

# Let Antioch Voters Decide: The Sand Creek Area Protection Initiative

Staff Review pursuant to California Elections Code Section 9212

## Overview

The Initiative establishes new land use controls throughout the Sand Creek Focus Area and creates a defined “Sand Creek Initiative Area” within which severe development restrictions are imposed. This area includes all lands west of Deer Valley Road within the Sand Creek Focus Area, as defined in the General Plan. The development restrictions serve the purposes of restricting development, maintaining the urban limit line, preserving nature, open spaces, and historic qualities, maintaining agriculture, protecting the Sand Creek corridor, and limiting traffic congestion. Future changes to the provision of the initiative, if adopted, require voter approval.

## Background

The proposed “Sand Creek Initiative Area” [Initiative Area] is located within the Sand Creek Focus Area (SCFA), which has been identified in the City of Antioch General Plan since 2003. The Initiative Area covers all portions of the SCFA west of Deer Valley Road. The Sand Creek Initiative, however, also includes text amendments that impact areas beyond the Initiative Area, including the entire Sand Creek Focus Area and the City of Antioch within the Urban Limit Line.

Prior to the July 24, 2018 approval of the “West Sand Creek Tree, Hillside, and Open Space Protection, Public Safety Enhancement, and Development Restriction Initiative” [The Ranch Initiative], the lands within the Initiative Area were designated Estate and Executive Residential, Open Space, Low Density Residential, Hillside Residential, and Golf Course and Senior Housing. The overall permitted development capacity for the SCFA was 4,000 units. Two previously-approved projects in the SCFA (Aviano and Vineyards at Sand Creek) provided a total of 1,174 units, leaving 2,826 units available for development. The Ranch project, as approved, consumed an additional 1,177 single-family dwellings, leaving 1,649 units available for development throughout the remainder of the SCFA. Though most of these units are anticipated to be developed east of Deer Valley Road beyond the Initiative Area, there remained the possibility of additional development within the Initiative Area prior to its adoption.

The Ranch Initiative modified the General Plan Land Use Designations of The Ranch project area to “Limited Development Area” and all lands within The Ranch Initiative Area, but outside of The Ranch project area to “Restricted Development Area”. Within the Limited Development Area, the General Plan Land Use Designation was changed to reflect The Ranch project and included the following land use designations: Estate Residential, Low Density Residential, Medium Low Density Residential, Medium Density Residential, Convenience Commercial, Mixed Use, Public/Quasi Public and Open Space. Within the Restricted Development Area, the General Plan Land Use Designation was changed to Rural Residential, Agriculture, and Open Space, allowing development of single-family homes at a density of one unit per 80 acres, agricultural uses, low-intensity recreational uses, and certain governmental, institutional, and non-profit uses. The approval also included Municipal Code amendments and a Development Agreement that would vest The Ranch project approval.

The impacts of The Ranch project were thoroughly studied through a Draft Environmental Impact Report (DEIR) and a fiscal analysis, which determined that the project would yield a net positive financial benefit

of \$515,325 annually. A corresponding technical review found that the project would conservatively generate a figure of \$276,767 if the existing police CFD were in place. Neither the DEIR nor the fiscal analyses considered the full impact of The Ranch Initiative, as they only studied the impacts of The Ranch project. The impact of modifying the General Plan Land Use Designations of the adjacent western properties to essentially preclude ordinary residential development, as was anticipated prior, was never studied.

The approval of The Ranch Initiative was followed by a vesting of the Development Agreement thirty days thereafter, at which time the area of land covered by the Development Agreement, The Ranch project area, became immune from modification by subsequent ballot initiatives or City Council action. However, the lands outside of The Ranch project area could still be affected by a new ballot initiative as it is not protected by the Development Agreement. If the Sand Creek Initiative were to be adopted by the City Council on August 28, 2018, only those provisions outside of The Ranch Development Agreement area would be amended. As a result, the proper baseline and setting for this analysis is the western portion of the Sand Creek Focus Area after approval of The Ranch Initiative. As such, this report will describe the anticipated changes that would occur should the Sand Creek Initiative be adopted in the near future considering that The Ranch Initiative has already been approved.

## Zeka Ranch

Directly to the west of Empire Mine Road is a 640-acre assemblage of land that constitutes Zeka Ranch. The General Plan Land Use Designation for Zeka Ranch was approximately 40% Hillside and Estate Residential (256 acres) and 60% Open Space (384 acres). The Hillside Estate Housing designation in the General Plan Land Use Element allows development at a rate of one dwelling unit per gross developable acre. (4.4.6.7.b.m). Using the above land use figures, this would allow an absolute maximum of 256 single-family homes on the Zeka Ranch property. It is more likely that some of the land within the Hillside and Estate Residential area would be disqualified from development and would not be contribute to “developable acreage”, which is defined by the General Plan (4.4.1.1) as follows:

“Density is assumed to accrue only to lands that are ‘developable.’ Developable acres are those lands within the boundaries of the ULL that are not encumbered by prior dedications or 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 underlined portion was added with approval of The Ranch Initiative. Also, with the passage of The Ranch Initiative, the development potential of Zeka Ranch was reduced to one unit per eighty acres, which results in a maximum development potential of eight homes. The Sand Creek Initiative applies an identical density and would result in a maximum of eight homes as well.

The other provisions of The Sand Creek Initiatives are similar to those applied by The Ranch Initiative. Both also allow for limited agricultural, low-intensity recreational uses, and certain governmental, institutional, and non-profit uses.

In summary, adoption of The Sand Creek Initiative would not materially affect the development potential of Zeka Ranch due, in large part, to the extensive restrictions recently imposed on the property through adoption of The Ranch initiative.

## Unconstitutional Taking

The Ranch Initiative contains language (Section 13; p. 75) that allows for amendment to the General Plan contrary to the contents of the initiative under very specific circumstances. One such circumstance would be that “The City Council makes a finding, supported by substantial evidence, that failure to amend would constitute an unconstitutional taking of a landowner’s property”. Under State and Federal laws, a government agency may not simply “take” a person’s private property and the down-zoning of property has been, and may be, interpreted by courts to constitute a form of unlawful “taking”. Presumably, a landowner would need to prove with substantial evidence that the initiative had the unintended effect of unconstitutionally taking their property through the diminishment of development rights, etc. If the City Council then agrees with the evidence, the General Plan could be amended without a public vote to address the grievance.

The Sand Creek Initiative contains differing language addressing the same concept. The Sand Creek Initiative (Section 6; p. 3) states, “Notwithstanding their terms or literal meaning, the provisions of this Ordinance are not applicable to the extent that courts decide that if they are applied they would violate the Federal or State Constitution or law.” In such a case, the City would have to rely on a court to determine that a taking occurred, presumably through a lawsuit against the City and might then be allowed to permit the minimum number of parcels necessary to resolve the financial loss.

Whereas, The Ranch initiative allowed the City Council to determine the validity of a takings grievance and take proper steps towards restitution, The Sand Creek Initiative would require that courts determine that the terms of the initiative violate the law. The Sand Creek Initiative would impose a higher and costlier standard to resolve a takings dispute, should one arise.

## Urban Limit Line

The Ranch Initiative re-established the Urban Limit Line and set it at the 2005 Measure K location. The Ranch Initiative also included a provision in Section 13, which states “this Initiative may only be amended or repealed, pursuant to California Elections Code section 9217, by majority of the voters in the City voting in an election held in accordance with State law.” This requirement is restated in the modified General Plan language (4.1.2) that says “The Initiative also ensure that City’s ULL cannot be changed, except by a vote of the people.”

The Sand Creek Initiative has a similar provision contained in Section 22, which states “The location of the Urban Limit Line enacted in Antioch Measure K on November 8, 2005, may be changed only by the voters.” It also amends the General Plan to state “The location of the Voter-Approved Urban Limit Line may be amended only by the voters of the City.” (P.15)

Both The Ranch Initiative and The Sand Creek Initiative contain provisions that assigns all future changes to the Urban Limit Line to the voters, rather than the City Council. These requirements are restated in the General Plan, which similarly cannot be amended without approval of the voters. Changes to the General Plan that do not conflict with either initiative may still be amended by the City Council.

In summary, The Sand Creek Initiative would not modify the recently-adopted standard that all changes to the Urban Limit Line must be decided by the voters.

## Land Uses

The Ranch Initiative established a list of permissible uses that would be allowed in the Restricted Development Area – that area beyond The Ranch project area. Through the Land Use Element in the General Plan, The Ranch Initiative created the “Rural Residential, Agriculture, and Open Space” land use designation that corresponds to the Restricted Development Area contained in The Ranch Initiative. No

changes were made directly to the Municipal Code, but other provisions require that Staff amend the Municipal Code (Zoning Ordinance) to be consistent with The Ranch Initiative. The following land uses are permissible within the Rural Residential, Agriculture, and Open Space land use designation:

- Single-Family Dwellings, with permissible rental of rooms to lodgers (4 max.),
- Home Occupations,
- Agriculture, including small scale dairy farms, pig farms, poultry ranches, vineyards, Christmas tree farms and nurseries,
- Processing, storage or sale of agricultural produce, but not freezing facilities or slaughterhouses,
- Breeding, rearing, boarding, training, care, use and sale or rental of horses, dogs and other animals not covered in paragraph (d),
- Low-intensity outdoor recreation, exercise, and pastimes for active participants, not spectators and accessory uses,
  - Amusement or theme parks, golf courses, firearms ranges, stadiums or non-equestrian arenas, motor vehicle tracks, and off-road courses are prohibited.
- Recreational vehicle parks are permitted, but not for stays greater than 14 days,
- Institutional and non-profit uses that predominantly serve permitted uses in the Initiative Area and adjacent areas, except cemeteries, and facilities for convalescence, rehabilitation and hospice care for not more than six patients,
- Government and public utility uses that only meet the needs of the other permitted uses in the Initiative Area, unless determined to be impractical by the City Council,
  - Waste disposal, processing or treatment, or electrical power production or transmission public for sale is prohibited.
- Occasional short-term events related to agriculture, animals, or outdoor recreation.
- All uses must be found not to cause significant environmental harm.

Within The Ranch project area, all land uses associated with The Ranch project were approved including housing, retail, senior-housing, parks, open space, a fire station, etc.

The Sand Creek Initiative contains an identical list of permissible land uses, but applies these restrictions to the entire Initiative Area. However, since The Ranch project will have been vested, these provisions would only apply to the remaining land outside of The Ranch project area. As a result, there would be no change to the potential land uses under The Sand Creek Initiative when compared to The Ranch Initiative and considering the approved vested nature of The Ranch project.

### Sand Creek Focus Area Unit Count

The General Plan has maintained a maximum development capacity for the entirety of the Sand Creek Focus Area of 4,000 units since its adoption in 2003. This figure was restated in The Ranch Initiative in Section 4.4.6.7.j. on page 27. The Sand Creek Initiative, however, would reduce this figure to 2,100 units per Section 4.4.6.7.k. et.al on page 12.

The City of Antioch previously approved two residential projects in the Sand Creek Focus Area – Vineyards at Sand Creek with 641 units and Aviano with 533 units. With the recent approval of The Ranch with 1,177 units, the current number of approved units in the Sand Creek Focus Area is 2,351. Since The Sand Creek

Initiative would limit the total number of residential units to 2,100, any future development anywhere in the Sand Creek Focus Area, including east of Deer Valley Road, would be absolutely prohibited. This includes the southern Ginochio property, Albers Ranch, and other residentially-designated properties. These properties would remain vacant or would have to be redesignated to non-residential land uses. This change represents a significant departure from the traditional land use vision of the Sand Creek Focus Area.

**Financial Analysis**

With adoption of The Ranch Initiative, the General Plan was amended to reduce the development capacity of the western portion of the Sand Creek Focus Area, though it maintained the 4,000-unit maximum in the broader Sand Creek Focus Area. Though these units may not be developable in the western portion of the Sand Creek Focus Area, they could still be developed elsewhere in the Focus Area. As such, the predicted costs and/or revenues from future development were not affected.

The Sand Creek Initiative reduces the 4,000-unit maximum to 2,100, eliminating the potential for any additional development in the Sand Creek Focus Area. This represents a loss of 1,900 units and all of the associated costs and revenues.

As part of the original submittal for The Ranch, a Fiscal Impact Analysis was prepared to demonstrate the ongoing financial costs and revenues to the City of Antioch that would result from development of that project. This analysis considered only the ongoing costs and revenues and did not evaluate the one-time fees that are collected at the Building Permit stage.

**Ongoing Revenues**

The ongoing costs and revenues include items such as property tax, sales tax, property transfer tax, property tax in lieu of vehicle license fee, and the Citywide Police Services Community Facilities District.

<b>COSTS &amp; REVENUE</b>	<b>1,900 Units</b>	<b>Per Unit</b>
Property Tax	\$ 1,647,691	\$ 867
Transfer Tax	\$ 80,465	\$ 42
Police CFD	\$ 879,700	\$ 463
Sales and Use Tax	\$ 552,460	\$ 291
<b>Total Revenues</b>	<b>\$ 3,160,315</b>	<b>\$ 1,663</b>
Maintenance Costs	\$ (740,289)	\$ (390)
<b>Net Ongoing Benefit</b>	<b>\$ 2,420,026</b>	<b>\$ 1,274</b>

If The Sand Creek Initiative were adopted, 1,900 potential residential units would be eliminated. The effect of this action is a reduction in annual ongoing revenue of \$3,160,315. The value of this revenue would be offset by the costs of \$740,289 to provide increased services to the new development. In total, the net annual ongoing benefit would be **\$2,420,026** or **\$1,274** per unit.

**Building Permit Revenues**

The fees collected at the Building Permit stage are calculated to include the per-unit obligation for direct services such as building inspections and also include pass-through fees for East Contra Costa Regional Fees & Financial Authority (ECCRFFA) and the Antioch Unified School District (AUSD). The impacts of the adoption of The Sand Creek Initiative are provided below.

*Pass Through and Regional Fees*

Pass through and regional fees are used to either pay-down past regional projects or to fund the construction of future projects. In the case of AUSD, the developer pays the school district directly. For the Fire Protection Fee, the City collects and holds the fee and then releases it for the construction of new fire stations. The CCWD fee is similarly collected to pay for water storage.

With the adoption of The Ranch Initiative, these fees will not be collected on future development. These fees were established assuming a certain level of development and the corresponding projects rely on build-out projections to ensure that they will be fully funded. Since this level would be decreased, there may be a shortfall in funding and alternate sources or increased fees elsewhere may be required. The total loss of pass through and regional fees is **\$65,411,015** or **\$34,427** per unit.

<b>PASS THROUGH/REGIONAL FEES</b>	<b>1,900 Units</b>	<b>Per Unit</b>
ECCRFFA	\$ 35,856,515	\$ 18,872
CCWD	\$ 10,429,100	\$ 5,489
Fire Protection	\$ 1,122,900	\$ 591
AUSD	\$ 18,002,500	\$ 9,475
<b>TOTAL PASS THROUGH FEES</b>	<b>\$ 65,411,015</b>	<b>\$ 34,427</b>

*City Building Permit Revenues*

Building Permit fees are collected to cover the costs of providing building inspection, plan check, compliance, records maintenance and other services related permitting construction. In addition, Development Impact Fees and the General Plan Maintenance fee are collected through building permits. If the Sand Creek Initiative were to be adopted, the City would forego a total revenue of **\$42,101,473** or **\$22,159** per unit.

<b>CITY BUILDING PERMIT FEES</b>	<b>1,900 Units</b>	<b>Per Unit</b>
Building Permit	\$ 4,568,075	\$ 2,404
Plan Check	\$ 2,969,244	\$ 1,563
CBSC SB1473	\$ 26,600	\$ 14
SMIP Residential	\$ 78,888	\$ 42
Technology Fee	\$ 91,371	\$ 48
Energy Inspection Fee	\$ 91,371	\$ 48
Plumb/Mech/Insul/Elec	\$ 1,140,000	\$ 600
Temp Const Water	\$ 55,100	\$ 29
TWC	\$ 2,130,622	\$ 1,121
Water Capacity	\$ 10,031,639	\$ 5,280
Sewer Connection	\$ 4,903,900	\$ 2,581
Backflow Domestic	\$ 327,807	\$ 173
Water Meter Installation	\$ 520,600	\$ 274
Traffic Signalization	\$ 792,300	\$ 417
Park In Lieu	\$ 2,850,000	\$ 1,500
Dev Impact Fee - CD Admin	\$ 299,193	\$ 157
Dev Impact Fee - Gen Admin	\$ 874,000	\$ 460

Dev Impact Fee - Parks & Rec	\$ 5,975,500	\$ 3,145
Dev Impact Fee - Police	\$ 2,261,000	\$ 1,190
Dev Impact Fee - Pub Works	\$ 845,500	\$ 445
Green Building Residential	\$ 822,263	\$ 433
Waste Management Plan	\$ 66,500	\$ 35
General Plan Maintenance	\$ 380,000	\$ 200
<b>TOTAL BLDG. PERMIT REVENUE</b>	<b>\$ 42,101,473</b>	<b>\$ 22,159</b>

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## Summary

In summary, The Sand Creek Initiative imposes severe land use restrictions throughout the western portion of the Sand Creek Focus Area and also reduces the overall development capacity of the Sand Creek Focus Area from 4,000 units to 2,100 units. This change along with the differing language regarding constitutionality are the most prominent elements of The Sand Creek Initiative. If adopted, the Sand Creek Initiative would have a profound effect on the Sand Creek Focus Area and would halt all future residential development. Other non-residential uses may still be feasible.