

Via Electronic Mail Only

January 8, 2021

Paul McDougall, Housing Policy Manager
California Department of Housing
and Community Development
P.O. Box 278180
Sacramento, CA 95827-8180
Paul.McDougall@hcd.ca.gov

**Re: HCD Review of Measure T (City of Antioch Voter Initiative) Pursuant to
SB 330 (Housing Crisis Act of 2019)**

Dear Mr. McDougall:

I. INTRODUCTION

We represent the City of Antioch (“City” or Antioch”). On behalf of the City, we submit this letter to the Department of Housing and Community Development (“HCD”) as required under Section 66300(b)(1) of the Government Code.

Specifically, the City seeks HCD’s review of an initiative adopted by the voters of Antioch on November 3, 2020 that restricts housing development within certain parts of the City (“Measure T”), to determine whether Measure T complies with state housing law, namely SB 330 (also known as the Housing Crisis Act of 2019).

II. BACKGROUND

A. Antioch’s Measure T Initiative

On November 3, 2020, the voters of Antioch overwhelmingly approved “Measure T,” which is also known as the Let Antioch Voters Decide initiative.¹

Measure T’s “principal purpose” includes protecting public security and wellbeing. (§ 1.²) One of Measure T’s findings is that proposed large-scale subdivisions would “destroy agriculture, stream qualities, grasslands and scenic views,” “would make traffic congestion worse on city streets and Highway 4,” and “would increase air pollution and greenhouse gas emissions in Antioch.” (§

¹ A true and correct copy of Measure T is attached hereto as Exhibit A.

² References to “§” are to the sections of Measure T unless otherwise provided.

2(c.) Measure T provides that “[n]ow is the time to protect these lands before they are permanently developed.” (*Id.*)

Measure T seeks to accomplish its stated objectives, which include “restricting the extent and amount of development in Antioch,” by imposing several restrictions and limitations on housing development within an “Initiative Area,” a precisely defined area within the Sand Creek Focus Area of the City (“Sand Creek”). The Initiative Area comprises specific Assessor's Parcel Numbers set forth in Measure T. (§ 5 [“This Initiative applies to land in the parcels listed in Section 20(h)”].) In general, the Initiative Area is the land within Sand Creek *west* of Deer Valley Road.

Measure T’s substantive housing development restrictions and limitations applicable to the Initiative Area include:

- Changing the designation of land in the Initiative Area to “Rural Residential, Agriculture, Open Space” (§ 5);
- An 80-acre minimum lot size for all residential parcels within the Initiative Area (§ 8);
- Maximum floor areas of 6,000 feet for residential buildings (§ 13); and
- New visual safeguards, including setback requirements, and a requirement that “development shall be subordinate to and blend harmoniously with the natural and open space qualities of the area where located.” (§ 14.)

Land in Sand Creek *east* of Deer Valley Road falls outside of the Initiative Area, and therefore is not directly affected by the foregoing housing development restrictions. However, all of Sand Creek is subject to Measure T’s “conforming amendments” to the General Plan. Such amendments were intended to make the General Plan consistent with Measure T’s substantive land use restrictions (*i.e.*, those set forth above). However, the amendments were applied indiscriminately to the entire Sand Creek area, including the area of Sand Creek that falls outside of the Initiative Area. (§ 26(a).)

The conforming amendments under Measure T include reductions in the maximum number of housing units permitted in Sand Creek from 3,970 to 2,100. The conforming amendments to the General Plan may be amended by the City provided such amendments comply with Measure T’s substantive restrictions and limitations (*i.e.*, those listed above). (§ 26(b).) As it currently stands, however, Measure T’s reduction in the maximum number of housing units set forth in the General Plan for Sand Creek results in a more severe “cap” on housing in Sand Creek than what was in effect prior to Measure T. (General Plan § 4.4.6.7(b)(k) & Table 4-B).³

³ Antioch’s General Plan, prior to Measure T, is *available at* <https://www.antiochca.gov/community-development-department/planning-division/general-plan/>

B. SB 330 – The Housing Crisis Act of 2019

SB 330 went into effect on January 1, 2020 after Measure T was drafted, but before it was adopted.⁴ Under SB 330, “affected cities,” including Antioch, may not enact certain restrictions on housing development, including through voter initiatives. (Gov’t Code § 66300(a)(3).)

Specifically, SB 330 provides that an affected city shall not enact a development policy, standard, or condition that would have certain effects, including:

- “Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use [including through lot size requirements] . . . below what was allowed under the land use designation and zoning ordinances of the affected . . . city . . . as in effect on January 1, 2018.” (Gov’t Code § 66300(b)(1)(A));
- “Imposing a moratorium or similar restriction or limitation on housing development.” (Gov’t Code § 66300(b)(1)(B)(i)); and
- “[E]stablishing or implementing any provision that . . . [a]cts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period.” (Gov’t Code § 66300(b)(1)(D)(ii).)

A local development policy, standard, or condition that does not comply with SB 330’s provisions, “shall be deemed void.” (Gov’t Code § 66300(b)(2).)

Although SB 330 proscribes a wide variety of local restrictions on housing development, it contains exceptions. (See, e.g., Gov’t Code § 66300(b)(1) (“Notwithstanding any other law *except as provided in subdivision (i)* . . . an affected city shall not enact a development policy, standard, or condition that would have any of the following effects: . . . *except as otherwise provided in clause (ii) of subparagraph (B).*”) (emphasis added).) Among other things, “a moratorium or similar restriction or limitation on housing development” will not run afoul of SB 330 if such restrictions or limitations “protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area . . .” (Gov’t Code § 66300(b)(1)(B)(i).)

For such permitted restrictions on housing, SB 330 provides that an affected city “shall not enforce [the relevant ordinance] until it has submitted the ordinance to, and received approval from, [HCD].” (Gov’t Code § 66300(b)(1)(B)(ii).) If HCD denies approval of the ordinance as inconsistent with SB 330, the ordinance shall be deemed void. (*Id.*)

III. HCD REVIEW OF MEASURE T

As discussed above, Measure T imposes various restrictions on housing development in Antioch that have the effect of reducing the intensity of housing in the Initiative Area, as well as outside of the Initiative Area within Sand Creek. For example, under the General Plan prior to Measure T, the

⁴ SB 330 is codified at California Government Code, Title 7, Division 1, Sections, 65589.5, 65490, 65943, 65950, 65905.5, 65913.10, 65941.1, as amended, and Title 7, Division 1, Chapter 12, Housing Crisis Act of 2019, Sections 66300 and 66301.

allowed minimum lot sizes within the Initiative Area ranged in size from 5,000 square feet (0.1 acres) to 20,000 square feet (0.5 acres). (General Plan, § 4.4.6.7(b)(m)).) Under Measure T, the minimum lot size for all land in the Initiative Area has been increased to 80 acres, greatly reducing the intensity of housing that can be built within the Initiative Area. (§ 8.) Likewise, Measure T's conforming amendments to the General Plan – including the reduction in the maximum number of housing units permitted in Sand Creek – results in a more severe “cap” on housing in Sand Creek.

Therefore, Measure T's housing development restrictions and limitations appear to be proscribed under SB 330 unless they fall within one of SB 330's exceptions. Specifically, Measure T's restrictions and limitations on housing in Sand Creek appear to be void – and Antioch appears to be precluded from enforcing such restrictions – unless and until HCD determines that Measure T's provisions constitute “a moratorium or similar restriction or limitation on housing development . . . within [Sand Creek] . . . to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of [Sand Creek] . . .” (Gov't Code §§ 66300(b)(1)(B)(i) and (ii).)

Accordingly, the City respectfully requests that HCD review Measure T for a determination of Measure T's validity under SB 330 as follows:

1. Whether Measure T's housing development restrictions are proscribed under Section 66300(b)(1)(A) of the Government Code.
2. Whether, pursuant to Sections 66300(b)(1)(B)(i) and (ii) of the Government Code, Measure T's housing development restrictions constitute “a moratorium or similar restriction or limitation on housing development . . . within [Sand Creek] . . . to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of [Sand Creek] . . .”.
3. Whether Measure T acts as an impermissible cap on housing pursuant to Section 66300(b)(1)(D)(ii) of the Government Code; and
4. Whether Antioch may, consistently with SB 330, enforce Measure T's housing development restrictions.

IV. CONCLUSION

We thank you for HCD's consideration of the foregoing. Please let us know should you have any questions or require any additional information.

Very truly yours,



David Mehretu

c. Thomas Lloyd Smith, City Attorney (City of Antioch)

3639554.1

EXHIBIT A

RECEIVED

FEB - 8 2018

CITY OF ANTIOCH
CITY CLERK

Let Antioch Voters Decide: The Sand Creek Area Protection Initiative

The people of the City of Antioch do ordain as follows:

Section 1: Purposes

The principle purposes of this Ordinance are to protect public security and wellbeing, and to preserve agriculture, nature, and open space in Antioch.

The Ordinance:

- restricts the extent and amount of development in Antioch;
- maintains the existing urban limit line;
- preserves nature, open spaces, and historic qualities;
- maintains agriculture;
- protects the Sand Creek stream corridor;
- limits traffic congestion in Antioch;
- requires voter approval to change these safeguards.

Section 2: Findings

The people of Antioch do find and declare:

(a) Protection of Agriculture and the Natural Environment: The area protected by this Initiative is undeveloped land in the Sand Creek area of south Antioch. It includes agricultural lands, hills, streams, and wildlife habitat. Historically, the area has been used for mining and ranching. It is a beautiful, natural contrast to urban development in Antioch and neighboring cities.

(b) Development in Antioch: There has been a large amount of residential development in Antioch in the last thirty years. This has created a serious housing/jobs imbalance, with many more houses than jobs. Antioch's population has more than doubled to 115,000. As a consequence, many of the desirable natural, open space and historic qualities of the city have been lost; much of what remains is in near-term jeopardy.

(c) Development in the Initiative Area: Large-scale subdivisions have been proposed in the area covered by the Initiative. Substantial additional development would destroy agriculture, stream qualities, grasslands and scenic views. Habitat for wildlife would be lost. Development would make traffic congestion worse on city streets and Highway 4, and would increase air pollution and greenhouse gas emissions in Antioch. Sprawl would be costly, to extend public facilities and services to new residential areas. Now is the time to protect these lands before they are permanently developed.

(d) **Agriculture**: Farmland is an irreplaceable natural resource, essential for food security. It is being lost steadily to development in the San Francisco Bay Area. More than 1,500 acres of land covered by this Initiative are classified as Farmland of Local Importance by the State Department of Conservation, over 650 acres as Prime Soils by the United States Department of Agriculture.

(e) **Wildlife Habitat**: A number of plant and animal species at risk of extinction exist in the Initiative Area. Land use must be carefully regulated to avoid ruining species habitats or obstructing migratory corridors.

(f) **Watercourses**: Sand Creek and its tributaries flow through the area covered by the Initiative. Development can have an adverse effect on the quality and quantity of that water, and on riparian wildlife. Residential development increases pollution by putting chemicals and automobile related effluents into runoff, and by reducing the area available for filtration. Flood and erosion control are often adverse to preservation of the natural qualities of streams.

(g) **Scenic Beauty**: The Sand Creek area is a scenic gateway to the City and contains the majority of Antioch's untrammled hills. It serves as a prominent vista for residents and visitors. Development must be controlled in order to avoid spoiling these views and marring a major natural asset.

(h) **Current Development Regulation**: Antioch's existing General Plan does not provide adequate, secure protection for the Initiative Area. The General Plan permits large-scale development on these lands that are a vital part of the city's remaining open space. Further conversion to urban uses will occur unless a firm commitment is made now to preservation of agriculture and nature.

(i) **Housing**: The Initiative does not affect the City's ability to provide for housing required by State law. It maintains all sites that have been designated to meet Antioch's Regional Housing Needs Allocations.

(j) **Burden of Proof**: For purposes of California Evidence Code Section 669.5(c)(3), this Initiative is designed to protect agricultural use as defined in Government Code Section 51201(b), and open space land as defined in Government Code Section 65560(b).

(k) **Federal and State Law**: This Initiative is subject to Federal and State Law, which are not always clear and change. The Initiative provides explicitly that it does not apply, notwithstanding its terms or literal meaning, to the extent that its application would be contrary to Federal or State Law. This explicit limitation on applicability is to make certain that the provisions of the Initiative do not violate the law in any respect, infringe any person's legal rights or privileges, or subject the City to legal liability.

(l) **Preservation of the Urban Limit Line**: In 2005, Antioch voters adopted Measure K establishing an Urban Limit Line. Under that measure, through December 31, 2020, only the voters may change the location of the Line. After that date, voter approval is not required. Maintaining voter approval beyond 2020 is in the best interests of Antioch residents.

Section 3: Title

The title of this Initiative is “Let Antioch Voters Decide: The Sand Creek Area Protection Initiative.” It may be referred to in this General Plan and otherwise as the “Sand Creek Area Protection Initiative” or the “Sand Creek Initiative.” It is designated in the text interchangeably as the “Initiative,” “Measure,” or “Ordinance.”

Section 4: Amendment of Antioch General Plan

Sections 3 through 21 of this Initiative are added to the Antioch General Plan. They shall be located in the Plan where City officials deem appropriate. They shall be identified distinctly in the Plan and in subsequent plans and revisions as enacted by initiative.

Section 5: Initiative Area

This Initiative applies to land in the parcels listed in Section 20(h). (The map in Appendix 1 depicts approximately the area covered; in general, the land bounded by Black Diamond Mines Regional Preserve on the west, East Bay Regional Park District lands and the city border on the south, Deer Valley Road, and existing residential development on the north. The map is illustrative only. It is not enacted by the Initiative.)

The Initiative Area shall be designated “Rural Residential, Agriculture, Open Space” in this Plan, including its maps, figures, and tables.

Section 6: Compliance with Law

(a) Notwithstanding their terms or literal meaning, the provisions of this Ordinance are not applicable to the extent that courts decide that if they were applied they would violate the Federal or State Constitution or law.

(b) To the extent that a provision of this Ordinance does not apply because of subsection (a), the City may permit only that minimum parcel creation, development, or use required by Federal or State Constitution or law that most fully carries out the provisions and purposes of this Ordinance.

Section 7: State Housing Requirements

Nothing in this Ordinance, including in this Section, shall be applied to preclude City compliance with housing requirements imposed by the State. The City shall comply fully with State housing mandates in a way that is most consistent with the provisions and purposes of this Ordinance.

To the maximum extent practicable, the City shall meet State housing requirements outside the Initiative Area. If required housing must be located in the Initiative Area, no more land may be used than is necessary to meet State requirements. Minimum parcel size and

maximum development envelopes and floor areas in this Ordinance shall not apply to that land for State required housing.

Section 8: Minimum Parcel Size

The minimum parcel size is 80 acres, except for parcels that are legal under Section 17.

Section 9: Certificates of Compliance

The City shall not grant a certificate or conditional certificate of compliance regarding any division of land except as required by State law. All permissible restrictive conditions shall be imposed on a certificate. The owner or subsequent transferees of property shall be held to strict compliance with those conditions. A certificate of compliance creates no right to develop, nor diminishes in any respect the City's authority to control development.

Section 10: Permissible Uses

The following uses only, and their normal and appropriate accessory uses and developments, may be permitted by the City in the Initiative Area, provided however that all use and development must comply with the provisions of this Plan and with other City plans and ordinances:

(a) One single family dwelling unit on a parcel, secondary units required by State law, and housing occupied only by bona fide farm workers employed on the parcel or on a farm or ranch which includes the parcel;

(b) Rental of rooms to lodgers, including board, not exceeding four lodgers in a residence;

(c) In-home occupations and offices, secondary to residential use and conducted primarily by residents of a parcel;

(d) Agriculture, including grazing, arboriculture, horticulture, viticulture, research and breeding, rearing, care, use and sale or rental of ruminants, pigs, poultry and bees, but not including feedlots unless most of the feed over a calendar year will be grown in the Initiative Area; provided, however, only small scale dairy farms, pig farms, poultry ranches, vineyards, Christmas tree farms and nurseries may be permitted. Agriculture uses shall not cause unnecessary or unreasonable environmental harm, including air or water pollution, noise, or odor;

(e) Processing, storage or sale of agricultural produce, most of which over a calendar year is grown in the Initiative Area, that has no substantial deleterious effects on the environment, but not including freezing facilities or slaughterhouses;

(f) Breeding, rearing, boarding, training, care, use and sale or rental of horses, dogs and other animals not covered in paragraph (d), provided that any activity does not cause unnecessary or unreasonable environmental harm, including air or water pollution, noise, or odor;

(g) Low-intensity outdoor recreation, exercise, and pastimes predominantly for active participants, not spectators, and subordinate auxiliary uses and development, including camps, picnic facilities, provision of food and drink, and safety and sanitary services; these permissible uses and developments do not include, among other things, amusement or theme parks, golf courses, firearm ranges, stadiums or arenas (except equestrian riding rings), motor vehicle tracks, courses or facilities for off-road use, or recreational vehicle parking (other than vehicles for the personal use of the owner of the parcel) for more than 14 days within a month. Uses and developments permitted under this paragraph shall be compatible with a rural environment and not contribute significantly to pollution, noise, or other environmental harm;

(h) Institutional and other 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, that do not substantially impair the environment;

(i) Government and public utility uses that are limited to meeting needs created by permitted uses in the Initiative Area, except to the extent the City Council reasonably finds substantial public need that cannot practicably be met outside that area, that do not unnecessarily or unreasonably impair the environment. However, this exception shall not apply to waste disposal, processing or treatment, or to electrical power production or transmission primarily for sale. The Antioch Unified School District may build and use school facilities. Publicly provided outdoor recreation and pastimes and subordinate auxiliary facilities are permitted if like private uses and development would be allowed;

(j) Occasional short-term events related to agriculture, animals or outdoor recreation that do not cause significant environmental harm.

Section 11: Areas of Special Environmental Concern

(a) Wetlands: Development or use, except for permissible flood control, is not permitted if by itself or in conjunction with other development or use it would reduce appreciably the quantity or biological quality of wetlands. "Wetlands" are areas permanently or periodically covered or saturated by water, including vernal pools, where hydrophytic vegetation is present under normal conditions, or soils are primarily hydric in nature, or are designated as wetlands by Federal or State law.

(b) Stream Corridors: Development or use is not permitted if by itself or in conjunction with other development or use it would impair appreciably the quantity or quality of water or of native vegetation in a stream corridor, except for permissible flood control, stock ponds, or preservation of special status species. "Stream corridors" are areas within 200 feet of the centerline of a permanent or intermittent stream.

(c) Grasslands: In permitting uses and developments, the City shall act to preserve a viable, continuous grassland corridor between Black Diamond Mines Regional Preserve and Cowell

Ranch (Marsh Creek) State Park, as shown in Figure 8 (Proposed Habitat Linkages) in the Framework for Resource Management in Appendix A to this Plan.

(d) Wildlife: No development or use is permitted that by itself or in conjunction with other development or use would reduce appreciably the number, prevent the recovery in number, or impair the genetic variability of one or more special status species.

(e) Steep Slopes: No building may be located, in whole or in part, on a slope of 20% or more, unless there is no other site on a parcel. No building may be located on a site that cumulatively has access for more than 50 feet over a slope of 20% or more, unless there is no other site on a parcel. No grading may take place on a slope of 20% or more unless necessary to maintain fire roads or provide access to a permitted residence. Cultivated agriculture may not be conducted on a slope of 20% or more. Slope percentages are based on the steepness of slopes in their natural, unaltered state, and are calculated by dividing altitude increase over each 20 feet of vertical slope by 20.

Section 12: Development Envelopes

All buildings on a parcel must be located within a contiguous area, as compact as reasonably practicable, not to exceed 2 acres, except for buildings that the Council finds must necessarily be located outside that area for permitted agricultural use, processing, storage or sale of agricultural produce, breeding, boarding, rearing, care, training, use or sale or rental of animals under Section 10(f), outdoor recreation, exercise and pastimes, institutional or other non-profit uses, government or public utility use, and short-term events.

Section 13: Maximum Floor Areas

(a) The maximum aggregate floor areas for all floors in all buildings on a parcel, except basement and cellar floors, may not exceed 10,000 square feet; residential and residential accessory building floors may not exceed 6,000 square feet of this maximum.

(b) The City Council may increase the maximum floor area by up to 20,000 square feet, in aggregate, if necessary for agricultural use, processing or storage of produce, breeding, rearing, boarding, training, care and use of animals, outdoor recreation, exercises or pastimes, institutional or other non-profit uses, government or public utility use, or short-term events.

Section 14: Visual Safeguards

(a) New or reconfigured parcels must be created or drawn, to the extent practicable, to minimize visibility of development from roads, parks and other public places. Structures may not be located on or within 150 feet of any ridgeline or hilltop, or where they will project into the view of a ridgeline or hilltop from public places, unless there is no less intrusive site on the parcel or on a contiguous parcel in legal or de facto common ownership on or at any time subsequent to the date this Ordinance became effective. To the extent practicable, consistent with other provisions of this Plan, structures shall be located, including by setbacks from parcel boundaries, on that part of a parcel which minimizes visibility from roads, trails and other public

places. Roads shall be consolidated and located, as practicable, where they are least visible from public places.

(b) Development shall be subordinate to and blend harmoniously with the natural and open space qualities of the area where located. The alteration of natural topography, vegetation, and other qualities by grading, surfacing, excavation, or deposition of material shall be allowed only to the extent necessary for permitted uses. Appropriate landscaping, design, and building materials shall be required by the City in all cases to reduce as much as practicable the visual impact of development. The height of buildings may not exceed 30 feet, except as necessary for agricultural use.

(c) Visibility of development from roads, parks and other public places shall be determined from a reasonable, representative sample of vantage points that will accomplish the objectives of this Section.

Section 15: Covenants

Before a structure requiring City approval may be permitted on a parcel, the City must receive a fully-executed covenant, running with the land, that bars creation of parcels, development or use on the parcel that would not be permitted under this Initiative. The covenant shall be granted to the City and, if practicable, jointly to an independent land trust (that complies with the standards and practices of the Land Trust Alliance). The covenant shall be negative only. It shall convey no possessory interest to the City or Trust, nor confer any right of public access. The owner retains exclusive occupancy and use. The City has no responsibility or liability because of the covenant for acts or omissions on the property, except in good faith and effectually to remedy violations of the covenant. Covenants shall be recorded as appropriate in the County land records.

Section 16: Transferable Development Credits

The City shall study and evaluate a transferable development credits program as a means of transferring permissible development from the Initiative Area to other locations.

Section 17: Applicability

(a) Parcels, structures, uses, or surface alterations to the extent that they existed legally at the time this Ordinance became effective remain valid, except if their authorized time limit expires they may not be reestablished to the extent inconsistent with this Ordinance, they are eliminated voluntarily or abandoned, or a use is contrary to Section 11. Parcels, structures, surface alterations or uses may not be changed or expanded to the extent that would cause a violation of any provision of this Ordinance, or would augment or make more serious what would have been a violation if created or done after the Ordinance became effective.

(b) This Ordinance shall be applied to proposed parcels, development and uses that have not received all required City discretionary approvals and authorizations prior to the Ordinance's effective date, except to the degree application would be contrary to State law.

(c) This Ordinance applies to the City and to its agencies, officials and properties, as well as to all other persons and entities.

Section 18: Inconsistent City Plans, Ordinances and Actions

(a) Except as provided in Section 25, any provision of this General Plan, whether adopted before or after this Initiative became effective, is nullified to the extent that it is inconsistent with the Initiative, unless voters approved the provision after approval of the Initiative.

(b) Application of any specific or other City plan, or any ordinance, resolution or regulation is barred to the extent in conflict with this Initiative.

(c) To the extent inconsistent with this Initiative, no subdivision or parcel map, development agreement, permit, variance or other action may be approved, permitted or taken by the City, its agencies or officials (including approval or permission by law because of inaction), or is valid legally, unless mandated by State law.

(d) Provisions of this Plan and other City plans, ordinances, resolutions, regulations, and actions, whether adopted or taken before or after this Initiative became effective, are not inconsistent with the Initiative because they impose prohibitions, restrictions, regulations, conditions, requirements or remedies with respect to parcels, development, or use greater than or in addition to those imposed by the Initiative. The Initiative establishes only minimum prohibitions, restrictions, regulations, conditions, requirements and remedies which the City may augment or supplement without creating any conflict or inconsistency, provided that it does not permit parcels, development, or use barred by the Initiative.

Section 19: Implementation and Enforcement

(a) The Council, City agencies and officials shall enforce the provisions of this Measure diligently and effectually. They shall review uses and the location, nature, amount, visibility, and environmental effects of proposed developments and parcels to ensure compliance with the Measure. They shall use the most effective means at their disposal, subject to official discretion mandated by State law, to avoid, prevent, abate and remedy violations. Violations are public nuisances and, as provided by statute, misdemeanors.

(b) Residents, organizations with members in the City, and others with standing may enforce this Measure, and the covenants required under Section 15, by judicial proceedings against any government agency, person, group, or entity that is in violation of the Measure or a covenant, or to prevent violations.

(c) The City may, in its discretion, particularize and implement this Measure by appropriate legislation and actions, in all cases in full consistency with the substantive content and purposes of the Measure.

Section 20: Definitions

For purposes of this Ordinance, unless the text or context compels a different meaning:

(a) “Appreciably” means measurably or perceivably and “appreciable” means measurable or perceivable, but not minute;

(b) “Basements” and “cellars” are the lowest stories of buildings, but only if at least 80% of the story’s cubic area is below both the adjacent land level and the natural grade;

(c) “Building” is any structure under a roof supported by one or more walls, columns, poles, or other means, including greenhouses, hoop houses and covered arenas;

(d) “City” is the City of Antioch, and “Council” is the City Council of Antioch;

(e) “Development” is the construction, erection, placement or appreciable alteration of a structure, including mobile dwelling units; it also means appreciable land alteration, including grading, surfacing, excavation, or deposition of material;

(f) “Floor Area” means the area of all floors, regardless of composition including soil, under roof, in or connected to buildings, including porches, decks, carports, and attic floors to the extent that the height of the ceiling is five feet or more above the floor;

(g) “Including” or “includes” means includes but is not limited to the items listed, consistent with the text and purposes of the Ordinance;

(h) “Initiative Area” means the land designated on January 1, 2018, by Assessor’s Parcel Numbers 057-010-001, 057-010-002, 057-010-003, 057-010-004, 057-021-003, 057-041-001, 057-041-002, 057-041-003, 057-041-004, 057-041-005, 057-041-006, 057-041-007, 057-041-009, 057-041-013, 057-041-015, 057-041-016, 057-041-018, 057-041-019, 057-041-020, 057-041-021, 057-041-022, 057-041-023, 057-041-024, 057-060-006, 075-132-009, 075-132-010, 075-132-011, 075-132-012, 075-132-013, 075-132-014, 075-132-015, and 075-132-016;

(i) “Practicable” means capable of being done or put into effect;

(j) “Small-scale dairy farms, pig farms, poultry ranches, vineyards, Christmas tree farms, or nurseries” are those that are commonly classified or regarded as small in their respective lines of activity (the City Council can particularize these definitions in accordance with Section 19(c));

(k) “Special status species” are species listed, proposed for listing, or candidates for listing as rare (plants), threatened or endangered under the Federal or California Endangered Species Acts, plant species with a Rare Plant Rank of 1A, 1B, 2 or 3 in the California Native Plant Society’s *Inventory of Rare and Endangered Vascular Plants of California*, plants listed as rare under the California Native Plant Protection Act, wildlife and invertebrate species listed by the California Department of Fish and Wildlife as species of special concern or fully protected species under California Fish and Game Code Sections 3511, 4700, 5050, and 5515, species that meet the

definition of rare or endangered under the California Environmental Quality Act (Sections 15380 and 15125(c)), species considered to be a taxon of special concern by local agencies, and species considered sufficiently rare by the scientific community to warrant special consideration;

(l) "Structure" includes any building, tower, utility line, tank, pole or other object constructed, erected or placed on a parcel, the existence and use of which requires location on the ground or attachment to some thing located directly or indirectly on the ground.

Section 21: Amendments

This Initiative may be repealed or amended only by the voters of Antioch, except the Council may make amendments that are fully consistent with the substantive content and purposes of the Initiative.

Section 22: Urban Limit Line

The location of the Urban Limit Line enacted in Antioch Measure K on November 8, 2005, may be changed only by the voters.

Section 23: Effective Date

This Initiative shall become effective on the date provided by statute, except if all the General Plan amendments permitted by law in the year in which the Initiative is approved have been made, the Initiative shall become effective at the beginning of January of the following year, as the first amendment of that year.

Section 24: Severability

If one or more than one section, subsection, paragraph, sentence, clause, term or application of this Measure is adjudicated to be invalid or inapplicable, that shall not cause any other part or application to be invalid or inapplicable unless the clear effect of holding that other part or application valid or applicable would be to defeat, on balance, the objectives of the Measure. Each part of this Measure would have been enacted as it is irrespective of the fact that one or more other parts are held invalid or inapplicable, except to the extent that enactment would have defeated, on balance, the purposes of the Measure.

Section 25: Conflicting Ballot Measures

If there were one or more other General Plan amendments on the same ballot as this Initiative, dealing with the same subject matter, that were approved by the voters, this Initiative shall be effective unless the other amendment or amendments received more votes and except to the extent that they constitute a complete regulatory scheme for an area or subject covered by this Initiative or are in specific, definite, irreconcilable conflict with this Initiative. Provisions in a measure purporting to nullify provisions of this Initiative on any other basis are ineffective.

Section 26: Changes in the General Plan for Consistency

(a) The General Plan is amended as follows to make it and this Ordinance consistent. Material in the Plan deleted is in strikeout type. Material added is underlined. Material unchanged is omitted, even within a paragraph or sentence, unless deemed necessary to understand an amendment.

(b) Notwithstanding Section 21 of this Ordinance, provisions in this Section may be amended by the City, provided that amendments are consistent with the substantive content of the other provisions of this Ordinance.

P. 4-6: **4.4 Intensity and Distribution of Land Use**

....Table 4.A...identifies which land use types are appropriate within which land use designations.

PP. 4-9 through 4-14:

Table 4.A – Appropriate Land Use Types

Rural Residential,
Agriculture, Open Space

Large Lot Residential. ... Residential developments of this type shall be designed as large suburban parcels within subdivisions within the Urban Limit Line and as rural residential uses <u>in the Sand Creek Initiative Area and outside of the Urban Limit Line.</u>	✓
...	
Residential Care Facilities.	✓
...	
Outdoor Recreational Facilities.	✓
...	
Recreational Vehicle Park.	✓7
...	
Open Space.	✓
Religious Assembly.	✓1
Schools, Public and Private.	✓1

P. 4-15: **Table 4.B – Anticipated Maximum General Plan Build Out in the City of Antioch**

	Single-Family (Dwelling Units)	Multi-Family (Dwelling Units)
Focus Areas¹		
Sand Creek Focus Area	3,537 <u>1,938</u>	433 <u>162</u>
Subtotal	6,439 <u>4,839</u>	5,570 <u>4,941</u>
TOTAL	35,462 <u>33,862</u>	11,912 <u>11,284</u>

P. 4-17: **Table 4.D – Anticipated Maximum General Plan Build Out in the General Plan Study Area**

Focus Areas ¹	Single-Family (Dwelling Units)		Multi-Family (Dwelling Units)	
	Sand Creek Focus Area	3,537	1,938	433
Subtotal	6,839	5,239	5,570	4,941
TOTAL	35,862	34,262	11,912	11,284

P. 4-18: **4.4.1.1 Residential Land Use Designations**

Six ~~Seven~~ residential land use designations are set forth

Rural Residential, Agriculture, Open Space. This designation allows single-family rural residential development as provided by the Sand Creek Area Protection Initiative. This designation, typically involving large parcels, protects agriculture, grasslands, and open space as well as permitting housing in rural areas. Maximum house size with accessory buildings is 6,000 square feet. Dwelling unit densities are less than one per acre. Population densities typically will be less than one person per acre.

PP. 4-38 through 4-44: **4.4.6.7 Sand Creek, b. Policy Direction**

~~The Sand Creek Focus Area is intended to function as a large scale planned community providing needed housing and employment opportunities. This Focus Area is also intended to provide substantial employment opportunities. West of Deer Valley Road, the Sand Creek Focus Area, under the Sand Creek Initiative, provides rural residential housing and preserves agriculture, grasslands, and open space. East of Deer Valley Road, it provides primarily housing and employment opportunities. Up to approximately 280 acres are to be devoted to retail and employment generating uses east of Deer Valley Road, which will result in the creation of up to 6,500 jobs at build out. Residential development within the Sand Creek Focus Area east of Deer Valley Road will provide for a range of housing types, including upper income estate housing, golf course oriented age restricted housing for seniors, suburban single-family detached housing for families or for seniors, and multifamily development. Residential development west of Deer Valley Road will be low-density, rural single-family detached houses. The Sand Creek stream corridor, hilltops, ridgelines, hillsides and sensitive biological resources will be protected throughout the Focus Area.~~

- k. A maximum of 4,000 ~~2,100~~ dwelling units may be constructed within the Sand Creek Focus Area.density bonuses may not exceed the total maximum of 4,000 ~~2,100~~ dwelling units for the Sand Creek Focus Area.
- l. It is recognized that although the ultimate development yield for the Focus Area may be no higher than the 4,000 ~~2,100~~ dwelling unit maximum, the actual development yield is not guaranteed by the General Plan, and could be substantially lower.
- m. As a means of expanding the range of housing choices available within Antioch, ~~three~~ several types of “upscale” housing ~~are to~~ may be provided, including Hillside Estate Housing and Executive Estate Housing, ~~and Golf Course Oriented Housing.~~

Hillside Estate Housing consists of residential development within the hilly portions of the Focus Area east of Deer Valley Road that are designated for residential development.

Executive Estate Housing consists of large lot suburban subdivisions within the flatter portions of the Focus Area east of Deer Valley Road.

~~Golf Course-Oriented Housing consists of residential dwelling units fronting on a golf course to be constructed within the portion of the Focus Area identified as Golf Course/Senior Housing/Open Space in Figure 4.8. Appropriate land use types include Single Family Detached and Small Lot Single Family detached for lots fronting on the golf course. Maximum densities for golf course-oriented housing would typically be 4 du/ac, with lot sizes as small as 5,000 square feet for lots actually fronting the golf course. Given the significant environmental topographic constraints in the portion of the focus area west of Empire Mine Road, the minimum lot size for executive estate housing within this area shall be a minimum of 10,000 square feet. This would allow additional development flexibility in situations where executive estate housing needs to be clustered in order to preserve existing natural features. In no case shall the 10,000 square foot minimum lot size constitute more than 20 percent of the total number of executive estate housing units in the area west of Empire Mine Road. The anticipated population density for this land use type is up to eight to twelve persons per acre developed for residential uses. Should the City determine as part of the development review process that development of a golf course within the area having this designation would be infeasible, provision of an alternative open space program may be permitted, provided, however, that the overall density of lands designated Golf Course/Senior Housing/Open Space not be greater than would have occurred with development of a golf course.~~

- q. Age-restricted senior housing... may be developed in any of the residential areas of the Sand Creek Focus Area east of Deer Valley Road, or on parcel 057-041-012, west of Deer Valley Road, which is not included in the Sand Creek Initiative Area.
- s. Sand Creek, ridgelines, hilltops, stands of oak trees, and significant landforms shall be preserved in their natural condition. Overall, ~~a minimum of 25~~ more than 80 percent of the Sand Creek Focus Area ~~shall west of Deer Valley Road will be preserved in open space, with large lot sizes, restrictions on use, and limitations on development envelopes and building floor areas, and other regulations exclusive of lands developed for golf course use.~~
- v. A viable, continuous grassland corridor between Black Diamond Mines Regional Preserve and Cowell Ranch State Park shall be retained using linkages in the southwestern portion of the Lone Tree Valley (within the Sand Creek drainage area), Horse Valley, and the intervening ridge.

~~To preserve this corridor and in view of other significant development constraints, certain lands in the southwestern portion of the Focus Area shall be designated as "Open Space," as depicted in Figure 4.8. Limited future adjustments to the boundaries of this "Open Space" area may occur as part of the Specific Plan and/or project level environmental review~~

processes, provided that such adjustments: (a) are consistent with the goals and policies outlined in the Framework for Resource Management set forth in Appendix A; (b) are based upon subsequently developed information and data relating to environmental conditions or public health and safety that is available at the Specific Plan stage, the project-level development stage, or during the permitting processes with federal, state or regional regulatory agencies; and (c) would not cause the "Open Space" area west of Empire Mine Road to be less than 65 percent of the total lands west of Empire Mine Road. Any open space and otherwise undeveloped areas west of Empire Mine Road that are within the area designated as "Hillside and Estate Residential" shall not count towards meeting this 65 percent minimum "Open Space" requirement.

~~Due to the varied and complex topography west of Empire Mine Road the exact boundary between the "Hillside Estate" residential area and "Estate" residential area shall be determined as part of the project-level entitlement process.~~

~~It is anticipated that there will be only minor adjustments to the boundary between the open space area and the hillside and estate residential area shown in Figure 4.8. Minor adjustments may be made to this boundary provided that such adjustments shall not create islands of residential development within the area designated open space in Figure 4.8.~~

~~In order to ensure adequate buffering of the Black Diamond Mines Regional Park from development in the Sand Creek Focus Area, no residential development shall be allowed north of the Sand Creek channel between the area designated "Hillside and Estate Residential" in Figure 4.8 west of Empire Mine Road and the existing Black Diamond Mines Regional Park boundary.~~

- gg. ~~subject to its financial feasibility (see Policy "m"), a golf course shall be provided within the Focus Area, designed in such a way as to maximize frontage for residential dwellings. The golf course may also be designed to serve as a buffer between development and open space areas set aside to mitigate the impacts of development.~~

~~The golf course shall be designed to retain the existing trail within Sand Creek.~~

~~The golf course and Sand Creek corridor shall function as a visual amenity from the primary access road within the Focus Area (Dallas Ranch Road/Sand Creek Road).~~

~~As part of the golf course clubhouse, banquet and conference facilities shall be provided.~~

- hh gg. A park program, providing active and passive recreational opportunities is to be provided. In addition to ~~a golf course and~~ preservation of natural open space within Sand Creek and the steeper portions of the Focus Area, the development shall meet the City's established park standards. In the Sand Creek Initiative Area parks shall also comply with Sections 10(g), 10 (i), 11 and 14 of the Initiative.

P. 4-45: **Figure 4.8, Sand Creek Focus Area**

Figure 4.8 is hereby amended to designate the Sand Creek Area Protection Initiative Area “Rural Residential, Agriculture, Open Space.” The designations Golf Course, Senior Housing, Open Space, Hillside and Estate Residential, Estate and Executive Residential, and Low Density Residential are eliminated from the Initiative Area.

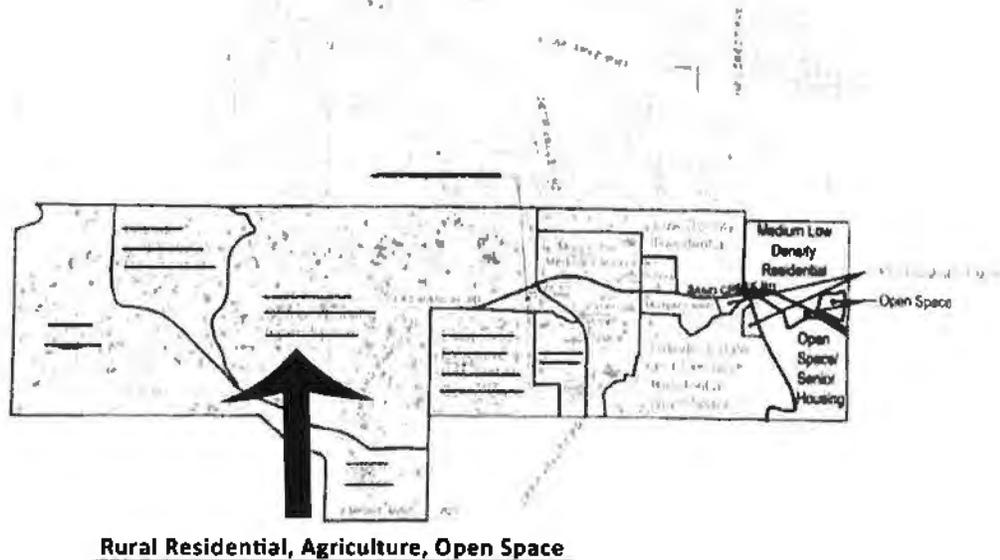


FIGURE 4.8
(REVISED BY OIG: 11/09/15)

P. 4-57: **4.4.7. Voter-Approved Urban Limit Line**

Until December 31, 2020, the location of the Voter-Approved Urban Limit Line may be amended only by the voters of the City.

P. 5-2: **5.2 Existing Community Design**, first paragraph

...Most of the open lands in the southwest Antioch are located within the Black Diamond Mines Regional Preserve, Contra Loma Regional Park, or the Sand Creek Focus Area, an area of mostly privately-owned ranch land that is some portions of which are planned for development.

P. 5-10: **5.4.2.e General Design Policies**

- Utilize existing creeks, such as Sand Creek, as linear parks, providing pedestrian and bicycle paths, consistent with Section 11(b) of the Sand Creek Initiative.

P. 5-24: 5.4.14 Hillside Design Policies

t. Sections 11(e) and 14 of the Sand Creek Initiative apply to Hillside Design in the Initiative Area to the extent that they impose greater restrictions or requirements on development than the policies in this Section 5.4.14.

P. 7-2: Table 7.A – Primary Arterials in Antioch

Under Arterial Activity Centers Served

Dallas Ranch Road Sand Creek ~~Specific Plan, including proposed golf course and~~ Focus Area
employment-generating areas.

P. 10-5: 10.3.2 Open Space Policies

f. In the Sand Creek Initiative Area, trails shall not impair appreciably the quantity or quality of water or of native vegetation in a stream corridor, as defined by Section 11(b) of the Initiative.

P. 10-7: Special Status Species

Special-status species are defined as:

- Species that are listed, proposed for listing, or designated as candidates for listing, as threatened or endangered under the Federal Endangered Species Act;
- Species that are listed, proposed for listing, or designated as candidates for listing as rare (plants), threatened, or endangered under the California Endangered Species Act;
- Plant species ~~on List 1A, List 1B, List 2, and List 3~~ with a Rare Plant Rank of 1A, 1B, 2 or 3 in the California Native Plant Society's *Inventory of Rare and Endangered Vascular Plants of California*;
- Plants listed as rare under the California Native Plant Protection Act;
- Wildlife and invertebrate species listed by the California Department of Fish and ~~Game~~ Wildlife as species of special concern or fully protected species under California Fish and Game Code Sections 3511, 4700, 5050, and 5515;
- Species that meet the definition of rare or endangered under the California Environmental Quality Act (under Sections 15380 and 15125(c) of CEQA¹); and
- Species ~~Considered~~ to be a taxon of special concern by local agencies; and
- Species considered sufficiently rare by the scientific community to warrant special consideration.

10.4.2 Biological Resources Policies

a. Wetlands shall be protected in the Sand Creek Initiative Area in accordance with Section 11(a) of the Initiative.

d. – Section 11(d) of the Sand Creek Initiative may impose more protections for special-status species in the Initiative Area.

Appendix 1

