoning code was as follows: "(4) If the project is infill, the City Council has the discretion to determine if the provisions of this Article need to be applied to the property." The request also included a rezone of the property from Hillside Planned Development District to Planned Development District. Staff's concerns still remained about exempting one particular parcel from the General Plan, which concerns were again conveyed to the applicant.

On December 21, 2010, the applicant again submitted an amendment to their application (Attachment "Q"). The third amendment requested the subject property and Black Diamond Ranch to be included in the Somersville Road Corridor Focus Area and to amend Article 24, the

Hillside Planned Development District, to reference the Somersville Road Corridor General Plan Focus Area and to state that properties within this Focus Area can process a regular PD in accordance with Article 23. The applicant's request and the implications of the request will be discussed in detail below.

The current General Plan designation for the subject property is Low Density Residential, which is generally characterized by single family homes in traditional subdivisions and is located in areas with gently rolling terrain with no or few geological or environment constraints (Attachment "R"). The applicant is proposing to remove the subject project and the Black Diamond Ranch subdivision from this Low Density Residential designation and instead to place both projects within the Somersville Road Corridor Focus Area (Attachment "S"). The Somersville Road Corridor Focus Area contains the City's main tax generators, including automobile dealerships, as well as other retail businesses, mainly providing regional level retail services. Accordingly, if the applicant's requested amendment were approved, staff would recommend the addition of a Residential designation within the Focus Area and to the map in Figure 4.3.

As noted above, staff recommends that the Council uphold the Planning Commission's recommended denial of the GPA. However, if the Council rejects the Planning Commission recommendation, staff recommends that the Council consider adding the following additional language in Section 4.4.6.2b of the General Plan, to ensure that the General Plan is internally consistent and includes a specific land use designation for the property.

- d. Areas designated "Residential" in Figure 4.3 shall consist of single family homes and the design shall be determined through the Planned Development process with approval by the City Council.*

The addition of the aforementioned language would be consistent with not only the Somersville Road Corridor Focus Area but also with other Focus Areas within the General Plan. If so directed by the Council, staff would prepare a proposed resolution including this additional language as well as the other additions discussed below.

The applicant's proposed General Plan Amendment (GPA) would also include waiving the requirements of General Plan Section 5.4.14 (Attachment "T") for residential properties within the Somersville Road Corridor Focus Area that are subject to the planned development process. General Plan Section 5.4.14 pertains to Hillside Design Policies, which contain provisions and policies about developing in hillside areas. The applicant is proposing to add the following language to General Plan Section 4.4.6.2.b:

- j. In order to provide continued support to sales tax generating uses, properties designated residential with the Focus Area will be allowed to maximize development density through the Planned Development process contained within the Zoning Ordinance. As such, the requirements of Section 5.4.14, if applicable, of the General Plan shall be waived if it is shown that development conditions will be safe and in harmony with surrounding development patterns and uses.*

As stated above, the Somersville Road Corridor Focus Area mainly encompasses regional retail uses. The only residentially zoned area within this Focus Area is designated High Density Residential and includes the Chateau Mobile Home Park and apartments located on the southwest corner of Somersville Road and Buchanan Road.

The Somersville Road Corridor Focus Area previously contained a second partially designated residential area known as the "Chevron property." However, based on a recent City of Pittsburg

ballot measure incorporating this area into the Pittsburg urban growth area, the Chevron property is proposed to be removed from the City of Antioch's Sphere of Influence and annexed into the City of Pittsburg. These actions have not yet been approved by LAFCO. The City of Antioch envisioned the Chevron property to be a combination of Business Park, single family detached homes, and multi-family development, consistent with Medium Density Residential, which are overall a much higher density and usage than Black Diamond Ranch and the subject development proposal.

Staff has identified some issues for the City Council to consider with the request to place the subject project and Black Diamond Ranch into the Somersville Road Corridor Focus Area.

- The proposed General Plan amendments could create a precedent that encourages similar proposals in the future. This approval, which would result in removing approximately 104 vertical feet of hillside, could have future repercussions for hillside developments within the City, potentially jeopardizing the community's intentions (as expressed throughout the General Plan) of promoting a harmonious visual and functional relationship between natural and built environments.
- The project would not be adhering to many of the hillside development policies put in place within the General Plan to prevent projects of this nature from being built and to preserve the natural ridgelines within the City.
- The Focus Area emphasizes a strong regional retail area with tax revenue generating uses because the intention is to create an area with strong commercial base. The Somersville Road Corridor Focus Area does not put an emphasis on lower density residential uses and the proposed project and the Black Diamond Ranch would be the only projects within this Focus Area with single family home development.
- If the Sphere of Influence change for the Chevron property is approved by LAFCO then the inclusion of Black Diamond Ranch and the Pointe will result in an area that is not contiguous with the rest of the focus area, which is not consistent with the other focus areas within the General Plan (Attachment "U").

On the other hand, the applicant will be bringing in an executive/estate type housing. The applicant has argued that the residents of such housing will have higher disposable income to spend within the Somersville Road Corridor Focus Area, which will produce additional tax revenue. However, according to the Association of Bay Area Governments (ABAG) the projected population increase from the proposed project is 3.08 persons per dwelling unit or 185 total people, which equates to only be an .18 percent change in population, so the scale of the additional revenue and above moderate income housing needs to be weighed with the impacts of proposed development on the City's hillside development policies and the potential inconsistencies with the General Plan.

Secondly, as stated above, the applicant is proposing to waive General Plan Section 5.4.14 (Attachment "T"), which contains the City's Hillside Design Policies. The policies discuss specifics on the City's expectations and goals when it comes to hillside development emphasizing sensitivity to existing terrain, views, and natural landforms. The majority of the project site currently has slopes over 25 percent and the applicant is proposing to remove approximately 104 vertical feet from the hillside for the project, which does not meet many of the hillside policies, as has been outlined in detail in the IS/MND. Approving such a request could provide a precedent for other developers to make similar requests for larger undeveloped areas where the terrain is equally as hilly, such as the Sand Creek Focus Area, rather than just on an

isolated 21 acre parcel. An argument could be made that the difference between the subject project and the Sand Creek Focus Area is that the project site is isolated and considered "infill" because it is substantially surrounded by existing or entitled development, including the Black Diamond Ranch project and the future Sky Ranch II project, a 415 single-family home development in Pittsburg. Executive/estate housing has not been readily developed in the City of Antioch and this product type potentially could further the General Plan's goals of providing more of a jobs and housing balance by encouraging businesses to locate in Antioch by providing executives with a desirable housing product. The City Council needs to consider if the request of waiving the Hillside Design Policies is in the best public interest and in the interest of the community. The amendment to the General Plan would provide a vehicle for the project to move forward without an unworkable inconsistency or a conflict with the General Plan.

As part of their application, the applicant did not include an exemption from the provisions of General Plan Section 4.4.1.1 (Attachment "V") and Section 10.3.2 (Attachment "W"), which both have elements related to development on steep sites. Section 4.4.1.1 has the following language:

Density is assumed to accrue only to lands that are "developable." Developable acres are those that are not encumbered by prior dedications of easements or rights-of-way, and are not so steep (generally 25%), unstable, flood-prone or subject to other hazards as to be unable to submit new development.

Section 10.3.2 discusses the City's open space policies, some of which pertain to development on steep slopes.

In staff's view, if the Council was to reject the Planning Commission's recommendation and instead to continue considering the applicant's proposed General Plan amendment, the amendment would also need to include exemptions from these two sections in order to remove potential inconsistencies with the General Plan.

Issue#3: Zoning Code Amendment and Rezone

The subject site is currently zoned Hillside Planned Development (HPD) and the applicant is proposing a rezone to Planned Development (PD) and the addition of language to the Municipal Code to give the City Council the discretion to exempt residential properties located within the Somersville Road Corridor Focus Area from the Hillside Planned Development District. The purpose of the HPD zoning district is to promote a harmonious visual and functional relationship between natural and built environments, and the zoning code for this district accordingly contains specific development parameters governing hillside development (Attachment "X"). The applicant's proposed project does not comply with many of the goals; therefore the applicant is requesting the PD zoning designation. In staff's view, the second part of the applicant's rezoning request (namely, to add language providing the City Council with discretion whether to exempt particular project's from the Hillside Planned Development District policies) is not really necessary because the applicant is proposing a rezone from HPD to PD. The rezone from HPD to PD will no longer subject the property to the HPD policies and will provide the applicant development flexibility through the PD zoning designation. Similar to the General Plan amendment, the City Council must consider whether to grant the applicant's request to grade the hillside not in conformance with the current zoning designation of Hillside Planned Development District.

Each residential PD District that is established must include specific development standards designed for that particular district, which shall include minimum lot sizes, setbacks, maximum building heights, lot coverages, and open space requirements. Per the code, in establishing

these standards, the requirements for existing zoning and PD Districts may be reviewed and modifications to these standards may be appropriate. Once approved as part of the final development plan, these standards effectively become the zoning standards, which are tied to the approved plan, unless formally amended by the City Council. The intent of the residential PD district is to create a wider variety of densities, product types and setbacks than would otherwise be possible under conventional residential zoning.

As noted above, staff recommends that the Council uphold the Planning Commission's recommendation to deny the requested rezone. However, if the Council rejects this recommendation, staff recommends that the Council reference Attachment "B" of the Planning Commission staff report, which is Attachment "L" of this staff report, for Staff's proposed development standards for the Project.

Issue #4: Grading and Storm Water

Grading: The proposed project site encompasses approximately 21 acres of land. The hilly site ranges in elevation from about 230 feet on the northeastern periphery of the site to 335 feet on the southern periphery. The peak elevation is southwest of the approximate center at 440 feet. The site is steeply sloped, with over 78 percent of the site having a gradient in excess of 25 percent, with only about 6 percent of the property having a gradient of less than 10 percent; most of the flat area within the project site is located along the periphery.

The applicant is proposing to extensively grade the project site and create three terraced levels within the gated community to maximize views and minimize street slopes. To maximize views, each terrace would terminate in a cul-de-sac, with each terraced level varying by approximately 20 feet. The maximum pad elevation of 336.5 feet (Pad 14), and the existing topography as high as 440 feet, the project would require grading cuts of up to 104 feet; fill depths would be under 10 feet, and retaining walls up to 6 feet in height. The retaining walls would be utilized throughout the site to provide structural support to grade separations and to provide useable private outdoor space. Excess soil would need to be transported offsite.

Site grading would create a maximum slope of 2:1 between the proposed homes. Slopes on the open space buffers would also generally be 2:1 gradients. Grading would result in street slopes of up to 15 percent, though the terminating cul-de-sacs serving as emergency vehicle access turnarounds would be limited to slopes of 2.0 to 2.6 percent, in accordance with the Contra Costa Fire Protection District (CCCFPD) requirements. Straight street segments near the cul-de-sacs would have grades of about 4 to 5 percent, while steeper grades of 6 to 15 percent would be located on the easterly stretch of Summit Place and Summit Way, just west of the site entrance.

The proposed grading does not conform to the General Plan or the Hillside Planned Development District in the zoning ordinance. However the applicant is seeking amendments to the General Plan and the zoning ordinance to make an exception for the project because it could be considered infill based on the surrounding Black Diamond Ranch project as well as Pittsburg's entitled project, Sky Ranch II. Further, the applicant is making the argument that the project would be furthering the goals of the Somersville Road Corridor Focus Area by increasing the population, therefore increasing the tax revenue, which is one of the overall goals for the Focus Area. The City Council has to consider if these are appropriate findings in order to approve the project.

Storm Water: The applicant is proposing two bio retention areas to manage the storm water from the project and to meet the requirements of C.3 in the California Regional Water Quality Control Board's Municipal Regional Permit (Attachment "Y"). The C.3 requirements treat and

meter flow of storm water to match predevelopment conditions. One existing basin is located within the Black Diamond Ranch subdivision at the terminus of Crescent Court, adjacent to Markley Creek Park, which is being proposed to be retrofitted to accommodate the additional flow from the proposed project. The applicant is proposing to make the basin deeper rather than larger to make that accommodation. This basin would be maintained by the Street, Lighting, and Landscape District (SLLD). The other basin is also located within the Black Diamond Ranch subdivision at the intersection of James Donlon Boulevard and Metcalf Street. The parcel currently is vacant and has high powered electrical lines that run above it, therefore limiting the usage of the parcel. The basin will have to be sized appropriately to accommodate the flows from the project and will be maintained by the HOA. Staff prefers the proposed basins because it eliminates the need for numerous small bio retention areas within a homeowner's yard or other areas within the project and presents only two locations that need to be monitored and verified they are functioning properly, which is required by the California State Regional Water Quality Control Board. If the Council rejects the Planning Commission's recommendation to deny the Project, staff recommends that it consider including a condition of approval to appropriately size the basins to accommodate the storm water flows and to require that the basin at the terminus of Crescent Court will be maintained by the SLLD while the other basin at Metcalf Street and James Donlon Boulevard will be maintained by the Home Owners Association and both will be required to be landscaped.

Issue #5: Traffic, Circulation, and Parking

According to the project's traffic study, the project would generate 576 daily vehicle trips, with 46 occurring in the AM peak hour and 61 trips occurring in the PM peak hour. Based on the criteria set forth in both the General Plan and IS/MND, the project would not create significant traffic impacts or create any significant hazards in design.

The nine homes interspersed in Black Diamond Ranch will be accessed by the existing streets, Country Side Way and Torgensen Court. The gated entrance at Summit Way would have a 62 foot wide right-of-way (ROW), with a 24 foot wide entrance way providing two 12 foot travel lanes: one for guests stopping at an entry keypad/intercom and one through lane for residents. A 10 foot wide landscaped median would separate the entrance lanes from a 20 foot wide exit lane and a 5 foot sidewalk.

The 51 homes would be accessed through three terraced streets (terminating in cul-de-sacs) via a gated extension of the current southern terminus of Summit Way. Each of the streets would have a 35 foot ROW, including a 28 foot roadway (two 14-foot travel lanes) and a 4-foot wide sidewalk on one side. According to the Vesting Tentative Map, a total of 54 guest parking spaces would be provided through controlled on-street parking on one-side of the each street. The three cul-de-sacs have an outside turning radius of 35 feet and an inside turning radius of 15 feet, which is not in accordance with the Contra Costa Fire Protection District (CCCYPD) requirements, which require an outside turning radius of 45 feet and an inside turning radius of 25 feet; however the applicant has indicated that through rolled curbs and a reinforced sidewalk the Fire District will approve this approach. The streets do not meet the City standards; however the City Council may consider whether this nonetheless may be an appropriate approach since the streets will be private and maintained by the HOA. If the Council rejects the Planning Commission's recommendation to deny the Project, staff recommends that it consider including a condition of approval requiring that the development shall meet all of the requirements of the CCCYPD. As long as the streets meet the minimum in terms of emergency vehicle access, staff does not see an issue with having narrower streets in a community with slopes.

The applicant has proposed 54 on-street parking spaces. The parking ordinance requirement for single family residential (detached) is one guest parking space on the street within close proximity to the unit served. The applicant is 6 spaces short of meeting the ordinance requirement. Accordingly, if the Council rejects the Planning Commission's recommendation to deny the Project, staff recommends that it consider including a condition of approval requiring that the project must meet the minimum parking requirements or obtain a variance.

During the Planning Commission hearing several of the residents of Black Diamond Ranch brought up the issue of traffic on Somersville Road and James Donlon Boulevard. As part of the Black Diamond Ranch approvals (including a Development Agreement dated October 14, 2003 and amended October 10, 2006, an Improvement Agreement dated March 17, 2004, and Deferred Improvement Agreement dated May 1, 2007), the developer for the Black Diamond Ranch project, Discovery Builders (which is also the applicant for this proposed project) was required to widen Somersville Road and install sidewalks, street lights and a traffic signal. Discovery Builders did not timely make these road improvements. Pursuant to a Settlement Agreement dated September 15, 2009, these improvements were later deferred for a limited period of time. When Discovery Builders still did not make the improvements, the City Council adopted Resolution No. 2011/18 and notified the surety for Discovery Builders regarding an apparent default and/or breach by Discovery Builders relating to the Markley Creek Culvert Project and the Somersville Road Project (Attachment "Z"). Discovery Builders filed a lawsuit against the City of Antioch (Contra Costa Superior Court Case No. CIVMSN11-0539, which resulted in a further Amendment to the existing 2009 Settlement Agreement. This Amendment to the Settlement Agreement, dated June 14, 2011, resulted (among other things) in the City taking over the construction of the Markley Creek Culvert Project, at Discovery Builder's cost, so that Discovery Builders could complete the Somersville Road project no later than December 31, 2014. Discovery Builders is still required to undertake and complete the Somersville Road project by this date.

Issue #6: Other Issues

Pedestrian Path: The project contains a proposed pedestrian pathway on each of the three terraces. The pathway runs from north to south between lots 42 and 41; 28 and 29; 26 and 25; and 14 and 15. Staff has concerns about pedestrians crossing adjacent to the backyards of homes and privacy issues.

Homeowners Association (HOA): The applicant is proposing to establish an HOA with CC&Rs. HOAs are organizations comprised of homeowners in a particular housing development and are regulated by the California Department of Real Estate. The HOA will be formed to own common property and to conduct maintenance of the private infrastructure including, but not limited to, the storm water basin at Metcalf and James Donlon Boulevard; storm water lines, mains, and inlets; streets; street lights; common area landscaping; and the pocket park including the water feature. The maintenance would be funded through HOA dues established when the HOA is formed.

Park-in-Lieu Fees/Park Benefit District: The Municipal Code requires that a subdivider dedicate land or pay an in lieu fee or both at the option of the City. The applicant is proposing an approximate 10,000 s.f. pocket park, which will be private and maintained by the Home Owners Association, so the applicant would be required to pay the park in lieu fee in place at the time of final map recordation.

Street Names: The proposed street names are: Summit Way, Summit Place, and Altamont Court. The alternative names are: Alpine Way, Terrace Place, Vista Place, Highland Way, Ridgeview Place, and Skyview Place.

Community Letters: The City has received letters regarding the Project in addition to the letters received on the IS/MND (Attachment "AA").

FISCAL IMPACT

This project would result in additional property tax revenue for the City as well as developer impact fees (assuming approval) or the RDA community benefits totaling \$1,650,000 assuming the applicant does not legally challenge the offered community benefits, which has been implied in past discussions.

This project could result in additional sales tax revenue from the additional residents.

ATTACHMENTS

- A: Resolutions Denying the Project
 - 1. Resolution Denying the General Plan Amendments
 - 2. Resolution Denying the Rezone from Hillside Planned Development District (HPD) to (PD)
 - 3. Resolution Denying the Final Development Plan, Vesting Tentative Map, and Use Permit
- B: Aerial Photograph
- C: Staff Report and Minutes from the November 22, 2005 City Council Hearing
- D: Staff Report and Minutes from the February 21, 2007 Planning Commission Hearing on the Preliminary Development Plan for the Pointe
- E: Staff Report and Minutes from the June 12, 2007 City Council Hearing on the Preliminary Development Plan for the Pointe
- F: RDAC Score Sheet
- G: Staff Report from the August 20, 2007 Residential Development Allocation Committee Hearing
- H: Staff Report and Minutes from the September 19, 2007 Planning Commission Hearing on Residential Development Allocations
- I: Staff Report and Minutes from the January 22, 2008 City Council Hearing on Residential Development Allocations
- J: Letter to the Applicant with an Enclosed Memorandum from the City's Environmental Consultant Recommending an EIR
- K: September 27, 2011 Letter from City Summarizing the Project's Timeline
- L: Staff Report with Attachments A, B, and C (Resolutions), and Draft Minutes from the November 6, 2013 Planning Commission Hearing
- M: Comment Letters on the IS/MND
 - a. Keith and Darcy Johnson
 - b. East Bay Regional Park District
 - c. Save Mount Diablo
 - d. Black Diamond Estate Homeowners and Terraces at Black Diamond Homeowners
- N: Letter from Save Mt. Diablo Requesting a Delay
- O: October 11, 2010 Amendment to the Project Application
- P: November 5, 2010 Revised Amendment to the Project Application
- Q: December 21, 2010 Revised Amendment to the Project Application
- R: Excerpt from the General Plan for Low Density Residential
- S: Excerpt from the General Plan for the Somersville Road Corridor Focus Area
- T: Excerpt from the General Plan for the Hillside Planned Design Policies
- U: Chevron Property Location Map
- V: Excerpt from the General Plan for Residential Land Use Designations
- W: Excerpt from the General Plan for Open Space Policies
- X: Article 24 – Hillside Planned Development District

Y: Basin Locations

Z: City Council Resolution 2011/18 Notice of Default and Breach

AA:Opposition Letters

- a. Peggy Vertin
- b. Kathy Roberson
- c. Black Diamond Estate and The Terrace Homeowners

ATTACHMENT "A"

RESOLUTION NO. 2013/**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH DENYING OF GENERAL PLAN AMENDMENTS FOR THE POINTE PROJECT

WHEREAS, the City of Antioch did receive a request from Discovery Builders to construct 60 single family homes, two open space parcels, two storm water basins, and a pocket park with a water feature, which also includes associated infrastructure improvements on an approximately 21 acre property, which request was dated January 29, 2007, and amended or supplemented on January 15, 2008, April 2, 2008, December 21, 2010, August 30, 2013, and October 17, 2013, all of which requests are incorporated herein by reference. The project includes General Plan amendments from Low Density Residential to inclusion within the Somersville Road Corridor Focus Area and the addition of language to the General Plan waiving the requirements of the hillside development policies, a rezone from Hillside Planned Development District to Planned Development District, a Final Development Plan, Vesting Tentative Map, and a Use Permit. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010) (the "Project").

WHEREAS, on October 25, 2005 and November 22, 2005, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved a re-designation of the subject parcel from "Open Space" to "Owner/Developer Remainder Parcel"; and

WHEREAS, on February 21, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on May 8, 2007 and June 12, 2007, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on August 20, 2007, the Residential Development Allocation Committee duly held a public hearing, received and considered evidence, both oral and documentary, and based on a satisfactory score of 308.8 recommended approval of 60 residential development allocations; and

WHEREAS, on September 17, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and recommended denial to the City Council of the 60 residential development allocations; and

WHEREAS, on January 22, 2008, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved 60 residential development allocations; and

WHEREAS, the City prepared an Initial Study, which included amendments to the General Plan, to evaluate the potential environmental impacts of the Pointe project in conformance with Section 15063 of Title 14 of the California Code of Regulations (the "CEQA Guidelines"); and

WHEREAS, Section 65358 of the California Government Code provides for the amendment of all or part of an adopted General Plan; and

RESOLUTION NO. 2013/**

December 10, 2013

Page 2

WHEREAS, the primary purpose of the General Plan amendments are to ensure consistency between the proposed Pointe project and the City of Antioch General Plan; and

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

WHEREAS, on November 6, 2013, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary; and

WHEREAS, the Planning Commission did not take action on the IS/MND and recommended denial of the Project to the City Council; and

WHEREAS, the City Council duly gave notice of a public hearing as required by law; and

WHEREAS, on December 10, 2013, the City Council duly held a public hearing on the matter, and received and considered evidence, both oral and documentary; and

WHEREAS, the City Council did not act on the IS/MND; and

NOW, THEREFORE BE IT RESOLVED, that based on the oral and written record, the City Council hereby determines:

1. The General Plan Amendments are inconsistent with the General Plan's goals and policies regarding hillside development and with the City's vision, as expressed in the existing General Plan, for the Somersville Road Corridor Focus area.
2. The General Plan Amendments could potentially result in the creation of a noncontiguous area within the Somersville Road Corridor Focus Area.
3. The Somersville Road Corridor Area policies and goals do not emphasize lower density residential uses, but instead prioritize commercial tax revenue generating uses and the Pointe Project would be the only single family home development in the Somersville Road Corridor Focus Area.
4. The Project undermines the efforts contained in the City's General Plan and Municipal Code to preserve natural ridgelines within the City of Antioch. The removal of 104 vertical feet of hillside does not meet the intent of the hillside development policies or meet the definition of developable land as outlined in the General Plan.
5. The approval of the project would set an adverse precedent for future hillside development within the City of Antioch.

Therefore, the City Council cannot make findings that the proposed General Plan Amendments are in the public interest of the people and hereby denies the amendments to City of Antioch's General Plan.

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December 10, 2013

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I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof held on the 10th day of December 2013 by the following vote:

AYES:

NOES:

ABSENT:

ARNE SIMONSEN
CITY CLERK OF THE CITY OF ANTIOCH

RESOLUTION NO. 2013/**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH DENYING THE ADOPTION OF AN ORDINANCE REZONING APPROXIMATELY 21 ACRES COMPRISING THE POINTE PROJECT FROM HILLSIDE PLANNED DEVELOPMENT (HPD) TO PLANNED DEVELOPMENT (PD)

WHEREAS, the City of Antioch did receive a request from Discovery Builders to construct 60 single family homes, two open space parcels, two storm water basins, and a pocket park with a water feature, which also includes associated infrastructure improvements on an approximately 21 acre property, which request was dated January 29, 2007, and amended or supplemented on January 15, 2008, April 2, 2008, December 21, 2010, August 30, 2013, and October 17, 2013, all of which requests are incorporated herein by reference. The project includes General Plan amendments from Low Density Residential to inclusion within the Somersville Road Corridor Focus Area and the addition of language to the General Plan waiving the requirements of the hillside development policies, a rezone from Hillside Planned Development District to Planned Development District, a Final Development Plan, Vesting Tentative Map, and a Use Permit. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010) (the "Project").

WHEREAS, on October 25, 2005 and November 22, 2005, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved a re-designation of the subject parcel from "Open Space" to "Owner/Developer Remainder Parcel"; and

WHEREAS, on February 21, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on May 8, 2007 and June 12, 2007, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on August 20, 2007, the Residential Development Allocation Committee duly held a public hearing, received and considered evidence, both oral and documentary, and based on a satisfactory score of 308.8 recommended approval of 60 residential development allocations; and

WHEREAS, on September 17, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and recommended denial to the City Council of the 60 residential development allocations; and

WHEREAS, on January 22, 2008, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved 60 residential development allocations; and

WHEREAS, the City prepared an Initial Study, which included amendments to the General Plan, to evaluate the potential environmental impacts of the Pointe project in conformance with Section 15063 of Title 14 of the California Code of Regulations (the "CEQA Guidelines"); and

RESOLUTION NO. 2013/**

December 10, 2013

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

WHEREAS, on November 6, 2013, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary; and

WHEREAS, the Planning Commission did not take action on the IS/MND and recommended denial of the Project to the City Council; and

WHEREAS, the City Council duly gave notice of a public hearing as required by law; and

WHEREAS, on December 10, 2013, the City Council duly held a public hearing on the matter, and received and considered evidence, both oral and documentary; and

WHEREAS, the City Council did not act on the IS/MND; and

WHEREAS, the City Council denied the request of the General Plan amendments for the Pointe Project; and

NOW, THEREFORE BE IT RESOLVED, that based on the oral and written record, the City Council hereby denies the request rezone the subject project because it would be inconsistent with the City's General Plan. The proposed rezone would result in the loss 104 vertical feet of hillside, which does not promote the harmonious visual and functional relationship between the natural and built environments; therefore not meeting the intent of the Hillside Planned Development District. In addition, the approval of the project would set an adverse precedent for future hillside development. Further, the City Council cannot make findings that the proposed rezone is in the public interest of the people of the City of Antioch. Therefore the City Council hereby denies the rezone of the Project site from Hillside Planned Development District (HPD) to Planned Development District (PD) and the applicant's requested zoning amendments.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was adopted by the City Council of the City of Antioch at a regular meeting thereof held on the 10th day of December, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ARNE SIMONSEN
CITY CLERK OF THE CITY OF ANTIOCH

A5

RESOLUTION NO. 2013/**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH DENYING THE FINAL PLANNED DEVELOPMENT, VESTING TENTATIVE MAP, AND USE PERMIT FOR 60 SINGLE-FAMILY HOMES, TWO OPEN SPACE PARCELS, AND A POCKET PARK

WHEREAS, the City of Antioch did receive a request from Discovery Builders to construct 60 single family homes, two open space parcels, two storm water basins, and a pocket park with a water feature, which also includes associated infrastructure improvements on an approximately 21 acre property, which request was dated January 29, 2007, and amended or supplemented on January 15, 2008, April 2, 2008, December 21, 2010, August 30, 2013, and October 17, 2013, all of which requests are incorporated herein by reference. The project includes General Plan amendments from Low Density Residential to inclusion within the Somersville Road Corridor Focus Area and the addition of language to the General Plan waiving the requirements of the hillside development policies, a rezone from Hillside Planned Development District to Planned Development District, a Final Development Plan, Vesting Tentative Map, and a Use Permit. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010) (the "Project").

WHEREAS, on October 25, 2005 and November 22, 2005, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved a re-designation of the subject parcel from "Open Space" to "Owner/Developer Remainder Parcel"; and

WHEREAS, on February 21, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on May 8, 2007 and June 12, 2007, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on August 20, 2007, the Residential Development Allocation Committee duly held a public hearing, received and considered evidence, both oral and documentary, and based on a satisfactory score of 308.8 recommended approval of 60 residential development allocations; and

WHEREAS, on September 17, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and recommended denial to the City Council of the 60 residential development allocations; and

WHEREAS, on January 22, 2008, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved 60 residential development allocations; and

WHEREAS, the City prepared an Initial Study, which included amendments to the General Plan, to evaluate the potential environmental impacts of the Pointe project in conformance with Section 15063 of Title 14 of the California Code of Regulations (the "CEQA Guidelines"); and

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

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WHEREAS, on November 6, 2013, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary; and

WHEREAS, the Planning Commission did not take action on the IS/MND and recommended denial of the Project to the City Council; and

WHEREAS, the City Council duly gave notice of a public hearing as required by law; and

WHEREAS, on December 10, 2013, the City Council duly held a public hearing on the matter, and received and considered evidence, both oral and documentary; and

WHEREAS, the City Council did not act on the IS/MND; and

WHEREAS, the City Council denied the request of the General Plan amendments for the Pointe Project; and

WHEREAS, the City Council denied adoption of an ordinance to rezone the subject parcel from Hillside Planned Development District (HPD) to Planned Development District (PD); and

NOW THEREFORE BE IT RESOLVED, that the City Council does hereby make the following findings for denial of a Final Planned Development to the City Council, as set for in Section 9-5.2308 of the Antioch Municipal Code:

SECTION 9.5.2308(A): 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 and potential surrounding uses but instead will have a beneficial effect which could not be achieved under another zoning district.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the Project is located in an area designated Hillside Planned Development District, which has policies outlining the goals of developing on a hillside. The project does not meet the majority of these policies therefore does not meet the City's intent and will not have a beneficial effect to the surrounding uses.

SECTION 9.5.2308(B): 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.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the streets associated with the project are supposed to be designed in a way to conform to the natural terrain according to the City's hillside development polices, which was not achieved by this project. The project is proposing to remove 104 vertical feet of hillside, which does not conform to the existing natural terrain. The streets do not meet the City's current standards including the widths, sidewalks on only one side of the street, cul-de-sac design, rolled curbs, and the turning radius for the Fire Department turnaround. Further, the project does not meet the minimum on-street parking requirements.

Adequate utility service, including electricity, water, and sewer service can be supplied to all phases of development by existing utility service providers.

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SECTION 9.5.2308(C): The commercial components of the Project are justified economically at the location proposed.

CITY COUNCIL'S DETERMINATION: No commercial components are proposed.

SECTION 9.5.2308(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.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the project is not designed to be in harmony with the character of the surrounding neighborhood. The project would be removing a substantial portion of a hillside to build 60 homes. The project has not been designed with maintaining the natural terrain and topography of the area. The density does not conform to the General Plan as the General Plan defines density on developable acreage. Developable acreage constitutes slopes 25 percent or less and close to 78 percent of the hillside exceeds the 25 percent slope.

SECTION 9.5.2308(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.

CITY COUNCIL'S DETERMINATION: There are no industrial components to the Pointe project.

SECTION 9.5.2308(F): Any deviation from the standard zoning requirements is warranted by the design and additional amenities incorporated in the final development plan which offers certain unusual redeeming features to compensate for any deviations that may be permitted.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the project does not conform to the hillside development policies in the General Plan or the Hillside Planned Development District. The project is not offering unusual redeeming features or amenities to warrant deviations from the standard zoning requirements. The project consists of more single family housing on flattened hillside with manufactured slopes that does not promote harmonious development between the natural and the built environment.

SECTION 9.5.2308(G): The area surrounding the Project can be planned and zoned in coordination and substantial compatibility with the proposed development.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the area surrounding the Project is already developed with homes or have been entitled by the City of Pittsburg. The commercial property to the north does not coordinate with the proposed development.

SECTION 9.5.2308(H): The project conforms with the General Plan of the City.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the project does not conform with the General Plan's land use designation of Low Density Residential, the hillside development policies, the developable acreage, and the open space policies.

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BE IT FURTHER RESOLVED that the City Council does hereby make the following findings for denial of a Vesting Tentative Map as set forth in the Subdivision Map Act and based on Chapter 9-4 of the Antioch Municipal Code:

REQUIRED FINDING 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.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the subdivision proposed by the Vesting Tentative Map is not consistent with the Antioch General Plan. The project does not conform with the General Plan's land use designation of Low Density Residential, the hillside development policies, the developable acreage, and the open space policies.

REQUIRED FINDING 2: That the subdivision complies with the Housing Element as it relates to the regional needs and complies with Section 66412.3 of the Subdivision Map Act.

CITY COUNCIL'S DETERMINATION: This finding cannot be made. The subdivision would further certain Housing Element goals by providing 60 units of the 1,046 required of above moderate income housing for the Regional Housing Needs Assessment for 2007 – 2014. However, pursuant to Section 66412.3 of the Subdivision Map Act, the City Council has considered the effects of this action and has determined the hillside constitutes an environmental resource and the benefits of the housing do not outweigh the loss of this resource.

REQUIRED FINDING 3: That the subdivision proposed by the Vesting Tentative Map has, to the maximum extent feasible, considered and provided opportunities for future passive or natural heating or cooling of the structures within the subdivision, as required by Government Code §66473.1.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the subdivision did not take into account the natural terrain of the existing hillside and could further take opportunities for passive heating and cooling into consideration as part of the development.

REQUIRED FINDING 4: That the subdivision proposed by the Tentative Map complies with the rules, regulations, standards, and criteria of the City's Subdivision Regulations.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the subdivision proposed by the Vesting Tentative Map does not comply with the rules, regulations, standards, and criteria of the City's Subdivision Regulations. The City requires the subdivision to be consistent with the General Plan and be consistent with the zoning provisions. The Project, as designed, is not compliant with the General Plan or consistent with the zoning. The project does not adhere to the density requirements of the General Plan, the hillside development policies, open space policies, and grading policies. The project does not comply with the zoning designation of Hillside Planned Development District (HPD) nor does it meet the minimum parking requirements for single family homes.

BE IT FURTHER RESOLVED that the City Council does hereby make the following findings for denial of a Use Permit based on Section 9-5.2703 of the Antioch Municipal Code:

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SECTION 9.5.2703(1)(a): Granting the use permit will not be detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the proposed project is injurious to the property as it would be removing 104 vertical feet from the existing hillside. The project was not designed in harmony with the natural and built environment as set forth by the hillside development policies.

SECTION 9.5.2703(1)(b): That the use applied for at the location indicated is properly one for which a use permit is authorized.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the use does not conform to the General Plan or to the zoning code; therefore it is not a use that is authorized.

SECTION 9.5.2703(1)(c): The project site is adequate in size and shape to accommodate its proposed uses, and all yard spaces, walls, fences, parking, loading, landscaping, and other features required, without interfering with other uses in the neighborhood.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the project did not take the Hillside Planned Development District policies into consideration. The project is only providing 54 on-street parking spaces, which is 6 less than the required amount, therefore not meeting the minimum standards, which could affect the surrounding neighborhood.

SECTION 9.5.2703(1)(d): The streets and highways that abut the project site are adequate in width and pavement type to carry the kind of traffic generated by proposed use.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the streets were not designed with the natural contours of the existing terrain. However, the City commissioned Fehr and Peers to prepare a traffic study to estimate and evaluate the amount of traffic that may be generated by the Pointe project. The traffic study concluded that the road improvements either proposed by the developer or required by the City are adequate in width and pavement type to carry the kind of traffic that will be generated by the project.

SECTION 9.5.2703(1)(e): The granting of such use permit will not adversely affect the comprehensive General Plan.

CITY COUNCIL'S DETERMINATION: This finding cannot be made because the project does not comply with the General Plan; therefore granting the use permit would affect the comprehensive General Plan.

BE IT FURTHER RESOLVED that the City Council, after reviewing the staff report and considering testimony offered, does hereby DENY the Final Development, Vesting Tentative Map, and Use Permit (PD-08-01, PW 608, and UP-08-01) to construct 60 single-family homes including associated infrastructure improvements, an approximately 10,000 s.f. pocket park, and two open space parcels.

RESOLUTION NO. 2013/**

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* * * * *

I HEREBY CERTIFY that the foregoing resolution was adopted by the City Council of the City of Antioch at a regular meeting thereof held on the 10th day of December, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ARNE SIMONSEN
CITY CLERK OF THE CITY OF ANTIOCH

111

ATTACHMENT "B"

Aerial Photograph



ATTACHMENT "C"

STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE MEETING OF NOVEMBER 22, 2005

Prepared by: Tina Wehrmeister
Acting Deputy Director of Community Development

Approved by: Joseph G. Brandt, Director of Community Development

Date: November 17, 2005

Subject: Amendment to the Black Diamond Ranch Tentative
Subdivision Map (PW 512)

RECOMMENDATION

The Planning Commission has recommended that the City Council deny the requested map amendment.

REQUEST

The applicant, Discovery Builders, Inc., is requesting an amendment to the designation of lands within the Black Diamond Ranch subdivision (formerly Sky Ranch). The approved tentative subdivision map designates the 21.2 acre Parcel A as "Open Space." The project is conditioned to require dedication of open space to the City with final map recordation. The applicant is requesting that the designation of Parcel A be amended to "Owner/Developer Remainder Parcel" in order to allow final maps to continue to be recorded within the Black Diamond Ranch subdivision while a future application for development of Parcel A is studied.

BACKGROUND / DISCUSSION

The City Council considered this item on October 25, 2005. The staff report from this meeting is included as Attachment A and contains staff's analysis. The City Council continued this item and directed staff to address the status of the remainder parcel in the event a future development application is denied. The City Attorney has provided a method of addressing this issue, (Attachment B). In his memo, the City Attorney suggests requiring an offer of dedication from the applicant which can be declined or accepted depending on the City Council's decision to approve or deny a future development application. This has been incorporated into the alternative resolution for approval.

At the October meeting the City Council also directed staff to provide a time limit for a development proposal to come forward. The alternative approval resolution provides a time period of two years. The condition stipulates that the Council "may consider acceptance of the offer of dedication" at the end of two years if no development proposal has been brought forward.

TW:tll

11-22-05

C1

FINANCIAL IMPACT

None.

OPTIONS

1. Approve the applicant's request (an alternative resolution is provided)
2. Continue the item with direction to staff

ATTACHMENTS

- A. October 25, 2005 staff report
- B. Memo from the City Attorney dated November 1, 2005

RESOLUTION NO. 2005/133

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
APPROVING THE REQUEST FROM DISCOVERY BUILDERS, INC. TO AMEND THE
DESIGNATION OF LANDS WITHIN THE BLACK DIAMOND RANCH SUBDIVISION
(APN 089-160-008)(PW-512)

WHEREAS, the City of Antioch received a request from Discovery Builders, Inc. to amend the designation of lands within the Black Diamond Ranch subdivision. The project site is located on the west side of Somersville Road, west of the Somersville Road / James Donlon Road intersection (APN 089-160-008) (PW - 512); and

WHEREAS, in accordance with the requirements of the California Environmental Quality Act, a Supplemental EIR and Mitigated Negative Declaration previously adopted for this project; and

WHEREAS, notice of public hearing was given as required by law; and

WHEREAS, the City Council on October 25 and November 22, 2005 duly held a public hearing, received and considered evidence, both oral and documentary; and

WHEREAS, re-designation of Parcel A to "remainder" does not provide future development rights of the parcel.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Antioch does hereby APPROVE re-designation of Parcel A from "Open Space" to "Owner/Developer Remainder Parcel" subject to the following conditions of approval:

1. That the applicant shall make an irrevocable offer of dedication to the City of Antioch of the "Owner/Developer Remainder Parcel." Should a future development proposal of this parcel be approved, then the dedication shall be declined. If the development proposal is denied, then the City shall consider acceptance of the dedication.
2. Should an application for development of the "Owner/Developer Remainder Parcel" fail to be submitted within three years of the date of this resolution, the Council may consider acceptance of the offer of dedication.

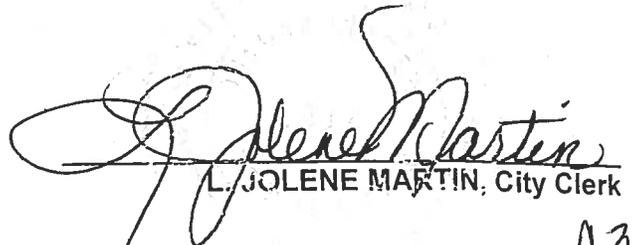
* * * * *

I HEREBY CERTIFY that the foregoing resolution was adopted by the City Council of the City of Antioch at a regular meeting thereof held on the 22nd day of November, 2005 by the following vote:

AYES: Council Member Kalinowski, Conley and Simonsen

NOES: Mayor Freitas

ABSENT: Council Member Davis


L. JOLENE MARTIN, City Clerk

On motion by Councilmember/Agencymember Conley, seconded by Councilmember/Agencymember Simonsen, the City Council and Antioch Development Agency adopted the resolutions approving a Disposition, Development, and Loan Agreement by and between the Antioch Development Agency and Mt. Diablo Habitat for Humanity for the development of four single-family homes located at 5th and "K" Streets.

Mayor/Chairperson Freitas adjourned to the City Council.

COUNCIL REGULAR AGENDA

- 6. **BLACK DIAMOND RANCH / DISCOVERY BUILDERS, INC. REQUESTS APPROVAL OF AN AMENDMENT OF A PREVIOUSLY APPROVED TENTATIVE MAP FOR 286 SINGLE FAMILY LOTS. THE PROPOSAL IS TO AMEND LANDS CURRENTLY DESIGNATED "OPEN SPACE" TO THE DESIGNATION OF "REMAINDER" LOCATED ON THE WEST SIDE OF SOMERSVILLE ROAD, WEST OF SOMERSVILLE RD. / JAMES DONLON RD (PW-512) #802-02**

Acting Community Development Deputy Director Wehrmeister presented the staff report dated November 17, 2005, with a recommendation from the Planning Commission for the City Council to deny the requested map amendment.

Council approved the following resolution, which Acting Community Development Deputy Director Wehrmeister presented to the City Council at the meeting.

RESOLUTION NO. 2005/133

On motion by Councilmember Kalinowski, seconded by Councilmember Simonsen the City Council approved the resolution as presented. The motion carried by the following vote:

Ayes: Kalinowski, Conley, Simonsen Noes: Freitas

Mayor Freitas declared a recess at 8:12 P.M. The meeting reconvened at 8:23 P.M. with all Councilmembers present with the exception of Councilmember Davis who was excused.

- 7. **PRESENTATION ON PROPOSED LOCATION OF THE E-BART LOCATED AT NEROLY AND EMPIRE AVENUE SITE #1107-03**

Deputy Director of Community Development Deputy Director Carniglia presented the staff report dated November 15, 2005 recommending that the City Council receive the presentation.

Ellen Smith, BART and Trent Lethco, ARUP gave a brief overhead presentation on the history, timeline and details for the proposed E-BART station and site.

Councilmember Simonsen requested the power point presentation be made available to city staff for the City Council. He expressed concern the MTC policy would impede Council efforts to

04

ATTACHMENT "D"

STAFF REPORT TO THE CITY OF ANTIOCH PLANNING COMMISSION FOR CONSIDERATION AT THE MEETING OF FEBRUARY 21, 2007

Prepared by: Mindy Gentry, Assistant Planner *MG*
Approved by: Tina Wehrmeister, Deputy Director of Community Development *TW*
Date: February 16, 2007
Subject: Preliminary Development Plan for The Pointe Subdivision
(PDP-06-03)

RECOMMENDATION

It is recommended that the Planning Commission provide feedback to the applicant and staff regarding the proposal, and adopt the resolution providing direction to the applicant for the Final Development Plan submittal.

REQUEST

The applicant is requesting preliminary plan review of a proposal to develop a 72 unit residential subdivision on 21.0 acres. The project site is located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-009) (Attachment "A").

The purpose of a preliminary plan is to gather feedback from the Planning Commission and outside agencies in order for the applicant to become aware of concerns and/or issues prior to final development plan submittal. As standard practice, preliminary plans are not conditioned; rather a list of needed items, information, and issues to be addressed is compiled for the applicant to address prior to a final plan hearing.

BACKGROUND

In the past, proposed residential development has gone through the Residential Development Allocation (RDA) process prior to processing a Preliminary Development Plan (PDP) application. However, the voter approved initiative Measure K does not permit the approval of new RDA allocations until 2008. Because the Municipal Code does not specify the order of the Preliminary Planned Development in relation to the RDA application, the Council approved an RDA process for 2007 that allows the processing of Preliminary Development Plan applications prior to the RDA application.

ENVIRONMENTAL

Preliminary plan review is a non-entitlement action and does not require environmental review. The Final Development Plan will require compliance with the California Environmental Quality Act (CEQA).

ANALYSIS

Issue #1: Project Overview

The adjacent development, Black Diamond Ranch has gone through a series of modifications and subsequent public review dating back to the early 1980's. The Final Development Plan and Vesting Tentative Map was approved with 286 homes, a 0.8 commercial site, a portion of a 10 acre park, and 43.9 acres of open space.

On October 5, 2005, the Planning Commission (Attachment "B") heard the applicant's request to change the subject parcel's (part of the Black Diamond Ranch open space) designation from "Open Space" to "Owner/Developer Remainder Parcel". The staff report references discussions with the applicant, who intended to propose "executive/estate" housing for the remainder parcel. A condition of approval for the map of the neighboring development, Black Diamond Ranch, was the portion identified as open space must be dedicated to the City. By reclassifying the parcel, it did not require the developer to dedicate it to the City; however, it did not guarantee development rights upon the subject parcel. The Planning Commission's recommendation to the City Council was denial.

The reclassification of the subject parcel was heard by the City Council on October 25, 2005 (Attachment "C"); however, was continued to November 22, 2005, by directing staff to address the status of the remainder parcel in the event that a future development application is denied. On November 22, 2005, the City Council (Attachment "D") heard the applicant's request to change the designation on the subject parcel and not dedicate the land to the City of Antioch. The City Council approved the request for the reclassification of the subject parcel; however, one of the conditions of approval stated, "That the applicant shall make an irrevocable offer of dedication to the City of Antioch of the "Owner/Developer Remainder Parcel." Should a future development proposal of this parcel be approved, then the dedication shall be declined. If the development proposal is denied, then the City shall consider acceptance of the dedication."

The applicant is now proposing a project consisting of 72 single family homes. The lots range in size from 7,000 s.f. to 17,383 s.f. with an average lot size of 8,849 s.f. The project also includes two open space parcels which are 2.7 acres and 1.8 acres in size. The applicant has not submitted information regarding the architecture, landscaping, or floor plans for the proposed homes. The applicant's project description of the overall development is provided as Attachment "E".

The applicant has not developed a product for this subdivision. The units plotted on the map are the Crystal Ranch product (City of Concord) for illustrative purposes only. The sample product results in the following setbacks: front yard setbacks on average are around 17 feet with some having a setback of only 13 to 14 feet. The side yard setbacks are a minimum of five feet. The rear yard setbacks are less than 20 feet on

many lots, and the majority of the backyards will be sloped resulting in a large portion of the backyard or side yard that would not be usable. The size of the lots and the setbacks are not conducive to executive/estate lots which typically leave ample yard areas for pools, enhanced landscape features, and increased privacy. Additionally, the subdivision layout does not respect the grading of the hillside. Staff recommends larger lots and diminishing density as the hillsides become steeper.

A homeowner's association (HOA) will be required for the project, which will be responsible for maintaining all open space, streets, street lighting, and storm water pollution devices.

Issue #2: Consistency with General Plan and Zoning Ordinance

The General Plan designation for the project site is Low Density Residential which allows a maximum density of four units an acre. Typically Low Density Residential is located on flat or gently rolling terrain with little or no geological or environmental constraints. In this particular instance, the project is an atypical Low Density Residential project with it being proposed on dramatic topography. The zoning designation is Hillside Planned Development (HPD). The proposed land use is consistent; however, the design and layout are not consistent with the General Plan and Zoning Ordinance because it does not meet the identified goals and policies for hillside development.

The proposed project density is consistent with the maximum density allowed under the General Plan. However, according to the General Plan:

"Developable acres are those that are not encumbered by prior dedications of easements or rights-of-way, and are not so steep (generally over 25%), unstable, flood prone or subject to other hazards as to be unable to support new development. "

In addition, in 1981, the City of Antioch enacted the Hillside Planned Development Ordinance to protect hillsides, ridges, and ridgelines within the City. The ordinance was eventually revised and adopted within the Zoning Ordinance.

According to the Zoning Ordinance, a Hillside Planned Development (HPD), is "intended to promote a more harmonious visual and functional relationship between the natural and built environments." There are certain goals within the HPD, such as preservation of significant features of hillside areas (i.e. steep slopes, ridgelines, rock outcroppings), encouragement of alternative and varied development to provide maximum safety and human enjoyment while utilizing opportunities present by the natural terrain, compliance with the land use densities specified in the General Plan with the understanding that in areas featuring steeper slopes densities shall decrease, and minimization of grading and cut and fill operations.

The applicant is proposing 72 homes, creating three terraces by removing a minimum of 103 feet from the top of the hillside to the highest pad elevation. The hillside is currently

approximately 445 feet in height and the highest pad elevation is 342 feet. Staff believes the applicant's grading plan and subdivision design does not fit within the aforementioned goals of the Hillside Planned Development. As stated earlier, developments within the HPD are to create a visual and harmonious relationship with the hillside. In this instance the applicant is proposing to heavily grade the parcel into three terraced levels. Staff feels the applicant should redesign the development with the goals of the General Plan and the Zoning Ordinance in mind.

Issue #3: Site Plan

The site plan calls for an entry feature into the subdivision from Black Diamond Ranch through Summit Way. The subdivision features three private roads with the majority of the houses facing onto the street with the exception of lots 64-72. Lots 64-72 are proposed to blend into the adjacent Black Diamond Ranch development. There is the potential that lot 72 will have to be removed or redesigned to provide emergency vehicular access.

The three private drives have a width of 28 feet with a 5 foot sidewalk on one side of the street and curb and gutter on both sides for a total of 35 feet. On-street parking will be available on only one side of the street. The three drives end with cul-de-sacs to the west. The cul-de-sacs are not the City of Antioch standard and will also have to be approved by the Contra Costa County Fire Protection District (CCCFPD). The HPD district provides flexibility with street widths and sidewalks to accommodate the natural contours and unique design and layout. Although the applicant is requesting an accommodation of narrower streets, Staff feels the narrower streets do not fulfill the intent of the Hillside Planned Development by not following the natural contours or retaining the visual character of the existing hillside.

Developments that are located on hillsides typically compensate for the steep slopes and ridgelines with higher densities on the less steep areas and diminishing density as the slope of the terrain increases. A HPD project shall also be based on how the proposal relates to the natural topography, the degree to which grading and cut and fill operations are minimized, and the degree to which unique features such as steep slopes are preserved. This project does not incorporate any of the above design features. Instead the majority of the plan features major grading with small lots. The sizes of the lots are typical of low density residential; however, the majority of backyards in many cases are largely unusable due to the terrain. The potential homeowners that are attracted to executive/estate development will be interested in building pools and patios, which are not easy or are impossible to facilitate in the proposed backyards. Staff envisions much larger lots with estate type housing taken into consideration, as was discussed with the applicant prior to the reclassification from Open Space to Remainder, as well as taking into consideration reduced densities and amended grading.

Most of the home layouts provide a driveway apron of less than 20 feet, which is too narrow. The City standard is 20 feet. In addition, some of the driveways are not radial

to the right of way. Having a driveway apron of less than 20 feet and not radial to the right of way will make it difficult for the homeowners to maneuver in and out of their homes. Staff recommends that the homes feature the 20 foot required driveway apron and that all driveways shall be radial to the street.

All of the homes are placed in a relatively straight line, with the exception of a couple around the cul-de-sacs, with front setbacks of less than 20 feet. Staff recommends that the site plan stagger the placement of the homes with at least a 20 foot setback to provide a more varied streetscape. Providing a varied front setback is consistent with General Plan Community Image and Design policy 5.4.7 b: *Provide recognizable variations in front and side yard setbacks within single-family residential neighborhoods.*

Issue #4: Open Space

The applicant is proposing two open space parcels of 2.7 acres (Parcel "A") and 1.4 acres (Parcel "B"). The open space areas are proposed as a vegetative buffer zone between Black Diamond Ranch and the adjacent subdivision, as well as containing a vegetative swale to comply with the C.3 provision of the National Pollution and Discharge Elimination System (NPDES) pertaining to storm water runoff. The existing concrete v-ditch will not comply with the C.3 requirements; the applicant will have to redesign the area to be in full compliance with NPDES. According to the applicant's project description, there will be natural landscaping in the open space consisting primarily of trees.

Issue #5: Parking and Circulation

The proposed plan features private streets with sidewalks and parking on one side of the street. Access to the development is through Black Diamond Ranch via Summit Way. As discussed earlier, since there is only one small access point, lot 72 will have to be eliminated or redesigned to provide an emergency vehicular access point.

The project is providing two parking spaces in a garage for each unit. The Zoning Ordinance requires one on-street guest parking space per unit. The ordinance does not specify the placement of the spaces, but subdivisions are typically conditioned to provide a guest parking space in front of or within 150-200 feet of the unit it is serving. Since there is only parking on one side of the street and the cul-de-sac design reduces the number of on-street parking spaces, Staff is recommending adding City standard cul-de-sacs, which contain additional parking spaces.

The Zoning Ordinance also requires unrestricted access to the rear yard for recreational vehicles for 25% of single family lots. Per the Zoning Ordinance, there shall be a minimum of a 10 foot wide side yard setback to allow unrestricted access to the rear yard. The applicant's proposed site plan with retaining walls and limited side yard setbacks make it difficult to provide the required number of RV parking spaces. It is likely that the target demographic will own RV's and/or boats and will need storage areas.

Issue #6: Grading

The highest grade currently on the hillside is approximately 445 feet. The applicant is proposing to remove approximately a minimum of 103 feet of the hill with the highest pad elevation being at 342 feet. The subdivision is proposed to have three terraced levels with each street at a different grade level with a difference of approximately 20 feet between each. The idea is to stagger the houses in order to obtain houses on at least one side of the street with a view of the City and the delta.

The highest pad levels are on the southwest side on A Drive. The pad levels for those particular homes range from 342 feet to 311 feet. From the southwest side, the grade travels downward in a south and easterly direction. The mid level terrace on B Drive has pad elevations ranging from 324 feet to 276 feet and the last level or C Drive has pad elevations ranging from 304 feet to 270 feet.

The City of Pittsburg, which is adjacent to the subject parcel, is currently processing a proposal for the Sky Ranch subdivision immediately west of the project. The grading plan received from the City of Pittsburg for Sky Ranch has the adjacent home levels approximately six feet above the houses in The Pointe. The applicant has indicated that Pittsburg is requiring Sky Ranch to meet the grades of the Antioch projects. The applicant must demonstrate this in their Final Planned Development / Tentative Map proposal.

In addition, as Sky Ranch moves toward the west, the pad elevations become considerably higher than the Pointe pad elevations. There are instances of pad levels at 428 feet in elevation which is 86 feet higher than the highest pad elevation at the Pointe. The current hillside with a height of 445 feet will block the view of the City of Pittsburg's housing development.

Issue # 7: Other Issues

Infrastructure

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

Outside Agency Comments

Comments from the Contra Costa Flood Control District are attached (Attachment "F"). The applicant should address these comments with the Final Development Plan submittal. In addition, a letter of opposition was received from the East Bay Regional Park District (Attachment "G").

Provision C.3 of the National Pollution Elimination Discharge System

The applicant has provided preliminary design documents for dealing with storm water runoff; however, these currently do not fully comply with requirements. Lots 64-72 are not C.3 compliant and the existing concrete ditch does not qualify for compliance. The

HOA will be responsible for all storm water pollution devices and the developer will have to become C.3 compliant with the Final Development Plan.

ATTACHMENTS

- A. Vicinity Map
- B. October 5, 2005, Planning Commission Meeting Staff Report and Minutes
- C. October 25, 2005, City Council Meeting Staff Report and Minutes
- D. November 22, 2005, City Council Meeting Staff Report and Minutes
- E. Applicant's Proposal
- F. CCFCD Letter
- G. EBRPD Letter of Opposition

**CITY OF ANTIOCH PLANNING COMMISSION
RESOLUTION NO. 2007/04**

WHEREAS, the City of Antioch received a request from Discovery Builders, Inc. for approval of a Preliminary Development Plan for the development of 72 single family homes on approximately 21 acres located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-009); and

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

WHEREAS, on February 21, 2007, the Planning Commission duly held a public hearing, and received and considered evidence, both oral and documentary; and

WHEREAS, a Preliminary Development Plan is a non-entitlement application and is therefore not subject to the California Environmental Quality Act.

NOW THEREFORE BE IT RESOLVED that the Planning Commission of the City of Antioch does hereby provide the following direction to the applicant for PDP-06-03:

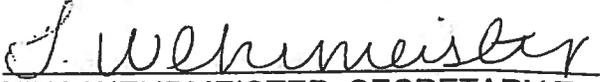
1. That the Final Development Plan submittal shall incorporate / address issues brought up by the Commission at the February 21, 2007, meeting, as well as those addressed in the staff report.
2. That the developer shall have a front yard setback of not less than 20 feet and shall stagger the front yard setbacks of adjacent lots to provide for a varied streetscape.
3. That each home shall include at least a 20 foot wide driveway apron.
4. That an HOA shall be established for the project and will be responsible for maintaining all open space, streets, street lighting, and storm water pollution devices.
5. That the project shall provide guest parking spaces within 150-200 feet of the unit each space serves and City standard cul-de-sacs, which include parking.
6. That the site plan shall be redesigned to take the Hillside Planned Development goals and policies into consideration.
7. That the streets shall follow the natural contours of the hillside.
8. That the lots shall be larger with more usable areas in the back and side yards.
9. That 25% of the lots shall have a minimum side yard setback of 10 feet without a retaining wall for RV parking.

10. That the applicant shall demonstrate how project grading and the grading of the adjacent subdivision to the west are compatible.
11. That parking will be allowed on both sides of the street throughout the development.

* * * * *

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 21st day of February, 2007.

AYES: Henry, Travers, Brandt, and Long
NOES: None
ABSTAIN: Delgadillo
ABSENT: Azevedo and Martin


TINA WEHRMEISTER, SECRETARY TO
THE PLANNING COMMISSION

On motion by Commissioner Henry and seconded by Commissioner Brandt, the Planning Commission approved the Minutes of January 17, 2007.

AYES: Henry, Brandt, Travers and Long
ABSENT: Delgadillo, Martin and Azevedo

Commissioner Henry stated that he would abstain from the Minutes of December 20, 2006, and January 31, 2007, due to his absence from the meetings.

NEW PUBLIC HEARINGS

2. **PDP-06-02 – Quail Cove Preliminary Development Plan – Discovery Builders, Inc., requests approval of a Preliminary Development Plan, which is not an entitlement, for the development of 27 single family homes on approximately 5.48 acres. The project site is located on the west side of Heidorn Ranch Road, southeast of the eastern terminus of Prewett Ranch Drive. (APN 056-130-012)**

Chairperson Long reported that the applicant has requested that this item be removed from the agenda, per an attached letter, in order to rework the site plan. When the revised submittal is complete, the item will be re-noticed and placed on a future agenda.

On motion by Vice Chairman Travers and seconded by Commissioner Henry, the Planning Commission removed Item No. 2 from the Agenda.

AYES: Travers, Henry, Brandt and Long
ABSENT: Azevedo, Martin and Delgadillo

3. **PDP-06-03 – The Pointe Preliminary Development Plan – Discovery Builders, Inc., requests approval of a Preliminary Development Plan, which is not an entitlement, for the development of 72 single family homes on approximately 21 acres. The project site is located east of the intersection of Somersville Road and James Donlon Boulevard. (APN 089-160-009).**

Assistant Planner Gentry provided a summary of the Staff Report dated February 16, 2007.

Opened Public Comment

Louis Parsons, representing Discovery Builders, provided background information on the preliminary development plan and referenced displayed wall maps that depicted schematic site plans. He also spoke to landscaping and grading plans.

Commissioner Henry expressed concern to the small size of the proposed homes and felt they were also spaced too close together. He understood the intent of the applicant to provide views, but stated his dislike to the extensive grading of the hillsides and the upslope to backyards leaving this area unusable.

Vice Chairman Travers stated that he had a concern as to the small lots that have been proposed and the EVA access, in terms of not having enough turning radius. He expressed concern to grading and questioned if some homes could be taken out of the plan, in order to provide larger back and side yards.

Commissioner Brandt expressed concern to the development of homes on this hillside. She felt that this development, being that it is an estate-g geared subdivision, should have parking on both sides of the street, contain three car garages, maintain room to maneuver three large garbage cans, and be designed to accommodate RV parking. She felt that estate lots should not contain up sloped backyards because of landscaping that could obstruct views for nearby neighbors. She wanted to ensure that the homeowners who purchase their lots with views would be able to maintain the views, and expressed concern to neighboring landscaping issues that could restrict views in the future.

Delgadillo arrived at 8:03 p.m.

Chairperson Long stated that Commissioner Delgadillo would abstain from Item No. 3, due to his late arrival.

Chairperson Long stated her disagreement to parking on one side of the street and suggested that the number of homes be reduced to provide additional acreage on side yards. She expressed concern to the proposed grading plan, in terms of high slopes, and the traffic circulation of the plan, in conjunction with the proposed narrow streets.

Chairperson Long requested that the applicant take the concerns heard here tonight into consideration and provide feedback to the Commission in the future.

Through discussions amongst the Commission, it was requested that the number of units be reduced, and it was felt that Condition No. 8 satisfied this concern. Moreover, Commissioner Brandt requested that a Condition No. 11 be added to state that "parking shall be allowed on both sides of the street".

In responding to Commissioner Brandt regarding maintaining view lots, Deputy Director of Community Development (DDCD) Wehrmeister felt it would be appropriate when the final development plan is approved, to place this requirement upon the Homeowner's Association.

RESOLUTION NO. 2007/04

On motion by Commissioner Henry, and seconded by Vice Chairman Travers, the Planning Commission approved a request from Discovery Builders, Inc., for approval of a Preliminary Development Plan for the development of 72 single family homes on approximately 21 acres located west of the intersection of Somersville Road and James Donlon Boulevard (APN 089-160-009) with the addition of:

- **Condition No. 11 to read: "That parking will be allowed on both sides of the street throughout the development."**

AYES: Henry, Travers, Brandt and Long
ABSTENTION: Delgadillo
ABSENT: Azevedo and Martin

4. **PDP-06-05 – Tierra Villas Preliminary Development Plan – Mission Peak Homes, Inc., requests approval of a Preliminary Development Plan, which is not an entitlement, for the development of 122 single family homes on approximately 20.3 acres. The project site is located on the west side of Heidorn Ranch Road, at the eastern terminus of Prewett Ranch Drive. (APN's 056-130-013, 015 and 017)**

Assistant Planner Morris provided a summary of the Staff Report dated February 16, 2007.

Opened Public Comment

Steve Allen and Jill Williams of Mission Peak Homes, provided a power point presentation that depicted a conceptual site, landscaping plans and architectural elements.

Commissioner Henry stated that he preferred to have one large proposed open space area, as opposed to two open space parcels and was slightly concerned about the proposed parking.

Vice Chairman Travers suggested that lot numbers 53 through 57 be removed and replaced with open space for the whole project, as well as the pathway being located behind lot numbers 31 and 32 which would connect to the walkways. Also, the two open space parcels shown on the plan be designated for a particular residence.

Commissioner Brandt expressed concern to the homes being too close together in proximity and did not want to see a window-to-window design. She stated that she would review the site plan and elevations to review this issue as the plan moves forward, as well as review lighting issues. She further expressed a concern to the 5 ft.

ATTACHMENT "E"

STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE MEETING OF JUNE 12, 2007

Prepared by: Victor Carniglia, Deputy Director of Community Development 

Approved by: Joseph G. Brandt, Director of Community Development 

Date: June 4, 2007

Subject: Preliminary Development Plan for The Pointe Project
(PDP-06-03)

RECOMMENDATION

It is recommended that the City Council provide feedback to the applicant regarding the Preliminary Development Plan submittal for The Pointe Project as summarized in the "Conclusion" section of this staff report.

BACKGROUND INFORMATION

The site being considered under this Preliminary Development Plan is a 21 ± acre hilltop that was previously designated "Open Space" on the tentative map for Black Diamond Ranch. The applicant previously requested the opportunity to develop Estate housing on this parcel and, in November 2005, Council redesignated the Open Space area as "Other Lands of Developer" to allow the applicant to develop a plan for that Estate housing. The surrounding Black Diamond Ranch development is a standard residential subdivision with 4,000, 5,000 and 6,000 nominal single family lots and publicly maintained roads.

This Preliminary Development Plan was continued from the City Council meeting of May 8, 2007. At the May 8, 2007 Council meeting the applicant stated in their presentation that they had submitted a revised plan to the City which the applicant felt addressed many of the issues raised in the staff report. Due to the fact that this revised plan was not included in the Council packet, staff was directed by City Council to bring the revised plan back to Council on June 12, 2007, along with a staff report addressing the revised plan.

On June 4, 2007, as this staff report was being finalized, the applicant submitted yet another revised plan for the Pointe project. Also submitted with the plans was a letter from the applicant describing the latest plan revisions (Attachment "A"). Due to the timing of this submittal, this latest plan was not able to be addressed in detail in this staff report.

With this new submittal, the City now has three separate plans for The Pointe project, namely the "original" plan (the plan that was distributed for the May 8, 2007 Council meeting), the "revised" plan (the plan the applicant referenced as

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addressing staff's issues at the May 8, 2007 Council meeting), and now the plan just submitted, referred to as the "latest" plan. Included in the Council packet are copies of all three plans suitably marked with the preceding names.

Attachment "B" provides minutes of the May 8, 2007 City Council meeting, while Attachment "C" provides the May 8, 2007 Council staff report as background information about the project. Attachment "G" of the May 8, 2007 staff report provides a detailed summary of General Plan and zoning requirements pertinent to this project.

ANALYSIS

Comparison of the Preliminary Development Plan Submittals: The presence of three separate development plans creates a challenge in analyzing the proposed project. However, this challenge is simplified to some extent by the fact that all three plans proposed by the applicant utilize a very similar approach to grading the site. As a result, the concerns expressed in this staff report over the lack of consistency between the proposed project grading and the City's adopted goals and policies are essentially equally applicable to all three plans. The following is a summary of the key similarities and differences between the three plans:

1. When the three plans are unfolded and laid out "side by side" it is clear that the three plans are in essence variations on a single plan. The basic development concepts behind this single plan are 1) to grade down and remove the majority of the hill, 2) to create large flat areas on which to place buildings, with some terraces between the flat areas, and 3) to construct three "double loaded" streets parallel through the site on the largely flat "plateaus" created by the grading.
2. Where the three plans differ is the number of units. The "original" plan had 72 units; the "revised" plan reduced this to 66 units, with the "latest" plan now down to 60 units. The reduction in units in the "revised" plan was largely achieved by eliminating one lot from each side of the three parallel streets running through the project. The reduction in the "latest" plan was made in a similar manner by eliminating two lots from each side of the three parallel streets.
3. The "revised" plan actually appears to increase the depth of overall site grading by cutting an additional 4 to 5 ft. from the hill as compared to the "original" plan. As a result, the "revised" plan has a maximum cut of 131 vertical feet, as compared to 125 vertical feet in the "original" plan. The grading in the "latest" plan, based on the limited grading information provided by the applicant, appears to be similar to the "revised" plan.
4. The height of most of the project's retaining walls has been reduced in the "revised" plan. In most instances lowering retaining walls would be considered to be a positive outcome. However, in this case the lowering of retaining walls was accomplished, not by modifying the plan to better fit the

existing hill, but instead by increasing the amount of vertical cut. In essence, the "revised" plan makes the hill "flatter" than proposed in the "original" plan. The flatter the site, the fewer retaining walls are needed between lots. Retaining walls are not shown on the "latest" plan.

5. The size of the typical usable yard area was increased in both the "revised" and the "latest" plan. This increase was largely due to the deletion of the lots. The average and minimum lot size was also increased, once again due to the deletion of lots.

It is important to note that while both the "revised" plan and the "latest" plan are improvements over the "original" plan submittal (due largely to the decrease in units and an increase in average lot size), the key point to emphasize is that the significant inconsistencies between the proposed grading and the City's various hillside preservation policies in the General Plan and Zoning Ordinance are essentially unchanged for all three plans. The reason for this situation is simple, namely that all three plans are all "variations" on the same theme from a grading perspective. What is needed is a truly new plan. This need for a new plan is discussed later in this staff report, and information on how such a new plan might be prepared will be presented at the Council meeting.

Planning Commission Direction to Applicant: The Preliminary Development Plan application was reviewed by the Planning Commission on February 21, 2007. At that meeting the Planning Commission gave direction to the applicant concerning changes to make to the plan. Included with the attached May 8, 2007 City Council report is a copy of the February 21, 2007 Planning Commission report, which includes the direction given by the Commission to the applicant. At the May 8, 2007 Council meeting the applicant stated that he felt that the "revised" plan addressed the direction given by the Commission. This assertion by the applicant warrants some clarification. The first thing to note is that the direction provided by the Planning Commission at their February 21, 2007 meeting was for the most part very broad, and did not direct specific changes be made to the site plan. The following are some examples of the broad direction made by the Planning Commission to the developer at the February 21, 2007 Commission meeting:

- *"That the site plan shall be redesigned to take the Hillside Planned Development goals and policies into consideration".*
- *"That the streets shall follow the natural contours of the land."*
- *"That the Final Development Plan submittal shall incorporate/address issues brought up by the Commission at the February 21, 2007 meeting, as well as those addressed in the staff report."*

The Planning Commission direction also included some more detailed provisions concerning certain performance standards. These included the following provisions:

- *"That the lots be larger with more usable areas in the back and side yards."*
- *"That 25% of the lots shall have a minimum side yard setback of 10 feet without a retaining wall for RV parking".*
- *"That each home shall have a 20 foot wide driveway apron."*

What appears to have happened is that the applicant in the "revised" plan addressed the more detailed direction provided by the Planning Commission, but appears to have neglected the broader direction. This may explain the applicant's apparently sincere belief that the "revised" plan addressed the issues raised by the Commission.

While it could be argued that broad general direction is appropriate for a non entitlement action like a Preliminary Development Plan, it can lead to a misunderstanding as appears to have happened in this case. In the future, staff will work with the Commission to provide more explicit direction about changes that need to be made to a plan. If City Council feels the need to clarify the intent of the Planning Commission's direction further, then the Council could refer the item back to the Commission for additional review.

General Plan Consistency: The issue of General Plan consistency was raised by the applicant at the May 8, 2007 Council meeting, with the assertion that the project as proposed is consistent with the General Plan due to the fact that the density proposed complies with the maximum allowed by the Medium Low Density Residential designation of the General Plan. The density proposed at approximately 2 units/gross acre in the latest plan appears to fall well within the allowed maximum. Nevertheless, a General Plan consistency determination involves much more than referring to the General Plan land use map. The following are points the Council needs to consider on the question of the proposed project's compliance with the General Plan:

- The City's General Plan, which was comprehensively updated in November 2003, has language specifically intended to clarify the kind of questions raised by a project of this type. Section 4.4.1.1 of the General Plan states that density is based on the concept of "net developable" acre, and that land encumbered by steep slopes (generally over 25%) are not counted when determining "net developable" acreage. Given that virtually the entire Pointe project site is occupied by slopes exceeding 25%, the net developable area would only be a fraction of the total 21 acres the applicant seeks to develop.
- The General Plan is implemented by considering all the relevant goals and policies pertinent to a development, and not just by looking at the land use map or selectively picking and choosing which policies to apply. While this may be cumbersome, and puts a burden on decision makers, it is the most appropriate way to effectively regulate something as complex as the development of land. Aside from this, State law specifically requires that in making decisions that the General Plan be looked at as a whole, including all relevant maps and policies.

- The General Plan map is not intended to be parcel specific or to distinguish individual terrain features within its land use designations. If the General Plan land use map had to contain that level of detail, then a City would be forced to do detailed site planning for every single parcel just to complete a General Plan map. This is neither practical nor desirable. The solution is to do a broad based map combined with goals and policies.
- The issue of "precedence" is important when interpreting the General Plan. The various goals and policies contained in the General Plan need to be implemented uniformly throughout the City, unless the General Plan has language establishing different standards and/or policy exemptions for different parts of the City. The General Plan policies concerning hillside development and grading do not differentiate between the area where the proposed "Pointe" is located and other undeveloped areas of the City, such as the Sand Creek Focus area (FUA#1) and the recently annexed Roddy Ranch property. As a result, it is conceivable that if the type of grading being requested by the applicant for the Pointe project is considered to be consistent and appropriate under the General Plan, then a future developer in FUA#1, Roddy or other area may make a similar request expecting a similar answer.

As previously discussed, Attachment "G" of the May 8, 2007 Council report provides a detailed comparison of the proposed project to the City's relevant General Plan policies.

Consistency with General Plan and Hillside Zoning Requirements: While much of the preceding discussion has focused on why staff feels the proposed Preliminary Development Plan does not comply with the City's various General Plan and Zoning requirements, it is appropriate to describe the type of development that would be consistent with the City's requirements. While it is not appropriate for staff to design a plan for the property owner, the following is a brief description of some of the characteristics of such a plan:

- The existing hill would not be mass graded and the summit would not be lowered. Grading for roads would be largely limited to that needed to construct narrow private roads accessing development sites.
- The road system accessing the building sites would to the extent practical follow the existing contours of the hill. The roads themselves would be private, with the minimum width necessary for access and safety.
- The development sites would be graded only as needed for the footprint of homes. Stepped foundations would be utilized so that structures better fit the existing hill form.
- Slopes between building pads would be left ungraded.

The closest local example of the type of development that would be appropriate for the Pointe property is the Sierra Vista project south of the Mira Vista development, which will be under construction in the near future. As a point of

comparison, the Sierra Vista project consists of 50 custom home sites on a roughly 150 acre parcel. This contrasts with the 60 lots on the 21 acre "Pointe" as proposed in the revised Preliminary Development Plan.

CONCLUSION:

As documented in this staff report and related attachments, the project as proposed is inconsistent with the General Plan and the City's hillside development policies. In order to proceed with development in the project area the applicant would need to substantially modify the plan. As discussed previously, some ideas on how such a modified plan might be prepared will be presented at the Council meeting.

Staff recommends that the City Council provide the following direction to the applicant for the "Pointe" Preliminary Development Plan application:

1. That the Final Development Plan submittal shall address issues brought up by the Council at the June 12, 2007 City Council meeting.
2. That the plan be substantially revised so that the form of the existing hill is largely retained. The existing hill may not be reduced in total height.
3. Mass grading of the site is not allowed. Grading shall be limited to the creation of building pads, and not for the purpose of creating flat yard areas. Split pads are encouraged to reduce pad grading.
4. Slopes between building pads and between lots shall be left ungraded,
5. That the environmental review process for any future entitlement application include a detailed visual and slope analysis to determine how any proposed plan complies with all of the City's General Plan and Zoning hillside development requirements.
6. The road system accessing the building sites would to the extent practical following the existing contours of the hill. The roads themselves will be private, with the minimum width necessary for access and safety, as determined by the City Engineer.
7. That the ultimate unit count will be reduced as necessary as part of any future entitlement process to comply with the City's General Plan and Zoning hillside development requirements.
8. That each home shall include a maximum of an 18 foot wide driveway apron.
9. That a Home Owners Association (HOA) shall be established for the project and will be responsible for maintaining all open space, streets, street lighting, and storm water pollution devices.

10. That the project shall provide guest parking spaces within 150-200 feet of the unit each space serves.
11. That the site plan shall be redesigned to comply with the General Plan Hillside Design Polices and Article 24 of the zoning ordinance relating to the Hillside Planned Development District.
12. That the lots shall be larger with more usable areas in the back and side yards.
13. That 25% of the lots shall have a minimum side yard setback of 10 feet without a retaining wall for RV parking.
14. That the applicant shall demonstrate how project grading and the grading of the adjacent subdivision to the west is compatible.

As a final note, the inconsistencies between the proposed plan and the City's General Plan and zoning requirements will need to be addressed before any request for a Residential Development Allocation (RDA) can be acted on.

FINANCIAL IMPACT

This is a non-entitlement Preliminary Planned Development application and as such, no financial impacts have been identified at this time.

OPTIONS

None. The purpose of this item is to provide feedback regarding the proposal

ATTACHMENTS

- A. Applicant's letter dated June 4, 2007
- B. Minutes of May 8, 2007 Council meeting
- C. Staff report for May 8, 2007 Council meeting

- K. **RESOLUTION NO. 2007/43 ACCEPTING WORK AND DIRECTING CITY ENGINEER TO FILE A NOTICE OF COMPLETION AND AUTHORIZING FINAL PAYMENT TO PACIFIC STATES ENVIRONMENTAL CONTRACTORS, INC FOR THE INTERIM SITE STABILIZATION WORK FOR MARKLEY CREEK #814-03**
- L. **APPROVAL TO COMPLETE REPAIR WORK ON SIERRA CRETE CATEGORY II STREETS, (PW 392-23) #1102-04**
- M. **CONSIDERATION OF BIDS FOR THE LANDSCAPE IMPROVEMENTS AT VARIOUS LOCATIONS WITHIN THE CITY OF ANTIOCH (PW 225-L) #806-03 - Rejected**

On motion by Councilmember Davis, seconded by Councilmember Simonsen, the Council members present unanimously approved the Council Consent Calendar with the exception of Item A, which was removed for further discussion.

Item A – Mayor Freitas stated he would abstain from the vote on the item due to his absence from the April 24, 2007 City Council meeting.

On motion by Councilmember Simonsen, seconded by Councilmember Moore, the City Council approved item A. The motion carried by the following vote:

Ayes: Davis, Moore, Simonsen

Absent: Kalinowski

Abstain: Freitas

PUBLIC HEARINGS

2. **THE POINTE PRELIMINARY DEVELOPMENT PLAN – DISCOVERY BUILDERS, INC. REQUESTS REVIEW OF A PRELIMINARY DEVELOPMENT PLAN FOR THE DEVELOPMENT OF UP TO 72 SINGLE FAMILY HOMES ON APPROXIMATELY 21 ACRES LOCATED WEST OF THE INTERSECTION OF SOMERSVILLE ROAD AND JAMES DONLON BOULEVARD (APN: 089-160-009) PDP-06-03 #202-03**

Community Development Deputy Director Carniglia presented the staff report dated June 4, 2007 recommending the City Council provide direction to the applicant regarding the Final Development Plan submittal.

Mayor Freitas opened the Public Hearing.

Louis Parsons, representing Discovery Builders, gave a brief overhead presentation of subsequent iterations of their site planning and the rationale for the design.

Wilson Wendt, Attorney representing Discovery Builders, stressed the application was a preliminary development plan and as part of the process there would be a CEQA analysis to address the projects impacts and conformity between the general plan and zoning provisions. He urged the City Council to let the process move forward and allow for the appropriate analysis. He felt no precedence would be set with approval of the development.

Mayor Freitas closed the Public Hearing.

Councilmember Simonsen stated he was disappointed in the staff report, noting he felt staff had not provided Council with all the options. It was, in his opinion, biased. He expressed concern staff had not carried out the City Council's established policy. Speaking to staff's recommendations #1-14 within the staff report he suggested the following changes to items #2-4, 6, 7, 11-14:

- #2 The site plan as shown is in compliance with Council direction for large usable lots
- #3 Grading of the site as shown is permitted. Grading shall be limited to the creation of building pads, and not for the purpose of creating flat yard areas. Split pads are encouraged to reduce pad grading.
- #4 Allow for slopes to be graded between pads necessary to provide views and landscaping for lots.
- #6 The location of the road grades shall be designed to provide practical feasible access to the units as shown on the site plan that meets the Contra Costa Consolidated Fire Department standards.
- #7 Units have been reduced from 63 units to 51 units on the hill at the direction of City Council. This reduction in unit count has provided for increased lot size, more outdoor usable space, RV parking, pedestrian access and a small community feature pocket park.
- #11 That the site has been redesigned to comply with the general plan and the Hillside Planned Development District and Article 24.
- #12 The minimum lot size on the hill will be no less than 10,000 square feet.
- #13 No comments made
- #14 That the applicant has demonstrated how project grading and the grading of the adjacent subdivision to the west is compatible.

Councilmember Moore stated he was in substantial agreement with Councilmember Simonsen's comments and looked forward to staff working with the applicant to develop a project that would benefit Antioch.

Councilmember Davis requested to see Councilmember Simonsen's recommendations in writing to give him an opportunity to review them and requested staff recommendation #2 be stricken. Additionally, he noted the applicant had responded to the requests from Council and he looked forward to the project coming back.

Mayor Freitas stated he felt the proposal was an abomination of the City Council. He noted staff had responded to the City Council's request to outline the policy issues. He further noted this was not an infill project and the area should remain open space, however, if the majority of the City Council felt it should be developed, they should require the applicant to follow the hillside ordinance. Furthermore, he felt they should be custom designed lots. He stated the proposal to grade the project 100 feet was significant and should be rejected. Additionally, he noted the project was precedence setting and would influence future development. He urged the City Council to reject the proposal based on its non-compliance to the Council approved policies or bring the general plan and hillside ordinance policies back for revisions.

Mayor Freitas declared a recess at 8:58 P.M. The meeting reconvened at 9:12 P.M. with all Councilmembers present.

Following discussion, Council agreed to move agenda item #4 to the next item of business.

ATTACHMENT "F"

RDA Committee Meeting
Project:

CATEGORY	POSSIBLE POINTS	COMMITTEE MEMBER SCORES				FINAL SCORES
A. PHYSICAL IMPROVEMENTS	200 POINTS POSSIBLE	Travers	Kalinowski	Freitas	Azevedo	AVERAGE
A-1 Traffic and Transportation	75 points	60	55	60	60	58.8
A-2 Utilities and Infrastructure	75 points	60	55	60	50	56.3
A-3 Open Space and Parks	25 points	15	18	15	15	15.8
A-4 Natural Features	25 points	10	0	0	5	3.8
SUB-TOTAL		145	128	135	130	134.5
B. DESIGN	100 POINTS POSSIBLE	Travers	Kalinowski	Freitas	Azevedo	AVERAGE
B-1 Site Design	25 points	23	20	15	20	19.5
B-2 Architecture and Design Quality	25 points	22	17	15	20	18.5
B-3 Energy and Efficiency	25 points	15	17	10	10	13.0
B-4 Public Safety	25 points	23	17	18	20	19.5
SUB-TOTAL		83	71	58	70	70.5
C. ADDITIONAL COMMUNITY BENEFITS AND CONTRIBUTIONS	200 POINTS POSSIBLE	Travers	Kalinowski	Freitas	Azevedo	AVERAGE
C-1 School Mitigation	60 points	40	40	40	40	40.0
C-2 Economic Development Benefits	60 points	40	20	30	35	31.3
C-3 Contributions to Special Projects	80 points	50	20	25	35	32.5
SUB-TOTAL		130	80	95	110	103.8
TOTAL POINTS	500 POSSIBLE	358	279	288	310	308.8

ATTACHMENT "G"

STAFF REPORT TO THE RDA COMMITTEE FOR CONSIDERATION AT THE MEETING OF AUGUST 20, 2007

Prepared by: Mindy Gentry, Assistant Planner *AK*
Reviewed by: Tina Wehrmeister, Deputy Director of Community Development
Date: August 17, 2007
Subject: RDA-07-02 – The Pointe

PROJECT INFORMATION

Applicant: Discovery Builders, Inc.
Owner: Discovery Builders, Inc.
Location: The project site is located east of the intersection of James Donlon Boulevard and Somersville Road (APN: 089-160-009) (Attachment "A")
General Plan / Zoning: The General Plan designation for the project site is Low Density Residential, which allows a maximum density of four units per acre. The zoning designation is Hillside Planned Development (HPD).
Requested Allocations: The applicant is requesting that 60 single-family residential units be allocated in 2008. The project is not being phased.

DISCUSSION

On July 30, 2007, the RDA Committee heard and continued the project and now the applicant is returning with revised benefits and contributions. The previous staff report is provided as Attachment "B". This staff report will address the project changes and summarize the community benefits that have been proposed by the applicant.

In the applicant's summary and revised site plan, they have indicated that a single story home has been added to the development (Attachment "C"). A revised floor plan has not been received by staff, although the applicant has indicated the single story home was derived from floor plan 1 which had a loft incorporated. The developer has eliminated the two upstairs bedrooms and bathroom. The square footage of the four homes now range from 2,616 s.f. to 3,951 s.f. with options ranging to 4,102 s.f.

ANALYSIS

Physical Improvements

The developer is proposing all private roads which will be maintained by the Homeowners Association. The necessary roadways to access the development have already been constructed or are planned for construction as part of the previously approved Black Diamond Ranch.

The developer will be required to provide the infrastructure necessary to serve the site and will be required to pay fair share costs for all infrastructure improvements. This includes utility tie-ins such as water, sanitary sewer, and storm drainage systems. The applicant is not proposing any public improvements to utilities or infrastructure. Additionally, the project will be annexed into SLLMD 2A-10 which is responsible for the ongoing maintenance of streets, landscaping, and lighting improvements to Somersville Road, James Donlon Boulevard, and Markley Creek Park.

The applicant is proposing approximately 4 acres of open space (about 20% of the overall site). The open space, Parcel A and Parcel B, are located at the rear of the houses on the upslope from Black Diamond Ranch. The applicant has provided a conceptual landscape plan for open space parcels. Furthermore, the applicant is providing a pedestrian path between the three terraces and a pocket park approximately 10,836 s.f. in size. Maintenance of all common areas, open space, front yard landscaping, the community pocket park, entry features, and landscaping in the common space will be the responsibility of the project's Homeowner's Association (HOA).

Site Plan, Architecture and Landscaping

All the lots except for 53-59 are 10,000 s.f. or larger. The site is zoned Hillside Planned Development (HPD), which allows for flexibility in setbacks and lot sizes. The design of the development has utilized the topography to maximize unobstructed views of the City of Antioch and the delta for many of the homes.

There are four proposed base floor plans ranging from 2,616 s.f. to 3,951 s.f. with options ranging to 4,102 s.f. There are several options for room arrangements and a mix of garage approaches from side to front load configurations. The themes of the proposed homes are Craftsman, Spanish, and Monterey which will be finished in stucco and accented by wood shutters, divided-lite windows, iron metal ornamentation, stone veneer, wood braces and concrete tile roofing.

The proposed landscape plan offers a wide variety of drought tolerant landscaping, a City standard requirement.

The applicant states that all the homes will meet or exceed energy efficient requirements and will have the appropriate conservation features included and available for the public to purchase as upgrades. The applicant has not identified the type of

appropriate conservation features that will be offered. It would be a benefit to the future homeowners if these energy efficient features were standard on all homes.

The majority of the proposed project is within a gated community with Lots 52 – 60 incorporated into Black Diamond Ranch and not gated. Security systems and alarms are offered with all homes, but are not included as standard.

Community Wide Benefits

The applicant has identified in their summary of benefits that the applicant will provide \$450,000 for additional permanent classrooms at the John Turner Elementary School and Antioch High School. This monetary contribution is to be made at the issuance of the 20th building permit. Furthermore, it is typical of new subdivisions to be required to annex into a Mello Roos District for the purpose of mitigating any school impacts.

For Economic Development Benefits and Contributions to Special Projects, the applicant is offering a monetary contribution of \$300,000 toward the City of Antioch monument entry signs. This contribution is to be made at the issuance of the 40th building permit. Furthermore, the applicant is offering a monetary contribution of \$300,000 towards the Community Center at Prewett Park. This contribution will be made at the issuance of the 60th building permit.

Overall, the financial contribution totals \$1,050,000 which equates to \$17,500 per lot. Staff has prepared a proforma based on similar proformas prepared on all properties in Future Urban Area 1 and outlining the approximate cost of the development, as well as the profits of the project (Attachment "C"). The proforma provides general numbers for the entire project with all the homes slated at 3,000 s.f., 3,500 s.f., or 4,000 s.f. The profit for the three generic homes sizes is approximately \$8,400,000, \$10,600,000, and \$13,000,000 respectively. The typical profit margin for a residential housing project is approximately 9% to 14%; however, the projected profit margin for this project is between 22% and 29%. The profit over and above the typical 9% to 14%, calculated at 12%, equates to approximately \$3,900,000, \$5,800,000, and \$7,600,000. Staff feels that because of this larger profit the economic and community benefits may not be equitable to the profits being generated.

The aforementioned proforma was provided to the applicant two weeks prior to the hearing. Staff asked that the applicant provide comments regarding the assumptions made in the proforma. At the time this staff report was prepared, feedback had not been received from the applicant.

SUMMARY OF PROJECT BENEFITS

Below is a brief description of the community benefits provided by the project and their timing organized by each evaluation category approved by the City Council. The maximum possible points for each category are shown in the table, but no points have been assigned. The applicant's description of the project's benefits to the community is attached (Attachment "D").

The Committee should use the table below to score the project prior to the RDAC meeting on August 20, 2007.

CATEGORY	POINTS POSSIBLE	COMMITTEE NOTES
A. PHYSICAL IMPROVEMENTS	200 POINTS	NOTES
A-1 Traffic and Transportation	75 points	
<ul style="list-style-type: none"> Streets within the project will be private and will be maintained by the Home Owners Association at no cost to the City. 		
A-2 Utilities and Infrastructure	75 points	
<ul style="list-style-type: none"> The project will be annexed into the SLLMD 2A-10, which maintains the landscaping and lighting for Somersville Road, James Donlon Boulevard, and Markley Creek Park. 		
A-3 Open Space and Parks	25 points	
<ul style="list-style-type: none"> The project includes 4 acres of private open space area and pedestrian paths between the three terraces. The project includes a 10,836 s.f. community pocket park with a water feature and pedestrian pathways between the three terraces. 		
A-4 Natural Features	25 points	
<ul style="list-style-type: none"> The project is not preserving the natural features of the hillside. 		
B. DESIGN	100 POINTS	
B-1 Site Design	25 points	
<ul style="list-style-type: none"> The majority of the lots in the project have a 10,000 or larger s.f. lot. There are unobstructed views of the City of Antioch and the delta from many of the homes. 		
B-2 Architecture and Design Quality	25 points	
<ul style="list-style-type: none"> The houses will be accented with wood shutters, divided-lite windows, iron metal ornamentation, stone veneer, wood braces, and concrete tile roofing. The landscape plan provides a wide variety of landscaping. 		
B-3 Energy and Efficiency	25 points	

CATEGORY	POINTS POSSIBLE	COMMITTEE NOTES
<ul style="list-style-type: none"> The homes will incorporate standard conservation features as well as upgraded energy efficient features. 		
B-4 Public Safety	25 points	
<ul style="list-style-type: none"> The majority of the community is gated. 		
C. ADDITIONAL COMMUNITY BENEFITS AND CONTRIBUTIONS	200 POINTS	
C-1 School Mitigation	60 points	
<ul style="list-style-type: none"> The applicant is proposing contributing \$450,000 at the issuance of the 20th building permit for permanent classrooms at Turner School and Antioch High School. The project will be required to annex into a Mello Roos district. 		
C-2 Economic Development Benefits	60 points	
<ul style="list-style-type: none"> The applicant is proposing contributing \$300,000 at the issuance of the 40th building permit toward the City of Antioch monument entry signs. 		
C-3 Contributions to Special Projects	80 points	
<ul style="list-style-type: none"> The applicant is proposing a financial contribution of \$300,000 at the issuance of 60th building permit towards the Community Center at Prewett Park. 		
TOTAL POINTS (500 points possible)		

RECOMMENDATION

It is recommended that the RDAC score the application and if the application meets the 50% threshold, decide if the project shall receive a recommendation of allocations. If the RDAC does recommend an allocation, such allocation should be contingent on compliance with the Antioch General Plan. A resolution of approval has been prepared; however, if the RDAC feels a denial resolution is appropriate, staff will prepare one accordingly.

ATTACHMENTS

- A. Vicinity Map
- B. Staff Report from the July 30, 2007 Residential Development Allocation Committee Hearing
- C. Proforma Prepared by Staff
- D. Letter from the Applicant Outlining Financial Contributions and the Project Description

**RESIDENTIAL DEVELOPMENT ALLOCATION COMMITTEE
RECOMMENDATION FOR APPROVAL OF ALLOCATION OF RESIDENTIAL UNITS
FOR THE POINTE RESIDENTIAL DEVELOPMENT**

WHEREAS, the Residential Development Allocation Committee (RDAC) of the City of Antioch did receive an application from Discovery Builders, Inc., for the approval of 60 residential development allocations for a +/- 21 acre project generally located east of the intersection of James Donlon Boulevard and Somersville Road. (APN: 089-160-009) (RDA-07-02); and

WHEREAS, the approval of residential development allocations does not constitute an entitlement to develop a project and the allocation process is not subject to the provisions of the California Environmental Quality Act; and

WHEREAS, the RDAC duly gave notice of the public meeting as required by law; and

WHEREAS, on July 30, 2007, the RDAC duly held a public meeting, received and considered evidence, both oral and documentary; and

WHEREAS, it is hereby understood that any contributions, mitigations, and other benefits that were agreed to as part of this allocation process shall be incorporated into future entitlement submittal(s).

NOW THEREFORE BE IT RESOLVED that the RDAC does hereby recommend that Discovery Builders, Inc. be granted 60 residential development allocations in 2008.

NOW THEREFORE BE IT FURTHER RESOLVED that the RDAC does hereby recommend that Discovery Builders, Inc be granted 60 residential development allocations subject to the following items and community benefits that the applicant has agreed to provide:

1. The project amenities shall be substantially in conformance with the applicant's project description date stamped July 20, 2007.
2. Local streets within the project shall be private and shall be maintained by the Home Owners Association at no cost to the City.
3. The homes shall incorporate appropriate conservation measures as standard equipment and not as options or upgrades.
4. The project will include approximately 4 acres of private open space area, a pedestrian path between the three terraces, and a community pocket park.
5. The homes shall be finished with wood shutters, divide-lite windows, iron metal ornamentation, stone veneer, wood braces, and concrete tile roofing.

6. All lots except lots 53 to 59 shall be 10,000 s.f. or larger.
7. The community shall be gated except for the lots that will blend into the Black Diamond Ranch subdivision.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the Residential Development Allocation Committee of the City of Antioch, County of Contra Costa, State of California at a regular meeting of said Residential Development Allocation Committee held on the 30th day of July, 2007 by the following vote:

AYES:
NOES:
ABSTAIN:

TINA WEHRMEISTER
Secretary to the RDAC

ATTACHMENT "H"

STAFF REPORT TO THE PLANNING COMMISSION FOR CONSIDERATION AT THE MEETING OF SEPTEMBER 19, 2007

Prepared by: Mindy Gentry, Assistant Planner *MG*
Reviewed by: Tina Wehrmeister, Deputy Director of Community Development *TW*
Date: September 14, 2007
Subject: RDA-07-02 – The Pointe

RECOMMENDATION

It is recommended that the Planning Commission approve the attached resolution recommending the City Council approve 60 Residential Development Allocations (RDA-07-02).

REQUEST

Discovery Builders Inc., the applicant, requests approval of 60 single family residential development allocations for 2008 for an approximately 21 acre site. The project is generally located east of the intersection of James Donlon Boulevard and Somersville Road (APN: 089-160-009).

BACKGROUND / DISCUSSION

On February 21, 2007, the applicant presented a Preliminary Development Plan containing a 72 unit development to the Planning Commission. The staff report and minutes are provided from that meeting as Attachment "B". The Planning Commission provided the following direction to the applicant:

- Reduce the number of houses and create larger lots,
- Provide larger useable back and side yards,
- Accommodate boat and RV parking,
- Provide parking on both sides of the street,
- Protection of views through the CC&R's, and
- Modify the grading to bring it inline with the goals and policies of Hillside Planned Developments.

Following the Planning Commission hearing, the applicant submitted the subject RDA application in which the site plan was reduced to 66 units from the 72 unit Preliminary Development Plan. The reduction in units came about due to the feedback received from the Planning Commission. The Preliminary Development Plan subsequently went to the City Council where it was continued at the May 8, 2007 hearing. The May 8, 2007 staff report is an attachment to the June 12, 2007 staff report (Attachment "C").

On June 12, 2007, the project went back to the City Council with another revised plan that contained 60 units. As stated in the June 12th Council report the project, in staff's opinion, is not in compliance with the General Plan and Hillside Planned Development goals and policies. The majority of the City Council members present at the hearing were supportive of the presented 60 unit plan and directed staff to take the project through the RDA process.

On July 30, 2007, the RDA Committee heard and continued the project due to a lack of information from the applicant in the various scoring categories. The staff report for the July 30, 2007, hearing is an attachment to Attachment "E". On August 20, 2007, the RDAC heard the subject project and based on the project's satisfactory score, recommended approval of 60 residential development allocations; however, approval of the allocation was contingent upon compliance with the General Plan (Attachment "D"). In addition, based on feedback provided by the RDAC, the applicant added a single story floor plan, as well as a water feature, in the community pocket park. The applicant has provided a summary of community benefits (Attachment "F").

The project received 308.8 points from the RDAC. Amendments from the proposed community benefits and contributions that were agreed to by the applicant during the RDAC hearing were as follows:

- Install security systems in all homes as a standard feature;
- \$450,000 monetary contribution for an all season sports field, the location to be determined by the City Council, at the issuance of the first building permit;
- \$300,000 monetary contribution towards economic development projects deemed appropriate by the City Council at the issuance of the 20th building permit;
- \$300,000 monetary contribution towards the Community Center at Prewett Park at the issuance of the 40th building permit.

ATTACHMENTS

- A: Vicinity Map
- B: Staff Report and Minutes from the February 21, 2007 Planning Commission Hearing
- C: Staff Report and Minutes from the June 12, 2007 City Council Hearing
- D: RDAC Score Sheet
- E: Staff Report from the August 20, 2007 Residential Development Allocation Committee Hearing
- F: Summary of Community Benefits Provided by the Applicant

**CITY OF ANTIOCH PLANNING COMMISSION
RESOLUTION NO. 2007-23**

WHEREAS, the City of Antioch received a request from Discovery Builders, Inc. for the approval of 60 residential development allocations in 2008 for an approximately 21 acre site. The project is generally located east of the intersection of James Donlon Boulevard and Somersville Road (APN: 089-160-009) (RDA-07-02); and,

WHEREAS, the Planning Commission did receive a recommendation for approval of residential allocations for this project from the Residential Development Allocation Committee; and;

WHEREAS, the allocation process is not subject to the provisions of the California Environmental Quality Act; and

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

WHEREAS, on September 19, 2007, the Planning Commission duly held a public meeting, received and considered evidence, both oral and documentary; and

NOW THEREFORE BE IT FURTHER RESOLVED that the Planning Commission does hereby recommend denial to the City Council of 60 residential development allocations.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the Planning Commission of the City of Antioch of the County of Contra Costa, State of California at a regular meeting of said Planning Commission held on the 19th day of September, 2007 by the following vote.

AYES: Azevedo, Martin, Delgadillo, Brandt and Travers

NOES: None

ABSTAIN: None

ABSENT: None


TINA WEHRMEISTER, SECRETARY TO THE
PLANNING COMMISSION

**CITY OF ANTIOCH
PLANNING COMMISSION
REGULAR MEETING**

**Regular Meeting
7:30 p.m.**

**September 19, 2007
City Council Chambers**

Chairman Travers called the meeting to order at 7:30 p.m. on Wednesday, September 19, 2007, in the City Council Chambers.

Chairman Travers 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, September 26, 2007.

ROLL CALL

Present: Commissioners Martin, Brandt, Delgadillo (arrived at 7:35 p.m.),
Vice Chairman Azevedo and Chairman Travers
Staff: Senior Planner Morris
Assistant Planner Gentry
Assistant City Attorney Hawkins
Minutes Clerk Lawson

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

None.

CONSENT CALENDAR

None.

END OF CONSENT CALENDAR

NEW PUBLIC HEARINGS

2. RDA-07-02 – The Pointe – Discovery Builders, Inc., requests approval of 60 residential development allocations for a single-family subdivision on approximately 21 acres. The project site is located west of the intersection of James Donlon Boulevard and Somersville Road (APN 089-160-009).

Associate Planner Gentry provided an overview of the Staff Report dated September 14, 2007.

OPENED PUBLIC HEARING

Louis Parsons, Discovery Builders, provided a PowerPoint presentation that depicted a brief overview of the site plan, as well as various amenities within the project.

Dana Owyong, Project Architect, Discovery Builders, spoke to the architectural details of the project, per displayed wall maps.

Troy Bristol, representing Save Mount Diablo, distributed and made a part of the record, a letter dated July 20, 2007, stating their opposition to this project. He felt the proposed project would have significant impacts on this area and furthermore that the project plan was inconsistent with the City of Antioch's General Plan, as well as the City's Hillside Plan Development Ordinance. He felt that by allowing this project to move forward, it would set a negative precedent by the City and felt it should be denied.

Mr. Parsons stated that when the project's plans were originally submitted in 2005, a request was made before the City Council for an amendment to the designation of the Black Diamond Ranch project which was approved in November of 2005 to designate the property as owner developer remainder parcel. Therefore at present, it has a land use designation for residential development as approved by the City Council, and the parcel is shown as a remainder parcel with applicable residential zoning and general plan designations.

Commissioner Martin asked Mr. Parsons if he agreed with all the conditions as stated within the proposed Resolution, wherein Mr. Parsons concurred.

CLOSED PUBLIC HEARING

Commissioner Delgadillo asked staff if the project met the specifications for hillside development, wherein Assistant Planner Gentry stated that it was staff's opinion that it was not in compliance with the City's General Plan or the Hillside Plan Development Ordinance.

Commissioner Martin stated that he felt this project was in violation of the City's General Plan and Hillside Planned Development Ordinance and felt that development should not move forward in this particular area. He personally felt that if this project were to move forward, it would set a precedent for the south side of Antioch to open up to additional development on the hillsides. Furthermore, he appreciated the monetary contributions offered within the RDA process and approved of the architectural elements of the project, but felt he could not move forward with an approval because he did not want to violate the City's General Plan and the Hillside Planned Development Ordinance. Commissioner Martin stated that he would be voting against this project.

Commissioner Brandt stated that she was disappointed in the proposed plans, in terms of the proposed hillside development's vision on the part of the applicant. She further

expressed disappointment in the proposed architectural plans, in that she felt the layout of the homes and the small lots were too ordinary and not what an executive-type home should be, as seen in other communities. She felt that the applicant did not take the City's Hillside Planned Development Ordinance seriously and felt the proposed plan did not meet the intent of the Ordinance, in terms of blending homes into the hillside.

Commissioner Delgadillo stated that he disagreed with the architectural type features that have been proposed by the applicant and that they were too similar with what already existed within the community. In terms of executive style homes, he expected the applicant to propose more amenities, features and larger lot sizes. Moreover, he felt the project did not meet the requirements of the City's Hillside Planned Development Ordinance and felt this area should remain as open space and remain consistent with the City's original intent.

Commissioner Azevedo stated that he did not feel the proposed executive style homes were exceptional in design and in speaking to the points received from the RDAC, he did not agree with the City Council's decision and could not support the applicant's proposal. He suggested that the applicant bring this project back with a plan that could meet the Planning Commission's concerns and standards.

Chairman Travers stated his disappointment in the RDAC's decision and felt this project could be constructed in a manner to meet the Planning Commission's concerns. He approved of the proposed elevations and articulations of the architectural designs, but felt that the executive homes should be larger with larger size lots. He recommended that the project be improved upon to meet the concerns of the Commission.

Chairman Travers stated for the record that he agreed with Save Mount Diablo's comments here tonight, but due to the fact that they have not voiced their opinion earlier in this process, he recommended that they be more expeditious in stating their beliefs at future meetings.

RESOLUTION NO. 2007-23

On a motion by Commissioner Azevedo and seconded by Commissioner Martin, the Planning Commission DENIED a request from Discovery Builders, Inc., to recommend approval to the City Council of 60 residential development allocations in 2008 for an approximately 21 acre site.

AYES: Azevedo, Martin, Delgadillo, Brandt and Travers

3. RDA-06-01 – Tierra Villas – Mission Peak Homes, Inc., requests approval of 115 residential development allocations over a three year period. The project site is located on the west side of Heidorn Ranch Road, at the eastern terminus of Prewett Ranch Drive (APN's 056-013-013, -015, -107 and -018).

ATTACHMENT "I"

STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE MEETING OF JANUARY 22, 2008

Prepared by: Mindy Gentry, Associate Planner *MA*

Reviewed by: Tina Wehrmeister, Deputy Director of Community Development *TW*

Approved by: Joseph G. Brandt, Director of Community Development *JG*

Date: January 18, 2008

Subject: Residential Development Allocation – The Pointe (RDA-07-02).

RECOMMENDATION

The Planning Commission has recommended that the City Council deny the requested 60 residential development allocations for The Pointe project.

REQUEST

Discovery Builders Inc., the applicant, requests approval of 60 single family residential development allocations for 2008 for an approximately 21 acre site. The project is generally located west of the intersection of James Donlon Boulevard and Somersville Road (APN: 089-160-009).

BACKGROUND INFORMATION

On February 21, 2007, the applicant presented a Preliminary Development Plan containing a 72 unit development to the Planning Commission. The staff report and minutes are provided from that meeting as Attachment "B". The Planning Commission provided the following direction to the applicant:

- Reduce the number of houses and create larger lots,
- Provide larger useable back and side yards,
- Accommodate boat and RV parking,
- Provide parking on both sides of the street,
- Protection of views through the CC&R's, and
- Modify the grading to bring it inline with the goals and policies of Hillside Planned Developments.

Following the Planning Commission hearing, the applicant submitted the subject RDA application in which the site plan was reduced to 66 units from the 72 unit Preliminary Development Plan. The Preliminary Development Plan subsequently went to the City Council where it was continued at the May 8, 2007 hearing. On June 12, 2007, the project went back to the City Council with another revised plan that contained 60 units.

01-22-08

II

The May 8, 2007 staff report and the June 12, 2007 staff report are attached (Attachment "C" and "D"). As stated in the June 12th Council report the project, in staff's opinion, is not in compliance with the General Plan and Hillside Planned Development goals and policies. The majority of the City Council members present at the hearing were supportive of the presented 60 unit plan and directed staff to take the project through the RDA process.

On July 30, 2007, the RDA Committee heard and continued the project due to a lack of information from the applicant in the various scoring categories (Attachment "E"). On August 20, 2007, the RDAC heard the subject project and based on the project's satisfactory score, recommended approval of 60 residential development allocations. Approval of the allocation was contingent upon compliance with the General Plan (Attachment "F"). In addition, based on feedback provided by the RDAC, the applicant added a single story floor plan, as well as a water feature, in the community pocket park.

The project received 308.8 points from the RDAC (Attachment "G"). Amendments to the proposed community benefits and contributions that were agreed to by the applicant during the RDAC hearing were as follows:

- Install security systems in all homes as a standard feature;
- \$450,000 monetary contribution for an all season sports field, the location to be determined by the City Council, at the issuance of the first building permit;
- \$300,000 monetary contribution towards economic development projects deemed appropriate by the City Council at the issuance of the 20th building permit;
- \$300,000 monetary contribution towards the Community Center at Prewett Park at the issuance of the 40th building permit.

On September 19, 2007, the Planning Commission heard the applicant's request for 60 residential development allocations and subsequently recommended denial of the project to the City Council (0-5 with 2 absent). The Planning Commission's reasons for denying the project were as follows: violation of the General Plan and Hillside Planned Development Ordinance, the layout and small lots were not typical of executive housing, lack of amenities, and dislike of the architectural features and design. While the Planning Commissioners' reasons for denial varied, the majority stated the project was in violation of the General Plan and Hillside Planned Development Ordinance (Attachment "H").

After the Planning Commission hearing, the Community Development Department received an amended list of community benefits from the applicant. The list had been modified with an additional contribution of \$10,000 per lot to be allocated to the Economic Development Job Creation Fund for a total of \$600,000 as an additional contribution (Attachment "I").

ENVIRONMENTAL

The Residential Development Allocation process is a non-entitlement action and does not require environmental review. The Final Development Plan will require compliance with the California Environmental Quality Act (CEQA).

PROJECT OVERVIEW

The proposed project consists of 60 single family homes. All the lots except for 53-59 are 10,000 s.f. or larger. The square footage of the four homes range from 2,616 s.f. to 3,951 s.f. with options ranging to 4,102 s.f. The site plan calls for an entry feature into the subdivision from Black Diamond Ranch through Summit Way. The subdivision features three private roads with the majority of the houses facing onto the street with the exception of lots 64-72. Lots 64-72 are proposed to blend into the adjacent Black Diamond Ranch development.

The subdivision is proposed to have three terraced levels with each street at a different grade level with a difference of approximately 20 feet between each. The applicant is also proposing two open space parcels of 2.7 acres (Parcel "A") and 1.4 acres (Parcel "B"). The open space areas are proposed as a vegetative buffer zone between Black Diamond Ranch and the adjacent subdivision (Attachment "J").

RDA EXPIRATION: The project does not currently have an expiration date associated with the residential development allocations. If the Council feels it is appropriate to add an expiration date, staff recommends adding, "The applicant shall submit a tentative map to the City within two years of the date of approval of RDA Allocations by the City Council. These RDA Allocations shall expire upon expiration of the underlying Tentative Subdivision Map." Staff would note that whatever action Council takes on this project with respect to an expiration of the RDA allocations will set precedent for future project allocations.

General Plan and Hillside Planned Development Ordinance Consistency: The subject project, in staff's opinion, is still not compliant with the General Plan and Zoning Ordinance's Hillside Planned Développement. If, at the time a Development Plan and Tentative Map are processed, Council feels the project does comply with the General Plan and Zoning Ordinance, they will need to make a determination the project is compliant with the General Plan and Zoning Ordinance based on specific findings.

Opposition Letters

A letter of opposition was received from the East Bay Regional Park District as well as from Save Mount Diablo. (Attachment "K").

FINANCIAL IMPACT

Denial of the application would eliminate the potential of the offered financial contribution of \$1,650,000 from the applicant.

OPTIONS

The City Council may approve the 60 requested allocations contingent on a future finding of consistency with the General Plan and Hillside Planned Development Ordinance. A resolution for approval has been included with condition number 13 addressing the requirement for consistency.

The City Council may direct the applicant to revise the project to be consistent with the General Plan and Hillside Planned Development Ordinance.

ATTACHMENTS

- A: Vicinity Map
- B: February 21, 2007 Planning Commission Meeting Staff Report and Minutes
- C: May 8, 2007 City Council Meeting Staff Report and Minutes
- D: June 12, 2007 City Council Meeting Staff Report and Minutes
- E: July 30, 2007 RDA Committee Staff Report
- F: August 20, 2007 RDA Committee Staff Report
- G: RDAC Score Sheet
- H: September 19, 2007 Planning Commission Staff Report and Minutes
- I: Applicant's Revised Financial Contributions
- J: Applicant's Project Description
- K: EBRPD and Save Mount Diablo Letters of Opposition

RESOLUTION NO. 2008/11

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH APPROVING 60 SINGLE FAMILY RESIDENTIAL DEVELOPMENT ALLOCATIONS FOR AN APPROXIMATELY 21 ACRE PROPERTY GENERALLY LOCATED WEST OF THE INTERSECTION OF JAMES DONLON BOULEVARD AND SOMERSVILLE ROAD (APN: 089-160-009).

WHEREAS, the City Council of the City of Antioch did receive a request from the Discovery Builders, Inc. requesting approval of 60 single family residential development allocations on an approximate 21 acre property. The project site is generally located west of the intersection of James Donlon Boulevard and Somersville Road (APN: 089-160-009); and

WHEREAS, the Planning Commission on September 19, 2007, duly held a noticed public hearing, received and considered evidence, both oral and documentary, and recommended denial of the allocations to the City Council; and,

WHEREAS, the City Council duly gave notice of public hearing; and,

WHEREAS, on January 22, 2008 the City Council duly held a public meeting, received and considered evidence, both oral and documentary; and,

NOW THEREFORE BE IT RESOLVED that the City Council does hereby APPROVE the request of 60 single family residential development allocations, subject to the following items and community benefits that the applicant has agreed to provide:

1. The project amenities shall be substantially in conformance with the applicant's project description, dated August 9, 2007 and their letter regarding community contributions, dated November 23, 2007.
2. Local streets within the project shall be private and shall be maintained by the Homeowners Association, at no cost to the City.
3. The project shall be annexed into a Street, Lighting, Landscaping, and Maintenance District (SLLMD).
4. The homes shall incorporate appropriate conservation measures as standard equipment and not as options or upgrades.
5. The project will include approximately 4 acres of private open space area, a pedestrian path between the three terraces, and a community pocket park with a water feature.
6. The homes shall be finished with wood shutters, divide-lite windows, iron metal ornamentation, stone veneer, wood braces, and concrete tile roofing.
7. All lots except lots 53 to 59 shall be 10,000 s.f. or larger.
8. The community shall be gated except for the lots that will blend into the Black Diamond Ranch subdivision.

9. A financial contribution of \$450,000 shall be made toward the establishment of an all season sports field, the location to be determined by the City Council, at the issuance of the 1st building permit.
10. A financial contribution of \$300,000 shall be made toward the City of Antioch for economic development projects deemed appropriate by the City Council at the issuance of the 20th building permit.
11. A financial contribution of \$300,000 shall be made toward the Community Center at Prewett Park at the issuance of the 40th building permit.
12. Upon approval of the Vesting Tentative Map, a financial contribution of \$10,000 per lot, for a total of \$600,000, shall be given to the Economic Development Job Creation Fund.
13. Allocations allowed under this resolution are contingent upon the Antioch City Council finding the project Development Plan and Tentative Map to be consistent with the General Plan and Zoning Ordinance.
14. The applicant shall submit a tentative map to the City within two years of the date of approval of RDA Allocations by the City Council. These RDA Allocations shall expire upon expiration of the underlying Tentative Subdivision Map

* * * * *

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 22nd day of January 2008, by the following vote:

AYES: Council Members Kalinowski, Davis, Moore and Simonsen

NOES: Mayor Freitas

ABSENT: None



L. JOLENE MARTIN, City Clerk

Steve Allen, representing the Mission Peak Company, gave a brief overview of the project and modifications made to incorporate direction received during the Preliminary Development Plan. He requested consideration of more than a 4-year timeframe for the allocations.

Mayor Freitas reviewed the RDA benefits proposed.

Following discussion, Mr. Allen requested the timing of the allocations be revised to 2009, 2010 and 2011.

Mayor Freitas closed the public hearing.

Councilmember Moore commended the applicant for bringing forward a green project.

Councilmember Kalinowski stated he felt the project was not consistent with the City's planning and vision for high density projects.

RESOLUTION NO. 2008/10

On motion by Councilmember Simonsen, seconded by Councilmember Moore the City Council approved the resolution with the following revisions:

The table of residential development allocations over three years were amended as follows:
2009 – 35, 2010 – 40 and 2011 – 40.

#10. The applicant shall submit a tentative map to the City within two years of the date of approval of RDA Allocations by the City Council. These RDA Allocations shall expire upon expiration of the underlying Tentative Subdivision Map.

#11. The addition of *Build it Green* standards.

The motion carried by the following vote:

Ayes: Simonsen, Moore, Davis

Noes: Freitas, Kalinowski

Mayor Freitas declared a recess at 8:50 P.M. The meeting reconvened at 9:02 P.M. with all Councilmembers present.

6. **DISCOVERY BUILDERS, INC. / THE POINTE REQUESTS APPROVAL OF 60 RESIDENTIAL DEVELOPMENT ALLOCATIONS FOR A SINGLE-FAMILY HOME SUBDIVISION ON APPROXIMATELY 21 ACRES LOCATED EAST OF THE INTERSECTION OF JAMES DONLON BOULEVARD AND SOMERSVILLE ROAD. (APN: 089-160-009). FILE: RDA-07-02 #204-05**

Associate Planner Gentry presented the staff report dated January 18, 2008 recommending the City Council approve the Planning Commission's recommendation and adopt the resolution denying the requested 60 Residential Development Allocations for the project.

Mayor Freitas opened the public hearing.

Louis Parsons, representing Discovery Builders Inc., gave a general project overview outlining the grading approach, site plan and community benefits for the project.

Dana Owyong, Project Architect, gave a brief overhead presentation of the project architecture.

Troy Bristol, representing Save Mt. Diablo, stated it was their position the project, as presented, was in violation of the City's General Plan and as well as being inconsistent with the Antioch's Hillside Planned Development Ordinance; therefore, the Save Mt. Diablo Organization urged the Council to uphold the recommendation of both the Planning Commission and City staff, and deny the appeal.

Barbara Sobalvarro, speaking on behalf of herself voiced her support for the Planning Commission's recommendation for denial of the project and discussed the importance in preserving hillsides and respecting the environment.

Mayor Freitas closed the Public Hearing.

Councilmember Simonsen stated the project was consistent with the other RDA requests,

Councilmember Kalinowski stated due to the City's inability to maintain open space and the fact the project was consistent with surrounding properties, he felt an exception should be made for the project. He highlighted the modifications and contribution submitted by the applicant.

Councilmember Moore stated the applicant had addressed the concerns of Council as the project had moved forward and the RDA contributions would improve the quality of life for Antioch residents.

Mayor Freitas stated while he liked the project, he felt it was moving in the wrong direction. He further noted grading the hill would not only be a violation of the General Plan and Hillside Planned Development Ordinance, it would also set precedence.

RESOLUTION NO. 2008/11

On motion by Councilmember Simonsen, seconded by Councilmember Moore the City Council adopted the resolution, approving 60 single family residential development allocations with the following revisions:

- #12 - Upon approval of the Vesting Tentative Map, a financial contribution of \$10,000 per lot, for a total of \$600,000, shall be given to the Economic Development Job Creation Fund.

#14 - The applicant shall submit a tentative map to the City within two years of the date of approval of RDA Allocations by the City Council. These RDA Allocations shall expire upon expiration of the underlying Tentative Subdivision Map

The motion carried by the following vote:

Ayes: Simonsen, Moore, Kalinowski, Davis

Noes: Freitas

COUNCIL REGULAR AGENDA

7. APPOINTMENT TO EBART SUBCOMMITTEE #302-10

Community Development Director Brandt presented the staff report dated January 15, 2008, recommending the City Council confirm the Mayor's appointment.

Mayor Freitas nominated Councilmember Simonsen.

On motion by Councilmember Moore, seconded by Councilmember Davis, the City Council accepted the Mayor's nomination and appointed Councilmember Simonsen to the eBART Subcommittee.

The motion carried by the following vote:

Ayes: Freitas, Davis, Moore, Simonsen

Noes: Kalinowski

8. APPOINTMENT TO CRIME PREVENTION COMMITTEE FOR 1 (ONE) UNEXPIRED TERM #302-01

Mayor Freitas nominated Daniel Campbell to the Antioch Police Crime Prevention Commission.

On motion by Councilmember Kalinowski, seconded by Councilmember Davis, the City Council unanimously approved the Mayor's nomination and appointed Daniel Campbell to the Police Crime Prevention Commission.

9. REPORT FROM THE ADHOC SUBCOMMITTEE REGARDING ANIMAL SERVICES #302-10

Lieutenant Welch presented the staff report dated January 14, 2008, recommending the City Council accept the report and provide direction to staff.

Councilmember Simonsen stated if the hiring of a consultant and an additional Animal Control Officer were to be approved, he was prepared to direct City staff to contact other jurisdictions with nonprofit animal shelters for budget, operational comparison purposes.

ATTACHMENT "J"

COMMUNITY DEVELOPMENT



P.O. Box 5007, Antioch, CA 94531-5007

August 2, 2010

Mr. Albert D. Seeno, Jr.
Albert D. Seeno Construction Co.
P.O. Box 4113
Concord, CA 94524-4113

Re: The Pointe – CEQA Review

Dear Mr. Seeno:

This letter is in response to your letter to Mr. Jakel dated June 24, 2010 regarding The Pointe project. I have enclosed a memo from the City's environmental consultant on The Pointe project. As you may recall in the RFP process, your team required a memo from the consultant discussing the required level of environmental review for the project before proceeding with the next stage. In addition, the memo explains that the Mitigated Negative Declaration box at the end of the project description was erroneously checked.

The memo concludes that the project will create significant unavoidable impacts to Aesthetics and Land Use/Planning; therefore, an Environmental Impact Report is the appropriate CEQA document for The Pointe project as currently proposed. The City continues to work on the administrative draft version of the Initial Study, but in order to move forward with the environmental review the City has identified three options at this time:

1. Proceed with the project as proposed; finalize the Initial Study; and prepare an Environmental Impact Report, currently identified as the appropriate CEQA document for the project.
2. As previously discussed with your team, submit General Plan and Zoning Amendment applications with the Project to address the project's aesthetic and land use impacts. These applications would be processed concurrently with the development application. This approach could address the significant impacts that are triggering an EIR for the project.
3. Amend the project such that all significant unavoidable impacts are avoided. The Initial Study would be revised accordingly.

I look forward to discussing these options with members of your planning and legal team. Please be assured that this project is not "postponed" and that staff continues to work on the administrative draft version of the Initial Study.

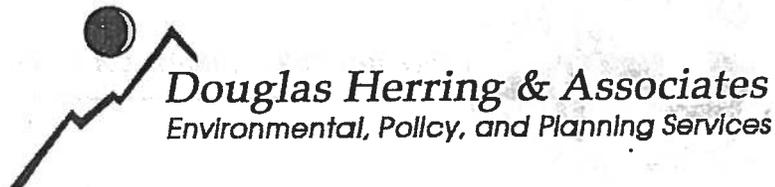
Sincerely,

A handwritten signature in cursive script, appearing to read "Tina Wehrmeister".

Tina Wehrmeister
Community Development Director

enclosure

cc: Jim Jakel, City Manager
Mindy Gentry, Associate Planner



MEMORANDUM

May 4, 2010

TO: City of Antioch
Tina Wehrmeister, Community Development Director
Mindy Gentry, Associate Planner/CDBG Program Administrator

FROM: Doug Herring, Douglas Herring & Associates (DHA)

SUBJECT: Pointe Project Environmental Review

This memo is submitted in response to the City's December 5, 2008 Request for Proposals (RFP) to Prepare an Initial Study for the Pointe Project, a residential subdivision proposed by Discovery Builders, Inc. The RFP requested a detailed memorandum that 1) summarizes the Initial Study findings; 2) recommends the appropriate environmental document to be prepared in response to the Initial Study and in compliance with the California Environmental Quality Act (CEQA); and 3) provides the reasons for selecting the recommended CEQA documentation. This submittal satisfies that requirement of the RFP and fulfills completion of Task 23 in our contractual scope of work for the project.

It should be noted that DHA's submittal of a draft project description inadvertently included an Initial Study Determination which indicated that a Mitigated Negative Declaration (MND) should be prepared for the proposed project. This was part of a standard IS template that we use for preparation of MNDs, with the X in the MND checkbox pre-checked. It was not a deliberate determination for the proposed Pointe Project, which would have been premature at the time the project description was submitted; its inclusion was an accidental oversight, and was not the actual determination we have made for the project, which is discussed in this memo.

Summary of Initial Study Findings

In the majority of environmental issue areas evaluated in the Initial Study (IS), potential impacts were found to be less than significant, or less than significant with implementation of mitigation measures identified in the IS. In the following resource areas, no potentially significant impacts were identified and no mitigation was recommended: agricultural resources, hazards/hazardous materials, mineral resources, population/housing, public services, recreation, and traffic/transportation.

1331 Linda Vista Drive • El Cerrito, California 94530

Phone: 510-237-2233 • Fax: 510-237-2363 • E-mail: doug@douglasherring.us

JZ

A single construction-related impact on air quality from dust generation—typical of nearly all construction projects—was identified, which would be reduced to insignificance with implementation of a standard mitigation measure recommended by the Bay Area Air Quality Management District (BAAQMD).

Three potentially significant impacts on biological resources were identified:

1. Project construction could adversely affect a rare plant, the round-leaved filaree (*California macrophylla*), if it is present on the site.
2. Project construction could adversely affect burrowing owl (*Athene cunicularia*), a special-status bird species, if it is present on the site.
3. Project construction would remove habitat that could be utilized by nesting special-status bird species.

Mitigation measures are identified in the IS to reduce each of these potential impacts to a less-than-significant level.

Although a Phase I Cultural Resources Evaluation of the project site performed by Archeo-Tec found no evidence of historic or prehistoric cultural resources on the project site, the possibility remains for such resources to be buried at the site. Project grading could damage or destroy any historic or prehistoric cultural artifacts that may remain buried, as well as Native American remains or paleontological resources. Standard mitigation measures have been identified in the IS to reduce each of these potential impacts to a less-than-significant level.

The geology and soils analysis identified three potentially significant impacts of the project:

1. Similar to any construction project in the seismically-active San Francisco Bay Area, the project could be exposed to strong seismic shaking that could damage project buildings and put project residents at risk.
2. During site grading, stormwater could carry significant amounts of suspended sediment, potentially degrading water quality in downstream receiving waters.
3. Expansive site soils could result in structural damage over time as a result of shrinking and swelling in response to seasonal wetting and drying.

Mitigation measures are identified in the IS to reduce each of these potential impacts to a less-than-significant level.

Similar to the geology and soils analysis, the hydrology and water quality analysis identified a potentially significant impact on surface water quality as a result of stormwater erosion during project construction. Following completion of construction, operation of the project could also adversely affect surface water quality from the uncontrolled discharge of polluted stormwater runoff. The IS identifies mitigation measures to reduce both of these potential impacts to acceptable levels.

The only potential noise impact identified in the IS would be short-term elevated noise levels during project construction. Mitigation measures consistent with the City's Noise Ordinance are identified to reduce the impact to a less-than-significant level.

A single utilities impact is identified in the utilities section of the IS. There may be insufficient water delivery pressure to serve the project, and a booster pumping station (BPS) may be required to deliver sufficient water supply for residential and fire suppression use. An engineering study would be required prior to project approval to determine whether a BPS is required and, if so, the appropriate size needed to adequately serve the project. This mitigation measure would reduce this potentially significant impact to a less-than-significant level.

Significant Impacts

The Land Use and Planning section of the IS identifies significant and unavoidable impacts related to conflicts with the General Plan and Zoning Ordinance. The project would be inconsistent with the General Plan in several respects. First, the project would conflict with the allowable density for the Low Density Residential designation assigned to the site. The General Plan stipulates that maximum allowable densities apply only to "developable" acreage, defined as unencumbered (by easements or rights-of-way) land that is not unstable, flood-prone, or subject to other hazards. In addition, slope gradients of "developable" acreage must generally be 25 percent or less. Nearly 80 percent of the project site has a slope of 25 percent or more and fails to meet the criteria for developable acreage. Therefore, the IS concludes that the proposed project would not be consistent with the Low Density Residential land use designation for the site. For reasons discussed further below, this would be a significant impact. Short of reducing the project to 18 homes,¹ which would presumably not meet the objectives of the project sponsor, no feasible mitigation was identified for this conflict. Consequently, it would be a significant and unavoidable impact.

The IS also concluded that the project may conflict with a number of General Plan policies, and would certainly conflict with Hillside Design Policies 5.4.14-b, 5.4.14-i, and 5.4.14-o. The first policy establishes grading guidelines for hillside areas, and stipulates that where slopes are between 25 percent and 35 percent, some grading may occur, but landforms need to retain their natural character. Where slopes are between 35 percent and 50 percent, development and limited grading can occur only if it can be clearly demonstrated that safety hazards, environmental degradation, and aesthetic impacts will be avoided; additional guidelines intended to preserve natural contours and blend development with the natural environment are also stipulated. Development on slopes greater than 50 percent is to be avoided except in small, isolated locations. Based on the slope analysis provided by the applicant's engineer, 78.4 percent of the project site (16.48 acres) has a slope in excess of 25 percent. Most of these 16.48 acres appear to have a slope of between 35 and 40 percent. The project would not clearly avoid aesthetic impacts, and would therefore not meet the criteria for exceptions on the grading limitations imposed on hillside sites where slopes are between 35 percent and 50 percent. Thus, the project would conflict with Hillside Design Policy 5.4.14-b.

¹ Approximately 4.5 acres (21.6%) of the 21-acre site has a slope of 25 percent or less. With an allowable density of 4 dwelling units per acre in the Low Density Residential designation, this would allow development of 18 dwelling units.

Hillside Design Policy 5.4.14-i calls for clustered development on the more level portions of a hillside site, while preserving steeper areas in a natural state. The proposed project would eliminate the top half of the existing hill and develop the entire upper portion of the remaining site with single-family homes; it would therefore be inconsistent with this policy.

Hillside Design Policy 5.4.14-o calls for medium to dark colors on building elevations and roofs in view-sensitive areas in order to blend with the surrounding environment. The proposed base colors for the stucco finish of the homes are predominantly light in color, ranging from white to light beige to medium beige. As proposed, the project conflicts with this policy; however, it would be feasible to mitigate this impact through modifications to the color palette.

The IS identifies numerous other General Plan policies with which the project would potentially conflict. The IS does not attempt to make a final determination regarding consistency with all applicable policies because, as discussed further below, preparation of an environmental impact report (EIR) is recommended, which would allow for further analysis of these policies.

The IS also identifies a conflict with the City's Hillside Planned Development District Ordinance as a significant impact. The ordinance applies to hillside areas where any one of three conditions occurs; all three of the conditions occur on the project site. The ordinance applies to hillside areas where: (1) a predominant portion of the area has slopes in excess of 10 percent; (2) a significant area of slopes of 25 percent or greater are located in the area; or (3) a significant ridgeline, hilltop, or exposed slope is located in the area.

The regulations for the Hillside Planned Development District call for the preservation of significant features of hillside areas, including steep slopes and ridgelines. The regulations also require a minimization of grading and cut and fill operations consistent with the retention of the natural character of the terrain; grading that blends into the natural landscape of the site and lessens any associated negative visual impacts from such grading; and avoiding the use of 2:1 slopes and benches. In addition, mass grading is generally prohibited, but the grading of less significant land forms is allowable, as is the grading of more significant natural features, provided such modifications will result in an improvement of the overall project and are in keeping with the overall intent of the ordinance. The proposed project would require extensive mass grading which, as previously noted, would remove the top half of the existing prominent hillside. The project appears to conflict with most if not all of the Hillside Planned Development District Ordinance regulations listed above. The IS identifies these conflicts as a potentially significant impact, and notes that the impact will be evaluated in further detail in the EIR that will be prepared for the project and any feasible mitigation measures to avoid or reduce this impact will be identified in the EIR.

The IS identifies a significant aesthetic impact related to a substantial adverse effect on a scenic vista. As discussed in some detail in the IS, adopted City policies establish the open space hillside that comprises the project site as an important visual component to the scenic hillsides that rise from the project site and continue southward as the foothills to Mt. Diablo. (This value is one that is widely held by the public, as reflected in the fact that many jurisdictions in the Bay Area have General Plan policies protecting open space hillsides, ridgelines, and natural viewsheds.) The importance to the City of Antioch of the scenic vistas

afforded by these hillsides is established by the first objective in the Community Image and Design Element of the City's General Plan and in a variety of General Plan policies. The sensitivity and value of the project site's hillside location is further reinforced by the protection afforded by the City's Hillside Planned Development District Ordinance. The project would cause a significant adverse impact on the scenic vista of connected hillsides by eliminating the top of a highly prominent hillside that dominates foreground views, reducing its elevation by well over 100 feet, and by transforming the remaining hillside from a natural condition to a built environment.

Recommended CEQA Document

It is the professional opinion of DHA that an EIR, rather than an MND, must be prepared for the proposed project, due to the identification of at least one significant and unavoidable impact, as discussed above. CEQA does not permit a lead agency to adopt an MND for a project that would have a significant and unavoidable impact on the environment; the agency must instead prepare an EIR in order to comply with CEQA (*CEQA Guidelines* Sections 15064 and 15070).

With respect to the significance of the impacts related to the General Plan and Zoning Ordinance conflicts, Appendix G of the *CEQA Guidelines* treats a conflict with any applicable land use plan or policy "adopted for the purpose of avoiding or mitigating an environmental effect" as a significant, adverse impact. Because the General Plan criteria defining and limiting developable acreage within the Low Density Residential land use designation are primarily environmental in nature (slope stability, flood hazard, etc.), the criteria were implicitly adopted for the purpose of avoiding adverse environmental effects. The introduction to the Land Use Element underscores this in noting that "the Land Use Element is the cornerstone of the General Plan, setting forth Antioch's fundamental land use philosophy and directing development to the most suitable locations, while maintaining the economic, social, physical, environmental health and vitality of the community." Similarly, the Community Image and Design Element of the City's General Plan specifically identifies views of Mt. Diablo and the surrounding ridgelines as resources that are important to the City (e.g., see Section 5.2.5.1). The General Plan policies and zoning regulations protecting those resources were adopted to preserve the hillsides, hilltops, and ridgelines as an aesthetic benefit to the community. Because these values would be compromised by development of the prominent hillside, the conflicts with the policies and regulations identified in the IS would therefore constitute significant impacts pursuant to CEQA. Because, in the case of at least some of these conflicts, there is no feasible way to mitigate the impacts to insignificance while meeting the implicit project objectives, there would be at least one significant and unavoidable impact from implementation of the project. Therefore, pursuant to CEQA, an EIR must be prepared.

DHA has prepared an Initial Study that allows the City to focus out most environmental resource issues from further consideration in the EIR. This approach will minimize the costs to the applicant while allowing the City to fully comply with CEQA. As provided for in the administrative draft IS, the only issues requiring further study in the EIR would be aesthetics and land use/planning.

As the Lead Agency, the ultimate decision regarding what type of CEQA documentation to prepare for the proposed Pointe Project lies with the City. However, by this memo, DHA

informs you that to proceed with an MND for the project would be counter to our professional advice as your environmental consultant on the IS, and to do so would be at the City's own risk.

ATTACHMENT "K"



September 27, 2011

Mr. Louis Parsons
Discovery Builders, Inc.
4061 Port Chicago Highway, Suite H
Concord, CA 94520

RE: POINTE ENVIRONMENTAL DOCUMENT APPLICATION AMENDMENT

Dear Mr. Parsons,

I am writing to follow up on your letter dated August 4, 2011 regarding the Pointe's environmental document. You stated in your letter that you do not agree with the additional analysis that needs to be completed for the environmental document as was outlined in my letter, dated July 7, 2011, and you also requested all of the documentation and analysis that has been performed to date, including the administrative draft of the Initial Study. Please find enclosed the requested documentation, which includes an administrative draft of the Initial Study, as well as the supporting studies and analysis. I understand that by making these documents available to you at your request, they may be public records now.

In addition, please keep in mind this documentation pertains to the original application for the Pointe and the documents were never finalized due to the subsequent direction received from Discovery Builders, Inc. In particular, Discovery Builders subsequently submitted General Plan and zoning code amendments to include in the Pointe project's application, therefore requiring changes to the Project Description as well as the analysis.

For clarification purposes, please see the timeline below highlighting the course the project has taken and the impacts it has had on the status of the environmental document.

The timeline for the Pointe project is as follows:

- On April 9, 2008, the initial application for the project was declared complete.
- On December 5, 2008, the City issued an RFP to environmental firms to prepare an Initial Study.
- In January 2009, City staff informed Discovery Builders, Inc. of the intent to recommend to the City Council a contract between the City and Douglas Herring and Associates to perform the Initial Study.
- On March 4, 2009, Discovery Builders, Inc. filed a letter of appeal with the City Clerk regarding the selection of Douglas Herring and Associates to complete the CEQA Initial Study for the Pointe.

Community Development Department
Planning Division

P.O. Box 5007 • 200 H Street • Antioch, CA 94531-5007 • Tel: 925-779-7035 • Fax: 925-779-7034 • www.ci.antioch.ca.us

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- On March 5, 2009, the City provided clarification by letter that the decision to enter into a contract with Douglas Herring and Associates resides with the City Council and is not one made at a staff level, therefore cannot be appealed to the Board of Administrative Appeals.
- On April 28, 2009 at a regular meeting of the City Council, the contract was awarded for the CEQA Initial Study to Douglas Herring and Associates following comments by Discovery Builders.
- On May 26, 2009, the City received a letter from Discovery Builders, Inc. requesting a postponement of further processing the application for the Pointe project due to the current economic conditions.
- On August 25, 2009, the City responded by letter stating that failure to submit the required costs for the Initial Study within 30 days would be considered withdrawal of the application. The letter also indicated there were no known provisions within the Subdivision Map Act, Permit Streamlining Act, or the Antioch Municipal Code that provided for a "postponement" of the required environmental review, but that Discovery Builders could provide authority to the contrary for the City's review.
- On August 31, 2009, the City received a check from Discovery Builders, Inc. for the budgeted amount, plus the City's 35% administration fee, to complete the scope of work for the Initial Study as outlined by Douglas Herring and Associates in response to the RFP.
- On November 17, 2009, a kickoff meeting to begin the Initial Study was held.
- In a memorandum dated May 4, 2010, from Douglas Herring and Associates, the consultant outlined the significant impacts related to the project based on the fact that no feasible mitigation was identified for the conflicts and inconsistencies with the General Plan and Zoning Code. Based on the information presented in the Initial Study and the significant and unavoidable impact, the recommendation of the consultant was to prepare an Environmental Impact Report with which staff agreed.
- Subsequent to the memorandum issued by Douglas Herring and Associates, Discovery Builders, Inc. and the City met on several occasions to discuss the Pointe project and the desire to not have to prepare an EIR. In addition, a letter from the City, dated August 2, 2010, was provided to Discovery Builders, Inc. with the following options:
 - Proceed with the project as proposed; finalize the Initial Study; and prepare an Environmental Impact Report, currently identified as the appropriate CEQA document for the project.
 - Submit additional General Plan and Zoning Amendment applications with the Project to address the project's aesthetic and land use inconsistencies with those documents. These applications would be processed concurrently with the development application. This approach could address the significant impacts that are triggering an EIR for the project.
 - Amend the project such that all significant unavoidable impacts are avoided. The Initial Study would be revised accordingly.
- On August 11, 2010, Discovery Builders, Inc. filed an appeal of the administrative decision by City staff that an EIR would be required for the Pointe project. Mayor

Davis requested the appeal to be heard by the City Council and subsequently it was scheduled for the November 9, 2010 meeting.

- On September 29, 2010, City staff and Discovery Builders Inc. met to discuss the pending appeal of the administrative decision to prepare an EIR.
- In a letter dated October 11, 2010 from Mr. Salvatore Evola, Discovery Builders, Inc. elected to amend the application to the Pointe project to include a text amendment to the General Plan.
- On October 18, 2010, the City and Discovery Builders, Inc. met to discuss the Pointe project's environmental document as well as the General Plan text amendment and the requirements of also including a rezone within the revised application.
- Per an email dated October 20, 2010, Kristina Lawson, Discovery Builders, Inc.'s legal counsel expressed a level of comfort to include a zoning amendment within the application for the Pointe project.
- Again, on October 28, 2010, a letter was sent to Discovery Builders Inc. with the options to move forward. In summary, the two options were as follows:
 - Continue with the pending appeal regarding the administrative decision to require an EIR for the project due to the significant and unavoidable impacts.
 - Modify the project to address the General Plan inconsistencies identified in the draft Initial Study for the project. This option outlined other materials that would be required to be submitted for the revised application, which included a General Plan and zoning amendment.
- Per a letter dated November 5, 2010, Discovery Builders, Inc. expressed the desire to pursue the General Plan and zoning amendments, which effectively amended the Pointe's application. Included in the letter from Discovery Builders, Inc. were materials for the application amendment.
- November 9, 2010, the appeal for the administrative decision to prepare an EIR was heard at the City Council meeting. The Council decided to continue the item to a date uncertain while the revised application was being reviewed by staff.
- On December 16, 2010, City staff and Discovery Builders Inc. again met regarding concerns about the General Plan and zoning amendments.
- On December 21, 2010, in a letter Discovery Builders Inc. proposed to amend the application to the Pointe project yet again.
- Per a letter dated January 5, 2011 from the City, the amended proposal was consistent with Staff's direction in order to move forward. The amended application was deemed complete and provided to Douglas Herring and Associates in order to receive a revised scope of work and budget.
- On February 3, 2011 a memorandum from Douglas Herring and Associates was received and forwarded to Discovery Builders (Louis Parsons) via email on February 15, 2011. The memorandum included a summary of changes in the regulatory environment as well as additional work in order to update the administrative draft of the Initial Study for the Pointe. The total requested budget from the consultant at the time the memorandum was issued was \$35,832.38.

The timeline above represents a long history on the subject project. As I stated earlier, Discovery Builders Inc. chose to amend the application on the Pointe rather than prepare an EIR. The amendment to the application was not included in the original scope of work prepared by Douglas Herring and Associates. Furthermore, the amended application is subject to the new regulatory environment since the deemed complete date for the amended project is January 5, 2011 and the amended State CEQA Guidelines became effective March 18, 2010 and the BAAQMD adopted updated CEQA thresholds of significance on June 2, 2010.

In light of the record above, please send a check to my attention payable to the City of Antioch for the total amount of the scope of the work to complete the Initial Study and environmental document, plus the City's 35% administration fee, which brings the total to \$48,373.71. If a check for the total costs is not received within 30 days of the date of this letter, October 31, 2011 by 5:00 PM, the application shall be considered withdrawn.

Lastly, the billing pertaining to the letters regarding this matter qualify as work related to the project. The 35% administration fee covers the costs only directly associated with the administration of the contract between the City and the consultant as well as the preparation of the environmental document.

Please feel free to contact me at (925) 779-6133 or mgentry@ci.antioch.ca.us if you have any questions or concerns regarding this matter.

Sincerely,



Mindy Gentry
Senior Planner

Enclosures (1)

cc: Tina Wehrmeister, Community Development Director
Albert Seeno III, Discovery Builders Inc.

ATTACHMENT "L"

STAFF REPORT TO THE PLANNING COMMISSION FOR CONSIDERATION AT THE MEETING OF NOVEMBER 6, 2013

Prepared by: Mindy Gentry, Senior Planner *MG*
Approved by: Tina Wehrmeister, Community Development Director
Date: October 31, 2013
Subject: GP-13-02, Z-13-07, PD-08-01, PW 608, UP-08-01 – The Pointe
Subdivision 9017 ("Pointe Project")

ACTIONS

First, staff recommends the Planning Commission recommend to the City Council adoption of the environmental document (Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program) for the Pointe Project (Attachment "A").

Second, the Planning Commission needs to consider the Pointe Project.

If the Planning Commission desires to recommend approval of the Project to the City Council, then the Planning Commission should approve Attachment "B".

1. Resolution recommending approval of the General Plan amendments.
2. Resolution recommending approval of the initiation of amendments to Title 9 of the Municipal Code, "Planning and Zoning" for a rezone of the subject property from Hillside Planned Development (HPD) to Planned Development (PD).
3. Resolution recommending approval to the City Council of the Vesting Tentative Map, Final Development Plan, and Use Permit for 60 single family units.

Or

If the Planning Commission desires to recommend denial of the Project to the City Council, then the Planning Commission should approve Attachment "C". However, if the Planning Commission's action is to deny the project then staff recommends action not to be taken on the environmental document.

1. Resolution recommending denial of the General Plan amendments.
2. Resolution recommending denial of the initiation of amendments to Title 9 of the Municipal Code, "Planning and Zoning" for a rezone of the subject property from Hillside Planned Development (HPD) to Planned Development (PD).
3. Resolution recommending denial to the City Council of the Vesting Tentative Map, Final Development Plan, and Use Permit for 60 single family units.

APPLICATION

Discovery Builders, a company run by Albert Seeno III, requests approval of a General Plan amendment (GPA) from Low Density Residential to inclusion in the Somersville Road Corridor Focus Area and to add language to the General Plan waiving the requirements of certain applicable sections of the General Plan related to hillside development; a rezone from Hillside

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Planned Development (HPD) District to Planned Development (PD) District; an amendment to the zoning ordinance to provide the City Council with the discretion to determine if the Hillside Planned Development policies apply to a project; a Vesting Tentative Map; a Final Plan Development; and a Use Permit in order to create 60 lots intended for single family homes. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010) ("Pointe Project") (Attachment "D").

Each requested action/entitlement is discussed below:

IS/MND & MMRP: An Initial Study/Mitigated Negative Declaration has been prepared for the project and it was available for public review from October 8, 2013 to October 28, 2013.

General Plan Amendment: The applicant is requesting a General Plan amendment to change the General Plan designation from Low Density Residential to include the Pointe Project site and the Black Diamond Ranch subdivision into the Somersville Road Corridor Focus Area as well as waive the requirements of the General Plan Section 5.4.14 for residential properties within the Somersville Road Corridor Focus Area subject to the Planned Development process.

While the applicant did not request this, staff is recommending the Planning Commission also consider adding the following to the applicant's request: adding a Residential designation to the Project site and to the Black Diamond Ranch subdivision in order to maintain consistency within the Focus Area as well as add General Plan Section 4.4.1.1 and Policy 10.3.2, which pertain to development on steep sites, to the aforementioned waiver language.

Rezone to Planned Development (PD) District: The project site is currently zoned with a designation of Hillside Planned Development (HPD) and the proposed rezoning is to Planned Development (PD).

Amendment to the Zoning Ordinance: The applicant is proposing to add language to Section 9-5.24 of the Zoning Ordinance to provide the City Council with the discretion to determine if the provisions of the Hillside Planned Development policies apply to a project. This amendment would not be necessary if the project is rezoned to Planned Development (PD), which is discussed in further detail below.

Vesting Tentative Subdivision Map (PW 608): A major subdivision is being requested to create the lots for the 60 single-family dwelling units and additional common/residual parcels.

Approval of Final Development Plan: Approval of the 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 will be for 60 single family homes, which includes 51 lots in a gated community and nine lots within the existing Black Diamond Ranch subdivision. The plan also includes an approximate 10,000 square foot pocket park and two open space parcels (Parcel A – 2.5 acres and Parcel B – 1.4 acres), which are to be maintained by the Homeowners Association (HOA).

Use Permit: Per the Zoning Code, in order to implement the Final Development Plan a use permit is required. The developer is requesting a use permit for 60 single-family homes, a pocket park, and two open space parcels.

The design and architectural elements, including landscaping, are not being considered at this time. The developer will seek design review approval from the Planning Commission subsequently.

BACKGROUND

The subject site was originally part of the Black Diamond Ranch subdivision, which is the adjacent 286 unit single family housing development with lots ranging in size between 4,000 to 6,000 s.f. with publicly maintained roads. The subject site had a designation of "Open Space" on the Black Diamond Ranch tentative map and was to be deeded to the City. In 2005, the applicant requested the opportunity to develop "executive/estate" housing on this parcel and, in November 2005, the City Council re-designated the Open Space area as "Owner/Developer Remainder Parcel" (Attachment "E"). The reclassification of the parcel did not require the developer to dedicate it to the City; and it did not guarantee developer rights either. One of the conditions of approval on the reclassification of the parcel was the applicant make an irrevocable offer of dedication to the City; however should a future development proposal on this parcel be approved then dedication shall be declined. If the development proposal was denied then the City shall consider acceptance of the dedication. The other condition of approval required a development application to be submitted within three years of the date of the City Council approving the re-designation to "Owner/Development Remainder Parcel" otherwise the Council would consider acceptance of the offer of dedication.

Preliminary Development Plan (PDP)

The applicant originally provided a Preliminary Development Plan with 72 lots for single family homes; however based on direction provided by the Planning Commission on February 21, 2007 and staff, the applicant resubmitted a preliminary development plan for a 60 lot subdivision. The direction from the Planning Commission was to redesign the site and to take the Hillside Planned Development policies into consideration: the streets shall follow the natural contours of the hillside and the lots should be larger with more useable space, to name a few (Attachment "F").

The Council provided feedback on the 60 residential units PDP on June 12, 2007 and directed staff to take the project through the RDA process, a process that has been substantially modified since then. (Attachment "G").

Residential Development Allocation (RDA)

On August 20, 2007, the Residential Development Allocation Committee, based on a satisfactory score of 308.8 points (Attachment "H"), recommended approval of 60 residential development allocations (Attachment "I"). On September 19, 2007, the Planning Commission heard the applicant's request for 60 allocations and subsequently recommended denial of the project to the City Council (5-0, with 2 absent). The Planning Commission's reasons for denying the project were as follows: violation of the General Plan and Hillside Planned Development Ordinance, the layout and small lots were not typical of executive housing, lack of amenities, and the dislike of the architectural features and design. While the Planning Commissions' reasons for denial varied, the majority stated the project was in violation of the General Plan and Hillside Planned Development Ordinance (Attachment "J").

On January 22, 2008 the City Council heard and approved the applicant's request for 60 residential development allocations. Following the Planning Commission hearing, the applicant

had revised the offered community benefits, which are reflected in the Council resolution included as Attachment "K". Since the RDA process has changed considerably since the approval in 2008 and the fact that City staff is currently working on a Development Impact Fee study; a condition has been added to the project, that the applicant either pay all financial contributions as approved in 2008 or to pay the Development Impact Fee.

Final Planned Development, Use Permit, and Design Review Application/CEQA Document

Subsequent to the City Council hearing, on January 29, 2008, the applicant submitted an application for a Final Planned Development, Vesting Tentative Map, Use Permit, and design review. Since that time, City staff has been working with the applicant to usher the project through the California Environmental Quality Act (CEQA) process. In May 2010, the City's environmental document consultant determined through the Initial Study process there would be significant and unavoidable impacts to Aesthetics and Land Use Planning; therefore an Environmental Impact Report would be required, which City staff agreed to absent project modifications. On August 2, 2010, Staff provided the applicant with three options of moving forward: 1) proceed with the project as proposed, finalize the Initial Study and prepare an EIR, 2) submit General Plan and Zoning Code amendment applications for the project, which could address the significant impacts that are triggering the EIR, or 3) amend the project such that all significant unavoidable impacts are avoided and the Initial Study would be revised accordingly.

On August 11, 2010, the applicant filed an appeal of the staff decision regarding the requirement of preparing an EIR to address the significant and unavoidable impacts. As allowed per the Municipal Code, Mayor Davis appealed the matter directly to the City Council. While the appeal was pending, meetings and other communications occurred with the applicant, resulting in the applicant deciding to amend their project and file General Plan and Zoning Code amendments in December 2011. Following the amendments, the Initial Study/Mitigated Negative Declaration was revised and completed in March 2013. Following completion of the environmental document, staff has been attempting to address concerns regarding the site plan. The applicant did address issues in regards to the storm water facilities; however, the applicant requested the remaining issues be address via the conditions of approval.

ENVIRONMENTAL

In compliance with the California Environmental Quality Act, an Initial Study/Mitigated Negative Declaration (IS/MND) has been prepared for the project. The IS/MND was circulated for a 20-day public review period from October 8, 2013 to October 28, 2013. The IS/MND was provided to the Planning Commission electronically and is available on the second floor of City Hall in the Community Development Department, and can also be found on the City's website at: <http://www.ci.antioch.ca.us/CityGov/CommDev/PlanningDivision/Environmental-docs.htm>.

The IS/MND identified the following as environmental factors that would be potentially affected by the proposed project: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology/Soils, Hydrology/Water Quality, Land Use/Planning, Noise, Public Services, Utilities/Service Systems, and Mandatory Findings of Significance. Mitigation measures have been provided reducing all project impacts to a less-than-significant level and a Mitigation Monitoring and Reporting Program (MMRP) has been prepared for the project. These are described in detail in the environmental document.

At the close of the comment period on October 28, 2013, the City received four comment letters on the IS/MND, but due to the timeline for getting the staff report to publication, the City has not

formally responded to these letters by the release of the staff report. The letters will be provided under a separate document to the Planning Commission prior to the public hearing.

ANALYSIS

Issue #1: Project Overview

The proposed project consists of 60 single family one-story and two-story homes to be constructed on an approximately 21 acre site at the western edge of the City and adjacent to the Black Diamond Ranch subdivision. The majority of these homes, 51, would be located within a gated community accessed from the neighboring Black Diamond Ranch subdivision via Summit Way. The remaining 9 homes would be incorporated into the Black Diamond Ranch subdivision, interspersed with the homes along Country Side Way and Torgensen Court. The 51 homes are separated from the rest of Black Diamond Ranch by two open space parcels, A and B. The two parcels circumvent the base of the hillside in three directions, where parcel A is approximately 2.6 acres and Parcel B is approximately 1.4 acres.

The project would require extensive grading of the site, requiring cuts up to 104 feet and fills of less than 10 feet. Approximately 16.7 acres of the 21 acre site would be developed with roads and homes, with about a 50 to 100 foot buffer encircling the gated community, and a centrally located park, totaling about 4.3 acres.

The proposed parcels within the private community would have an average size to 10,537 square feet (s.f.) and would range in size from 10,000 s.f. to 14,371 s.f., while the nine lots in Black Diamond Ranch would average 10,004 s.f. and range from 6,616 s.f. to 21,495 s.f. The proposed development, according to the applicant, would result in an overall density of 2.9 acres, however, that calculation includes developable and undevelopable land. The General Plan considers any lands generally over a 25 percent slope to be undevelopable, so the density would be considerably higher if undevelopable land was not included in the calculation because 78 percent of the project site has slopes that exceed 25 percent. The request to waive the requirements of this section of the General Plan is discussed in further detail below.

Lot 60, located on Torgensen Court, would be the largest lot at 21,495 s.f. but would also contain the emergency vehicle access easement and road connecting Torgensen Court with Summit Place to provide secondary emergency access to the 51 gated homes.

The private subdivision, of 51 homes, would be configured on three terraced levels, each served by a private street, which would be maintained by the HOA. Each street, separated by a grade difference of about 20 vertical feet, would terminate in a cul-de-sac.

The surrounding land uses are as follows:

- North: Single family residential subdivision (Black Diamond Ranch)
- South: Single family residential subdivision (Black Diamond Ranch) and undeveloped land within the East Bay Regional Park District - Black Diamond Mines
- West: City of Pittsburg - Undeveloped land, however Sky Ranch II, a 415 unit single family subdivision has been entitled
- East: Single family residential (Black Diamond Ranch)

Issue #2: General Plan Amendments

The current General Plan designation for the subject property is Low Density Residential, which is generally characterized by single family homes in traditional subdivisions and is located in areas with gently rolling terrain with no or few geological or environment constraints (Attachment "L"). The applicant is proposing to change the General Plan designation of the subject site and the Black Diamond Ranch subdivision to be located within the Somersville Road Corridor Focus Area (Attachment "M"). The Somersville Road Corridor Focus Area is the location of the main tax generators, automobile dealerships of the City and is also home to other retail businesses, mainly providing regional level retail services. This amendment would also require the addition of a Residential designation within the Focus Area and to the map in Figure 4.3.

Staff is proposing the following language in Section 4.4.6.2b,

- d. Areas designated "Residential" in Figure 4.3 shall consist of single family homes and the design shall be determined through the Planned Development process with approval by the City Council.*

See Exhibit "A" of the resolution recommending approval to the City Council of the General Plan Amendments, which is contained in Attachment "B", for the proposed redline changes. The addition of the aforementioned language would be consistent with not only the Somersville Road Corridor Focus Area but also with other Focus Areas within the General Plan.

The applicant's proposed General Plan Amendment (GPA) would also include waiving the requirements of General Plan Section 5.4.14 (Attachment "N") for residential properties within the Somersville Road Corridor Focus Area that are subject to the planned development process. General Plan Section 5.4.14 pertains to Hillside Design Policies, which contains provisions and policies about developing in hillside areas. The applicant is proposing to add the following language to General Plan Section 4.4.6.2.b:

- j. In order to provide continued support to sales tax generating uses, properties designated residential with the Focus Area will be allowed to maximize development density through the Planned Development process contained within the Zoning Ordinance. As such, the requirements of Section 5.4.14, if applicable, of the General Plan shall be waived if it is shown that development conditions will be safe and in harmony with surrounding development patterns and uses.*

As stated above, the Somersville Road Corridor Focus Area mainly encompasses regional retail uses, with only one residentially zoned area after the developer passed a ballot measure to move the area known as the Chevron property from the City of Antioch's Sphere of Influence to the City of Pittsburg's Sphere of Influence. The developer is still awaiting final LAFCO approval; however the City of Antioch is not currently contesting this measure and application. The only residential area is High Density Residential and is located on the southwest corner of Somersville Road and Buchanan Road. The area includes the Chateau Mobile Home Park and apartments. The Chevron property envisioned a combination of Business Park, single family detached homes, and multi-family development, consistent with Medium Density Residential, which are overall a much higher density and usage than Black Diamond Ranch and the subject development.

Staff has identified some issues for the Planning Commission to consider with the request to place the subject project and Black Diamond Ranch into the Somersville Road Corridor Focus Area.

- The Somersville Road Corridor Focus Area does not put an emphasis on lower density residential uses and would be the only area with single family home development; however the Focus Area does emphasize a strong regional retail area with tax revenue generating uses because the intention is to create an area with strong commercial base.
- The issue of precedence is something to consider when approving General Plan amendments. This approval, which would result in removing approximately 104 vertical feet of hillside, could have future repercussions for hillside developments within the City, potentially jeopardizing the community's intentions of promoting a harmonious visual and functional relationship between natural and built environments.
- The project would not be adhering to many of the hillside development policies put in place within the General Plan to prevent projects of this nature from being built and to preserve the natural ridgelines within the City.
- If the Sphere of Influence change for the Chevron property is approved by LAFCO then the inclusion of Black Diamond Ranch and the Pointe will result in an area that is not contiguous, which is not consistent with the other focus areas within the General Plan (Attachment "O").

On the other hand, the applicant will be bringing in an executive/estate type housing, which can be argued will have disposable income to spend within the Somersville Road Corridor Focus Area, which will produce additional tax revenue. However, according to the Association of Bay Area Governments (ABAG) the projected population increase is 3.08 persons per dwelling unit or 185 total people, which equates to only be a .18 percent change in population, so the scale of the additional revenue and above moderate income housing needs to be weighed with the impacts of proposed development on the City's hillside development policies and the inconsistencies with the General Plan.

Secondly, as stated above, the applicant is proposing to waive General Plan Section 5.4.14 (Attachment "N"), which is the City's Hillside Design Policies. The policies discuss specifics on the City's expectations and goals when it comes to hillside development which has an emphasis placed on sensitivity to existing terrain, views, and natural landforms. The majority of the project site currently has slopes over 25 percent and the applicant is proposing to remove approximately 104 vertical feet from the hillside for the project, which does not meet many of the hillside policies, which has been outlined in detail in the IS/MND. Approving such a request could provide a pathway for other developers to make similar requests for larger undeveloped areas where the terrain is equally as hilly, such as the Sand Creek Focus Area, rather than just on an isolated 21 acre parcel. An argument could be made that the difference between the subject project and the Sand Creek Focus Area is that the project site is isolated and considered infill because it is substantially surrounded by existing or entitled development, which includes the Black Diamond Ranch project and the future Sky Ranch II project, a 415 single-family home development in Pittsburg. Executive/estate housing has not been readily developed in the City of Antioch and this product type could further the General Plan's goals of providing more of a jobs and housing balance by encouraging businesses to locate in Antioch by providing executives with a desirable housing product. The Planning Commission needs to

consider if the request of waiving the Hillside Design Policies is in the best public interest and in the interest of the community. The amendment to the General Plan would provide a vehicle for the project to move forward without an unworkable inconsistency or a conflict with the General Plan.

As part of their application, the applicant did not include in their application an exemption from the provisions of General Plan Section 4.4.1.1 (Attachment "P") and Section 10.3.2 (Attachment "Q"), which both have elements related to development on steep sites. Section 4.4.1.1 has the following language:

Density is assumed to accrue only to lands that are "developable." Developable acres are those that are not encumbered by prior dedications of easements or rights-of-way, and are not so steep (generally 25%), unstable, flood-prone or subject to other hazards as to be unable to submit new development.

Section 10.3.2 discusses the City's Open Space Policies, some of which pertain to development on steep slopes. These two exemptions would also have to be included in the waiver request because they are applicable to the subject project and are necessary to remove any inconsistencies with the General Plan that could transpire. Staff has included these two Sections in the language in the General Plan amendment approval recommendation to the City Council should that be the Commission's desire.

Issue#3: Zoning Code Amendment and Rezone

The subject site is currently zoned Hillside Planned Development (HPD) and the applicant is proposing a rezone to Planned Development (PD) and the addition of language to the Municipal Code to allow City Council to have the discretion on residential properties located within the Somersville Road Corridor Focus Area to be exempt from the Hillside Planned Development District. The purpose of the HPD zoning district is to promote a harmonious visual and functional relationship between natural and built environments, more specifically the zoning code has laid out specific development parameters required to build on a hillside (Attachment "R"). The applicant's proposed project does not comply with many of the goals; therefore the applicant is requesting the PD zoning designation. The second part of the applicant's request regarding the addition of language to provide the City Council with discretion whether the Hillside Planned Development District policies apply to a particular project is not really necessary because the applicant is proposing a rezone from HPD to PD. The rezone from HPD to PD will no longer subject the property to the HPD policies and will provide the applicant development flexibility through the PD zoning designation. Similar to the General Plan amendment, the Planning Commission must consider whether to grant the applicant's request to grade the hillside not in conformance with the currently zoning designation of Hillside Planned Development District.

Each residential PD District that is established shall include specific development standards designed for that particular district, which shall include minimum lot sizes, setbacks, maximum building heights, lot coverages, and open space requirements. Per the code, in establishing these standards, the requirements for existing zoning and PD Districts may be reviewed and modifications to these standards may be appropriate. Once approved as part of the final development plan, these standards effectively become the zoning standards, which are tied to the approved plan, unless formally amended by the City Council. The intent of the residential PD district is to create a wider variety of densities, product types and setbacks than would otherwise be possible under conventional residential zoning.

Staff is proposing the following zoning standards for this project if the project is approved:

**Development Standards for
The Pointe Planned Development District**

Standard	Required for Project
Minimum Lot Size	Lots 1 – 51 and 60: 10,000 sq. ft. 52-59: 6,000 sq. ft.
Minimum Lot Width	Per the vesting tentative map date stamped on October 17, 2013.
Maximum Lot Coverage	40%
Front/Street Side Yard Minimum (shall be reserved for landscaping)	Front: 20 ft setback from the right of way to the face of garage door, or 15 feet to a side entry garage (e.g. accessed by a swing driveway). The front yard dimensions shall be varied by increasing the front yard setback by up to 25 ft. and staggering the varied setbacks. Side: 15 ft setback for the primary structure from the right of way line. Approved architectural elements may encroach 2 ft.
Side Yard – Interior	5 ft. with 4 ft of flat useable area with 25% of the lots having a 10 foot side setback on one side. The 10 feet must remain as unrestricted open area.
Minimum Rear Yard	15 ft minimum of flat usable space and a 20 ft. setback from the rear property line. A single story portion of the main structure shall be allowed 10 ft from the property line provided the width of that portion of the main structure does not exceed 50% of the buildable width of the lot. Approved architectural elements may encroach 2 ft.
Maximum Building Height	35 ft.
Parking	2 spaces per unit in a garage, plus one guest parking space on the street within close proximity to the unit served.
Driveways/Drive Aisles	Per the vesting tentative map date stamped on October 17, 2013.
Roadways	Per the vesting tentative map date stamped on October 17, 2013.
Landscape Requirements	Summit Way – 10 ft landscape median. Parcels A and B.
Architectural Requirements	As approved by the Planning Commission (PC). Any substantial deviations from approved architectural plans will require review and approval by PC.

Issue #4: Grading and Storm Water

Grading: The proposed project site encompasses approximately 21 acres of land. The hilly site ranges in elevation from about 230 feet on the northeastern periphery of the site to 335 feet on the southern periphery. The peak elevation is southwest of the approximate center at 440 feet. The site is steeply sloped, with over 78 percent of the site having a gradient in excess of 25 percent, while only about 6 percent of the property having a gradient of less than 10 percent; most of the flat area within the project site is located along the periphery of the project site.

The applicant is proposing to extensively grade the project site and create three terraced levels within the gated community to maximize views and minimize street slopes. To maximize views, each terrace would terminate in a cul-de-sac, with each terraced level varying by approximately 20 feet. The maximum pad elevation of 336.5 feet (Pad 14), and the existing topography as high as 440 feet, the project would require grading cuts of up to 104 feet; fill depths would be under 10 feet, and retaining walls up to 6 feet in height. The retaining walls would be utilized throughout the site to provide structural support to grade separations and to provide useable private outdoor space. Excess soil would need to be transported offsite.

Site grading would create a maximum slope of 2:1 between the proposed homes. Slopes on the open space buffers would also generally be 2:1 gradients. Grading would result in street slopes of up to 15 percent with the terminating cul-de-sacs serving as emergency vehicle access turnarounds, would be limited to slopes of 2.0 to 2.6 percent, in accordance with the Contra Costa Fire Protection District (CCCFPD) requirements. Straight street segments near the cul-de-sacs would have grades of about 4 to 5 percent, while steeper grades of the 6 to 15 percent would be located on the easterly stretch of Summit Place and Summit Way, just west of the site entrance.

The proposed grading does not conform to the General Plan or the Hillside Planned Development District zoning ordinance. However the applicant is seeking amendments to the General Plan and the zoning ordinance to make an exception for the project because it would be considered infill based on the surrounding Black Diamond Ranch project as well as Pittsburg's entitled project, Sky Ranch II. Further, the applicant is making the argument that the project would be furthering the goals of the Somersville Road Corridor Focus Area by increasing the population, therefore increasing the tax revenue, which is one of the overall goals for the Focus Area. The Planning Commission has to consider if these are appropriate findings in order to approve the project.

Storm Water: The applicant is proposing two bio retention areas to manage the storm water from the project and to meet the requirements of C.3 in the California Regional Water Quality Control Board's Municipal Regional Permit (Attachment "S"). The C.3 requirements treat and meter flow of storm water to match predevelopment conditions. One existing basin is located within the Black Diamond Ranch subdivision at the terminus of Crescent Court, adjacent to Markley Creek Park, which is being proposed to be retrofitted to accommodate the additional flow from the proposed project. The applicant is proposing to make the basin deeper rather than larger to make that accommodation. This basin would be maintained by the Street, Lighting, and Landscape District (SLLD). The other basin is also located within the Black Diamond Ranch subdivision at the intersection of James Donlon Boulevard and Metcalf Street. The parcel currently is vacant and has high powered electrical lines that run above it, therefore limiting the usage of the parcel. The basin will have to be sized appropriately to accommodate the flows from the project and will be maintained by the HOA. Staff prefers the proposed basins because it eliminates the need for numerous small bio retention areas within a homeowner's yard or other areas within the project and presents only two locations that need to be monitored and verified they are functioning properly, which is required by the California State Regional Water Quality Control Board. If approved, staff has conditioned the project to appropriately size the basins to accommodate the storm water flows and that the basin at the terminus of Crescent Court will be maintained by the SLLD while the other basin at Metcalf Street and James Donlon Boulevard will be maintained by the Home Owners Association and both will be required to be landscaped.

Issue #5: Traffic, Circulation, and Parking

According to the project's traffic study, the project would generate 576 daily vehicle trips, with 46 occurring in the AM peak hour and 61 trips occurring in the PM peak hour. Based on the criteria set forth in both the General Plan and the CEQA, the project would not create significant traffic impacts or create any significant hazards in design.

The nine homes interspersed in Black Diamond Ranch will be accessed by the existing streets, Country Side Way and Torgensen Court. The gated entrance at Summit Way would have a 62 foot wide ROW, with a 24 foot wide entrance way providing two 12 foot travel lanes: one for guests stopping at an entry keypad/intercom and one through lane for residents. A 10 foot wide landscaped median would separate the entrance lanes from a 20 foot wide exit lane and a 5 foot sidewalk.

The 51 homes would be accessed through three terraced streets (terminating in cul-de-sacs) via a gated extension of the current southern terminus of Summit Way. Each of the streets would have a 35 foot right-of-way (ROW), including a 28 foot roadway (two 14-foot travel lanes) and a 4-foot wide sidewalk on one side. According to the Vesting Tentative Map, a total of 54 guest parking spaces would be provided through controlled on-street parking on one-side of the each street. The three cul-de-sacs have an outside turning radius of 35 feet and an inside turning radius of 15 feet, which is not in accordance with the Contra Costa Fire Protection District (CCCFPD) requirements, which require an outside turning radius of 45 feet and an inside turning radius of 25 feet; however the applicant has indicated that through rolled curbs and a reinforced sidewalk the Fire District will approve this approach. The streets do not meet the City standards; however the Planning Commission may consider since the streets will be private and maintained by the HOA that this may be an appropriate approach. A condition of approval has been added that the development shall meet all of the requirements of the CCCFPD. As long as the streets meet the minimum in terms of emergency vehicle access, staff does not see an issue with having narrower streets in a community with slopes. A condition of approval has been added to the reflecting the project must meet the requirements of the CCCFPD.

The applicant has proposed 54 on-street parking spaces. The parking ordinance requirement for single family residential (detached) is one guest parking space on the street within close proximity to the unit served. The applicant is 6 spaces short of meeting the ordinance requirement and a condition of approval has been added that the project must meet the minimum parking requirements or process a variance if approved.

Issue #6: Other Issues

Pedestrian Path: The project contains a proposed pedestrian pathway on each of the three terraces. The pathway runs from north to south between lots 42 and 41; 28 and 29; 26 and 25; and 14 and 15. Staff has concerns about pedestrians crossing adjacent to the backyards of homes and privacy issues therefore has added a condition of approval to remove the pedestrian path.

Homeowners Association (HOA): The applicant is proposing to establish an HOA with CC&Rs. HOAs are organizations comprised of homeowners in a particular housing development and are regulated by the California Department of Real Estate. The HOA will be formed to own common property and to conduct maintenance of the private infrastructure including, but not limited to, the storm water basin at Metcalf and James Donlon Boulevard; storm water lines, mains, and inlets; streets; street lights; common area landscaping; and the pocket park including the water

feature. The maintenance will be funded through HOA dues established when the HOA is formed.

Park-in-Lieu Fees/Park Benefit District: The Municipal Code requires that a subdivider dedicate land or pay an in lieu fee or both at the option of the City. The applicant is proposing an approximate 10,000 s.f. pocket park, which will be private and maintained by the Home Owners Association, so the applicant will be required to pay the park in lieu fee in place at the time of final map recordation.

Street Names: The proposed street names are: Summit Way, Summit Place, and Altamont Court. The alternative names are: Alpine Way, Terrace Place, Vista Place, Highland Way, Ridgeview Place, and Skyview Place.

Community Letters: The City has received two letters of opposition in addition to the letters received on the IS/MND (Attachment "T").

Issue #7: Findings for the Conditions of Approval

A. GENERAL CONDITIONS

1. The City of Antioch has established a Municipal Code to protect the public health, safety, and welfare of the citizens within the City. This condition of approval is necessary for the developer to mitigate any project impacts that may threaten the health, safety, or welfare of its citizens.
- 2-3. In order for the project to be constructed to the City's approved standards, the plans need to adequately reflect the changes made by the Planning Commission (and City Council if applicable) and City staff needs to inspect the site for compliance with the conditions of approval prior to final inspection approval. These conditions protects the public safety, health, and general welfare of the residents of the Project and surrounding residential and other uses by providing an adequate reflection of the approved project prior to the issuance of building permits and a follow up site inspection to ensure the Project was built as conditioned.
4. The project will be adding structures to the landscape of the City and those structures should be harmonious and orderly with the surrounding neighborhood as well as aesthetically pleasing. Therefore, the condition is necessary to have the Planning Commission review the design since it is not being considered as part of this project.
5. The regulatory environment of land development and base line conditions change frequently as well as thresholds established by the California Environmental Quality Act; therefore this condition is necessary to ensure any project going forward is subject to the most current regulations in order to promote the public health, safety, and welfare in the City of Antioch.
6. The Project is being pursued by a developer and the City's responsibility is to promote orderly development within the City. This condition is necessary to protect the City from the financial and time expenses for defending challenges to land use entitlements or environmental reviews that are financially benefitting the applicant, particularly given the City's own financial challenges.
7. The City is granting approval to construct 60 single family homes and does not want more than one valid approval on the same piece of the property. This condition is preventing City

actions from becoming injurious to the subject property or the surrounding community by granting more than one land use entitlement.

8. The Project takes City time and staff to process development applications through the land use entitlement process. The development of property is at the benefit of the applicant; therefore the condition is necessary to ensure the applicant pays the expenses to process the application rather than having that burden placed on the taxpayers for another's benefit.

9-11. The development of this Project could require construction within the public right-of-way and/or private and public easements. These conditions are necessary to protect private and public property interests, as well as the traveling public, by requiring the applicant to obtain permission prior to entering, accessing, or making modifications to property not owned by the applicant.

12-13. The applicant is proposing having private areas of the development such as the streets, common areas, street lights, the pocket park with water feature, landscaping, open space areas and amenities including storm water control facilities. These private areas will be owned in common and thus will be required to be maintained by a Homeowners Association. These conditions are necessary because the Homeowners Association will be ensuring the health, safety, and welfare of the Project area, which will result in fire safety, security, and a more aesthetic community. The City will need to ensure that the obligations of the HOA are clear through the recorded CC&Rs to ensure the conditions of approval are met.

B. TENTATIVE MAP CONDITIONS

1-6. The City is subject to the State of California Subdivision Map Act and the City's own Subdivision provisions in the Antioch Municipal Code, which set forth conditions of approval to govern the subdivision's design (lots, streets, rights-of-way, drainage, sewer, etc.) and to ensure that a subdivider will properly complete the areas dedicated for public purposes to not become an undue burden upon the taxpayers of the community. The vesting tentative map provides a framework of the design and improvements for the subdivider to propose a project to the approving bodies of the City for consideration as an entitlement action. These conditions are necessary to ensure the subdivider is going to build what the City reviewing bodies considered as part of the project, as well as to ensure the subdivider will construct the required infrastructure in an orderly manner. The conditions are necessary to prevent an undue burden on the City of Antioch because of the Project.

C. CONSTRUCTION CONDITIONS

1-3. The construction of the Project will span approximately one year and will include site preparation, earthmoving, and general construction, which includes the development of buildings, structures, and facilities. Construction activities will produce impacts related to noise, dust, vibrations, and traffic that must be addressed and mitigated. In addition, the City is under a State-wide mandate to divert its waste by 50% and thus the City has adopted an ordinance to reduce construction and demolition debris from going to the landfill. These conditions of approval are necessary to address these impacts from the Pointe Project to ensure the public health, safety, and welfare of the Antioch community are protected and that development in the City occurs in an orderly fashion consistent with the City's General Plan and Municipal Code and to not create temporary or permanent nuisances.

D. SITE AND PROJECT DESIGN CONDITIONS

The Project is proposing to construct 60 single family homes, two open space parcels, two storm water basins, a pocket park with a water feature, and related infrastructure.

1-2. The Project will have impacts associated with mail delivery and the potential construction of second units and in order to promote harmonious development to preserve the health, safety, and welfare of the residents of this Project and the mail carriers, these conditions are necessary.

3. The Project requires extensive grading of the hillside due to the removal 104 vertical feet from the project site, which will have impacts on the final elevations for the overall development and the adjacent properties. It may be necessary for the City to engage professionals to verify the adequacy of the plans in order to preserve the health, safety, and welfare of the residents of this Project, the surrounding neighborhood, and the construction workers, therefore this condition is necessary.

4-12. The Project will be constructing streets and driveways to serve the Project and in order to maintain the health, safety, and welfare of the residents and those that will visit this Project; the streets and driveways need to be adequately designed for safe travel and maneuverability. Therefore these conditions are necessary for the Project.

13-14. The Project is required to construct fences on all rear and side yards. In order to preserve the health, safety, and welfare of the residents of this Project; fencing provides a barrier to pedestrian and vehicular trespassing, provides privacy, and a barrier for children and pets these conditions are necessary.

15. The installation of street lights is required for the project to enhance the health, safety, and welfare of the residents of this Project by providing lighting to increase security of both people and property as well as to provide illumination to see at night; therefore this condition is necessary. The project has two open space parcels, front yards, a pocket park, and storm water basins that will be graded and will require landscaping. These conditions are necessary to promote the health, safety and general welfare of the citizens of the City of Antioch by preserving and enhancing the City's natural environment; to facilitate the creation of a convenient, attractive, and harmonious community; to minimize erosion and disturbed lands through revegetation; to conserve energy by the provision of shade trees over streets, sidewalks, and other paved areas; to reduce the risk of fire by the management of flammable vegetation; to improve the appearance of the built environment; and to encourage the appropriate use of and orderly development of land.

16-17. Street names and addresses are utilized in navigating the proposed Project by the residents, visitors, mail delivery, and emergency responders. The street names may be rejected by the emergency responders due to duplication or other reasons; therefore requiring backup names. Addresses need to be clearly indicated or there may be issues trying to locate the physical address. These conditions of approval are necessary to the health, safety and general welfare of the citizens of the City of Antioch to successfully navigate and locate a physical address.

18. The State mandates any new for-sale housing developments provide a list to buyers of universal accessibility features that would make the home entrance, interior routes of travel, the kitchen, and the bathrooms fully accessible to persons with disabilities. Universal design

provides a safer and easier to use home for persons who are aging or frail, or who have certain temporary or permanent activity limitation or disabilities. The condition is necessary to meet State law and to promote the safety of the residents of the Project.

19-20. To improve accessibility of the development, the Project is required to install a five foot monolithic sidewalk. The sidewalk will promote the harmonious development of the project as well as the health, safety and general welfare by providing an accessible path of travel as well as increase the walkability of the neighborhood.

21. All improvements shall be contained in each lot and the projections of its sidelines will promote harmonious development within the City. By having the improvements contained in each lot, the owner will not have to access the public right-of-way or another person's property for maintenance or to fix an issue on his or her property. This will make maintenance as well as emergency repairs easier and more likely to be accomplished to the benefit of the owner and neighboring properties; therefore this condition is necessary.

22-23. The applicant is not proposing a City standard cul-de-sac, which provides additional parking due to limited street parking on a cul-de-sac because of the design. The applicant is currently not meeting the City's on-street parking requirements; therefore additional parking may have to be provided in the cul-de-sac. If the parking requirements are not met there could be impacts to the health, safety, and welfare of the residents as well as the surrounding neighborhood; therefore these conditions are necessary.

24-25. The Project contains a pocket park and undeveloped areas, which are to be private. Because the areas will be private, it will require ownership and maintenance by a Homeowners' Association. The condition is necessary because the Homeowners' Association will be ensuring the health, safety, and welfare of the Project area, which will result in fire safety and a more aesthetic community.

26-27. The Project will be adding structures to the landscape of the City and those structures should be harmonious and orderly with the surrounding neighborhood as well as aesthetically pleasing. Therefore, these conditions are necessary to have the Planning Commission review the design since it is not part of this project.

28. The Project is proposing a gate, which will have impacts that need to be mitigated through this condition of approval. The gate is required to be at least 20' from the entrance at Country Side Drive, in order to not block any traffic. The gate will be private and maintained by the HOA, which is ensuring the health, safety, and welfare of the Project area, which will result in a more aesthetically pleasing and harmonious community.

29. The proposed pedestrian path has impacts associated with it that cannot be mitigated such as privacy issues with the lots immediately adjacent to the path. These issues will detract from a harmonious and safe development; therefore this condition is necessary.

E. UTILITIES

1. The Project will require electrical, water, sewer, and storm drain facilities. The Antioch Municipal Code requires all utility facilities (including, but not limited to, electric, communication, and cable television lines) which are located on-site or adjacent to the subdivision shall be placed underground. In order to minimize visual clutter utilities should be placed underground or subsurface. This condition is necessary to promote the desirability of the City through the

minimization of visual clutter and to maintain the aesthetics of the City as well as adherence to the Antioch Municipal Code.

2-16. The City of Antioch owns the sewer conveyance lines within the City and also provides water service to residents within the city limits. In order to maintain these lines, the City requires easements as well as the orderly development of public utilities to ensure the lines are installed in an appropriate manner. The City is also required to comply with the California Regional Water Quality Control Board storm water control permit for managing storm water flows. These conditions are necessary to ensure the Pointe Project infrastructure and facilities are constructed in a manner to minimize maintenance, are easily accessible, and will function appropriately. These conditions are also necessary to ensure the public health, safety, and welfare of the residents of the Project as well as to ensure adequate capacity to serve the Project with the existing infrastructure and not compromising the service of the existing users.

F. LANDSCAPING CONDITIONS

1-4. The project has two open space parcels, front yards, a pocket park, and storm water basins that will be graded and will require landscaping. The City has also adopted Citywide Design Guidelines, which sets standards for streetscape design in regards to landscaping. These conditions are necessary to promote the health, safety and general welfare of the citizens of the City of Antioch and adhering to the Design Guidelines by preserving and enhancing the City's natural environment to facilitate the creation of a convenient, attractive, and harmonious community; to minimize erosion and disturbed lands through revegetation; to conserve energy by the provision of shade trees over streets, sidewalks, and other paved areas; to reduce the risk of fire by the management of flammable vegetation; to improve the appearance of the built environment; and to encourage the appropriate use of and orderly development of land.

G. FIRE REQUIREMENTS

1-4. The Contra Costa Fire Protection District provides fire services for the City of Antioch and follows the California Fire Code. The conditions of approval are necessary on the Project to protect the public health and provide for the safety and welfare of life and property from fire and explosion hazards or dangerous conditions in new buildings and existing buildings; structures and premises; and to provide safety and assistance to fire fighters and emergency responders during emergency operations.

H. FEES

1-9. The City of Antioch, the Contra Costa Flood Protection District, and the Antioch Unified School District provide existing infrastructure such as streets, utilities, traffic signals, schools, public right-of-way, parks, flood mitigation improvements, parks, and police services. The fees required by the conditions of approval serve two functions: 1) the funds will provide mitigation for the project's fair share impact and the Project's responsibility of costs for the existing infrastructure due to the increase in population and 2) to mitigate the costs of additional infrastructure and maintenance necessary due to the impact of the Project. The conditions of approval are necessary to mitigate impacts to public infrastructure from deterioration as well as provide additional infrastructure to serve the additional population.

I. MODEL HOMES

1-3. Applicants will construct model homes to provide customers with a sample of the product, which assists with the sale of their housing products. The models homes are a temporary commercial use, so special consideration must be given through the conditions of approval. The conditions are necessary to ensure the models will not adversely affect the character of the surrounding residential neighborhoods or to create a public nuisance.

J. GRADING

1-21. The project requires extensive grading of the hillside due to the removal 104 vertical feet from the project site, which will have impacts on the final elevations for the overall development and the adjacent properties. These final elevations of the project site are important to drainage, sewer installation, roadway slopes, lot design, promoting harmonious design, and retaining wall height. These conditions are necessary to ensure public health, safety, and welfare because the grading has to be designed and approved by a licensed geotechnical engineer. The licensed geotechnical engineer is responsible for the development of a plan detailing the site conditions, design, and construction recommendations based on specific information on subsurface soil, rock, and water conditions. The impacts of the grading will be mitigated by the conditions of approval to ensure slope stability, appropriately functioning utilities, and the development will be in accordance with the surrounding properties.

K. CONSERVATION/NPDES

1. The Project is proposing to create 60 homes, open spaces, two storm water basins, and a park all with landscaping. The condition of approval pertaining to water conservation measures is necessary to reduce the amount of water used since water is a finite resource and to protect aquatic resources. The condition of approval protects the general welfare of the State to use water resources efficiently and to not waste water.

2a-o. The Project is proposing to create impervious surface as well as engage in land disturbing construction activities which will lead to increase storm water runoff. The City is under Federal and State mandate to control water pollution by regulating point sources that discharge into local water bodies. Point sources are discrete conveyances such as pipes or man-made ditches. The Project is proposing two storm water control basins and a variety of conveyances to handle the storm water from the development. These conditions of approval are necessary to address these impacts from the Pointe Project to ensure the public health, safety, and welfare of the Antioch community is protected by control point source pollutants.

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

1. As required by the State of California, through the California Environmental Quality Act, an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program have been prepared for the Pointe Project. The impacts of the Project were identified to produce significant environmental impacts without mitigations. With the implementation of the mitigation measures, it reduces the project's impact to a less-than-significant level. The condition of approval is necessary to ensure the project complies with all mitigation measures so the Project does not create a significant environmental impact. The mitigation measures will ensure provision of a high quality environment with acknowledgement of the relationship to the

general welfare of the people of the State. The capacity of the environment is limited and CEQA maintains thresholds for the health and safety of the people and take necessary action to prevent such thresholds from being reached. Lastly, the environmental document is to regulate activities which affect the quality of the environment so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment.

M. RESIDENTIAL DEVELOPMENT ALLOCATIONS

1. The Project was awarded 60 Residential Development Allocations in 2008 by the City Council. The purpose of the Residential Development Allocations process was to implement the General Plan, to regulate growth, to ensure the City's infrastructure kept pace with development, to ensure the City met its Regional Housing Needs Allocation, and to encourage reinvestment in older neighborhoods. This condition of approval is necessary to reiterate the 2008/11 conditions of approval are still applicable to fulfill the purpose of the Residential Development Allocation process; however the regulatory environment has changed since the allocation approval. Therefore the City is providing an option to the applicant to pursue another means of paying their fair share of Project impacts through the yet to be established development impact fees.

ATTACHMENTS

- A: Resolution Recommending Adoption the IS/MND and MMRP
- B: Actions to Recommend Approval of the Project to the City Council:
 - 1. Resolution Recommending Approval of the General Plan Amendments
 - 2. Resolution Recommending Approval of the Initiation of a Rezone from HPD to PD
 - 3. Resolution Recommending Approval of the Final Development Plan, Vesting Tentative Map, and Use Permit
- C: Actions to Recommend Denial of the Project to the City Council:
 - 1. Resolution Recommending Denial of the General Plan Amendments
 - 2. Resolution Recommending Denial of the Initiation of a Rezone from HPD to PD
 - 3. Resolution Recommending Denial of the Final Development Plan, Vesting Tentative Map, and Use Permit
- D: Aerial Photograph
- E: Staff Report and Minutes from the November 22, 2005 City Council Hearing
- F: Staff Report and Minutes from the February 21, 2007 Planning Commission Hearing on the Preliminary Development Plan for the Pointe
- G: Staff Report and Minutes from the June 12, 2007 City Council Hearing on the Preliminary Development Plan for the Pointe
- H: RDAC Score Sheet
- I: Staff Report from the August 20, 2007 Residential Development Allocation Committee Hearing
- J: Staff Report and Minutes from the September 17, 2007 Planning Commission Hearing on Residential Development Allocations
- K: Staff Report and Minutes from the January 22, 2008 City Council Hearing on Residential Development Allocations
- L: Excerpt from the General Plan for Low Density Residential
- M: Excerpt from the General Plan for the Somersville Road Corridor Focus Area
- N: Excerpt from the General Plan for the Hillside Planned Design Policies
- O: Chevron Property Location Map
- P: Excerpt from the General Plan for Residential Land Use Designations

Q: Excerpt from the General Plan for Open Space Policies
R: Article 24 – Hillside Planned Development District
S: Basin Locations
T: Opposition Letters

ATTACHMENT "A"

RESOLUTION NO. 2013/**

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH RECOMMENDING ADOPTION TO THE CITY COUNCIL OF A FINAL INITIAL STUDY/MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM FOR THE POINTE PROJECT

WHEREAS, the City of Antioch did receive a request from Discovery Builders to construct 60 single family homes, two open space parcels, two storm water basins, and a pocket park with a water feature, which also includes associated infrastructure improvements on an approximately 21 acre property, dated January 29, 2007, January 15, 2008, April 2, 2008, December 21, 2010, August 30, 2013, and October 17, 2013 and incorporated by reference. The project includes General Plan amendments from Low Density Residential to inclusion within the Somersville Road Corridor Focus Area and the addition of language to the General Plan waiving the requirements of the hillside development policies, a rezone from Hillside Planned Development District to Planned Development District, a Final Development Plan, Vesting Tentative Map, and a Use Permit. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010) (the "Project").

WHEREAS, on October 25, 2005 and November 22, 2005, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved a re-designation of the subject parcel from "Open Space" to "Owner/Developer Remainder Parcel"; and

WHEREAS, on February 21, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan for the Project; and

WHEREAS, on May 8, 2007 and June 12, 2007, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on August 20, 2007, the Residential Development Allocation Committee duly held a public hearing, received and considered evidence, both oral and documentary, and based on a satisfactory score of 308.8 recommended approval of 60 residential development allocations; and

WHEREAS, on September 17, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and recommended denial to the City Council of the 60 residential development allocations; and

WHEREAS, on January 22, 2008, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved 60 residential development allocations; and

WHEREAS, the City prepared an Initial Study to evaluate the potential environmental impacts of the Pointe Project in conformance with Section 15063 of Title 14 of the California Code of Regulations (the "CEQA Guidelines"); and

WHEREAS, a draft Initial Study and Mitigated Negative Declaration ("IS/MND") was circulated for a 20-day review period, with the public review period commencing on October 8, 2013 and ending on October 28, 2013; and

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November 6, 2013

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WHEREAS, the Planning Commission has reviewed the IS/MND for this Project and the comments received during the comment period; and

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

WHEREAS, on November 6, 2013, 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 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 – Thursday 8:00 am – 11:30 am and the MMRP is attached as Exhibit 1 to this document.

NOW THEREFORE BE IT RESOLVED

1. 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 and Mitigated Negative Declaration, and independently reviewed the Final Initial Study and Mitigated Negative Declaration; 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 General Plan and Zoning Ordinance amendments; and
 - c. The Final Initial Study and Mitigated Negative Declaration reflect the City's independent judgment and analysis.
2. The Planning Commission hereby **RECOMMENDS** that City Council of the City of Antioch **APPROVE AND ADOPT** the Initial Study, Mitigated Negative Declaration and Mitigation Monitoring and Report Program for the Project .

* * * * *

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 6th day of November, 2013 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

TINA WEHRMEISTER,
Secretary to the Planning
Commission

LZ1

ATTACHMENT "B"

RESOLUTION NO. 2013/**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
RECOMMENDING TO THE CITY COUNCIL APPROVAL OF GENERAL PLAN
AMENDMENTS FOR THE POINTE PROJECT**

WHEREAS, the City of Antioch did receive a request from Discovery Builders to construct 60 single family homes, two open space parcels, two storm water basins, and a pocket park with a water feature, which also includes associated infrastructure improvements on an approximately 21 acre property, dated January 29, 2007, January 15, 2008, April 2, 2008, December 21, 2010, August 30, 2013, and October 17, 2013 and incorporated by reference. The project includes General Plan amendments from Low Density Residential to inclusion within the Somersville Road Corridor Focus Area and the addition of language to the General Plan waiving the requirements of the hillside development policies, a rezone from Hillside Planned Development District to Planned Development District, a Final Development Plan, Vesting Tentative Map, and a Use Permit. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010) (the "Project").

WHEREAS, on October 25, 2005 and November 22, 2005, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved a re-designation of the subject parcel from "Open Space" to "Owner/Developer Remainder Parcel"; and

WHEREAS, on February 21, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan on the Project; and

WHEREAS, on May 8, 2007 and June 12, 2007, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on August 20, 2007, the Residential Development Allocation Committee duly held a public hearing, received and considered evidence, both oral and documentary, and based on a satisfactory score of 308.8 recommended approval of 60 residential development allocations; and

WHEREAS, on September 17, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and recommended denial to the City Council of the 60 residential development allocations; and

WHEREAS, on January 22, 2008, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved 60 residential development allocations; and

WHEREAS, the City prepared an Initial Study, which included amendments to the General Plan, to evaluate the potential environmental impacts of the Pointe Project in conformance with Section 15063 of Title 14 of the California Code of Regulations (the "CEQA Guidelines"); and

WHEREAS, the Planning Commission has recommended to the City Council to approve and adopt the Final IS/MND; and

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WHEREAS, Section 65358 of the California Government Code provides for the amendment of all or part of an adopted General Plan; and

WHEREAS, the primary purpose of the General Plan amendments is to ensure consistency between the City of Antioch General Plan and the Pointe Project. The GPAs as described in Exhibit A, would revise several sections of the Land Use Element of the General Plan, which would include amendments to: the map in Figure 4.3; additional language in Section 4.4.6.2.b, which would provide the City Council with the ability waive the requirements of Sections 4.4.1.1, 5.4.14, and 10.3.2; and add language to Section 4.4.6.2 to reflect the appropriate land use of the project.

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

WHEREAS, on November 6, 2013, 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 based on the oral and written record and the findings established in this resolution, the recommended adoption of the Final IS/MND and MMRP to the City Council, the Planning Commission hereby recommends to the City Council adoption of the amendments shown to the General Plan in Exhibit A pursuant to the following findings:

- a. The project is considered infill development and is substantially surrounded by the adjacent Black Diamond Ranch project, a 286-single family detached subdivision and the entitled Sky Ranch II project, a 415-single family detached subdivision within the City of Pittsburg.
- b. The estate/executive housing will help to fulfill the commercial and tax revenue generating goals of the Somersville Road Corridor Focus Area by providing an additional population with disposable income.
- c. The estate/executive housing will provide a housing type that has not been readily developed within Antioch and will further the General Plan's goals of providing more of a job and housing balance by encouraging businesses to locate in Antioch by providing executives with a desirable housing type.
- d. The General Plan Amendments provide for the continuing internal consistency between each of the General Plan's elements, as required by Government Code Section 65300.5.
- e. As required by Government Code Section 65358(a), the proposed General Plan Amendments are in the public interest of the people of the City of Antioch.

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* * * * *

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 6th day of November, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

TINA WEHRMEISTER,
Secretary to the Planning
Commission

L24

EXHIBIT A

4.4.6.2 Somersville Road Corridor. This Focus Area encompasses the commercial areas along Somersville Road from SR-4 north to Fourth Street, as well as the commercial areas south of the freeway, up to and including the Chevron property. The General Plan intends that existing auto dealerships be retained and revitalized along Somersville Road. If the existing dealers ultimately decide to relocate from Somersville Road, the City should work with the dealers to secure alternative locations within the City of Antioch. Potential alternative locations include the Regional Commercial area within the East Lone Tree Specific Plan Focus Area and between SR 4 and the railroad in the Hillcrest Station Area.

a. Purpose and Issues. The Somersville Road corridor is one of Antioch's primary sales tax generators, encompassing automobile dealerships, the Somersville Towne Center mall, and other retail businesses. Uses along this corridor are aging, and in need of improvement. In addition, the Somersville Road interchange is heavily congested. Interchange capacity will be increased as part of improvements for SR-4. Interchange improvements could impact adjacent existing hotel uses.

- Automobile dealerships exist along Somersville Road. The City has worked in the past to improve the design of Somersville Road, and to assist existing dealerships to modernize their facilities. Relocating the dealerships to another location within Antioch could reduce the amount of land available for industrial use, and may or may not be desirable for the dealerships. The dealerships have generated a customer base in their present location, though they do not have freeway visibility.
- South of the freeway is Somersville Towne Center, formerly known as County East Mall. The center was an open air complex, and was enclosed in the 1970s. The mall has not provided the level of retailers, mix of uses (e.g., restaurants), or design interest that could be supported by the community. In addition, vehicular access to the mall from Somersville Road is difficult due to limited parking. Pedestrian entry along the easterly side of the mall is awkward due to the presence of commercial uses with access directly from the parking lot.

There have been discussions in the past regarding adding another anchor tenant. However, the present design of the mall, with a series of tenants having their entries open to the parking lot along Somersville Road, limits simple design solutions. As a result, there have been suggestions that the mall be revitalized as a mixed-use specialty retail, entertainment, office, and residential project.

- The Focus Area's commercial uses are auto-oriented, and its general character is that of a typical older suburban community. Improvements to signage, streetscapes, and building façades are needed throughout the developed portion of this Focus Area, along with improved pedestrian linkages in the mall area.
- At the southern end of this Focus Area is the Chevron property, which is a 193-acre relatively flat, vacant parcel south of Buchanan Road. It is an unincorporated island surrounded by the cities of Antioch and Pittsburg, and is within Antioch's sphere of influence. The site has been extensively disturbed as the result of its previous use as an oil storage facility. With the extension of James Donlon Road, the Chevron property will become an important gateway into west Antioch.

b. Policy Direction. Efforts should be continued to keep existing automobile dealerships in their present locations, and to upgrade their facilities. Somersville Towne Center should be improved and expanded into a cohesive mixed-use retail, retail, entertainment, and residential center. Pedestrian and other urban design improvements need to be provided to increase linkages between the mall and adjacent uses. Special effort should be undertaken to improve access to the mall site from Somersville Road, and to improve the distribution of parking around the mall.

The following policies apply to the Somersville Road Corridor Focus Area.

- a. Areas designated "*Commercial*" on Figure 4.3 shall comply with the provisions of the Somersville Road Commercial land use category (see Table 4.A).
- b. Areas designated "*Regional Commercial*" on Figure 4.3 shall comply with the provisions of the Regional Commercial land use category (see Table 4.A).

c. Areas designated "High Density Residential" in Figure 4.3 shall comply with the provisions of the High Density Residential land use category (see Table 4.A).

e.d. Areas designated "Residential" in Figure 4.3 shall consist of single family homes and the design shall be determined through the Planned Development process with approval by the City Council.

Expansion of Somersville Towne Center is encouraged, including new and expanded retail, particularly addition of new anchor tenants (department stores), higher end specialty retail, and sit-down restaurants. As shown in Figure 4.3, the General Plan permits expansion of the mall to the west. Expansion of the mall could also occur vertically by adding a second story of shops. Also permitted is the conversion of the existing mall into a mixed-use commercial, office, and residential complex. Revitalization of the mall into a mixed use concept could occur alongside expansion of the existing mall itself through development of multi-story office buildings, either free-standing or attached to the mall.

e.e. In cooperation with the City of Pittsburg, work to extend Century Boulevard to Buchanan Road as a two-lane arterial, with a connection to Los Medanos College.

e.f. The development of the "Chevron property," located on the west side of Somersville Road, south of Buchanan Road, shall comply with the following provisions.

- The primary land use intent for this site is a mix of low-rise business park and medium density residential housing products.

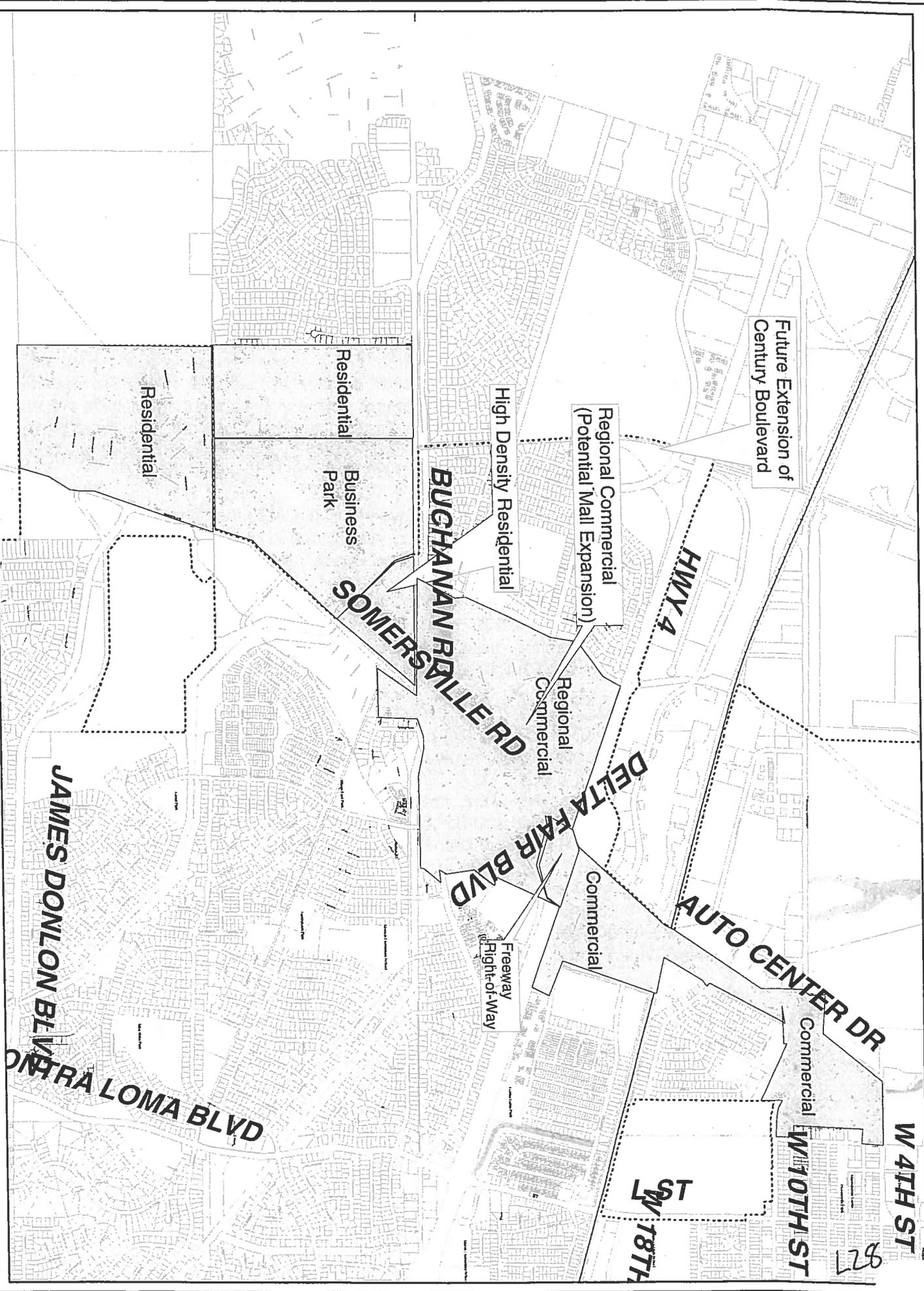
For illustrative purposes, Figure 4.3 shows the property divided into business park and residential portions. The specific development design of the site shall be determined through approval of a planned development for the site. A minimum of 40 percent of the site is to be devoted to business park and related commercial and open space uses.

- Business Park and related commercial uses shall front along the entire length of Somersville. Although it would be desirable to have business park and related commercial uses fronting along Buchanan Road at least as far west as the flood control channel, residential uses may front along Buchanan Road. The Business Park areas shall comply with the provisions of the Business Park land use category.
- Development of the site should be heavily landscaped. Business park and related commercial uses should be one or two stories, and clustered in a park-like setting.
- A common design theme for business park and residential uses within the 193-acre site is to be provided, including compatible architectural, landscaping, and signage.
- Residential uses within the Chevron site may consist of a combination of small lot single family detached and multi-family development, and shall be consistent with the provisions of the Medium Density Residential land use category.
- Adequate separation shall be maintained between new office and multi-family uses and existing residential neighborhoods. If parking areas are located along the residential edge, sufficient noise mitigation shall be provided.
- As part of site development, a community gateway monument shall be provided, including distinctive signage and landscaping at the northwest corner of the site, expressing the theme of Antioch as "Gateway to the Delta." Such signage and monumentation must portray a high quality design image for the City.
- The City should work with the owner of the Chevron property to annex it into Antioch.

f.g. An urban design plan should be prepared for the entire Somersville Road Corridor. The design plan should define a design theme; set specific architectural, sign, landscape, and streetscape design standards for the corridor; and select specific designs for public improvements such as street lighting, special paving sections at intersections, and street furniture.

h. A façade improvement program should also be undertaken for existing commercial uses within this Focus Area, with assistance from the Antioch Redevelopment Agency.

g.i. In order to provide continued support to sales tax generating uses, properties designated residential with the Focus Area will be allowed to maximize development density through the Planned Development process contained within the Zoning Ordinance. As such, the requirements of Sections 4.4.1.1, 5.4.14, and 10.3.2 if applicable, of the General Plan shall be waived if it is shown that development conditions will be safe and in harmony with surrounding development patterns and uses.



Antioch City Limits

Figure 4.3

RESOLUTION NO. 2013/**

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH INITIATING AMENDMENTS TO TITLE 9 OF THE ANTIOCH MUNICIPAL CODE "PLANNING AND ZONING" AND RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE REZONING APPROXIMATELY 21 ACRES COMPRISING THE POINTE PROJECT FROM HILLSIDE PLANNED DEVELOPMENT (HPD) TO PLANNED DEVELOPMENT (PD)

WHEREAS, the City of Antioch did receive a request from Discovery Builders to construct 60 single family homes, two open space parcels, two storm water basins, and a pocket park with a water feature, which also includes associated infrastructure improvements on an approximately 21 acre property, dated January 29, 2007, January 15, 2008, April 2, 2008, December 21, 2010, August 30, 2013, and October 17, 2013 and incorporated by reference. The project includes General Plan amendments from Low Density Residential to inclusion within the Somersville Road Corridor Focus Area and the addition of language to the General Plan waiving the requirements of the hillside development policies, a rezone from Hillside Planned Development District to Planned Development District, a Final Development Plan, Vesting Tentative Map, and a Use Permit. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010) (the "Project").

WHEREAS, on October 25, 2005 and November 22, 2005, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved a re-designation of the subject parcel from "Open Space" to "Owner/Developer Remainder Parcel"; and

WHEREAS, on February 21, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on May 8, 2007 and June 12, 2007, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on August 20, 2007, the Residential Development Allocation Committee duly held a public hearing, received and considered evidence, both oral and documentary, and based on a satisfactory score of 308.8 recommended approval of 60 residential development allocations; and

WHEREAS, on September 17, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and recommended denial to the City Council of the 60 residential development allocations; and

WHEREAS, on January 22, 2008, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved 60 residential development allocations; and

WHEREAS, the City prepared an Initial Study, which included amendments to the General Plan, to evaluate the potential environmental impacts of the Pointe Project in conformance with Section 15063 of Title 14 of the California Code of Regulations (the "CEQA Guidelines"); and

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November 6, 2013

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

WHEREAS, on November 6, 2013, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary; and

WHEREAS, the Planning Commission has recommended to the City Council to approve and adopt the Final IS/MND; and

WHEREAS, the Planning Commission has recommended to the City Council to implement General Plan Section 4.4.6.2b which provides City with the option to waive the requirements of Sections 4.4.1.1, 5.4.14, and 10.3.2 if the project can be shown that development conditions will be safe and in harmony with the surrounding development patterns and uses; and

WHEREAS, the Planning Commission has recommended to the City to approve the amendments to the General Plan; and

NOW, THEREFORE BE IT RESOLVED, based on the oral and written record; the recommendation of adoption of the Final IS/MND and MMRP; and recommendation of the General Plan amendments to the City Council, the Planning Commission makes the following findings:

- a. The Final IS/MND and MMRP determined the Project will have a less-than-significant impact to the environment.
- b. The project is considered infill development and is substantially surrounded by the adjacent Black Diamond Ranch project, a 286-single family detached subdivision and the entitled Sky Ranch II project, a 415-single family detached subdivision within the City of Pittsburg.
- c. The Project is similar in nature to the surrounding development and consists of the same uses therefore the project is not detrimental to the surrounding properties.
- d. The estate/executive housing will help to fulfill the commercial and tax revenue generating goals of the Somersville Road Corridor Focus Area by providing an additional population with disposable income.
- e. The estate/executive housing will provide a housing type that has not been readily developed within Antioch and will further the General Plan's goals of providing more of a jobs and housing balance by encouraging businesses to locate in Antioch by providing executives with a desirable housing type.
- f. The rezone is in conformance with the City of Antioch General Plan.

BE IT FURTHER RESOLVED, the Planning Commission hereby recommends to the City Council initiation of an amendment to Title 9 of the Antioch Municipal Code "Planning and Zoning" and recommending adoption of the ordinance to rezone approximately 21 acres, known

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as the Pointe Project, from Hillside Planned Development (HPD) to Planned Development (PD), generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010).

* * * * *

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 6th day of November, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

TINA WEHRMEISTER,
Secretary to the Planning
Commission

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH APPROVING
A REZONING OF APPROXIMATELY 21 ACRES REFERRED TO AS THE POINTE PROJECT
FROM HILLSIDE PLANNED DEVELOPMENT (HPD) TO PLANNED DEVELOPMENT (PD)**

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

SECTION 1. Findings. The Antioch City Council hereby finds, determines and declares as follows:

- A.** The City of Antioch holds the right to make and enforce all laws and regulations not in conflict with general laws, and the City holds all rights and powers established by state law.
- B.** The Planning Commission conducted a duly noticed public hearing on November 6, 2013 at which it adopted a resolution to initiate and recommend approval to the City Council of this ordinance regarding rezoning approximately 21 acres from Hillside Planned Development (HPD) to Planned Development (PD). The City Council held a duly noticed public hearing on _____ at which all interested persons were allowed to address the Council regarding adoption of this ordinance.
- C.** The City prepared an IS/MND and MMRP to evaluate the potential environmental impacts of the Pointe Project, including this Ordinance, in conformance with Section 15063 of Title 14 of the California Code of Regulations (the "CEQA Guidelines"). The City Council deemed the Final IS/MND to be adequate on _____.
- D.** The Final IS/MND and MMRP determined the project would have a less-than-significant impact on the environment.
- E.** The City Council implemented General Plan Section 4.4.6.2b which provides City with the option to waive the requirements of General Plan Sections 4.4.1.1, 5.4.14, and 10.3.2 if the project can be shown that development conditions will be safe and in harmony with the surrounding development patterns and uses. The rezone is in conformance with the City of Antioch General Plan.
- F.** The project is considered infill development and is substantially surrounded by the adjacent Black Diamond Ranch project, a 286-single family detached subdivision and the entitled Sky Ranch II project, a 415-single family detached subdivision within the City of Pittsburg.
- G.** The Project is similar in nature to the surrounding development and consists of the same uses therefore the project is not detrimental to the surrounding properties.
- H.** The estate/executive housing will help to fulfill the commercial and tax revenue generating goals of the Somersville Road Corridor Focus Area by providing an additional population with disposable income.
- I.** The estate/executive housing will provide a housing type that has not been readily developed within Antioch and will further the General Plan's goals of providing more of

jobs and housing balance by encouraging businesses to locate in Antioch by providing executives with a desirable housing type.

SECTION 2. The real property described in Exhibit A, attached hereto, is hereby rezoned from Hillside Planned Development District (HPD) to Planned Development (PD) and the zoning map is hereby amended accordingly. 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 3. The permitted uses shall be those proposed: 60 single-family homes, a pocket park with a water feature, open space, two storm water basins, and other associated infrastructure improvements as shown on the Vesting Tentative Map date stamped October 17, 2013.

SECTION 4. Development Standards for the Pointe Planned Development District:

Standard	Required for Project
Minimum Lot Size	Lots 1 – 51 and 60: 10,000 sq. ft. 52-59: 6,000 sq. ft.
Minimum Lot Width	Per the vesting tentative map date stamped on October 17, 2013.
Maximum Lot Coverage	40%
Front/Street Side Yard Minimum (shall be reserved for landscaping)	Front: 20 ft setback from the right of way to the face of garage door, or 15 feet to a side entry garage (e.g. accessed by a swing driveway). The front yard dimensions shall be varied by increasing the front yard setback by up to 25 ft. and staggering the varied setbacks. Side: 15 ft setback for the primary structure from the right of way line. Approved architectural elements may encroach 2 ft.
Side Yard – Interior	5 ft. with 4 ft of flat useable area with 25% of the lots having a 10 foot side setback on one side. The 10 feet must remain as unrestricted open area.
Minimum Rear Yard	15 ft minimum of flat usable space and a 20 ft. setback from the rear property line. A single story portion of the main structure shall be allowed 10 ft from the property line provided the width of that portion of the main structure does not exceed 50% of the buildable width of the lot. Approved architectural elements may encroach 2 ft.
Maximum Building Height	35 ft.
Parking	2 spaces per unit in a garage, plus one guest parking space on the street within close proximity to the unit served.
Driveways/Drive Aisles	Per the vesting tentative map date stamped on October 17, 2013.
Roadways	Per the vesting tentative map date stamped on October 17, 2013.
Landscape Requirements	Summit Way – 10 ft landscape median. Parcels A and B.

Architectural Requirements

As approved by the Planning Commission (PC). Any substantial deviations from approved architectural plans will require review and approval by PC.

SECTION 5. Publication; Effective Date.

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 ___ day of _____ and passed and adopted at a regular meeting thereof, held on the ___ day of _____, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Mayor of the City of Antioch

ATTEST:

City Clerk of the City of Antioch

Exhibit A

LEGAL DESCRIPTION

RESOLUTION NO. 2013/**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
RECOMMENDING APPROVAL TO THE CITY COUNCIL OF A FINAL PLANNED
DEVELOPMENT, VESTING TENTATIVE MAP, AND A USE PERMIT FOR 60 SINGLE-
FAMILY HOMES, TWO OPEN SPACE PARCELS, AND A POCKET PARK**

WHEREAS, the City of Antioch did receive a request from Discovery Builders to construct 60 single family homes, two open space parcels, two storm water basins, and a pocket park with a water feature, which also includes associated infrastructure improvements on an approximately 21 acre property, dated January 29, 2007, January 15, 2008, April 2, 2008, December 21, 2010, August 30, 2013, and October 17, 2013 and incorporated by reference. The project includes General Plan amendments from Low Density Residential to inclusion within the Somersville Road Corridor Focus Area and the addition of language to the General Plan waiving the requirements of the hillside development policies, a rezone from Hillside Planned Development District to Planned Development District, a Final Development Plan, Vesting Tentative Map, and a Use Permit. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010) (the "Project").

WHEREAS, on October 25, 2005 and November 22, 2005, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved a re-designation of the subject parcel from "Open Space" to "Owner/Developer Remainder Parcel"; and

WHEREAS, on February 21, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on May 8, 2007 and June 12, 2007, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on August 20, 2007, the Residential Development Allocation Committee duly held a public hearing, received and considered evidence, both oral and documentary, and based on a satisfactory score of 308.8 recommended approval of 60 residential development allocations; and

WHEREAS, on September 17, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and recommended denial to the City Council of the 60 residential development allocations; and

WHEREAS, on January 22, 2008, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved 60 residential development allocations; and

WHEREAS, the City prepared an Initial Study, which included amendments to the General Plan, to evaluate the potential environmental impacts of the Pointe Project in conformance with Section 15063 of Title 14 of the California Code of Regulations (the "CEQA Guidelines"); and

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

WHEREAS, on November 6, 2013, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary; and

WHEREAS, the Planning Commission has recommended to the City Council to approve and adopt the Final IS/MND; and

WHEREAS, the Planning Commission has recommended to the City Council to approve the amendments to the General Plan; and

WHEREAS, the Planning Commission has recommended to the City Council to implement General Plan Section 4.4.6.2b which provides City with the option to waive the requirements of Sections 4.4.1.1, 5.4.14, and 10.3.2; and

WHEREAS, the Planning Commission has initiated an amendment to Title 9 of the Antioch Municipal Code "Planning and Zoning" and made a recommendation to the City Council to approve an ordinance to rezone the subject parcel from Hillside Planned Development District (HPD) to Planned Development District (PD); and

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

FINDING 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 and potential surrounding uses but instead will have a beneficial effect which could not be achieved under another zoning district.

EVIDENCE: The Project is located within an area designated for residential development in the General Plan. After approval of the General Plan amendments and the rezone, the project is consistent with the policies of both the General Plan and zoning code. Each unit within the subdivision can exist independently. The project site is surrounded by existing, developing, and entitled residential lands therefore the project will not be detrimental to the surrounding uses, rather it will further the commercial and tax revenue generating goals of the Somersville Road Corridor Focus Area by providing an additional population with disposable income. The estate/executive housing product type will also help further the goals of the General Plan by offering a desirable product to executives, therefore decreasing the disparity in jobs and housing balance.

FINDING 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.

EVIDENCE: The City commissioned PHA Transportation Consultants to prepare a traffic study to estimate and evaluate the amount of traffic that may be generated by the Pointe Project. A copy of the report is included in the Appendices to the Pointe Final IS/MND. The report evaluated the most recent traffic data and projections for the project area and the region, and found that the project satisfies the standards of the City's Growth Management Program

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and meets current design criteria. Adequate utility service, including electricity, water, and sewer service can be supplied to all phases of development by existing utility service providers.

FINDING 3: The commercial components of the Project are justified economically at the location proposed.

EVIDENCE: No commercial components are proposed.

FINDING 4: 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.

EVIDENCE: The proposed residential subdivision will continue the residential uses and will be similar in character of the surrounding neighborhood. The approval of the General Plan amendment and rezone will result in densities no higher than permitted by the General Plan.

FINDING 5: 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.

EVIDENCE: There are no industrial components to the Pointe Project.

FINDING 6: Any deviation from the standard zoning requirements is warranted by the design and additional amenities incorporated in the final development plan which offers certain unusual redeeming features to compensate for any deviations that may be permitted.

EVIDENCE: The rezoning of the property from Hillside Planned Development to Planned Development allows for flexibility of the project's design. The project is located on an area with slopes steeper than 25%, which make it difficult to develop. The estate/executive housing could be considered a community amenity because the product type not readily available or commonly built in the City; therefore the project will be offering a wider variety of housing than currently exists and attempting to equal the jobs and housing balance.

FINDING 7: The area surrounding the Project can be planned and zoned in coordination and substantial compatibility with the proposed development.

EVIDENCE: The area surrounding the Project is already developed with homes or has been entitled by the City of Pittsburg.

FINDING 8: The project conforms with the General Plan of the City.

EVIDENCE: The approval of the General Plan amendments will result in a project that conforms with the General Plan.

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

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FINDING 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.

EVIDENCE: The subdivision proposed by the Vesting Tentative Map is consistent with the Antioch General Plan after approval of the GPAs. The General Plan now designates this parcel as Residential with the Somersville Road Corridor Focus Area, which allows for low density single family residential. Therefore, the subdivision proposed by the Vesting Tentative Map is consistent with the General Plan.

FINDING 2: That the subdivision complies with the Housing Element as it relates to the regional needs and complies with Section 66412.3 of the Subdivision Map Act.

EVIDENCE: The Planning Commission has considered the potential effect of the subdivision proposed by the Vesting Tentative Map on the housing needs of the City and the region, and finds that the subdivision will promote the City's goal of achieving a greater balance between residential and employment-generating uses within the City because the project will be providing estate/executive homes, which will provide a place for executives to locate and in turn bring in businesses. The increase in business will promote the City's goal of achieving a greater balance by providing a catalyst for commercial and employment generating uses to locate in the City of Antioch. Furthermore it will fulfill the need of above moderate income Regional Housing Needs Assessment, which the City has 1,046 allocations for 2007-2014. The project also complies with Section 66412.3 of the Subdivision Map Act.

FINDING 3: That the subdivision proposed by the Vesting Tentative Map has, to the maximum extent feasible, considered and provided opportunities for future passive or natural heating or cooling of the structures within the subdivision, as required by Government Code §66473.1.

EVIDENCE: The subdivision design provides for future passive or natural heating or cooling opportunities to the extent feasible in light of the need to accommodate physical, infrastructure and topography of the site, as well as CEQA mitigation measures and design features. The majority of the site contains slopes in excess of 25% and is surrounded on all four sides by other developed or entitled projects, which limits the design capabilities. The project will meet or exceed the energy efficient requirements and will have conservation features included and available to the public to purchase as upgrades.

FINDING 4: That the subdivision proposed by the Tentative Map complies with the rules, regulations, standards, and criteria of the City's Subdivision Regulations.

EVIDENCE: The subdivision proposed by the Vesting Tentative Map complies with the rules, regulations, standards, and criteria of the City's Subdivision Regulations as conditioned.

BE IT FURTHER RESOLVED that the Planning Commission does hereby make the following findings for approval of a Use Permit:

FINDING 1: Granting the use permit will not be detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity.

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EVIDENCE: The project will create a 60 lot residential subdivision. The project site is located in the Somersville Road Corridor Focus Area, and is designated for residential and open space uses. The surrounding neighborhood is single family residential similar in nature to the project. After approval of the General Plan Amendments and the rezone, the development proposed by the project is consistent with the uses permitted under the General Plan and the proposed zoning for the project site.

FINDING 2: That the use applied for at the location indicated is properly one for which a use permit is authorized.

EVIDENCE: The General Plan designates the area encompassing the project site as Residential within the Somersville Road Corridor Focus Area which allows low and medium low density residential and open space uses as proposed.

FINDING 3: The project site is adequate in size and shape to accommodate its proposed uses, and all yard spaces, walls, fences, parking, loading, landscaping, and other features required, without interfering with other uses in the neighborhood.

EVIDENCE: The project is designed to comply with the zoning development standards that were established for the Planned Development (PD) District specifically for this project. The zoning accommodates yard spaces, walls, fences, parking, landscaping and other features without interfering with other uses in the neighborhood.

FINDING 4: The streets and highways that abut the project site are adequate in width and pavement type to carry the kind of traffic generated by proposed use.

EVIDENCE: The City commissioned Fehr and Peers to prepare a traffic study to estimate and evaluate the amount of traffic that may be generated by the Pointe Project. The traffic study concluded that the road improvements either proposed by the developer or required by the City are adequate in width and pavement type to carry the kind of traffic that will be generated by the project.

FINDING 5: The granting of such use permit will not adversely affect the comprehensive General Plan.

EVIDENCE: The Pointe Project is consistent with the General Plan designation for the project area, which is Residential in the Somersville Road Corridor Focus Area and will not adversely affect the comprehensive General Plan.

BE IT FURTHER RESOLVED that the Planning Commission, after reviewing the staff report and considering testimony offered, does hereby recommend to the City Council APPROVAL of the Final Development, Vesting Tentative Map, and Use Permit (PD-08-01, PW 608, and UP-08-01) to construct 60 single-family homes including associated infrastructure improvements, an approximately 10,000 s.f. pocket park and two open space parcels, subject to the following conditions:

A. GENERAL CONDITIONS

1. The City of Antioch Municipal Code shall be complied with.
2. Conditions required by the Planning Commission (and the City Council if applicable), which call for a modification or any change to the site plan shall be submitted, and shall 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 City Council if applicable) and the standards of the City.
3. City staff shall inspect the site for compliance with conditions of approval prior to final inspection approval.
4. Design review approval is required prior to development of any phase of the subdivision.
5. That this approval expires two years from the date of approval (Expires November 6, 2015), 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.
6. The applicant shall defend, indemnify, and hold harmless the City in any action brought by a third party to challenge the land use entitlement or environmental review. In addition, if there is any referendum or other election action to contest or overturn these approvals, the applicant shall either withdraw the application or pay all City costs for such an election.
7. This approval supersedes previous approvals that have been granted for this site.
8. No permits or approvals, whether discretionary or mandatory, shall be considered if the applicant is not current on fees, reimbursement payments and other fees that are due.
9. All required easements or rights-of-way for off tract improvements 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.
10. The applicant shall obtain an encroachment permit for all work to be done within the public right-of-way.
11. All easements of record, which affect individual parcels within this project shall be removed prior to or concurrently with the recordation of the final map.

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12. The applicant shall establish a Home Owners Association (HOA) for this project in conformance with the regulations set forth by the State Department of Real Estate. The HOA shall be responsible for owning and maintaining all private common areas, streets, street lights, the pocket park with water feature, landscaping, open space areas and amenities including storm water control facilities. The City shall review and approve the CC&Rs for the Homeowners Association prior to the recording of the first final map. The CC&Rs shall include restrictions providing for the development and maintenance of manufactured and landform graded slopes.
13. The CC&Rs shall include a provision indicating that the City of Antioch is named as a third-party beneficiary with the right, but not the obligation, to enforce the provisions of the CC&Rs relating to the maintenance and repair of the property and improvements, including but not limited to landscaping, parking, main utilities, open space, storm water and the prohibition of nuisances. The City shall have the same rights and remedies as the Association, Manager or Owners are afforded under the CC&Rs, including but not limited to rights of entry. This right of enforcement is in addition to all other legal and equitable remedies available to the City, including the right to refuse to issue building permits for any building or structure that is not in compliance with applicable federal, state or local laws, regulations, permits or approvals. Neither action nor inaction by the City shall constitute a waiver or relinquishment of any rights or remedies. In addition, the CC&Rs shall include a provision that any design approvals required by the CC&Rs for construction, reconstruction and remodeling are in addition to any approvals needed from the City as well. Further, the CC&Rs cannot be terminated or amended materially without the prior written consent of the City Manager and City Attorney of the City of Antioch. Material changes are those that would change the fundamental purpose of the development; City approvals of uses or external modifications; property ownership or maintenance obligations including but not limited to common areas, storm water and landscaping; and Community Police Financing District or similar mechanism.

B. TENTATIVE MAP CONDITIONS

1. The Tentative Map approval is subject to the time lines established in the State of California Subdivision Map Act.
2. The lots and improvements within the development shall comply with the City of Antioch Municipal Code, unless a specific exception is granted thereto.
3. Approval of this tentative map shall not constitute the approval of any improvements shown on the tentative map.
4. All lot areas shall conform to the general lot areas proposed, and approved, on the tentative map.
5. 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.

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6. A lot line adjustment and/or lot merger shall be processed prior to the recordation of the Final Map between the project and Lots 172-174 of the Black Diamond Ranch, Subdivision 8585, to accommodate for Summit Way, as directed by the City Engineer.

C. CONSTRUCTION CONDITIONS

1. The use of construction equipment shall be restricted to weekdays between the hours 8:00 A.M. and 5:00 P.M., or as approved in writing by the City Manager.
2. The project shall be in compliance with and supply all the necessary documentation for AMC6-3.2: Construction and Demolition Debris Recycling.
3. Standard dust control methods and designs shall be used to stabilize the dust generated by construction activities. The applicant shall post dust control signage with a contact number of the applicant, City staff, and the air quality control board.

D. SITE AND PROJECT DESIGN

1. Provisions for mail delivery in the subdivision area shall be reviewed and approved by staff prior to the approval of the final map. Applicant shall install mail box facilities as required by the City Engineer.
2. Any conversion of the homes to allow for a second unit shall be subject to a use permit for such a conversion, in conformance with the City's "Second Unit" provisions of the Zoning Ordinance.
3. Prior to the approval of the final subdivision map, 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 professionals to verify implementation of the plans. Costs for these services shall be borne by the applicant.
4. All public street intersections shall meet the requirements of Caltrans Highway Design Manual for Intersection Design Standards (Topic 405), and private streets to the extent practicable, or as approved by the City Engineer.
4. All proposed improvements shall be constructed to City standards.
5. All public streets shall intersect at 90 degrees and private streets to the extent practicable, or as approved by the City Engineer.
6. All driveways shall be perpendicular to the street centerline for a minimum distance of 20 feet behind the curb, or as approved by the City Engineer.

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7. Driveways for three car garages shall flare to the third garage only or as approved by City staff.
8. Full curb cuts shall be used for all three-car driveways on lots that are at least 60 feet in width or as approved by City staff.
9. All driveways shall be a minimum of five feet from curb return.
10. A minimum of a 20 foot tangent shall extend beyond the return at intersections, or as approved by the City Engineer.
11. All lot sidelines shall be perpendicular or radial to the fronting street centerline, or as approved by the City Engineer.
12. The required 50 foot sight distance triangles shall be maintained at all intersections and that no object greater than 3 feet in height shall be placed in that triangle. All fencing, landscaping, signage, and slopes shall also not restrict sight distance.
13. Rear and side yard fencing shall be provided for all units. All fences shall be located at the top of slope, or as approved by staff.
14. In cases where a fence is to be built in conjunction with a retaining wall, and the wall face is exposed to a side street, the fence shall be setback a minimum of three feet (3') behind the retaining wall.
15. The applicant shall install streetlights and landscaping within the project area at no cost to the City. The Homeowners Association shall be responsible for owning and maintaining the streetlights and landscaping. The design of the streetlights, locations, and landscaping shall be reviewed and approved by the Planning Commission prior to the issuance of any building permit for the project.
16. The proposed street names shall be utilized in the development. If the applicant wants to change any of the street names not included in the staff report then the request will have to go back to the Planning Commission for approval.
17. All homes shall be identified by a decorative addressing method easily visible from the roads within the project in order to aid emergency responders. This method shall be reviewed by the Antioch Police Department and the Planning Commission.
18. The applicant shall provide a "checklist" of universal design accessibility features to home buyers as required by Section 17959.6 of the Health and Safety Code.
19. The sidewalk on Summit Place and Altamont court shall be a five foot monolithic.
20. An accessible path of travel shall be provided to the pocket park.

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21. All improvements for each lot (water meters, sewer cleanouts, driveway curb cuts, etc.) shall be contained within the lot and the projection of its sidelines, or as approved by the City Engineer.
22. Cul-de-sac parking shall be provided as required by the City Engineer.
23. One on-street parking space per lot shall be located within close proximity to the unit served or shall process a variance.
24. The applicant and then the HOA, once the CC&Rs are operative, shall maintain all undeveloped areas within this subdivision/unit in an attractive manner, which shall also ensure fire safety.
25. The approximately 10,000 s.f. pocket park, which shall be owned and maintained by the HOA, design including the water feature shall be reviewed and approved by the Planning Commission.
26. The architecture, sound walls, fencing, mailboxes, lighting, any accent paving, addressing, and landscaping for the entire project shall be subject to review and approval by the Planning Commission prior to application for building and/or grading permits for the project.
27. A masonry wall shall be constructed for the entry at Summit Way adjacent to lots 172 and 174. The design shall be reviewed and approved by the Planning Commission prior to the recordation of the final map.
28. The gate to the entrance of the development shall be located a minimum distance of 20 feet from the intersection of Country Side Drive. The gate shall swing into the development. The gate shall be owned and maintained by the HOA.
29. The pedestrian path between Lots 42 and 41; 28 and 29; 26 and 25; and 14 and 15 shall be removed from the plans.

E. UTILITIES

1. All existing and proposed utilities shall be undergrounded (e.g. transformers and PMH boxes) 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. No fire hydrant or electrolier shall be located in the front yard of a corner lot.
3. Underground utilities shall be designed to flow approximately parallel to the centerline of the street, or as approved by the City Engineer.
4. All proposed drainage facilities, including open ditches, shall be constructed of Portland Concrete Cement.
5. All sewage shall flow by gravity to the intersecting street sewer main or as approved by the City Engineer.

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6. All public utilities shall be installed in streets avoiding between lot locations unless approved by the City Engineer.
7. All facilities collecting or conveying storm water from open space parcels shall be owned and maintained by a Home Owners Association, at no expense to the City.
8. The applicant shall submit hydrology and hydraulic analysis with a storm water control plan to the City for review and approval prior to the recordation of the final and to Contra Costa County Flood Control for review at no cost to the City as directed by the City Engineer.
9. An analysis of the City's Water Supply Zone IV shall be submitted to the City prior to the recordation of the final map to determine whether a hydro pneumatic booster pumping station (BPS) would be required to provide water supply delivery pressure to the project.
10. A public utilities easement that encompasses public utilities shall be provided as directed by the City Engineer.
11. All open space storm water shall be collected via V-ditches prior to being discharged into the City storm drain system.
12. The existing storm drain easement on lot 172 shall be vacated at no cost to the City and the storm drain shall be maintained by the HOA.
13. The storm water basin at the terminus of Crescent Court shall be maintained by the SLLD and the basin located at Metcalf Street and James Donlon Boulevard shall be maintained by the HOA.
14. The applicant shall submit a drainage study, prior to the recordation of the final map, outlining what facilities are to be constructed and how they will function as a part of the Drainage District, and that the improvements to mitigate the increased downstream runoff be constructed as required by the County Flood Control District and the City Engineer.
15. The applicant 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.
16. The roof drain collection system shall be connected to an underground drainage system and be discharged through curb drains. The houses shall contain rain gutters and downspouts, with the downspouts and runoff of adjacent water to foundations being collected into an underground conduit, and be discharged, as approved by the City Engineer.

F. LANDSCAPING

1. The slopes, medians, and any open space areas be developed and managed by the applicant as required by the City Engineer and be maintained at no cost to the City.
2. A 10-foot wide tree planting easement shall be provided across the front of all single family lots and that one 15 gallon tree shall be located within such easement prior to building final. The City Engineer shall determine type and location of tree.
3. The Summit Way median and Summit Way shall be landscaped with design review approval subject to the Planning Commission.
4. The Home Owners Association shall provide for reimbursement of City maintenance of landscaped areas that are not maintained to an acceptable standard by the HOA.

G. FIRE REQUIREMENTS

1. Fire hydrants shall be furnished and installed, of a type and at a location approved by the City Engineer.
2. All weather access roads and a water supply shall be provided prior to commencing any combustible construction, as required by the Fire Chief.
3. Street widths shall be subject to approval by the Contra Costa County Fire Protection District and the City Engineer.
4. The applicant shall comply with the following conditions provided by the Contra Costa County Fire Protection District:
 - a. Access roadways of less than 28-foot unobstructed width shall have NO PARKING – FIRE LANE signs posted or curbs painted red with the words NO PARKING – FIRE LANE clearly marked, which shall be maintained by the HOA. 22500.1 CVC
 - b. The cul-de-sacs or turnarounds shall have an outside turning radius of a minimum of a 45' or as approved by the Fire District.
 - c. A minimum of two emergency apparatus access roadways are required when serving 26 or more dwelling units. The proposed 20-foot wide EVA, located adjacent to lot 60, appears to comply with Fire District requirements. The proposed EVA shall have an all-weather driving surface with a maximum allowable grade of 16%. (503.1.2) CFC
 - d. The applicant shall provide an adequate reliable water supply for fire protection with a minimum fire flow of 1750 GPM. Required flow shall be

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delivered from not more than one hydrant flowing simultaneously for the duration of 120 minutes while maintaining 20-pounds residual pressure in the main. (508.1), (B105) CFC

- e. The applicant shall provide seven hydrants of the East Bay type, which shall be maintained by the City. Hydrant locations will be determined by the Fire District.
- f. 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. Gravel roads are not considered all-weather roadways for emergency apparatus access. The first lift of asphalt concrete paving shall be installed as the minimum sub base materials and capable of supporting the designated gross vehicle weight specified above.
- g. 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. (505.1) CFC, (501.2) CBC
- h. The applicant shall submit three copies of site improvement plans indicating all existing or proposed fire apparatus access for review and approval prior to construction. (501.3) CFC
- i. The applicant shall submit three copies of a 300-foot scale parcel map indicating approved fire hydrant locations, street names, and addresses to the Fire District for mapping purposes. These maps are required prior to Fire District signing for final improvement plans. (Mylar)
- j. 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).
- k. Submit plans to: Contra Costa County Fire Protection District, 2010 Geary Road, Pleasant Hill, CA 94523.

H. FEES

- 1. The applicant shall pay utility connection fees which have been established by the City Council prior to the filing of the final map and as required by the Antioch Municipal Code.
- 2. The applicant shall pay traffic signal fees as adopted by the City Council.
- 3. The applicant shall pay the Regional Traffic Impact Fee as well as all other applicable fees, including any future increase in the Regional Traffic Impact Fee.
- 4. The applicant shall pay the Contra Costa County Fire Protection District Fire Development Fee in place at the time of building permit issuance.

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5. Prior to filing of the first final map for recording, the applicant shall pay all costs associated with having an engineer's report prepared and shall annex the property into the existing Landscape and Lighting District 2A-10. The applicant shall agree to accept a level of annual assessments sufficient to maintain improvements including but not limited to street lights, parks, drainage, and landscaping as identified in the Engineer's Report at no cost to the City.
6. The project is subject to the current Community Park Fee and future Community Park Fees as established and levied by the City Council.
7. Improvements and fees that are required by the Contra Costa County Flood Control District shall be implemented, as approved by the City Engineer.
8. The applicant shall pay all required school impact fees, fire facility, and sewer fees.
9. The applicant shall annex the project into the Community Police Financing District once it has been established or if the project is first to build, the applicant shall establish the District or similar land-based financing mechanism approved by the City for police services. The applicant shall agree to accept a level of annual assessments sufficient to maintain police services for the project's direct proportional impact of the General Plan performance standard of a range of 1.2 officers to 1.5 officers, including community service officers assigned to community policing and prisoner custody, per 1,000 population.

I. Model Homes

1. Prior to the placement of any sales trailers, plans shall be submitted to the Engineering Department for review and approval. Any trailer shall be placed out of the public right-of-way and shall have its own parking lot with a minimum of ten (10) full-sized parking spaces.
2. The model home complex parking lot location and design shall be subject to staff approval. This complex shall feature a minimum of ten (10) full-sized parking spaces.
3. The model home landscaping shall be drought tolerant, with total area of spray irrigation for the complex not to exceed 50 percent of the landscaping area. The landscaping shall be reviewed by the Planning Commission.

J. 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. All lots and slopes shall drain to approved drainage facilities as approved by the City Engineer.

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3. All grading shall be accomplished in a manner that precludes surface water drainage across any property line.
4. All lots shall be graded to drain positively from the rear to the street or as approved by the City Engineer.
5. The swales adjacent to the house structure shall have a minimum of a 2 percent slope or as directed by the City Engineer.
6. All off-site grading is subject to the coordination and approval of the adjacent property owners, and the City Engineer. The applicant shall submit written authorization to "access, enter, or grade" adjacent properties prior to performing any work.
7. Any sale of a portion (or portions) of this project to multiple developers include the necessary agreement and/or grading easements to assure that project-wide grading conforms to the approved map and conditions of this resolution.
8. The grading plan for this development shall be approved by the City Engineer.
9. The final grading plan for this development shall be signed by a California licensed geotechnical engineer and approved by the City Engineer.
10. All elevations shown on the improvement plans shall be on the USGS 1929 sea level datum.
11. 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.
12. The applicant shall submit a program for preventative maintenance of major manufactured slope areas, which must be reviewed and approved by staff prior to approval of the final map, and shall include homeowner slope maintenance requirements and guidelines.
13. No retaining walls shall be constructed in City right-of-way or other City maintained parcels unless approved by the City Engineer.
14. All retaining walls shall be of masonry construction.
15. All retaining walls shall be reduced in height to the maximum extent practicable and that the walls meet the height requirements in the front yard setback as required by the City Engineer.
16. On Parcels A and B, manufactured slopes in excess of five feet shall be landform graded. The landform grading shall create slopes with curves and various slope ratios in the horizontal and vertical planes to simulate the appearance of natural terrain, as directed by the City Engineer.

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17. Street slopes across intersections shall not exceed 6 percent and street slopes shall not exceed 15% or as approved by the City Engineer.
18. Building pads abutting Sky Ranch II, Subdivision 8475, shall be constructed at an elevation above or equal to the Sky Ranch II subdivision.
19. The back to back or side to side grading transitions from lot to lot shall have a maximum slope of 2:1, and shall be accommodated entirely on the lower lot or as approved by the City Engineer.
20. The minimum concrete gutter flow slope shall be 0.75%.
21. All property lines shall be located at the top of slope.

K. 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. The project shall comply with all Federal, State, and City regulations for the National Pollution Discharge Elimination System (NPDES) (AMC§6-9). 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. An Operation and Maintenance Plan (O&M) for the treatment and flow-controls in the approved SWCP shall be submitted and approved before the Building Department will issue Certificate of Occupancy permits and shall be included in the project CC&Rs. Prior to building permit final and issuance of a Certificate of Occupancy, the applicant 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. That the applicant shall comply with the Storm Water Treatment Plan dated August 30, 2013.
4. 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 applicant shall submit a permit application consistent with the applicant'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.

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- 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 applicant 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. The O&M plan shall be incorporated into the CC&Rs for the Project.
- d. Prior to building permit final and issuance of a Certificate of Occupancy, the applicant 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 driveways in a concentrated manner.
- f. Collect and convey all storm water entering, and/or originating from, the site to an adequate downstream drainage facility. 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.

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- 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 on all catch basins "No Dumping, Drains to River" decal buttons.
- 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 applicant 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.

L. 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.

M. RESIDENTIAL DEVELOPMENT ALLOCATIONS

- 1. All Residential Development Allocation conditions in City Council resolution 2008/11 shall be adhered to except conditions number 9 – 12, which pertain to financial contributions. If at the time of first building permit issuance, the City has not adopted revised and additional development impact fees or those fees have

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been legally challenged and there is not a decision by a final court with jurisdiction, then the applicant shall comply with conditions number 9-12 in City Council resolution 2008/11.

* * * * *

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 6th day of November, 2013.

AYES:

NOES:

ABSTAIN:

ABSENT:

TINA WEHRMEISTER, SECRETARY TO THE
PLANNING COMMISSION

ATTACHMENT "C"

RESOLUTION NO. 2013/**

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH RECOMMENDING TO THE CITY COUNCIL DENIAL OF GENERAL PLAN AMENDMENTS FOR THE POINTE PROJECT

WHEREAS, the City of Antioch did receive a request from Discovery Builders to construct 60 single family homes, two open space parcels, two storm water basins, and a pocket park with a water feature, which also includes associated infrastructure improvements on an approximately 21 acre property, dated January 29, 2007, January 15, 2008, April 2, 2008, December 21, 2010, August 30, 2013, and October 17, 2013 and incorporated by reference. The project includes General Plan amendments from Low Density Residential to inclusion within the Somersville Road Corridor Focus Area and the addition of language to the General Plan waiving the requirements of the hillside development policies, a rezone from Hillside Planned Development District to Planned Development District, a Final Development Plan, Vesting Tentative Map, and a Use Permit. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010) (the "Project").

WHEREAS, on October 25, 2005 and November 22, 2005, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved a re-designation of the subject parcel from "Open Space" to "Owner/Developer Remainder Parcel"; and

WHEREAS, on February 21, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on May 8, 2007 and June 12, 2007, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on August 20, 2007, the Residential Development Allocation Committee duly held a public hearing, received and considered evidence, both oral and documentary, and based on a satisfactory score of 308.8 recommended approval of 60 residential development allocations; and

WHEREAS, on September 17, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and recommended denial to the City Council of the 60 residential development allocations; and

WHEREAS, on January 22, 2008, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved 60 residential development allocations; and

WHEREAS, the City prepared an Initial Study, which included amendments to the General Plan, to evaluate the potential environmental impacts of the Pointe project in conformance with Section 15063 of Title 14 of the California Code of Regulations (the "CEQA Guidelines"); and

WHEREAS, Section 65358 of the California Government Code provides for the amendment of all or part of an adopted General Plan; and

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WHEREAS, the primary purpose of the General Plan amendments is to ensure consistency between the City of Antioch General Plan and the Pointe project; and

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

WHEREAS, the Planning Commission has recommended to the City Council to approve and adopt the Final IS/MND; and

WHEREAS, on November 6, 2013, 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 based on the oral and written record, the Planning Commission hereby determines:

1. The General Plan Amendments could potentially result in an area not contiguous within the Somersville Road Corridor Focus Area.
2. The Somersville Road Corridor Area policies and goals do not emphasize lower density residential uses, but rather commercial tax revenue generating uses and the Pointe Project would be the only single family home development in the Somersville Road Corridor Focus Area.
3. The Project undermines the efforts contained in the City's General Plan and Municipal Code to preserve natural ridgelines within the City of Antioch. The removal of 104 vertical feet of hillside does not meet the intent of the hillside development policies or meet the definition of developable land as outlined in the General Plan.
4. The approval of the project would set a precedence of future hillside development in the City of Antioch.

Therefore, the Planning Commission cannot make findings that the proposed General Plan Amendments are in the public interest of the people and hereby recommends to the City Council denial of the amendments to City of Antioch's General Plan.

* * * * *

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 6th day of November, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

TINA WEHRMEISTER,
Secretary to the Planning
Commission

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RESOLUTION NO. 2013/**

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH NOT INITIATING AMENDMENTS TO TITLE 9 OF THE ANTIOCH MUNICIPAL CODE "PLANNING AND ZONING" AND RECOMMENDING THAT THE CITY COUNCIL DENY THE ADOPTION AN ORDINANCE REZONING APPROXIMATELY 21 ACRES COMPRISING THE POINTE PROJECT FROM HILLSIDE PLANNED DEVELOPMENT (HPD) TO PLANNED DEVELOPMENT (PD)

WHEREAS, the City of Antioch did receive a request from Discovery Builders to construct 60 single family homes, two open space parcels, two storm water basins, and a pocket park with a water feature, which also includes associated infrastructure improvements on an approximately 21 acre property, dated January 29, 2007, January 15, 2008, April 2, 2008, December 21, 2010, August 30, 2013, and October 17, 2013 and incorporated by reference. The project includes General Plan amendments from Low Density Residential to inclusion within the Somersville Road Corridor Focus Area and the addition of language to the General Plan waiving the requirements of the hillside development policies, a rezone from Hillside Planned Development District to Planned Development District, a Final Development Plan, Vesting Tentative Map, and a Use Permit. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010) (the "Project").

WHEREAS, on October 25, 2005 and November 22, 2005, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved a re-designation of the subject parcel from "Open Space" to "Owner/Developer Remainder Parcel"; and

WHEREAS, on February 21, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on May 8, 2007 and June 12, 2007, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on August 20, 2007, the Residential Development Allocation Committee duly held a public hearing, received and considered evidence, both oral and documentary, and based on a satisfactory score of 308.8 recommended approval of 60 residential development allocations; and

WHEREAS, on September 17, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and recommended denial to the City Council of the 60 residential development allocations; and

WHEREAS, on January 22, 2008, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved 60 residential development allocations; and

WHEREAS, the City prepared an Initial Study, which included amendments to the General Plan, to evaluate the potential environmental impacts of the Pointe project in conformance with Section 15063 of Title 14 of the California Code of Regulations (the "CEQA Guidelines"); and

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

WHEREAS, on November 6, 2013, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary; and

WHEREAS, the Planning Commission has recommended to the City Council to approve and adopt the Final IS/MND; and

WHEREAS, the Planning Commission has recommended to the City Council denial of the requested GPAs; and

NOW, THEREFORE BE IT RESOLVED, that based on the oral and written record, the Planning Commission determines to deny the request to initiate the amendments to Title 9 "Planning and Zoning" and is recommending denial to the City Council of a rezone of the subject project because it would result in the loss 104 vertical feet of hillside, which does not promote the harmonious visual and functional relationship between the natural and built environments; therefore not meeting the intent of the Hillside Planned Development District. In addition, the approval of the project would set a precedence of future hillside development. Further, the Planning Commission cannot make findings that the proposed amendments to the General Plan are in the public interest of the people and thus the zoning amendments would be inconsistent with the General Plan. Therefore the Planning Commission hereby recommends to the City Council denial of the amendments and rezone to City of Antioch's zoning code found in Title 9 of the Antioch Municipal Code.

* * * * *

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 6th day of November, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

TINA WEHRMEISTER,
Secretary to the Planning
Commission

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RESOLUTION NO. 2013/**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
RECOMMENDING DENIAL TO THE CITY COUNCIL OF A FINAL PLANNED
DEVELOPMENT, VESTING TENTATIVE MAP, AND A USE PERMIT FOR 60 SINGLE-
FAMILY HOMES, TWO OPEN SPACE PARCELS, AND A POCKET PARK**

WHEREAS, the City of Antioch did receive a request from Discovery Builders to construct 60 single family homes, two open space parcels, two storm water basins, and a pocket park with a water feature, which also includes associated infrastructure improvements on an approximately 21 acre property, dated January 29, 2007, January 15, 2008, April 2, 2008, December 21, 2010, August 30, 2013, and October 17, 2013 and incorporated by reference. The project includes General Plan amendments from Low Density Residential to inclusion within the Somersville Road Corridor Focus Area and the addition of language to the General Plan waiving the requirements of the hillside development policies, a rezone from Hillside Planned Development District to Planned Development District, a Final Development Plan, Vesting Tentative Map, and a Use Permit. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010) (the "Project").

WHEREAS, on October 25, 2005 and November 22, 2005, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved a re-designation of the subject parcel from "Open Space" to "Owner/Developer Remainder Parcel"; and

WHEREAS, on February 21, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on May 8, 2007 and June 12, 2007, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and provided direction and feedback to the applicant on the Preliminary Development Plan; and

WHEREAS, on August 20, 2007, the Residential Development Allocation Committee duly held a public hearing, received and considered evidence, both oral and documentary, and based on a satisfactory score of 308.8 recommended approval of 60 residential development allocations; and

WHEREAS, on September 17, 2007, the Planning Commission duly held a public hearing, received and considered evidence, both oral and documentary, and recommended denial to the City Council of the 60 residential development allocations; and

WHEREAS, on January 22, 2008, the City Council duly held a public hearing, received and considered evidence, both oral and documentary, and approved 60 residential development allocations; and

WHEREAS, the City prepared an Initial Study, which included amendments to the General Plan, to evaluate the potential environmental impacts of the Pointe project in conformance with Section 15063 of Title 14 of the California Code of Regulations (the "CEQA Guidelines"); and

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

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WHEREAS, on November 6, 2013, the Planning Commission duly held a public hearing on the matter, and received and considered evidence, both oral and documentary; and

WHEREAS, the Planning Commission has recommended to the City Council to approve and adopt the Final IS/MND; and

WHEREAS, the Planning Commission has recommended to the City Council denial of the requested General Plan Amendments; and

WHEREAS, the Planning Commission has denied initiating amendments to Title 9 "Planning and Zoning" and has recommended denial to the City Council of an ordinance to rezone the subject parcel from Hillside Planned Development District (HPD) to Planned Development District (PD); and

NOW THEREFORE BE IT RESOLVED, that the Planning Commission does hereby make the following findings for a recommendation of denial of a Final Planned Development to the City Council, as set for in Section 9-5.2308 of the Antioch Municipal Code:

FINDING 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 and potential surrounding uses but instead will have a beneficial effect which could not be achieved under another zoning district.

EVIDENCE: The Project is located in an area designated Hillside Planned Development District, which has policies outlining the goals of developing on a hillside. The project does not meet the majority of these policies therefore does not meet the City's intent and will not have a beneficial effect to the surrounding uses.

FINDING 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.

EVIDENCE: The streets associated with the project are supposed to be designed in a way to conform to the natural terrain according to the City's hillside development polices, which was not achieved in this project. The project is proposing to remove 104 vertical feet of hillside, which does not conform to the existing natural terrain. The streets do not meet the City's current standards including the widths, sidewalks on only one side of the street, cul-de-sac design, rolled curbs, and the turning radius for the Fire Department turnaround. Further, the project does not meet the minimum on-street parking requirements.

Adequate utility service, including electricity, water, and sewer service can be supplied to all phases of development by existing utility service providers.

FINDING 3: The commercial components of the Project are justified economically at the location proposed.

EVIDENCE: No commercial components are proposed.

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FINDING 4: 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.

EVIDENCE: The project is not designed to be in harmony with the character of the surrounding neighborhood. The project would be removing a substantial portion of a hillside to build 60 homes. The project has not been designed with maintaining the natural terrain and topography of the area. The density does not conform to the General Plan as the General Plan defines density on developable acreage. Developable acreage constitutes slopes 25 percent or less and close to 78 percent of the hillside exceeds the 25 percent slope.

FINDING 5: 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.

EVIDENCE: There are no industrial components to the Pointe project.

FINDING 6: Any deviation from the standard zoning requirements is warranted by the design and additional amenities incorporated in the final development plan which offers certain unusual redeeming features to compensate for any deviations that may be permitted.

EVIDENCE: The project does not conform to the hillside development policies in the General Plan or the Hillside Planned Development District. The project is not offering unusual redeeming features or amenities to warrant deviations from the standard zoning requirements. The project consists of more single family housing on flattened hillside with manufactured slopes that does not promote harmonious development between the natural and the built environment.

FINDING 7: The area surrounding the Project can be planned and zoned in coordination and substantial compatibility with the proposed development.

EVIDENCE: The area surrounding the Project is already developed with homes or have been entitled by the City of Pittsburg. The commercial property to the north does not coordinate with the proposed development.

FINDING 8: The project conforms with the General Plan of the City.

EVIDENCE: The project does not conform with the General Plan's land use designation of Low Density Residential, the hillside development policies, the developable acreage, and the Open Space policies.

BE IT FURTHER RESOLVED that the Planning Commission does hereby make the following findings for a recommendation of denial to the City Council of a Vesting Tentative Map as set forth in the Subdivision Map Act and based on Section 9-4 of the Antioch Municipal Code:

FINDING 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.

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EVIDENCE: The subdivision proposed by the Vesting Tentative Map is not consistent with the Antioch General Plan. The project does not conform with the General Plan's land use designation of Low Density Residential, the hillside development policies, the developable acreage, and the Open Space policies.

FINDING 2: That the subdivision complies with the Housing Element as it relates to the regional needs and complies with Section 66412.3 of the Subdivision Map Act.

EVIDENCE: The subdivision complies with the Housing Element by providing 60 units of the 1,046 required of above moderate income housing for the Regional Housing Needs Assessment for 2007 – 2014. Adhering to Section 66412.3 of the Subdivision Map Act, the Planning Commission has considered the effects of this action and has determined the hillside constitutes an environmental resource and the benefits of the housing do not outweigh the loss of this resource.

FINDING 3: That the subdivision proposed by the Vesting Tentative Map has, to the maximum extent feasible, considered and provided opportunities for future passive or natural heating or cooling of the structures within the subdivision, as required by Government Code §66473.1.

EVIDENCE: The subdivision did not take into account the natural terrain of the existing hillside and could further take opportunities for passive heating and cooling into consideration as part of the development.

FINDING 4: That the subdivision proposed by the Tentative Map complies with the rules, regulations, standards, and criteria of the City's Subdivision Regulations.

EVIDENCE: The subdivision proposed by the Vesting Tentative Map does not comply with the rules, regulations, standards, and criteria of the City's Subdivision Regulations. The City requires the subdivision to be consistent with the General Plan and be consistent with the zoning provisions. The Project, as designed, is not compliant with the General Plan or consistent with the zoning. The project does not adhere to the density requirements of the General Plan, the hillside development policies, open space policies, and grading policies. The project does not comply with the zoning designation of Hillside Planned Development District (HPD) nor does it meet the minimum parking requirements for single family homes.

BE IT FURTHER RESOLVED that the Planning Commission does hereby make the following findings for a recommendation of denial to the City Council of a Use Permit based on Section 9-5.27 of the Antioch Municipal Code:

FINDING 1: Granting the use permit will not be detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity.

EVIDENCE: The proposed project is injurious to the property as it would be removing 104 vertical feet from the existing hillside. The project was not designed in harmony with the natural and built environment as set forth by the hillside development policies.

FINDING 2: That the use applied for at the location indicated is properly one for which a use permit is authorized.

L6Z

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EVIDENCE: The use does not conform to the General Plan or to the zoning code; therefore is not a use that is authorized.

FINDING 3: The project site is adequate in size and shape to accommodate its proposed uses, and all yard spaces, walls, fences, parking, loading, landscaping, and other features required, without interfering with other uses in the neighborhood.

EVIDENCE: The project did not take the Hillside Planned Development District policies into consideration. The project is only providing 54 on-street parking spaces, which is 6 less than the required amount, therefore not meeting the minimum standards, which could affect the surrounding neighborhood.

FINDING 4: The streets and highways that abut the project site are adequate in width and pavement type to carry the kind of traffic generated by proposed use.

EVIDENCE: The streets were not designed with the natural contours of the existing terrain. However, the City commissioned Fehr and Peers to prepare a traffic study to estimate and evaluate the amount of traffic that may be generated by the Pointe project. The traffic study concluded that the road improvements either proposed by the developer or required by the City are adequate in width and pavement type to carry the kind of traffic that will be generated by the project.

FINDING 5: The granting of such use permit will not adversely affect the comprehensive General Plan.

EVIDENCE: The project does not comply with the General Plan; therefore granting the use permit would affect the comprehensive General Plan.

BE IT FURTHER RESOLVED that the Planning Commission, after reviewing the staff report and considering testimony offered, does hereby recommend to the City Council DENIAL of the Final Development, Vesting Tentative Map, and Use Permit (PD-08-01, PW 608, and UP-08-01) to construct 60 single-family homes including associated infrastructure improvements, an approximately 10,000 s.f. pocket park and two open space parcels.

* * * * *

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 6th day of November, 2013.

AYES:

NOES:

ABSTAIN:

ABSENT:

TINA WEHRMEISTER, SECRETARY TO THE
PLANNING COMMISSION

L63

cards available and requested that speakers come to the podium to speak, mentioning the warning signal light. She said that there may be questions for staff and the applicant, that the hearing would then be closed for the commission to deliberate, and that there would need to be four affirmative votes to recommend approval of the project.

NEW PUBLIC HEARING

2. Discovery Builders requests the approval of a General Plan amendment (GPA) from Low Density Residential to inclusion in the Somersville Road Corridor Focus Area and to add language to the General Plan waiving the requirements of certain applicable sections of the General Plan related to hillside development; a rezone from Hillside Planned Development (HPD) District to Planned Development (PD) District; an amendment to the zoning ordinance to provide the City Council with the discretion to determine if the Hillside Planned Development policies apply to a project; a Vesting Tentative Map; a Final Plan Development; and a Use Permit in order to create 60 lots intended for single family homes. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010). An Initial Study and Mitigated Negative Declaration are also being considered for adoption.

Senior Planner Gentry provided a summary of the staff report dated October 31, 2013. She went over the options for each action, referenced the letter on the dais received after the staff report was prepared, and indicated that the City's environmental consultant was available for questions.

CA Nerland said that there were copies of the letter in the back for the public.

Commissioner Pinto confirmed with staff that even though the City is not required to submit project information to the State, that there was no negative impact but that this noticing would extend the review time by ten days. SP Gentry said that now that the comment period is closed they would have to reopen the environmental document for thirty days.

Commissioner Baatrup asked staff about the time period between March of 2013 and October of 2013 to which SP Gentry said that City staff was still working with the applicant and then made the decision to go forward in bringing it to the commission for hearing and releasing the initial study. She said the initial study was released electronically to the Commission and that there was a link in the staff report for the document.

Chair Hinojosa said that she feels comfortable with the amenities proposed but given the requested removal of the pedestrian path for privacy issues, she asked staff if more recreation was included on the site to which SP Gentry said that while this is not a huge project, there would be a private pocket park.

Chair Hinojosa then asked staff about the significant issues for the EIR, the recommended language to the General Plan Amendment and changing the zoning designation. SP Gentry responded that the significant issues were land use and

aesthetics, and the language amendments requested will eliminate any inconsistencies or conflicts with the General Plan and that geotechnical reports would be looked at. She said that for the CEQA document she would defer questions to the consultant.

Consultant Doug Herring said that remedial grading would address the stability concerns and that they would be verifying in the field that they are able to mitigate those issues. He said that if they are unable to remediate the issues, the City would step in and halt development pursuant to the conditions of approval.

Chair Hinojosa confirmed with the consultant that it is very common to have mitigation measures for the report and study in establishing performance standards and that the issues raised in the document were not related to the requirement to prepare an Environmental Impact Report.

OPENED PUBLIC HEARING

Applicant, Louis Parsons, gave a brief PowerPoint presentation showing the proposed Sky Ranch project and the existing Black Diamond project with the remainder parcel which is this project in the middle. He showed maps of the projected lots, the grading plan, a project overview, infill information and definition, design constraints of the project, and terracing. He said that he was here to answer questions and is excited about the project.

Commissioner Motts asked the applicant about the view shed and the grading of Sky Ranch II to which Mr. Parsons said that Sky Ranch II is immediately adjacent to this project and that it is a much larger project with similar grading.

Commissioner Baatrup questioned the applicant about the grading, the flat topography and asked about the greatest cut in Sky Ranch II. Mr. Parsons answered that Sky Ranch II is a big cut and big fill project with the greatest cut being 120 to 130 feet. He said that the Pointe is all a cut, that they have a detailed remedial grading plan and that given this would be a tentative approval, they couldn't get a permit or record a final map until they comply with mitigation measures and conditions of approval.

Commissioner Pinto asked the applicant about the Traffic study conducted in 2010 and grading of the hills to ensure there are no landslides or shifting of the soil. Applicant stated that although no new traffic analysis or studies have been done, any additional traffic increase is negligible.

Albert Seeno spoke to say that the soil conditions on the site have been remediated, that they will be offloading unstable soils, they will take care of the remedial grading and that there will be no slides as it will be very stable.

Commissioner Pinto clarified with Mr. Seeno that although there are existing retaining walls, there will be no impact to those walls because they will have a geo grid in the hillside to stabilize the slopes.

L65

Chair Hinojosa asked applicant about long term maintenance and repair to which Mr. Seeno said that some things like ditches and retaining walls will be maintained by the property owners and others by the Homeowners Association. He said that none of the HOA funding would be prefunded but that there would be a phasing plan and the maintenance association fee would be very nominal.

Commissioner Westerman questioned Mr. Seeno about the privately owned streets and if the HOA would be responsible for maintenance of the streets, storm water drains, the pocket park and the water retention basin. Mr. Seeno said that these would fall under the HOA but they would attempt to keep the cost under \$100.00 a month. He said that the streets have a thicker section than the City standard warrants, that the life expectancy of the asphalt is at least 25 years with slurry sealing every few years and the City would have an easement to take care of water and sewer lines, and the HOA would maintain the storm drains.

Commissioner Motts expressed concern with the view shed and read a portion of the letter to which Mr. Seeno stated that he is a home builder, that Save Mount Diablo are good custodians of their property, that this project has been in process for almost nine years, and that there will always be opposition.

Michael Mikel, resident on Countryside Way since 2007, said that he bought the house hoping to live in a community and that over the last 7 years he and his neighbors regularly come together for picnics, meetings, and have a social website. He said that approximately 50 people signed the petition, that Seeno Homes wants to put a gated community in the midst of their community, that they had no idea it was coming, that they were told that the hill would remain open space, that some people paid a premium for their lot with a view of the hillside, and that an EIR is a must.

Robert Williams, resident in Black Diamond Ranch, said that safety is a concern and that residents had a meeting and arrived at three questions: where are the fire department, police or any medical facilities there; will the neighborhood wall be a T or an L; and what is the plan for inclusion of sidewalks given some people and animals have been killed. He also said that a community impact study was needed to reflect current population with existing families.

Roy L. Norwood, resident of Black Diamond, said that the request should be denied, that he has heard nothing to suggest that they have done environmental reviews for anything to be built on that hill, and that they have not been given any guarantees that there won't be sliding. He said that there is also the issue of emergencies with only one way in and one way out; that there are traffic issues, no lights, no sidewalks and major accidents.

Nancy Woldering with Save Mount Diablo said that this land was set aside, that this sets a bad precedent, that they are concerned the project has massive grading, and that they highly believe that an EIR should be prepared. She said that the CEQA process allows adoption but they need to mitigate impacts when policies are waived and that mass grading not be allowed. She said that this plan ignores all of the City's direction.

L46

John Neal said that he has had to invest in ground compaction and drainage issues given that over the past 3 years his property has flooded. He said that if the hill is taken down this will increase runoff and that he has seen no reports as to what they would do to mitigate or control additional runoff from the hillside. He said he is concerned about the construction traffic going in and out directly behind his property and that there have been several accidents with construction vehicles. He said that there are safety concerns for families.

Larry Tong with East Bay Regional Park District said that as indicated in the letter, they believe the City cannot make the findings needed to support this project. He added that the proposed removal of 104 vertical feet of hillside is similar to a 9 to 10 story building which is not consistent with the General Plan. He said that given that this project does not address land use and aesthetic issues, that they feel it should not be approved.

Marty Fernandez said that while he doesn't live close to the area, mornings are a madhouse and that this project is located in their school district without bus service for kids. He said this item should not be considered and they should be turned down.

Chair Hinojosa then read statements from speakers who did not wish to speak:

Radiah Mikel wrote: This is not good. We purchased our home with Discovery and was told the hill would remain open wildlife space. The community does not want this to happen.

Margaret Ellen Verbin wrote: Extreme grading will expose Torgensen Ct to views of factories by California Avenue and Pittsburg Antioch Highway. Not clear what intention is with Torgensen Ct other than EVA; object to grading of hill behind my house. Would like more time to respond in writing to study, etc if appropriate and further action is warranted.

Darryl Parker wrote: When we bought our home the builder told us that the area will be open space. This is the main reason we bought the house.

Regina Norwood wrote: My main concern is safety. We need more lanes on Somersville. A light signal placed at James Donlon and Somersville and buses that run up Somersville to Black Diamond Estates. Enough deaths already. One is too many. Our kids walk to Gentrytown 1 to 2 miles just to take the bus to school. Traffic is horrible during commute hours on Somersville. No more houses until that safety issue is fixed.

Chair Hinojosa asked if it was appropriate to ask questions of speakers and whether CC&Rs have been reviewed as to keeping open space.

Michael Mikel said that at the time they purchased their home, it was never told to them, that some people bought higher premium lots for view of the hills and that if they have more time, they can get a list of people who were told that. That this was a determining factor of them buying their home; that the area gets very windy when it comes down from the mountain and is wondering what affect cutting the hill will have.

Applicant responded that the remainder property was talked about as not being open space and that this is in CC&Rs.

Robert Williams said that he just bought his home and that the real estate people said nothing will be on this mountain.

Chair Hinojosa asked Mr. Tong to come back up. She asked him to explain the visual study done from the Moller property indicated in the letter to the City.

Mr. Tong said that Exhibit 1 is a visual identifying the view point on the trail; that this project will be highly visible from the park site, and that Exhibit 2 references the parcel was designated as open space.

Chair Hinojosa stated that from the proposed trail the proposed project will disturb a view shed and that has not been adequately considered and needs to be evaluated in an environmental document.

CLOSED PUBLIC HEARING

Recess from 8:15 p.m. to 8:30 p.m.

Staff put up the slide outlining the Commission's options.

Commissioner Motts questioned staff regarding the anticipated expansion of Somersville Road and the completion of James Donlon Road and if this will alleviate some of those issues.

Ron Bernal responded that the Somersville Road widening is scheduled to be completed by the end of 2014 which would involve expansion of Somersville to four lanes with a traffic signal at James Donlon. He said that there will be sidewalk down the west side of Somersville. The James Donlon extension is further out and won't be done for several years. He said that the Chevron property to the north has a road that would connect to this development but that it is a few years out as well.

Commissioner Motts clarified with staff that the original proposal included a parcel dedicated to the City as open space but that in 2008 the applicant requested this be changed to a remainder parcel for executive and estate housing on that parcel.

Commissioner Pinto asked staff if the developer met the 3 year requirement in the original approval. SP Gentry said that they did meet the 3 year requirement but this is a long process and the process has undergone a variety of review processes.

Commissioner Pinto asked if the community had any town hall meetings or community outreach. SP Gentry said that while the City was not involved in any, she is unsure if applicant did any. She added that the City followed proper noticing procedures.

Commissioner Baatrup clarified with staff that the environmental document has to have approval for the Commission to act on project.

LL8

Commissioner Baatrup then discussed with staff the significant impacts and aesthetic issues being a judgment call given the removal of 100 feet of vertical hillside.

Commissioner Baatrup asked staff if one brings forward a General Plan Amendment if it warrants an environmental review to which SP Gentry said that the City can only approve four General Plan Amendments in a year, and that they would look at the project as a whole on a case by case basis.

Commissioner Motts said that given the background and the concerns raised, he can't see where it rises to a place to amend the General Plan. He said that it might be appropriate to recommend an Environmental Impact Report to alleviate concerns and then move forward.

Commissioner Baatrup said that he is not comfortable with the Mitigated Negative Declaration for this project given the severity of the construction necessary. He said that he can't get on board to recommend adoption of what is in front of them tonight; that there are too many significant impacts and too many exceptions. He said that this project was proposed in 2005 and that between 2005 and 2008 the property owner decided on an opportunity to develop the property and that there is a necessity for an Environmental Impact Report. He stated his preference to not recommend adoption of the Mitigated Negative Declaration to the City Council and to deny at this time.

Commissioner Pinto said that while he is all for development and construction which creates jobs, this project is not something he can support because traffic flow one way in and one way out. He expressed concern with the fact that the Air Quality Board did not review, with the hillside grading, and with kids who will be moving in ending up at Mission School. He said that he thinks the project is good but not very well thought out. The community was not involved in the decision making process which is not fair to local residents and that he is not able to support this project.

Commissioner Westerman said that the normal way for a project is to design it to conform to requirements, zoning and guidelines. In this case, the project was designed first and now want to change zoning, design and guidelines to fit the project. With the General Plan dealing with hillsides, this would be setting precedent that would be undesirable. Other projects coming along would put the City in a precarious situation. He said that he is not supportive of this project.

Chair Hinojosa thanked applicant for their interest in the community and said that this type of development would be an asset given the beautiful area. Putting aside massive grading, the project appears to be consistent but we need to step back and look at the bigger picture. She said she likes the idea of planned development but does not agree with all of the policies. She cannot support the outright waiver of policies for hillsides. She said the project has history and the Planning Commission has had concerns. She said with the steep grading and not complying with all of its plans in totality, she would like to give the developer the opportunity to pursue by preparing an Environmental Impact Report, rather than outright denying the project.

CA Nerland said that there a number of possible resolutions for action but what the Commission does not have is a resolution denying the Mitigated Negative Declaration and direction that an Environmental Impact Report be prepared. But if a number of the Commissioners tonight feel that there really isn't likely going to be more information brought forward to support changing the General Plan and rezoning, an alternative approach would be not to take action in the environmental review and to recommend denials.

Chair Hinojosa asked for clarification that if the Commission denies the MND but determines an Environmental Impact Report is appropriate, applicant would prepare and come back to the Commission but if some feel that after an Environmental Impact being prepared is not going to be much farther, what is the point. She said her concern is that if the Commission recommends denial outright tonight, it will be appealed to the City Council who can overturn the decision by the Planning Commission.

CA Nerland responded that the Planning Commission's action tonight is a recommendation and that City Council will always have the final say.

Commissioner Pinto said that based upon the City Attorney's statement that the applicant may not be satisfied with the decision we make tonight, his recommendation would be to take the second option and deny the project.

CA Nerland said that applicant can respond if they wish for an Environmental Impact Report.

REOPENED PUBLIC HEARING

Applicant said that they do not believe that this project warrants the preparation of an Environmental Impact Report and would not be amenable to funding and preparing that for this project.

RECLOSED PUBLIC HEARING

Commissioner Baatrup made a motion not to take action on the environmental document, a resolution recommending denial of the General Plan Amendments, resolution recommending denial of the initiation of amendments to Title 9 of the Municipal Code, "Planning and Zoning" for a rezone of the subject property from Hillside Planned Development (HPD) to Planned Development (PD), and a resolution recommending denial to the City Council of the Vesting Tentative Map, Final Development Plan and Use Permit for 60 single family units.

RESOLUTION NO. 2013-**

On Motion by Commissioner Baatrup and seconded by Commissioner Westerman, the Planning Commission recommends to the City Council denial of the amendments to the City of Antioch's General Plan.

AYES: *Hinojosa, Pinto, Motts, Baatrup, Westerman*
NOES: *None*
ABSTAIN: *None*
ABSENT: *Miller*

RESOLUTION NO. 2013-**

On Motion by Commissioner Baatrup and seconded by Commission Westerman, the Planning Commission recommends to the City Council denial of the amendments and rezone to City of Antioch's zoning code found in Title 9 of the Antioch Municipal Code.

AYES: *Hinojosa, Pinto, Motts, Baatrup, Westerman*
NOES: *None*
ABSTAIN: *None*
ABSENT: *Miller*

RESOLUTION NO. 2013-**

On Motion by Commissioner Baatrup and seconded by Commissioner Westerman, the Planning Commission recommends to the City Council denial of the Final Development, Vesting Tentative Map, and Use Permit (PD-08-01, PW 608, and UP-08-01) to construct 60 single family homes including associated infrastructure improvements, an approximately 10,000 s.f. pocket park and two open space parcels.

AYES: *Hinojosa, Pinto, Motts, Baatrup, Westerman*
NOES: *None*
ABSTAIN: *None*
ABSENT: *Miller*

NEW ITEMS

3. Election of Vice Chair

SP Gentry said that with one member of the Commission absent, this item can be postponed to the next meeting.

Commissioner Baatrup said that it would be worthwhile for all to participate and he would like to continue to the next meeting.

Commissioner Motts confirmed with staff that the recruitment is still in process.

Commissioner Pinto recommended that the Commission proceed in selecting the Vice Chair.

Commissioner Westerman said that he agreed with Commissioner Baatrup and that it was a good idea to wait until the next meeting.

ATTACHMENT "M"

Keith and Darcy Johnson
3615 Torgensen Court
Antioch, CA 94509
October 27, 2013

RECEIVED

OCT 28 2013

CITY OF ANTIOCH
COMMUNITY DEVELOPMENT

Ms. Mindy Gentry, Senior Planner
[mgentry@ci.antioch.ca.us](mailto:mgency@ci.antioch.ca.us)
City of Antioch
Community Development Department, Planning Division
P.O. Box 5007
3rd and H Streets
Antioch, CA 94531-5007

Re: Project Name: The Pointe Project Subdivision, Antioch ("Project")
 Applicant: Discovery Builders, Inc. ("Applicant")
 Description: 60 Homes on 21-Acre Open Space Hillside
 Public Hearing: November 6, 2013, 6:30 p.m.
 Concerning: Intent to Adopt A Mitigated Negative Declaration

Dear Ms. Gentry:

We live at 3615 Torgensen Court in Antioch California. We are writing today in reference to the proposed project called "The Pointe, Antioch", to be developed by Discovery Builders. While the project will drastically alter the "rolling hills" nature of our neighborhood, development was always anticipated and this project is not entirely objectionable. In the interest of full disclosure, our home is on lot 282 of the Black Diamond Estates, adjacent to Lot 60 of the proposed project. The concerns we have do reflect the fact that this is literally right next door.

Torgensen Court, as part of the Black Diamond Estates development, was proposed and planned to be a residential cul-de-sac with 14 homes. Approved by the City of Antioch Planning Commission and City Council as such, the homes were purchased by families like ours with the understanding that only 14 homes would be built on our street. When we asked if any other homes would be built at the end of our street, we were told no, the hill next to us was outside the development boundary. We were told the hill top might someday be developed, but there would be a buffer between the developments. This was important to us for privacy. As a matter of fact, privacy and the view were the reasons we felt the \$50,000 premium we paid for our lot was justified.

We have no objections to the general plan of The Pointe. We do think that a gated community within an open neighborhood is of questionable taste, but that's just us. However, in talking with our neighbors, it has been pointed out that homeowner's associations do not necessarily guarantee maintenance costs can be met. Infrastructure problems like streets, drainage, landscaping, and slippage will have a direct impact on us. The financial stability of the proposed HOA consisting of only 51 homes is questionable unless the developer pre-funds the association with adequate reserves to assure the HOA is equipped to handle potential issues.

We can understand the necessity of a secondary access road for emergency situations. While we do not think a residential cul-de-sac is the proper location for an Emergency Vehicle Access road, we can see that Torgensen Court is probably the best and only choice for an EVA. That said, the drawing from the EIR shows the EVA to have two 90 degree turns. If you want to get fire engines into a gated community through a back door, why make it a curvy road? We think the planned EVA should be modified be to a straight line from the end of Torgensen Court to Summit Place, passing between lots 10 and 11. As

M1

drawn, the EVA runs through the present street light. Rerouting the EVA will allow the streetlight to remain in its present (already approved safety) location. Connecting the EVA to Torgensen Court will result in the loss of one on street parking space, but we think the present population can accommodate the loss.

On the other hand, we do have significant concerns and objections to the development of Lot 60. The proposal is to build a 15th house on Torgensen Court. Not only is this a major change from the original plan for 14 homes, it also eliminates the promised buffer between us and any new development. It will create increased traffic flow and the need for additional parking. While increasing the demand for parking, the driveway for the house will cause the loss of at least two "on street" parking spaces. The Torgensen Court frontage for Lot 60 is approximately 50 feet, not much space to accommodate the emergency vehicle access road, the driveway, a fire hydrant (not noted in the EIR renderings of Torgensen Court) and the street light. Because the addition of the house proposed for Lot 60 confuses the route of the EVA, increases the traffic on a residential street, likely removes 3 parking places while increasing the demand for parking, we believe the development of Lot 60 should be removed from the project plan.

Another concern we have is that the developer and his contractors will use Torgensen Court as access into the project and as a delivery and staging area for materials. Torgensen Court has been finished as planned, and is now a quiet residential cul-de-sac for 14 families with kids. While the initial grading and site preparation for The Pointe will create a disturbance, that disturbance will be short lived. The EVA will be installed with the streets, no extra bother there. But, build a house on lot 60 and a whole new level of intrusion is created. Deliveries of supplies and materials, workers and their equipment, lunch trucks and noise will descend on Torgensen Court. Not only for lot 60, but potentially for all the lots at that end of Summit Place, lots 7 through 18. If the project is approved, we ask the Planning Commission to consider work rules that prohibit any and all use of Torgensen Court for construction purposes.

The Pointe is described as a project to build 60 homes, 51 within a gated community, 9 along the project perimeter, integrated into the existing Black Diamond Estates neighborhood. Of the 9, all but Lot 60 are on Countryside Way, and it was evident to all that they would be developed some day. Lot 60 on the other hand is at the end of a "finished" street and was promised never to be built upon. Rather than being integrated into the neighborhood, Lot 60 feels more like it is being imposed upon its neighbors.

We also have concerns in regards to traffic. The EIR references a traffic study conducted in 2010. That study does not reflect the reality of the traffic situation as it exists today at the intersection of James Donlan and Somersville Rd. Since that study was done there has been a significant increase in traffic at that intersection. As a matter of fact the disclosure statement in our purchase agreement from earlier this year states:

"Buchanan Road and James Donlon Boulevard tend to have congestion at certain peak times. Even with the implementation of these planned improvements, current studies forecast that significant traffic congestions will remain in the future."

The current intersection is dangerous especially for those coming from the Terraces. There is no signal light and the road has not yet been widened to four lanes as has been promised. The intersection as currently structured grants right of way to traffic coming from the freeway and Buchanan road through the intersection with no stops required. Traffic from the Terraces must stop before proceeding either directly through or making a turn. Traffic coming from Antioch must stop if going through the intersection and is supposed to yield when making a right turn onto Somersville. What this means is that in the morning, the Antioch traffic blows through the yield sign endangering those making the left from the Terraces. There is no recognition of or compliance with the Yield sign. In fact, friends who commute

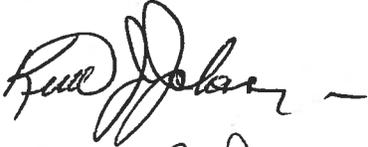
from east Antioch report being harassed when they actually slow down and yield. In the afternoon making a left from the Terraces onto Somersville is next to impossible because there is rarely a break in the oncoming traffic from the freeway/Buchanan Rd. We suggest that improving this intersection and widening the road should be a prerequisite to any further development that would be accessed via James Donlon, specifically either The Pointe or Sky Ranch.

We have read the draft letter being circulated by some of our neighbors and agree with some of the concerns expressed. Specifically, we believe The Pointe may:

- Have an adverse seismic impact to our home and concrete surfaces, cracking inside and out caused by the vibrations during extreme grading.
- Cause a loss of protection from the wind afforded us by existing hills.

We hope to attend the November 6 Planning Commission meeting, but are submitting this letter to ensure our concerns are presented to you and the Planning Commission. Thank you for your attention to our concerns.

Sincerely,




October 28, 2013

City of Antioch
Planning Division
Mindy Gentry, Senior Planner
P.O. Box 5007
Antioch, CA 94531

RE: Black Diamond Mines Regional Preserve. "The Pointe Residential Subdivision"
Mitigated Negative Declaration

Dear Ms. Gentry:

East Bay Regional Park District ("District") has received the proposed Mitigated Negative Declaration (MND) for The Pointe Residential Subdivision ("Project") in the City of Antioch. The District operates Black Diamond Mines Regional Preserve ("Preserve") located south of the Project site. As described in our Master Plan, we support the protection of open space and scenic resources, including the open space now proposed for development.

The District is under contract to acquire the Antioch Unified School District (AUSD) property, also known as Moller Ranch. This property abuts the southern boundary of Black Diamond Ranch. The Project area is approximately 700 feet north of this boundary. See Exhibit 1. The District submitted comments on the Project on January 4, 2007 and July 24, 2007 (see Exhibits 2 and 3) encouraging the City to deny the applicant's request to change land use designations and subdivide the open space dedication parcel associated with the Black Diamond Ranch project.

We submit these comments regarding the proposed general plan amendments and MND. In our opinion the City cannot make the findings required to support the proposed general plan amendments and approve the MND. Our conclusion is based upon the following:

- 1.) Project description lacks sufficient detail for impact analysis
- 2.) Significant impacts to land use, aesthetics and recreation are not considered
- 3.) Does not comply with the requirements of the California Environmental Quality Act
- 4.) Does not comply with the requirements of State General Plan Policies

Proposed General Plan Amendment, Project Description and Land Use Impact Analysis: The project description and land use impact analysis misleads the reader to believe that impacts of the proposed general plan amendments are merely procedural legislative actions for which environmental impact analysis is not required. The MND inappropriately proposes general plan amendments as mitigation measures for significant land use impacts, yet fails to address the individual and cumulative impacts of these amendments on the environment. A general plan is intended to be a self-mitigating document through adopted policies; however, the MND does

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not disclose or analyze how amending the policies will affect the original impact analysis contained in the General Plan EIR.

Pursuant to Government Code Sections 65350-65362 the MND should provide the legislative body with sufficient information to answer the fundamental questions required for a general plan amendment:

- 1.) Is the amendment in the public interest (i.e., it advances community goals, describes a community interest, etc.)
- 2.) Is the amendment consistent with all other parts of the general plan?
- 3.) If the amendment requires other changes to the plan, are those changes considered?
- 4.) Will the amendment necessitate changes in zoning or other ordinances, and are those changes to be considered within a reasonable time?
- 5.) Have adequate mitigation measures been incorporated into the amendment?

In its current form, we do not believe that the MND answers any of the five questions required for a general plan amendment and doesn't comply with State General Plan Policies or CEQA.

Aesthetics: The MND provides two visual simulations of potential impacts that are taken from public roadways. It does not contain a visual impact simulation of views from the Preserve. Instead it provides a narrative description of visual impacts; however, there is no visual impact simulation to substantiate the conclusions in the MND that there would be no potential significant visual impacts to the Preserve.

In the absence of a visual simulation in the MND, the District has prepared its own. The MND contains a statement that the project area will be substantially graded and lowered to approximately 315 feet. This elevation was utilized to calculate a footprint that was used to prepare Exhibit 4 that shows an oblique angle view of the Project area from the Preserve.

The District is developing a trail that will run along the ridgeline of the former AUSD property (see *Exhibit 1*). A key view point looking north from this trail is located at an elevation of 560 feet. As previously noted, project grading may be as low at 315 feet. This means that the view point in the Preserve is 245 feet higher in elevation than the Project area. Approximately 75% of Project grading will be visually prominent from the Preserve and will significantly disrupt views from the Preserve of an undisturbed ridge top (aka "The Pointe"). There are no visual obstructions between the view point and the Project area (~1,500 feet due north). This significant visual impact is not identified, evaluated or mitigated in the MND. We believe that the impact can be mitigated by removing the proposed units from the ridge top. This would protect its scenic qualities, including a spine of rock outcrops and south facing grasslands.

Figure 4 in the MND shows a landscaping plan that contains two major east-to-west terraces that are used to buttress the houses along the ridgeline above. Removal of the housing units above these terraces would substantially reduce the visual impacts as seen from the Preserve. At a minimum this would include elimination of units 19 through 34, as shown on Figure 4 of the MND. This would also require removal of "B Drive" and changing the plant materials in the proposed terraces to native grasses so they blend with the undisturbed slopes above.

Recreation: The MND references a conversation with Ms. Linda Chavez, a retired District planner, stating that Project “would not create a significant impact on the regional park”. Written communication from Ms. Chavez does not support this conclusion (see Exhibits 2 and 3). There have been significant changes in circumstances since 2007, including the District’s acquisition of the AUSD property. Based on our review of the MND, it appears that the Project will have significant impacts to the Preserve.

CEQA requires project-level analysis of impacts to public parks. The lead agency must determine the extent to which population increases from new housing will impact use of adjacent regional parks (*City of Hayward v. Board of Trustees of the California State University, 2012*). The MND fails to evaluate this potentially significant impact in violation of CEQA.

Any disruption or deterioration of park users experience while engaging in park activities, such as nature appreciation, hiking, biking, equestrian use, camping, picnicking, photography, painting, and birding is of concern to the District. The MND does not analyze these potential impacts. For example, the MND aesthetics analysis does not evaluate or disclose how diminished scenic value resulting from the Project may deteriorate the recreational experience at the Preserve.

For the reasons outlined in this letter we request that the proposed MND for the Project be denied, and that the City either modify the Project to ensure it will have no significant environmental impacts or prepare a full EIR. Thank you for your review and consideration of our comments. Please notify us of any public meetings or hearings for the Project and include us on any distribution list for CEQA notices or associated documents for the Project. If you have any questions, please contact me at (510) 544-2622 or via email at bolson@ebparks.org.

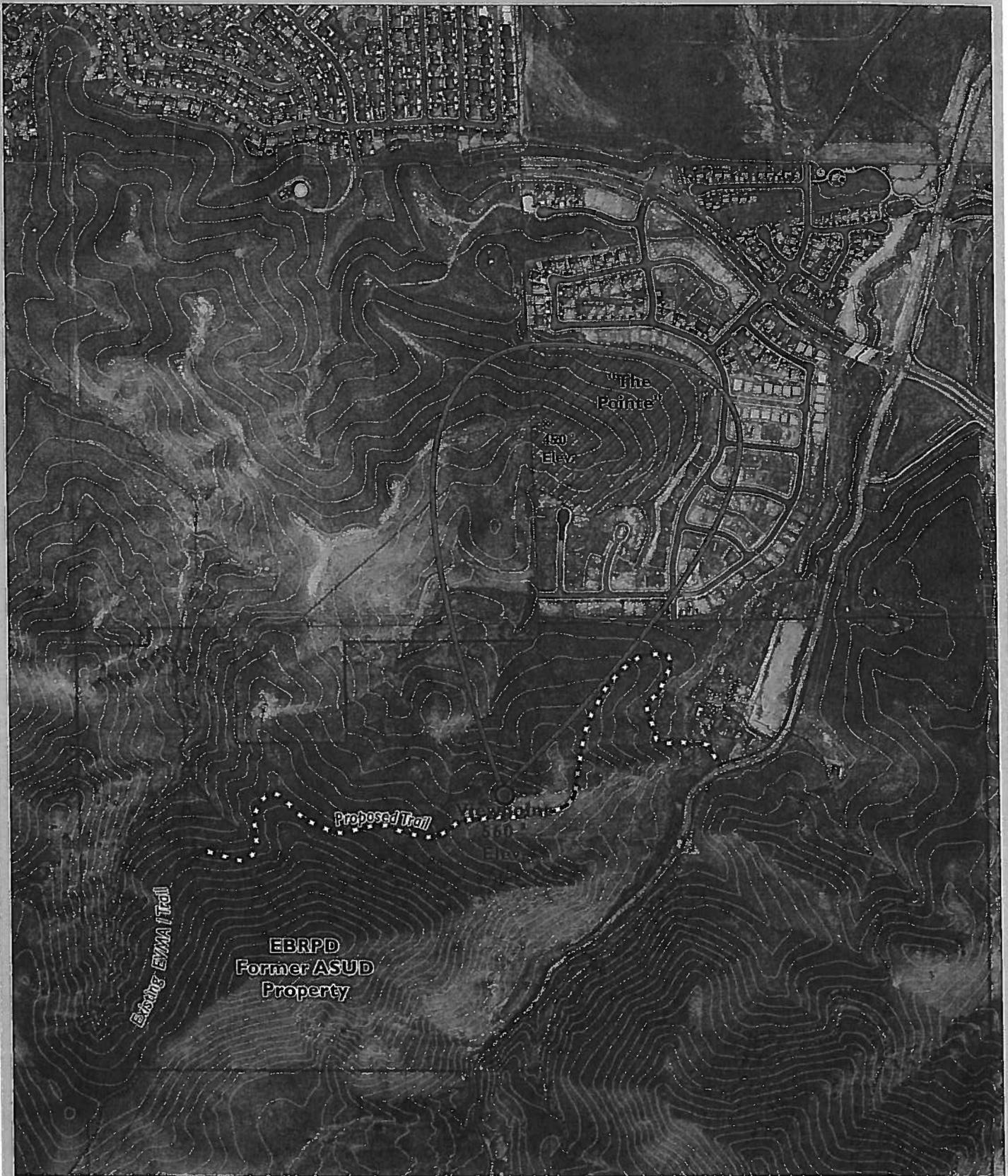
Sincerely,



Brad Olson
Environmental Programs Manager

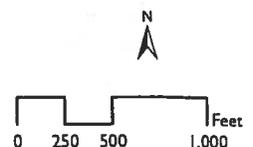
Attachments: Exhibit 1 – Project Area Map
Exhibit 2 - Letter From Linda Chavez to Mindy Gentry dated January 4, 2007
Exhibit 3 - Letter from Linda Chavez to Victor Carniglia dated July 24, 2007
Exhibit 4 – Visual impact simulation of Project

CC. District Board of Directors
Robert E. Doyle, General Manager
Bob Nisbet, Assistant General Manager



East Bay 
Regional Park District
Environmental Programs and GIS
September 18, 2013
c:/bstone/mxd/projects/studies/
bd_AUSD-ThePointeVisualImpacts.mxd

**"The Pointe" Subdivision Project
Black Diamond Mines Regional Preserve
View from Northern Boundary**



M7

EAST BAY REGIONAL PARK DISTRICT



January 4, 2007

Ms. Mindy Gentry
City of Antioch
Community Development
P.O. Box 5007
Antioch, CA 94531

RE: **Black Diamond Regional Preserve**
PDP-06-03 Discovery Builders/The Pointe

Dear Ms. Gentry,

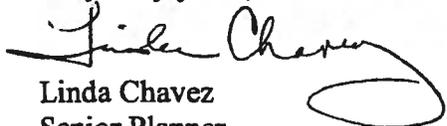
Sorry for the delay in returning this letter to you and respectfully request that the City consider the Park District's comments. I had expected to respond back by the December 27th deadline, however, my father passed away during my time off and I have just now returned to work.

The Park District is opposed to development of the open space parcel, which resulted from the approved Black Diamond Ranch located west of the Somersville Road / James Donlan Blvd. This parcel was designated as an open space parcel to be dedicated to the City. This open space provided a visual break in the development while protecting the hill tops and the visual back drop that leads up to Kreiger Peak. Why is this open space parcel even being considered for development? If the City is unable to accept the maintenance responsibility of the parcel it should remain with the development as an HOA maintained open space parcel, not fill it in with housing.

The proposal is also a 72-lot cul-de-sac with one way in and out. This is not good planning. It appears to be a last minute idea to place as many housing units on an open space parcel, to fill up an open space, rather than viewing the open space parcel as an asset to the surrounding development.

Thank you for the opportunity to comment on this project.

Very truly yours,


Linda Chavez
Senior Planner

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2950 PERALTA OAKS COURT PO BOX 5381 OAKLAND CALIFORNIA 94605-0381 T. 510 635 0135 F. 510 569 4319 TDD 510 633 0460 WWW.EBPARKS.ORG

July 24, 2007

Mr. Victor Carniglia
 City of Antioch
 Community Development Department
 P.O. Box 5007
 Antioch, CA 94531

**RE: Black Diamond Ranch
 The Pointe – Preliminary Development Plan**

Dear Mr. Carniglia,

The East Bay Regional Park District previously submitted a comment letter dated January 4, 2007 (see attached) regarding this proposed preliminary development plan for 72 units on land that was committed to be an open space dedication to the City within an approved subdivision. The Park District wants to reiterate its opposition to this proposal to put housing within the previously approved open space dedication parcel.

The District is quite concerned that this potential action would set a terrible precedent for developers to make requests to the City to change the designation on approved open space lands in order to increase their housing units. Discovery Builder purchased an approved project with designated land uses and a specific unit count. Modifying the product line to increase or decrease the density within the designated residential land use area to address market demand is not that uncommon. However, to change an open space designation to residential development would not be good community planning and development. They had full knowledge of the approved project with its commitment to keeping this area as open space. The proposal to change the open space dedication parcel to consider additional housing would make a mockery of the public planning process. It would not be consistent with the policies of the City's General Plan and Hillside Planned Development Ordinance. It would not be consistent with the commitment to keep the area as open space.

The Park District urges the City Council to support their City staff's and Planning Commission's recommendation to deny this request.

Park District requests to be on the mailing list to receive referrals, additional information and notices of the public hearing for this proposal.

Very truly yours,

Linda J. P. Chavez
 Senior Planner

cc: Mayor Freitas and City Council members

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MA

Grading to ~315' contour

~780'

Black Diamond Mines Regional Preserve

View
Point
~53'

Google Earth



October 25, 2013

Ms. Mindy Gentry
Senior Planner
Community Development Department
City Hall
Third and "H" Streets
P.O. Box 5007
Antioch, CA 94531-5007

RECEIVED

OCT 29 2013

CITY OF ANTIOCH
COMMUNITY DEVELOPMENT

Subject: The Proposed Pointe Project on a 21-acre hillside site located at the western edge of the City of Antioch, conditioned to be dedicated to the City as "Open Space" as part of the adjacent Black Diamond Ranch development

Dear Ms. Gentry:

Thank you for the opportunity to provide additional comments on this application, originally proposed in 2007, and now being resubmitted in 2013.

Save Mount Diablo's Position

Save Mount Diablo is opposed to this project given that it would destroy open space supposedly preserved for public trust benefits—aesthetics, wildlife, recreation, etc. or mitigation-- as a condition of the previous surrounding project, and hand it back to the developer as a windfall profit. It is an extremely bad precedent—the promise of open space or public benefit in any future Antioch projects, such as at FUA#1, will lack credibility.

The removal of the entire hillside associated with the proposed Pointe residential development would result in a wide range of significant environmental impacts that have not been adequately mitigated in the Point Initial Study/Mitigated Negative Declaration (March 2013). Further, Save Mount Diablo believes that approval of General Plan Amendments that allow the applicant to waive compliance with many general plan policies (many of which are written as performance standards to avoid significant impacts), would result in significant environmental impacts. The impacts associated with waiving the City's requirements have not been studied as part of the proposed project. While the general plan amendments might reduce plan-level impacts associated with the project, they would exacerbate the physical environmental impacts that the policies are designed to avoid or mitigate.

The CEQA Analysis is Inadequate

The California Environmental Quality Act (CEQA) requires that an EIR be prepared if there is a "fair argument" that the project would result in significant environmental impacts (Laurel Heights Improvement Assoc. v. U.C. Regents (1993) 47 Cal.4th 376). If a fair argument can be raised on the basis of "substantial evidence" in the record that the project may have a significant

adverse environmental impact-even if evidence also exists to the contrary – then an EIR is required.

A Mitigated Negative Declaration can only be adopted if (1) “There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” “Or (2) An initial study identifies potential significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment”. (*Public Resources Code, § 21080(c)(1) and (2)*)

Clearly, the whole record related to the Pointe Project documents extreme concern about project impacts related to massive grading of an entire hill and disregard for the city’s general plan and development requirements. “If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared”(Public Resources Code, § 21080(d)).

Removing an entire hillside, in conflict with the City’s General Plan Hillside Design Policies, and Article 24 of the zoning ordinance related to the Hillside Development District, would result in significant impacts related to aesthetics, geology, soils and seismicity, land use and planning, greenhouse gases, transportation, biological resources, hydrology and noise. In this case, developing a property that had been dedicated as Open Space would also result in impacts related to recreation. Impacts identified in the Initial Study/Mitigated Negative Declaration do not reduce impacts related to removal of an entire hill to less-than-significant levels. For many environmental issue areas, the environmental document relies on waiving requirements as part of a general plan amendment, instead of identifying adequate mitigation measures. Waiving the City’s General Plan policy requirements that were generally developed to function as performance standards would in fact result in significant environmental impacts. Examples are included below:

Aesthetics and Visual Quality: In analyzing visual impacts related to removal of the hill, the Initial Study notes that: “While both the Antioch General Plan and the City’s Hillside Planned Development District Ordinance specifically provide for protection of views of the hills in the adjacent project area, with approval of the proposed General Plan and zoning text amendments, the project would be exempt from those policies. (The Pointe Initial Study/Mitigated Negative Declaration, March 2013, p. 22). The potential impact related to a substantial adverse effect on a scenic vista is identified as less than significant, with no mitigation identified.

Land Use and Planning: “Absent approval of the General Plan amendments that are components of the proposed project, the project’s conflict with Low Density Residential designation would be a significant adverse impact. However, with approval of these amendments, there would be no conflicts with the General Plan. For purposes of this analysis, approval of the amendments is assumed. There would be no impact related to a conflict with the City of Antioch General Plan.” (The Pointe Initial Study/Mitigated Negative Declaration, March 2013, p. 71)

Similarly, the need to comply with policies related to Hillsides and the requirement to prepare a Resource Management Plan would be waived with the General Plan Amendment. “Although the project could conflict with Hillside Design Policies 5.414-b, 5.4.14-I, and 5.4.14-o and Open

Space Policy 10.3.2-g, as noted above, approval of the proposed General Plan amendments is assumed for purposes of this analysis, which would grant the project an exemption from the policies. There would therefore be no impact related to a conflict with policies promulgated in the City of Antioch General Plan.”

The CEQA Process is Inadequate

While the Initial Study/Mitigated Negative Declaration is dated March 2013, it was not released for public review until October 8, 2013. A twenty (20)-day public review period is inadequate for a project of this magnitude that warrants close scrutiny by State Agencies. Given issues related to biological resources, geology, soils and seismicity, and hydrology and water quality, it is critical that the project be reviewed by the California Department of Fish and Wildlife, the State Water Quality Control Board/Regional Water Quality Control Board and other State agencies.

Geology and Soils: “Because the project would occur on a large, steep site, and would require significant grading entailing movement of large amounts of soil, the potential for erosion during project construction is extremely high”. Yet, mitigation measures are limited to “restricting grading activities to the summer construction season or compliance with more stringent restrictions imposed by other regulatory agencies such as California Department of Fish and Game if applicable”, and preparation of a Stormwater Pollution Prevention Plan and Stormwater Control Plan. (The Pointe Initial Study/Mitigated Negative Declaration, March 2013, pp. 58-59) With a 20-day review period, it is not clear whether the California Department of Fish and Wildlife or Regional Water Quality Control Board is even being given the opportunity to review the document to determine whether more stringent mitigation is warranted. Plus the mitigation is vague and conditional; there is no guarantee it will in fact decrease impacts to less than significant.

General Plan and Hillside Planned Development Ordinance

Similar to the 2007 proposal, the project would violate grading, slope and contouring requirements created to protect Antioch’s hills. The application is inconsistent with the City of Antioch General Plan and the City’s Hillside Planned Development Ordinance. The plans submitted for review include cuts of up to 125 feet. Nearly the entire site has slopes over 25 percent, and slopes covering much of the area are over 35 percent.

Save Mount Diablo is opposed to this project given that it would destroy open space supposedly preserved as a condition of the previous project, and is an extremely bad precedent—the promise of public benefit in any future Antioch projects will lack credibility.

However, if any development is allowed on this “Open Space” site, we agree with direction provided by staff on the first three submittals in the staff report dated June 4, 2007:

- That the plan be substantially revised so that the form of the existing hill is largely retained. The existing hill may not be reduced in total height.
- Mass grading of the site is not allowed. Grading shall be limited to the creation of building pads, and not for the purpose of creating flat yard areas. Split pads are encouraged to reduce pad grading.
- Slopes between building pads and between lots shall be left ungraded.

- That the environmental review process for any future entitlement application include a detailed visual and slopes analysis to determine how any proposed plan complies with all of the City's General Plan and Zoning hillside development requirements.
- That the site plan shall be redesigned to comply with the General Plan Hillside Design Policies and Article 24 of the zoning ordinance related to the Hillside Development District.

The current plan, evaluated in the March 2013 Initial Study/Mitigated Negative Declaration, completely ignores all of this direction and would result in significant, and possibly, unavoidable impacts related to, at minimum: Aesthetics; Air Quality, Biological Resources, Geology & Soils, Hydrology, Planning and Land Use; and Cumulative Impacts related to Open Space resources. An EIR is clearly required to analyze potentially significant impacts and alternatives that may be available to reduce potential impacts to less than significant levels, as is required by the California Environmental Quality Act (CEQA).

The City has repeatedly expressed its concern with the project's inconsistencies with the General Plan and the Hillside Planned Development Ordinance throughout the application process. Over time, the Planning Commission, Residential Development Allocation Committee, and City Staff have all recommended that the application be denied unless the applicant revises the proposal to be in compliance with the General Plan. Despite such clear direction from the City, the applicant has not modified its plans. In fact, from the visual simulations, it appears that the majority of the hill would be removed to develop the project. The applicant has requested an exemption from provisions of the General Plan that relate to development on steep hillsides.

We have consistently supported both the Staff's and the Planning Commission's unanimous recommendation to deny the proposal. We continue to share the sentiment expressed six years ago by Mayor Don Freitas at the June 12, 2007 City Council meeting that *the proposal—to reward the destruction of promised open space—is an "abomination."*

At this juncture, we encourage the City of Antioch Planning Commission to stand up for its own planning process and development requirements.

Open Space Designation

The 21 acres proposed for development were originally designated as Open Space as part of the applicant's previous Black Diamond Ranch development. The applicant requested re-designation of the Open Space to allow for further development. Allowing re-designation and development of the parcel suggests that any Open Space designated parcel, whether required by a project's conditions of approval as mitigations, or otherwise, can be set aside if a developer requests this change. The proposal would have significant cumulative and growth inducing impacts on the area, because it suggests that all "Open Space" designated parcels in the city are ultimately available for development.

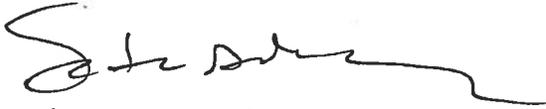
Approval of this application would set a terrible precedent that the General Plan can easily be overridden and that Open Space designations in the City of Antioch are meaningless.

Our Recommendation

Save Mount Diablo urges the Planning Commission not to adopt the Mitigated Negative Declaration and to deny this project which has been designed in a manner that is blatantly

inconsistent with the City's General Plan Hillside Design Policies and Article 24 of the zoning ordinance relating to the Hillside Planned Development District. Save Mount Diablo supports the City of Antioch in standing up to maintain its planning and regulatory framework. If the city chooses to continue consideration of the project, an Environmental Impact Report must be prepared.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read 'Seth Adams', with a long horizontal flourish extending to the right.

Seth Adams
Land Programs Director

Cc: Meredith Hendricks, Senior Land Programs Manager

9-5.1719 ADDITIONAL DESIGN STANDARDS.

(A) A parking area may not be used for the vehicle sales, renting, leasing, storage, repair work, dismantling, or outdoor open sales displays. Exceptions may be granted for special outdoor events by the Zoning Administrator.

(B) Surface water shall be controlled in conformance with the storm water control plan prior to being discharged to natural or engineered off-site drainage facilities and may not drain off or across public or private sidewalks, pedestrian walkways, or areas not designed as drainage facilities.

(C) Markings:

(1) Each standard parking space shall be marked with four inch wide double stripes 18 inches on center, as shown in subdivision (6) of this division.

(2) Each parking space and parking facility shall be identified by surface markings and shall be maintained in a manner so as to be readily visible and accessible at all times. Such markings shall be arranged to provide for orderly and safe loading, unloading, parking and storage of vehicles. Markings required to be maintained in a highly visible condition include striping, directional arrows, lettering on sign and in handicapped-designated areas, and field color.

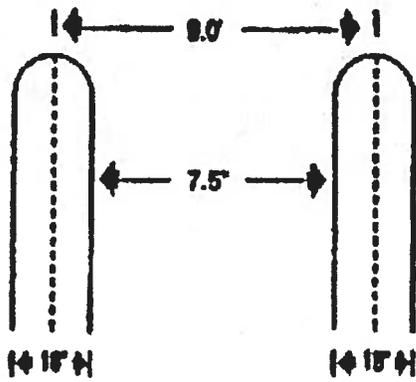
(3) One-way and two-way accesses into required parking facilities shall be identified by directional arrows. Any two-way access located at any angle other than 90° to a street shall be marked with a traffic separation stripe the length of the access, however this requirement does not extend to the parking aisles.

(4) Compact spaces shall be clearly identified by the word "compact" painted on the paved surface of the space in white block letters.

(5) Where the exit may not be clearly recognizable, directional signage must be provided.

(6) Concrete wheel stops shall be provided where parking spaces are perpendicular to a walkway, so that vehicles do not overhang such a walkway.

FIGURE 8



BLACK DIAMOND ESTATES HOMEOWNERS
TERRACES AT BLACK DIAMOND HOMEOWNERS

c/o 3555 Country Side Way
Antioch, California 94509
Email: rsjmikel@hotmail.com

October 27, 2013

VIA EMAIL and PERSONAL DELIVERY

Ms. Mindy Gentry, Senior Planner
[mgentry@ci.antioch.ca.us](mailto:mgency@ci.antioch.ca.us)
City of Antioch
Community Development Department, Planning Division
P.O. Box 5007
3rd and H Streets
Antioch, CA 94531-5007

Re: Project Name: The Pointe Project Subdivision, Antioch
Parcel: APN-089-160-010
Applicant: Discovery Builders, Inc.
Description: 60 Homes on 21-Acre Central Open Space Hillside
Public Hearing: November 6, 2013, 6:30 p.m.
Concerning: Intent to Adopt A Mitigated Negative Declaration

Dear Ms. Gentry:

In an effort to save time, a group of Black Diamond Estates Homeowners and Terraces at Black Diamond Homeowners (collectively, "**BDEHs**") are responding in one communication to:

(1) the Initial Study ("**Study**") prepared by Douglas Herring & Associates concerning The Pointe Project Residential Subdivision ("**Project**");

(2) **Oppose** the City of Antioch's proposed **General Plan Amendment ("GPA")** waiving requirements, including but not limited to, any GPA amendments **that pertain to waiving requirements for development on steep sites**, among other things, as follows:

"The proposed project would include General Plan amendments (GPA) to include the project site and surroundings in the Somersville Road Corridor Focus Area and to waive the requirements of General Plan Section 5.4.14 for residential properties within the focus area subject to the Planned Development process. The GPA would also exempt the project from provisions of General Plan Section 4.4.1.1. and Policy 10.3.2-e which both pertain to development on steep sites, among other things."

Ms. Mindy Gentry, Senior Planner
City of Antioch
October 27, 2013
Page 3 of 6

(3) **Oppose Zoning Text Amendment to Article 24 of the City of Antioch Municipal Code (Hillside Planned Development District Ordinance)** to allow residential properties located within the Somersville Road Corridor to be processed in accordance with the Planned Development process pursuant to Article 23 of the Antioch Municipal Code rather than processed pursuant to Article 24 as it currently stands concerning Hillside Planned Development.

(4) to submit written comments by October 28, 2013, pursuant to the Public Hearing Notice and Notice of Intent to Adopt A Mitigated Negative Declaration, dated October 8, 2013;

Additional Time to Submit Comments and Updated Pictures

BDEHs would like additional time after the November 6, 2013 meeting to consider and further respond to the Project's Study due to the Study's length and complexity. We would like to submit updated pictures to reflect the current landscapes, skylscapes and views of Black Diamond Estates today. The pictures shown in the study are not current. The simulated pictures do not accurately reflect what the neighborhood will look like after the grading is completed. (see AES1 and AES2, Study, pp. 23-24.)

Applicant's Zoning Designation Application from Low Density Hillside to Owner/Developer Remainder.

The Antioch City Council ("ACC") approved Discovery Builders, Inc.'s ("*Applicant*") application for converting the Black Diamond General Plan zoning designation of "Low Density Residential" and "Hillside Planned Development" into "Owner/Developer Remainder" for the remaining open space at Black Diamond Estates without notice or an opportunity for BDEHs to respond.

BDEHs object to the ACC's approval of Applicant's application for "Owner/Developer Remainder" zoning designation. BDEHs would like to take steps to restore the original zoning designation and to keep our hills as "Remaining Opening Space" as they are now.

Proposed Grading of Hills Eliminates A Natural Shelter from Antioch's High Winds and Extreme Temperatures During Summer Months; We Have No Trees That Provide Shade

"Implementation of the proposed Project would have two rather dramatic effects on the visual character of the site and the scenic vista of which it is a contributing component. First the proposed grading would eliminate the top of the hill."

We are vehemently opposed to transforming the remaining hillside on Countryside and Summit (and surrounding hills) from "open space" to a "residential subdivision. (See Study, p. 20, ¶ 1.) which would change the look of our entire community and expose us to Buchanan Road and the Antioch Focus Corridor, both unattractive.

Removing that 125 feet of the hill would expose homeowners and homes to even higher winds and temperatures during summer months. We have no shade trees currently in our newly-developed neighborhood. The grading would have a detrimental effect on ALL Black Diamond wildlife which most of us enjoy.

Grading these hills will generate negative seismic activity on lots in and around the Project. BDEHs are also concerned with what the seismic effect of the Project's extreme grading will be on retaining walls already in place, we feel it will cause cracks in the dirt, sink holes, cracks to concrete, and general instability of surrounding hills and land, as well as causing our homes to shift and crack.

The exact location, design and grading plans for the remaining nine custom homes that are not in the Project's gated community but will be developed behind Torgensen Court is not clear nor discussed in detail in the Study. We do not want steep grades or any GPA requirements waived, or Zoning Amendments approved for the hill behind Torgensen Ct.

Grading the hill will destroy Black Diamond's skylines and beautiful mountain scapes that BDEHs currently enjoy and that should be protected under Article 24 of Antioch's Municipal Code. *The hill, as it appears now*, is the main reason we all decided to purchase our Black Diamond homes. The hill is a part of the beauty of Antioch, the personality and charm of our neighborhood and needs to remain its current state indefinitely for all to enjoy.

Project's Proposed Gated Community and Emergency Access Road to be Maintained By A Homeowners Association

The Project will have an adverse effect on the neighborhood as a whole because the proposed gated community to be maintained by a homeowner's association ("HOA") lies directly in the center of an established, ungated community that is not maintained by an HOA. BDEHs feels that an HOA of any sort is not a good fit. Many of us purchased our Black Diamond homes *specifically* because there is no HOA. We want our community to remain beautiful with an open feel, not an urban feel. We do not want a fenced community within our established, friendly community.

Additionally, HOAs do not work in today's economy because there are members that do not pay their monthly dues causing the HOA's paying members the burden of carrying non-paying members. There is always animosity amongst neighbors. HOAs are very expensive to maintain because of the legally required yearly reserve studies, operating fees, requisite management company, liability insurance, bank accounts, etc. Lenders will not finance HOA properties with under-funded reserves and most of today's HOAs are under-funded.

If a construction defect is identified within the Project after it is completed, this would be detrimental to the Project's HOA reserves and that would snowball into our community.

The Project's proposed emergency access road will become a negative activity travel path generating unwanted vehicles, graffiti, noise, guests, and loss of quiet enjoyment thus reducing property values and quality of life.

Residents Were Told That The Hill Was To Remain Open Space and Would Be Left That Way

BDEHs were under the impression that the majority of the Project space was to remain Wildlife Remaining Open Space when we purchased our homes. We feel the Project will have

Ms. Mindy Gentry, Senior Planner
City of Antioch
October 27, 2013
Page 5 of 6

an adverse effect on the look and personality of our community as a whole, and expose homeowners on Torgensen to views of Buchanan and the Antioch Focus Corridor. It will have a negative impact on the wildlife that most of us enjoy. It will destroy our beautiful hillsides, and could expose us to increased heat and wind damage due to hill grading, resulting in loss of property values.

Pocket Park Is Not An Activity Park

Most of the Project's remaining open space would comprise Parcels A and B, the majority of which is steep sloped and shouldn't be considered any kind of pocket park because it cannot be used for exercise, walking or recreation.

Currently, there is no proposed bicycle routes or friendly walking areas to local shopping and coffee throughout our community or the Antioch Focus Corridor.

The Study's Traffic/Density and Pollution

We feel the ABAG statistics are under-stated so the figures contained in the Study's Explanation under Section XII that the population will only increase by 185 residents is not accurate, Study, p. 90. BDEHs feel this is understated based on occupants per household living in our community now. Traffic is currently a nightmare on Somersville and Buchanan Road. The James Donlon Bypass should be completed to relieve this. Traffic is on overload with no relief in sight.

Environmental Concerns

BDEHs would like to add to the Project Study's list of "Environmental Factors Potentially Affected List" on Study page 16, with additional categories: Greenhouse Gas Emissions, Transportation/Traffic, Population/Housing, and Recreation to the list of factors potentially affected by the Project.

We also have other environmental concerns such as the additional heat and wind our community will endure if the hill on Country Side is graded 125 feet and a road constructed. The only landscaping planned is for low-growing trees and plants. The summers are very hot in Antioch and we also have high winds (like today) that are derailed somewhat by the hills. We do not have any shade trees in our community currently.

Landscaping Concerns

Applicant currently uses ground cover on their homes in the form of brown wood chips that blow right off the lots, into the street gutters, and then into the storm drains because of the high winds in Black Diamond. The Study says that Applicant intends to use this same type of ground cover for landscaping for the Project which is of concern. It is also very unattractive.

The fact that Applicant only wants to plant low growing trees and plants to preserve views for The Pointe homeowners, is unacceptable.

MZI

Ms. Mindy Gentry, Senior Planner
City of Antioch
October 27, 2013
Page 6 of 6

BDEHs All Thought That After the Final Terraces Release That Construction Would Conclude and Applicant Would Leave Our Community

BDEHs thought construction would be completed after the final Terraces release (construction now in progress) was finished. The Project will generate much noise and inconvenience to homeowners with dust generated from grading causing breathing difficulties to residents with asthma, noise and toxic materials from construction of additional roads.

We are tired of the Builder and want them to leave. Discovery Builders have been doing construction in the neighborhood for a solid five years and BDEHs deserve a break from the noise, dust, dirt and other negative and inconvenient activity constructing homes produces.

Clarification of Notice's Last Paragraph

BDEHs need further clarification on the Notice's last paragraph and hope that further clarification can be provided:

"If you challenge the action of the Planning Commission on this matter in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the City concerning the Public Hearing."

Sincerely,

BLACK DIAMOND ESTATES HOMEOWNERS
AND TERRACES AT BLACK DIAMOND
HOMEOWNERS

BLACK DIAMON ESTATES & TERRACES HOMEOWNERS AT BLACK DIAMOND

62W

	First Name (Print)	Last Name (Print)	Street Address	Contact Phone Number	Signature
1	AUDRES	TEJADA	WIND CHIME ST.	(925)	
2	Patrick	HANAVAN	Markley Creek Dr.	(925)	
3	han	lee	" "	" "	
4	Nick	Pandelis	Merley Court D	925	
5	Arena	CORTEZ	WIND CHIME ST	925	
6	Craig	Kaliski	Wind Chime St	925	
7	Andrade	Victor	Wind Chime St	925	
8	Ray	ABROWD	Windchime St	415	
9	REGINA	ABROWD	Windchime St	415	
10	Paul	WESTERN	WIND CHIME ST	925	
11	Riley	Melvin	Country Side	510	
12	Sonia	ORTEGA	Country Side	(925)	
13	ANNIE	HOANG	Oak Knoll St	925	
14	Leanne	Rossu	Oak Knoll St	925	
15	Michael	PLATT	Oak Knoll St	(925)	
16	BO	FALCONE	oak Knoll St	925	
17	Alice	RAGANIO	Oak Knoll St.	925	
18	ELVESTER	WOODS	Markley Creek Dr.	925	

Elvester Woods at 10:57

BLACK DIAMON ESTATES & TERRACES HOMEOWNERS AT BLACK DIAMOND

	First Name (Print)	Last Name (Print)	Street Address	Contact Phone Number	Signature
1	ANGELICO	MIRANDA	BARN HOLLOW WAY	925	<i>Miranda</i>
2	ANGELA	MIRANDA	COUNTRYSIDE WAY	925	<i>Angela</i>
3	MICHAEL	VILLANUEVA	COUNTRYSIDE WAY	925	<i>Michael</i>
4	EVA	GARCIA	Barn Hollow Way	925	<i>Eva Garcia</i>
5	Clayton	Hirshka	Barn Hollow Way	925	<i>Clayton</i>
6	JESSIE	LEWIS	ROBERTS CT.	925	<i>Jessie</i>
7	Lakeshore	Smith	Key Ct	925	<i>Lakeshore</i>
8	Mario	Alvarez	Countryside Way	925	<i>Mario Alvarez</i>
9	Yanina	Abarez	Countryside Way	925	<i>Yanina</i>
10	Shawn	Timms	Roberts Ct	(925)	<i>Shawn</i>
11	RODNEY	KRAL	Roberts Ct	925	<i>Rodney</i>
12	Ruby	Mortimer	Roberts Ct	925	<i>Ruby</i>
13	Sandra M. Nunez	Porter	Sun Crests	925	<i>Sandra M. Nunez</i>
14	MCS	Rodriguez	Sun Crest	925	<i>MCS</i>
15	Sanku	Ternang	Sun Crest	925	<i>Sanku</i>
16	Victor	LaBardi	Sun Crest St	925	<i>Victor</i>
17	EDGAR	CREMINI/DAL	SUN CREST ST	925	<i>Edgar</i>
18					

BLACK DIAMON ESTATES & TERRACES HOMEOWNERS AT BLACK DIAMOND

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
First Name (Print)	Last Name (Print)	Street Address	Contact Phone Number													
HOSIEN	AMIRFATAHI	Torensen CT	(925) "													
COLMAR	PARVIZI	" Countryside Way	925-													
ROBERT D.	WILLIAMS	? Country Side Way	925-													
Daniel	HAYES	Countryside Way	925													
Timothy	Bimboon															
Daniel	PALEOY	COUNTRYSIDE WAY	925.													
E. Street	ERIC	Bunny Side Play	415-													
Alicia	HAYES	Country Side Play	925-													
Bernard	Mikel	Country Side Way	925-													
Ramon	VASH	MARKLEY CRES	925-													

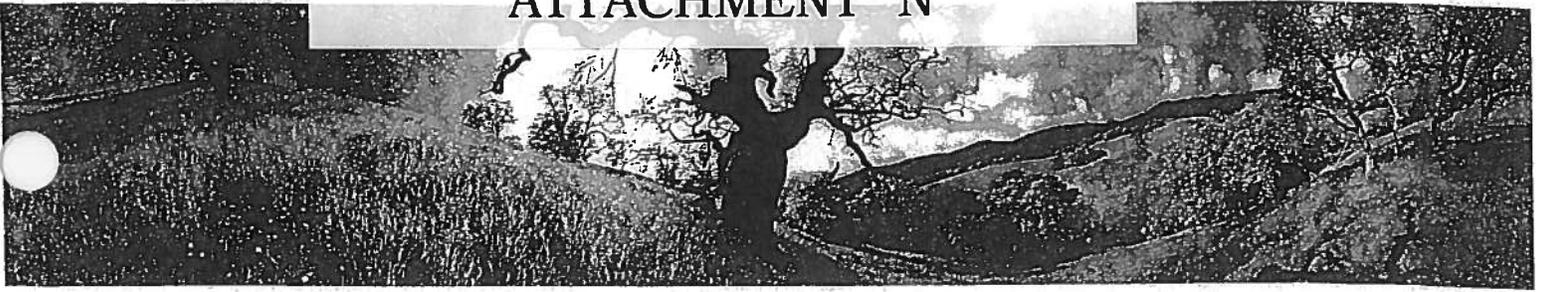
M25

BLACK DIAMON ESTATES & TERRACES HOMEOWNERS AT BLACK DIAMOND

92W

	First Name (Print)	Last Name (Print)	Street Address	Contact Phone Number	Signature
19	Alicia	Hayes	Country Side Way Torgenson Ct	925	<i>Alicia Hayes</i>
20	Margaret E.	Vertin	Country Side Way	925-	
21	Radhak	Mikel	Country Side Way	(925)	<i>Radhak Mikel</i>
22					
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34					
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36					

ATTACHMENT "N"



RECEIVED

NOV 04 2013

CITY OF ANTIOCH
COMMUNITY DEVELOPMENT

November 1, 2013

Planning Commission
City of Antioch
P. O. Box 5007
Antioch, CA 94531-5007

Subject: Proposed Pointe Project, Agenda Item No. 2, November 6th Planning Commission Meeting

Dear Chair Sanderson, Vice Chair Hinojosa, and Commissioners Azevedo, Motts, Miller, Baatrup and Westerman:

We have reviewed materials related to the proposed Pointe project. We observe that there are no responses to the comments that have been submitted, and to our knowledge, the document has not been circulated to the State Office of Planning and Research. This means that the California Department of Fish and Game, the Regional Water Quality Control Board, the Area Air Quality Control District and other key agencies appear not to have had the opportunity to review and comment on the project and associated Initial Study/Mitigated Negative Declaration.

We respectfully request that the Agenda Item No. 2 be delayed until Responsible and Trustee Agencies are notified of the project and environmental document, and the environmental consultant is provided the opportunity to respond to the issues raised. We also request notification in advance of the November 6th meeting that the item has been delayed.

All of you as decision makers and the wider public deserve full information, as is required by the California Environmental Quality Act (CEQA), before any action is taken on the project and associated environmental document.

Sincerely,

Nancy Woltering
Land Conservation Associate

Cc: Tina Wehrmeister, Director, Community Development Department
✓ Mindy Gentry, Senior Planner
Seth Adams, Land Program Director, Save Mount Diablo
Meredith Hendricks, Senior Land Programs Manager



ATTACHMENT "O"



4001 Fort Chicago Highway, Suite H

Concord, California 94520

(925) 682-6419

Fax (925) 689-7741

October 11, 2010

VIA HAND DELIVERY

Tina Wehrmeister
Community Development Director
City of Antioch
P.O. Box 5007
Antioch, CA 94531

RE: The Pointe (Subdivision 9017): Appeal of August 2nd, 2010 Administrative Decision by City Staff and City's 3rd Party CEQA Consultant Douglas Herring & Associates

Dear Tina:

Thank you for taking the time to meet with me on September 29, 2010 regarding our pending appeal of the administrative decision by City of Antioch staff that an EIR is the appropriate CEQA document for the Pointe project. I am certain you would agree that our meeting was very productive in discussing the ability of working together and allowing our project to move forward with the full support of City staff.

On August 11, 2010 and pursuant to Antioch Municipal Code section 1-4.01, we exercised our right to appeal a decision made by City of Antioch staff and its Consultant, to the Board of Administrative Appeals. As you acknowledge in your letter dated August 26, 2010, the Mayor or Mayor Pro Tem have the authority to transfer matters from the Board of Administrative Appeals directly to the City Council for their consideration. As the City Manager confirmed in our meeting, the Mayor has made the necessary request of which has been further affirmed, that our appeal is scheduled to be considered by the Council at its regular meeting of October 26, 2010.

I am well aware of the concerns that have been raised in the past by City staff regarding our application and its perceived inconsistencies. It remains our position that the Antioch City Council provided previous direction to City staff on June 12, 2007 and January 22, 2008 determining that this project, as proposed, does not result in an inconsistency with the applicable General Plan and Zoning Ordinance. However, notwithstanding that position, it was mutually agreed in our meeting that perhaps the proper course of action in order to allow this project as proposed, to move forward,

would be to amend our existing application. This proposed text amendment would include a General Plan Amendment, specific to the entire project site and allow City staff and its Consultant to recommend support for this project based upon its merits and make findings to support this project. For your review please find our proposed General Plan Amendment language with draft supporting findings. Approving this General Plan Amendment would exempt Parcel A of Subdivision 8586 from Section 5.4.14 of the General Plan and Article 24 of the municipal code. This text amendment would allow the City to make findings that this project is consistent with the General Plan.

I am anxious to work with you and City staff in order to address any further questions or concerns that may exist in connection with this text amendment. It is my goal that through this letter and notwithstanding your response, that we may be able to postpone, *but not withdraw*, our pending appeal, in order to allow City staff and its Consultant some additional time to process and support our proposed General Plan Amendment.

As also discussed in our meeting, it is understood that if City staff supports our proposed text amendment, its Consultant would be directed to revise the initial study and determine that with the inclusion of this text amendment, our proposed project would not result in an inconsistency with the applicable General Plan and Zoning Ordinance. With that revised determination, Staff should be able to further direct its Consultant to prepare a Mitigated Negative Declaration as the appropriate CEQA document for this project.

At your earliest opportunity, please review our proposed text amendment and confirm my understanding of our meeting in writing and also confirm that City staff supports our proposed General Plan Amendment so that we may consider postponing our pending appeal. Once again thank you for taking the time to meet with me last week and I look forward to reaching a mutually agreeable solution that will result in allowing us to move forward with our project as proposed.

Sincerely,



Salvatore N. Evola

Attachments (2):

Proposed Application Amendment

Draft General Plan and zoning amendment language with supporting findings

Cc: Jim Jakel
Mindy Gentry
Albert D. Seeno, Jr.
Albert D. Seeno, III.
Louis Parsons

General Plan Amendment Request:

“Parcel A of Subdivision 8586 is exempt from all goals and policies outlined in section 5.4.14 of the Antioch General Plan and also is exempt from Article 24, Hillside Development District, of the Antioch Municipal Code.”

Finding: On the General Plan Land Use Designation Map the Pointe is designated Low Density Residential. *(General Plan Land Use Map & Section 3.2 Goals of Growth Management)*

Finding: The General Plan provides a blue print for community development by designating land for different land uses. In designating uses, the General Plan takes into account what is the current pattern of developed land surrounding a parcel. *(Section 4.1.3 General Plan Land Use Designation and Development Feasibility)*

Finding: Low Density Residential designation for the Pointe provides the property owner an opportunity to develop a marketable product that is comparable to contiguous development. *(Section 4.1.3 General Plan Land Use Designation and Development Feasibility)*

Finding: The proposed Pointe application complies with the policy of maintaining a pattern of land uses that minimizes conflicts between various land uses, and promotes rational utilization of presently undeveloped and underdeveloped land, and supports the achievement of Antioch’s vision for its future. *(Section 4.1 Goals of Land Use Element)*

Finding: Provide adequate land for present and future urban and economic development needs, while retaining a compact, rather than a scattered, development pattern. The Pointe is consistent with this policy of the General Plan because it is an infill project that is surrounded by like development. *(Section 4.3.1 Community Structure Objective)*

Finding: The Pointe is an infill development adding to the intended character of the neighborhood by developing a similar housing type and subdivision. *(Section 5.4.11 Infill Development)*

Finding: The small knoll that this project is proposed on is not listed in the General Plan as a landmark or named as an area where views should be protected. It is not named on topographic maps, and is therefore an insignificant landform. *(General Plan Section 5.2.5.4 Landmarks)*

Finding: Table 4.A of the General Plan identifies appropriate land use types based on General Plan Land Use designations. This site is designated Low Density Residential. Table 4.A indicates that suburban single family, detached dwellings is an appropriate land use for this site.

Supplemental Information:

1. All proposed roadways within this project meet minimum Contra Costa County Fire Protection Standards for grades (maximum 16%).
2. This project is surrounded by developed and approved single family detached homes on four sides ranging from 5,000-10,000 sq ft.
3. Some grading is necessary in order to achieve the direction of the City Council which is to provide some useable private outdoor open space, a small pocket park and requested RV parking.
4. The terraced grading design enables every lot to have a view of the City and the delta.
5. The project provides a terraced landscape buffer between the existing development and this proposed project.
6. Properties to the south outside of the City limits are at a much higher elevation and planned development to the west is at a higher elevation.

ATTACHMENT "P"



4061 Port Chicago Highway, Suite H

Concord, California 94520

(925) 682-6419

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NOV 08 2010

CITY OF ANTIOCH
COMMUNITY DEVELOPMENT

November 5, 2010

VIA EMAIL & HAND DELIVERY

Mr. Jim Jakel
City Manager
City of Antioch
P.O. Box 5007
Antioch, CA 94531

RE: The Pointe (Subdivision 9017)

Dear Jim:

Thank you for your letter of October 28, 2010 regarding our pending appeal of the Pointe project. We definitely agree with the determination made by you and your staff that based on the merits and infill circumstance of our project that a site specific General Plan / Zoning Amendment is an appropriate approach to take in order to proceed with the entitlement process.

As you know and by way of background we submitted an appeal regarding the processing and Staff determination of this project on August 11, 2010. At your suggestion and in an effort to work towards a mutually agreeable process with City Staff, we met on September 29, 2010. At that meeting, we mutually discussed that notwithstanding our pending appeal, we should consider submitting a General Plan Text Amendment in order to eliminate a perceived inconsistency with the applicable General Plan and Zoning Ordinance. On October 11, 2010 a formal Amendment was submitted.

Following the submittal of our General Plan Text Amendment, and at the request of City Staff, we met together with our respective legal counsel on October 18, 2010 to further discuss our proposal. On October 19th, Kristina Lawson (our land use attorney) received an email from Lynn Nerland with some questions pertaining to our proposed application. On October 20, Kristina Lawson responded to Lynn's concerns and indicated that we are comfortable with the City's approach to doing a zoning amendment and we suggested a zoning text amendment to Article 24. As of the date of this letter, our legal counsel still has not received a response from the City Attorney's office as a follow-up. We are

anxiously awaiting a reply in order to move the process forward, and to continue to mutually work together on these proposed amendments.

In response to your letter dated October 28, 2010, it is still our desire to proceed with our proposed amendments and with "OPTION B" of your letter. Please find the attached items which you have requested in order to continue processing our application.

Notwithstanding the aforementioned efforts of working together with you and your staff, I need to set the record straight on the specific chain of events regarding our pending appeal. It was my understanding that our appeal was scheduled to be considered by the Council at its regular meeting of October 26, 2010 which was based upon your verbal confirmation at our meeting of September 29, 2010, where the Mayor had made the necessary request to transfer our appeal up from the Board of Administrative Appeals directly to the City Council for their consideration. This was also confirmed in writing in a letter dated October 14, 2010 from Tina Wehrmeister. Staff requested in this letter that we postpone this hearing and we responded on October 19, 2010 indicating we would agree to postpone a hearing providing the City make written confirmation to the items mentioned in our letter. We expected to receive a response to our October 19th letter in order to agree to postpone our appeal hearing but we never did. When reviewing the agenda for the October 26th City Council hearing, to our great surprise, our appeal was omitted from the agenda. The response from the City did not come until October 28, 2010 which was after what we thought to be our scheduled hearing. At no time between the last two correspondences did we either verbally, or in writing make a request to postpone the scheduled hearing of October 26, 2010.

It now appears that our pending appeal has been scheduled for discussion at the regular City Council meeting of November 9, 2010. I have read the staff report and possible actions and would respectfully request the Mayor or Mayor Pro-Tem file a notice to have our appeal heard directly by the City Council (Possible Action Item #2). *However*, I would additionally respectfully request the Council to set a hearing date to "a future date uncertain". I would hope you would agree that this is the most prudent course of action given our current mutual understanding and agreement on the direction we are taking with the processing of this project.

It continues to be our goal to work with your City staff, and its Consultant in processing the project and continuing to support our amended application. It also continues to be our understanding that if the City as the Lead Agency supports our proposed amendments, its Consultant would be directed to revise the Initial Study and determine that with the inclusion of these amendments, our proposed project would not result in an inconsistency with the applicable General Plan and Zoning Ordinance. With that revised determination, the City as the Lead Agency should be able to further direct its Consultant to prepare a Mitigated Negative Declaration as the appropriate CEQA document for this project.

Please advise us as to when your staff has had an opportunity to review the requested additional materials necessary in order to move the processing of our project forward and when we can expect to review the draft CEQA documents. We continue and

look forward to staying on track with this mutually agreeable solution that will result in allowing us to move forward with our project as proposed.

Sincerely,



Salvatore N. Evola

Cc: Mayor and City Council
Tina Wehrmeister, Community Development Director
Mindy Gentry, Associate Planner

Albert D. Seeno, Jr.
Albert D. Seeno, III.
Louis Parsons

Attachments (3):

1. Current title report prepared within the last three months
2. Vicinity Map – 10 copies
3. Further written detailed summary describing the characteristics of the proposal

General Plan Amendment Request:

“Parcel A of Subdivision 8586 is exempt from all goals and policies outlined in section 5.4.14 of the Antioch General Plan and also is exempt from Article 24, Hillside Development District, of the Antioch Municipal Code.”

Municipal Code Amendment to Article 24 Section 9-5.2402.

Propose to add subsection 9-5.2402 A (4):

“(4) If the project is infill, the City Council has the discretion to determine if the provisions of this Article need to be applied to the property.”

Rezone Request

We request that this property be rezoned to PD in accordance with Article 23 of the Antioch Municipal Code.

Narrative

This project proposes to subdivide approximately 21 acres into 60 lots. Of these 60 lots, 51 of them are proposed on the minor knoll while the remaining 9 lots will be incorporated into the existing Black Diamond Ranch project. The General Plan provides the blue print for community development by designating land for different uses. This property has a General Plan Land Use designation for Low Density Residential and the 60 lot proposal is consistent with this Land Use Designation and provides the property owner the opportunity to design a project that is similar to contiguous development. This property is surrounded on all four sides with constructed or approved single family residential projects ranging from approximately 5,000 – 10,000 sq ft.

Through previous preliminary hearings the City Council has requested the following:

Create large useable lots providing useable outdoor private open space and large building envelopes; provide a certain amount of RV parking; provide a small private open space area; provide that most lots be designed to enjoy views of the Delta and the City. All of these items have been accomplished through the iterative design process and the present project design is consistent with the direction of the City Council.

It is very important to review this project proposal in the context of how it relates to existing and planned surrounding development. Again, in this case, this project is entirely surrounded by existing or planned development. The fully constructed 286 lot Black Diamond Ranch subdivision surrounds this project to the north, east and south. To the west, there is an approved 415 lot project called Sky Ranch II. Construction plans for this project are underway. Based on the direction provided by the City Council and based on the fact that this is an infill project, the Hillside Design Policies and the Hillside Planned District are not the appropriate land use designations for this site. Therefore, we have requested that this parcel be exempt from these policies, an exception be added to Article 24 as it pertains to infill parcels, and that the property be rezoned to PD in accordance with Article 23. This small knoll is not a landmark identified by the City nor is it named on any topographic maps. The current proposal provides for a consistent land use pattern with surrounding development and provides for rational utilization of this undeveloped/underdeveloped remainder parcel which is a goal of the General Plan.

All 51 lots on the minor knoll are a minimum of 10,000 sq ft. In addition, the design of this project provides for a landscape buffer between the existing Black Diamond Ranch project and the proposed 51 lots on the minor knoll. This buffer will be landscaped softening the transition between the existing lots and the proposed lots. This project will be gated and private and there will be a Home Owners Association to maintain the private improvements and the proposed colors of the homes will have more neutral earth tones. This infill project will provide a small, upscale private community with tremendous views and high quality housing product. The aforementioned amendments to the General Plan and Municipal Code, along with the Zone Change request to PD, will allow the City to move forward and continue to proceed in processing this application.

ATTACHMENT "Q"



4061 Port Chicago Highway, Suite H
Concord, California 94520
(925) 682-6419
Fax (925) 689-7741

RECEIVED

JAN 03 2011

CITY OF ANTIOCH
COMMUNITY DEVELOPMENT

December 21, 2010

VIA EMAIL & US MAIL

Tina Wehrmeister
Community Development Director
City of Antioch
P.O. Box 5007
Antioch, CA 94531

RE: The Pointe (Subdivision 9017): General Plan / Zoning Text Amendment

Dear Tina:

Thank you for taking the time to meet with me on December 16, 2010 regarding the Pointe project and our pending General Plan / Zoning Text Amendments. As we both know, at the regular November 9, 2010 City Council meeting, the Mayor took the necessary action to have our pending appeal heard directly by the City Council, and at our request, the Council also provided the necessary direction setting a hearing to "a future date uncertain" allowing us to continue to work in a positive manner with Staff on our pending Amendments.

As discussed in our meeting, it continues to be my understanding that City Staff both supports our General Plan and Zoning Text Amendment and agreed it is the appropriate approach to take in order to proceed with the entitlement process of our project. It has been my opinion that based on the extraordinary merits and infill circumstance of our project, a site specific General Plan and Zoning Text Amendment, is the best approach to move this project forward. However, I further understand that Staff would like our General Plan Amendment proposal augmented.

Based upon our discussion and the aforementioned concerns, I am proposing to amend and modify our pending General Plan Amendment which was formally submitted to you on October 11, 2010. This will include an Amendment to General Plan Section 4.4.6.2 entitled Somersville Road Corridor Focus Area, and figure 4.3 of this section to include the Black Diamond Ranch and Pointe projects. This focus area concentrates on its importance as one of the City's primary sales tax generating areas which include auto dealers as well as regional retail. I propose that we amend the General Plan and add the following language to Section 4.4.6.2:

In order to provide continued support to sales tax generating uses, properties designated residential within the focus Area will be allowed to maximize development density through the Planned Development process contained within the Zoning Ordinance. As such, the requirements of Section 5.4.14, if applicable, of the General Plan shall be waived if it is shown that development conditions will be safe and in harmony with surrounding development patterns and uses.

Appropriate findings can be made to demonstrate the relationship between an increased number of upper-scale roof-tops and population, increasing the level of disposable income to spend in this current economically depressed corridor.

I would also propose that we amend the HPD section of the Zoning Ordinance and Code. This would include referencing the Somersville Road Corridor General Plan Focus Area and stating that properties within this Focus Area can process a regular PD in accordance with Article 23.

At your earliest opportunity please confirm in writing that the City will fully support this approach and would concurrently direct its Consultant to finish the Initial Study and determine that with the inclusion of these amendments, our proposed project would not result in an inconsistency with the applicable General Plan and Zoning Ordinance. With that revised determination, the City as the Lead Agency *should* be able to further direct its Consultant to prepare a Mitigated Negative Declaration as the appropriate CEQA document for this project.

As I have stated in the past, it continues to be our goal to work in a positive manner with City staff, and its Consultant in the processing of our project and our amended application. I appreciate your time and consideration in the review of this proposed modified amendment.

Sincerely,


Salvatore N. Evola

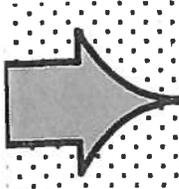
Cc: Jim Jakel, City Manager
Mindy Gentry, Associate Planner
Albert D. Seeno, Jr.
Albert D. Seeno, III.
Louis Parsons

Attachments (3):

1. General Plan Section 4.4.6.2 – Somersville Road Corridor Focus Area
2. Figure 4.3 – Somersville Road Corridor Focus Area
3. Further written detailed summary describing the characteristics of the proposal

area for family-oriented use, including both private development and public open spaces.

- z. The revitalization and redevelopment of Rodgers Point should include improved boat launch facilities, unless provision is made to provide a municipal boat launch at a different location in the community. Along with improved boat launch facilities, opportunities should be provided for the establishment of privately operated stackable dry boat storage.
- aa. Prior to or concurrent with approvals of any development applications at Rodgers Point, a Master Plan for the area shall be prepared and approved by the City. The Master Plan shall provide detailed guidance for environmental review, project-related land use, provision and financing of required public services and facilities, open space preservation, community design, recreational amenities, and community improvements.
- bb. "Anchor" commercial facilities such as restaurants or lodging/visitor services should be developed at Rodgers Point as part of the area's revitalization.
- cc. The distinctive streetscape existing within the downtown area should be expanded to encompass the all of the commercial and residential portions of the Rivertown/Urban Waterfront Focus Area. Entry monumtation, including signage, special landscaping, and, potentially, an overhead structure spanning the street, should be placed at the following locations:
 - Fourth Street at "L" Street
 - "L" Street at 10th Street
 - "A" Street at 6th Street
 - 10th Street at "L" Street.



4.4.6.2 Somersville Road Corridor. This Focus Area encompasses the commercial areas along Somersville Road from SR-4 north to Fourth Street, as well as the commercial areas south of the freeway, up to and including the Chevron property. The General Plan intends that existing auto dealerships be retained and revitalized along Somersville

Road. If the existing dealers ultimately decide to relocate from Somersville Road, the City should work with the dealers to secure alternative locations within the City of Antioch. Potential alternative locations include the Regional Commercial area within the East Lone Tree Specific Plan Focus Area and the SR-4 Frontage Focus Area.

a. Purpose and Issues. The Somersville Road corridor is one of Antioch's primary sales tax generators, encompassing automobile dealerships, the Somersville Towne Center mall, and other retail businesses. Uses along this corridor are aging, and in need of improvement. In addition, the Somersville Road interchange is heavily congested. Interchange capacity will be increased as part of improvements for SR-4. Interchange improvements could impact adjacent existing hotel uses.

- Automobile dealerships exist along Somersville Road. The City has worked in the past to improve the design of Somersville Road, and to assist existing dealerships to modernize their facilities. Relocating the dealerships to another location within Antioch could reduce the amount of land available for industrial use, and may or may not be desirable for the dealerships. The dealerships have generated a customer base in their present location, though they do not have freeway visibility.
- South of the freeway is Somersville Towne Center, formerly known as County East Mall. The center was an open air complex, and was enclosed in the 1970s. The mall has not provided the level of retailers, mix of uses (e.g., restaurants), or design interest that could be supported by the community. In addition, vehicular access to the mall from Somersville Road is difficult due to limited parking. Pedestrian entry along the easterly side of the mall is awkward due to the presence of commercial uses with access directly from the parking lot.

There have been discussions in the past regarding adding another anchor tenant. However, the present design of the mall,

with a series of tenants having their entries open to the parking lot along Somersville Road, limits simple design solutions. As a result, there have been suggestions that the mall be revitalized as a mixed-use specialty retail, entertainment, office, and residential project.

- The Focus Area's commercial uses are auto-oriented, and its general character is that of a typical older suburban community. Improvements to signage, street-scapes, and building façades are needed throughout the developed portion of this Focus Area, along with improved pedestrian linkages in the mall area.
- At the southern end of this Focus Area is the Chevron property, which is a 193-acre relatively flat, vacant parcel south of Buchanan Road. It is an unincorporated island surrounded by the cities of Antioch and Pittsburg, and is within Antioch's sphere of influence. The site has been extensively disturbed as the result of its previous use as an oil storage facility. With the extension of James Donlon Road, the Chevron property will become an important gateway into west Antioch.

b. Policy Direction. Efforts should be continued to keep existing automobile dealerships in their present locations, and to upgrade their facilities. Somersville Towne Center should be improved and expanded into a cohesive mixed-use retail, retail, entertainment, and residential center. Pedestrian and other urban design improvements need to be provided to increase linkages between the mall and adjacent uses. Special effort should be undertaken to improve access to the mall site from Somersville Road, and to improve the distribution of parking around the mall.

The following policies apply to the Somersville Road Corridor Focus Area.

- a. Areas designated "*Commercial*" on Figure 4.3 shall comply with the provisions of the Somersville Road Commercial land use category (see Table 4.A).

- b. Areas designated "*Regional Commercial*" on Figure 4.3 shall comply with the provisions of the Regional Commercial land use category (see Table 4.A).
- c. Areas designated "*High Density Residential*" in Figure 4.3 shall comply with the provisions of the High Density Residential land use category (see Table 4.A).
- d. Expansion of Somersville Towne Center is encouraged, including new and expanded retail, particularly addition of new anchor tenants (department stores), higher end specialty retail, and sit-down restaurants. As shown in Figure 4.3, the General Plan permits expansion of the mall to the west. Expansion of the mall could also occur vertically by adding a second story of shops. Also permitted is the conversion of the existing mall into a mixed-use commercial, office, and residential complex. Revitalization of the mall into a mixed use concept could occur alongside expansion of the existing mall itself through development of multi-story office buildings, either free-standing or attached to the mall.
- e. In cooperation with the City of Pittsburg, work to extend Century Boulevard to Buchanan Road as a two-lane arterial, with a connection to Los Medanos College.
- f. The development of the "Chevron property," located on the west side of Somersville Road, south of Buchanan Road, shall comply with the following provisions.
 - The primary land use intent for this site is a mix of low-rise business park and medium density residential housing products.

For illustrative purposes, Figure 4.3 shows the property divided into business park and residential portions. The specific development design of the site shall be determined through approval of a planned

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development for the site. A minimum of 40 percent of the site is to be devoted to business park and related commercial and open space uses.

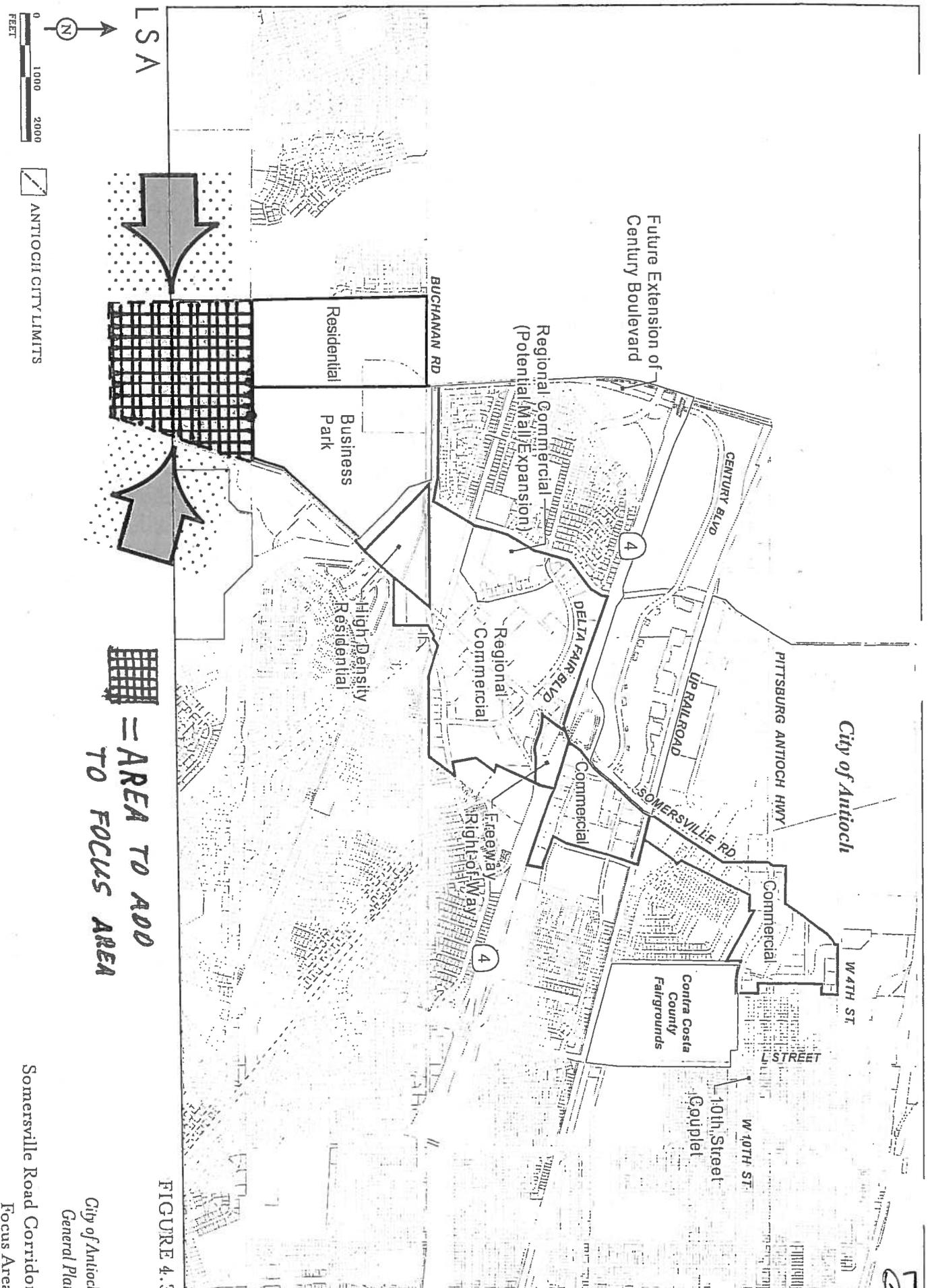
- Business Park and related commercial uses shall front along the entire length of Somersville. Although it would be desirable to have business park and related commercial uses fronting along Buchanan Road at least as far west as the flood control channel, residential uses may front along Buchanan Road. The Business Park areas shall comply with the provisions of the Business Park land use category.
- Development of the site should be heavily landscaped. Business park and related commercial uses should be one or two stories, and clustered in a park-like setting.
- A common design theme for business park and residential uses within the 193-acre site is to be provided, including compatible architectural, landscaping, and signage.
- Residential uses within the Chevron site may consist of a combination of small lot single family detached and multi-family development, and shall be consistent with the provisions of the Medium Density Residential land use category.
- Adequate separation shall be maintained between new office and multi-family uses and existing residential neighborhoods. If parking areas are located along the residential edge, sufficient noise mitigation shall be provided.
- As part of site development, a community gateway monument shall be provided, including distinctive signage and landscaping at the northwest corner of the site, expressing the theme of Antioch as "Gateway to the Delta." Such signage and monumentation must portray a high quality design image for the City.

- The City should work with the owner of the Chevron property to annex it into Antioch.
- g. An urban design plan should be prepared for the entire Somersville Road Corridor. The design plan should define a design theme; set specific architectural, sign, landscape, and streetscape design standards for the corridor; and select specific designs for public improvements such as street lighting, special paving sections at intersections, and street furniture.
- h. A façade improvement program should also be undertaken for existing commercial uses within this Focus Area, with assistance from the Antioch Redevelopment Agency.

4.4.6.3 Eastern Waterfront Employment Area. This Focus Area encompasses the industrial areas in the northeastern portion of the City and its General Plan study area, south of the San Joaquin River, west of the SR-160 freeway. The Eastern Waterfront Employment Area is approximately 474 acres in size, and lies partly within the City of Antioch and partly within unincorporated territory.

a. Purpose and Primary Issues. As a result of shifts in the national and regional economy, several of the heavy industrial uses located along the San Joaquin River have closed, or have significantly scaled back their operations. Thus, it is necessary to plan for revitalization of former heavy industrial lands along the river, including transition to other uses. This may include environmental clean up of brownfields resulting from years of heavy industrial use. To the east of Fulton Shipyard and south of the Antioch Dunes National Wildlife Refuge is the abandoned City Sewage treatment plant site. The development feasibility of this site may depend in part upon the clean up and improvement of nearby areas.

A large portion of this Focus Area, primarily north of Wilbur Avenue and the BNSF rail line, is within unincorporated territory, and would need to be annexed if Antioch is to have any control over future land use. Portions of this area are rail-served, which provides

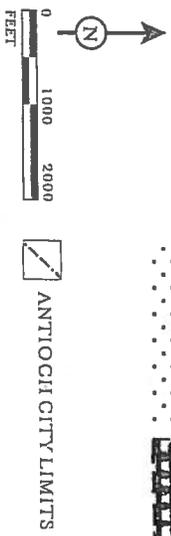


AREA TO ADD
TO FOCUS AREA

FIGURE 4.3

City of Antioch
 General Plan

Somersville Road Corridor
 Focus Area



GENERAL PLAN

Amend the Somersville Road Corridor Focus Area map (figure 4.3) to include both the Black Diamond Ranch and Pointe properties.

This focus area concentrates on its importance as one of the City's primary sales tax generating areas which include auto dealers as well as regional retail. Amend the General Plan adding the following language:

In order to provide continued support to sales tax generating uses, properties designated residential within the focus Area will be allowed to maximize development density through the Planned Development process contained within the Zoning Ordinance. As such, the requirements of Section 5.4.14, if applicable, of the General Plan shall be waived if it is shown that development conditions will be safe and in harmony with surrounding development patterns and uses.

Make appropriate findings to demonstrate the relationship between an increased number of upper-scale roof-tops and population, increasing the level of disposable income to spend in this current economically depressed corridor.

ZONING ORDINANCE

Amend the HPD section of the Zoning Ordinance and Code referencing the Somersville Road Corridor General Plan Focus Area indicating:

Residential properties located within the Somersville Road Corridor General Plan Focus Area shall have the ability to process a regular PD in accordance with Article 23.

ATTACHMENT "R"

General Plan land use map or in Focus Area policies. Overall, residential developments within the Estate Residential land use category should provide large lots, and project a semi-rural character.

Neighborhood entry signage is encouraged to create a sense of community, and define Estate Residential neighborhoods as special places. Within hillside areas, dwelling units should be clustered on land that is relatively flat, and no development should occur on slopes exceeding 20 percent. Due to the unique nature of these areas, a clustering of units may be needed to accommodate the unit yield and still maintain the topographic uniqueness of the area. Developments in these areas should be oriented around a major amenity that increases public exposure to the more hilly terrain. Examples of such amenities include golf courses and equestrian centers.

- *Appropriate Land Use Types:* See Table 4.A
- *Maximum Allowable Density:* One dwelling unit per developable acre (1 du/ac) or two dwelling units per developable acre (2 du/ac)
- *Anticipated Population per Acre:* Four (4) to eight (8) persons per acre

Low Density Residential. These areas are generally characterized by single-family homes in traditional subdivisions. Areas designated Low Density Residential are typically located on gently rolling terrain with no or few geological or environmental constraints. The residential neighborhoods of southeast Antioch reflect this residential density.

- *Appropriate Land Use Types:* See Table 4.A
- *Maximum Allowable Density:* Four dwelling units per gross developable acre (4 du/ac)
- *Anticipated Population per Acre:* Twelve (12) to Fourteen (14) persons per acre

Medium Low Density. These areas are generally characterized by single-family

homes in typical subdivision development, as well as other detached housing such as zero lot line units and patio homes. Duplex development would generally fall into this development density. Areas designated Medium Low Density are typically located on level terrain with no or relatively few geological or environmental constraints. Older subdivisions within the northern portion of Antioch reflect this residential density.

- *Appropriate Land Use Types:* See Table 4.A
- *Maximum Allowable Density:* Six dwelling units per gross developable acre (6 du/ac)
- *Anticipated Population per Acre:* Fourteen (14) to Eighteen (18) persons per acre

Medium Density Residential. A wide range of living accommodations, including conventional single-family dwellings, small lot single-family detached dwellings, mobile homes, townhouses, and garden apartments, characterizes the Medium Density land use designation. Development in these areas can be expected to be a maximum of two (2) stories, and include generous amounts of public or open space for active and passive recreational uses. Lands adjacent to parks, commercial uses, transit routes and rail stations, and arterial roadways would be appropriate for the upper end of the allowable development intensity for this category. Other lands would serve as a buffer or transition between lower density residential areas and higher density residential and commercial areas, as well as areas exhibiting greater traffic and noise levels.

At the higher end of the density range for this category multi-family townhouse and apartment development is expected to be predominant. Where the Medium Density land use designation serves as a transition or buffer, lower density townhouse and small lot, single-family development would be the predominant uses.

- *Appropriate Land Use Types:* See Table 4.A

ATTACHMENT "S"

- area for family-oriented use, including both private development and public open spaces.
- z. The revitalization and redevelopment of Rodgers Point should include improved boat launch facilities, unless provision is made to provide a municipal boat launch at a different location in the community. Along with improved boat launch facilities, opportunities should be provided for the establishment of privately operated stackable dry boat storage.
 - aa. Prior to or concurrent with approvals of any development applications at Rodgers Point, a Master Plan for the area shall be prepared and approved by the City. The Master Plan shall provide detailed guidance for environmental review, project-related land use, provision and financing of required public services and facilities, open space preservation, community design, recreational amenities, and community improvements.
 - bb. "Anchor" commercial facilities such as restaurants or lodging/visitor services should be developed at Rodgers Point as part of the area's revitalization.
 - cc. The distinctive streetscape existing within the downtown area should be expanded to encompass the all of the commercial and residential portions of the Rivertown/Urban Waterfront Focus Area. Entry monumentation, including signage, special landscaping, and, potentially, an overhead structure spanning the street, should be placed at the following locations:
 - Fourth Street at "L" Street
 - "L" Street at 10th Street
 - "A" Street at 6th Street
 - 10th Street at "L" Street.

4.4.6.2 Somersville Road Corridor. This Focus Area encompasses the commercial areas along Somersville Road from SR-4 north to Fourth Street, as well as the commercial areas south of the freeway, up to and including the Chevron property. The General Plan intends that existing auto dealerships be retained and revitalized along Somersville

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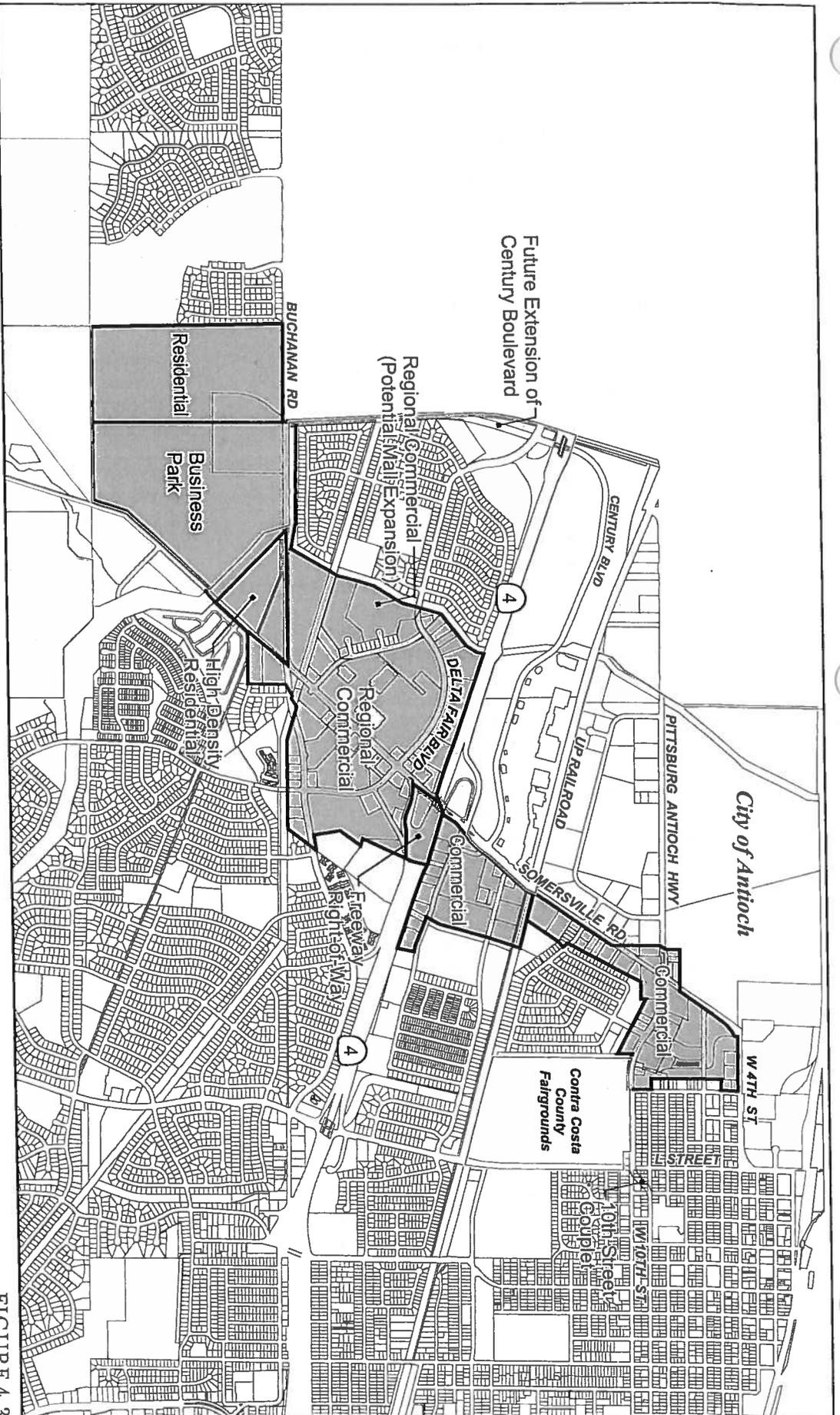
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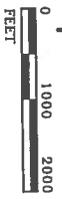
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LSA



ANTIOCH CITY LIMITS

FIGURE 4.3

City of Antioch
 General Plan
 Somersville Road Corridor
 Focus Area

development for the site. A minimum of 40 percent of the site is to be devoted to business park and related commercial and open space uses.

- Business Park and related commercial uses shall front along the entire length of Somersville. Although it would be desirable to have business park and related commercial uses fronting along Buchanan Road at least as far west as the flood control channel, residential uses may front along Buchanan Road. The Business Park areas shall comply with the provisions of the Business Park land use category.
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a. Purpose and Primary Issues. As a result of shifts in the national and regional economy, several of the heavy industrial uses located along the San Joaquin River have closed, or have significantly scaled back their operations. Thus, it is necessary to plan for revitalization of former heavy industrial lands along the river, including transition to other uses. This may include environmental clean up of brownfields resulting from years of heavy industrial use. To the east of Fulton Shipyard and south of the Antioch Dunes National Wildlife Refuge is the abandoned City Sewage treatment plant site. The development feasibility of this site may depend in part upon the clean up and improvement of nearby areas.

A large portion of this Focus Area, primarily north of Wilbur Avenue and the BNSF rail line, is within unincorporated territory, and would need to be annexed if Antioch is to have any control over future land use. Portions of this area are rail-served, which provides

ATTACHMENT "T"

- are to be designed to communicate clearly, and are to be integrated into the overall design of the project.
- g. Pole signs are not to be permitted. Signs are to be designed to reflect the general low-rise character of the City. Low monument-type signs are appropriate for identifying freestanding commercial uses, shopping centers, and business/office complexes. Where roof signs are permitted, they are to be architecturally integrated with the overall building design.
 - h. Individual tenant signs within centers should be designed as part of an overall sign program, integrating all signs with the architectural design of the project.
 - i. "Corporate" and "franchise" signage is discouraged, unless it is blended into the overall design theme of the center within the sign is located.
 - j. Gas station canopies with corporate colors, logos, and signs are discouraged unless their design is blended into the overall design of the adjacent structure.

5.4.14 Hillside Design Policies

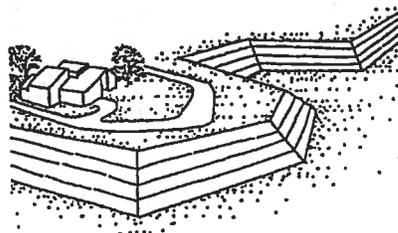
- a. Design hillside development to be sensitive to existing terrain, views, and significant natural landforms and features.
- b. Projects within hillside areas shall be designed to protect important natural features and to minimize the amount of grading. To this end, grading plans shall conform to the following guidelines.
 - *Slopes less than 25%:*
Redistribution of earth over large areas may be permitted.
 - *Slopes between 25% and 35%:*
Some grading may occur, but landforms need to retain their natural character. Split-level designs and clustering are encouraged as a means of avoiding the need for large padded building areas.
 - *Slopes between 35% and 50%:*
- c. Development and limited grading can occur only if it can be clearly demonstrated that safety hazards, environmental degradation, and aesthetic impacts will be avoided. Structures shall blend with the natural environment through their shape, materials and colors. Impact of traffic and roadways is to be minimized by following natural contours or using grade separations. Encouraged is the use of larger lots, variable setbacks and variable building structural techniques such as stepped or post and beam foundations are required.
 - *Slopes greater than 50%:*
Except in small, isolated locations, development in areas with slopes greater than 50% should be avoided.
- d. Manufactured slopes in excess of five vertical feet (5') shall be landform graded. "Landform grading" is a contour grading method which creates artificial slopes with curves and varying slope ratios in the horizontal and vertical planes designed to simulate the appearance of surrounding natural terrain. Grading plans shall identify which slopes are to be landform graded and which are to be conventionally graded.
- e. The overall project design/layout of hillside development shall adapt to the natural hillside topography and maximize view opportunities to, as well as from the development.
- f. Grading of ridgelines is to be avoided wherever feasible, siting structures sufficiently below ridgelines so as to preserve unobstructed views of a natural skyline. In cases where application of this performance standard would prevent construction of any structures on a lot of record, obstruction of views of a natural skyline shall be minimized through construction techniques and design, and landscaping shall be provided to soften the impact of the new structure.
- f. Hillside site design should maintain an informal character with the prime

determinant being the natural terrain. This can be accomplished by:

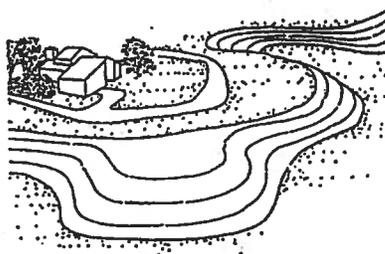
- utilizing variable setbacks and structure heights, innovative building techniques, and retaining walls to blend structures into the terrain, and
- allowing for different lot shapes and sizes.

g. Buildings should be located to preserve existing views and to allow new dwellings access to views similar to those enjoyed from existing dwellings.

h. Streets should follow the natural contours of the hillside to minimize cut and fill, permitting streets to be split into two one-way streets in steeper areas to minimize grading and blend with the terrain. Cul-de-sacs or loop roads are encouraged where necessary to fit the terrain. On-street parking and sidewalks may be eliminated, subject to City approval, to reduce required grading.



Unacceptable



Acceptable

i. Clustered development is encouraged as a means of preserving the natural appearance of the hillside and maximizing the amount of open space. Under this concept, dwelling units are grouped in the more level portions of the site, while steeper areas are preserved in a natural state.

j. Project design should maximize public access to canyons, overlooks, and open space areas by:

- providing open space easements between lots or near the end of streets or cul-de-sacs; and
- designating public pathways to scenic vistas.

k. Permit the use of small retaining structures when such structures can reduce grading, provided that these structures are located and limited in height so as not to be a dominant visual feature of the parcel.

- Where retaining walls face public streets, they should be faced with materials that help blend the wall into the natural character of the terrain.
- Large retaining walls in a uniform plane should be avoided. Break retaining walls into elements and terraces, and use landscaping to screen them from view.

l. Lot lines shall be placed at the top of slopes to facilitate maintenance by the down slope owner, who has the greater "stake" in ensuring the continued integrity of the slope.

m. The overall scale and massing of structures shall respect the natural surroundings and unique visual resources of the area by incorporating designs which minimize bulk and mass, follow natural topography, and minimize visual intrusion on the natural landscape.

- The overall height of a building is an important aspect of how well it fits into

- the existing character of the neighborhood and its hillside environment. Houses should not be excessively tall so as to dominate their surroundings or create a crowded appearance in areas of small lots. Structures should generally be stepped down hillsides and contained within a limited envelope parallel to the natural grade, rather than "jutting out" over natural slopes.
- Building forms should be scaled to the particular environmental setting so as to complement the hillside character and to avoid excessively massive forms that fail to enhance the hillside character.
 - Building facades should change plane or use overhangs as a means to create changing shadow lines to further break up massive forms.
 - Wall surfaces facing towards viewshed areas should be minimized through the use of single story elements, setbacks, roof pitches, and landscaping.
- n. Collective mass rooflines and elements should reflect the naturally occurring ridgeline silhouettes and topographical variation, or create an overall variety, that blends with the hillside.
- o. Based upon the graphic principle that dark colors recede and light colors project, medium to dark colors which blend with the surrounding environment should be used for building elevations and roof materials in view-sensitive areas.
- p. Architectural style, including materials and colors, should be compatible with the natural setting. The use of colors, textures, materials and forms that will attract attention by contrasting or clashing with other elements in the neighborhood is to be avoided. No one dwelling should stand out.
- q. The interface between development areas and open space is critical and shall be given special attention. Slope plantings should create a gradual transition from developed slope areas into natural areas. By extending fingers of planting into existing and sculptured slopes, the new landscape should blend in with the natural vegetation.
- r. Planting along the slope side of a development should be designed to allow controlled views out, yet partially screen and soften the architecture. In general, 50 percent screening with plant materials should be accomplished.
- Trees should be arranged in informal masses and be placed selectively to reduce the scale of long, steep slopes.
 - Shrubs should be randomly spaced in masses.
 - Skyline planting should be used along recontoured secondary ridgelines to recreate the linear silhouette and to act as a backdrop for structures. Trees should be planted to create a continuous linear silhouette since gaps in the planting will not give the desired effect.
 - Trees that grow close to the height of structures should be planted between buildings to eliminate the open gap and blend the roof lines into one continuous silhouette.
 - For fire prevention purposes, a fuel modification zone shall be provided between natural open space and development.
- s. New development within hillside areas shall be conditioned upon:
- the preparation and recordation of a declaration of covenants, conditions and restrictions providing for the development and maintenance of manufactured slopes;
 - in the case of a parcel map or subdivision, the subdivider's supplying a program and/or staff for preventive maintenance of major manufactured slope areas. Such program must be approved prior to approval of a final map, and shall include homeowner slope maintenance requirements and

guidelines to be incorporated into the declaration of covenants, conditions, and restrictions.

5.4.15 Landscaping

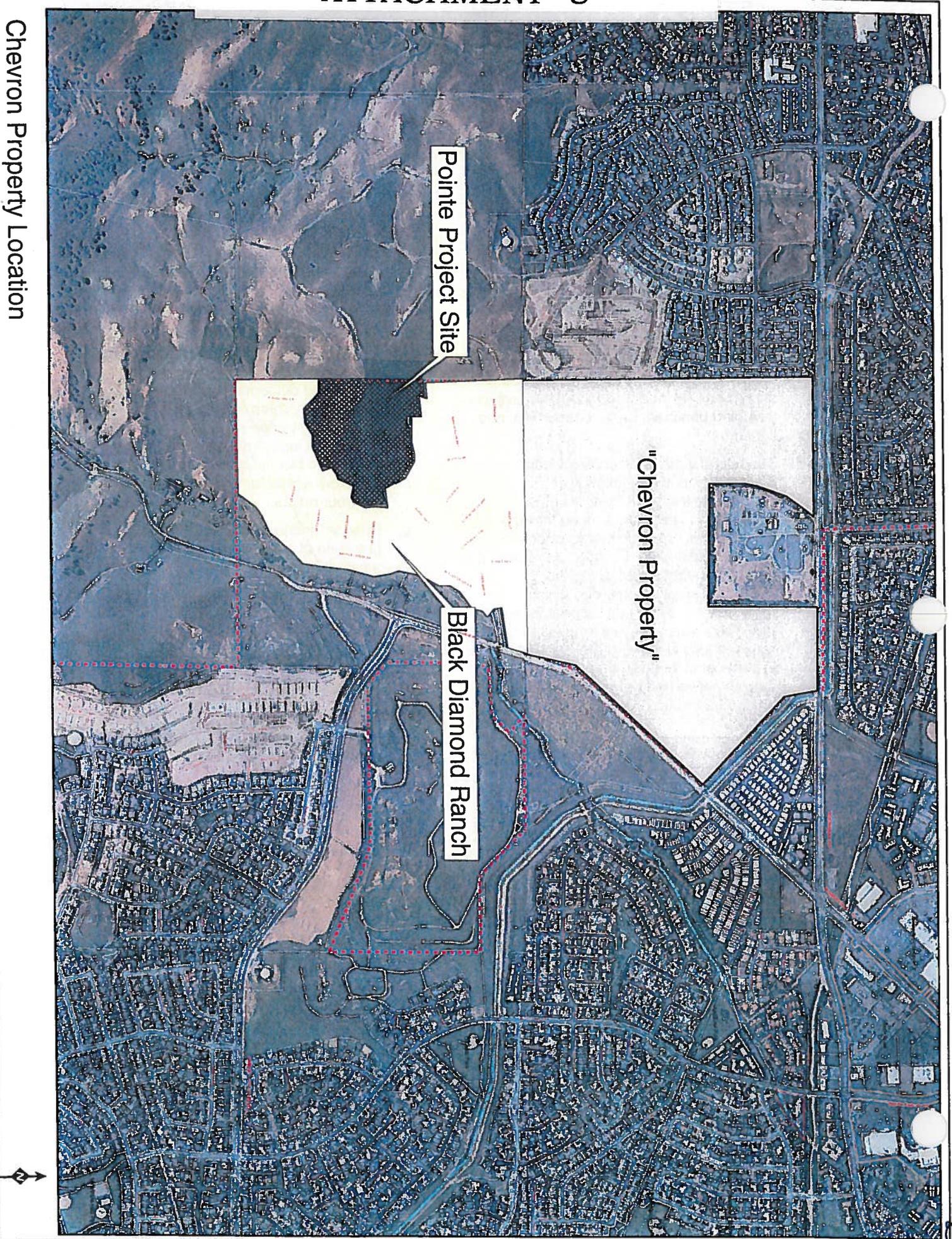
- a. Landscape design should accent the overall design theme and help to reinforce the pedestrian scale of the project. This could be accomplished through the use of structures, arbors, and trellises that are appropriate to the particular architectural style of the project. Pedestrian amenities should be provided throughout the project including benches, trash receptacles, and lighting.
- b. The use of water efficient landscape materials and the installation of appropriate irrigation systems are required. This does not mean that the landscape is brown, displays a "desert" theme, or is devoid of plants. However, it does mean that a well designed landscape shall be provided which produces the same lush appearance as other non-water efficient landscapes, but requires less water and maintenance. Where consistent with the site's design theme, native and naturalized species should be featured in the site's landscape design.
- c. Whenever landscaping of the public parkway is required it should be designed in coordination with the project's on-site landscaping to provide an integrated design concept along street frontages.
- d. Project entries should be designed as special statements reflective of the character of the project in order to establish identity for tenants, and visitors. Accent planting, specimen trees, enhanced paving, and project entry signs should be used to reinforce the entry statement.
- e. Landscaping should be designed as an integral part of the overall site plan design. Landscaping and open spaces should not be relegated to pieces of the site left over after buildings, parking, and circulation have been laid out.

5.4.16 Civic Arts Policies

- a. Support the efforts of the Civic Arts Organization to provide cultural and civic activities to residents and visitors, including such activities as art shows, school competitions, public exhibitions, art in public places, musical performances, dance recitals, plays, film festivals, and artists in residence.
- b. Pursue the establishment of facilities for the arts, including a museum; gallery space; and outdoor amphitheater for community events, musical performances, and plays; storage space for local arts groups; an indoor performance facility in addition to the Antioch community Center; and work space for both professional and amateur artists.
- c. Provide incentives to developments for the provision of outdoor art in public places in a variety of forms, such as stationary and kinetic sculptures, commemorative plaques, and murals. Such incentives could include, but are not necessarily limited to, credits for the provision of open space, density bonuses, or considerations in the City's residential development allocation system.

ATTACHMENT "U"

Chevron Property Location



21

4.4.1 Land Use Designations

4.4.1.1 Residential Land Use Designations.

Six residential land use designations are set forth to provide for development of a full range of housing types, in conjunction with residential development within General Plan Focus Areas. Permitted maximum land use and anticipated population densities are described for each designation. Densities are stated as the maximum permissible number of dwelling units per net acre that exists within the project site *prior to any new dedication requirements*. Density is assumed to accrue only to lands that are "developable."

Developable acres are those that are not encumbered by prior dedications of easements or rights-of-way, and are not so steep (generally over 25%), unstable, flood-prone or subject to other hazards as to be unable to support new development. Achievement of the maximum allowable density is neither guaranteed nor implied by the General Plan. The final density of any particular residential development type is dependent upon development design; any physical, geological, or environmental constraints that might be present within the site; available infrastructure and services; and other factors. The development standards that are established in the Antioch zoning ordinance might also limit attainment of maximum allowable densities.

Second units on a residential lot and home occupations are permitted by local regulation. Provision of density bonuses as allowed by State law and City ordinance may result in development densities in excess of the nominal maximum density for any land use designation.

Estate Residential. Estate Residential land uses are planned as a transition between urban and rural areas, and for areas that are not suited for a more intensive form of development because of topography, geologic conditions, or urban service limitations. Estate Residential areas will also serve to provide "executive" housing on large lots, thereby expanding the community's range of housing types.

On designated lands where topography is not limiting, the representative form of development would be single-family homes on lots that average one acre in size. For properties so designated that are situated in steeper hillside settings, clustering of units and utilization of other hillside development techniques are anticipated and encouraged. The final approved and built density on lands in the Estate Residential land use designation should reflect the location of these lands as low-density residential transition areas between the urbanized Antioch and the undeveloped Mount Diablo Range of hills.

Since this designation is planned at the urban/non-urban interface, the type and level of development may require different construction standards, such as narrower street widths with parking along only one side of the street or no on-street parking, greater setbacks, limited sidewalk areas, etc. Development may require a different level of services than that required for strictly urban land uses. Projects that minimize the demand for urban services and provide major funding for construction of needed service facilities would be appropriate.

Environmental constraints such as steep slopes, riparian habitats, unstable soil conditions, sensitive flora and fauna, and visual prominence are often found on lands with the Estate Residential designation. These constraints may make development of these areas extremely sensitive, and could require creative and imaginative site planning in all projects. The steepness of the slopes and the visual prominence of these areas make many of these resources important public amenities to be preserved for all of the citizens of Antioch. Finally, as these areas will serve as a buffer between the urbanized City of Antioch and the undeveloped open space to the southwest, development must be at a level, which serves as an appropriate transition between urban and non-urban environments.

Development in this category is generally limited to a maximum of one (1) unit per gross developable acre, unless a density of two (2) units per developable acre is specified on the

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with views to the north and east. To preserve open space and views along the River, and to attract residents down to the area, the City has developed projects such as the Municipal Public Marina (built in 1988) and the Antioch Riverfront Promenade.

In 1981, the City enacted the Hillside Planned Development (HPD) Ordinance to protect hillsides, ridges, and ridgelines within the City. The Ordinance was revised and adopted in 1994 as part of the Zoning Ordinance and applies to those hillside areas in which one or more of the following apply:

- A predominant portion of the area has slopes in excess of 10 percent;
- A significant area of slopes of 25 percent or greater; or
- A significant ridgeline, hilltop, or exposed slope is located in the area.

The purpose of the Ordinance is to promote a more harmonious visual and functional relationship between the natural and built environments. The HPD Districts are reserved for residential uses that are clustered in a manner that will preserve significant features of hillside areas, such as drainage swales, streams, steep slopes, ridgelines, rock outcroppings, and native vegetation.

As of 1998, the City had three HPD Districts located in the south and southwest portions of the City. This land could be developed or redeveloped at any time with uses as specified in the General Plan or Zoning Ordinance. Areas designated, currently or in the future, as HPD Districts will be developed and should not be considered permanent passive open space. However, these areas will be developed in a manner which preserves valued open space characteristics.

10.3.1 Open Space Objective

Maintain, preserve and acquire open space and its associated natural resources by providing parks for active and passive recreation, trails, and by preserving natural, scenic, and other open space resources.

10.3.2 Open Space Policies

- a. Establish a comprehensive system of open space that is available to the public, including facilities for organized recreation; active informal play; recreational travel along formal, natural, and riverfront trails; passive recreation; and enjoyment of the natural environment.
- b. Implement the design standards of the Community Image and Design Element so as to maintain views of the San Joaquin River, Mount Diablo and its foothills, Black Diamond Mines Regional Preserve and other scenic features, and protect the natural character of Antioch's hillside areas as set forth in the Community Image and Design Element¹.
- c. Maintain the shoreline of the San Joaquin River as an integrated system of natural (wetlands) and recreational (trails and viewpoints) open space as set forth in the Land Use Element and Public Services and Facilities Element.
- d. Where significant natural features are present (e.g., ridgelines, natural creeks and other significant habitat areas, rock outcrops, and other significant or unusual landscape features), require new development to incorporate natural open space areas into project design. Require dedication to a public agency or dedication of a conservation easement, preparation of maintenance plans, and provision of appropriate long-term management and maintenance of such open space areas.
- e. Require proposed development projects containing significant natural resources (e.g. sensitive or unusual habitats, special-status species, habitat linkages, steep slopes, cultural resources, wildland fire hazards, etc.) to prepare Resource Management Plans to provide for their protection or preservation consistent with the provisions of the Antioch General

¹ Policies related to viewshed protection are set forth in Section 5.4.2, General Design Policies. Hillside design polices are found in Section 5.4.14.

W1

Plan, other local requirements, and the provisions of State and Federal law. The purpose of the Resource Management Plan is to look beyond the legal status of species at the time the plan is prepared, and provide a long-term plan for conservation and management of the natural communities found onsite. Resource Management Plans shall accomplish the following.

- Determine the significance of the resources that are found onsite and their relationship to resources in the surrounding area, including protected open space areas, habitat linkages and wildlife movement corridors;
 - Define areas that are to be maintained in long-term open space based on the significance of onsite resources and their relationship to resources in the surrounding area, and
 - Establish mechanisms to ensure the long term protection and management of lands retained in open space.
- f. Encourage public access to creek corridors through the establishment of trails adjacent to riparian resources, while maintaining adequate buffers between creeks and trails to protect sensitive habitats, special-status species and water quality to the maximum extent feasible.
- g. Where feasible, incorporate preserve and protect significant existing natural features as part of the design of new development projects rather than removing them. Where preservation of natural features is not feasible, introduce natural elements into project design. Impacts to significant natural features that cannot be preserved or reintroduced into the project design on-site shall be mitigated off-site.

and worthy of consideration in the California Natural Diversity Database:

- Native grasslands
- Vernal pools
- Stabilized interior dunes
- Seasonal wetlands
- Freshwater seeps
- Freshwater marshes
- Coastal brackish marshes
- Alkaline floodplains
- Alkali seeps
- Valley oak woodlands
- Riparian woodland

Grassland. Native grasslands have been reduced to 90 percent of their former area in California. Native grassland in the Antioch Planning Area would be dominated by purple needlegrass (*Nassella guchra*). A variety of spring wildflowers are also found in native grasslands. Because of the rarity of this once abundant vegetation type, the California Department of Fish and Game may request mitigation for projects that impact native grasslands. Additionally, special-status plants are more likely to be found in undisturbed native vegetation. Native grasslands are most likely to be found scattered in the southern part of the Antioch Planning Area. A number of special-status species has been identified in certain native and non-native grassland habitats within and adjacent to Antioch, including San Joaquin kit fox (*Vulpes macrotis*), California tiger salamander (*Ambystoma californiense*), American badger (*Taxidea taxus*), western burrowing owl (*Athene cunicularia hypugea*), and golden eagle (*Aquila chryseatos*).

Vernal Pools. Vernal pools are seasonal wetlands typically occurring in depressions in grasslands. These depressions collect water during the winter and spring rains, and dry once the rains cease. As the ponds dry in the spring, a succession of different plant species bloom around the edges of the pool. A high-quality vernal pool will display concentric rings

~~10.4 BIOLOGICAL RESOURCES OBJECTIVE AND POLICIES~~

~~Although it is largely urbanized, portions of remaining undeveloped lands contain vegetation and habitat types the California Department of Fish and Game considers rare~~

ATTACHMENT "X"

ARTICLE 24: HILLSIDE PLANNED DEVELOPMENT DISTRICT

§ 9-5.2401 PURPOSE.

(A) The Hillside Planned Development District (HPD) is intended to promote a more harmonious visual and functional relationship between the natural and built environments.

(B) The district shall provide for the following:

(1) The preservation of significant features of hillside areas, such as drainage swales, streams, steep slopes, ridgelines, rock outcroppings and native vegetation;

(2) The encouragement in hillside areas of an alternative and varied development approach that would provide the maximum in safety and human enjoyment while utilizing the opportunities presented by the natural terrain;

(3) The concentration of dwelling units and other structures through clustering so as to preserve the most sensitive terrain in its natural state;

(4) A mixture of housing stock so as to provide variation in appearance;

(5) Compliance with the land use densities specified in the General Plan with the understanding that in areas featuring steeper slopes, densities shall diminish as the slope of the terrain increases;

(6) Consistency with the Open Space Element of the General Plan and evidence that detailed and effective arrangements for the preservation, maintenance and control of open space and recreational lands are provided;

(7) The minimization of grading and cut and fill operations consistent with the retention of the natural character of the terrain; and

(8) The minimization of water runoff and soil erosion problems in the modification of the terrain to meet on-site and off-site development needs.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.2402 GENERAL PROVISIONS.

(A) This section shall apply to those hillside areas in which one or more of the following apply:

(1) A predominant portion of the area has slopes in excess of 10%;

(2) A significant area of slopes of 25% or greater are located in the area; or

(3) A significant ridgeline, hilltop, or exposed slope is located in the area.

(B) Applicability for a particular area shall be determined by the Zoning Administrator and may be appealed to the Planning Commission and City Council. The provisions of this section shall not apply to those parcels of record for which a tentative map or final development plan has been approved and for which a plan or map has not expired. All such parcels of record shall be

permitted at least one dwelling unit unless such right is or has been previously waived by scenic easement, deed of development rights, or other device.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.2403 RELATIONSHIP TO LAND SUBDIVISION.

In situations where a subdivision of land (e.g., a tentative map) is undertaken in conjunction with the establishment or implementation of a P-D District, such subdivisions shall be processed concurrently and approved under the same resolution of approval.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.2404 USES PERMITTED.

An HPD District shall generally be reserved for residential uses; however, other uses may be permitted in accordance with the General Plan or any approved Specific Plan and provided such uses are shown on the approved final development plan for that district.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.2405 RELATIONSHIP TO EXISTING PLANS.

All standards, requirements, densities, land use designations and other contents of an approved final development plan shall be in substantial conformance with the General Plan and any applicable Specific Plan.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.2406 ESTABLISHMENT AND DEVELOPMENT.

(A) A Hillside Planned Development District may be established upon an application of the property owner or owners or upon the initiative of the city.

(B) Prior to the extensive preparation or submittal of detailed plans and information the applicant is required to submit a preliminary proposal to the Community Development Department so that the applicant may be informed of possible environmental concerns, General Plan and engineering requirements, circulation, siting and design criteria and other factors that may affect the proposal.

(C) A preliminary development plan for a proposed HPD District shall be submitted for Planning Commission approval. In considering the preliminary development plan at its public hearing, the Commission shall determine its appropriateness based on its ability to meet the purpose of this article. In no case shall approval of the preliminary development plan constitute an endorsement of the proposal's precise location, extent of uses, configuration of parcels or engineering feasibility.

(D) Once a preliminary development plan has been approved by the Planning Commission a final development plan may be submitted to the city. The review and approval procedure and findings for a final development plan for a HPD District shall be the same as that for a P-D

District. If approved the property shall be rezoned as an HPD District and so indicated on the zoning map of the city.

(E) A use permit shall be required prior to the construction of any phase of an approved HPD District and shall follow the same review and approval procedure as outlined for P-D Districts.

(F) The required submittal materials for HPD District approval shall be as listed in the application package available from the Community Development Department.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.2407 DEVELOPMENT STANDARDS AND CRITERIA.

(A) The development standards and criteria set forth in this section are the minimum necessary to insure that the intent of this article is achieved. Such standards and criteria recognize the unique nature of hillside areas and are designed to provide greater flexibility so that more innovative development schemes are possible. Despite the intended flexibility, there may arise unique circumstances in which the development standards and criteria set forth in this section may result in severe hardship or produce results counter to the stated intent of this chapter. Where these circumstances are proven to exist, exceptions to such standards may be permitted coincidental with the approval of the Hillside Planned Development District.

(B) It is the expressed intent of this section that innovative development techniques be utilized in hillside areas, therefore flexible lot standards shall be allowed. To this end, minimum yard or lot areas, lot widths, lot depths, distances between buildings, maximum lot coverage and/or rear yard access requirements shall be specific for each HPD District and approved with the final development plan and use permit for each project. This provision shall be consistent with any and all fire, building or other safety codes.

(C) In approving an HPD, the degree to which the proposed lot specifics meet the intent of this chapter shall be evaluated based on the following:

- (1) The manner in which the proposal relates to the natural topography;
- (2) The degree to which grading and cut and fill operations are minimized;
- (3) The stability of the soil and underlying geology;
- (4) The degree to which unique natural features, such as rock outcroppings, ravines, creeks, and steep hill faces, are preserved;
- (5) The effect on native vegetation and the extent to which landscaping enhances the characteristics of the area;
- (6) The vehicular accessibility;
- (7) The extent to which parking areas are well-designed and functional;
- (8) The degree to which dwelling units relate to recreational and natural areas;
- (9) The degree to which individual privacy is provided for; and

(10) The degree to which the project relates to adjacent existing and future developments.

(D) The design of building, fences, and other structures shall be in harmony with and enhance natural site characteristics in regard to height, massing, texture, color, reflective properties, roof characteristics, and setbacks. Fences shall not extend vertically into any areas where the visual quality of a hillside would be disrupted nor shall the roofing of any structure be situated so as to visually extend above any significant ridgeline when viewed from off-site.

(E) (1) Hillside streets should reflect a rural rather than an urban character. Curbs and gutters will be required, unless it can be shown that an alternative pavement treatment will permit adequate drainage and will not adversely impact the roadway base.

(2) Horizontal and vertical street alignments should relate to the natural contours of the site. Proposed street designs shall minimize grading to the extent feasible and shall account for the following:

(a) The steepness of the terrain;

(b) The depth of the cut, the amount of cut and fill required and the height and appearance of required retaining walls;

(c) The ability to grade required cut and fill areas to give the appearance of natural slopes;

(d) The provision of off-street parking to compensate for any inability to provide on-street parking;

(e) The provision of adequate turnouts;

(f) The adequacy of site distances provided;

(g) The safety of driveway entrances;

(h) The maximum number of dwelling units which can ultimately be served by the streets;

(i) The length of the street and its potential to become a through street; and

(j) The provision of access for emergency vehicles.

(3) To better match a project's streets with its natural setting, varied right-of-way widths, off-street rather than on-street parking, split level streets and a variety of street designs (e.g., cul-de-sac, hammerheads, short loop streets) may be considered. Private streets or lanes may be allowed where they will create a more desirable living environment and result in a more effective use of hillside amenities.

(4) Street lighting used in an HPD District shall be low profile, unobtrusive, and designed to enhance the rural character of the area while providing adequate safety and security.

(F) (1) A pedestrian circulation plan shall be provided to ensure adequate separation between vehicular and pedestrian traffic. The need for public sidewalks shall be determined by their expected levels of use and may be waived where appropriate. Private walkways/paths connecting dwelling units with each other and with various components of the HPD District may

be utilized and shall be the responsibility of a homeowners' association or other maintenance mechanism.

(2) Bicycle and equestrian trails, if provided, shall be integrated into an overall plan for the HPD District and, where possible, provide linkage to a city-wide and/or regional trail system.

(G) (1) Where the General Plan and/or an adopted Specific Plan designates any portion of an area as open space, it shall be reflected in the proposed development plan. Any area not previously designated as open space but which lends itself to such use should be similarly identified on the development plan. Areas proposed as open space should include irreplaceable natural features such as stream beds, significant stands of trees, individual trees of significant size, age and/or appearance, exposed or steep slopes, significant ridgelines and rock outcroppings. Natural features of lesser significance which nonetheless are aesthetically important shall be preserved.

(2) Dedication of open space as a part of a public open space or park system may be required. Where such offer of dedication is not accepted, the development shall provide for the maintenance and preservation of such open space through covenants or other legal arrangements acceptable to the Council. Common private open space which is permanently maintained as a landscaped park or recreational area may be eligible for credit toward the development's park dedication requirements.

(H) All new utilities shall be installed under-ground and shall conform to the rules and regulations of the State Public Utilities Commission. Drainage and flood control devices shall be integrated into the landscape and, where feasible, natural-appearing drainage ways shall be used.

(I) A Stormwater Control Plan shall be prepared by an engineer, or equally qualified professional as determined by the City Engineer. The City Engineer may require that the Stormwater Control Plan be prepared by a licensed civil engineer. All architectural, civil engineering, and landscape site plans shall be consistent with the storm water control plan.

(Ord. 897-C-S, passed 10-25-94; Am. Ord. 1064-C-S, passed 12-13-05) [Penalty, see § 9-5.2904](#)

§ 9-5.2408 GRADING.

(A) Any parcel of land subject to this article shall not be graded unless such grading is specifically shown on an approved final development plan. Grading shall be planned so that it blends into the natural landscape of the site and lessens any associated negative visual impacts from such grading. The use of 2:1 slopes shall be avoided, as shall the use of benches. Where allowed, 2:1 slopes and benches shall be of limited height and designed so that they are situated and/or screened by structures to minimize visibility from public rights-of-way and off-site properties. While mass grading is generally prohibited, the grading of less significant land forms is allowable, as is the grading of more significant natural features, provided such modifications will result in an improvement of the overall project and are in keeping with the overall intent of this article.

(B) In steeper areas and areas of greater visibility, grading should generally be limited to that portion of the site required for the structure and limited associated outdoor area. The use of retaining walls, terracing, platform structures, and stepped or post and beam construction shall be used to minimize the impacts of grading on steeper slopes. In areas of lesser slopes, limited

padding may be allowed where it could provide for the clustering of development and would otherwise promote the intent of this article.

(C) Grading plans shall be reviewed to ensure that any land form modifications will not adversely impact adjacent property owners and that proposed grading will be able to blend into any existing and future development on adjacent parcels.

(Ord. 897-C-S, passed 10-25-94) Penalty, see § 9-5.2904

§ 9-5.2409 LAPSE OF APPROVAL.

A final development plan shall expire two years after date of approval or at an alternate date specified as a condition of approval, unless there has been any activity in that HPD District (e.g., a use permit has been approved or a building permit issued for any development phase of the HPD) or an extension has been granted.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.2410 EXTENSION AND RENEWAL.

A final development plan approval may be extended by the Planning Commission for a two-year period without notice or public hearings, if the findings required remain valid. The Planning Commission may modify the final development plan and/or add conditions of approval at this time based on this review.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.2411 CHANGED PLANS AND NEW APPLICATIONS.

(A) A request for modifications to the conditions of approval for a final development plan shall be treated as a new application, unless the Zoning Administrator finds that the changes proposed would be non-controversial, minor, do not involve substantial alterations or additions to the plan, and are consistent with the intent of the original approval.

(B) If an application for a final development plan is denied, no new application for the same, or substantially the same, final development plan shall be filed within one year of the date of last denial, unless the denial was made without prejudice.

(Ord. 897-C-S, passed 10-25-94)

§ 9-5.2412 HPD DISTRICTS APPROVED PRIOR TO ADOPTION.

Final development plans approved by the City Council prior to adoption of this chapter shall not be subject to these provisions.

(Ord. 897-C-S, passed 10-25-94)

ATTACHMENT "Y"

Basin Aerial



ATTACHMENT "Z"

RESOLUTION NO. 2011/18

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH

CONFIRMING THE NOTICE OF DEFAULT AND BREACH SENT FEBRUARY 24, 2011 TO SEENO HOMES/SECON FINANCIAL AND CONSTRUCTION CO., INC. AND DISCOVERY BUILDERS/BLACK DIAMOND LAND INVESTORS LLC AND APPROVING THE DEED RESTRICTION ON THE BLACK DIAMOND OPEN SPACE PROPERTY

WHEREAS, the City Council approved the Black Diamond Ranch Subdivision (formerly known as Sky Ranch) on November 12, 1996 pursuant to Resolution No. 96/188, which was extended on November 10, 1998 pursuant to Resolution No. 98/164; on July 8, 2003 the City Council approved a Residential Development Allocation for this project; on August 6, 2003 the Planning Commission approved a Use Permit pursuant to Resolution No. 03-29; on October 14, 2003 the City, Discovery Builders and Secon Financial and Construction Co. entered into a Development Agreement, which was approved pursuant to Ordinance No. 1008-C-S and extended on October 10, 2006 pursuant to Ordinance No. 1079-C-S; and

WHEREAS, the conditions of approval for the Black Diamond Ranch Subdivision required the developer – at that time Secon Financial and Construction Co. and Discovery Builders -- to widen Somersville Road and to pay all costs for the design, permitting and City construction of a culvert crossing for Markley Creek; and

WHEREAS, pursuant to an Improvement Agreement dated March 17, 2004, Discovery Builders Inc. agreed to pay for the design, construction, environmental permitting and mitigation for the Markley Creek Culvert Crossing at Somersville Road with a surety bond in the amount \$1,100,000 for the Markley Creek Culvert Crossing submitted with the Improvement Agreement; and

WHEREAS, a Deferred Improvement Agreement dated May 1, 2007 was executed by the City and Black Diamond Land Investors LLC detailing the developer's requirement to widen James Donlon Boulevard and to commence construction within 60 days of the City's approval of the plans for the work and all other agency approval with a surety bond in the amount of \$4,202,670 submitted with the Deferred Improvement Agreement; and

WHEREAS, in order to resolve a lawsuit filed on June 24, 2004 by Seeno Homes entities SPPI-Somersville, Inc. and Somersville-Gentry Inc. regarding contamination of property adjacent to the old Contra Costa Landfill, the City of Antioch entered into a Settlement Agreement with SPPI-Somersville, Inc. and Somersville-Gentry Inc. dated September 15, 2009 and agreed to defer construction of the Markley Creek Culvert Crossing project for one year after all of the environmental permits were obtained then the Somersville Road Widening project for one year after the Culvert crossing was installed but no earlier than May 2011 for the Somersville Road Widening project; and

WHEREAS, the Markley Creek Culvert Crossing can only be constructed during the dry season (typically April 15th to October 1st) and should be constructed before the Somersville Road Widening project; and

WHEREAS, all of the environmental permits for the Markley Creek Culvert Crossing project and Somersville Road Widening project were in place on July 31, 2009 and the Markley Creek Culvert Crossing should have been constructed in 2010 and the Somersville Road widening should be constructed in 2011; and

WHEREAS, due to the continued failure to construct the Markley Creek Culvert Crossing project within one year of all of the environmental permits being obtained on July 31, 2009 and to then proceed with the construction of the Somersville Road Widening project within 2 years of July 31, 2009, a Notice of Default and Breach dated February 24, 2011 was sent to Seeno Homes/Seecon Financial and Construction Co., Inc. and Discovery Inc./Black Diamond Land Investors LLC under the Development Agreement dated October 14, 2003; Improvement Agreement dated March 17, 2004; Improvement Security bond from Travelers dated March 19, 2004 (no. 104285182); Subdivision bond from Safeco dated April 20, 2007 (bond no. 6482641); Deferred Improvement Agreement dated May 1, 2007; and Settlement Agreement dated September 15, 2009; and

WHEREAS, at 4:00 p.m. on March 8, 2011, the City received a letter from an attorney for Seecon Financial and Construction, Inc. Discovery Builders, Black Diamond Land Investors LLC and affiliated entities indicating that it was their position that the City of Antioch is responsible for permitting, design and construction of the Markley Creek Culvert Crossing project at the cost of the Discovery Builders; and

WHEREAS, Discovery Builders failed to grant a required deed restriction to the California Department of Fish and Game on open space property in the Black Diamond Ranch project before conveying the property to the City and the Department of Fish and Game is now requiring the City to grant the deed restriction;

NOW, THEREFORE, BE IT RESOLVED that due to the continued failure to construct the Markley Creek Culvert Crossing project within one year of all of the environmental permits being obtained on July 31, 2009 and to then proceed with the construction of the Somersville Road Widening project within 2 years of July 31, 2009, the City Council confirmed the February 24, 2010 Notice of Default and Breach putting the parties on notice of the need to cure defaults and breaches under the following agreements:

- a. Black Diamond Land Investors, LLC (successor in interest to Seecon Financial and Construction Co., Inc. and Discovery Builders, Inc.) is not complying in good faith with the terms of the Development Agreement dated October 14, 2003 and executed by Albert D. Seeno Jr. and Albert D. Seeno III and is in default of that Agreement;
- b. Discovery Builders Inc. has defaulted on the Improvement Agreement dated March 17, 2004 and executed by Albert D. Seeno III;
- c. Black Diamond Land Investors LLC has defaulted on the Deferred Improvement Agreement dated May 1, 2007 and executed by Albert D. Seeno III;

- d. SPPI-Somersville, Inc. and Somersville-Gentry Inc. have breached the Settlement Agreement dated September 15, 2009 and executed by Albert D. Seeno Jr.;

BE IT FURTHER RESOLVED, given the letter that the City received at 4:00 p.m. on March 8, 2011, from an attorney for Seecon Financial and Construction, Inc. Discovery Builders, Black Diamond Land Investors LLC and affiliated entities indicating that it was their position that the City of Antioch is responsible for permitting, design and construction of the Markley Creek Culvert Crossing project at the cost of the Discovery Builders, then there are a number of different tasks that Seeno Homes/Discovery Builders will need to undertake to ensure that there is no continuing default or breaches in their obligations under the Development Agreement dated October 14, 2003; Improvement Agreement dated March 17, 2004; Improvement Security bond from Travelers dated March 19, 2004 (no. 104285182); Subdivision bond from Safeco dated April 20, 2007 (bond no. 6482641); Deferred Improvement Agreement dated May 1, 2007; and Settlement Agreement dated September 15, 2009, including but not limited to the following:

Taking any steps necessary to transfer the environmental permits for the Culvert Crossing project in the name of Discovery Builders to the City;

Providing electronic and hard copies of all design plans and specifications for the Culvert project and assigning the City the right to use them to construct the project;

3. Reimbursing the City for costs incurred in obtaining the environmental permits, design and construction of the project.
4. Taking any other actions necessary to allow the City to proceed with the Culvert Crossing project.
5. Upon completion of the Markley Creek Culvert Crossing project, to undertake construction of the Somersville Road Widening project.

BE IT FURTHER RESOLVED that the City Council approves the deed restriction on Black Diamond Ranch open space property located immediately west of Somersville Road that Discovery Builders failed to provide the Department of Fish and Game before deeding the property to the City (Exhibit 1) and authorizes the City Manager to execute and record the deed restriction when he deems it appropriate.

* * * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the 8th day of March 2011 by the following vote:

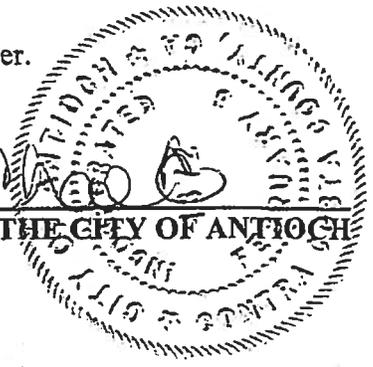
AYES: Council Members Kalinowski, Rocha, Agopian and Mayor Davis.

NOES: None.

ABSENT: None.

RECUSED FOR CONFLICT OF INTEREST: Council Member Harper.

[Handwritten signature]
CITY CLERK OF THE CITY OF ANTIOCH



ATTACHMENT "AA"

Gentry, Mindy

From: Peggy Vertin [moonwork_04@comcast.net]
Sent: Saturday, October 12, 2013 10:03 AM
To: Gentry, Mindy
Subject: Objection to The Pointe Development Rezoning Request and Mitigated Negative Declaration

Dear Mindy:

I am receipt of your notice of intent to amend the negative declaration concerning The Pointe developed and file a mitigated negative declaration. I strongly object that Discovery Builders is allowed not comply with environmental policies and requirements that we voters have in place out here. I just bought my home and was told no one would be building above or I would not have bought my home. I was those were part of Black Diamonds wildlife refuge and no one would be building above. This will seismic issues for all of us which some people are already experiencing with their new homes.

Someone posted on nextdoor.com that Mr. Seeno plans to completely bulldoze our hills and I see he wants the zoning changed so it is for a Planned Community instead of a Hillside Community.

I will hire an attorney. My purchase was misrepresented and I will be down there to read the papers and attend the meeting. Mr. Seeno should not be given carte blanche to kill the environment out here. I was really disgusted to see all that grading at Blue Ridge they did. I've lived Contra Costa County since 1965 and Antioch should be ashamed at what it is letting these developers do. We need to maintain the beauty of Contra Costa while doing some development too but like out what they did at Blue Ridge.

I will be down there to review those papers at my earliest opportunity. I'm not going down without a fight on this.

Peggy Vertin

Gentry, Mindy

From: kathy roberson [kardpr@att.net]
Sent: Sunday, October 27, 2013 7:34 PM
To: Gentry, Mindy
Subject: the pointe by discovery builders

Hello I'm writing you to tell you my concerns about this development, there is already enough congestion on somersville rd, pretty much enough in antioch as it is, the roads are not very good, when we bought our house this was not mentioned to us, if we would of known this we would have definitely purchased our home else where, it is sickening to think that the city would ok with something like this just to make a buck, and not take care of the people who pay their paycheck. our little community has already been a victim of many crimes and still not enough protection from the police because to little of them are to busy with the scum on the other side of antioch, which then brings me to the other development that discovery plans on doing again we would not have purchased our home if knowing that we would have "low income" which most of the time translates to welfare, drug dealers, which than brings their friends from other crappy neighborhoods than leads to crime because what else do they have to do but steal from hard working tax paying abiding citizens like myself ,my family, and my neighbors in the terraces. if this was disclosed in the paperwork at the time of purchasing our home (it wasn't) we would have gone to another city to purchase our home. it's really sad to feel this way but i wish we wouldn't have purchased here and gone somewhere else...I thought the city of antioch was trying to revive the city to make it a better place??? chopping down hillsides to cram more people in, to congest the roads even more than what they are, or have crime spike WAY more than it already is, is not my ida of making antioch a better place. i have told my friends who were potentially wanting to purchase here in antioch not to because you aren;t being told the truth you think you are purchasing a beautiful home in a quiet community and than they're disregarding it to pile more people on top of you.

Thank you for your time
kathy roberson

Gentry, Mindy

From: Radiah Mikel [rsjmikel@hotmail.com]
Sent: Wednesday, December 04, 2013 8:59 AM
To: Harper, Wade; Rocha, Mary; Agopian, Gary; Wilson, Monica; Tiscareno, Tony; Council
Cc: Gentry, Mindy; Michael Mikel
Subject: ** HOMEOWNERS ARE OPPOSED TO THE POINTE (Discovery Builders)
Attachments: Picture #1.docx; Picture #2.docx; Picture #3.docx; Signatures.pdf

**BLACK DIAMOND ESTATE and THE TERRACE HOMEOWNERS ARE OPPOSED TO
THE POINTE**

Hello City of Antioch Council Members:

Mayor Wade Harper

Mayor Pro Tem Mary Helen Rocha

Council Member Gary Agopian

Council Member Monica E. Wilson

Council Member Tony G. Tiscareno

On Dec 10th there will be a public hearing in regards to the Discovery Builders proposed development call The Pointe. This gated community would be located in the middle of two existing developments, The Estates at Black Diamond and The Terraces. The majority of the homeowners of these two existing communities strongly oppose the building of The Pointe in the midst of our neighborhood. As a community we have many concerns about the Discovery Builders plan, but for brevity we want to draw your attention to four issues:

1. When purchasing our homes we were never told of the plan to develop the Country Side Way hillside. In fact the staff at the Black Diamond Estate sales office assured us that the hill would remain wildlife open space. As the accompanying photo will reveal two home sites were for sale where the builder now plans a road. Two home sites were for sale where the builder now plans a road. (See picture #1)

2. We are very concerned about the environmental impact of the planned development. Given that the plan calls for the removal of over 100 vertical feet of hill (equal to a 10 story building) as well as the massive grading, it's hard to believe anyone would argue that major impact to the geology, hydrology and air quality should not be determined. The fact that the project requires exemptions to the Antioch General Plan and the City Hillside Planned Development Ordinance are evidence of the potential environmental impact. There will be major impacts to the aesthetics and visual quality of not only our neighborhood, but the surrounding area. We believe the California Environmental Quality Act (CEQA) mandates that an Environmental Impact Report be prepared before this project can proceed. (See picture #2)

3. Traffic in the area around this planned development is already horrendous. The intersection between Somersville and James Donlon is a nightmare to traverse, and with the development of this project it will only get worse. In addition, we have lived with major construction in our neighborhoods for over eight years. All the while looking forward to the day when our community would at last be complete. With that day finally in sight, we are now begin told we can look forward to a whole new round of major construction with the accompanying noise and congestion for years to come? Enough is enough!

4. Over the last eight years, we have worked hard to create not just a neighborhood, but a community. A community of diverse families working to have our homes places anyone would be proud to call their own. We have a vibrant and growing social network in this neighborhood. We make a strong effort to meet one another with block parties and neighborhood watch meetings, we lookout for our neighbors homes when their on vacations. In short, we have the kind of community the city of Antioch should encourage and support, the kind of neighborhood Discovery Builders aspire to build. So why then would you insert in the middle of this community, a large gated community that by its very nature will cause division? (See picture #3)

Why create this artificial separation in the midst of our homes? This gated development, if allowed to go forward would not only sit in the center of our community, but above it.

We would not be able to meet these new neighbors without access to their keypad entrance, and would likely only see them as they pass in and out of their gate. This planned development would have a devastating impact on our community.

As we stated in the beginning, we have many objections to this proposed development by Discovery Builders, but we think these issues listed above should be enough for the council to adopt the recommendation of the planning commission to deny Discovery Builders General Plan Amendment of re- zoning the hillside.

Thank you for your consideration,

Black Diamond Estates Homeowners and The Terraces Homeowners,

1. Angelico Miranda – 4045 Barn Hallow Way
2. Angela Miranda – 3551 Country Side Way
3. Michael Villanueva – 3551 Country Side Way
4. Eva Garcia – 4045 Barn Hallow Way
5. Charity Miranda – 4045 Barn Hallow Way
6. Jesse Wang – 4030 Roberts Ct
7. Lakesha Smith – 3616 King Ct
8. Mario Alvarez – 3531 Country Side Way
9. Yanira Alvarez – 3531 Country Side Way
10. Shawn Tims – 4027 Roberts Ct
11. Rocky Hast – 4020 Robert Ct
12. Randy Mortunrco – 4024 Roberts Ct
13. Samuel Maurice Porter – 4020 Sun Crest
14. M Rodriguez – 4012 Sun Crest
15. Sanh Troung – 4027 Sun Crest
16. Victor Lizardi – 4016 Sun Crest
17. Edgar Cacanindin – 4004 Sun Crest
18. Andres Tejada – 4004 Wind Chime St
19. Patrick Hanavan – 3557 Markley Creek Dr.
20. Lan Lee – 3557 Markley Creek Dr.
21. Nick Panchlis – 3565 Makley Creek Dr.

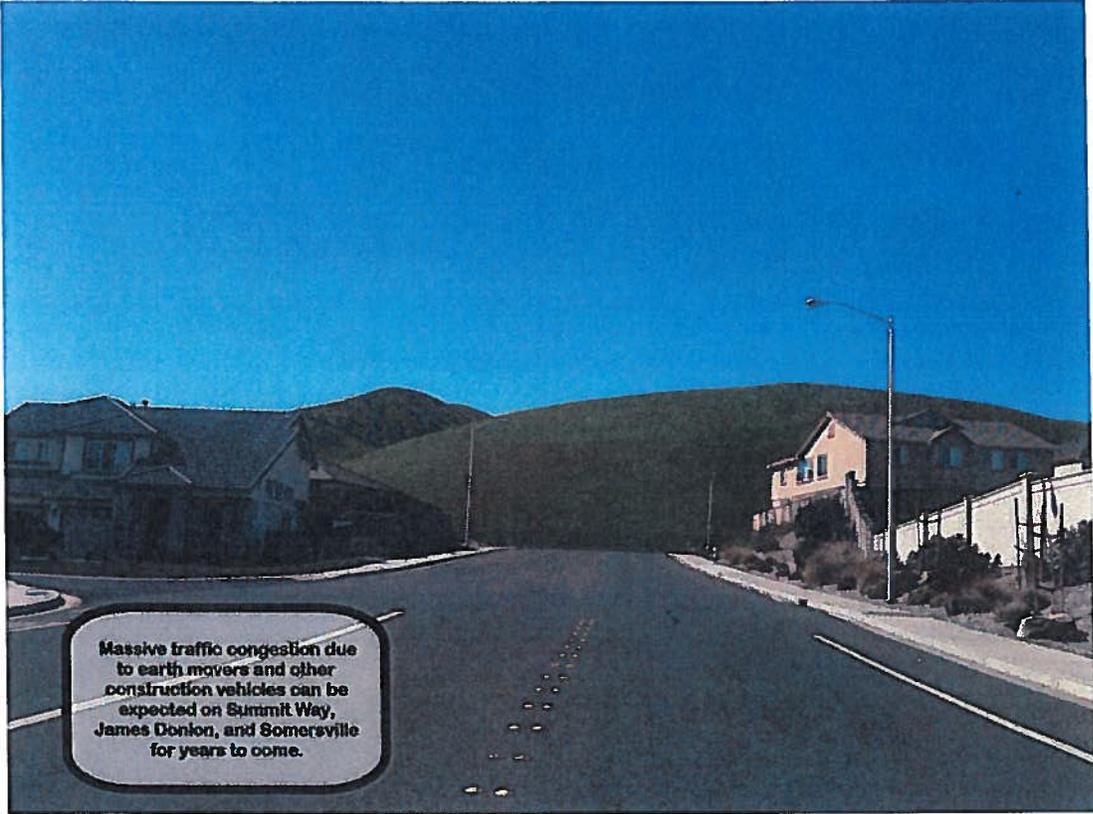
22. Arnel Cortez – 4008 Wind Chime St
23. Craig Kaleiki – 4012 Wind Chime St
24. Androde Victor – 4015 Wind Chime St
25. Roy Norwood – 4019 Wind Chime St
26. Regina Norwood – 4019 Wind Chime St
27. Paul Westlund – 4011 Wind Chime St
28. Riley Melvin – 3598 Country Side Way
29. Sonia Ortega – 3602 Country Side Way
30. Annie Hoang – 4023 Oak Knoll St
31. L. Russo – 4028 Oak Knoll St
32. Michael Platt – 4024 Oak Knoll St
33. Bo Ruczyn – 4007 Oak Knoll St
34. Arne Ragario – 4012 Oak Knoll St
35. Elvester Woods – 3569 Markely Creek Dr.
36. Alicia Hays – 3541 Country Side Way
37. Margaret Vertin – 3620 Torgensen Ct
38. Radiah Mikel – 3555 Country Side Way
39. Michael Mikel – 3555 Country Side Way
40. Hosien Amirfatahi – 3614 Torgensen Ct
41. Golnar Parvizi – 3614 Torgensen Ct
42. Robert Williams – 3518 Country Side Way
43. Dalvin Hayes – 3541 Country Side Way

44. T. Bimbona – 3521 Country Side Way
45. David & Susie Talcoth – 3530 Country Side Way
46. Erica Curry – 3534 Country Side Way
47. Barbara Mikel – 3541 Country Side Way
48. Raman Viorh – 3510 Markely Creek
49. Aeyrah Suits – 4011 Sun Crest St
50. Lemuel Jonson – 4011 Sun Crest St

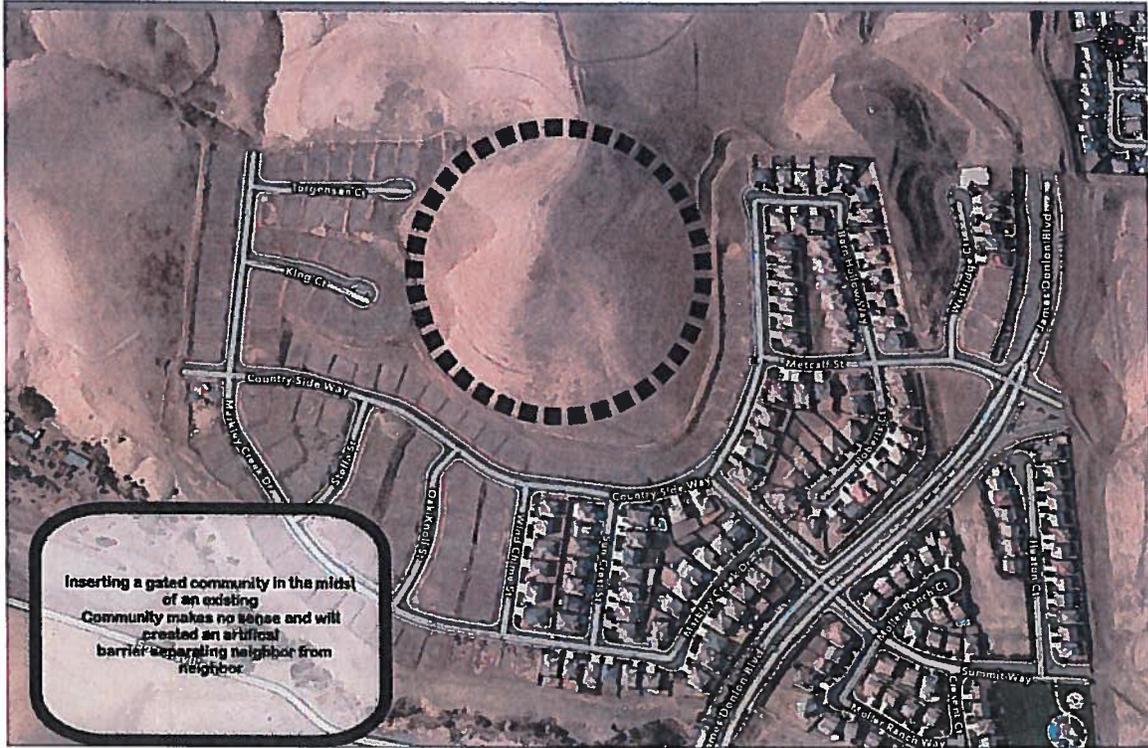


Sales office map showing lots for sale where road is to go

No indication of any Development plans



Massive traffic congestion due to earth movers and other construction vehicles can be expected on Summit Way, James Donlon, and Somersville for years to come.



**STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE
COUNCIL MEETING OF DECEMBER 10, 2013**

FROM: Lynn Tracy Nerland, City Attorney 

DATE: December 2, 2013

SUBJECT: New City Manager Recruitment

ACTION

The action before the City Council is to adopt a motion: appointing Steven Duran as City Manager; approving the Agreement with Steven Duran for City Manager Services and authorizing the Mayor to sign it (Attachment A); and appointing Ron Bernal as Acting City Manager from December 31, 2013 until Mr. Duran begins.

BACKGROUND

Jim Jakel has served as City Manager since 2003 and indicated his intention to retire at the end of 2013 after 10 years of service as City Manager and 25 years of public service.

Recruitment Process

The City Council began a comprehensive recruitment process, beginning with the agenda item on the March 26, 2013 City Council meeting to choose a recruiting firm. Phil McKenney with the firm of Peckham and McKenney was chosen. At the City Council meeting on September 10, 2013, Mr. McKenney made a presentation about the recruitment for the new City Manager. Members of the public were invited to discuss qualifications for the new City Manager then.

In order to encourage further public input on the qualifications for the new City Manager, the City Council directed that another opportunity for public comment be scheduled for the September 24, 2013 Council meeting as well. In addition, members of the public were encouraged to contact Mr. McKenney directly with comments, if they did not want to do so publicly.

Steven Duran

Since 2011, Steven Duran has served as City Manager for the City of Hercules when he was brought in to address the financial and mismanagement issues in that city. Prior to his service to the Hercules community, Mr. Duran was the Community & Economic Development Agency Director in Richmond, California, which included the Office of Economic Development, the Redevelopment Agency, the Housing Authority and the Employment & Training Department. His other public sector experience included four years with the San Jose Redevelopment Agency, where he was Downtown Development and Implementation Manager. Before that, Mr. Duran worked in the private sector in corporate real estate and facilities management, commercial real estate brokerage and consulting, and property management and leasing. The press release announcing the appointment is attached (Attachment B).

Acting City Manager

As Mr. Duran has contractual obligations to the City of Hercules, and appreciating the need for an orderly transition at both cities, Ron Bernal has agreed to serve as Acting City Manager until Mr. Duran can start in Antioch, which will be no later than February 3, 2013. Mr. Bernal has worked at the City of Antioch since 1984 rising from Junior Civil Engineer to Public Works Director/City Engineer responsible for a staff of 80 and budget of \$60 million.

FISCAL IMPACT

The proposed Agreement with Mr. Duran provides that until furloughs/10% salary reduction are eliminated for Antioch employees, he will receive \$207,000 in annual salary. His benefits are consistent with other Executive Management employees; although, he will not be eligible for the City of Antioch's Medical-after-Retirement benefit that has been discontinued for new employees. He will be entitled to a contribution to a Medical-after-Retirement account if offered to other Executive Management employees. Mr. Duran will serve at the pleasure of the City Council majority; although, as is typical for city manager contracts, he would be entitled to a severance payment if he is terminated without good cause and does not secure comparable employment. The severance payment would be limited to 12 months of salary and health benefits, which is less than the 18-month limit established by state law.

OPTIONS

No options are presented as the proposed action is consistent with the direction given in closed session.

ATTACHMENTS

- A. Proposed Employment Agreement with Steven Duran
- B. Press Release for the Appointment of Steven Duran as City Manager

**CITY OF ANTIOCH
AGREEMENT WITH STEVE DURAN FOR
CITY MANAGER SERVICES**

This Agreement ("Agreement"), dated for reference purposes only the ___ day of November, 2013, is made and entered into at Antioch, California by and between the City of Antioch, California ("City") and Steven Duran ("Duran"). This Agreement (the "Agreement") shall be effective on the date the Agreement is signed by Duran and the City ("Effective Date").

RECITALS

WHEREAS, the City requires the services of a person with proven executive and administrative qualifications to fill the position of City Manager; and

WHEREAS, the City, acting by and through its City Council, desires to employ the services of Duran as City Manager and to appropriately compensate him for such services; and

WHEREAS, Duran desires to be employed by the City as City Manager for appropriate compensation and conditions of employment;

NOW, THEREFORE, in consideration of the mutual promises, terms and conditions contained in this Agreement, the parties agree as follows:

Section 1 - Appointment. The City agrees to employ and appoint Duran to the position of City Manager for the City of Antioch, California upon the commencement of the Term defined below and does hereby confer upon and delegate to Duran all of the duties, powers, and responsibilities of City Manager as the same are set forth in State law, the City of Antioch Municipal Code, the ordinances, resolutions, policies, rules and regulations existing thereunder, and the provisions of this Agreement ("the Services"). Duran accepts employment as City Manager and agrees to serve as such. Duran serves at the pleasure of a majority of the City Council, and nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Duran at any time, subject only to the provisions in this Agreement.

Section 2 - Term. This Agreement shall start no sooner than January 6, 2014 and no later than February 3, 2014 and shall continue until terminated pursuant to this Agreement.

Section 3 - Duties. Duran's Employment shall be Full Time. As City Manager, Duran shall perform the duties and functions of the City Manager identified in State law, Antioch Municipal Code, the ordinances, resolutions, policies, rules and regulations existing thereunder and other duties and functions as the City Council may assign. Duran accepts employment subject to the terms and conditions of this Agreement and agrees: (1) to perform all such

duties and functions in a professional and ethical manner to the best of his skill and ability; (2) and to use his best efforts to promote and advance the interests and the City Council's goals and objectives.

Duran understands and agrees that the position of City Manager is not a part time position and will require Duran to work greater than a customary forty hour week. Although City Hall is generally open to the public during regular set work hours, Duran shall perform his obligations as full time City Manager during regular work hours and on such evenings, weekends and other times as are necessary. Duran also acknowledges that the position of City Manager is a position of high visibility before the public and agrees that he shall conduct himself before the public and City staff, both during and outside of regular working hours, in a manner that reflects favorably on the City.

The parties acknowledge that Antioch is a general law city that operates under a Council – Manager form of government and that the City Manager is therefore vested with responsibility for the administration of all City finances and operations in accordance with the City's ordinances, policies and budgets passed by the City Council. Such responsibility includes but is not limited to the authority, without interference from the City Council, to hire, manage, promote, discipline and terminate all non-elected City employees, except the City Attorney, in accordance with the any active collective bargaining agreements and the laws and ordinances to which the City is subject, whether local, state or federal.

Section 4 - No Other Employment. Duran agrees not to undertake any other employment during the term of this Agreement. Duran further agrees to confer with the City Council before undertaking any non-paid projects for organizations other than the City which may require a substantial time commitment by Duran.

Section 5 - Termination by Duran. Duran may terminate this Agreement and resign as City Manager at any time, for any reason, upon 45 days prior written notice to the City. Upon receipt of written notice from Duran, the City may elect to immediately remove Duran from his position as City Manager or to allow Duran to remain as City Manager for all or any part of the notice period. If the City removes Duran from his position as City Manager prior to the expiration of notice period, the City will pay Duran an amount equal to the salary and benefits that Duran would have received if he had remained in the City Manager position until the expiration of notice period, less legally required withholdings. If the City advises Duran that he should continue to perform his duties and functions as City Manager during the notice period, and Duran fails to do so, Duran will receive no salary or benefits after the last date on which he actually performs his City Manager duties and functions.

Section 6 - Termination by City.

- A. **Termination for Good Cause.** The City Manager may be discharged for Good Cause. Good Cause includes, without limitation, and as determined in the reasonable discretion of the City, any of the following: (1) insubordination, (2) dishonesty, (3) embezzlement, (4) violation of Federal, State or local requirements

pertaining to conflict of interest, (5) conviction of a criminal act, (6) involvement in any act involving moral turpitude that would compromise Duran's effective performance as City Manager, (7) taking a position adverse to the interests of the City without the City's prior written consent, (8) violation of any fiduciary duty owed to the City, (9) failure to abide by the employment restrictions under this Agreement, (10) documented incident of dishonesty, (11) failure to observe or perform any of his duties and obligations under this Agreement, if that failure continues for a period of thirty (30) days after Duran receives written notice from the City Council specifying the acts or omissions deemed to constitute that failure.

If the City elects to terminate this Agreement for Good Cause, it will pay Duran for all earned pay and accrued, unused vacation benefits at the time it notifies Duran of the termination decision, less legally required withholdings. Duran will be entitled to no pay or benefits after the date that the City notifies him that this Agreement and his employment by the City are being terminated for Good Cause. If the City elects to terminate this Agreement with Good Cause, it will provide Duran with a written explanation for that decision sent to Duran's last known home address. Duran shall have the right to meet with the City Council in closed session for the purpose of discussing the basis for his proposed termination for Good Cause prior to a final vote on his termination for Good Cause. In order to exercise that right, he must provide a written request to meet in closed session to the Mayor of the City and the City Attorney within fifteen days of the effective date of his termination for Good Cause. Failure to timely provide such written notice shall constitute a waiver of the right to be heard. Duran shall have no right to be heard publicly by the City Council prior or subsequent to a final vote on his termination and hereby waives any right to be heard publicly under the Antioch Municipal Code; provided however that no provision of this Agreement shall constitute a waiver of Duran's rights in law or equity to recover damages caused by an abuse of this provision by the City.

- B. Termination Without Good Cause. If the City elects to terminate this Agreement and Duran's employment without Good Cause as defined in this Agreement, it shall not be required to provide any reasons for that decision to Duran or anyone else. Notice of Termination Without Cause shall be provided in writing.

The City will pay Duran for all earned pay and accrued, unused vacation benefits up to but not including the effective date of termination, less legally required withholdings. Additionally, the City will pay Duran his monthly salary and health benefits amount (meaning just what is known as the flexible benefits or cafeteria plan amount) at the rate he is earning on the date he is given notice that this Agreement and his employment are being terminated, less legally required withholdings ("severance payment") for twelve (12) months following such notice or until he receives comparable employment within such time, at which point the severance payments shall be discontinued. "Comparable employment shall mean employment paying seventy-five (75%) or more of his then current city manager salary.

- C. Duran shall not be entitled to any severance payment if he is terminated, resigns or retires following his arrest for a felony or a crime of moral turpitude or for a

documented incident of dishonesty affecting the affairs of the City. Further, pursuant to Article 2.6 of Division 2 of Title 5 of the California Government Code (sections 43243 et seq.), If Duran is convicted of a crime involving abuse of his position, as defined under State law, he shall not be entitled to paid leave during the investigation, any cash settlement paid related to termination, or any severance payment and Duran shall reimburse the City any such salary or benefits or payments provided in this circumstance.

Section 7 - Inability To Perform Essential Duties and Functions. Duran agrees that if he is unable to perform the essential duties and functions of the City Manager position for any reason for more than 120 consecutive calendar days, the City may terminate this Agreement. If the City elects to terminate this Agreement based on Duran's inability to perform the essential duties and functions of the City Manager position, it will so advise Duran in a writing sent to Duran's last known home address. Such termination shall not be deemed termination for "Good Cause" as defined in this Agreement, unless Duran chooses to contest the termination pursuant to Section 6.a above. At the time the City provides such notice, it will pay Duran for all earned pay and accrued, unused vacation benefits, less legally required deductions. However, Duran will not be entitled to any severance payments described above pursuant to Section 6.b of this Agreement.

If termination of this Agreement is the result of the death of Duran, the City shall pay all salary and benefits then due to Duran's legal heir(s).

Section 8 - Compensation.

- A. **Salary.** The City agrees to pay Duran for the performance of his duties and functions an annual salary as follows: \$230,000.00 subject to the 10% reduction in salaries for all employees imposed when weekly furloughs were instituted at the City. When weekly furloughs are reduced or eliminated, then the City Manager's salary shall be reinstated by a commensurate amount (e.g. if the weekly furloughs are completely abolished and the 40-hour work week re-established, then the City Manager shall be entitled to the full 10% increase. In addition, the City Council shall determine annually whether Duran shall be granted a cost of living adjustment (COLA) provided other Executive Management employees and whether Duran shall be granted any additional salary increase.

Salary will be paid in installments at the same time that other employees of the City are paid. Duran shall not be entitled to receive payment or credit for, and City shall not pay or credit Duran for, overtime, compensated time off in lieu of overtime or other compensation except as expressly provided in this Agreement. Duran acknowledges that the position of City Manager is exempt from the provisions of the Fair Labor Standards Act (FLSA).

- B. **Benefits.** During the term of this Agreement and his employment hereunder, Duran shall be entitled to receive benefits on the same terms and conditions as other Executive Management employees of the City as set forth in the current City of Antioch

Management Benefit Document (the current City of Antioch Management Benefit Document dated October 1, 2010 through September 30, 2013 is attached as Exhibit 1), unless otherwise set forth in this Agreement:

- Retirement benefits available on the same terms and conditions as other Executive Management employees under classic PERS of 2.7 at 55, which currently includes paying 1.0% of the employee's PERS contribution and reimbursing the City for 7.0% of the employer's PERS contribution or as may be amended through the Management Benefit Document for Executive Management employees.
- Duran shall not be entitled to the City of Antioch's Medical-after-Retirement benefit, but shall be entitled to a contribution to a Medical-after-Retirement Account (MARA) if offered to other Executive Management employees.

Except as expressly set forth in this Agreement, Duran shall not be entitled to nor be paid for any other benefits available to non Executive Management employees of the City.

Section 9 - Performance Evaluations. The City shall review and consider Duran's performance as City Manager at least annually as close as reasonably possible to the expiration of each twelfth month of this Agreement. The review shall be discussed with Duran and reduced to writing.

Section 10 - Confidential Information. Duran agrees that he will not reveal any confidential information about the City, City officials, or City employees that he learns while performing the duties and functions of City Manager.

Section 11 - City Property. Duran agrees that all materials, regardless of their form, that he receives, creates or produces in connection with this Agreement and/or his employment as City Manager are and will remain the exclusive property of the City. Duran will immediately deliver all originals of such materials to the City that are in his possession or control upon termination of this Agreement.

Section 12 - Assistance in Litigation. Duran agrees that he will furnish information and proper assistance to the City as it may reasonably require with any litigation in which it is or may become involved, either during or after the termination of this Agreement. Duran further agrees that he will not discuss, reveal or convey any information or documents pertaining to the City to any person or entity, or to any attorney for or representative of any person or entity, with actual or potential claims adverse to the City except pursuant to duly issued legal process or as otherwise authorized by the City. Duran agrees to notify the City immediately upon receipt of any legal process pertaining to the City. This provision shall not apply to any criminal investigation targeting any City official or employee.

Section 13 - Governing Law. This Agreement will be construed and enforced in accordance with the laws of the State of California.

Section 14 - Headings. The headings used in this Agreement are provided for convenience only and may not be used to construe meaning or intent.

Section 15 - Assignment. Neither this Agreement nor any interest in this Agreement may be assigned.

Section 16 - Severability. If any provision or portion of this Agreement is held to be invalid or unenforceable, this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable provision(s) or portion(s) had never been included.

Section 17 - Notices. Notices pursuant to this Agreement will be deposited with the United States Postal Service, postage prepaid and addressed as follows:

City:
Mayor's Office
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007

With a copy to: City Attorney
 City of Antioch
 P.O. Box 5007
 Antioch, CA 94531-5007

Duran:
Steven Duran
5281 San Vicente Terrace
Dublin, CA 94568

Section 18 - Modification. This Agreement may only be modified by a writing executed by the parties, the City Council having approved the modification on behalf of the City.

Section 19 - Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, and contains all agreements between Duran and the City regarding his employment as City Manager. Duran and the City agree that no representations, inducements, promises or agreements, oral or otherwise, have been made to either party, or anyone acting on behalf of either party, which are not stated herein, and that no agreement,

statement, or promise not contained in this Agreement will be valid or binding on either party.

Section 20 - Effective Date. This Agreement will become effective on the date of execution by the parties and the Term shall commence as defined herein.

City of Antioch

By: _____
Wade Harper, Mayor

Approved as to form:

Lynn Tracy Nerland, City Attorney

Attest:

Arne Simonsen, City Clerk of the City of Antioch

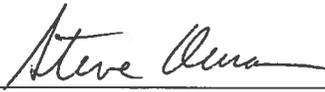
By:  _____
Steven Duran

Exhibit 1: City of Antioch Management Benefit Document October 1, 2010 through September 30, 2013



December 2, 2013

Contact:
Jim Jakel
(925) 779-7011
jjakel@ci.antioch.ca.us

FOR IMMEDIATE RELEASE

MAYOR ANNOUNCES NEW CITY MANAGER

Mayor Wade Harper announced that the City Council has hired Steve Duran, currently the City Manager in Hercules, California, to replace Jim Jakel, who is retiring in January after 10 years as Antioch's City Manager. All contract terms have been agreed upon and the City is set to approve a contract on December 10, 2013.

Duran, who took the reins in Hercules in 2011, is largely credited with saving that scandal ridden and financially beleaguered city from bankruptcy and helping an all new City Council restore public trust after years of mismanagement and malfeasance by previous administrations. After major layoffs, Friday furloughs and two successful tax measures, Hercules was able to eliminate its structural deficit and balance its fiscal year 2013-2014 budget. Duran also managed to get Hercules' Intermodal Transit Center project, which will eventually bring passenger rail, bus service, ferry service and the Bay Trail together on San Pablo Bay. Most recently, he finalized a deal for a Safeway anchored shopping center in Hercules.

Prior to his stint in Hercules, Duran spent nine years as the Community & Economic Development Agency Director in Richmond, California, where he had executive oversight of the Office of Economic Development, the Redevelopment Agency, the Housing Authority and the Employment & Training Department. His other public sector experience includes four years with the San Jose Redevelopment Agency, where he was Downtown Development and Implementation Manager.

Mayor Harper noted that the City Council believes Duran is the best fit for his new position because of his experience with financial challenges, economic development and budget skills for implementation of Measure C. He stated, "Steve is the right person to lead the City staff and deal with the complex issues in the community."

Duran said, "It was a tough decision to leave Hercules; but Hercules is on the right track now and the City Council isn't about to repeat the mistakes of previous administrations. They are a very sharp group." He added, "I find the challenges and opportunities in Antioch very motivating and the best match for my experience in the long run." He added, "The City Council has good chemistry. They seem to work well together and truly put the City's interests first."



Duran's compensation package includes an annual salary of \$230,000, which will be discounted to \$207,000 until City furloughs are discontinued, and a one-year severance package. He is set to officially start work in Antioch in January 2014.

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**STAFF REPORT TO THE MAYOR AND CITY COUNCIL FOR
CONSIDERATION AT THE COUNCIL MEETING OF DECEMBER 10, 2013**

FROM: Lynn Tracy Nerland, City Attorney 
DATE: December 3, 2013
SUBJECT: **Implementation of the Sales Tax Ordinance (Measure C)**

RECOMMENDATION: With the City Council's adoption of the Sales Tax Ordinance on June 12, 2013 and the voters' approval of the Ordinance (Measure C) on November 5, 2013 by 68.09%, the following implementation steps are recommended:

1. Adopt a Resolution Authorizing the City Manager to Execute Agreements with the State Board of Equalization for Implementation of a Local Transactions and Use Tax (Attachment A)
 - a. Agreement for Preparation to Administer and Operate City's Transactions and Use Tax Ordinance (Exhibit 1 to Attachment A)
 - b. Agreement for State Administration of City Transactions and Use Taxes (Exhibit 2 to Attachment A)
2. Adopt a Resolution Establishing Procedures for the Sales Tax Citizens' Oversight Committee (Attachment B), which pursuant to the Sales Tax Ordinance (Ordinance No. 2068-C-S at Attachment C) is composed of 7 Antioch residents serving staggered terms. For the Council's consideration:
 - Staggered terms: Shall 4 members be appointed to 3-year terms and 3 members to 2-year terms or some other variation?
 - Service on other Boards, Commissions and Committees: Like the Oversight Board for the redevelopment agency's dissolution, may members of the Sales Tax Citizens' Oversight Committee serve on other City Boards, Commissions or Committees?
 - Qualifications: Does the Council want to set qualifications for some or all of the Committee members? For example, should at least one member of the Committee have a financial, accounting or auditing background?

Applications for the City's Boards and Commissions require that a resume be include or the application will not be considered. Is there any other information that the Council desires to be submitted with the application?

- Role: Pursuant to the Ordinance, the Committee shall review the receipt and expenditures of the increased sales tax amount and report publicly to the City Council as part of the City's budget process. Shall the Committee be directed to meet publicly at least once to receive information from the Finance Director, including the annual audit, and then to provide a report,

either written or oral, to the City Council by April 1 each year? Shall the report indicate how the funds are being used to address the City Council's stated priorities of public safety and code enforcement?

- Staff Liaison: As the Committee will be subject to the Brown Act (requiring noticing of its public meetings) and the Committee members subject to the Political Reform Act requiring disclosure of economic interests, shall the Finance Director be the staff liaison to the Committee?

3. Direct Staff to Solicit Applications for the Sales Tax Citizens' Oversight Committee with applications due January 16, 2014 (draft Announcement and Application attached as Attachment D)

BACKGROUND:

Given concerns about service levels in light of the City's significant revenue declines due in part to the national economic recession and housing market crisis, the City Council unanimously declared a Fiscal Emergency and called for an election on November 5, 2013 for the voters to consider a ballot measure to adopt a temporary one-half cent Transactions and Use (Sales) Tax to fund all essential Antioch City services including police and code enforcement. The Sales Tax Ordinance is attached as Attachment D.

On November 5, 2013, the Antioch electorate approved the ballot measure by 68.09%. The results of the election were certified by the City pursuant to Resolution No. 2013/66 on November 26, 2013.

As the transactions and use (sales) tax is administered by the State Board of Equalization pursuant to State tax laws, Section 3-5.404 of the Sales Tax Ordinance requires the City to enter into Agreements with the State for the administration and operation of the tax. Section 3-5.416 of the Sales Tax Ordinance adopted by the City Council and approved by the voters requires the creation of a Citizens' Oversight Committee and provides that the City Council may adopt a resolution regarding the appointment of the Committee members and more specific duties of the Committee.

FINANCIAL IMPACT:

It is anticipated that a ½ cent increase in the sales tax will raise approximately \$4.7 million annually in additional revenue for the General Fund. The Finance Director has confirmed that the additional half-cent sales tax revenue will be segregated by the State Board of Equalization, so that the Finance Director can set up separate accounting funds to track the revenue and expenditures.

The Agreements with the State Board of Equalization require the City to pay the costs to prepare and administer the sales tax, which is standard.

OPTIONS:

The agreements with the State and the creation of the Citizens' Oversight Committee were required by Ordinance No. 2068-C-S, which was adopted by the City Council and approved by the voters. Therefore, the options before the City Council are regarding the details of the implementation of the Sales Tax Ordinance as outlined on the first page of this staff report.

ATTACHMENTS:

- A. Resolution Authorizing the City Manager to Execute Agreements with the State Board of Equalization for Implementation of a Local Transactions and Use Tax

 Agreement for Preparation to Administer and Operate City's Transactions and Use Tax Ordinance (Exhibit 1 to Attachment A)

 Agreement for State Administration of City Transactions and Use Taxes (Exhibit 2 to Attachment A)
- B. Adopt a Resolution Establishing Procedures for the Sales Tax Citizens' Oversight Committee
- C. An Ordinance of the City of Antioch Imposing a Transactions and Use Tax to be Administered by the State Board of Equalization (Ordinance No. 2068-C-S)
- D. Draft Announcement and Application for the Sales Tax Citizens' Oversight Committee

RESOLUTION NO. 2013-

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
AUTHORIZING THE CITY MANAGER TO EXECUTE
AGREEMENTS WITH THE STATE BOARD OF EQUALIZATION FOR
IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX**

WHEREAS, on June 11, 2013 the City Council approved Ordinance No. 2068-C-S amending the City Municipal Code and providing for a local transactions and use tax, which was approved by a majority vote of the electorate on November 5, 2013; and

WHEREAS, the State Board of Equalization (Board) administers and collects the transactions and use taxes for all applicable jurisdictions within the state; and

WHEREAS, the Board will be responsible to administer and collect the transactions and use tax for the City; and

WHEREAS, the Board requires that the City enter into a "Preparatory Agreement" and an "Administration Agreement" prior to implementation of said taxes, and

WHEREAS, the Board requires that the City Council authorize the agreements;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Antioch that the "Preparatory Agreement" attached as Exhibit 1 and the "Administrative Agreement" attached as Exhibit 2 are hereby approved and the City Manager is hereby authorized to execute each agreement.

* * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the ____ day of _____, 2013, by the following vote:

AYES: Councilmembers

NOES:

ABSENT:

CITY CLERK, CITY OF ANTIOCH

**AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE
CITY'S TRANSACTIONS AND USE TAX ORDINANCE**

In order to prepare to administer a transactions and use tax ordinance adopted in accordance with the provision of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, the City of Antioch, hereinafter called *City*, and the STATE BOARD OF EQUALIZATION, hereinafter called *Board*, do agree as follows:

1. The Board agrees to enter into work to prepare to administer and operate a transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue and Taxation Code which has been approved by a majority of the electors of the City and whose ordinance has been adopted by the City.

2. City agrees to pay to the Board at the times and in the amounts hereinafter specified all of the Board's costs for preparatory work necessary to administer the City's transactions and use tax ordinance. The Board's costs for preparatory work include costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Board's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance. These costs shall include both direct and indirect costs as specified in Section 11256 of the Government Code.

3. Preparatory costs may be accounted for in a manner which conforms to the internal accounting and personnel records currently maintained by the Board. The billings for costs may be presented in summary form. Detailed records of preparatory costs will be retained for audit and verification by the City.

4. Any dispute as to the amount of preparatory costs incurred by the Board shall be referred to the State Director of Finance for resolution, and the Director's decision shall be final.

5. Preparatory costs incurred by the Board shall be billed by the Board periodically, with the final billing within a reasonable time after the operative date of the ordinance. City shall pay to the Board the amount of such costs on or before the last day of the next succeeding month following the month when the billing is received.

6. The amount to be paid by City for the Board's preparatory costs shall not exceed one hundred seventy-five thousand dollars (\$175,000) (Revenue and Taxation Code Section 7272.)

7. Communications and notices may be sent by first class United States mail. Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization
P.O. Box 942879
Sacramento, California 94279-0032
Attention: Administrator, RAAS

Communications and notices to be sent to City shall be addressed to:

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

8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer City's transactions and use tax ordinance has been completed and the Board has received all payments due from City under the terms of this agreement.

CITY OF ANTIOCH

STATE BOARD OF EQUALIZATION

By _____
(Signature)

By _____
Dario Romano, Administrator
Return Analysis and Allocation Section

Jim Jakel

City Manager

(Rev. 11/02)

**AGREEMENT FOR STATE ADMINISTRATION
OF CITY TRANSACTIONS AND USE TAXES**

The City Council of the City of Antioch has adopted, and the voters of the City of Antioch (hereafter called "City" or "District") have approved by the required majority vote, the City of Antioch Transactions and Use Tax Ordinance (hereafter called "Ordinance"), a copy of which is attached hereto. To carry out the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code and the Ordinance, the State Board of Equalization, (hereinafter called the "Board") and the City do agree as follows:

**ARTICLE I
DEFINITIONS**

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

1. "District taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance specifically authorized by Revenue and Taxation code Section 7285.9, and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

2. "City Ordinance" shall mean the City's Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No. 2068-C-S, as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

**ARTICLE II
ADMINISTRATION AND COLLECTION
OF CITY TAXES**

A. Administration. The Board and City agree that the Board shall perform exclusively all functions incident to the administration and operation of the City Ordinance.

B. Other Applicable Laws. City agrees that all provisions of law applicable to the administration and operation of the State Sales and Use Tax Law which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be applicable to the administration and operation of the City Ordinance. City agrees that money collected pursuant to the City Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing the Board pursuant to Article IV of this Agreement, and transmitting to City the amount to which City is entitled.

C. Transmittal of money.

1. For the period during which the tax is in effect, and except as otherwise provided herein, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City periodically as promptly as feasible, but not less often than twice in each calendar quarter.

2. For periods subsequent to the expiration date of the tax whether by City's self-imposed limits or by final judgment of any court of the State of California holding that City's ordinance is invalid or void, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the City designated and authorized by the City. A statement shall be furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this Agreement.

D. Rules. The Board shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the City Ordinance and the distribution of the district taxes collected thereunder.

E. Preference. Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Board shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and district transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and City as their interests appear.

F. Security. The Board agrees that any security which it hereafter requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon such terms that it also will be available for the payment of the claims of City for district taxes owing to it as its interest appears. The Board shall not be required to change the terms of any security now held by it, and City shall not participate in any security now held by the Board.

G. Records of the Board.

When requested by resolution of the legislative body of the City under section 7056 of the Revenue and Taxation Code, the Board agrees to permit authorized personnel of the City to examine the records of the Board, including the name, address, and account number of each seller holding a seller's permit with a registered business location in the City, pertaining to the ascertainment of transactions and use taxes collected for the City. Information obtained by the City from examination of the Board's records shall be used by the City only for purposes related to the collection of transactions and use taxes by the Board pursuant to this Agreement.

H. Annexation. City agrees that the Board shall not be required to give effect to an annexation, for the purpose of collecting, allocating, and distributing District transactions and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Board. The notice shall include the name of the county or counties annexed to the extended City boundary. In the event the City shall annex an area, the boundaries of which are not coterminous with a county or counties, the notice shall include a description of the area annexed and two maps of the City showing the area annexed and the location address of the property nearest to the extended City boundary on each side of every street or road crossing the boundary.

ARTICLE III
ALLOCATION OF TAX

A. Allocation. In the administration of the Board's contracts with all districts that impose transactions and use taxes imposed under ordinances, which comply with Part 1.6 of Division 2 of the Revenue and Taxation Code:

1. Any payment not identified as being in payment of liability owing to a designated district or districts may be apportioned among the districts as their interest appear, or, in the discretion of the Board, to all districts with which the Board has contracted using ratios reflected by the distribution of district taxes collected from all taxpayers.

2. All district taxes collected as a result of determinations or billings made by the Board, and all amounts refunded or credited may be distributed or charged to the respective districts in the same ratio as the taxpayer's self-declared district taxes for the period for which the determination, billing, refund or credit applies.

B. Vehicles, Vessels, and Aircraft. For the purpose of allocating use tax with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing on the application for registration or on the certificate of ownership may be used by the Board in determining the place of use.

ARTICLE IV COMPENSATION

The City agrees to pay to the Board as the Board's cost of administering the City Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Board for the City.

ARTICLE V MISCELLANEOUS PROVISIONS

A. Communications. Communications and notices may be sent by first class United States mail to the addresses listed below, or to such other addresses as the parties may from time to time designate. A notification is complete when deposited in the mail.

Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization
P.O. Box 942879
Sacramento, California 94279-0032
Attention: Administrator, RAAS

Communications and notices to be sent to the City shall be addressed to:

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

Unless otherwise directed, transmittals of payment of District transactions and use taxes will be sent to the address above.

B. Term. The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on April 1, 2014. This Agreement shall continue until December 31 next following the expiration date of the City Ordinance, and shall thereafter be renewed automatically from year to year until the Board completes all work necessary to the administration of the City Ordinance and has received and disbursed all payments due under that Ordinance.

C. Notice of Repeal of Ordinance. City shall give the Board written notice of the repeal of the City Ordinance not less than 110 days prior to the operative date of the repeal.

ARTICLE VI
ADMINISTRATION OF TAXES IF THE
ORDINANCE IS CHALLENGED AS BEING INVALID

A. Impoundment of funds.

1. When a legal action is begun challenging the validity of the imposition of the tax, the City shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II. C., until a court of competent jurisdiction renders a final and non-appealable judgment that the tax is valid.

2. If the tax is determined to be unconstitutional or otherwise invalid, the City shall transmit to the Board the moneys retained in escrow, including any accumulated interest, within ten days of the judgment of the trial court in the litigation awarding costs and fees becoming final and non-appealable.

B. Costs of administration. Should a final judgment be entered in any court of the State of California, holding that City's Ordinance is invalid or void, and requiring a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement, the parties mutually agree that:

1. Board may retain all payments made by City to Board to prepare to administer the City Ordinance.

2. City will pay to Board and allow Board to retain Board's cost of administering the City Ordinance in the amounts set forth in Article IV of this Agreement.

3. City will pay to Board or to the State of California the amount of any taxes plus interest and penalties, if any, that Board or the State of California may be required to rebate or refund to taxpayers.

4. City will pay to Board its costs for rebating or refunding such taxes, interest, or penalties. Board's costs shall include its additional cost for developing procedures for processing the rebates or refunds, its costs of actually making these refunds, designing and printing forms, and developing instructions for Board's staff for use in making these rebates or refunds and any other costs incurred by Board which are reasonably appropriate or necessary to make those rebates or refunds. These costs shall include Board's direct and indirect costs as specified by Section 11256 of the Government Code.

5. Costs may be accounted for in a manner, which conforms to the internal accounting, and personnel records currently maintained by the Board. The billings for such costs may be presented in summary form. Detailed records will be retained for audit and verification by City.

6. Any dispute as to the amount of costs incurred by Board in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Board in connection with such refunds shall be billed by Board on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding City's Ordinance invalid or void becomes final. Thereafter Board shall bill City on or before the 25th of each month for all costs incurred by Board for the preceding calendar month. City shall pay to Board the amount of such costs on or before the last day of the succeeding month and shall pay to Board the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Board costs incurred in making those refunds.

CITY OF ANTIOCH

STATE BOARD OF EQUALIZATION

By _____
(Signature)

By _____
Dario Romano, Administrator
Return Analysis and Allocation Section

Jim Jakel

City Manager

RESOLUTION NO. 2013-**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
ESTABLISHING PROCEDURES FOR THE SALES TAX CITIZENS' OVERSIGHT
COMMITTEE CREATED PURSUANT TO ORDINANCE NO. 2068-C-S**

WHEREAS, given concerns about service levels in light of the City's significant revenue declines due in part to the national economic recession and housing market crisis, the City Council unanimously declared a Fiscal Emergency, adopted Ordinance No. 2068-C-S, and called for an election on November 5, 2013 for the voters to consider a ballot measure to adopt a temporary one-half cent Transactions and Use (Sales) Tax to fund all essential Antioch City services including police and code enforcement; and

WHEREAS, on November 5, 2013, the Antioch electorate approved the ballot measure by 68.09%; and

WHEREAS, the results of the election were certified by the City pursuant to Resolution No. 2013/66 on November 26, 2013; and

WHEREAS, Section 3-5.416 of Ordinance No. 2068-C-S (the Sales Tax Ordinance) adopted by the City Council and approved by the voters requires the creation of a Citizens' Oversight Committee and provides that the City Council may adopt a resolution regarding the appointment of the Committee members and more specific duties of the Committee;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Antioch that:

1. Pursuant to Ordinance No. 2068-C-S, the Sales Tax Citizens' Oversight Committee shall be composed of 7 Antioch residents serving staggered terms. Four members of the Committee shall be appointed to 3-year terms and 3 members shall be appointed to 2-year terms.
2. Members of Sales Tax Citizens' Oversight Committee are not prohibited from serving on other City Boards, Commissions or Committees.
3. At least one member of the Sales Tax Citizens' Oversight Committee shall have a financial, accounting or auditing background.
4. The Sales Tax Citizens' Oversight Committee shall review the receipt and expenditures of the increased sales tax amount and report publicly to the City Council as part of the City's budget process. The Committee shall meet publicly at least once to receive information from the Finance Director, including the annual audit, and then shall provide a report, either written or oral, to the City Council by April 1 each year. The report shall indicate how the funds are being

used to address the City Council's stated priorities of public safety and code enforcement.

5. The Sales Tax Citizens' Oversight Committee shall be subject to the Brown Act (requiring noticing of its public meetings) and the Committee members shall be subject to the Political Reform Act requiring disclosure of economic interests.
6. The Finance Director shall be the City staff liaison to the Sales Tax Citizens' Oversight Committee.

* * * *

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Antioch at a regular meeting thereof, held on the ____ day of _____, 2013, by the following vote:

AYES: Councilmembers
NOES:
ABSENT:

CITY CLERK, CITY OF ANTIOCH

ORDINANCE NO. 2068-C-S

AN ORDINANCE OF THE CITY OF ANTIOCH
IMPOSING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

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

SECTION 1. ADDITION TO THE MUNICIPAL CODE. Article 4 is added to Chapter 5 of Title 3 of the Antioch Municipal Code to read as follows:

ARTICLE 4: TRANSACTIONS AND USE TAX

Section 3-5.401. TITLE. This article shall be known as the "Antioch Transactions and Use Tax Ordinance." The city of Antioch hereinafter shall be called "City." This article shall be applicable in the incorporated territory of the City.

Section 3-5.402. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance.

Section 3-5.403. PURPOSE. This article is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this article.

Section 3-5.404. CONTRACT WITH STATE. Prior to the Operative Date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax article; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the Operative Date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 3-5.405. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one-half of one percent (.50%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this article.

Section 3-5.406. PLACE OF SALE. For the purposes of this article, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

Section 3-5.407. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the Operative Date of this article for storage, use or other consumption in said territory at the rate of one-half of one percent (.50%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Section 3-5.408. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this article and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this article as though fully set forth herein.

Section 3-5.409. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this article.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

Section 3-5.410. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this article.

Section 3-5.411. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee

at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this article.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this article.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this article, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this article.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this article.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this article may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 3-5.412. AMENDMENTS.

A. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this article, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this article.

B. Pursuant to California Elections Code section 9217 or any successor statute, the City Council of the City of Antioch may amend or repeal this article, but not increase or extend the rate of tax imposed by the article, without the approval of the voters of the City of Antioch voting on such question.

Section 3-5.413. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this article, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 3-5.414. USE OF TAX PROCEEDS. All proceeds of the tax levied and imposed under this article shall be paid into the General Fund for use by the City of Antioch.

Section 3-5.415. ANNUAL AUDIT. By no later than December 31st of each year, the City's independent auditors shall complete a financial audit report to include the revenue raised and expended by this tax to be reflected in the City's budget.

Section 3-5.416. CITIZENS' OVERSIGHT COMMITTEE. A Citizens' Oversight Committee shall be established to review the receipt and expenditure of the revenue from this transactions and use tax, including the annual auditor's report. The Committee's review shall be completed in conjunction with the City's budget process. The Committee's report on its review, whether oral or written, shall be considered by the City Council at a public meeting. Any written report shall be a matter of public record. The Committee shall consist of seven members who shall be Antioch residents. The terms of the Committee members may be staggered but no term shall be less than two years. The City Council may adopt a resolution regarding the appointment of the Committee members and more specific duties of the Committee.

Section 3-5.417. TERMINATION DATE. The authority to levy the tax imposed by this article shall expire seven (7) years from the Operative Date.

SECTION 2. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 3. CEQA. This transactions and use tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment. Therefore, under CEQA Guidelines section 15060, review under CEQA is not required.

SECTION 4. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City's transactions and use taxes and shall not take effect until approved by the majority of the voters voting at the general municipal election to be held on November 5, 2013.

SECTION 5. CERTIFICATION; PUBLICATION. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law and transmitted to the Board of Equalization.

* * * * *

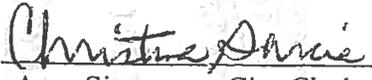
INTRODUCED by the City Council of the City of Antioch on May 28, 2013 and PASSED AND ADOPTED by the City Council of the City of Antioch on June 25, 2013, by the following vote:

AYES: Council Members Wilson, Rocha, Tiscareno, Agopian and Mayor Harper

NOES: None

ABSENT: None


Wade Harper, Mayor

Attest: 
for Arne Simonsen, City Clerk

Ordinance No. 2068-C-S was submitted to the People of the City of Antioch at the November 5, 2013 special municipal election. It is hereby certified that this Ordinance was APPROVED by the following vote of the People of Antioch:

YES: 7,609

NO: 3,566

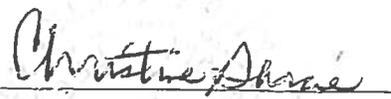
This Ordinance was thereby adopted by the voters at the November 5, 2013 election and took effect upon adoption of a resolution declaring the results of the election at a regular meeting of the City Council held on November 26, 2013 by the following vote:

AYES: Council Members Wilson, Rocha, Tiscareno, Agopian and Mayor Harper

NOES: None

ABSENT: None

I hereby certify that the foregoing is a true and correct copy of an ordinance duly and regularly adopted by the People of the City of Antioch, California.


for Arne Simonsen, City Clerk



BOARDS AND COMMISSION VACANCY ANNOUNCEMENT

SALES TAX CITIZENS' OVERSIGHT COMMITTEE

Seven (7) Committee Member Vacancies

4 Vacancies for a 3-year term

3 Vacancies for a 2-year term

A Sales Tax Citizens' Oversight Committee shall be established as the voters passed Ballot Measure C – Transaction and Use (Sales) Tax at the November 5, 2013 Consolidated Election.

Each year, an independent auditor would complete a public audit report of the revenue raised and its expenditure. A Sales Tax Citizens' Oversight Committee would review the expenditures and report publicly. The Committee's review shall be completed in conjunction with the City's budget process. The Committee's report on its review, whether oral or written, shall be considered by the City Council at a public meeting. Any written report shall be a matter of public record.

The Sales Tax Citizens' Oversight Committee shall consist of seven members who shall be Antioch residents. The terms of the Committee members may be staggered but no term shall be less than two years. The City Council's resolution regarding the appointment of the Committee members and more specific duties of the Committee is attached. The Committee will be appointed by the Mayor and approved by the City Council.

The Committee shall meet on a date and time to be determined in the City Council Chambers and be subject to the Brown Act. Members of the Sales Tax Citizens' Oversight Committee will be required to file an annual "Statement of Economic Interest".

To be considered for this volunteer position, a completed application must be received in the office of the City Clerk no later than

5:00 p.m., Thursday, January 16, 2014.



APPLICATION DEADLINE: 5:00 p.m. on Thursday, January 16, 2014

APPLICATION FOR COMMUNITY SERVICE

SALES TAX CITIZENS' OVERSIGHT COMMITTEE

Print Your Name _____

Address _____ City _____

ZIP Code _____ Phone (H) _____ (W) _____ (C) _____

E-mail address _____

Employer _____

Address _____ City _____

Occupation _____

Years lived in the City of Antioch _____

List the three (3) main reasons for your interest in this appointment:

Have you had any previous appointments to other city commissions or boards? (If yes, please explain) _____

What skills/knowledge do you have that would be helpful in serving on the Sales Tax Citizens' Oversight Committee? _____

**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF DECEMBER 10, 2013**

Prepared by: Monika Helgemo, Supervisor of Animal Services
Diane Aguinaga, Police Lieutenant managing Animal Services

Reviewed by: Leonard Orman, Acting Police Chief 

Date: December 4, 2013

Subject: Adoption of a Revised Title 6, Chapter 1, of the Antioch Municipal Code regarding Animals

RECOMMENDATION

It is recommended that the City Council approve a:

1. Motion to read the ordinance by title only; and
2. Motion to introduce an ordinance amending in its entirety Title 6, Chapter 1, Animals, of the Antioch Municipal Code.

BACKGROUND INFORMATION

Animal control issues are a continuing problem in the City. The intake of animals at the Shelter is trending higher and higher each year. Over 50% of the calls for service that are handled by Animal Control Officers are for dangerous animals (i.e. aggressive/biting/fractious). Over the last year, the number of high profile animal cases has highlighted the need for a well defined and updated ordinance. With the exception of a few minor changes over the years, most of the Animal Municipal Code has not been updated since the early 1980s. At the City Council's request, the Police Department, Animal Control Supervisor and City Attorney's Office have revised the existing ordinance.

DISCUSSION

Following are the highlights of the proposed changes made to the animal ordinance:

1. General. The chapter was reorganized from a single list of sections into eight articles, organized by subject. The ordinance was updated consistent with state law, and references to state law are included in parenthesis where useful.
2. Clarifications. Certain existing sections were expanded or clarified, such as:
 - the right to enter private property was clarified at section 6-1.202.
 - a list of potential City remedies for violation is consolidated and outlined at section 6-1.204.
 - the right to appeal decisions to the Board of Administrative Appeals was clarified at section 6-1.203.
 - the permit procedure for keeping certain animals or bees was clarified at section 6-1.601.

3. Unlawful Acts. The list of Unlawful Acts was expanded and consolidated at section 6-1.501. It now includes the following prohibitions and requirements:

- It is unlawful for a person to keep more than 5 cats without a permit.
 - Allows the City to control the number of cats per property.
 - Reduces the number of complaints from the public regarding uncontrolled cats that are trespassing, defecating or otherwise being a nuisance on neighboring properties.
 - Creates more parity between the allowed number of cats and dogs per property.
- It is unlawful to feed feral cats off one's own property.
 - Reduces the number of complaints from the public regarding uncontrolled cats that are trespassing, defecating or otherwise being a nuisance to or on neighboring properties.
 - Decreases the number of wildlife, rodents, vermin and other pests that are eating food from feeding stations.
- It is unlawful to allow a dog to bark unabated.
 - Updates and clearly defines what a barking dog is.
- It is unlawful to keep a rooster without a permit.
 - Prohibits any person from keeping a rooster without a permit.
 - Allows a person to have only one rooster with a permit.
 - Allows the City to control the number of roosters.
 - Reduces the number of complaints from the public regarding uncontrolled roosters that are being noisy, defecating or otherwise being a nuisance to or on neighboring properties.

4. Redeeming impounded animals. The requirements for redeeming an impounded animal were added and are set forth at section 6-1.705. It now includes the following fees and requirements:

- Requires that an impounded animal must be micro-chipped before release to the owner.
 - The microchip serves as a permanent form of identification
 - Decreases the number of unclaimed animals at the Shelter
 - Reduces the time an animal with a possible owner is boarded at the Shelter
 - Requires the animal owner to pay a fee for implantation according to the City's Master Fee Schedule (Currently \$22.00)
- Requires that a dog or cat, impounded for the 2nd time, must be spayed or neutered before release to the owner.
 - Diminishes the animal's desire to stray from home.
 - Eliminates the animal's ability to reproduce while at large.
 - Provides a deterrent for repeat violators of an animal being at large.
 - Reduces the number of unwanted animals that cause over-crowding at the Shelter.
 - Requires the owner to pay the spay/neuter surgery fees to the local Antioch veterinarian of their choice before an animal is released to the owner.

5. Multiple pets or kennel permit. New permits for multiple pets or kennels were added to section 6-1.303. The multiple pets permit replaces the former dog fancier permit. The following changes and requirements have been added to the process of obtaining a permit:

- Now prohibits any applicant that has a revoked dog license from obtaining a permit.
- Now prohibits any applicant that has been convicted for a violation of any law regulating animals within 3 years from obtaining a permit.
- Animal Control will now notify adjacent property owners and tenants within 300 feet of the applicant's property.

- Adjacent property owners and tenants will now be given the opportunity, within 10 days of notification, to provide Animal Control with any written/verbal comments regarding any animal nuisances (i.e. trespassing, noise, defecation.)
- The applicant may now appeal the Animal Control Supervisor's decision to deny a permit.

6. Potentially dangerous and vicious animals. The provisions regulating potentially dangerous and vicious animals were updated and include more remedies. These are found at Article 8, beginning at section 6-1.801. (As a reminder, under state law, the City is not permitted to ban any type of dog based upon the breed. Food and Agriculture Code section 31683.)The following updates and additions have been made to the Dangerous Animal Ordinance:

- Aligns the City ordinance more closely with that of California State Law.
- Updates the ordinance to now include remedy for animal attacks and maulings that take place on private property.
- Now includes the requirements for keeping an animal after it has been declared potentially dangerous or vicious.
- Now includes the process of how to appeal a determination of a potentially dangerous animals or vicious animal.
- Continues to comply with the State prohibition of breed specific legislation (Food and Agriculture Code section 31683.)

FISCAL IMPACT

There is no direct fiscal impact associated with the adoption of the proposed ordinance. However, the proposed updates to the ordinance hope to not only deter animal law violations, but also encourage the fiscal responsibility of animal owners, particularly when animals are impounded. The enforcement of the monetary fines and penalties (as well as those within the regular Master Fee Schedule) may help Animal Services recover more of its costs.

OPTIONS

The Council may choose not to adopt the ordinance and direct staff to prepare different amendments to the Animal ordinance.

ATTACHMENTS

A: Ordinance

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH AMENDING
IN ITS ENTIRETY CHAPTER 1, ANIMALS, OF TITLE 6, SANITATION AND HEALTH**

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

SECTION 1. Chapter 1, Animals, of Title 6 (Sanitation and Health) is amended in its entirety to read as follows:

"Chapter 1, Animals

CHAPTER 1: ANIMALS

Article 1: Purpose and Definitions

Article 2: Authority; Entry on Private Property; Procedures; Violations; Remedies

Article 3: Dog Licensing

Article 4: Rabies and Animal Bites

Article 5: Animals: Prohibitions and Requirements

Article 6: Number and Types of Animals

Article 7: Impounding and Disposition of Animals

Article 8: Potentially Dangerous and Vicious Animals

ARTICLE 1: PURPOSE AND DEFINITIONS

§6-1.101 Purpose

§6-1.102 Definitions

§ 6-1.101 PURPOSE.

The purpose of this chapter is to provide standards to safeguard property and the public welfare by regulating and controlling animals and providing for the impoundment and caring for certain animals. (Citations to California Codes in this chapter are for reference.)

§ 6-1.102 DEFINITIONS.

In this chapter, the following definitions apply unless the context requires a different meaning.

ANIMAL. A mammal, avian, reptile, arachnid or fish.

ANIMAL CONTROL or ANIMAL CONTROL SERVICES. The City's Animal Control Division of the Police Department.

ANIMAL CONTROL SUPERVISOR. The City's Animal Control Supervisor or his or her designee. (See Section 6-1.201.)

ANIMAL SERVICES. The Antioch Animal Services Center or any other facility designated by action of the Council for the purpose of impounding and caring for animals found in violation of this chapter, or surrendered to the city by their owners.

AT LARGE. An animal that is: 1) not secured or enclosed on the owner's property; or 2) not under restraint by a substantial leash no longer than 6 feet and within the care, custody and physical control of a competent person authorized to be at that location. An at-large animal does not include a cat.

BARKING DOG. A dog that barks, bays, cries, howls or makes any noise for an extended period of time to the disturbance of any person at any time of day or night, regardless of whether the dog is physically situated in or on private property. An extended period of time consists of incessant barking for 30 minutes or more in any 24-hour period, or intermittent barking for 60 minutes or more during any 24-hour period. A dog shall not be deemed a "barking dog" if at the time the dog is barking: (1) a person is trespassing or threatening to trespass on private property where the dog is situated; or (2) the dog is being teased or provoked.

CAT. A member of the feline species customarily confined or cultivated as a pet.

CHIEF OF POLICE or CHIEF. The City's Chief of Police or his or her designee. (See Section 6-1.201.)

DOG. A member of the canine species customarily confined or cultivated as a pet.

EUTHANASIA. The humane destruction of an animal by a method that involves instantaneous unconsciousness and immediate death, or by a method that involved anesthesia produced by an agent that causes the painless loss of consciousness and death during the loss of consciousness.

FERAL CAT. A cat that is born in or has reverted to the wild, and is not domesticated or tamed.

HORSE. An animal of the genus equus, including, but not limited to, horses, mules, donkeys, and burros.

IMPOUNDED. Taken into the custody of Animal Services. (Food & Ag. Code §31607.)

KENNEL PERMIT. A discretionary permit issued by the City to permit more than 10 dogs in any single dwelling unit or business or to allow dogs to be kept for commercial purposes. See Section 6-1.303(A)(2).

MULTIPLE PET PERMIT. A discretionary permit issued by the City to allow more than 3 dogs at a single dwelling unit or business unit pursuant to Section 6-1.303(A)(1) or more than 5 cats pursuant to Section 6-1.601 and Section 6-1.303(A)(1).

OWNER. A person owning, keeping, or having custody of one or more animals (not including Animal Control Services).

PERSON. An individual, domestic or foreign corporation, partnership, association of any kind, trust, fraternal society, or cooperative.

PET. An animal kept for pleasure rather than utility.

PET SHOP. A premises devoted to the commercial trade or selling of animals for use as pets.

POTENTIALLY DANGEROUS DOG OR ANIMAL. Any of the following, as determined by the City:

(1) a dog or other animal which, when unprovoked, on two separate occasions within the prior 36-month period, engages in any behavior that requires a defensive action by a person or another animal to prevent bodily injury when the person and the dog are: off the property of the dog's owner; or on the property of the dog's owner by invitation or with implied permission. (Food & Ag. Code §31602);

(2) a dog or animal which, when unprovoked, bites a person causing a less severe injury than as defined here as a SEVERE INJURY (Food & Ag. Code §§31602, 31064); or

(3) a dog or animal which, when unprovoked, has bitten, inflicted injury or otherwise caused injury attacking a domestic animal. (Food & Ag. Code §31602.)

PREMISES. A property owned, leased, or rented by a person.

PUBLIC NUISANCE. An animal which engages in behavior specified as defined as a public nuisance under Section 6-1.501, this Chapter 1, elsewhere in the Municipal Code, or state law.

SEVERE INJURY. A physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery. (Food & Ag. Code §31604.)

VETERINARY HOSPITAL. An establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of animal diseases and injuries.

VICIOUS DOG OR ANIMAL. Any of the following, as determined by the City:

(1) a dog or animal seized under Penal Code section 599aa and upon the sustaining of a conviction of the owner under Penal Code section 597.5;

(2) a dog or animal which, when unprovoked, in an aggressive manner inflicts severe injury on or kills a person or a domestic animal;

(3) a dog or animal previously determined to be and currently listed as a potentially dangerous dog or animal which, after its owner has been notified of this determination: continues the behavior described as a potentially dangerous dog or animal; or is not kept indoors or secured on the owner's property. Here, "secured" means contained within a fence or structure suitable to prevent the entry of young children and to confine a vicious dog or animal, designed to prevent the animal from escaping. (Food & Ag. Code §§31603, 31641, 31642 or 31643.)

WILD ANIMAL. An animal that can normally be found in a wild state or is defined as a wild animal under state law. This includes but is not limited to a live raccoon, skunk, fox, opossum, gopher or undomesticated rabbit, rodent or snake.

ARTICLE 2: AUTHORITY; ENTRY ON PRIVATE PROPERTY; PROCEDURES; VIOLATIONS; REMEDIES

- §6-1.201 Authority.
- §6-1.202 Entry on private property.
- §6-2.203 Procedures.
- §6-1.204 Violations; Remedies.
- §6-1.205 Future Ownership of Animals after Violation

§ 6-1.201 AUTHORITY.

This chapter shall be enforced, administered, and directed by the Chief of Police or his or her designated representative. The following are also authorized to enforce this chapter: the Animal Control Supervisor or representative, the Code Enforcement Officer or representative, and all City police officers.

§ 6-1.202 ENTRY ON PRIVATE PROPERTY.

(A) Entry on private property. The Animal Control Supervisor may enter on private property to investigate or enforce a possible violation of this chapter under any of the following circumstances:

- (1) with the written or verbal consent of the property owner or adult person in possession of the property; or
- (2) in an emergency situation when immediate action is required without time to seek a warrant. Examples of an emergency situation include circumstances posing an immediate threat to public health or safety or a situation requiring swift

action to save life, property or evidence. (See *Broden v. Marin Humane Society* (1999) 70 Cal. App. 4th 1212, 83 Cal. Rptr. 2d 235.)

(B) Warrant. The Animal Control Supervisor must obtain a warrant issued by the court before entering private property when there is no consent and no emergency under subsection (A) above. (Code of Civ. Proc. §§1822.50 through 1822.57).

6-1.203 PROCEDURES.

(A) General. A person aggrieved by a decision made under this chapter may appeal that decision to the Board of Administrative Appeals, under Sections 1-4.01 through 1-4.04, or to a hearing officer appointed by the City Manager in a case where a quorum of the Board cannot be convened in a timely manner. However, these procedures do not apply to criminal penalties (§6-1.201 (B)(1)), civil injunctions (§6-1.201 (B)(2)), administration citations (§6-1.201 (B)(3)) or public nuisance abatement (§6-1.201 (B)(4)), each of which is subject to its own procedures.

(B) Examples. Examples of matters that are subject to appeal include:
(1) determination of unlawful act under Section 6-1.501 or other section of this chapter;
(2) denial or revocation of a permit under Article 6 of this chapter; (3) designation as potentially dangerous animal or vicious animal, or conditions related to continued ownership.

(C) Notice, hearing, decision. The notice, hearing and decision procedures are those set forth in Section 1-4.03 and procedures that the Board of Administrative Appeals may adopt.

§ 6-1.204 VIOLATIONS; REMEDIES.

(A) Violations. It is unlawful for a person to violate this Chapter 1, or to fail to comply with a requirement of this Chapter 1. Each day the violation continues is a separate offense.

(B) Remedies Generally. The City may enforce this Chapter 1 by any one or more of the following methods, at the City's discretion:

(1) Criminal penalties. A violation of this Chapter 1 is a misdemeanor, unless the citing officer determines to cite the violation as an infraction based upon the circumstances. Anyone authorized to enforce this Chapter under Section 6-1.201 may investigate complaints and may issue a criminal citation if he or she observes a violation committed in his or her presence. (See Title 1, Chapter 2, of the Antioch Municipal Code regarding penalties.) (Food & Ag. Code §31401.)

(2) Civil injunction and penalties, under Section 1-2.04.

(3) Administrative citations and penalties, under Title 1, Chapter 5 of the Antioch Municipal Code.

- (4) Public nuisance abatement, under Antioch Municipal Code Section 5-1.301 and following and Government Code sections 38773 or other lawful authority.
- (5) Impoundment and/or Quarantine.
- (6) Mandatory surrender of animal.
- (7) Conditions imposed as a condition of permits, or for animals declared to be potentially dangerous or vicious under Section 6-1.803.
- (8) Remedies provided by state law.

(C) State law. When more stringent than the provisions of this chapter, the provisions of the Health and Safety Code, the Penal Code, the Food and Agriculture Code and the California Code of Regulations relating to animal health, control, care, and rabies control shall apply.

§ 6-1.205 FUTURE OWNERSHIP OF ANIMALS AFTER CRIMINAL VIOLATION

A person convicted of violating or permitting violations of this chapter or related state law is prohibited from keeping or harboring within the City an animal of the type, species, group or family to which the conviction applies (including the animal initially causing the violation or nuisance) for a period of three years from the date of the subsequent conviction. (See also Section 6-1.805, Actions after determination: Vicious.)

ARTICLE 3: DOG LICENSING

- §6-1.301 Ownership.
- §6-1.302 Dog licenses required.
- §6-1.303 Multiple pet or kennel permit.
- §6-1.304 License fee.
- §6-1.305 License fee exemptions.
- §6-1.306 Lost tags; Duplication fees.
- §6-1.307 License tags; Display
- §6-1.308 License tags not to be removed without permission from owner; Counterfeit tags.
- §6-1.309 License record keeping.
- §6-1.310 Disposition of fees and fines.

§ 6-1.301 OWNERSHIP.

A person who obtains a dog license under this chapter is, for the purposes of this chapter, the legal owner of the animal described in the license file. That person, and anyone defined as an owner under Section 6-1.102, is responsible for the animal.

§ 6-1.302 DOG LICENSE REQUIRED.

Each owner of a dog which is over the age of four months and which is kept in the City shall obtain an annual license for the dog, beginning with date of the (mandatory) rabies vaccination of the dog and expiring one year later. The owner shall obtain the license within 30 days after the day on which the dog, if over the age of four months, is first owned. The Animal Control Supervisor will issue a license after application and payment of the required fee.

A dog owner may, with proof of multi-year rabies vaccination, choose to renew a license for one, two or three years, with final expiration coincident with the expiration of the rabies vaccination. (Food & Ag. Code §30801.) A person who acquires a licensed dog must transfer ownership within 30 days, and shall include written notice to Animal Control of the name and address of the former owner.

§ 6-1.303 MULTIPLE PET OR KENNEL PERMIT.

(A) Permit required.

(1) Multiple pet permit. No more than 3 dogs over six months of age may be kept, harbored, possessed or maintained for more than 30 days in a single dwelling or business unit without a multiple pet permit.

(2) kennel permit. No more than 10 dogs over six months of age, and no dogs for commercial purposes may be kept, harbored, possessed or maintained in any single dwelling or business unit without a kennel permit. *Commercial purposes* includes but is not limited to: boarding, training, or wholesaling of animals; but does not include the sale of individual animals to private owners.

(3) Exemptions.

(a) A veterinary hospital is not required to obtain a multiple pet permit or kennel permit unless the hospital also offers boarding or breeding services separately from hospital services.

(b) A person holding dog fancier permit on the effective date of this chapter need not obtain a multiple pet permit until the end of the term of the dog fancier permit.

(4) Wearing license tag. A dog for which a license is required under a multiple pet or kennel permit, which is removed for more than one day from the permitted premises, shall wear its current, valid license tag unless performing in the capacity of hunting, working, obedience, tracking or showing.

(B) Application.

(1) The application for a multiple pet permit or a kennel permit shall include a written application to the Animal Control Supervisor accompanied by an application fee.

(2) The Animal Control Supervisor may promulgate regulations governing the application and issuance of permits, consistent with this section.

(3) An application for a multiple pet permit or kennel permit shall list each dog to be included and show:

(a) Facilities exist at the location to adequately secure, feed, house and maintain the animals;

(b) Possession and maintenance of the animals at the location has not resulted in, and is not likely to result in the animals being subjected to neglect, suffering, cruelty or abuse;

(c) Within the prior three years, neither the applicant, the owner, nor the possessor of the animals has: had a city or county permit or license revoked; been issued an administrative citation or found civilly liable for a violation of this chapter or any law regulating animals; or been convicted for a violation of this division or any law regulating animals;

(d) All dogs maintained under a multiple pet permit shall be confined on the premises and shall be enclosed in a secure shelter during the hours of darkness, except when they are shown, exercised, tried, worked, hunted, or trained under the owner's control;

(e) A current rabies immunization certificate issued by a veterinarian for each dog listed.

The required showing may be made by declaration under penalty of perjury.

(C) Decision.

(1) Inspection; Notification. Before approving an application, the Animal Control Supervisor shall inspect the premises and notify adjacent property owners and tenants within 300 feet of the proposed use for multiple pets or a kennel. Adjacent property owners and tenants will be given at least 10 calendar days to provide written or verbal comments regarding any complaints, noise or odor.

(2) Decision. The Animal Control Supervisor shall notify neighbors that a permit application has been filed, under subsection (C)(1) above, and allow them 10 days to provide comments to the Supervisor. After the 10 calendar days, the Supervisor shall determine whether the application will be approved (subject to conditions) or denied, and shall notify the applicant in writing of the decision.

(3) Approval and conditions. The Animal Control Supervisor may approve the permit subject to reasonable conditions.

(4) Term of permit; Renewal. The permit is valid for one year. A multiple pet permit or kennel permit shall be renewed without review upon the filing of a complete application and payment of the necessary fees, unless the City has received or lodged any complaint concerning the permitted location within the last year.

(D) Fees. Multiple pet permit fees, kennel permit fees, application fees, and late permit fees are established by resolution of the City Council. The fees for the initial application and any application after complaints are received or lodged shall include the cost of inspecting the premises.

Late fees are payable upon the failure to obtain a multiple pet permit or a kennel permit within sixty days of keeping, harboring, possessing or maintaining animals in excess of those specified in subsection (A), or upon the failure to pay a renewal permit fee within 60 days after it is due.

(E) Breeding limitation. A person holding a multiple pet or kennel permit may allow the parturition and rearing of no more than one litter per bitch registered by a nationally recognized dog registering body in any one calendar year.

§ 6-1.304 PERMIT FEE.

(A) The permit fee is established by resolution of the City Council. Permit fees are nonrefundable.

(B) An added late fee shall be charged for late licensing.

(C) The owner of a dog which has been permitted for the current year in any other political subdivision of the state, or in any other state which has the same licensing requirements, may have the permit validated for use in the City for the remainder of the year, for a fee set in the master fee resolution.

(D) A dog redeemed or adopted in the City, but residing outside the City, is not required to pay a license fee to the City.

§ 6-1.305 LICENSE FEE EXEMPTIONS.

(A) Assistance dog. A dog being raised, trained and used as a guide dog, signal dog or service dog shall be licensed without a fee while so owned and used, but is not exempt from registration or from any required vaccinations. (Food & Ag. Code §30850.)

Whenever a person applies for an assistance dog identification tag, the person shall sign an affidavit stating as follows:

“By affixing my signature to this affidavit, I hereby declare I fully understand that Section 365.7 of the Penal Code prohibits any person to knowingly and fraudulently represent himself or herself, through verbal or written notice, to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide dog, signal dog, or service dog, as defined in subdivisions (d), (e), and

(f), respectively, of Section 365.5 of the Penal Code and paragraph (6) of subdivision (b) of Section 54.1 of the Civil Code, and that a violation of Section 365.7 of the Penal Code is a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.”

Upon the death or retirement of an assistance dog, the owner or person in possession of the assistance dog identification tag shall immediately return the tag to Animal Control.

(B) Law enforcement. A dog used by a governmental agency for law enforcement purposes shall be licensed without a fee, but is not exempt from registration or from any required vaccinations. Verification shall be presented upon request.

§ 6-1.306 LOST TAGS; DUPLICATION FEES.

If a license is lost, Animal Services may issue a new license after payment of the required fee, stated in the master fee resolution.

§ 6-1.307 LICENSE TAGS; DISPLAY.

The license tag shall be attached securely to collar or harness upon the dog for which issued at all times the dog is within the City and not confined indoors. The owner shall show the license tag at any time upon request by the Animal Control Supervisor or other enforcement officers.

§ 6-1.308 LICENSE TAGS NOT TO BE REMOVED WITHOUT PERMISSION FROM OWNER; COUNTERFEIT TAGS.

No person shall remove a license tag from a dog without the permission of the owner, expressed or implied. No person shall counterfeit or imitate a dog license tag or make any unauthorized substitution of license tags.

§ 6-1.309 LICENSE RECORD KEEPING.

The City shall keep a permanent record of all animals registered under this chapter until the City is notified that the animal has been removed from the City or has been lost or stolen or has died. The person registering the animal remains liable for the acts of the registered animal until notice is given to the Animal Control Supervisor of the sale or transfer of the animal, the removal of such animal from the City, or the death or loss of such animal. (Food & Ag. Code §30502.) If an Animal Control Supervisor determines an animal to be potentially dangerous or vicious under Sections 6-1.803, he or she shall include the potentially dangerous or vicious designation in the registration records of the dog. (Food & Ag. Code §31641.)

§6-1.310 DISPOSITION OF FINES AND FEES.

Fees for the issuance of dog license tags, and the fines collected, shall be used in the following order of precedence: (1) to pay fees for the issuance of dog license

tags; (2) to pay fees, salaries, costs and expenses for the enforcement of this Chapter. (Food & Ag. Code §30652.)

ARTICLE 4: RABIES AND ANIMAL BITES

§ 6-1.401 Rabies vaccination required.

§ 6-1.402 Rabies reports.

§ 6-1.403 Biting report; Impoundment and quarantine of animal.

§ 6-1.401 RABIES VACCINATION REQUIRED.

(A) Each dog owner shall procure a rabies vaccination by a licensed veterinarian upon the dog attaining the age of four months, and at intervals not later than the expiration date on the vaccination certificate. The veterinarian shall issue a certificate to the owner showing the following:

- (1) The veterinarian's name and business address;
- (2) The name and description of the dog;
- (3) The date of the vaccination; and
- (4) The expiration date of the vaccination.

Each dog owner shall show a copy of the vaccination certificate upon the request of an Animal Control Supervisor or other enforcement officer.

(B) The veterinarian may issue an exemption if a rabies vaccination would be detrimental to the health of the dog.

(C) The certificate of vaccination is required before the City will issue a dog license under Section 6-1.302.

§ 6-1.402 RABIES REPORTS.

(A) Rabies is declared to be a reportable disease. Each veterinarian practicing within the City, and every person providing professional medical treatment for an animal bite by a species subject to rabies, shall immediately notify Animal Services or the Police Department.

(B) Every veterinarian practicing within the City shall provide Animal Services with a copy of every rabies immunization certificate which is issued.

§ 6-1.403 BITING REPORT; IMPOUNDMENT AND QUARANTINE OF ANIMAL.

(A) Owner reporting and quarantine instructions. The owner of an animal which bites or scratches (with skin broken) a person shall immediately (1) notify Animal Services or the Police Department, giving the name and address of the person bitten or scratched, if known, and (2) obey any quarantine instructions given by the responding officer. Failure to obey the quarantine instructions is cause for the impoundment of the animal for the quarantine period.

It is also the duty of every physician or other medical practitioner to report to the Animal Shelter or Police Department the names and addresses of persons treated for bites inflicted by animals, together with other information as will be helpful in rabies control.

(B) Quarantine requirement. Each animal in violation of the Rabies Control Act (Cal. Health and Safety Code Sections 121575-121710), or of the rabies control provisions of this chapter, shall be quarantined or impounded, and is subject to destruction in some humane manner. Such animals are also subject to other disposition as provided by this chapter.

(1) General. Each animal that has bitten a person or is suspected of having been exposed to rabies shall be securely quarantined at the discretion of the Animal Control Supervisor and at the owner's expense. Upon demand by the Animal Control Supervisor, the owner shall immediately surrender the animal.

(2) Location of quarantine. At the discretion of the Animal Control Supervisor, the quarantine may be on the premises of the owner, at the Animal Shelter or at a veterinary hospital of the owner's choice. In the case of a stray animals or an animal whose owner is not known, the quarantine shall be at the Animal Shelter.

(3) Time period. The animal shall be quarantined for a period of 10 days.

(4) Release; Fees. The animal shall not be released from quarantine except by written permission of the Animal Control Supervisor. The owner may reclaim the animal if the animal is adjudged free from rabies. Before the release, the owner shall pay board fees if applicable and comply with licensing provisions. (See Section 6-1.302.)

(5) Rabies diagnosis. When an animal under quarantine has been diagnosed as being rabid, or is suspected by a licensed veterinarian as being rabid, and dies while under observation, the Animal Control Supervisor shall immediately send the animal's head to the appropriate health department for pathological examination, and shall notify the proper public health officer of reports of contacts and the diagnosis made of the suspected animal.

(C) Self-defense. No person shall kill, or cause to be killed, any rabid animal, any animal suspected of having been exposed to rabies, or any animal biting a human, unless in self-defense or the defense of others, except as provided in this section, nor remove the animal from the City without written permission from the Animal Control Supervisor.

ARTICLE 5: ANIMALS: PROHIBITIONS AND REQUIREMENTS

- § 6-1.501 Unlawful acts.
- § 6-1.502 Animal care.
- § 6-1.503 Dogs to be leashed in public places.
- § 6-1.504 Striking animal with a motor vehicle.
- § 6-1.505 Animals not to be sold as pets or novelties; No prizes.
- § 6-1.506 Disposal of carcasses.

§ 6-1.501 UNLAWFUL ACTS. It is unlawful for a person owning an animal to do any of the following. A violation of this section is also a public nuisance, under Section 1-2.01(D):

- (A) Abandon the animal, except to surrender it to the Animal Shelter or Animal Control Supervisor; (Penal Code §597s.)
- (B) Fail to license a dog over the age of four months, or allow a dog to leave its premises when the dog does not have a current license affixed to its collar; (Food & Ag. Code §30951.)
- (C) Allow an animal to be at large (or to be at a public park, playground or school unless under leash restraint); (See Definition of "at large" at §6-1.102.)
- (D) Allow a dog to enter on private property without the consent of the person in possession of the property or to damage or destroy a lawn, tree, shrub, or other planting or any other improvement or thing of value on the property;
- (E) Allow an animal to defecate on public property or private property of another without immediately cleaning up. The owner of each animal is responsible for the immediate removal of any excreta deposited by the animal anywhere but the owner's own property, and the sanitary disposal of the removal;
- (F) Fail to clean up excreta on one's own property within a reasonable period of time;
- (G) Allow a barking dog or another animal-related noise that continues for 30 minutes or more in any 24-hour period or intermittently for 60 minutes or more during any 24-hour period causing disturbance to any person regardless of whether the animal is physically situated on private property; (See Definitions at §6-1.102.)
- (H) Allow a female dog to roam at large or remain accessible to other roaming dogs while the dog is in heat or breeding condition; (Food & Ag. Code §30954.)

- (I) Allow an animal to be tethered or leashed on any street or other public place unattended, except temporary tethering or leashing (or tying in an appropriate and safe place) as the owner enters a store or public place for a specific purpose. In no case shall the temporary tethering exceed 15 minutes; (Hlth. & Saf. Code §122335; Penal Code §597t.)
- (J) Tether, fasten, chain, tie or restrain a dog to a dog house, tree, fence or other stationary object for any longer than three hours in a 24-hour period, except: (1) to a running line, pulley, or trolley system (without a choke or pinch collar); (2) as required by a camping or recreational area; or (3) other exception permitted under Health and Safety Code section 122335;
- (K) Harbor or feed a feral cat except on one's own property;
- (L) Beat, cruelly ill-treat, torment, tease, overload, overwork, or otherwise abuse an animal, nor cause, instigate, or permit any dogfight, cockfight, or combat between animals or animals and humans, excluding police canines. No parent may allow his minor child to so treat any animal; (Penal Code §597.)
- (M) Own, keep or train a dog with the intent that the dog engage in an exhibition of fighting; or cause a dog to fight with or injure another dog, for amusement or gain; or permit either of those actions on premises under his or her control. (Penal Code section 597.5.)
- (N) Expose any known poisonous substance, whether mixed with food or not, so that the substance is liable to be eaten by an animal (except for a person to expose on his own property common rat poison mixed only with vegetable substances for the sole purpose of combating rat infestation);
- (O) Permit an animal to engage in conduct that would constitute a public nuisance;
- (P) Refuse to obey the conditions of a lawfully imposed quarantine;
- (Q) Refuse to display an animal to the Animal Control Supervisor upon his or her request;
- (R) Interfere with, obstruct, or hinder an Animal Control Supervisor or health officer in the discharge of the officer's duties under this chapter or state laws related to animal care and control;
- (S) Violate this chapter or any state law regarding animals.

§ 6-1.502 ANIMAL CARE.

(A) Food, water, shelter, veterinary care. No owner shall fail to provide his or her animal(s) with: adequate feed and water; proper, clean, and sanitary shelter and protection from the weather; and veterinary care when needed to prevent suffering. (Penal Code §§597.1, 597f.)

In this section, "adequate feed" means the provision at regular intervals, not to exceed 24 hours, of a quantity of wholesome foodstuff, served in a sanitary container, suitable for the species and age, and sufficient to maintain a reasonable level of nutrition in each animal involved. "Adequate water" means constant access to a supply of clean, fresh, potable water, provided in a sanitary manner, or provided at regular intervals for the species, never to exceed 24 hours at any interval.

(B) Overcrowding; sanitation. No person shall keep an animal overcrowd in any crate, box, or other receptacle, or fail to provide sanitation for the animal in the crate, box, or other receptacle.

(C) Confinement in vehicle.

(1) No person shall leave an animal confined in a motor or other vehicle without adequate ventilation that would deleteriously affect the ambient temperature immediately surrounding the animal. If an animal is so confined, the Animal Control Supervisor, or any other enforcing authority, may enter the vehicle by whatever reasonable force is necessary to release the animal, without any liability upon the City or the enforcing authority for resulting damages. An animal in or on a vehicle is deemed to be upon the property of the vehicle's operator. (Penal Code §597.7.)

(2) No person shall transport an animal on a public street in a vehicle unless the animal is totally enclosed within the vehicle, within a secured container carried on the vehicle, or securely cross-tethered to the vehicle in such a way as to prevent the animal from falling out of or off the vehicle, and to prevent injury to the animal.

§ 6-1.504 STRIKING ANIMAL WITH A MOTOR VEHICLE.

Any person who, as the operator of a motor vehicle, strikes a non-wild, domesticated animal shall stop at once and render such assistance as may be possible and shall attempt to locate the animal's owner and inform him or her of the collision. If the owner cannot be ascertained and located, the operator shall immediately report the location of the injured animal to the Animal Shelter or to an appropriate law enforcement agency.

§ 6-1.505 ANIMALS NOT TO BE SOLD AS PETS OR NOVELTIES; NO PRIZES.

(A) No sale as pet or novelty; No prize. No person shall sell, offer for sale, barter, give away, or publicly display a dog, cat or other animal (including but not limited to baby chicks, ducklings, or other fowl) as pets or novelties. (See Penal Code §597.3.) No person shall give away a live animal as a prize for or as an inducement to enter: a

contest, game, or competition; a place of amusement; or business agreement to attract trade. (Penal Code §599.)

- (B) Exception. This section shall not be construed to prohibit:
- (1) the sale or display of natural chicks or ducklings in proper brooder facilities by hatcheries or stores engaged in the business of selling them to be raised for domestic consumption or commercial purposes; or
 - (2) the sale or display in humane display facilities of a dog, cat or other animal by a pet store engaged in the business of selling them, or animal shelter engaged in placing the animal as a pet; or
 - (3) the sale or gift of a pet or its offspring by the owner as a family pet, from the owner's private property.

§ 6-1.506 DISPOSAL OF CARCASSES.

A person possessing a dead animal shall take the responsibility of disposing of it in a safe and sanitary manner that does not pollute drinking water. Upon the receipt of information that the body of an animal has not been properly disposed of in accordance with this section, the Animal Control Supervisor shall dispose of the body, and charge the costs to the owner, if known.

ARTICLE 6: NUMBER AND TYPES OF ANIMALS

- § 6-1.601 Permit procedures.
§ 6-1.602 Keeping animals and bees.
§ 6-1.603 No livestock within City limits; Horse stables.

§ 6-1.601 PERMIT PROCEDURES. Whenever a permit is required under this Article 6, the permit procedures in Section 6-1.303 apply. In addition to other requirements, the Animal Control Supervisor must first determine that the keeping of an animal, bird or bees is not likely to result in harm to the creature, create a public nuisance or health hazard, or cause an unreasonable disturbance to the neighborhood due to odors, noise or the creature's behavior.

§ 6-1.602 KEEPING ANIMALS AND BEES.

The total number of fowl or animals specified in subsections (A), (B), (C), (D) and (F) of this section may not exceed 15 for each household.

(A) Number of dogs. It is unlawful for a person to keep more than three dogs that are required to be licensed at any residence in the City, without first obtaining a multiple pet or kennel permit under Section 6-1.303.

(B) Number of cats. It is unlawful for a person to keep more than five cats without a permit issued under Section 6-1.601.

(C) Number of fowl. It is unlawful for a person to keep or maintain more than ten each of ducks, geese, chickens or other fowl. No person may keep a rooster without a permit under Section 6-1.601.

Fowl shall be kept in enclosures located a minimum of 20 feet from any dwelling, church, or school (except with permission on school premises). Such enclosures shall be maintained in a clean manner.

(D) Rabbits. Not more than 10 domesticated rabbits may be kept on any parcel within the City, and their cages and runs shall be kept clean.

(E) Bees. Bees may only be kept in an agricultural or open space zoning district and with a permit from the Animal Control Supervisor. (See Section 6-1.601.)

(F) 3/4 acre requirement. It is unlawful for a person to keep or maintain a horse, mule, cow, sheep, goat, pig, or wild animal, except dogs and cats and other household pets, except in an enclosed area for the animal of not less than three-fourths of an acre, and then only with a permit. (See Section 6-1.601.)

(G) Racing pigeons. A member of a recognized racing pigeon club may keep an unlimited number of banded racing pigeons or fancy birds upon obtaining a permit from the Animal Control Supervisor. (See Section 6-1.601.) The keeping of such birds is subject to the following minimum conditions:

- (1) Aviaries shall be of sound construction and properly maintained to conform with the surrounding area.
- (2) The location is subject to inspection by the Animal Control Supervisor at reasonable times.
- (3) Aviaries shall be cleaned regularly, maintained in a sanitary condition, and kept free of organic materials which may cause offensive odors or allow the propagation of flies and other insects.
- (4) Feed shall be stored in containers which protect against rodents and insects.
- (5) The cage size and specifications shall conform to the rules and regulations of the racing pigeon organization.

§ 6-1.603 NO LIVESTOCK WITHIN THE CITY LIMITS; HORSE STABLES.

No person shall stable, keep, pasture or maintain horses or bovine animals within the City, unless expressly allowed to do so by the zoning ordinance. This section does not apply to a circus, carnival, or show permitted to operate in the City.

Each person who stables, keeps, pastures, or maintains a horse within the City shall keep the stable or enclosure clean and free from manure, mud, and everything of a foul and unclean nature.

ARTICLE 7: IMPOUNDING AND DISPOSITION OF ANIMALS

- § 6-1.701 Stray animals.
- § 6-1.702 Impounding animals found running at large
- § 6-1.703 Disposition of impounded animals.
- § 6-1.704 Redemption.
- § 6-1.705 Sterilization.
- § 6-1.706 Surrender of animals.

§ 6-1.701 STRAY ANIMALS

A person who picks up a stray or lost animal shall report it to Animal Services within eight hours, and shall release the animal to the enforcing authority upon demand.

§ 6-1.702 IMPOUNDING ANIMALS FOUND RUNNING AT LARGE

(A) The Animal Control Supervisor may seize and impound an animal found at large or in violation of this chapter. (Food & Ag. Code §31101.) A seized animal will be impounded at the Animal Shelter and confined there in a humane manner.

(B) When a dog is found at large, and its ownership is known to the Animal Control Supervisor, the dog need not be impounded. The Animal Control Supervisor, at his or her discretion, may return the animal to its owner and cite the dog owner under Section 6-1.501.

§ 6-1.703 DISPOSITION OF IMPOUNDED ANIMALS

(A) The City will keep an impounded dog or cat for:

- (1) if licensed, bears owner identification or is known to the Animal Control Supervisor, for at least 10 days that the shelter is open;
- (2) if the dog or cat is unlicensed and bears no identification, for at least 4 days that the shelter is open. (Food & Ag. Code §31108.)

(B) Upon delivering the animal to Animal Services, the Animal Control Supervisor shall send a written notice of impoundment by email or mail to the licensed or registered owner of the animal, if known, at the address as shown on the records of the Animal Services. The Animal Control Supervisor shall scan the animal for a microchip that identifies the owner. (Food & Ag. Code §31108(c).) The notice shall state that the animal has been impounded and shall give the location of impoundment. The notice shall also state that if the animal is not claimed within the period specified in the notice, the animal will be disposed of by placing it in another suitable home or by euthanizing the animal.

(C) The owner may recover the dog, cat, or other animal picked up and impounded under this chapter only upon payment of the charges and costs of redemption of impounded animals. (See Section 6-1.705 below.) The owner is liable for the costs whether or not the owner redeems the animal.

The owner's refusal or failure to pay the fees and charges, after due notification, constitutes his or her abandonment of the animal.

(D) A licensed dog not redeemed by the owner within 10 days after mailing or emailing the notice shall be disposed of as though the dog was an unlicensed dog when impounded. If the Animal Control Supervisor determines that the animal will not be claimed, represents a health hazard to the other animals maintained at the shelter, is of a wild nature, or is severely injured, he or she may order the animal to be placed in a suitable home or euthanized.

(Food & Ag. §31108.)

§ 6-1.704 REDEMPTION.

(A) The owner may redeem an animal taken up and impounded under this chapter at any time before the actual disposal of the animal, by presenting suitable evidence of ownership. (Food & Ag. Code § 31108.5.) No animal will be released until the owner has:

- (1) paid redemption fees and any fees and penalties authorized by this chapter. The fees may include, but are not limited to: impound fee; boarding (care and feeding); microchip fee; dog license; vaccination; veterinary fees, if injured; investigation; spaying or neutering; special tag and investigation if determined to be potentially dangerous or vicious;
- (2) signed a declaration of ownership, made under penalty of perjury, to justify the release of the animal declaring ownership. However, the Animal Control Supervisor may refuse to release the animal if there is reasonable cause to believe that the information contained in the declaration is untrue or incorrect and, in that case, may require additional evidence of ownership as the Animal Control Supervisor may determine; and
- (3) paid the fine specified under Food and Agriculture Code section 30804.7 for any nonspayed or unneutered dog that is impounded.

(B) No dog shall be released from impoundment until the dog has been licensed or registered. No dog or cat shall be released from impoundment until the animal has been implanted with a microchip identification and, after the second impoundment, until the animal has been spayed or neutered.

(C) The Animal Control Supervisor, at his or her discretion, may refuse to permit the redemption of any animal impounded under this chapter, or any other county, state, or municipal law, until the need for the retention of such animal no longer exists. The City shall bear the cost of the continued retention, after any request of redemption and tendering of all other costs and fees by the owner.

§ 6-1.705 STERILIZATION.

No unclaimed dog or cat shall be released for adoption without:

- (1) being sterilized; or

(2) a written agreement from the adopter guaranteeing that the animal will be sterilized and a sterilization deposit made. The sterilization fee deposit is established by resolution of the Council. If the animal is not sterilized within 14 business days after the date of purchase, the sterilization deposit collected at the time of adoption will be considered abandoned and the money applied to the General Animal Control Fund for use as the City may determine. (Food & Ag. Code §30503.)

§ 6-1.706 SURRENDER OF ANIMALS.

(A) For disposal. At the request of a person not operating a commercial establishment for the sale and/or care of animals, the Animal Control Supervisor shall accept and dispose of any small animal, such as a dog, cat, bird, or rabbit, lawfully in the possession of the person.

(B) For adoption. An owner may surrender an animal to the Animal Control Supervisor for placement for adoption. It is understood that no guarantee of placement will be made, and euthanasia will be at the discretion of the Animal Control Supervisor. A surrender fee is established by resolution of the Council.

ARTICLE 8: POTENTIALLY DANGEROUS AND VICIOUS ANIMALS

- § 6-1.801 Purpose; Definitions.
- § 6-1.802 Seizure and impoundment.
- § 6-1.803 Determination of potentially dangerous or vicious dog or animal.
- § 6-1.804 Actions after determination: potentially dangerous.
- § 6-1.805 Actions after determination: vicious.
- § 6-1.806 Inspections.

§ 6-1.801 PURPOSE; DEFINITIONS.

(A) Purpose. The purpose of this article 8 is to reduce the risk of serious attacks or bites by dogs or other animals. This article sets forth the procedures for finding an animal potentially dangerous or vicious and subject the animal to appropriate controls and enforcement actions. (Hlth. and Saf. Code §§ 31601 and following; Food & Ag. Code §§31601-31683.)

(B) Definitions. In this Article 8:

POTENTIALLY DANGEROUS DOG OR ANIMAL. Any of the following, as determined by the City:

- (1) a dog or other animal which, when unprovoked, on two separate occasions within the prior 36-month period, engages in any behavior that requires a defensive action by a person or another animal to prevent bodily injury when the person and the dog are: off the property of the dog's owner; or on the property of the dog's owner by invitation or with implied permission. (Food & Ag. Code §31602);

(2) a dog or animal which, when unprovoked, bites a person causing a less severe injury than as defined here as a SEVERE INJURY (Food & Ag. Code §§31602, 31064); or

(3) a dog or animal which, when unprovoked, has bitten, inflicted injury or otherwise caused injury attacking a domestic animal. (Food & Ag. Code §31602.)

SECURE ENCLOSURE. A kennel, pen or structure with secure sides and a secure, attached top. The kennel or pen shall be constructed in a manner so that it cannot be broken down by any action of the confined animal. All structures used for confinement of a vicious animal must be locked with a key or combination lock of sufficient strength to ensure confinement of the animal. The structures must be erected on a secure bottom or floor constructed of concrete or other material sufficient to prevent the animal from digging free. A vicious animal enclosed in a house, apartment, building or similar structure is allowed only where the windows and doors of the structure are secured to prevent the animal from exiting without the assistance of the owner or other person in control. (See also Food & Ag. Code §31605.)

SEVERE INJURY. A physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery. (Food & Ag. Code §31604.)

VICIOUS DOG OR ANIMAL. Any of the following, as determined by the City:

(1) a dog or animal seized under Penal Code section 599aa and upon the sustaining of a conviction of the owner under Penal Code section 597.5;

(2) a dog or animal which, when unprovoked, in an aggressive manner inflicts severe injury on or kills a person or a domestic animal;

(3) a dog or animal previously determined to be and currently listed as a potentially dangerous dog or animal which, after its owner has been notified of this determination: continues the behavior described as a potentially dangerous dog or animal; or is not kept indoors or secured on the owner's property. Here, "secured" means contained within a fence or structure suitable to prevent the entry of young children and to confine a potentially dangerous or vicious dog or animal, designed to prevent the animal from escaping. (Food & Ag. Code §§31603, 31641, 31642 or 31643.)

Other definitions in Section 6-1.102 also apply unless the context indicates or requires a different meaning.

6-1.802 SEIZURE AND IMPOUNDMENT.

If upon investigation the Animal Control Supervisor or law enforcement officer determines that probable cause exists to believe a dog or animal poses an immediate threat to public safety, then the Animal Control Supervisor or law enforcement officer may seize and impound the animal pending the opportunity for hearing under this section. (Food & Ag. Code §31625.) The animal's owner is liable to the City for the fees and costs of keeping the animal if it is determined to be potentially dangerous or vicious. At the Supervisor's discretion, the animal may be quarantined on the owner's property in an approved enclosure. (Food & Ag. Code §31605 regarding enclosure. See also Definitions at §6-1.801(B).) (See Section 6-1.705(A) regarding fees and costs.)

6-1.803 DETERMINATION OF POTENTIALLY DANGEROUS OR VICIOUS DOG OR ANIMAL.

(A) Determination. In making a determination regarding whether the animal is potentially dangerous or vicious, the Animal Control Supervisor shall take into account the severity of the injury, the number of attacks, and the circumstances. No dog or animal may be declared potentially dangerous or vicious if:

- (1) the injury or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the owner's premises, or was teasing, tormenting, abusing or assaulting it, or was committing or attempting to commit a crime.
- (2) if it was protecting or defending a person within the immediate vicinity of the dog or animal from an unjustified attack or assault.
- (3) any other exception applies under Food & Agriculture Code §31626.

(B) Notice to owner; Appeal.

(1) The Animal Control Supervisor or law enforcement officer shall attempt to notify the animal owner of the animal in writing of the impoundment and of the determination that the dog or animal is determined to be potentially dangerous or vicious. The notification shall include any requirements to be imposed upon the restraint and enclosure of the animal, or if the animal is proposed to be euthanized.

The City may also notify the property owner, police department, fire department, post office and any utility companies of the determination and any requirements.

(2) The notice shall also contain information that the officer's determination may be appealed to the Board of Administrative Appeals, within the time specified in Municipal Code Title 1, Chapter 4, Appeals. The procedures and appeal period shall comply with Food and Agriculture Code sections 31621 through 31625.

(3) The Board of Administrative Appeals may decide all issues for or against the owner of the animal, even if the owner does not appear at the hearing. (Food & Ag. Code §31623.)

(4) The decision of the Board of Administrative Appeals may be appealed to the superior court under Food and Agriculture Code section 31622.

(C) Permit. If not euthanized, an animal designated potentially dangerous or vicious may only be owned, kept or maintained upon issuance of a potentially dangerous or vicious animal permit. The Animal Control Supervisor shall impose conditions upon the ownership and custody of the dog or animal that protect the public health, safety and welfare. (See Section 6-1.804.) The animal owner shall notify the Animal Control Supervisor within two working days if the animal dies or is sold, transferred or permanently removed from the City. (Food & Ag. Code §31643.) The owner is responsible for notifying the subsequent owner of the potentially dangerous or vicious designation.

(D) Violation of conditions. If a determination is made that the owner of the potentially dangerous or vicious animal has violated the conditions of a potentially dangerous or vicious dog permit, the permit is immediately revoked and the animal may be euthanized at the discretion of Animal Control.

6-1.804 ACTIONS AFTER DETERMINATION: POTENTIALLY DANGEROUS.

(A) If the Animal Control Supervisor determines an animal to be potentially dangerous, he or she shall include the potentially dangerous designation in the dog's registration records (Food & Ag. Code §31641), and may order any of the following actions, or a combination of them:

- (1) Prior to release, at the owner's expense and as approved by the City:
 - (a) Have the animal micro-chipped for permanent identification, and identification numbers registered with Home Again Pet Recovery;
 - (b) Have the animal spayed or neutered;
 - (c) Reimburse the City for the cost of keeping the animal, if applicable;
 - (d) Pay a fine, up to \$500 (Food & Ag. Code §31662.);
 - (e) Have current rabies vaccination and dog license;
 - (f) Obtain liability insurance;
 - (g) For security:
 - post a "BEWARE OF DOG" sign at each entry gate to rear and side yards;
 - at the premises, have exit gates and/or doors (including those into the residence and garage) which are self-closing, self-latching and in good working order;
 - install a security screen door on the front door entrance;
 - (h) Sign City's terms and conditions declaration.

- (2) Within 30 days of release:
(a) Satisfactorily complete a basic obedience/aggressive dog training course and provide proof of completion to the Animal Control Supervisor;
- (3) At all times:
(a) Authorize Animal Services to inspect and approve the area(s) of confinement;
(b) When in public, the dog shall wear a humane muzzle, a dog harness and shall be restrained by a lease no longer than six feet and be under the control of a competent adult who is physically able to restrain the animal. The leash must be capable of restraining four times the weight of the animal. The animal shall not be leashed or tethered at any time to inanimate objects such as trees, posts, or buildings. The muzzling device for the animal must be constructed so that it is impossible for the animal to remove it without human assistance;
(c) The dog shall not be allowed loose in the front yard. An adult must be present and supervising the dog when it is loose in the side or rear yard;
(d) When unsupervised in the side or rear yard, the dog must be in a secure enclosure with the gate locked;
(e) The owner must immediately contact Animal Services if the dog escapes and owner's premises or bites a human or animal;
(f) Notify any caregiver or custodian of the terms and conditions;
(g) Have the animal wear the special red tag indicating the dog is potentially dangerous (or vicious);
(h) Transportation of the animal shall only be in a locked animal carrier equivalent in construction quality to those used by commercial air carriers. The animal shall not be left unattended or loose in or about any motor vehicle;
(h) Comply with all applicable animal care and control laws.
- (4) Notice of changes. The owner must notify the City before any change in location of the animal, or new ownership, at least seven days before the change. If a new location is in the City, it is subject to the inspection and prior approval of the Animal Control Supervisor. If the new location is outside the City, the Animal Control Supervisor shall notify the animal control department or police department of that City.
- (5) Any other appropriate action.

(B) The animal shall be removed from the list of potentially dangerous animals if there are no additional instances of the behavior within a 36-month period. (Food & Ag. Code §31644.)

§6-1.805 ACTIONS AFTER DETERMINATION: VICIOUS.

(A) Actions. If the Animal Control Supervisor determines an animal to be vicious, he or she may order any of the following actions, or a combination of them:

- (1) Any action set forth for a potentially dangerous animal, under Section 6-1.804 above, except that the fine is up to \$1,000; (Food & Ag. Code §31662.)
- (2) Order the owner to surrender it to the Animal Services Officer for euthanizing; (Food & Ag. Code §31645.)
- (5) Order that the owner may not own or possess any dog or other animal for a 36-month period; (Food & Ag. Code §31646.)

(B) Findings. Before allowing a person to keep a vicious animal, the Animal Control Supervisor must make all of the following findings:

- (1) Allowing the person to keep the animal will not result in any detriment or danger to the peace, health or safety of the people in the vicinity of where the animal will be kept;
- (2) Possession and maintenance of the animal at the location has not resulted in and is not likely to result in the animal being subjected to neglect, suffering, cruelty or abuse;
- (3) The location is kept clean and sanitary, and the animal is provided with adequate food, water, ventilation, shelter and care at all times.
- (4) Possession of the animal at the location does not violate any law, code or regulation; and
- (5) The animal will not be kept at any other location than that specified in the order.

(C) Euthanizing dangerous dog or animal.

(1) A dog or animal determined to be vicious may be euthanized by the Animal Control Department when it is found that the release of the animal would create a significant threat to public health, safety and welfare, and: (a) when the time for filing an appeal with the Board of Administrative Appeals has lapsed; or (b) if an appeal is filed, when the Board determined to rule against the appeal; or (c) if the owner has not met the conditions imposed on releasing a vicious animal within 14 days.

(2) If there is a violation of this chapter, or a violation of any nonappealable order under this chapter after release of the animal that is observed by the Animal Services Officer, or sworn to in a written affidavit from a complaining party, the Animal Services Officer shall issue an order for the owner or possessor of the vicious animal to surrender the vicious animal to the Animal Control Supervisor for euthanizing. This order is subject to the appeal provisions set forth in Title 1, Chapter 4 of the Antioch Municipal Code.

§6-1.806 INSPECTIONS.

The Animal Control Supervisor may make whatever inspections deemed necessary to ensure compliance with this chapter, the orders or conditions, and any order of the Board of Administrative Appeals."

SECTION 2. CEQA.

This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 15061 (b) (3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 3. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. Effective Date.

This Ordinance shall be effective thirty (30) days from and after the date of its adoption.

SECTION 5. Publication; Certification.

The City Clerk shall certify to the adoption of this Ordinance and cause same to be published in accordance with State law.

I do hereby certify that the foregoing ordinance was introduced by the City Council of the City of Antioch on _____ and passed and adopted by the City Council of the City of Antioch at a regular meeting held on the __ day of ____, 20__, by the foregoing vote:

AYES: COUNCIL MEMBERS: _____

NOES: COUNCIL MEMBERS: _____

ABSENT: COUNCIL MEMBERS: _____

ABSTAIN: COUNCIL MEMBERS: _____

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch



**DEPARTMENT OF
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and City Council
From: Mindy Gentry, Senior Planner *MA*
Date: December 10, 2013
Subject: Item #2 – The Pointe

The attached letter from Save Mount Diablo was received by staff after the release of the staff report.



December 5, 2013

City Council
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007

Subject: Appeal of the Pointe Project to the Antioch City Council

Dear Mayor Harper and Councilmembers:

Save Mount Diablo supports the City of Antioch Planning Commission's unanimous decision on November 6, 2013 to deny the Pointe project, given that the project completely circumvents the City's planning requirements. The project completely ignores direction provided by the Planning Commission to the developer the February 21, 2007 Commission meeting:

- "That the site plan shall be redesigned to take the Hillside Development goals and policies into consideration";
- "That the streets shall follow the natural contours of the land."
- That the Final Development Plan submittal shall incorporate/address issues brought up by the Commission at the February 21, 2007 meeting, as well as those addressed in the staff report".

Should the City Council choose to move forward with the project, an EIR should be required to address the project's significant environmental impacts. The current plan would result in significant, and possibly, unavoidable impacts related to, at minimum: Aesthetics; Air Quality, Biological Resources, Geology & Soils, Hydrology, Planning and Land Use; and Cumulative Impacts related to Open Space resources (as described in the attached letter of October 25, 2013 to the Antioch Planning Commission).

The Project Circumvents the City of Antioch's own Planning Regulations

The project circumvents Antioch's planning regulations that are designed to protect environmental quality. The City of Antioch approved a General Plan that includes many policies that function as mitigation measures to reduce significant environmental impacts. As you waive the need to comply with your own policies, projects move forward unmitigated. **This is to say that as you remove "plan level inconsistencies", you create many new significant physical impacts to the environment that warrant preparation of an EIR on the project.** As you know, if a fair argument can be raised based on "substantial evidence" in the record that the project may have a significant adverse impact, then an EIR is required.

As we evaluated your own administrative record, there is extreme concern expressed about project's impacts related to massive grading of an entire hill and disregard for the city's general plan and development requirements.

CEQA Process is Inadequate

It is extremely unusual that a project of this magnitude would not be circulated to the State Clearinghouse so that State agencies such as the State Department of Fish and Game and State Water Resources Control Board have the opportunity to review the project. It is also extremely unusual that the City of Antioch would not provide the consultant the opportunity to respond to comments raised about the environmental document prepared for the project.

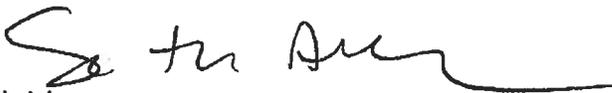
Save Mount Diablo's Position

Save Mount Diablo does not support development of the site. However, if any development is allowed on this "Open Space" site, we agree with direction provided by staff in the staff report dated June 4, 2007:

- That the plan be substantially revised so that the form of the existing hill is largely retained. The existing hill may not be reduced in total height.
- Mass grading of the site is not allowed. Grading shall be limited to the creation of building pads, and not for the purpose of creating flat yard areas. Split pads are encouraged to reduce pad grading.
- That the environmental review process for any future entitlement application include a detailed visual and slopes analysis to determine how any proposed plan complies with all of the City's General Plan and Zoning hillside development requirements.
- That the site plan shall be redesigned to comply with the General Plan Hillside Design Policies and Article 24 of the zoning ordinance related to the Hillside Development District.

Save Mount Diablo appreciates the opportunity to submit comments on this project.

Sincerely,



Seth Adams
Land Programs Director

Attachment

Cc: Meredith Hendricks, Senior Land Programs Manager
Juan Pablo Galvan, Land Use Planner



October 25, 2013

Ms. Mindy Gentry
Senior Planner
Community Development Department
City Hall
Third and "H" Streets
P.O. Box 5007
Antioch, CA 94531-5007

Subject: The Proposed Pointe Project on a 21-acre hillside site located at the western edge of the City of Antioch, conditioned to be dedicated to the City as "Open Space" as part of the adjacent Black Diamond Ranch development

Dear Ms. Gentry:

Thank you for the opportunity to provide additional comments on this application, originally proposed in 2007, and now being resubmitted in 2013.

Save Mount Diablo's Position

Save Mount Diablo is opposed to this project given that it would destroy open space supposedly preserved for public trust benefits—aesthetics, wildlife, recreation, etc. or mitigation-- as a condition of the previous surrounding project, and hand it back to the developer as a windfall profit. It is an extremely bad precedent—the promise of open space or public benefit in any future Antioch projects, such as at FUA#1, will lack credibility.

The removal of the entire hillside associated with the proposed Pointe residential development would result in a wide range of significant environmental impacts that have not been adequately mitigated in the Point Initial Study/Mitigated Negative Declaration (March 2013). Further, Save Mount Diablo believes that approval of General Plan Amendments that allow the applicant to waive compliance with many general plan policies (many of which are written as performance standards to avoid significant impacts), would result in significant environmental impacts. The impacts associated with waiving the City's requirements have not been studied as part of the proposed project. While the general plan amendments might reduce plan-level impacts associated with the project, they would exacerbate the physical environmental impacts that the policies are designed to avoid or mitigate.

The CEQA Analysis is Inadequate

The California Environmental Quality Act (CEQA) requires that an EIR be prepared if there is a "fair argument" that the project would result in significant environmental impacts (Laurel Heights Improvement Assoc. v. U.C. Regents (1993) 47 Cal.4th 376). If a fair argument can be raised on the basis of "substantial evidence" in the record that the project may have a significant

adverse environmental impact-even if evidence also exists to the contrary – then an EIR is required.

A Mitigated Negative Declaration can only be adopted if (1) “There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” “Or (2) An initial study identifies potential significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment”. (*Public Resources Code, § 21080(c)(1) and (2)*)

Clearly, the whole record related to the Pointe Project documents extreme concern about project impacts related to massive grading of an entire hill and disregard for the city’s general plan and development requirements. “If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared”(Public Resources Code, § 21080(d)).

Removing an entire hillside, in conflict with the City’s General Plan Hillside Design Policies, and Article 24 of the zoning ordinance related to the Hillside Development District, would result in significant impacts related to aesthetics, geology, soils and seismicity, land use and planning, greenhouse gases, transportation, biological resources, hydrology and noise. In this case, developing a property that had been dedicated as Open Space would also result in impacts related to recreation. Impacts identified in the Initial Study/Mitigated Negative Declaration do not reduce impacts related to removal of an entire hill to less-than-significant levels. For many environmental issue areas, the environmental document relies on waiving requirements as part of a general plan amendment, instead of identifying adequate mitigation measures. Waiving the City’s General Plan policy requirements that were generally developed to function as performance standards would in fact result in significant environmental impacts. Examples are included below:

Aesthetics and Visual Quality: In analyzing visual impacts related to removal of the hill, the Initial Study notes that: “While both the Antioch General Plan and the City’s Hillside Planned Development District Ordinance specifically provide for protection of views of the hills in the adjacent project area, with approval of the proposed General Plan and zoning text amendments, the project would be exempt from those policies. (The Pointe Initial Study/Mitigated Negative Declaration, March 2013, p. 22). The potential impact related to a substantial adverse effect on a scenic vista is identified as less than significant, with no mitigation identified.

Land Use and Planning: “Absent approval of the General Plan amendments that are components of the proposed project, the project’s conflict with Low Density Residential designation would be a significant adverse impact. However, with approval of these amendments, there would be no conflicts with the General Plan. For purposes of this analysis, approval of the amendments is assumed. There would be no impact related to a conflict with the City of Antioch General Plan.” (The Pointe Initial Study/Mitigated Negative Declaration, March 2013, p. 71)

Similarly, the need to comply with policies related to Hillsides and the requirement to prepare a Resource Management Plan would be waived with the General Plan Amendment. “Although the project could conflict with Hillside Design Policies 5.414-b, 5.4.14-I, and 5.4.14-o and Open

Space Policy 10.3.2-g, as noted above, approval of the proposed General Plan amendments is assumed for purposes of this analysis, which would grant the project an exemption from the policies. There would therefore be no impact related to a conflict with policies promulgated in the City of Antioch General Plan.”

The CEQA Process is Inadequate

While the Initial Study/Mitigated Negative Declaration is dated March 2013, it was not released for public review until October 8, 2013. A twenty (20)-day public review period is inadequate for a project of this magnitude that warrants close scrutiny by State Agencies. Given issues related to biological resources, geology, soils and seismicity, and hydrology and water quality, it is critical that the project be reviewed by the California Department of Fish and Wildlife, the State Water Quality Control Board/Regional Water Quality Control Board and other State agencies.

Geology and Soils: “Because the project would occur on a large, steep site, and would require significant grading entailing movement of large amounts of soil, the potential for erosion during project construction is extremely high”. Yet, mitigation measures are limited to “restricting grading activities to the summer construction season or compliance with more stringent restrictions imposed by other regulatory agencies such as California Department of Fish and Game if applicable”, and preparation of a Stormwater Pollution Prevention Plan and Stormwater Control Plan. (The Pointe Initial Study/Mitigated Negative Declaration, March 2013, pp. 58-59) With a 20-day review period, it is not clear whether the California Department of Fish and Wildlife or Regional Water Quality Control Board is even being given the opportunity to review the document to determine whether more stringent mitigation is warranted. Plus the mitigation is vague and conditional; there is no guarantee it will in fact decrease impacts to less than significant.

General Plan and Hillside Planned Development Ordinance

Similar to the 2007 proposal, the project would violate grading, slope and contouring requirements created to protect Antioch’s hills. The application is inconsistent with the City of Antioch General Plan and the City’s Hillside Planned Development Ordinance. The plans submitted for review include cuts of up to 125 feet. Nearly the entire site has slopes over 25 percent, and slopes covering much of the area are over 35 percent.

Save Mount Diablo is opposed to this project given that it would destroy open space supposedly preserved as a condition of the previous project, and is an extremely bad precedent—the promise of public benefit in any future Antioch projects will lack credibility.

However, if any development is allowed on this “Open Space” site, we agree with direction provided by staff on the first three submittals in the staff report dated June 4, 2007:

- That the plan be substantially revised so that the form of the existing hill is largely retained. The existing hill may not be reduced in total height.
- Mass grading of the site is not allowed. Grading shall be limited to the creation of building pads, and not for the purpose of creating flat yard areas. Split pads are encouraged to reduce pad grading.
- Slopes between building pads and between lots shall be left ungraded.

- That the environmental review process for any future entitlement application include a detailed visual and slopes analysis to determine how any proposed plan complies with all of the City's General Plan and Zoning hillside development requirements.
- That the site plan shall be redesigned to comply with the General Plan Hillside Design Policies and Article 24 of the zoning ordinance related to the Hillside Development District.

The current plan, evaluated in the March 2013 Initial Study/Mitigated Negative Declaration, completely ignores all of this direction and would result in significant, and possibly, unavoidable impacts related to, at minimum: Aesthetics; Air Quality, Biological Resources, Geology & Soils, Hydrology, Planning and Land Use; and Cumulative Impacts related to Open Space resources. An EIR is clearly required to analyze potentially significant impacts and alternatives that may be available to reduce potential impacts to less than significant levels, as is required by the California Environmental Quality Act (CEQA).

The City has repeatedly expressed its concern with the project's inconsistencies with the General Plan and the Hillside Planned Development Ordinance throughout the application process. Over time, the Planning Commission, Residential Development Allocation Committee, and City Staff have all recommended that the application be denied unless the applicant revises the proposal to be in compliance with the General Plan. Despite such clear direction from the City, the applicant has not modified its plans. In fact, from the visual simulations, it appears that the majority of the hill would be removed to develop the project. The applicant has requested an exemption from provisions of the General Plan that relate to development on steep hillsides.

We have consistently supported both the Staff's and the Planning Commission's unanimous recommendation to deny the proposal. We continue to share the sentiment expressed six years ago by Mayor Don Freitas at the June 12, 2007 City Council meeting that *the proposal—to reward the destruction of promised open space—is an “abomination.”*

At this juncture, we encourage the City of Antioch Planning Commission to stand up for its own planning process and development requirements.

Open Space Designation

The 21 acres proposed for development were originally designated as Open Space as part of the applicant's previous Black Diamond Ranch development. The applicant requested re-designation of the Open Space to allow for further development. Allowing re-designation and development of the parcel suggests that any Open Space designated parcel, whether required by a project's conditions of approval as mitigations, or otherwise, can be set aside if a developer requests this change. The proposal would have significant cumulative and growth inducing impacts on the area, because it suggests that all “Open Space” designated parcels in the city are ultimately available for development.

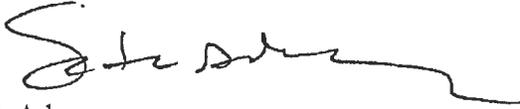
Approval of this application would set a terrible precedent that the General Plan can easily be overridden and that Open Space designations in the City of Antioch are meaningless.

Our Recommendation

Save Mount Diablo urges the Planning Commission not to adopt the Mitigated Negative Declaration and to deny this project which has been designed in a manner that is blatantly

inconsistent with the City's General Plan Hillside Design Policies and Article 24 of the zoning ordinance relating to the Hillside Planned Development District. Save Mount Diablo supports the City of Antioch in standing up to maintain its planning and regulatory framework. If the city chooses to continue consideration of the project, an Environmental Impact Report must be prepared.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read 'Seth Adams', with a long horizontal flourish extending to the right.

Seth Adams
Land Programs Director

Cc: Meredith Hendricks, Senior Land Programs Manager