CITY OF ONTARIO

Regular City Council/Housing Authority Meeting
SEPTEMBER 3, 2024

City Hall
303 East B Street, Ontario, CA 91764

MAYOR PAUL S. LEON • MAYOR PRO TEM DEBRA DORST-PORADA
COUNCIL MEMBERS ALAN D. WAPNER, JIM W. BOWMAN AND RUBEN VALENCIA

CITY CLERK SHEILA MAUTZ • TREASURER JAMES R. MILHISER
CITY MANAGER SCOTT OCHOA • CITY ATTORNEY RUBEN DURAN

WELCOME TO A MEETING OF THE ONTARIO CITY COUNCIL

All documents for public review are on file with the Records Management/City Clerk's Department located at 303 East B Street, Ontario, CA 91764.

Anyone wishing to speak in person during public comment or on a particular item will be required to fill out a blue slip. Blue slips must be turned in prior to public comment beginning or before an agenda item is taken up. The Clerk will not accept blue slips after that time. To comment by email, submit your comments no later than 4:00 p.m. on the day of the meeting by emailing your name, agenda item you are commenting on and your comments to publiccomments@ontarioca.gov. All comments received by the deadline will be forwarded to the City Council for consideration before action is taken on the matter and will be entered into the record.

Comments will be limited to 3 minutes. Speakers will be alerted when they have 1 minute remaining and when their time is up. Speakers are then to return to their seats and no further comments will be permitted.

In accordance with State Law, remarks during public comment are to be limited to subjects within Council's jurisdiction. Remarks on other agenda items will be limited to those items.

Remarks from those seated or standing in the back of the chamber will not permitted. All those wishing to speak including Council and Staff need to be recognized by the Chair before speaking.

ACCOMODATIONS

If you need special assistance or accommodations to participate in this meeting, please contact the City Clerk's office at 909-395-2009. Notification of 48 hours prior to the meeting will help the City make reasonable arrangements. Equipment for the hearing impaired is available in the Records Management Office.

ORDER OF BUSINESS

The regular City Council and Housing Authority meeting begins with Closed Session and Closed Session Comment at 6:00 p.m., Public Comment at 6:30 p.m. immediately followed by the Regular Meeting and Public Hearings. No agenda item will be introduced for consideration after 10:00 p.m. except by majority vote of the City Council.

CALL TO ORDER *(OPEN SESSION)*

ROLL CALL

Porada, Wapner, Bowman, Valencia, Mayor/Chairman Leon

CLOSED SESSION PUBLIC COMMENT

The Closed Session Public Comment portion of the Council/Housing Authority meeting is limited to a maximum of 3 minutes for each speaker and comments will be limited to matters appearing on the Closed Session. Additional opportunities for further Public Comment will be given during and at the end of the meeting.

CLOSED SESSION

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 0210-211-33; 700 North Haven Avenue; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: CORE Hotel Venture, LLC; Under negotiation: Price and terms of payment

ATTACHMENT: 20240903 Closed Session

PLEDGE OF ALLEGIANCE

Council Member Valencia

INVOCATION

Pastor Alena Uhamaka, First United Methodist Church

REPORT ON CLOSED SESSION

City Attorney

SPECIAL CEREMONIES

PROCLAMATION OF SEPTEMBER 2024 AS NATIONAL PREPAREDNESS MONTH

That the City Council proclaim the month of September 2024 as National Preparedness Month in the City of Ontario.

ATTACHMENT: NPM_Proc._2024

PROCLAMATION OF SEPTEMBER 2024 AS NATIONAL SENIOR CENTER MONTH

That the City Council proclaim the month of September 2024 as National Senior Center Month in the City of Ontario.

ATTACHMENT: 20240903 National Senior Center Month Proclamation^01^PROC

PUBLIC COMMENTS 6:30 P.M.

The Public Comment portion of the Council/Housing Authority meeting is limited to 30 minutes with each speaker given a maximum of 3 minutes. An opportunity for further Public Comment may be given at the end of the meeting. Under provisions of the Brown Act, Council is prohibited from taking action on oral requests.

To comment by email, submit your comments by email no later than 4:00 p.m. on the day of the meeting by emailing your name, agenda item you are commenting on and your comment to publiccomments@ontarioca.gov. All Comments received by the deadline will be forwarded to the City Council for consideration before action is taken on the matter and entered into the record. As previously noted -- if you wish to address the Council, fill out one of the blue slips at the rear of the chambers and give it to the City Clerk.

AGENDA REVIEW/ANNOUNCEMENTS

The City Manager will go over all updated materials and correspondence received after the Agenda was distributed to ensure Council Members have received them. He will also make any necessary recommendations regarding Agenda modifications or announcements regarding Agenda items to be considered.

INFORMATION RELATIVE TO POSSIBLE CONFLICT OF INTEREST

Agenda item contractors, subcontractors and agents may require member abstentions due to

conflict of interests and financial interests. Council Member abstentions shall be stated under this item for recordation on the appropriate item.

CONSENT CALENDAR

All matters listed under CONSENT CALENDAR will be enacted by one motion in the form listed below – there will be no separate discussion on these items prior to the time Council votes on them, unless a member of the Council requests a specific item be removed from the Consent Calendar for a separate vote.

Each member of the public wishing to address the City Council on items listed on the Consent Calendar will be given a total of 2 minutes.

1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council and Housing Authority of August 6, 2024 and approving same as on file in the Records Management Department.

ATTACHMENT: 20240806 Meeting Minutes (Not Official Until Approved)

2. BILLS & PAYROLL

Bills August 2, 2024 through August 8, 2024, and Payroll July 14, 2024 through July 27, 2024.

3. ACCEPTANCE OF GRANT AWARD FUNDS FROM THE U.S. DEPARTMENT OF TRANSPORTATION FISCAL YEAR 2023 SAFE STREETS AND ROADS FOR ALL GRANT PROGRAM

That the City Council authorize the City Manager to execute all documents necessary to accept grant award funds in the amount of $360,000 from the U.S. Department of Transportation Fiscal Year 2023 Safe Street and Roads for All Grant Program.

ATTACHMENT: SS4A FY23 Grant Agreement Ontario Draft (BBK Edits)

4. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR DEVELOPMENT PLAN NO. PDEV21-020 LOCATED AT 1050 EAST HOLT BOULEVARD

That the City Council adopt a Resolution approving an Improvement Agreement and Improvement Security for Project No. PDEV21-020, located at 1050 East Holt Boulevard.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR DEVELOPMENT PLAN NO. PDEV21-020 LOCATED AT 1050 EAST HOLT BOULEVARD.

ATTACHMENT: 20240903 PDEV21-020^01_EXH_A.pdf
ATTACHMENT: 20240903 PDEV21-020 02^RESO^RM

ATTACHMENT: 20240903 PDEV21-020^03 IA.pdf

5. A RESOLUTION APPROVING FINAL PARCEL MAP NO. 20583, LOCATED AT THE SOUTHEAST CORNER OF HAVEN AVENUE AND GUASTI ROAD

That the City Council adopt a Resolution approving Final Parcel Map No. 20583 located at the southeast corner of Haven Avenue and Guasti Road.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FINAL PARCEL MAP NO. 20583 LOCATED AT THE SOUTHEAST CORNER OF HAVEN AVENUE AND GUASTI ROAD.

ATTACHMENT: 20240903 PM 20583^01 Exhibit A.pdf
ATTACHMENT: 20240903 PM 20583 02^RESO^RM

6. AN ORDINANCE APPROVING A SPECIFIC PLAN (FILE NO. PSP22-001 - EUCLID MIXED USE SPECIFIC PLAN)

That the City Council consider and adopt an Ordinance approving the Euclid Mixed Use Specific Plan (File No. PSP22-001).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSP22-001, A SPECIFIC PLAN (EUCLID MIXED USE SPECIFIC PLAN) TO ESTABLISH THE LAND USE DISTRICTS, DEVELOPMENT STANDARDS, GUIDELINES, AND INFRASTRUCTURE IMPROVEMENTS FOR THE POTENTIAL DEVELOPMENT OF UP TO 1,386,776 SQUARE FEET OF BUSINESS PARK LAND USES, 290,110 SQUARE FEET OF OFFICE AND RETAIL LAND USES, AND 466 DWELLING UNITS ON THE 84-ACRE PROJECT SITE, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 1053-071-01; 1053-071-02; 1053-071-03; 1053-071-04; 1053-211-01; 1053-211-02; 1053-211-05; 1053-281-01; 1053-281-02; 1053-281-03; 1053-281-04; 1053-281-07; 1053-281-08; 1053-081-01; 1053-081-02; 1053-081-03; 1053-081-04.

ATTACHMENT: File No. PSP22-001 SP 06^ORD^RM.docx
ATTACHMENT: File No. PSP22-001^07_SP Attch.pdf
ATTACHMENT: File No. PSP22-001^08_SP COA.pdf

7. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA23-004) BETWEEN THE CITY OF ONTARIO AND EUCLID LAND INVESTMENT, LLC

That the City Council consider and adopt an Ordinance approving a Development Agreement (File No. PDA23-004) between the City of Ontario and Euclid Land Investment, LLC, to establish the terms and conditions associated with Tentative Parcel Map 20714 (File No. PMTT23-005), a 60-acre property located east of Euclid Avenue, south of Schaefer Avenue, west of future Sultana Avenue and north of Edison Avenue within the Euclid Mixed Use Specific Plan.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA23-004, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND EUCLID LAND INVESTMENT, LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE PARCEL MAP 20714 (FILE NO.PMTT23-005), A 60 ACRE PROPERTY LOCATED

EAST OF EUCLID AVENUE, SOUTH OF SCHAEFER AVENUE, WEST OF SULTANA AVENUE AND NORTH OF EDISON AVENUE WITHIN THE EUCLID MIXED USE SPECIFIC PLAN (FILE NO. PSP22-001); (APNS: 1053-071-01; 1053-071-02; 1053-071-03; 1053-071-04; 1053-211-01; 1053-211-02; 1053-281-08; 1053-081-01; 1053-081-02; 1053-081-03; 1053-081-04).

ATTACHMENT: File No. PDA23-004 Euclid Land Investment LLC 02^ORD^RM
ATTACHMENT: File No. PDA23-004 Euclid Land Investment LLC^01^EXH_A_B.pdf
ATTACHMENT: File_No._PDA23-004_ Euclid Land Investment LLC^03^DEV^AGR.docx

8. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 52 (SUNDANCE PARK)

That the City Council consider and adopt an Ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 52 (Sundance Park).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING A SPECIAL TAX WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 52 (SUNDANCE PARK).

ATTACHMENT: CFD 52 Sundance Park Ordinance to Levy Speical Tax 06^ORD^RM

9. ACCEPTANCE OF SENATE BILL 1383 LOCAL ASSISTANCE GRANT PROGRAM FUNDING FROM CALIFORNIA'S DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

That the City Council Authorize the City Manager, or his designee, to execute all documents necessary to accept grant award funds in the amount of $476,003 from California's Department of Resources Recycling and Recovery (CalRecycle) for the Senate Bill (SB) 1383 Local Assistance Grant Program.

ATTACHMENT: Award Letter.pdf

10. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH COLLABORATIVE SOLUTIONS, LLC FOR WORKDAY SERVICE SUPPORT

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 2 to the Professional Services with Collaborative Solutions, LLC of Teaneck, New Jersey, for ongoing full-suite Workday support and configuration services, increasing the authorized contract amount by $216,020 for a total contract not-to-exceed amount of $514,824.

ATTACHMENT: For Granicus_Amendment 2_Collaborative Solutions.pdf

11. AMERICORPS STATE COMPETITIVE CONTINUATION GRANT FOR 2024-25

That the City Council authorize the City Manager or designee to execute grant documents and accept a $368,000 AmeriCorps Competitive Continuation Grant for October 2024 through September 2025 to fund the Ontario Promise Corps project.

12. A PROFESSIONAL SERVICES AGREEMENT WITH ATHENS INSURANCE SERVICES, INC. FOR THIRD-PARTY ADMINISTRATION SERVICES FOR WORKERS' COMPENSATION CLAIMS

That the City Council approve and authorize the City Manager, or his designee, to execute a three-year Professional Services Agreement with Athens Insurance Service, Inc. of Concord, California, for third-party administration and training services for workers' compensation claims for a total not-to-exceed amount of $1,814,460.

ATTACHMENT: Final_Professional Services Agreement - Athens Insurance Services Inc..pdf

PUBLIC HEARINGS

Pursuant to Government Code Section 65009, if you challenge the City's zoning, planning or any other decision 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 Council at, or prior to the public hearing. Affidavits of posting compliance, for all items below, are on file with the Records Management Department.

Each member of the public wishing to address the City Council on Public Hearing items will be given a total of 2 minutes.

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13. AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION FOR FILE NOS. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015 AND PDET23-016

That the City Council conduct a public hearing on the Appeals and after receiving all public testimony, uphold the Planning Commission's decision to uphold Zoning Administrator Decision No's. ZA23-024 (File No. PDET23-005), ZA23-030 (File No. PDET23-007), ZA23-031 (File No. PDET23-008), ZA23-032 (File No. PDET23-009), ZA23-033 (File No. PDET23-010), ZA23-038 (File No. PDET23-015) and ZA23-039 (File No. PDET23-016) and deny the Appeals.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-005) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE HOTEL HACIENDA, LOCATED AT 2425 SOUTH ARCHIBALD AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1083-071-26.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-007) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE BRIGHT STAR MOTEL, LOCATED AT 1530 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1011-221-15.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-008) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE DAYS INN ONTARIO MOTEL, LOCATED AT 1405 EAST 4TH STREET, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0108-381-32.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-009) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE ECONOMY INN, LOCATED AT 2301 SOUTH EUCLID AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1051-071-04.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-010) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE MAYFAIR INN, LOCATED AT 1120 EAST HOLT BOULEVARD, WITHIN THE INDUSTRIAL PARK ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1049-141-25.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-015) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE SANDS MOTEL, LOCATED AT 1240 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1101-211-03.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-016) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE WEST COAST INN, LOCATED AT 1211 NORTH GROVE AVENUE, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1047-451-25.

ATTACHMENT: 20240903 Hotel Appeals PC^Back-up
ATTACHMENT: File No. PDET23-005 Hotel Hacienda - Appeal^03^RESO^RM
ATTACHMENT: File No. PDET23-007 Bright Star Motel - Appeal 04^RESO^RM
ATTACHMENT: File No. PDET23-008 Days Inn Ontario - Appeal 05^RESO^RM.docx
ATTACHMENT: File No. PDET23-009 Economy Inn - Appeal 06^RESO^RM
ATTACHMENT: File No. PDET23-010 Mayfair Inn - Appeal 07^RESO^RM
ATTACHMENT: File No. PDET23-015 Sands Motel - Appeal^08^RESO^RM

ATTACHMENT: File No. PDET23-016 West Coast Inn - Appeal ^09^RESO^RM

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

Mayor Leon
Mayor pro Tem Porada
Council Member Wapner
Council Member Bowman
Council Member Valencia

ADJOURNMENT

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council // Housing Authority // Other // *(GC 54957.1)*
September 3, 2024

ROLL CALL: Dorst-Porada _, Wapner _, Bowman _, Valencia _, Mayor / Chairman Leon _.

STAFF: City Manager / Executive Director __, City Attorney __

In attendance: Dorst-Porada _, Wapner _, Bowman _, Valencia _, Mayor / Chairman Leon _.

- GC GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS Property: APN: 0210-211-33; 700 North Haven Avenue; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: CORE Hotel Venture, LLC; Under negotiation: Price and terms of payment

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

Reported by:

_____
City Attorney / City Manager / Executive Director

CITY OF ONTARIO *Agenda Report* **September 3, 2024**	**SECTION:** **SPECIAL CEREMONIES**
Department: Fire Department Prepared By: Joseph Ramos Staff Member Presenting: Mike Gerken, Fire Chief Reviewed By: Sagar Patel Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No:

SUBJECT: PROCLAMATION OF SEPTEMBER 2024 AS NATIONAL PREPAREDNESS MONTH

RECOMMENDATION: That the City Council proclaim the month of September 2024 as National Preparedness Month in the City of Ontario.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety

FISCAL IMPACT: There is no direct fiscal impact associated with this action.

BACKGROUND & ANALYSIS: For the twentieth consecutive year, the Federal Emergency Management Agency (FEMA) has announced September as National Preparedness Month (NPM). The goal of NPM is to build awareness and encourage the whole community to prepare for emergencies in their homes, businesses, schools, workplaces, and communities. NPM is managed and sponsored by FEMA's Ready Campaign. The Ready Campaign works closely with Citizens Corps to increase national readiness across the nation. National Preparedness Month is an opportunity for all residents and business owners to build preparedness skills to increase resiliency.

Residents and businesses are encouraged to help their families and neighbors to prepare by: 1) creating a communication plan; 2) planning for transportation needs; and 3) planning for food, water, and essentials for themselves and pets. All residents are encouraged to visit the www.ReadyOntario.com website to learn more and find resources to make these three actions simple and easy to do. During this month, residents and businesses are reminded to register their cell phones with AlertOntario, the City's emergency notification system, by texting "ONTARIO" to 888777 and visit the www.ReadyOntario.com website for trainings and resources.

PROCLAMATION OF SEPTEMBER 2024
AS NATIONAL PREPAREDNESS MONTH

WHEREAS, the City of Ontario is committed to ensuring the safety and security of all those living and visiting the city, and is dedicated to raising the awareness of all employees, residents, schools, and businesses about the importance of being prepared for potential disasters; and

WHEREAS, emergency preparedness is the responsibility of every resident of the City of Ontario, California, and all residents are urged to make preparedness a priority and work together to ensure that individuals, families, and communities are prepared for disasters and emergencies of any type; and

WHEREAS, the U. S. Department of Homeland Security is focused on promoting and improving our Nation's ability to respond to emergencies and strongly supports efforts by cities to safeguard their communities by encouraging them to implement simple measures that will mitigate potential hazards and prevent damage to land and property; and

WHEREAS, the City of Ontario is proud to join with the Federal Emergency Management Agency (FEMA) in this nationwide effort and pledge their support for emergency preparedness by encouraging everyone, especially our older adults, in the community to create an emergency plan for themselves and their family and friends, to equip themselves with the necessary supplies to care for themselves and their families for at least 72 hours, to register themselves and their family for the mass notification tool AlertOntario, and become informed about the different threats that may affect them;

NOW, THEREFORE, the City of Ontario, its City Council and staff members do declare the month of September 2024 as:

NATIONAL PREPAREDNESS MONTH

GIVEN UNDER THE CORPORATE SEAL OF THE CITY OF ONTARIO, CALIFORNIA this 3rd day of September 2024.

_____
PAUL S. LEON, MAYOR

CITY OF ONTARIO *Agenda Report* **September 3, 2024**	**SECTION:** **SPECIAL CEREMONIES**
Department: Recreation & Community Services Prepared By: Danielle Guevara Department: Prepared By: Danielle Guevara Staff Member Presenting: Nicholas S. Gonzalez, Recreation & Community Services Director Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No:

SUBJECT: PROCLAMATION OF SEPTEMBER 2024 AS NATIONAL SENIOR CENTER MONTH

RECOMMENDATION: That the City Council proclaim the month of September 2024 as National Senior Center Month in the City of Ontario.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

FISCAL IMPACT: There is no direct fiscal impact associated with this action.

BACKGROUND & ANALYSIS: The National Council on Aging (NCOA) has recognized the month of September as National Senior Center Month. To commemorate, organizations and individuals alike will celebrate and promote a positive image of aging and show how senior centers improve the lives of older adults. This month serves as an opportunity to encourage older residents to explore events and programming offered by the Ontario Senior Center. This year's NCOA theme, "Powering Connections", highlights the vital role senior centers play in enhancing the lives of older adults by fostering guidance, education, support, and community. The Ontario Senior Center provides a welcoming and inclusive space of programs, services, and events to build meaningful connections.

This month, the Recreation & Community Services Department will use social media to spotlight the Ontario Senior Center and the active senior community that enjoys all the center's offerings. The "Our House, Ontario Senior Center" social media campaign will showcase how the center is a second home to all who visit by highlighting the facility, specialty programs, and community members. The department is excited to share the opportunities for building connections and forming lasting friendships at the Ontario Senior Center.

With the approval of Measure Q, the Senior Center's operating hours will be extended to 8am to 8pm from Monday to Friday, and from 8am to 12pm on Saturdays, starting in December. Additionally, we are pleased to announce that we have received a grant from OmniTrans, enabling us to expand our transportation services to include grocery shopping and non-emergency medical appointments.

This National Senior Center Month let's celebrate the many ways senior centers create a sense of connection. Together, we can demonstrate the significant ways these spaces are *Powering Connections*. Residents can learn more about the Ontario Senior Center by visiting www.OntarioCA.gov/Recreation or by contacting the center directly at (909) 395-2021.

The Recreation & Parks Commission met on August 26, 2024 and voted 6-0 to recommend this proclamation to City Council.

PROCLAMATION OF SEPTEMBER 2024
AS NATIONAL SENIOR CENTER MONTH

WHEREAS, older Americans are significant members of our society, investing their wisdom and experience to help enrich and strengthen our community; and

WHEREAS, the Ontario Senior Center has acted as a catalyst for mobilizing the creativity, energy, vitality, and commitment of the older residents of Ontario, California; and

WHEREAS, through the wide array of services, programs, and activities, the Ontario Senior Center empowers older citizens of Ontario, California to contribute to their own health and well-being and the health and well-being of their fellow citizens of all ages; and

WHEREAS, during the pandemic, the Ontario Senior Center has been a community partner in ensuring that our most vulnerable citizens – people age 50 and older, many with underlying medical conditions – are cared for and able to stay connected, safe and healthy; and

WHEREAS, the senior center in Ontario, California affirms the dignity, self-worth, and independence of older persons by facilitating their decisions and actions; tapping their experiences, skills, and knowledge; and enabling their continued contributions to the community; and

WHEREAS, the City of Ontario, California recognizes the benefits derived from senior center resources.

And call upon all citizens to recognize the special contributions of the senior center participants and the special efforts of the staff and volunteers who work every day to enhance the well-being of the older citizens of our community.

NOW THEREFORE, the City of Ontario, its City Council and staff members do declare the month of September 2024 as **NATIONAL SENIOR CENTER MONTH**.

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
AUGUST 6, 2024
(Not Official Until Approved)

JOINT MEETINGS

The regular meetings of the Ontario City Council and the Housing Authority were held on Tuesday, August 6, 2024 at Ontario City Hall, 303 E. B Street Ontario, California.

OPEN MEETING CALLED TO ORDER

Mayor Leon called the joint meetings to order at 6:01 p.m.

ROLL CALL

PRESENT:	Mayor/Chairman:	Paul S. Leon
	Mayor pro Tem/Vice Chair:	Debra Porada
	Council/Authority Members:	Alan D. Wapner and Ruben Valencia
ABSENT:	Council/Authority Members:	Jim W. Bowman

Also present were City Manager / Executive Director Scott Ochoa, City Attorney/Legal Counsel Ruben Duran, and City Clerk / Secretary Sheila Mautz.

INFORMATION RELATIVE TO POSSIBLE CONFLICTS OF INTEREST

There were no conflicts of interest announced by the City Council.

CLOSED SESSION

Mayor Leon inquired whether persons were present who wished to speak to the Closed Session items. Hearing no one, City Attorney Duran announced the matters for discussion as listed on the agenda and recessed to Closed Session at 6:03 p.m. for discussion of the following:

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS:
Property: APNS: 1011-221-09 through 12; 1500-1506 West Mission Boulevard; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: George Grigorian and Julie Grigorian; Under negotiation: Price and terms of payment

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS:
Property: APN: 1011-221-13; 1514 West Mission Boulevard; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: 4 Yogi Corp; Under negotiation: Price and terms of payment

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS:
Property: APN: 1011-221-15; 1530 West Mission Boulevard; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: Bright Star LP; Under negotiation: Price and terms of payment

GC 54956.9(d)(1), CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:
Frank Benavente, et al. v. City of Ontario, United States District Court for the Central District of California, Case No. 5:23-cv-00266-SSS-KK

OPEN MEETING CALLED TO ORDER

Mayor Leon reconvened the meetings at 6:35 p.m. for the regular session.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Valencia.

INVOCATION

The invocation was led by Assistant Pastor Juan Velez, Montecito Baptist Church.

REPORT ON CLOSED SESSION

City Attorney Duran announced, regarding Frank Benavente, et al. v. City of Ontario, the Council voted 4-0, with Council Member Bowman absent, to settle in the amount of $695,000 and that this settlement is in no way an admission of liability on the City's part. There were no other reportable actions.

PUBLIC COMMENT

Assistant City Clerk Isbell announced there was one written comment:
Brad Neumann, regarding personnel matters.

Mayor Leon called upon the first speaker:
Brad Neumann, spoke regarding personnel matters.
Art Marquez, introduced himself as the new representative with SoCal Gas.
Leo Gomez, spoke in opposition to housing on 5th Street.
Steve Ho, spoke in opposition to housing on 5th Street.
Peter Bloomfield, spoke in opposition to housing on 5th Street.
Matt Ryan, spoke in opposition to housing on 5th Street.
Gina Rodriguez, spoke in opposition to housing on 5th Street.
Mary Thompson, spoke in opposition to housing on 5th Street.
Richard Rodriguez, spoke in opposition to housing on 5th Street.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa made no announcements.

CONSENT CALENDAR

MOTION: Moved by Mayor pro Tem Porada, seconded by Council Member Wapner and carried by a unanimous vote 4-0, with Council Member Bowman absent, to approve the Consent Calendar as presented.

1. APPROVAL OF MINUTES

Minutes for the special meetings of the City Council and Housing Authority of June 18, 2024 and regular meeting of July 2, 2024, approving same as on file in the Records Management Department.

2. BILLS & PAYROLL

Approved bills June 28, 2024 through July 18, 2024, in the amount of $52,891,735.22, and Payroll June 16, 2024 through June 29, 2024 in the amount of $5,566,716.55.

3. AN ORDINANCE APPROVING A ZONE CHANGE FOR FILE NO. PZC23-004.

The City Council considered and adopted an Ordinance approving the Zone Change (File No. PZC23-004). Introduction and first reading took place at a regular meeting on July 16, 2024.

ORDINANCE NO. 3281 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC23-004, A ZONE CHANGE REQUEST TO CHANGE THE ZONING DISTRICT FOR [1] 134.42 ACRES FROM THE ARMSTRONG RANCH SPECIFIC PLAN TO OS-R (OPEN SPACE RECREATION) ZONING DISTRICT LOCATED SOUTH OF RIVERSIDE DRIVE, NORTH OF CHINO AVENUE, WEST OF UNIMPROVED RIGHT-OF-WAY FOR WHISPERING LAKES LANE, AND EAST OF THE INIMPROVED RIGHT-OF-WAY FOR VINEYARD AVENUE; [2] 51.57 ACRES FROM THE ARMSTRONG RANCH SPECIFIC PLAN TO CCS (CONVENTION CENTER SUPPORT COMMERCIAL) ZONING DISTRICT GENERALLY LOCATED SOUTH OF RIVERSIDE DRIVE, NORTH OF CHINO AVENUE, EAST OF THE UNIMPROVED RIGHT-OF-WAY FOR WHISPERING LAKES LANE, AND WEST OF THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL; [3] REMOVE THE AH (AFFORDABLE HOUSING OVERLAY ZONING DISTRICT ON 36.18 ACRES OF LAND LOCATED SOUTH OF RIVERSIDE DRIVE, NORTH OF CHINO AVENUE, EAST OF THE UNIMPROVED RIGHT-OF-WAY FOR WHISPERING LAKES LANE, AND WEST OF THE UNIMPROVED RIGHT-OF-WAY FOR VINEYARD AVENUE, AND [4] ADD THE AH (AFFORDABLE HOUSING) OVERLAY ZONING DISTRICT ON 19.25 ACRES OF LAND WITHIN THE SP (SPECIFIC PLAN)/AG (AGRICULTURAL) OVERLAY LOCATED NORTH OF ONTARIO RANCH ROAD, SOUTH OF SCHAEFER AVENUE, EAST OF THE UNIMPROVED RIGHT-OF-WAY FOR VINEYARD AVENUE, AND WEST OF THE RIGHT-OF-WAY FOR HELLMAN AVENUE. (APNS: 218-101-01, 218-101-02, 218-101-03, 218-101-04, 218-101-05,

218-101-06, 218-101-07, 218-101-08, 218-102-10, 218-102-11, 218-111-04, 218 111-05, 218-111-06, 218-111-08, 218-111-09, 218-111-11, 218-111-12, 218-111-45, 218-111-49, 218-111-50, 218-181-02, AND 218-181-15.

STAFF MATTERS:

City Manager Ochoa made no announcements.

COUNCIL MATTERS:

There were no Council comments.

ADJOURNMENT:

Mayor Leon adjourned the meetings of the Joint Agencies at 6:59 p.m. and announced the next regular meeting was scheduled for August 20, 2024.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

CITY OF ONTARIO *Agenda Report* **September 3, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Jaime Maciel-Carrera Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 3

SUBJECT: **ACCEPTANCE OF GRANT AWARD FUNDS FROM THE U.S. DEPARTMENT OF TRANSPORTATION FISCAL YEAR 2023 SAFE STREETS AND ROADS FOR ALL GRANT PROGRAM**

RECOMMENDATION: That the City Council authorize the City Manager to execute all documents necessary to accept grant award funds in the amount of $360,000 from the U.S. Department of Transportation Fiscal Year 2023 Safe Street and Roads for All Grant Program.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The City, through the U.S. Department of Transportation (USDOT) Fiscal Year 2023 Safe Street and Roads for All (SS4A) Grant Program, has been awarded $360,000 to develop a Citywide Safety Action Plan.

The City will be reimbursed 80% of the costs associated with the development of a Citywide Safety Action Plan; a total reimbursement of $360,000. The required 20% match of $90,000 will be funded from the Road Maintenance and Rehabilitation Account (RMRA-SB1) fund balance. Upon approval, additional appropriations from the RMRA-SB1 fund and associated grant revenue will be included in a subsequent quarterly budget report to the City Council as needed.

BACKGROUND & ANALYSIS: The City has been awarded funding in the amount of $360,000 from the USDOT for the SS4A Discretionary Grant Opportunity to create a comprehensive Citywide Safety Action Plan. The Bipartisan Infrastructure Law (BIL) established the SS4A grant program which funds regional, local, and Tribal initiatives through grants to prevent roadway deaths and serious injuries. The creation of the Citywide Safety Action Plan will provide the underserved communities in the City of Ontario the opportunity to provide direct input to find and tailor solutions to improve roadway safety in their neighborhood. The Action Plan will target safety improvements for all roadway users through project prioritization, safety analysis, and community-based feedback and engagement. The plan will address safety topics including transportation insecurity, social and health vulnerabilities, and climate resilience with the goal of preventing future roadway death and serious injury.

1. Federal Award No.

2. Effective Date
See No. 17 Below

3. Assistance Listings No.
20.939

4. Award To
CITY OF ONTARIO
303 East B Street,
Ontario, California 91764

Unique Entity Id.: CVCXJQVZRMB3
TIN No.: 95-6000754

5. Sponsoring Office
U.S. Department of Transportation
Federal Highway Administration
Office of Safety
1200 New Jersey Avenue, SE
HSSA-1, Mail Drop E71-117
Washington, DC 20590

6. Period of Performance
Effective Date of Award through
September 30, 2027

7. Total Amount

Federal Share:	$360,000
Recipient Share:	$90,000
Other Federal Funds:	$0
Other Funds:	$0
Total:	$450,000

8. Type of Agreement
Grant

9. Authority
Section 24112 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021; also referred to as the "Bipartisan Infrastructure Law" or "BIL")

10. Procurement Request No.
HSA240020PR

11. Federal Funds Obligated
$360,000

12. Submit Payment Requests To
See Article 5.

13. Accounting and Appropriations Data
[insert Data]

14. Description of the Project: City of Ontario Citywide Safety Action Plan for underserved communities.

RECIPIENT

15. Signature of Person Authorized to Sign

_____

Signature Date

Name: Scott Ochoa

Title: City Manager

FEDERAL HIGHWAY ADMINISTRATION

16. Signature of Agreement Officer

_____

Signature Date

Name:

Title: Agreement Officer

U.S. DEPARTMENT OF TRANSPORTATION

GRANT AGREEMENT UNDER THE
FISCAL YEAR 2023 SAFE STREETS AND ROADS FOR ALL GRANT PROGRAM

This agreement is between the United States Department of Transportation's (the "**USDOT**") Federal Highway Administration (the "**FHWA**") and the City of Ontario, a California municipal corporation (the "**Recipient**").

This agreement reflects the selection of the Recipient to receive a Safe Streets and Roads for All ("**SS4A**") Grant for the City of Ontario SS4A Action Plan.

The parties therefore agree to the following:

ARTICLE 1
GENERAL TERMS AND CONDITIONS

1.1 General Terms and Conditions.

(a) In this agreement, "**General Terms and Conditions**" means the content of the document titled "General Terms and Conditions Under the Fiscal Year 2023 Safe Streets and Roads for All ("SS4A") Grant Program,", which is available at https://www.transportation.gov/grants/ss4a/grant-agreements under "Fiscal Year 2023." Articles 7–30 are in the General Terms and Conditions. The General Terms and Conditions are part of this agreement.

(b) The Recipient acknowledges that it has knowledge of the General Terms and Conditions. Recipient also states that it is required to comply with all applicable Federal laws and regulations including, but not limited to, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200); National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.); and Build America, Buy America Act (BIL, div. G §§ 70901-27).

(c) The Recipient acknowledges that the General Terms and Conditions impose obligations on the Recipient and that the Recipient's non-compliance with the General Terms and Conditions may result in remedial action, termination of the SS4A Grant, disallowing costs incurred for the Project, requiring the Recipient to refund to the FHWA the SS4A Grant, and reporting the non-compliance in the Federal-government-wide integrity and performance system.

ARTICLE 2
APPLICATION, PROJECT, AND AWARD

2.1 Application.

Application Title: City of Ontario SS4A Action Plan

Application Date: July 10, 2023

2.2 Award Amount.

SS4A Grant Amount: $360,000

2.3 Federal Obligation Information.

Federal Obligation Type: Single

2.4 Budget Period.

Budget Period: See Block 6 of Page 1

2.5 Grant Designation.

Designation: Planning and Demonstration

ARTICLE 3
SUMMARY PROJECT INFORMATION

3.1 Summary of Project's Statement of Work.

The City of Ontario will develop a comprehensive Citywide Safety Action Plan. Ontario Citywide Action Plan will take a safe systems approach to assess safety issues combined with direct community input to identify priority projects that are both equity-minded and forward looking.

The project will be completed in one phase.

3.2 Project's Estimated Schedule.

Action Plan Schedule

Milestone	Schedule Date
Planned NEPA Completion Date:	Completed prior to award date
Planned Draft Plan Completion Date:	February 27, 2026
Planned Final Plan Completion Date:	September 30, 2026
Planned Final Plan Adoption Date:	January 19, 2027

Planned SS4A Final Report Date:	September 30, 2027

3.3 Project's Estimated Costs.

(a) Eligible Project Costs

Eligible Project Costs	
SS4A Grant Amount:	$360,000
Other Federal Funds:	$0
State Funds:	$0
Local Funds:	$90,000
In-Kind Match:	$0
Other Funds:	$0
Total Eligible Project Cost:	$450,000

ARTICLE 4

RECIPIENT INFORMATION

4.1 Recipient Contact(s).

Scott Ochoa
City Manager
City of Ontario
303 East B Street
Ontario, CA 91764
909-395-2555
sochoa@ontarioca.gov

4.2 Recipient Key Personnel.

Name	Title or Position
Jay Bautista	Traffic/Transportation Manager
Jaime Maciel-Carrera	Principal Engineer

4.3 USDOT Project Contact(s).

Safe Streets and Roads for All Program Manager
Federal Highway Administration
Office of Safety
HSSA-1, Mail Stop: E71-117
1200 New Jersey Avenue, S.E.
Washington, DC 20590
202-366-2822
SS4A.FHWA@dot.gov

and

Agreement Officer (AO)
Federal Highway Administration
Office of Acquisition and Grants Management
HCFA-33, Mail Stop E62-310
1200 New Jersey Avenue, S.E.
Washington, DC 20590
202-493-2402
HCFASS4A@dot.gov

and

Elissa Konove
Agreement Officer's Representative (AOR)
Division Administrator
FHWA California Division Office
650 Capitol Mall, Ste. 4-100
Sacramento, CA 95814
916-498-5015
Hdaca@dot.gov

and

Daniel Hawk
California Division Office Lead Point of Contact
Local Programs Manager
650 Capitol Mall, Suite 4-100
Sacramento, California
Phone: 916-498-5849
Email: daniel.hawk@dot.gov

ARTICLE 5
USDOT ADMINISTRATIVE INFORMATION

5.1 Office for Subaward and Contract Authorization.

USDOT Office for Subaward and Contract Authorization: FHWA Office of Acquisition and Grants Management

SUBAWARDS AND CONTRACTS APPROVAL

Note: See 2 CFR § 200.331, Subrecipient and contractor determinations, for definitions of subrecipient (who is awarded a subaward) versus contractor (who is awarded a contract).

Note: Recipients with a procurement system deemed approved and accepted by the Government or by the Agreement Officer (the "**AO**") are exempt from the requirements of this clause. See 2 CFR 200.317 through 200.327. Note: This clause is only applicable to grants that do not include construction.

In accordance with 2 CFR 200.308(c)(6), unless described in the application and funded in the approved award, the Recipient must obtain prior written approval from the AO for the subaward, transfer, or contracting out of any work under this award above the Simplified Acquisition Threshold. This provision does not apply to the acquisition of supplies, material, equipment, or general support services. Approval will be issued through written notification from the AO or a formal amendment to the Agreement.

The following subawards and contracts are currently approved under the Agreement by the AO. This list does not include supplies, material, equipment, or general support services which are exempt from the pre-approval requirements of this clause.

5.2 Reimbursement Requests

(a) The Recipient may request reimbursement of costs incurred within the budget period of this agreement if those costs do not exceed the amount of funds obligated and are allowable under the applicable cost provisions of 2 C.F.R. Part 200, Subpart E. The Recipient shall not request reimbursement more frequently than monthly.

(b) The Recipient shall use the DELPHI iSupplier System to submit requests for reimbursement to the payment office. When requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit supporting cost detail with the SF-270 (Request for Advance or Reimbursement) or SF-271 (Outlay Report and Request for Reimbursement for Construction Programs) to clearly document all costs incurred.

(c) The Recipient's supporting cost detail shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, travel, etc., and the Recipient shall identify the Federal share and the Recipient's share of costs. If the Recipient does not provide sufficient detail in a request for reimbursement, the Agreement Officer's Representative (the "**AOR**") may withhold processing that request until the Recipient provides sufficient detail.

(d) The USDOT shall not reimburse costs unless the AOR reviews and approves the costs to ensure that progress on this agreement is sufficient to substantiate payment.

(e) In the rare instance the Recipient is unable to receive electronic funds transfers (EFT), payment by EFT would impose a hardship on the Recipient because of their inability to manage an account at a financial institution, and/or the Recipient is unable to use the DELPHI iSupplier System to submit their requests for disbursement, the FHWA may waive the requirement that the Recipient use the DELPHI iSupplier System. The Recipient shall contact the Division Office Lead Point of Contact for instructions on and requirements related to pursuing a waiver.

(f) The requirements set forth in these terms and conditions supersede previous financial invoicing requirements for Recipients.

ARTICLE 6
SPECIAL GRANT TERMS

6.1 SS4A funds must be expended within five years after the grant agreement is executed and DOT obligates the funds, which is the budget period end date in section 10.3 of the Terms and Conditions and section 2.4 in this agreement.

6.2. The Recipient demonstrates compliance with civil rights obligations and nondiscrimination laws, including Titles VI of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act, and accompanying regulations. Recipients of Federal transportation funding will also be required to comply fully with regulations and guidance for the ADA, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other civil rights requirements.

6.3 SS4A Funds will be allocated to the Recipient and made available to the Recipient in accordance with FHWA procedures.

6.4 The Recipient of a Planning and Demonstration Grant acknowledges that the Action Plan will be made publicly available and agrees that it will publish the final Action Plan on a publicly available website.

6.5 There are no other special grant requirements.

ATTACHMENT A
PERFORMANCE MEASUREMENT INFORMATION

Study Area: City of Ontario

Table 1: Performance Measure Table

Measure	Category and Description	Measurement Frequency and Reporting Deadline
Equity [for all Grants]	Percent of Funds to Underserved Communities: Funding amount (of total project amount) benefitting underserved communities, as defined by USDOT	Within 120 days after the end of the period of performance
Costs [for all Grants]	Project Costs: Quantification of the cost of each eligible project carried out using the grant	Within 120 days after the end of the period of performance
Lessons Learned and Recommendations [for all Grants]	Lessons Learned and Recommendations: Description of lessons learned and any recommendations relating to future projects or strategies to prevent death and serious injury on roads and streets.	Within 120 days after the end of the period of performance

ATTACHMENT B
CHANGES FROM APPLICATION

Describe all material differences between the scope, schedule, and budget described in the application and the scope, schedule, and budget described in Article 3. The purpose of Attachment B is to clearly and accurately document any differences in scope, schedule, and budget to establish the parties' knowledge and acceptance of those differences. See Article 11 for the Statement of Work, Schedule, and Budget Changes. If there are no changes, please insert "N/A" in Section 3.3 of the table.

Scope: N/A There have been no changes to the Scope as described in the application.

Schedule: N/A There have been no changes to the Schedule as described in the application.

Budget: N/A There have been no changes to the Budget as described in the application.

The table below provides a summary comparison of the project budget.

	Application		**Section 3.3**	
Fund Source	$	%	$	%
Previously Incurred Costs (Non-Eligible Project Costs)				
Federal Funds			N/A	
Non-Federal Funds			N/A	
Total Previously Incurred Costs			N/A	
Future Eligible Project Costs				
SS4AFunds			N/A	
Other Federal Funds			N/A	
Non-Federal Funds			N/A	
Total Future Eligible Project Costs			N/A	
Total Project Costs			N/A	

ATTACHMENT C
RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

1. Efforts to Improve Racial Equity and Reduce Barriers to Opportunity.

The Recipient states that rows marked with "X" in the following table align with the application:

	A racial equity impact analysis has been completed for the Project. *(Identify a report on that analysis or, if no report was produced, describe the analysis and its results in the supporting narrative below.)*
X	The Recipient or a project partner has adopted an equity and inclusion program/plan or has otherwise instituted equity-focused policies related to project procurement, material sourcing, construction, inspection, hiring, or other activities designed to ensure racial equity in the overall delivery and implementation of the Project. *(Identify the relevant programs, plans, or policies in the supporting narrative below.)*
	The Project includes physical-barrier-mitigating land bridges, caps, lids, linear parks, and multimodal mobility investments that either redress past barriers to opportunity or that proactively create new connections and opportunities for underserved communities that are underserved by transportation. *(Identify the relevant investments in the supporting narrative below.)*
	The Project includes new or improved walking, biking, and rolling access for individuals with disabilities, especially access that reverses the disproportional impacts of crashes on people of color and mitigates neighborhood bifurcation. *(Identify the new or improved access in the supporting narrative below.)*
	The Project includes new or improved freight access to underserved communities to increase access to goods and job opportunities for those underserved communities. *(Identify the new or improved access in the supporting narrative below.)*
	The Recipient has taken other actions related to the Project to improve racial equity and reduce barriers to opportunity, as described in the supporting narrative below.
	The Recipient has not yet taken actions related to the Project to improve racial equity and reduce barriers to opportunity but intends to take relevant actions described in the supporting narrative below.
	The Recipient has not taken actions related to the Project to improve racial equity and reduce barriers to opportunity and will not take those actions under this award.

2. Supporting Narrative.

The City of Ontario adopted Resolution No. 7396 June 5, 1973 that states "WHEREAS, the City Council of the City of Ontario, California, is committed to the concept of equal employment opportunity in private enterprise and in public service as a basic personnel principle, and has a long-standing policy of avoiding discriminatory practices against any person employed, or seeking employment,

because of race, color, religion, marital status, national origin, citizenship, sex or age".

Additionally, the City of Ontario has a Non-Discrimination clause that is included in all Professional Services Agreements made between the City and consultants/subconsultants and contractors.

The City has and will continue to include and follow these measures to ensure racial equity in the overall delivery and implementation of all projects.

ATTACHMENT D
CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE IMPACTS

1. Consideration of Climate Change and Environmental Justice Impacts.

The Recipient states that rows marked with "X" in the following table align with the application:

X	The Project directly supports a Local/Regional/State Climate Action Plan that results in lower greenhouse gas emissions. *(Identify the plan in the supporting narrative below.)*
	The Project directly supports a Local/Regional/State Equitable Development Plan that results in lower greenhouse gas emissions. *(Identify the plan in the supporting narrative below.)*
	The Project directly supports a Local/Regional/State Energy Baseline Study that results in lower greenhouse gas emissions. *(Identify the plan in the supporting narrative below.)*
	The Recipient or a project partner used environmental justice tools, such as the EJScreen, to minimize adverse impacts of the Project on environmental justice communities. *(Identify the tool(s) in the supporting narrative below.)*
	The Project supports a modal shift in freight or passenger movement to reduce emissions or reduce induced travel demand. *(Describe that shift in the supporting narrative below.)*
	The Project utilizes demand management strategies to reduce congestion, induced travel demand, and greenhouse gas emissions. *(Describe those strategies in the supporting narrative below.)*
	The Project incorporates electrification infrastructure, zero-emission vehicle infrastructure, or both. *(Describe the incorporated infrastructure in the supporting narrative below.)*
	The Project supports the installation of electric vehicle charging stations. *(Describe that support in the supporting narrative below.)*
	The Project promotes energy efficiency. *(Describe how in the supporting narrative below.)*
	The Project serves the renewable energy supply chain. *(Describe how in the supporting narrative below.)*
	The Project improves disaster preparedness and resiliency *(Describe how in the supporting narrative below.)*
	The Project avoids adverse environmental impacts to air or water quality, wetlands, and endangered species, such as through reduction in Clean Air Act criteria pollutants and greenhouse gases, improved stormwater management, or improved habitat connectivity. *(Describe how in the supporting narrative below.)*
	The Project repairs existing dilapidated or idle infrastructure that is currently causing environmental harm. *(Describe that infrastructure in the supporting narrative below.)*

	The Project supports or incorporates the construction of energy- and location-efficient buildings. *(Describe how in the supporting narrative below.)*
	The Project includes recycling of materials, use of materials known to reduce or reverse carbon emissions, or both. *(Describe the materials in the supporting narrative below.)*
	The Recipient has taken other actions to consider climate change and environmental justice impacts of the Project, as described in the supporting narrative below.
	The Recipient has not yet taken actions to consider climate change and environmental justice impacts of the Project but will take relevant actions described in the supporting narrative below.
	The Recipient has not taken actions to consider climate change and environmental justice impacts of the Project and will not take those actions under this award.

2. Supporting Narrative.

The 2022 Ontario Community Climate Action Plan (2022 CCAP), adopted unanimously by the City Council on August 16, 2022, is the strategic plan for how the City of Ontario (City) will reduce greenhouse gas (GHG) emissions and foster a sustainable community through 2050 and beyond. Reductions related to transportation, water, solid waste, offroad equipment, energy, and renewable energy sources all play a crucial part in gaining the level of efficiency needed within the new development across Ontario. GHG emissions have long-term, cumulative impacts on the climate, both locally and globally

The majority of Census Tracts that have been identified as disadvantaged in the City of Ontario are in the central downtown district along Mission Boulevard and Euclid Avenue as well as the commercial and industrial districts adjacent to Ontario International Airport and in northeast Ontario along the Interstate 10 and 15 corridors. A significant percentage of residents in Ontario have experienced climate and environmental burden inequities due to pollution, which include high levels of particulate matter (PM) in the air and the proximity to hazardous waste sites in the City's industrial zones. Therefore, the City of Ontario Citywide Safety Action Plan will target the safety needs and equity disadvantages of vulnerable communities within the City where fatal and severe collisions most frequently occur. As capital improvement projects are developed, based on the Citywide Safety Action Plan, consideration shall be given to the potential reduction of GHG, and compliance with the California Environmental Quality Act (CEQA) requirements.

ATTACHMENT E
LABOR AND WORKFORCE

1. Efforts to Support Good-Paying Jobs and Strong Labor Standards

The Recipient states that rows marked with "X" in the following table align with the application:

	The Recipient demonstrate, to the full extent possible consistent with the law, an effort to create good-paying jobs with the free and fair choice to join a union and incorporation of high labor standards. *(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)*
	The Recipient or a project partner has adopted the use of local and economic hiring preferences in the overall delivery and implementation of the Project. *(Describe the relevant provisions in the supporting narrative below.)*
	The Recipient or a project partner has adopted the use of registered apprenticeships in the overall delivery and implementation of the Project. *(Describe the use of registered apprenticeship in the supporting narrative below.)*
	The Recipient or a project partner will provide training and placement programs for underrepresented workers in the overall delivery and implementation of the Project. *(Describe the training programs in the supporting narrative below.)*
	The Recipient or a project partner will support free and fair choice to join a union in the overall delivery and implementation of the Project by investing in workforce development services offered by labor-management training partnerships or setting expectations for contractors to develop labor-management training programs. *(Describe the workforce development services offered by labor-management training partnerships in the supporting narrative below.)*
	The Recipient or a project partner will provide supportive services and cash assistance to address systemic barriers to employment to be able to participate and thrive in training and employment, including childcare, emergency cash assistance for items such as tools, work clothing, application fees and other costs of apprenticeship or required pre-employment training, transportation and travel to training and work sites, and services aimed at helping to retain underrepresented groups like mentoring, support groups, and peer networking. *(Describe the supportive services and/or cash assistance provided to trainees and employees in the supporting narrative below.)*
	The Recipient or a project partner has documented agreements or ordinances in place to hire from certain workforce programs that serve underrepresented groups. *(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)*

X	The Recipient or a project partner participates in a State/Regional/Local comprehensive plan to promote equal opportunity, including removing barriers to hire and preventing harassment on work sites, and that plan demonstrates action to create an inclusive environment with a commitment to equal opportunity, including: a. affirmative efforts to remove barriers to equal employment opportunity above and beyond complying with Federal law; b. proactive partnerships with the U.S. Department of Labor's Office of Federal Contract Compliance Programs to promote compliance with EO 11246 Equal Employment Opportunity requirements and meet the requirements as outlined in the Notice of Funding Opportunity to make good faith efforts to meet the goals of 6.9 percent of construction project hours being performed by women and goals that vary based on geography for construction work hours and for work being performed by people of color; c. no discriminatory use of criminal background screens and affirmative steps to recruit and include those with former justice involvement, in accordance with the Fair Chance Act and equal opportunity requirements; d. efforts to prevent harassment based on race, color, religion, sex, sexual orientation, gender identity, and national origin; e. training on anti-harassment and third-party reporting procedures covering employees and contractors; and f. maintaining robust anti-retaliation measures covering employees and contractors. *(Describe the equal opportunity plan in the supporting narrative below.)*
	The Recipient has taken other actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards. *(Describe those actions in the supporting narrative below.)*
	The Recipient has not yet taken actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards but, before beginning construction of the project, will take relevant actions described in the supporting narrative below.
	The Recipient has not taken actions related to the Project to improving good-paying jobs and strong labor standards and will not take those actions under this award.

2. Supporting Narrative.

The City of Ontario adopted Resolution No. 7396 June 5, 1973 that states "WHEREAS, the City Council of the City of Ontario, California, is committed to the concept of equal employment opportunity in private enterprise and in public service as a basic personnel principle, and has a long-standing policy of avoiding discriminatory practices against any person employed, or seeking employment, because of race, color, religion, marital status, national origin, citizenship, sex or age".

Additionally, the City of Ontario has a Non-Discrimination clause that is included in all Professional Services Agreements made between the City and consultants/subconsultants and contractors.

The City has and will continue to include and follow these measures to ensure racial equity in the overall delivery and implementation of projects.

Lastly, the City of Ontario adopted Resolution No. 2000-180 December 5, 2000 in which it established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26, and as such, our policy is the following:
To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
To help remove barriers to the participation of DBEs in DOT-assisted contracts; and To assist the development of firms that can compete successfully in the market place outside the DBE Program.

ATTACHMENT F
CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

1. Efforts to strengthen the Security and Resilience of Critical Infrastructure against both Physical and Cyber Threats.

The Recipient states that rows marked with "X" in the following table are accurate:

	The Recipient demonstrates, prior to the signing of this agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the activities.
	The Recipient appropriately considered and addressed physical and cyber security and resilience in the planning, design and oversight of the project, as determined by the Department and the Department of Homeland Security.
	For projects in floodplains: The Recipient appropriately considered whether the project was upgraded consistent with the Federal Flood Risk Management Standard, to the extent consistent with current law, in Executive Order 14030, Climate-Related Financial Risk (86 FR 27967), and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Solicit and Considering Stakeholder Input (80 FR 6425).

2. Supporting Narrative.

The purchase of Information Technology and/or Operational Technology is not part of the City's proposed the SS4A Action Plan.

CITY OF ONTARIO *Agenda Report* **September 3, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: David Zurita Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Raymond Lee, Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 4

SUBJECT: **A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR DEVELOPMENT PLAN NO. PDEV21-020 LOCATED AT 1050 EAST HOLT BOULEVARD**

RECOMMENDATION: That the City Council adopt a Resolution approving an Improvement Agreement and Improvement Security for Project No. PDEV21-020, located at 1050 East Holt Boulevard.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

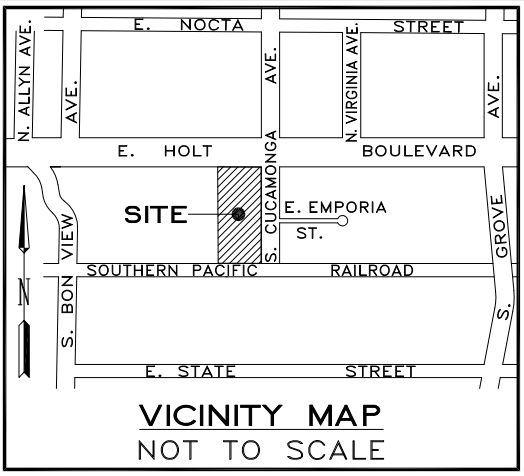
FISCAL IMPACT: There is not a direct fiscal impact associated with this action. All public infrastructure improvements required for this project will be constructed by the Developer at its sole cost.

BACKGROUND & ANALYSIS: Development Plan No. PDEV21-020, consisting of one 45,000-square foot industrial building constructed on 2.1 acres of land, as shown on Exhibit A, has been submitted by the Developer, TIP Ontario, LLC. This project was approved by the Development Advisory Board on July 18, 2022.

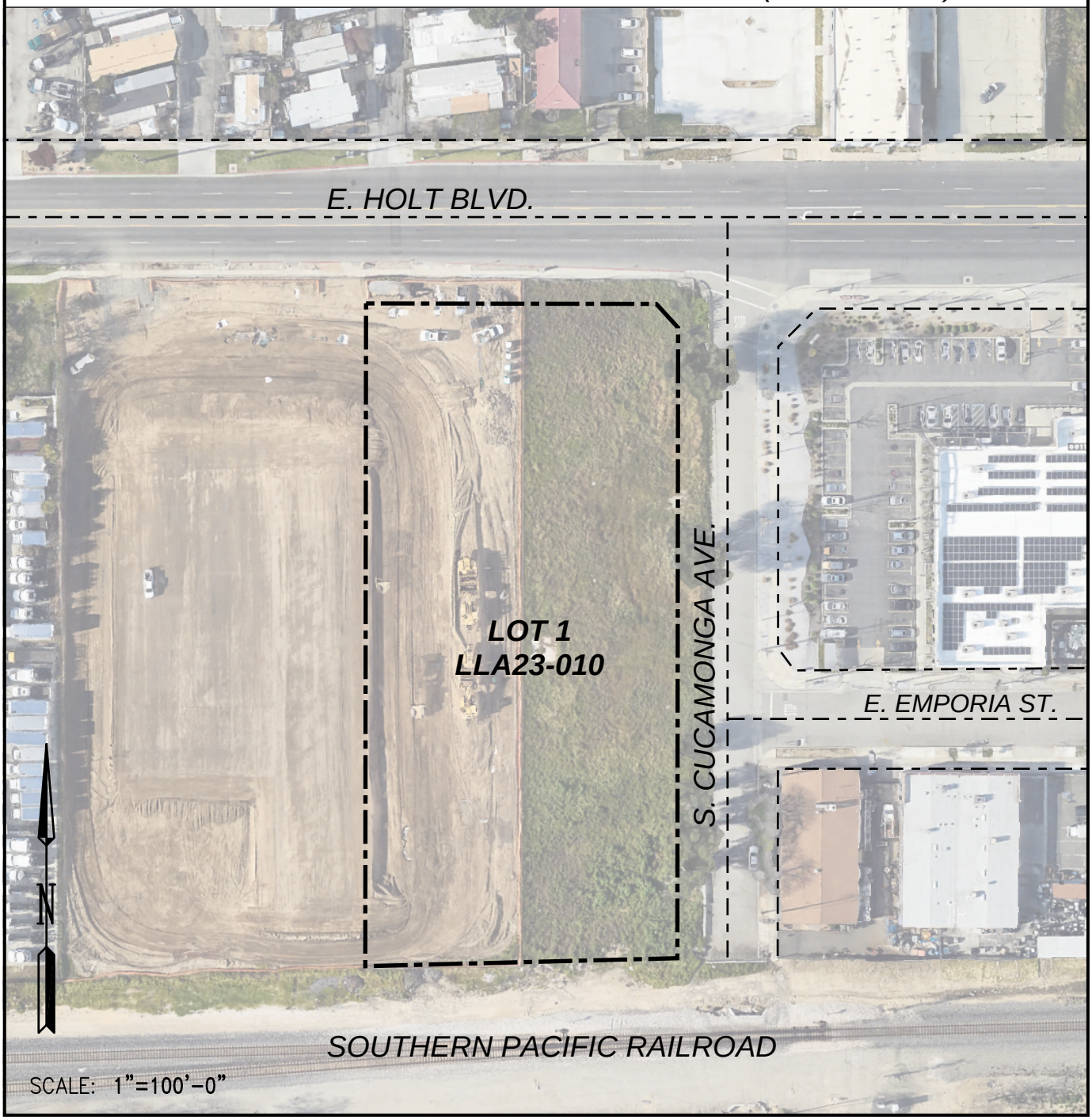
Improvements will include streets, sidewalks, parkway landscaping with irrigation, water service, sewer lateral, streetlights, fire hydrant, and signing and striping. All landscape improvements will be consistent with current City approved drought measures.

The Developer has entered into an Improvement Agreement with the City for this project and has posted adequate security to ensure construction of the required improvements. This project meets all conditions of the Ontario Municipal Code and has been reviewed and approved by the City Engineer.

EXHIBIT A



1050 E. HOLT BLVD., CITY OF ONTARIO, CA (PDEV21-020)



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR DEVELOPMENT PLAN NO. PDEV21-020 LOCATED AT 1050 EAST HOLT BOULEVARD.

WHEREAS, Development Plan No. PDEV21-020 submitted for approval by TIP Ontario, LLC, was approved by the Development Advisory Board of the City of Ontario on July 18, 2022; and

WHEREAS, Development Plan No. PDEV21-020, a 45,000-square foot industrial building on 2.123 acres of land being Lot 1 as described in Lot Line Adjustment No. LLA23-010 recorded April 5, 2023 in the Office of County Recorder of San Bernardino County; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Project No. PDEV21-020, TIP Ontario, LLC, has offered the Improvement Agreement together with good and sufficient improvement security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

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

1. That said Improvement Agreement be, and the same is, approved and the City Manager is authorized to execute same on behalf of said City, and the City Clerk is authorized to attest thereto; and

2. That said Improvement Security is accepted as good and sufficient, subject to approval as to form and content thereof by the City Attorney.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 3rd day of September, 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 3, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held September 3, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Ontario
303 E. B St.
Ontario, CA 91764
Attn: City Engineer

(Exempt from Filing Fees – Government Code § 6103)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS BETWEEN THE CITY OF ONTARIO AND TIP ONTARIO LLC

1. PARTIES AND DATE.

This Agreement for Completion of Public Improvements ("Agreement") is entered into as of this _____ day of _____, 2024 by and between the **City of Ontario**, a municipal corporation (hereinafter referred to as "City") and TIP Ontario LLC, a California limited liability company with its principal office located at 13925 City Center Drive, Suite 200, Chino Hills, CA 91709 (hereinafter referred to as "Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

2. RECITALS.

2.1 Developer's owns real property located within City, a legal description of which is attached hereto as Exhibit "A" ("Property"), was approved in accordance with the Ontario Development Code on July 26, 2022 to allow the development of a 45,000 square-foot industrial building ("Project").

2.2 Developer is the owner of Property, and Developer proposes to do and perform certain work of improvement thereon as set forth in this Agreement.

2.3 Developer has not completed all of the work or made all of the public improvements required by Chapter 2 of Title 9 of the City of Ontario Municipal Code, or such other ordinances, resolutions or policies of the City requiring construction of improvements in

conjunction with City entitlements (hereinafter collectively referred to as "City Ordinances") or by conditions to the approval of Development Plan PDEV21-020 ("Project Entitlements") in accordance with the City Ordinances.

2.4 Developer and City desire to enter into this Agreement for the timely construction and completion of the public improvements and the furnishing of security acceptable to the City Engineer and City Attorney.

3. TERMS.

3.1 Effectiveness. This Agreement shall not be effective unless and until all three of the following conditions are satisfied: (a) Developer provides City with security of the type and in the amounts required by this Agreement; (b) Developer executes and records this Agreement in the Recorder's Office of the County of San Bernardino; and (c) the approving body per the Ontario Development Code approves the "Project Entitlements" for the Property. If any of the above described conditions are not satisfied, this Agreement shall automatically terminate without need of further action by either City or Developer, and Developer may not thereafter proceed with the Project Entitlements without modification to the Project Entitlements.

3.2 Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all roads, curbing, pavement and other improvements required by the City as part of the approval of Project Entitlements, including, but not limited to, the following: widening Cucamonga Ave, constructing a new drive approach, installing street lights, installing fiber optics conduits, and relocating a storm drain outlet (hereinafter referred to as the "Public Improvements"). The Public Improvements are more specifically described in Exhibit "B" attached hereto and incorporated herein by this reference. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any utility system or public improvement in conflict with the construction or installation of the Public Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such utility system or public improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or as required by the City to fully and adequately complete the Public Improvements.

3.3 Partially Completed Public Improvements. Where construction of any Public Improvements has been partially completed prior to this Agreement, Developer agrees to complete such Public Improvements or assure their completion in accordance with this Agreement.

3.4 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any Public Improvement until all plans, specifications, estimates, and bonds for such Public Improvement have been submitted to and approved by the City Engineer, or his/her authorized designee. Approval by the City Engineer shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement.

3.5 Quality of Work. The Public Improvements shall be constructed and installed pursuant to City review and approval. The construction plans and specifications for the Public Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations and other requirements. In addition, the Public Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings and special amendments thereto on file with City, as well as all applicable federal, state and local laws, ordinances, regulations and other requirements. It is understood and agreed that all work and improvements done pursuant to this Agreement shall conform to the standards applicable at the time work is actually commenced.

3.6 Standard of Performance. Developer and its contractors, if any, shall perform all work required to construct the Public Improvements under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

3.7 Alterations to Improvements; Notice to Surety. The Public Improvements in Exhibit "B" are understood to be only a general designation of the work and improvements to be done, and not a binding description thereof. All work shall be done and improvements made and completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation of the Public Improvements it is determined that the public interest requires alterations in the Public Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications and the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.

3.8 Superintendence by Developer. Developer shall require each contractor and subcontractor to have a competent foreperson on the job at all times when that contractor or subcontractor, or any employee or agent thereof, is performing work on the Public Improvements. Before starting work on the Public Improvements, each contractor and subcontractor shall submit in writing the name of the proposed foreperson, who shall be subject to the review and approval of City. Following approval by City, each foreperson shall be present at the work site at all times that any work is in progress and at any time that any employee of the contractor or subcontractor is present at the work site. The Developer shall employ a competent construction manager that is responsible for the entire work. Each contractor or subcontractor shall contractually report to the construction manager, either directly or through a subcontract. The construction manager shall be immediately available by phone during hours when construction is in progress and shall be available in person within two hours when requested by the City. The construction manager shall coordinate the work such that construction and the associated inspection happen in an efficient manner. Should a contractor or subcontractor desire to change its foreperson, it shall provide the information specified above and obtain City's prior written approval. City, in its sole and absolute discretion, may require any contractor or

subcontractor to replace its foreperson provided that City gives the contractor or subcontractor at least forty-eight hours written notice.

Developer shall, at all times, enforce strict discipline and good order among its employees and those of its subcontractors and shall not employ any unfit person or anyone not skilled in the assigned task. If any person employed by, the Developer, a contractor or subcontractor fails or refuses to carry out the directions of the City or appears to the City, in its sole and absolute discretion, to be incompetent or to act in a disorderly or improper manner, such person shall be removed from the project immediately upon request by the City, and such person shall not again be employed on the work. Such removal shall not be the basis for any claim of compensation or damages against the City.

In addition, Developer shall maintain an office with a telephone, and Developer or a person authorized to make decisions and to act on Developer's behalf in Developer's absence shall be available to be on the job within three (3) hours of being called at such office by the City, during the hours of 9:00 a.m. through 5:00 p.m., Monday through Friday, or any other day or time when work is being performed on the Public Improvements. Developer shall also provide City with a telephone number, at which Developer, or its representative, shall be available twenty-four (24) hours a day in the event of an emergency.

3.9 Maintenance of Public Improvements and Landscaping. City shall not be responsible or liable for the maintenance or care of the Public Improvements until City approves and accepts them. City shall exercise no control over the Public Improvements until accepted. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to City's acceptance of the Public Improvements. Developer shall maintain all the Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by City, and until the security for the performance of this Agreement is released.

Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, street trees, signals, parkways, water mains and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing and maintaining in good and safe condition all streets and street improvements. Developer shall cause the sweeping of streets to occur weekly at a minimum. Developer shall perform additional street sweeping work as necessary depending on construction activities or as required by, and at the direction of, the City Engineer. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this Section, City may do all necessary work and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

3.9.1 Landscaping and Existing Irrigation Systems. Developer shall plant and maintain parkway trees and landscaping as provided in Section 10-2.07 of the City Municipal Code, and as directed by the Public Facilities Department. The Developer shall also be responsible for the replacement, relocation or removal of any component of any irrigation water system in conflict with the construction or installation of the Public Improvements. Such

replacement, relocation or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such water system.

3.10 Construction Schedule. Unless extended pursuant to this Section 3.10, Developer shall fully and adequately complete or have completed the Public Improvements within twelve (12) months following approval of the Project Entitlements. At least fifteen (15) days prior to the commencement of such work, Developer shall notify the City Engineer in writing of the date fixed by Developer for commencement of the work.

3.10.1 Extensions of Schedule. Time is of the essence with regard to this Agreement. The City may in its sole and absolute discretion, provide Developer with additional time within which to complete the Public Improvements. Requests for extension of time shall be in writing and shall be delivered to City in the manner hereinafter specified for service of notices. An extension of time, if any, shall be granted only in writing, and an oral extension shall not be valid or binding on City. It is understood that by providing the security required by this Agreement, Developer and its surety consent in advance to any extension of time as may be given by City to Developer, and waive any and all right to notice of such extension(s). Developer's acceptance of an extension of time granted by City shall constitute a waiver by Developer and its surety of all defenses of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by City following the date on which the Public Improvements were to have been completed hereunder. In addition, as consideration for granting such extension to Developer, City reserves the right to review the provisions of this Agreement, including, but not limited to, the construction standards, the cost estimates approved by the City, and the sufficiency of the improvement security provided by Developer, and to require adjustments thereto when warranted according to City's reasonable discretion.

3.10.2 Accrual of Limitations Period. Any limitations period provided by law related to breach of this Agreement or the terms thereof shall not accrue until Developer has provided the City Engineer with written notice of Developer's intent to abandon or otherwise not complete required or agreed upon Public Improvements.

3.11 Grading. Developer agrees that any and all grading done or to be done in conjunction with construction of the Public Improvements or development of Project shall conform to all federal, state and local laws, ordinances, regulations and other requirements, including without limitation, City's grading regulations, the National Pollutant Discharge Elimination Systems (NPDES), and stormwater regulations thereunder as administered by the State Water Resources Control Board and Regional Water Quality Control Boards and City's grading regulations. In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the above time schedule for completion of the Public Improvements, and prior to City's approval and acceptance of the Public Improvements and release of Security as set forth in this Agreement. Developer further agrees that the indemnification as set forth in this Agreement shall extend to and include any and all grading contemplated by this Agreement, including but not limited to, any partial or rough grading work. Developer agrees that any and all grading done or to be done in conjunction with of the Property shall conform to all federal, state, and local laws, ordinances, regulations, and other requirements including, In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in

accordance with the time schedule for completion of the Public Improvements established by this Agreement, and prior to City's approval and acceptance of the Public Improvements.

3.12 Encroachment Permit. Developer shall obtain any necessary encroachment permits from the office of the City Engineer prior to start of any work within the public rights-of-way, and the Developer shall conduct such work in full compliance with the regulations and other requirements contained therein. The Developer shall be responsible for the removal of all loose rock and other debris from the public rights-of-way resulting from work done on adjacent property or within said rights-of-way. Work done within existing public rights-of-way shall be diligently pursued to completion with minimal obstruction or inconvenience to the public and pursuant to the terms of the encroachment permit and any applicable federal, state or local laws, rules or regulations. The City shall have the right to complete any and all work in the event of unjustified delay in completion, and to recover all costs and expenses incurred from the Developer or its surety by any lawful means. Non-compliance with the terms of the encroachment permit or any applicable federal, state or local laws, rules or regulations may result in the City's cessation of the work and assessment of any applicable penalties or other remedies. Prior to, and as a condition precedent to, the issuance of any required encroachment permit(s), Developer shall provide to the City evidence satisfactory to the City of: (1) the certificate(s), endorsement(s), or policy(ies) of insurance as required by this Agreement; and (2) any and all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work.

3.13 City Inspection of Public Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur.

3.13.1 Acceptance of Improvements; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by City, and if they comply with all applicable federal, state and local laws, ordinances, regulations and other requirements, City shall be authorized to accept the Public Improvements. Notwithstanding the foregoing, the City may not accept any Public Improvements unless and until the Developer provides reproducible "As-Built" or record drawings or plans to the City Engineer for all such Public Improvements.

3.13.2 Demand to Perform; City Remedies. Upon default of any obligation hereunder, and at any time after any such default, City may make written demand upon Developer or its surety, or both, to immediately remedy the default or complete the Public Improvements. If the required work is not substantially commenced within ten (10) days of such demand, or if it is not thereafter diligently prosecuted to a completion acceptable to City within the time frame contained in the demand, City may then complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required. All such work or remedial activity shall be at the sole and absolute expense and obligation of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any of the required Public Improvements at the time of City's demand for performance. In the event City elects to

complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to permit adequate coordination by City. Notwithstanding the foregoing, if the conditions precedent for reversion to acreage can be met and if the interests of the City will not be prejudiced thereby, the City may also process a reversion to acreage and thereafter recover from the Developer's surety the full cost and expense incurred.

3.13.3 Default; Notice of Violation; Stop Work Order. If City determines that there is a violation of applicable federal, state or local laws, ordinances, regulations or other requirements, or the terms and conditions of this Agreement, the City and/or City Engineer may issue a Notice of Violation and Demand for Compliance and/or a Stop Work Order. The City may declare the Developer to be in default or violation of this Subdivision Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation. Developer shall comply with the Notice of Violation and/or Stop Work Order and shall substantially commence the work required to remedy the default or violation with the time specified in the Notice of Violation. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City and/or City Engineer may provide the Notice of Violation verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof.

3.13.4 Failure to Remedy Violation; City Action. If the work required to remedy the notices of default or violation is not diligently prosecuted to a completion acceptable to City within the time frame contained in the Notice of Violation, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity at its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

3.13.5 Other Remedies. No action by City pursuant to this Section of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise it rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

3.13.6 Administrative Costs. If Developer fails to construct and install all or any part of the Public Improvements required by this Agreement within the time set forth herein, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

3.14 Indemnification. Developer shall defend (with Counsel acceptable to City), indemnify and hold harmless City, its elected officials, officers, employees ,agents and volunteers from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions or willful misconduct of Developer, its officers, employees, agents or contractors in connection with or arising out of or in connection with Developer's maintenance or construction of the Public Improvements, or its performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the negligence or willful misconduct of City as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Agency, its elected officials, officers, employees, agents, or volunteers

3.15 Security.

3.15.1 Prior to execution of this Agreement, Developer shall provide City with sufficient security in the amounts and under the terms set forth below ("Security"). Nothing in this Section is intended to prevent City, in its sole discretion, from requiring Developer to submit, or prevent Developer from submitting, security in a form other than bonds that may be allowed under California Government Code Section 66499, et seq. and the City's Municipal Code, and acceptable to City. The amount of the Security shall be based on the City Engineer's approximation of the actual cost to construct the Public Improvements, including the replacement cost for all public landscaping ("Estimated Costs"). If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this Section shall in no way limit or modify Developer's indemnification obligation under this Agreement. Security shall be on forms approved by the City for the purposes and amounts as follows:

3.15.2 To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in this Agreement, and to secure Developer's one-year guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City security in the amount of **Three Hundred Seventy-Five Thousand Eight Hundred Seventeen and 83/100 Dollars ($375,817.83)**, which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The City may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the Public Improvements are accepted by City, as provided herein, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Project, and the total remaining security is not less than twenty-five percent (25%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period (as defined above), or any extension thereof as provided in this Agreement,

provided that Developer is not in default on any provision of this Agreement or condition of approval for the Project.

3.15.3 To provide in the amount of ten percent (10%) of the Estimated Costs of the Work to guarantee and warrant the Work, for a period of one year following its completion and acceptance, against any defective work or labor done, or defective materials furnished, as required by California Government Code Section 66499.3(d). Any unused portion of the guarantee and warranty security shall be released one year after acceptance of the required improvements by the City Council.

3.15.4 Bond/Surety Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of no less than A:VIII, shall be authorized to do business in the State of California, and shall be satisfactory to City. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer or its surety shall secure the costs and reasonable expenses and fees, including reasonable attorneys' fees and costs, incurred by City in enforcing the obligations of this Agreement. Developer and its surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the plans and specifications for the Public Improvements shall in any way affect its obligation on the Security.

3.15.5 Evidence of Bonds and Security. Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "C," unless other forms are deemed acceptable by the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

3.16 Insurance.

3.16.1 Time for Compliance. Developer shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Developer shall not allow any contractor to commence work on any contract until it has provided evidence satisfactory to the City that the contractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.16.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Developer, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Developer agrees to amend, supplement or endorse the policies to do so.

(a) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than $2,000,000 per occurrence and no less than $4,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for

contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(b) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than $2,000,000 combined limit for each occurrence.

(c) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than $1,000,000 per accident for bodily injury and disease.

3.16.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Developer shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(a) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Developer; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Developer shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(b) Automobile Liability. (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(c) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.16.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.16.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Developer or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Developer hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its contractors.

3.16.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.16.7 Evidence of Insurance. The Developer, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Developer shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.16.8 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.16.9 Enforcement of Agreement Provisions (non estoppel). Developer acknowledges and agrees that actual or alleged failure on the part of the City to inform Developer of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.16.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.16.11 Additional Insurance Provisions

(a) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Developer, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise

assumed by the Developer pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(b) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Developer.

(c) The City may require the Developer to provide complete copies of all insurance policies in effect for the duration of the Project.

(d) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(e) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Developer from liability in excess of such coverage, nor shall it limit the Developer's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(f) Developer shall report to the City, in addition to Developer's insurer, any and all insurance claims submitted by Developer in connection with the Services under this Agreement.

3.17 Evidence of Bonds and Security. Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "C," unless other forms are deemed acceptable by the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

3.18 Signs and Advertising. Developer understands and agrees to City's ordinances, regulations and requirements governing signs and advertising structures. Developer hereby agrees with and consents to the removal by City of all signs or other advertising structures erected, placed, or situated in violation of any City ordinance, regulation or other requirement. Removal shall be at the expense of Developer. Developer shall indemnify and hold City free and harmless from any claim or demand arising out of or incident to signs, advertising structures, or their removal.

3.19 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, nor any other related entitlement, permit, or approval issued by City for the Property shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer, its contractors, or its subcontractors an agent, contractor or subcontractor of City.

3.20 General Provisions.

3.20.1 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.20.2 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

3.20.3 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and contractors and subcontractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.20.4 Notices. All notices to be given hereunder shall be in writing and may be made either by personal delivery or by registered or certified mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses listed below, but each party may change the address by written notice in accordance with this Section. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

CITY	**DEVELOPER**
City of Ontario	TIP Ontario LLC
Engineering Department	C/O: HK Ventures
303 East "B" Street	13925 City Center Dr Ste 200
Ontario, CA 91764	Chino Hills, CA 91709

3.20.5 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.20.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements, either written or oral, express or implied. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

3.20.7 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by the Developer without the prior written consent of the City.

3.20.8 Waiver. The City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Developer of any of its obligations of this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional. Developer agrees to waive, as a defense, counterclaim or set off, any and all defects, irregularities or deficiencies in the authorization, execution or performance of the Public Improvements or this Agreement, as well as the laws, rules, regulations, ordinances or resolutions of City with regards to the authorization, execution or performance of the Public Improvements or this Agreement.

3.20.9 Definition. For purposes of enforcing this Agreement, the term "City" shall include, but shall not be limited to, City Council, City Manager, City Attorney, City Engineer, or any of their authorized representatives. City shall have the sole and absolute discretion to determine which public body, public official or public employee may act on behalf of City for any particular purpose.

3.20.10 Assignment or Transfer of Agreement. Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City. Any attempt to do so shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in City's written consent, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement. In the event that City consents in writing to such an assignment, any assignee, hypothecatee, or transferee shall expressly assume Developer's obligations hereunder by a written agreement in a form, and containing such security, as is reasonably acceptable to City.

The agreement, hypothecation, or transfer shall be to the satisfaction of the City Attorney and shall include provisions requiring the assignee to post bonds or submit another form of financial security, satisfactory to City and approved by the City Attorney, to guarantee construction of the Public Improvements. The agreement shall be recorded against the Property to inform successors and assigns of the required Public Improvements to be constructed and their time frame for construction.

Following any permitted assignment, hypothecation, or transfer of the Public Improvements as set forth in this Section, City shall release Developer from its obligations so assigned and shall release to Developer any bonds or other security posted to secure the Public Improvements so assigned; provided, however, that City shall not release any security or undertakings given to secure the performance of any of the Public Improvements not assigned, hypothecated, or transferred.

3.20.11 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This Section shall not be construed as an authorization for any Party to assign any right or obligation.

3.20.12 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

3.20.13 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.20.14 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of San Bernardino, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

3.20.15 Attorneys' Fees and Costs. If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Property, the prevailing party, whether by final judgment or arbitration award, shall be entitled to and recover from the other party all costs and expenses incurred by the prevailing party, including actual attorneys' fees ("Costs"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Costs. This Section shall survive the termination or expiration of this Agreement.

3.20.16 Acquisition and Dedication of Easements or Rights-of-Way. If any of the Public Improvements required by this Agreement are to be constructed on land not within the subdivision or an already-existing public right-of-way, no construction or installation shall be commenced before:

(a) The irrevocable offer of dedication or conveyance to City of appropriate rights-of-way, easements, or other interests in real property, and appropriate authorization from the property owner to allow construction or installation of the Public Improvements or work; or

(b) The issuance of an order of possession by a court of competent jurisdiction pursuant to California's Eminent Domain Law. Developer shall comply in all respects with any such order of possession.

3.20.17 Nothing in this paragraph shall be construed as authorizing or granting an extension of time to Developer for completion of the Public Improvements.

3.20.18 Prevailing Wages. Developer has been alerted to the requirements of California Labor Code section 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to pay prevailing wages for work required by this Agreement.

3.20.19 Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

CITY OF ONTARIO

By:_____
Scott Ochoa, City Manager

DEVELOPER

By:_____
Signature

Name Henry Hong

Title Manager

Attest

_____

By:_____
Sheila Mautz, City Clerk

Approved as to Form:

By:_____
Best Best & Krieger, City Attorney

By:_____

_____

NOTE: DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BY LAWS, ARTICLES OF INCORPORATION OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

STATE OF CALIFORNIA)
COUNTY OF San Bernardino)

On July 26, 2024, before me, Mindy Kraft, Notary Public,

personally appeared Henry Hong,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

MINDY KRAFT
Notary Public - California
Orange County
Commission # 2367427
My Comm. Expires Jul 23, 2025

WITNESS my hand and official seal.

Signature of Notary Public

Principal must indicate below in what capacity he/she is signing. If other than in an individual capacity, the Principal must provide evidence satisfactory to demonstrate that he/she serves in such capacity and that he/she is authorized to execute this instrument.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

AGREEMENT – (DEVELOPER)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Bernardino)

On July 26, 2024 before me, Mindy Kraft, Notary Public,
(insert name and title of the officer)

personally appeared Henry Hong,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

MINDY KRAFT
Notary Public - California
Orange County
Commission # 2367427
My Comm. Expires Jul 23, 2025

Signature _____ **(Seal)**

Exhibit "A"

Legal Description

LOTS 1 AND 2 OF MAP OF BONVIEW TRACT, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 18, PAGE 24 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

EXCEPTING THEREFROM ANY PORTION THEREOF LYING WITHIN THE RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD COMPANY AS GRANTED BY ACT OF CONGRESS.

Exhibit "B"
List of Public Improvements

CITY OF ONTARIO
CONSTRUCTION AND BOND ESTIMATE
IMPROVEMENT AGREEMENT FOR [PROJECT]

[ENGINEERING ESTIMATE ATTACHED]

CITY OF ONTARIO

ENGINEERING DEPARTMENT

Project Cost Estimate

Date 5/9/2024
Project Number PDEV 21-020
Location 1050 EAST HOLT BLVD.
Computed By SEABOARD ENGINEERING COMPANY
Contact Phone No. 310-277-7337

Attached project estimate prepared by (or under the direction of)

Marites A. Dizon 5/9/24
Signature of Registered Civil Engineer

RCE No. 61180 Exp. Date: 06/30/25

REGISTERED PROFESSIONAL ENGINEER MARITES A. DIZON No. 61180 CIVIL STATE OF CALIFORNIA

Civil Engineer Stamp

Recommended by HARRIS
for APPROVAL by City
By: 5/22/2024

Approved By:
Date:

CITY OF ONTARIO

ENGINEERING DEPARTMENT

Summary of Estimated Cost of Construction in Public Right-Of-Way

For Encroachment Permit Fee Calculation

Date 5/9/2024
Project Number PDEV 21-020
Location 1050 EAST HOLT BLVD.
Computed By SEABOARD ENGINEERING COMPANY
Contact Phone No. 310-277-7337

A.	STREET	Sub-Total	**$209,344.41**
B.	WATER	Sub-Total	**$60,221.41**
C.	RECYCLED WATER	Sub-Total	
D.	SEWER	Sub-Total	**$11,425.45**
E.	STORM DRAIN	Sub-Total	**$71,629.25**
F.	FIBER OPTIC	Sub-Total	**$23,197.31**

TOTAL ESTIMATED CONSTRUCTION COST **$375,817.83**

Construction Inspection Fee **$20,646.07**
(Exc. Landscape & Utility Poles Sections)
(Inc. $164 Inspection Base Fee)

Refundable Cash Deposit
(Collect only if security not posted with Final Map)
660 = $1,980.00 **$375,817.83**
$500.00 Min

PERMIT FEE **$116.00**

TRAFFIC CONTROL PERMIT FEE **$103.00**

ENCROACHMENT PERMIT FEE TOTAL **$396,682.90**

CITY OF ONTARIO

ENGINEERING DEPARTMENT

Summary of Estimated Cost of Construction in Public Right-Of-Way

For Plan Check Fee Calculation

Date 5/9/2024
Project Number PDEV 21-020
Location 1050 EAST HOLT BLVD.
Computed By SEABOARD ENG
Contact Phone No. 310-277-7337

A.	STREET (Exc. Utility Poles Section)	Sub-Total	**$209,344.41**
B.	WATER	Sub-Total	**$60,221.41**
C.	RECYCLED WATER	Sub-Total	
D.	SEWER	Sub-Total	**$11,425.45**
E.	STORM DRAIN	Sub-Total	**$71,629.25**
F.	FIBER OPTIC	Sub-Total	**$23,197.31**
G.	LANDSCAPING (Inc. Neighborhood Edge and Median)	Sub-Total	

TOTAL ESTIMATED CONSTRUCTION COST (A+B+C+D+E+F+G) **$375,817.83**

Plan Check Fee **$17,475.53**

For Office Use Only

TOTAL ESTIMATED CONSTRUCTION COST (A+B+C+D+E) **$352,620.52**

Plan Check Fee **$16,396.85**

CITY OF ONTARIO
ENGINEERING DEPARTMENT

Summary of Estimated Cost of Construction in Public Right-Of-Way

For Security (i.e. Bond) Amount

(For Subdivision Maps Only)

Date 5/9/2024
Project Number PDEV 21-020
Location 1050 EAST HOLT BLVD.
Computed By SEABOARD ENGINEERING COMPANY
Contact Phone No. 310-277-7337

A.	STREET	Sub-Total	**$232,541.72**
B.	WATER	Sub-Total	**$60,221.41**
C.	RECYCLED WATER	Sub-Total	
D.	SEWER	Sub-Total	**$11,425.45**
E.	STORM DRAIN	Sub-Total	**$71,629.25**

CONTINGENCY FOR UNSIGNED PLANS (10%)	**$37,581.78**
TOTAL SECURITY (i.e. BOND) ESTIMATE AMOUNT	**$413,399.61**

SECURITY (BOND) AMOUNTS

Performance Bond (100% of estimated cost)	$413,399.61
Labor and Material Bond (100% of estimated cost)	**$413,399.61**
Maintenance Bond* (10% of Performance Bond)	$41,339.96
Monumentation Cash Deposit**	**$1,000.00**

(No. of Monmuments to set:)

* To be provided prior to release of Performance Bond

**To be provided if monumentation is not completed by the time of Final (Parcel) Map approval

CITY OF ONTARIO

ENGINEERING DEPARTMENT

Date 5/9/2024
Project Number PDEV 21-020

		~~Total Length in feet to be~~ constructed
A.	WATER MAIN	
B.	SEWER MAIN	
C.	STORM DRAIN MAIN	
D.	RECYCLED WATER	
E.	FIBER OPTIC	**439**

* To be provided to the Fiscal Services Department

ENGINEERING DEPARTMENT

Construction Cost Estimate Form

Street Improvements

Date 5/9/2024
Project Number PDEV 21-020
Location 1050 EAST HOLT BLVD.
Computed By SEABOARD ENGINEERING COMPANY
Contact Phone No. 310-277-7337

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
PAVING *A.C. PAVEMENT ($0.39/IN/S.F. A.C. & $0.19/IN/S.F. CAB)				
A.C. UP TO 6" THICKNESS	10800	S.F.	$2.34	$25,272.00
CRUSHED AGREGGATE BASE UP TO 8" THICKNESS	10800	S.F.	$1.52	$16,416.00
A.C. PAVEMENT (FULL DEPTH)	5	Ton	$65.00	$325.00
8" AC	3050	SF	$3.12	$9,516.00
10"CAB	3050	SF	$1.90	$5,795.00
A.C. BERM		L.F.	$13.00	
2" GRIND UP TO 5' IN WIDTH	4520	L.F.	$2.00	$9,040.00
SAWCUT	510	L.F.	$3.50	$1,785.00
IMPORT FILL (INCLUDING COMPACTION)	200	C.Y.	$25.00	$5,000.00
PREPARATION OF SUBGRADE 10800+3050 = 13850	13850	S.F.	$0.50	$6,925.00
A.C. PAVEMENT REMOVAL	2244	S.F.	$3.50	$7,854.00
SLURRY SEAL (RPM TYPE II)		S.F.	$0.17	
TRENCH BACKFILL AND COMPACTION	660	S.F.	$3.50	$2,310.00
CONCRETE				
CURB & GUTTER	639	L.F.	$15.00	$9,585.00
P.C.C. CURB ONLY		L.F.	$12.00	
CROSS GUTTER/SPANDREL		S.F.	$7.00	
SIDEWALK	4755	S.F.	$4.75	$22,586.25
WHEELCHAIR RAMP	1	EA.	$2,200.00	$2,200.00
TRAFFIC ISLAND		S.F.	$9.50	
CONCRETE PAVEMENT (PCC - REINFORCED, UP TO 10" THICKNESS)		S.F.	$7.80	
			10% Contingency	$12,460.93
			Street Improvements Sub-Total	$137,070.18

Construction Cost Estimate Form

Street Improvements

DRIVE APPROACHES				
RESIDENTIAL		S.F.	$6.50	
COMMERCIAL	594	S.F.	$8.50	$5,049.00
REMOVAL				
REMOVAL OF CONCRETE	410	S.F.	$3.50	$1,435.00
REMOVAL OF BERM, A.C. OR P.C.C.	169	L.F.	$6.50	$1,098.50
ADJUSTMENT TO GRADE				
MANHOLE	3	EA.	$600.00	$1,800.00
WATER VALVE	1	EA.	$325.00	$325.00
CLEANOUT		EA.	$265.00	
DRAINAGE				
PARKWAY DRAIN	2	EA.	$1,800.00	$3,600.00
SIGNS				
REFLECTOR SIGN AND POST	3	EA.	$175.00	$525.00
STREET NAME SIGN	1	EA.	$475.00	$475.00
TRAFFIC SIGN AND POST	2	EA.	$300.00	$600.00
LIGHTING				
STREET LIGHT - 70, 100 WATT (INCLUDING CONDUIT & PULL BOXES)	3	EA.	$6,200.00	$18,600.00
- 150, 250 WATT (INCLUDING CONDUIT & PULL BOXES)	1	EA.	$6,500.00	$6,500.00
STREET LIGHT SERVICE PEDESTAL	1	EA.	$4,100.00	$4,100.00
STREET LIGHT SERVICE DUAL PEDESTAL		EA.	$5,900.00	
STRIPING				
SIGNING & STRIPING LOCAL STREET		L.F.	$4.50	
SIGNING & STRIPING COLLECTOR STREET	350	L.F.	$8.75	$3,062.50
SIGNING & STRIPING ARTERIAL STREET		L.F.	$12.75	
PAINTED LEGEND	1	EA.	$80.00	$80.00
THERMOPLASTIC LEGEND	2	EA.	$165.00	$330.00
			10% Contingency	$4,758.00
			Street Improvements Sub-Total	$52,338.00

Construction Cost Estimate Form

Street Improvements

TRAFFIC SIGNALS				
NEW TRAFFIC SIGNAL		EA.	$355,600.00	
MODIFY EXISTING SIGNAL (STREET WIDENING, PER CORNER)		EA.	$88,900.00	
REMOVE EXISTING SIGNAL		EA.	$25,000.00	
REPLACE/RESTORE T.S. DETECTION LOOP		EA.	$425.00	
TRAFFIC SIGNAL INTERCONNECT CONDUIT		L.F.	$17.00	
TRAFFIC SIGNAL INTERCONNECT CONDUIT & CABLE		L.F.	$20.00	
ADD LEFT TURN PHASING		L.S.	$30,000.00	
ADD LEFT TURN PHASING		L.S.	$30,000.00	
LANDSCAPE				
PARKWAY TREE WITH IRRIGATION		EA.	$525.00	
PARKWAY LANDSCAPING		S.F.	$6.00	
(INCLUDING IRRIGATION FACILITIES)				
NEIGHBORHOOD EDGE AND/OR MEDIAN LANDSCAPING		S.F.	$6.00	
(INCLUDING IRRIGATION FACILITIES)				
NEIGHBORHOOD EDGE AND/OR MEDIAN TREE		EA.	$525.00	
(INCLUDING IRRIGATION FACILITIES)				
UTILITY POLES				
RELOCATION OF POLE		EA.	$18,000.00	
UNDERGROUNDING OF POWER LINES		L.F.	$350.00	
UNDERGROUNDING OF COMMUNICATION LINES		L.F.	$90.00	
FIBER OPTIC				
CONDUIT PLACEMENT TRENCH/BORE (INCLUDES HANDHOLES)	439	L.F.	$45.00	$19,755.00
(ARTERIAL/COLLECTOR STREETS - MAIN BACKBONE)				
IN-TRACT LOCAL STREETS				
FIBER CONDUIT PLACEMENT		L.F.	$5.70	
FIBER TRENCH		L.F.	$6.50	
HANDHOLE - FLOWER POT (FP)		EA.	$125.00	
HANDHOLE - HH-3		EA.	$250.00	
HANDHOLE - HH-4		EA.	$375.00	
OTHER				
REMOVE GUARD RAIL	138	LF	$30.00	$4,140.00
BORE (AC PAVEMENT)		L.F.	$20.00	
BORE (PARKWAY)		L.F.	$10.00	
MICRO TRENCHING		L.F.	$8.15	
DRY UTILITY TRENCH (AC PAVEMENT)		L.F.	$56.00	
DRY UTILITY TRENCH (PARKWAY)		L.F.	$8.00	
REMOVE K RAIL	13	LF	150	$1,950.00
			10% Contingency	$2,584.50
			Street Improvements Sub-Total	$28,429.50
TRAFFIC CONTROL		L.S.	$5,990.54	$5,990.54
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.	$8,713.51	$8,713.51
(Sub-Total Transferred to Item "A" on Summary Sheet)				$232,541.72

CITY OF ONTARIO

Construction Cost Estimate form

Water Improvements

Date 5/9/2024
Project Number PDEV 21-020
Location 1050 EAST HOLT BLVD.
Computed By SEABOARD ENGINEERING COMPANY
Contact Phone No. 310-277-7337

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
WATER / FIRE MAIN				
6" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$30.00	
8" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$40.00	
10" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$45.00	
8" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$90.00	
10" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$95.00	
12" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$105.00	
16" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$115.00	
WATER SERVICE				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
1" WATER SERVICE WITH METER BOX	1	EA.	$1,000.00	$1,000.00
2" WATER SERVICE WITH METER BOX	1	EA.	$2,200.00	$2,200.00
FIRE HYDRANT				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
BREAK-OFF TYPE FIRE HYDRANT (INC. CONNECTION)	2	EA.	$5,400.00	$10,800.00
~~RELEASE / BLOW-OFF~~				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
AIR RELEASE VALVE (INC. CONNECTION)		EA.	$4,600.00	
BLOW-OFF VALVE (INC. CONNECTION)		EA.	$4,500.00	
			10% Contingency	$1,400.00
			Water Improvements Sub-Total	$15,400.00

Construction Cost Estimate form

Water Improvements

~~BACKFLOW ($1000/IN)~~				
RP 2" AND SMALLER	2	EA.	$3,000.00	$6,000.00
DDC ABOVE GROUND (UP TO 6" DIAMETER)	1	EA.	$7,000.00	$7,000.00
GATE VALVE				
6"	2	EA.	$550.00	$1,100.00
8"	1	EA.	$850.00	$850.00
10"		EA.	$1,250.00	
12"		EA.	$1,375.00	
16"		EA.	$3,425.00	
HOT TAP				
HOT TAP WITH VALVE		EA.	$1,750.00	
CONNECTION TO EXISTING 6" MAIN		EA.	$3,500.00	
CONNECTION TO EXISTING 8" MAIN	3	EA.	$3,750.00	$11,250.00
CONNECTION TO EXISTING 12" MAIN	2	EA.	$4,100.00	$8,200.00
INSTALL TEE	1	EA.	$300.00	$300.00
REMOVE EXISTING BLIND FLANGE		EA.	$475.00	
CONCRETE THRUST BLOCK	1	EA.	$585.00	$585.00
OTHER				
REMOVE EX. FIRE HYDRANT	1	EA.	$2,000.00	$2,000.00
			10% Contingency	$3,728.50
			Water Improvements Sub-Total	$41,013.50
TRAFFIC CONTROL		L.S.	1551.37	$1,551.37
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.	**2256.54**	**$2,256.54**
(Sub-Total Transferred to Item "B" on Summary Sheet)				**$60,221.41**

CITY OF ONTARIO

Construction Cost Estimate form

Recycled Water Improvements

Date 5/9/2024
Project Number PDEV 21-020
Location 1050 EAST HOLT BLVD.
Computed By SEABOARD ENGINEERING COMPANY
Contact Phone No. 310-277-7337

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
WATER / FIRE MAIN				
6" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$30.00	
8" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$40.00	
10" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$45.00	
8" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$90.00	
10" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$95.00	
12" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$105.00	
16" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$115.00	
WATER SERVICE				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
1" WATER SERVICE WITH METER BOX		EA.	$1,000.00	
2" WATER SERVICE WITH METER BOX		EA.	$2,200.00	
FIRE HYDRANT				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
BREAK-OFF TYPE FIRE HYDRANT (INC. CONNECTION)		EA.	$5,400.00	
RELEASE / BLOW-OFF				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
AIR RELEASE VALVE		EA.	$4,600.00	
BLOW-OFF VALVE		EA.	$4,500.00	
			10% Contingency	
			Water Improvements Sub-Total	

Construction Cost Estimate form

Recycled Water Improvements

BACKFLOW ($1000/IN)				
RP 2" AND SMALLER		EA.	$3,000.00	
DDC ABOVE GROUND (UP TO 6" DIAMETER)		EA.	$7,000.00	
GATE VALVE				
6"		EA.	$550.00	
8"		EA.	$850.00	
10"		EA.	$1,250.00	
12"		EA.	$1,375.00	
16"		EA.	$3,425.00	
HOT TAP				
HOT TAP WITH VALVE		EA.	$1,750.00	
CONNECTION TO 8" MAIN		EA.	$3,750.00	
CONNECTION TO 12" MAIN		EA.	$4,100.00	
INSTALL TEE		EA.	$300.00	
REMOVE EXISTING BLIND FLANGE		L.S.	$475.00	
CONCRETE THRUST BLOCK		EA.	$585.00	
OTHER				
10% Contingency				
Water Improvements Sub-Total				
TRAFFIC CONTROL		L.S.		
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.		
(Sub-Total Transferred to Item "C" on Summary Sheet)				

ENGINEERING DEPARTMENT

Construction Cost Estimate Form

Sewer Improvements

Date 5/9/2024
Project Number PDEV 21-020
Location 1050 EAST HOLT BLVD.
Computed By SEABOARD ENGINEERING COMPANY
Contact Phone No. 310-277-7337

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
SEWER MAIN (VCP ONLY)				
~~8" & SMALLER IN EASEMENT AREA ONLY (NOT IN PAVED STREET)~~		~~L.F.~~	~~$40.00~~	
10" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$60.00	
12" & LARGER IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$63.00	
8" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$70.00	
10" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$75.00	
12" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$80.00	
15" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$90.00	
18" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$95.00	
~~21" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION~~		~~L.F.~~	~~$105.00~~	
24" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$115.00	
MANHOLE				
MANHOLE		EA.	$4,050.00	
DROP MANHOLE		EA.	$4,100.00	
VAULT		EA.	$3,500.00	
MONITORING FACILITY / NON TRAFFIC AREA	1	EA.	$1,750.00	$1,750.00
MONITORING MANHOLE		EA.	$4,100.00	
CLEANOUT	1	EA.	$1,750.00	$1,750.00
REMOVE/ABANDON EXISTING MANHOLE		EA.	$1,200.00	
REMOVE EXISTING SEWER				
UP TO 12" DIAMETER	50	L.F.	$55.00	$2,750.00
GREATER THAN 12" DIAMETER		L.F.	$70.00	
			10% Contingency	$625.00
			Sewer Improvements Sub-Total	**$6,875.00**

Construction Cost Estimate Form

Sewer Improvements

LATERAL				
4" HOUSE CONNECTION TO SEWER MAIN IN STREET		L.S.	$2,925.00	
6" & SMALLER VCP SEWER LATERAL / EASEMENT		L.F.	$42.00	
6" & SMALLER VCP SEWER LATERAL / PAVED STREET	33	L.F.	$70.00	$2,310.00
SEWER CHIMNEY		EA.	$1,170.00	
SEWER SADDLE	1	EA.	$1,170.00	$1,170.00
WYE 4" x 8" TYPICAL		EA.	$115.00	
OIL/GREASE INTERCEPTOR NOT IN STREET		EA.	$1,750.00	
OTHER				
10% Contingency				$348.00
Sewer Improvements Sub-Total				**$3,828.00**
TRAFFIC CONTROL		L.S.	$294.33	$294.33
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.	**428.12**	**$428.12**
(Sub-Total Transferred to Item "D" on Summary Sheet)				**$11,425.45**

*S:\Engineering\Forms\Land Forms\
Engineering Cost Estimate\Engineering
Project Cost Estimate 03-23-23*

Last Update: 03-23-23

ENGINEERING DEPARTMENT

Construction Cost Estimate form

Storm Drain Improvements

Date 5/9/2024
Project Number PDEV 21-020
Location 1050 EAST HOLT BLVD.
Computed By SEABOARD ENGINEERING COMPANY
Contact Phone No. 310-277-7337

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
STORM DRAIN (RCP SIZE X $3.25 / INCH OF I.D. UP TO 60" DIAMETER)				
63" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$210.00	
66" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$260.00	
72" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$290.00	
78" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$305.00	
81" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$320.00	
84" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$330.00	
90" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$350.00	
96" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$365.00	
102" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$470.00	
108" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$480.00	
24" X 36" CMPA (10 GUAGE)		L.F.	$140.00	
27" X 43" CMPA (10 GUAGE)		L.F.	$150.00	
LATERAL				
18" RCP OR SMALLER		L.F.	$45.00	
(INC. EXC., BACKFILL & PAVEMENT RESTORATION)				
MANHOLE		EA.	$4,500.00	
10% Contingency				
Storm Drain Improvements Sub-Total				

Construction Cost Estimate form

Storm Drain Improvements

CATCH BASIN				
CATCH BASIN LESS THAN 7' IN WIDE		L.F.	$409.50	
7' WIDE - CB WITH SCREEN INLET		E.A.	$3,900.00	
10' WIDE- CB WITH SCREEN INLET		E.A.	$4,200.00	
14' WIDE - CB WITH SCREEN INLET		E.A.	$4,700.00	
21' WIDE - CB WITH SCREEN INLET		E.A.	$4,900.00	
LOCAL DEPRESSION FOR UP TO 10' WIDE CB		L.S.	$585.00	
LOCAL DEPRESSION FOR > 10' WIDE CB		L.S.	$1,200.00	
REINFORCED CONCRETE BOX				
(INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION)				
4' X 6' RCB		L.F.	$400.00	
7' X 6' RCB		L.F.	$470.00	
7' X 8.5' RCB		L.F.	$560.00	
7' X 9.5' RCB		L.F.	$575.00	
8' X 11' RCB		L.F.	$585.00	
8' X 13' RCB		L.F.	$600.00	
9' X 9' RCB		L.F.	$610.00	
9' X 12' RCB		L.F.	$650.00	
OUTLET STRUCTURE		EA.	$700.00	
INLET STRUCTURE		EA.		
4" X 9"	52	LF	$600.00	$31,200.00
TRANSITION STRUCTURE	1	L.S.	$1,700.00	$1,700.00
OTHER				
PARKWAY DRAIN - OUTLET STRUCTURE - 12' WIDE	12	LF	$600.00	$7,200.00
PARWAY DRAIN - 4' WIDE	49	LF	$350.00	$17,150.00
REMOVE EXISTING RC STORM DRAIN	25	LF	$150.00	$3,750.00
			10% Contingency	$6,100.00
			Storm Drain Improvements Sub-Total	$67,100.00
TRAFFIC CONTROL		L.S.	$1,845.25	$1,845.25
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.	**2684**	**$2,684.00**
			(Sub-Total Transferred to Item "E" on Summary Sheet)	**$71,629.25**

Exhibit "C"

Bonds and other Security

As evidence of understanding the provisions contained in this Agreement, and of the Developer's intent to comply with same, the Developer has submitted the below described security and has affixed the appropriate signatures thereto:

FAITHFUL PERFORMANCE BOND PRINCIPAL AMOUNT: $375,817.83
Description: Faithful Performance Bond
Surety: Markel Insurance Company
Attorney-in-fact: Martha J. Chase
Title Service Representative: _____
Address: _____
_____
Phone Number: _____
Email: _____

MAINTENANCE GUARANTEE BOND PRINCIPAL AMOUNT: $37,581.78
To be posted upon completion of the Public Improvements by Developer and approval and acceptance by City.

BOND NO. 4478221
PREMIUM $8,016.00

CITY OF ONTARIO

AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the City Council of the City of Ontario, State of California ("CITY") and TIP Ontario LLC ("PRINCIPAL") have entered into an Agreement for Completion of Public Improvements ("Improvement Agreement") dated on or about the 3rd day of September, 2024 for public improvements to be constructed as part of the Titan Industrial Project; and,

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and,

WHEREAS, the PRINCIPAL is required under the terms of the Improvement Agreement to provide a good and sufficient bond, in a form and from a surety acceptable to the CITY, for the performance of the Improvement Agreement; and,

NOW, THEREFORE, the PRINCIPAL and Markel Insurance Company, a company organized and doing business under and by virtue of the laws of the State of Illinois and duly licensed to conduct a general surety business in the State of California, as "SURETY," are held and firmly bound unto the CITY, as "OBLIGEES," in the sum of **Three Hundred Seventy-Five Thousand Eight Hundred Seventeen and 83/100 Dollars ($375,817.83)** for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such, that if the above bonded PRINCIPAL, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in said Improvement Agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the CITY, it officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Improvement Agreement, or the work to be performed thereunder or the specifications accompanying the same, shall in any manner affect its obligations on this bond, and it does hereby waive notice of such change, extension, alteration or addition to the terms of the Improvement Agreement or to the work or specifications.

IN WITNESS WHEREOF, the seal and signature of said PRINCIPAL is hereto affixed, and the corporate seal and the name of said SURETY is hereto affixed and attested by its duly authorized Attorney-in-Fact at Los Angeles, California this 26th day of July, 2024 to become effective the 3rd day of September, 2024.

PRINCIPAL	**SURETY**
TIP Ontario LLC Print Name	Markel Insurance Company Print Name
By: _____ Signature	By: _____ Signature
Henry Hong Name	Martha J. Chase Name
Manager Title	Attorney-in-Fact Title
7/26/24 Date	July 26, 2024 Date

NOTE: APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPALS AND SURETY MUST BE ATTACHED TO THIS BOND.

RISK MANAGEMENT
DATE 8/1/24
SURETY APPROVED ONLY
INITIAL KG

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF San Bernardino)

On July 26, 2024, before me, Mindy Kraft, Notary Public,

personally appeared Henry Hong,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

MINDY KRAFT
Notary Public - California
Orange County
Commission # 2367427
My Comm. Expires Jul 23, 2025

Signature of Notary Public

WITNESS my hand and official seal.

Principal must indicate below in what capacity he/she is signing. If other than in an individual capacity, the Principal must provide evidence satisfactory to demonstrate that he/she serves in such capacity and that he/she is authorized to execute this instrument.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited ☐ General
- ☐ Attorney-In-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)ss.
COUNTY OF LOS ANGELES)

On July 26, 2024 before me, Rolando Lopez, Notary Public, personally appeared Martha J. Chase, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(ies), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Rolando Lopez, Notary Public (Seal)

ROLANDO LOPEZ
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
COMMISSION # 2381870
MY COMM. EXPIRES NOV. 30, 2025

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____,

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____

Signature of Notary Public

Principal must indicate below in what capacity he/she is signing. If other than in an individual capacity, the Principal must provide evidence satisfactory to demonstrate that he/she serves in such capacity and that he/she is authorized to execute this instrument.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☐ Corporate Officer

_____
Title(s)

- ☐ Partner(s) ☐ Limited ☐ General
- ☒ Attorney-In-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number Of Pages

_____
Date Of Document

_____
Signer(s) Other Than Named Above

POA# 510901

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Martha J. Chase

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Five Million and 00/100 Dollars ($5,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, any Senior Vice President, Vice President, Assistant Vice President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 17th day of July , 2024 .

SureTec Insurance Company

By: _____
Michael C. Keimig, President

SURETEC INSURANCE COMPANY

MARKEL INSURANCE COMPANY CORPORATE SEAL

Markel Insurance Company

By: _____
Lindey Jennings, Vice President

State of Texas
County of Harris:

On this 17th day of July , 2024 A. D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.

JULIE E. MCCLARY
Notary Public State of Texas
Commission # 12947680-5
Commission Expires March 29, 2026

By: _____
Julie E. McClary, Notary Public
My commission expires 3/29/2026

We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do herby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 26th day of July , 2024 .

SureTec Insurance Company

By: _____
M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By: _____
Andrew Marquis, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity. 510901
For verification of the authority of this Power you may call (713)812-0800 on any business day between 8:30 AM and 5:00 PM CST.

BOND NO. 4478221
PREMIUM Included in Performance Bond

CITY OF ONTARIO

AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS
WARRANTY BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Ontario ("CITY"), a California municipal corporation by its City Council and TIP Ontario LLC ("PRINCIPAL") have entered into that certain Agreement for Completion of Public Improvements ("Improvement Agreement") dated September 3, 2024, referred to and incorporated herein by this reference, whereby PRINCIPAL agrees to install and complete certain designated public improvements for the project identified as Titan Industrial; and

WHEREAS, PRINCIPAL is required under the terms of the Improvement Agreement to furnish a bond to guarantee and warrant the work for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, to comply with the terms of the Improvement Agreement; and

WHEREAS, we TIP Ontario LLC, as PRINCIPAL and Markel Insurance Company, a corporation organized and existing under the laws of the State of Illinois, and authorized to transact surety business in the State of California as surety ("SURETY"), are held and firmly bound onto the CITY, in the full and just sum of **Thirty-Seven Thousand Five Hundred Eighty One and 78/100 Dollars ($37,581.78)** for which payment well and truly to be made, the said PRINCIPAL and SURETY bind themselves, their successors and assigns, jointly and severally, firmly by these presents; and

WHEREAS, PRINCIPAL, required under the Improvement Agreement to construct the designated public improvements in accordance with CITY's Standard Specifications, agrees to repair or replace any and all work required under this Improvement Agreement that may prove defective in workmanship and/or materials, together with any other work which may be effected by this repair, excepting any work necessitated by ordinary wear and tear, or unusual abuse or neglect, within a one-year period from the date of acceptance of the work and improvements by the CITY; and

WHEREAREAS, such work and improvements have been completed in accordance with the Improvement Agreement; and

WHEREAS, CITY is willing and agreeable to accept a bond in the amount of **Thirty-Seven Thousand Five Hundred Eighty One and 78/100 Dollars ($37,581.78)** (10% of CITY's estimated cost) to be a guarantee that all charges for material and labor accruing in the construction of said work and improvements have been or will be paid in full by PRINCIPAL and that the work and improvements shall remain free form defects resulting from defective material and labor for a period of twelve months from the date of acceptance by the CITY.

NOW, THEREFORE, the condition of this obligation is such that PRINCIPAL, having completed the work and improvements to the satisfaction of CITY, and if all charges for material and labor accruing in the construction of the work and improvements have been paid in full by PRINCIPAL, and if the work and improvements have remained free from defects resulting from the defective materials and labor, all for a period of twelve months from the date of acceptance by CITY. This bond shall remain in full force and effect until a written release is received from the City, at the written request of the Surety or Principal. The CITY may perform a warranty inspection prior to the expiration of the one year warranty period, but no sooner than 45 days prior to expiration. The PRINCIPAL will be notified in writing of any efficiencies revealed by this inspection. The warranty bond will not be released until the required repairs are completed and a one year warranty period has expired. Without any defects resulting from defective materials or labor, has been subsequently completed for all the installed public improvements and any repairs or replacement if necessary per the Improvement Agreement above. If the warranty inspection identifies no necessary repairs or replacement, the CITY will release the warranty bond at the end of the one year warranty period. The PRINCIPAL shall be entitled to seek a release of this bond only at that time when the installed public improvements have been maintained and have remained free of defects for an entire one year.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 3 (commencing with Section 9550) of Part 6 of Division 4 of the Civil code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be full performed, then this obligation shall become null and void; otherwise, it shall remain in full force and effect.

The SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said Improvement Agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extensions, alteration or addition; and expressly waives the defenses of statutes of limitation, laches and estoppel in the event said changes, extensions, alterations or additions are granted or made.

SURETY, by executing this Warranty Bond, warrants and alleges that it has read the said Improvement Agreement or by signing this bond shall be deemed to have read said Improvement Agreement and knows the contents and all provisions therein contained, and shall be bound by each and every term, condition and provision contained therein.

IN WITNESS WHEREOF, said PRINCIPAL and SURETY have caused this bond to be duly executed this 26th day of July, 2024 to become effective the 3rd day of September, 2024.

[SIGNATURE PAGE FOLLOWS]

PRINCIPAL	SURETY
TIP Ontario LLC Print Name	Markel Insurance Company Print Name
By: _____ Signature	By: _____ Signature
Henry Hong Name	Martha J. Chase Name
Manager Title	Attorney-in-Fact Title
7/26/24 Date	July 26, 2024 Date

NOTE: APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPALS AND SURETY MUST BE ATTACHED TO THIS BOND.

RISK MANAGEMENT
DATE 8/1/24
SURETY APPROVED ONLY
INITIAL

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF San Bernardino)

On July 26, 2024, before me, Mindy Kraft, Notary Public,

personally appeared Henry Hong,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

MINDY KRAFT
Notary Public - California
Orange County
Commission # 2367427
My Comm. Expires Jul 23, 2025

Signature of Notary Public

WITNESS my hand and official seal.

Principal must indicate below in what capacity he/she is signing. If other than in an individual capacity, the Principal must provide evidence satisfactory to demonstrate that he/she serves in such capacity and that he/she is authorized to execute this instrument.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited ☐ General
- ☐ Attorney-In-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

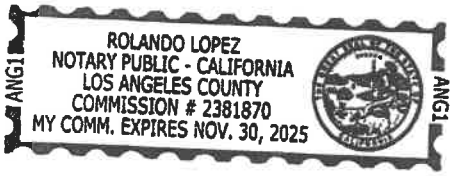
STATE OF CALIFORNIA)
)ss.
COUNTY OF LOS ANGELES)

On July 26, 2024 before me, Rolando Lopez, Notary Public, personally appeared Martha J. Chase, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(ies), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Rolando Lopez, Notary Public



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____,

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

Principal must indicate below in what capacity he/she is signing. If other than in an individual capacity, the Principal must provide evidence satisfactory to demonstrate that he/she serves in such capacity and that he/she is authorized to execute this instrument.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☐ Corporate Officer

_____
Title(s)

- ☐ Partner(s) ☐ Limited ☐ General
- ☒ Attorney-In-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number Of Pages

_____
Date Of Document

_____
Signer(s) Other Than Named Above

POA# 510901

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Martha J. Chase

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Five Million and 00/100 Dollars ($5,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, any Senior Vice President, Vice President, Assistant Vice President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 17th day of July , 2024 .

SureTec Insurance Company

By: _____
Michael C. Keimig, President

SURETEC INSURANCE COMPANY

MARKEL INSURANCE CORPORATE COMPANY SEAL ILLINOIS

Markel Insurance Company

By: _____
Lindey Jennings, Vice President

State of Texas
County of Harris:

On this 17th day of July , 2024 A. D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.

JULIE E. MCCLARY
Notary Public State of Texas
Commission # 12947680-5
Commission Expires March 29, 2026

By: _____
Julie E. McClary, Notary Public
My commission expires 3/29/2026

We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do herby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 26th day of July , 2024 .

SureTec Insurance Company

By: _____
M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By: _____
Andrew Marquis, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity. 510901
For verification of the authority of this Power you may call (713)812-0800 on any business day between 8:30 AM and 5:00 PM CST.

CITY OF ONTARIO *Agenda Report* **September 3, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Henry D Pham Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Raymond Lee, Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 5

SUBJECT: **A RESOLUTION APPROVING FINAL PARCEL MAP NO. 20583, LOCATED AT THE SOUTHEAST CORNER OF HAVEN AVENUE AND GUASTI ROAD**

RECOMMENDATION: That the City Council adopt a Resolution approving Final Parcel Map No. 20583 located at the southeast corner of Haven Avenue and Guasti Road.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: There is not a direct fiscal impact associated with this action. All public infrastructure improvements required have already been constructed.

BACKGROUND & ANALYSIS: Final Parcel Map No. 20583, consisting of two numbered lots on 4.3 acres of land, as shown on Exhibit A, has been submitted by the developer, Prime A Investments-Ontario, LLC. Tentative Parcel Map No. 20583 was approved by the Planning Commission on December 19, 2022.

This map meets all conditions of the Subdivision Map Act and the Ontario Municipal Code. All public improvements were previously installed and the map has been reviewed and approved by the City Engineer.

EXHIBIT A

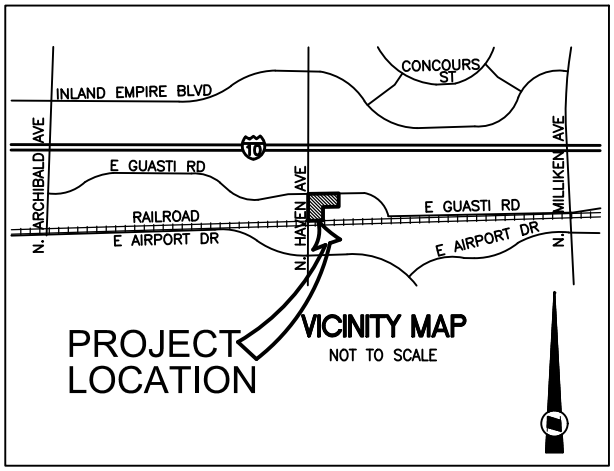
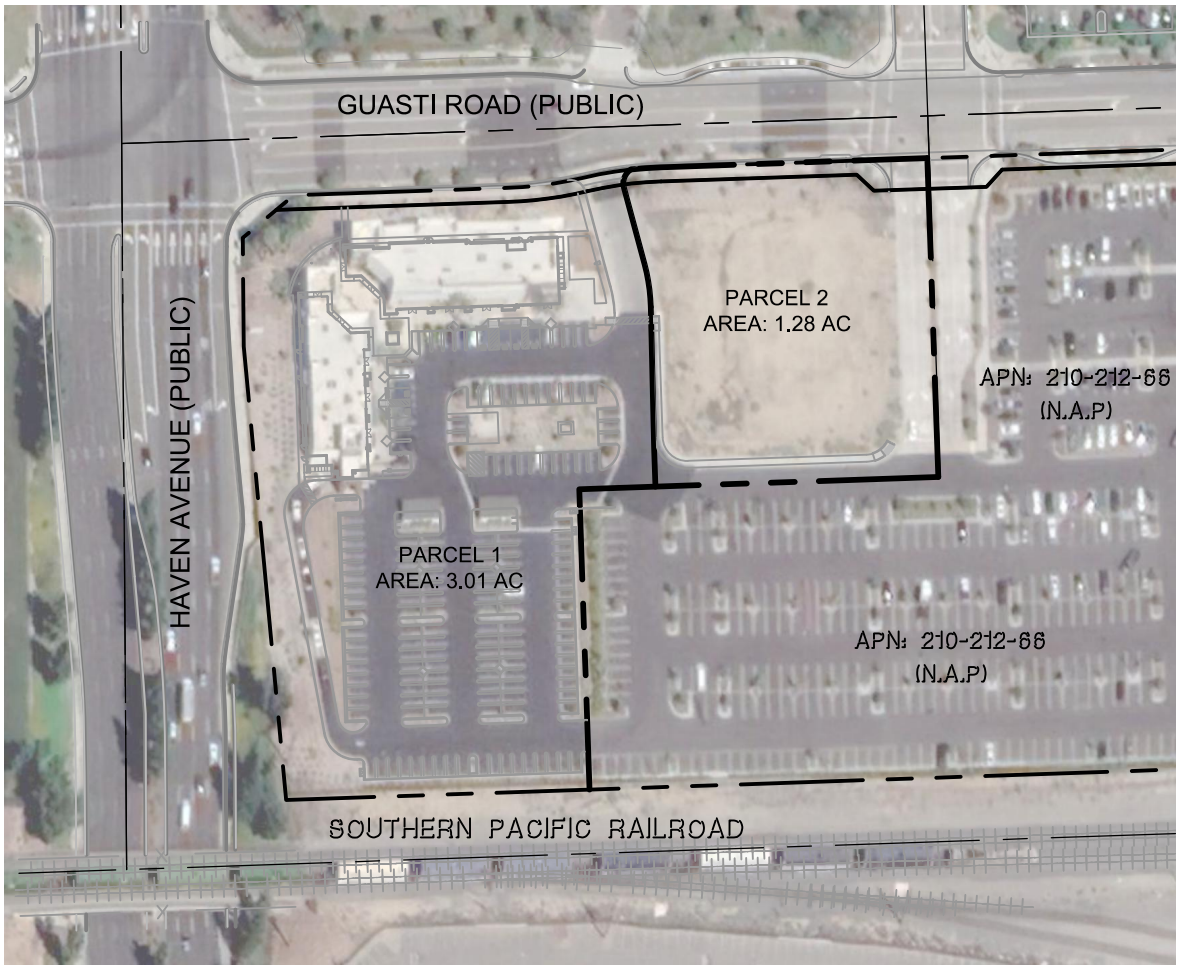


EXHIBIT A
PM-20583

2 PARCELS



150' 0' 75' 150'

SCALE: 1" = 150'

PREPARED BY:

FUSCOE ENGINEERING

3257 E Guasti Road Suite 300
Ontario, California 91761
909.581.0676 fuscoe.com

SCALE: 1"=150'
PROJECT ID: PM 20583
DATE: AUGUST, 2024

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FINAL PARCEL MAP NO. 20583 LOCATED AT THE SOUTHEAST CORNER OF HAVEN AVENUE AND GUASTI ROAD.

WHEREAS, Tentative Parcel Map No. 20583, submitted for approval by Prime A Investments-Ontario, LLC, was approved by the Planning Commission of the City of Ontario on December 19, 2022; and

WHEREAS, Tentative Parcel Map No. 20583 consists of two numbered lots, being a subdivision of a portion of parcel 3 of Parcel Map No. 18094, City of Ontario, County of San Bernardino, State of California, as per in book 224, pages 67 through 70; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California, that Final Parcel Map No. 20583, be approved and that the City Clerk be authorized to execute the statement thereon on behalf of said City.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 3rd day of September, 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 3, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held September 3, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **September 3, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Planning Prepared By: Edmelynne V Hutter Department: Prepared By: Edmelynne V Hutter Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 6

SUBJECT: **AN ORDINANCE APPROVING A SPECIFIC PLAN (FILE NO. PSP22-001 - EUCLID MIXED USE SPECIFIC PLAN)**

RECOMMENDATION: That the City Council consider and adopt an Ordinance approving the Euclid Mixed Use Specific Plan (File No. PSP22-001).

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: Adoption of the Euclid Mixed Use Specific Plan (EMUSP) would result in both short- and long-term fiscal impacts to the City. Short-term impacts include infrastructure improvements to serve the new Business Park and Mixed-Use development. The cost of these improvements is included in the Nexus Study and Development Impact Fees previously adopted by the City Council. The developer will be required to install improvements or pay the Development Impact Fees ("DIF") associated with the various improvements. Long-term fiscal impacts include the ongoing operations and maintenance services (police, fire, maintenance, etc.) necessary to serve the new development. While the development will result in potential increased property tax revenue, the increase is not sufficient to cover the cost of services associated with the project. To address the shortfall, the developer will be required to form and/or join a Community Facilities District ("CFD") to cover the additional public service costs. No Original Model Colony dollars will be used to fund this Ontario Ranch development.

BACKGROUND & ANALYSIS: On August 20, 2024, the City Council introduced and waived further reading of an Ordinance approving the Euclid Mixed Use Specific Plan. The Ontario Plan 2050 (TOP 2050) Policy Plan (General Plan) provides the basic framework for development within the 8,200-acre area commonly referred to as Ontario Ranch. The Policy Plan requires City Council approval of a Specific Plan for new developments within Ontario Ranch, to ensure that sufficient land area is

included to achieve cohesive, unified districts and neighborhoods. Additionally, a Specific Plan is required to incorporate a development framework that details land use, circulation, infrastructure improvements (such as drainage, sewer, and water facilities), provision for public services, and urban and design landscape standards.

The Euclid Mixed Use Specific Plan (EMUSP) area is 84 acres in size and bordered by Schaefer Avenue to the north, Sultana Avenue to the east, Edison Avenue to the south and Euclid Avenue to the west.

The EMUSP establishes a comprehensive set of design guidelines and development regulations to guide and regulate site planning, landscape, and architectural character, and ensuring that excellence in community design is achieved during Project development. The EMUSP establishes the procedures and requirements to approve new development within the Project site to ensure the Policy Plan goals and policies are achieved.

Land Use Plan - The EMUSP consists of five Planning Areas that will accommodate business park, light industrial, commercial, office and residential uses. The Land Use Plan implements the vision of TOP 2050 by providing opportunities for employment in warehousing, research and development, service, professional office, and supporting retail at intensities designed to meet the demand of current and future market conditions.

The EMUSP land use intensity anticipated in the five proposed planning areas (see Exhibit B: Land Use Plan) is consistent with TOP 2050. The EMUSP proposes a maximum 0.6 Floor-Area Ratio (FAR) within the Business Park land use district (Planning Areas 1, 2A and 2B); and 1.5 FAR for office uses, 1.0 FAR for retail uses and 35 DU/AC for residential uses within the Mixed-Use land use district (Planning Areas 3A and 3B). The proposed overall FARs and residential density for the EMUSP are consistent with the TOP 2050 Policy Plan Land Use designations for Business Park and Mixed Use – Great Park.

The EMUSP proposes the potential development of up to 1,676,886 square feet of business park, office and retail development, and 466 dwelling units. Planning Areas 1 and 2 are approximately 53.06 acres in size and can potentially be developed with 1,386,776 square feet of business park space. Planning Area 3 is approximately 19.03 acres in size and is anticipated to be developed with up to 290,110 square feet of office and retail space, and 466 dwelling units. Planning Areas 4 and 5 are 6.28 acres and 5.73 acres both include the extension of existing Southern California Edison transmission lines and are designated as non-recreational open space.

Design Guidelines - The design theme and concept for the project was created to ensure a high-quality, attractive and cohesive design structure for the EMUSP. The guidelines provide the following objectives for all future development within the EMUSP area.

- Demonstrates high-quality development that complements and integrates into the community and adds value to the City.
- Creates a functional and sustainable place that ensures EMUSP is competitive regionally and appropriate in the Ontario Ranch community.
- Illustrates the distinctive characteristics of the three land use districts: Business Park, Mixed

Use and Open Space – Nonrecreational.

- Establishes criteria for building design and materials, landscape design, and site design that provide guidance to developers, buildings, architects, landscape architects, and other professionals preparing plans for construction.
- Provides guidance to City staff and the Planning Commission in the review and evaluation of future development projects in the EMUSP area.
- Incorporates construction and landscape design standards that promote energy and water conservation strategies.
- Implements the goals and policies of TOP 2050 and the intent of the Ontario Development Code.

The Design Guidelines have been established to promote high-quality architecture as required by the Ontario Development Code and TOP 2050. The proposed architectural theme of the EMUSP incorporates a Contemporary Architectural style, and the planning areas will be designed to be compatible with and complement one another. The EMUSP provides examples of the type of business park and mixed-use concepts that are envisioned to be constructed within the Specific Plan.

The EMUSP requires all buildings to be designed to highlight the primary entryways by incorporating special materials, visual relief, massing and shading. Additionally, the facades that front onto a public street must incorporate vertical and horizontal articulation and material changes that will assist in enhancing these elevations and providing visual interest from the public view.

Circulation Concept - The circulation plan reinforces the objective of moving vehicles, pedestrians, cyclists, and public transit safely and efficiently through and around the Project and establishes the hierarchy and general location of roadways in and around the project boundary.

Future traffic signals are planned at the following intersections.

- Schaefer & Sultana (future) Avenues
- Edison & Sultana (future) Avenues
- Schaefer Avenue – between Euclid and Sultana Avenues
- Edison Avenue – between Euclid and Sultana Avenues
- Euclid Avenue – between Schaefer and Edison Avenues

Primary access to developments within the EMUSP area will be provided along the perimeter streets of Schaefer, Sultana (future), Edison and Euclid Avenues. Final right-of-way section improvements along these streets are provided in the EMUSP and are consistent with the City's Master Plan of Streets. Euclid Avenue right-of-way will be 200 feet wide, while Edison Avenue will be 160 feet wide. Euclid and Edison Avenues will have 4 lanes in each direction, with raised medians that are 66 FT-wide and 26 FT-wide, respectively. Schaefer Avenue is planned to be 108 feet wide with 2 lanes in each direction, and no raised median. Sultana Avenue is categorized as a local industrial street with 66 feet wide right-of-way.

Each street will include a parkway, sidewalk and landscape buffer. Euclid, Edison and Schaefer

Avenues will also be designed with a multi-purpose trail within the neighborhood edge, however the trail on Edison Avenue is planned on the south side of the street and will be addressed in a different specific plan.

Landscaping - The landscape design theme for EMUSP encourages durable landscape materials and designs that enhance the aesthetics of the structures, create and define public and private spaces, and provide shade and environmental benefits. Table 5.1 in the EMUSP establishes a base palette and includes a variety of groundcovers, shrubs, ornamental grasses, and evergreen and deciduous trees. The selection complements the design theme of the EMUSP area and features water-efficient, drought-tolerant species native to the region. Similar plant materials may be substituted for the species listed in Table 5.1 – Plant Palette if the alternative plans are climate appropriate and enhance the thematic setting.

The minimum landscape coverage required for both Business Park and Mixed-use land use districts is 10 percent. As illustrated in Section 5.13 – Streetscapes of the Specific Plan, Euclid Avenue will be required to provide a 50-foot-wide neighborhood edge (15-foot-wide parkway plus an additional 35-foot-wide landscape buffer). Edison and Schaefer Avenues will be required to provide a 23-foot-wide landscape buffer. Sultana will be designed with a nine-foot-wide parkway that includes a five-foot-wide sidewalk and a four-foot-wide landscape area adjacent to the curb.

Infrastructure and Services – The backbone infrastructure to serve all areas of the EMUSP will be installed by the developers in accordance with the Ontario Ranch Master Plans for streets, water (including recycled water), sewer, storm drain, and fiber optic facilities. Natural gas will be provided by Southern California Gas Company and electricity by Southern California Edison ("SCE"). Development of the Project requires that the developer install all infrastructure necessary to serve the Project as a standalone development, with phasing and ultimate details to be reviewed and approved via the Development Agreement (File No. PDA23-004).

Specific Plan Phasing – Development phasing within the EMUSP will be determined by the developer, based upon the real estate market conditions, infrastructure extensions, and associated Development Agreements. The EMUSP provides a Conceptual Phasing Plan and anticipated development to occur in at least two phases (see Exhibit E: Conceptual Phasing Plan). The Applicant is an interest holder of the Phase 1 area, and therefore is pursuing the associated proposed Tentative Parcel Map (File No. PMTT23-005) and Development Plan (File No. PDEV23-011) applications that the Planning Commission considered at a public hearing on July 23, 2024, and voted (6-0) to approve. The properties within the Phase 2 area are under different ownerships and no development is currently proposed for these properties.

Signage – The Euclid Mixed Use Specific Plan requires that signage within the Specific Plan area adhere to Section 5.2.2.5 (Signage) of the Euclid Mixed Use Specific Plan and comply with Chapter 8 (Sign Regulations) of the Development Code.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed Project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050.

The California Government Code (Title 7, Division 1, Chapter 3, Article 8, Section 65450-65457) permits the adoption and administration of specific plans as an implementation tool for elements contained in the local General Plan. Specific plans must demonstrate consistency in regulations, guidelines, and programs, with the goals and policies set forth in the General Plan. The EMUSP has been prepared in conformance with the goals and policies of the Policy Plan (General Plan) component of The Ontario Plan 2050. The policy analysis in Chapter 7 of the Specific Plan describes the manner in which the EMUSP complies with the Policy Plan goals and policies.

HOUSING ELEMENT COMPLIANCE: The Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan 2050. The Project site is one of the properties listed in the Housing Element Sites Inventory contained in Tables B-1 and B-2 of the Housing Element Technical Report, and the proposed Project is consistent with the number of dwelling units (466) and density (35 du/ac) specified in the Housing Element Sites Inventory.

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

On April 19, 2011, the City Council of the City of Ontario approved and adopted the ONT ALUCP, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending body for File No. PSP22-001 and the decision-making body for File Nos. PMTT23-005 and PDEV23-011, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP.

On August 2, 2022, the City Council of the City of Ontario approved and adopted a Development Code Amendment to establish the Chino Airport ("CNO") Overlay Zoning District ("OZD") and Reference I, Chino Airport Land Use Compatibility Plan ("CNO ALUCP"). The CNO OZD and CNO ALUCP established the Airport Influence Area for Chino Airport, solely within the City of Ontario, and limits future land uses and development within the Airport Influence Area, as they relate to safety, airspace protection, and overflight impacts of current and future airport activity. The CNO ALUCP is consistent with policies and criteria set forth within the Caltrans 2011 California Airport Land Use Planning Handbook. The proposed Project is located within the Airport Influence Area of Chino Airport and was evaluated and found to be consistent with the California Airport Land Use Planning Handbook and the CNO ALUCP. As the decision-making body for File No. PSP22-001 and the decision-making body for File Nos. PMTT23-005 and PDEV23-011, the City Council has reviewed

and considered the facts and information contained in the Application and supporting documentation against the CNO ALUCP compatibility factors, including Safety, Airspace Protection and Overflight. As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the California Airport Land Use Planning Handbook and the Chino ALUCP.

ENVIRONMENTAL REVIEW: The Specific Plan is located in what was formerly the City of Ontario Sphere of Influence ("SOI") area, which consists of roughly 8,200 acres at the south end of the City. On January 7,1998, the City of Ontario adopted the New Model Colony ("NMC") General Plan Amendment, setting forth a comprehensive strategy for the future development of the SOI. The NMC is bounded by Riverside Drive to the north, Hamner Avenue to the east, Euclid Avenue to the west, and Merrill Avenue/Bellegrave to the south.

Since the adoption of the NMC General Plan Amendment, the City has updated the General Plan on different occasions. On January 27, 2010, the City adopted The Ontario Plan and certified the accompanying Environmental Impact Report (SCH# 2008101140). On August 16, 2022, the City adopted The Ontario Plan 2050 (TOP 2050), which was an update to The Ontario Plan adopted in 2010 and included the certification of an accompanying Supplemental Environmental Impact Report (SCH# 2021070364). The Policy Plan component of TOP 2050 serves as the General Plan for the entire City, including the NMC (now referred to as "Ontario Ranch"). TOP 2050 identified many areas that might have potentially significant impacts on the environment. These areas included 1) Aesthetics; 2) Biological Resources; 3) Geology and Soils; 4) Hazards and Hazardous Materials; 5) Hydrology and Water Quality; 6) Land Use and Planning; 7) Mineral Resources; 8) Population and Housing; 9) Public Services; 10) Recreation; and 11) Utilities and Service systems. Through the EIR process, these potential impacts were analyzed, revisions were incorporated into the plan, and/or mitigation measures were identified that reduced the potential environmental impacts to a level that was less than significant.

TOP 2050 also identified several potential impacts that, even with revisions and/or mitigation measures, could not be reduced to a level of less than significant. These areas included Air Quality, Cultural Resources, Noise, and Transportation. While these impacts will be significant and unavoidable, the City determined that the benefits of the Ontario Ranch development outweigh the potential unavoidable, adverse impacts of the plan. As a result, the City adopted a Statement of Overriding Considerations for those impacts that could not be fully mitigated to a level of less than significant.

The TOP 2050 EIR analyses focused on the program, or "big picture" impacts associated with development. With the submittal of the EMUSP, staff is charged with evaluating the potential impacts of development at the project level, looking specifically at the project proposal and any potential environmental impacts associated with it. Staff completed an Initial Study for the Project and determined that an EIR should be prepared for the EMUSP. Through the Initial Study preparation and scoping meeting discussion, an EIR was prepared for the EMUSP addressing the following issues:

- Aesthetics
- Agricultural and Forestry Resource

- Air Quality Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Noise
- Population and Housing
- Public Services
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems

The EMUSP EIR evaluates each of these various areas and identifies mitigation measures and/or revisions to the plan to lessen the level of significance. The EIR analyzed EMUSP Phase 1 based on the proposed EMUSP land uses, development intensities, conceptual designs, infrastructure requirements, and onsite surveys and studies. However, access to properties within Phase 2 could not be obtained and, therefore, the level of impact cannot be known for categories such as Biological Resources, Geology and Soils, and Hazards and Hazardous Materials since onsite surveys could not be conducted. It is conceivable that, when development of Phase 2 is proposed and onsite access is obtained, the potentially significant impacts on Biological Resources, Geology and Soils, and Hazards and Hazardous Materials in Phase 2 can be mitigated to less than significant. Nevertheless, since level of impact cannot be known for Phase 2 areas at this time, the EMUSP EIR conservatively concludes that there are significant and unavoidable impacts.

With the implementation of the various mitigation measures, many of the potential adverse impacts can be reduced to a level of less than significant. Of the 17 areas considered by the EIR, all but seven areas were less than significant or mitigated to a level of less than significant. The seven remaining impact areas, even with the mitigation measures, could not be reduced to less than significant, resulting in some impacts remaining potentially significant and unavoidable. These areas are:

- Agricultural and Forestry Resources
- Air Quality
- Biological Resources (Phase 2 only)
- Cultural Resources
- Geology and Soils (Phase 2 only)
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials (Phase 2 only)

While mitigation of all potential impacts to a level of less than significant is desirable, the fact that seven areas will remain significant and unavoidable is not unexpected. The identification of these areas as significant and unavoidable also validates the work previously completed for TOP 2050. Staff continues to believe that the benefits of the proposed development outweigh the potential

impacts associated with it. Therefore, staff recommends the Planning Commission recommend certification of the EIR to the City Council and that a Statement of Overriding Considerations be adopted for the Project.

PLANNING COMMISSION REVIEW: On July 23, 2024, the Planning Commission conducted a public hearing and voted (6-0) to recommend City Council approval of the project Environmental Impact Report including a Statement of Overriding Consideration and a Mitigation Monitoring and Reporting Program, and the Specific Plan, File No. PSP22-001.

ORDINANCE NO._____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSP22-001, A SPECIFIC PLAN (EUCLID MIXED USE SPECIFIC PLAN) TO ESTABLISH THE LAND USE DISTRICTS, DEVELOPMENT STANDARDS, GUIDELINES, AND INFRASTRUCTURE IMPROVEMENTS FOR THE POTENTIAL DEVELOPMENT OF UP TO 1,386,776 SQUARE FEET OF BUSINESS PARK LAND USES, 290,110 SQUARE FEET OF OFFICE AND RETAIL LAND USES, AND 466 DWELLING UNITS ON THE 84-ACRE PROJECT SITE, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 1053-071-01; 1053-071-02; 1053-071-03; 1053-071-04; 1053-211-01; 1053-211-02; 1053-211-05; 1053-281-01; 1053-281-02; 1053-281-03; 1053-281-04; 1053-281-07; 1053-281-08; 1053-081-01; 1053-081-02; 1053-081-03; 1053-081-04.

WHEREAS, EUCLID LAND INVESTMENT LLC ("Applicant") has filed an Application for the approval of the Euclid Mixed Use Specific Plan, File No. PSP22-001, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 84 acres of land bordered by Schaefer Avenue to the north, future Sultana Avenue to the east, Edison Avenue to the south, and Euclid Avenue to the west, within the SP(AG) (Specific Plan (Agricultural Overlay)) zoning district, and is presently improved with agricultural, dairy, recreational vehicle storage, residential and vacant land uses; and

WHEREAS, the properties to the north of the Project site are within the SP (Specific Plan) zoning district and are developed with agricultural uses. The properties to the south are within the SP zoning district and include vacant land, a dairy farm, recreational vehicle storage and residential uses. The properties to the east are within the SP zoning district and are vacant. The properties to the west are located within the City of Chino and improved with commercial, residential and trailer storage uses; and

WHEREAS, the Euclid Mixed Use Specific Plan, attached hereto as "Attachment A," establishes a comprehensive set of design guidelines and development regulations to guide and regulate site planning, landscape, and architectural character, and ensuring that excellence in community design is achieved during project development. In addition, the Specific Plan will establish the procedures and requirements to approve new development within the project site to ensure The Ontario Plan 2050 (“TOP 2050”) goals and policies are achieved; and

WHEREAS, the Euclid Mixed Use Specific Plan consists of approximately 84 acres of land, which includes potential development of up to 1,676,886 square feet of business park, office and retails uses, and 466 dwelling units; and

WHEREAS, the land use intensity of the Euclid Mixed Use Specific Plan anticipated in the five planning areas is consistent with TOP 2050. The Specific Plan is proposing a maximum 0.6 floor area ratio (“FAR”) within the Business Park land use designation (Planning Areas 1, 2A and 2B) located along the northern area of the Specific Plan area. Planning Areas 1, 2A and 2B are 53.06 acres in size and can be potentially developed with 1,386,776 square feet of business park development. The Specific Plan is proposing a maximum 1.5 FAR for office, 1.0 FAR for retail, and 35 du/ac within the Mixed Use land use designation along the southern portion of the Specific Plan. Planning Area 3 is 19.03 acres in size and can potentially be developed with 124,146 square feet of office and 165,964 square feet of retail development and maximum 466 dwelling units. Planning Areas 4 and 5 are designated Open Space-Nonrecreational land use and no development square footage is planned for these areas; and

WHEREAS, the Euclid Mixed Use Specific Plan has been prepared in conformance with the goals and policies of the City of Ontario Policy Plan (General Plan). The policy (General Plan) analysis in “Chapter 7. Consistency with The Ontario Plan” of the Specific Plan describes the manner in which the Euclid Mixed Use Specific Plan complies with the Policy Plan goals and policies applicable to the Euclid Mixed Use Specific Plan; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, an Environmental Impact Report (“EIR”) (State Clearinghouse No. 2023020281), including the adoption of a Mitigation and Monitoring and Reporting Program (“MMRP”) and a Statement of Overriding Considerations, have been prepared in accord with CEQA and the State CEQA Guidelines, and the City of Ontario Guidelines to address the environmental effects of the Specific Plan (Euclid Mixed Use Specific Plan); and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan 2050, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport ("ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (ALUCP), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, the proposed Project is located within the Airport Influence Area of Chino Airport, within the City of Ontario boundary, and is subject to, and must be consistent with, the policies criteria set forth in Reference I, Chino Airport Land Use Compatibility Plan (CNO ALUCP), which applies only to jurisdictions within City of Ontario, and addresses the safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on July 23, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the EIR, MMRP, Statement of Overriding Considerations, and the Project, and concluded said hearing on that date, voting to issue Resolution No. PC24-031 & PC24-032, recommending the City Council approve the Application; and

WHEREAS, on August 20, 2024, the City Council of the City of Ontario conducted a hearing to consider the EIR, MMRP, Statement of Overriding Considerations, and the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the EIR, MMRP, and Statement of Overriding Considerations prepared for the Project and supporting documentation. Based upon the facts and information contained in the EIR (State Clearinghouse No. 2023020281) and the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The Euclid Mixed Use Specific Plan EIR, MMRP, and Statement of Overriding Considerations contain a complete and accurate reporting of the environmental impacts associated with the Project; and

(2) The Euclid Mixed Use Specific Plan EIR, MMRP, and Statement of Overriding Considerations have been completed in compliance with CEQA, the State CEQA Guidelines and the City of Ontario Local CEQA Guidelines; and

(3) The Euclid Mixed Use Specific Plan EIR, MMRP, and Statement of Overriding Considerations reflects the independent judgment of the City Council.

SECTION 2: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making body for the Project, the City Council finds that based upon the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan 2050. The Project site is one of the properties listed in the Housing Element Sites Inventory contained in Tables B-1 and B-2 of the Housing Element Technical Report, and the proposed Project is consistent with the number of dwelling units (466) and density (35 du/ac) specified in the Housing Element Sites Inventory.

SECTION 3: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

(1) On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP; and

(2) On August 2, 2022, the City Council of the City of Ontario approved and adopted a Development Code Amendment to establish the Chino Airport (“CNO”) Overlay Zoning District (“OZD”) and Reference I, Chino Airport Land Use Compatibility Plan (“CNO ALUCP”). The CNO OZD and CNO ALUCP established the Airport Influence Area for Chino Airport, solely within the City of Ontario, and limits future land uses and development within the Airport Influence Area, as they relate to safety, airspace protection, and overflight impacts of current and future airport activity. The CNO ALUCP is consistent with policies and criteria set forth within the Caltrans 2011 California Airport Land Use Planning Handbook. The

proposed Project is located within the Airport Influence Area of Chino Airport and was evaluated and found to be consistent with the California Airport Land Use Planning Handbook and the CNO ALUCP. As the decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the CNO ALUCP compatibility factors, including Safety, Airspace Protection, Overflight. As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the California Airport Land Use Planning Handbook and the Chino ALUCP.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3 above, the City Council hereby concludes as follows:

(1) ***The proposed Specific Plan, or amendment thereto, is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050.*** The approximately 84-acre Euclid Mixed Use Specific Plan is suitable for business park and mixed use development and is consistent with the goals and policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of TOP 2050. "Chapter 7. Consistency with The Ontario Plan" of the Euclid Mixed Use Specific Plan describes the manner in which the Specific Plan complies with the Policy Plan goals and policies; and

(2) ***The proposed Specific Plan, or amendment thereto, would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.*** The proposed Euclid Mixed Use Specific Plan is in conformance with the Land Use Policies and Goals of the Policy Plan and will provide standards and guidelines for the harmonious development within the districts, in a manner consistent with the Policy Plan. The Specific Plan is proposing business park and mixed use (office, retail and residential) type development for the approximately 84-acre site, which is what is mandated by the land use plan of the Policy Plan; therefore, the proposed business park and mixed use land uses will not be detrimental to the public interest, health, safety, convenience, or general welfare of the City because it will provide land uses that are consistent with the existing and future development of the surrounding area; and

(3) ***In the case of an application affecting specific property(ies), the proposed Specific Plan, or amendment thereto, will not adversely affect the harmonious relationship with adjacent properties and land uses.*** The proposed Specific Plan will modify the land use from agricultural, dairy farm, recreational vehicle storage, residential and vacant land uses to Business Park and Mixed Use, which aligns with surrounding land uses

planned in TOP 2050 and allows for similar development intensities under the Business Park and Mixed Use designation; and

(4) ***In the case of an application affecting specific property(ies), the subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development.*** The proposed Specific Plan will allow for business park and mixed use on the subject site. When in conformance with the Specific Plan, the project site is suitable in size and shape, allows for sufficient access and availability of utilities to accommodate the anticipated development.

SECTION 4: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 3, above, the City Council hereby APPROVES the herein described Euclid Mixed Use Specific Plan, attached hereto as "Attachment A," and incorporated herein by this reference, and subject to the Conditions of Approval.

SECTION 5: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 6: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 7: ***Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 8: ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 9: ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 3rd day of September, 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held August 20, 2024 and adopted at the regular meeting held September 3, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held September 3, 2024 and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

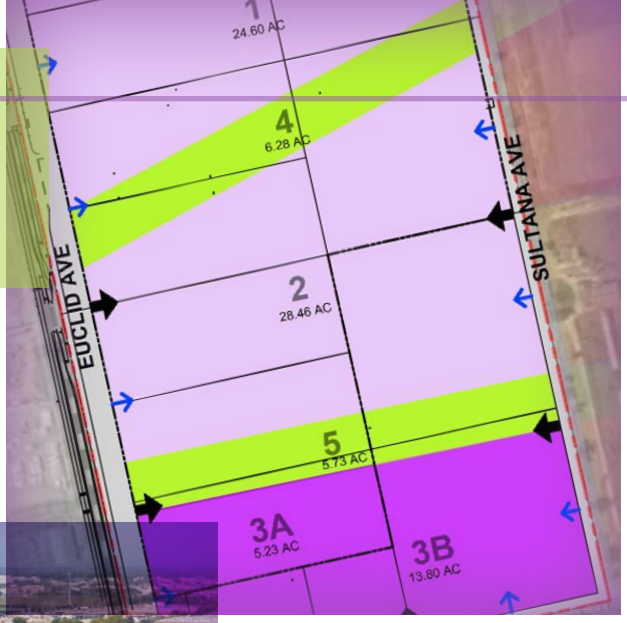
_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PSP22-001;
Euclid Mixed Use Specific Plan

(Document follows this page)







EUCLID MIXED USE SPECIFIC PLAN





ONTARIO, CA

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1. INTRODUCTION

Euclid Avenue can be described as the backbone of the City of Ontario (***See Figure 1.1***). Extending from the San Gabriel foothills to the north, Euclid Avenue was originally designed by George and William Chaffey in 1882 to be a grand boulevard constructed as part of the "Model Irrigation Colony" and was intended to connect to the southern edge of the colony at the Southern Pacific Railroad. Euclid Avenue initially provided street lights, water services and long distance telephone lines and was envisioned to include an electric railway to serve the growing community.

Today, Ontario has grown to become the identifiable center of the inland valley, with commerce and community expanding around the City's strategic location along regional transportation routes, growing international airport, commerce and cultural amenities. Ontario is situated in the path of expanding urbanization and housing demand in the surrounding region. The project site, the Euclid Mixed-Use Property, is comprised of approximately 84 acres located along the east side of Euclid Avenue in the City of Ontario, California and establishes the west gateway to the Ontario Ranch.

Within Ontario Ranch, the City of Ontario promotes innovative land development principles to continue the legacy of the Model Colony. The City's general plan, The Ontario Plan, envisions the Ontario Ranch area will include housing, commercial and Business Park areas, parks, recreational uses, trails and bike links. Specific plans are required to guide development in Ontario Ranch to ensure the City objectives are achieved.

On January 26, 2010, the City of Ontario adopted The Ontario Plan, which serves as its new business plan and includes a long term vision and principle-based policy plan, essentially functioning as the General Plan for the city, including Ontario Ranch. The Ontario Plan 2050 was adopted in August 2022 as an update to the original 2010 document. The Euclid Mixed-Use Specific Plan is consistent with The Ontario Plan 2050.

The Euclid Mixed-Use Specific Plan (this "Specific Plan") is a major "next step," creating a specific plan to implement the vision outlined by the City of Ontario for the western portion of the Ontario Ranch area, formerly New Model Colony (***See Figure 1.2***). The Ontario Ranch area covers 8,200 acres of the historic San Bernardino Agricultural Preserve, which was predominantly used for dairy or cattle farming. In 1999, the City of Ontario named its portion of the Agricultural Preserve to be the New Model Colony after the original Model Irrigation Colony.

The City's TOP overall vision for the Ontario Ranch is to create a self-sustaining place of diversity, extending into Ontario's existing fabric of development. The City's TOP also envisions each neighborhood and commercial center within the Ontario Ranch as a place uniquely identifiable for its residents, employees, and visitors, united through an area-wide network of greenways, trails, open spaces, amenities, and infrastructure.

The vision for Euclid Mixed-Use is to create a gateway to the City of Ontario and to the Ontario Ranch planned community incorporating a variety of opportunities for small businesses and employment within the Business Park District and a vibrant community with a mixture of uses all connected through a series of trails providing opportunities for people to live, work and play within the Mixed-Use District of the Specific Plan.

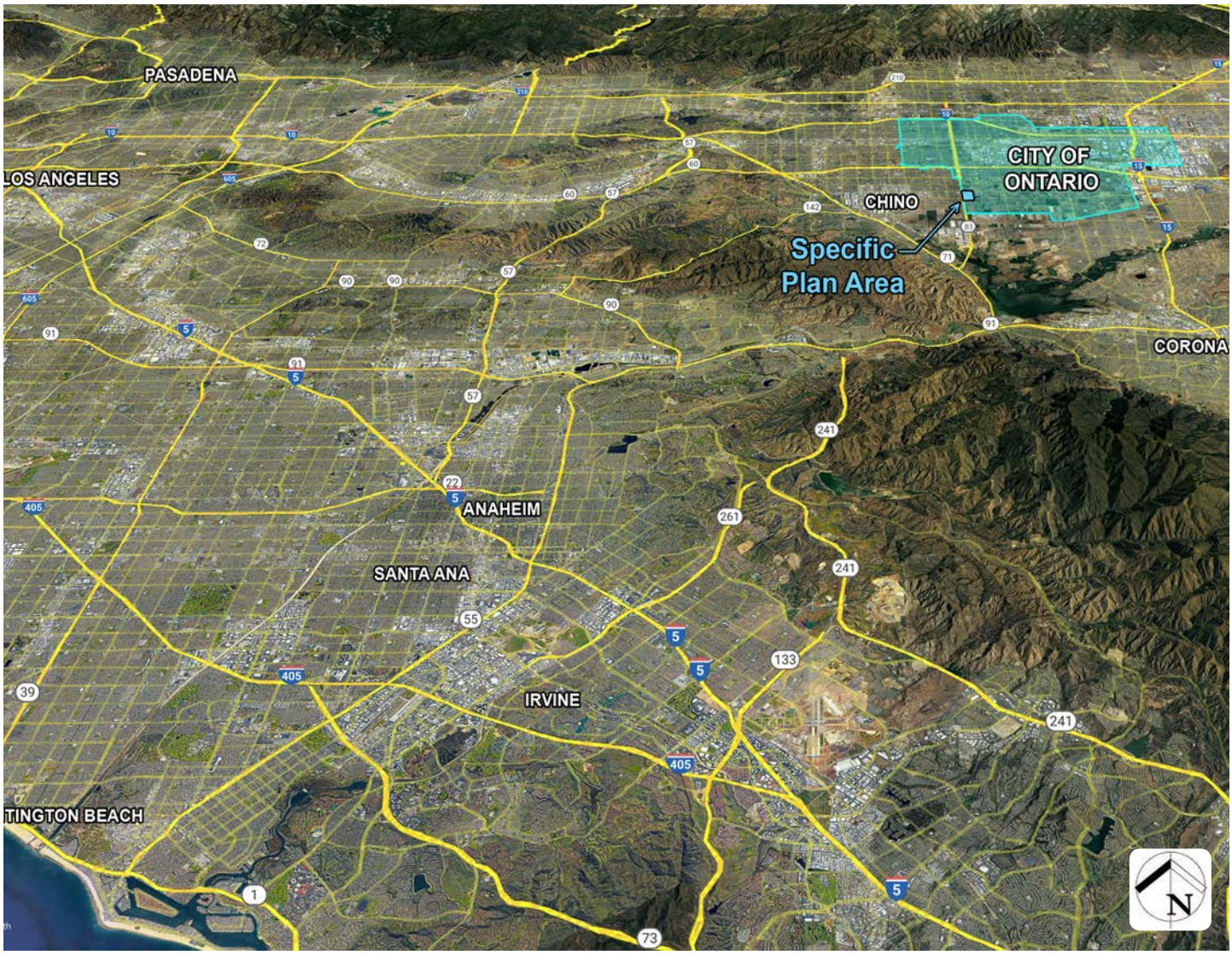


FIGURE 1.1 REGIONAL LOCATION

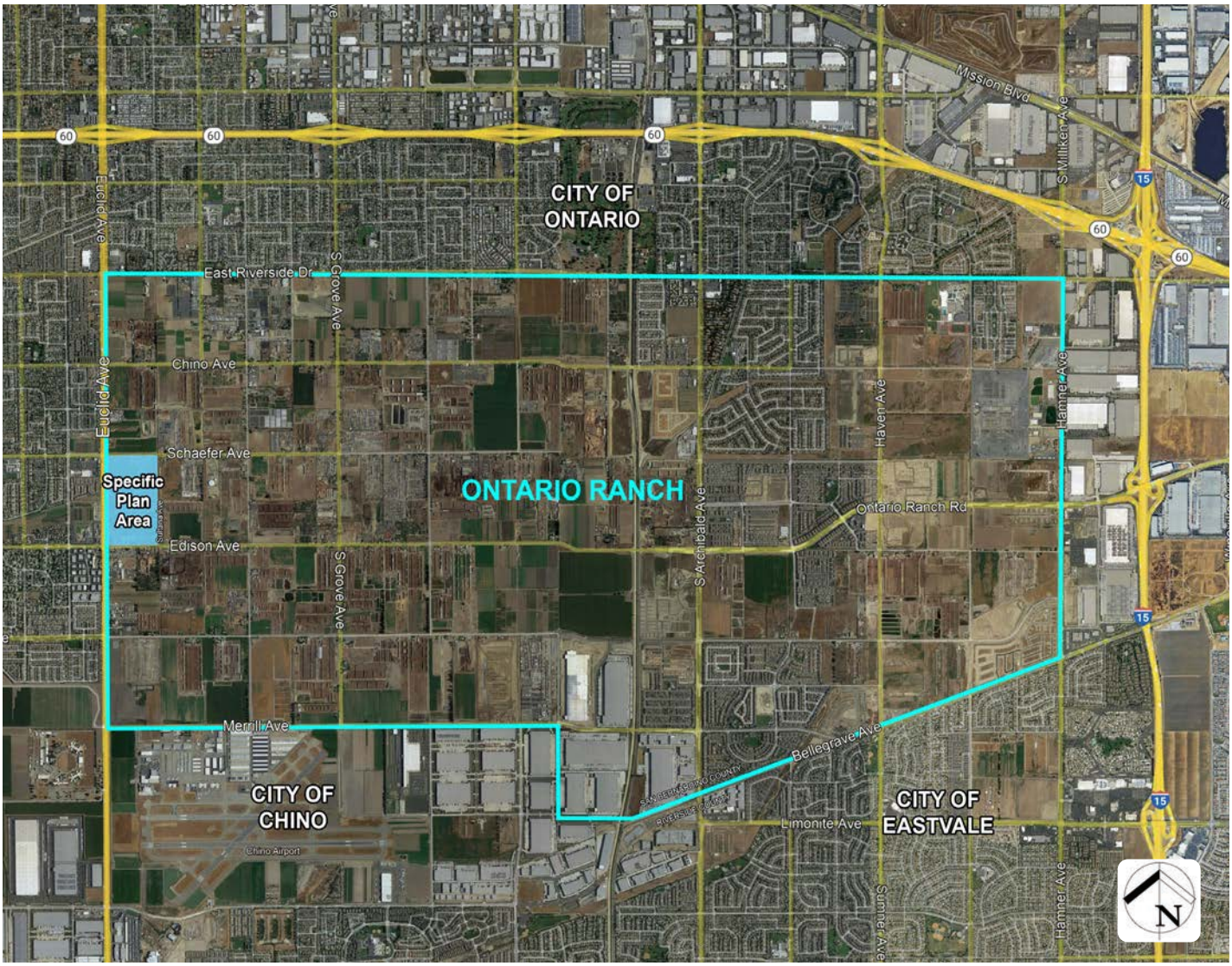


FIGURE 1.2 ONTARIO RANCH

In order to actualize this vision, a series of objectives are provided to augment policies identified within the City's TOP. These objectives and policies are as follows:

Create a place with a Unique Identity.

- Provide a variety of quality building designs that reinforces the rich agricultural history and the high quality of development within the City.
- Provide a walkable plan that ties the future residential, retail and employment areas to surrounding support uses and open space/recreational uses including the Great Park.
- Provide outdoor gathering spaces within attached residential neighborhoods, office parks and retail centers.
- Design convenient access to transit stops to encourage alternatives to vehicular commuting.

Develop a Public Realm that emphasizes Comfort, Safety and Human scale.

- Establish a walkable street pattern linking living and shopping areas with public spaces and the Great Park.
- Design and plan buildings and landscaping to create inviting outdoor living areas.
- Create building elevations with regular articulation and varied facade expressions.

Optimize connectivity within the Mixed Use areas within the overall Community Network.

- Design streets in a grid pattern with short, walkable blocks.
- Establish a street pattern as a logical extension of open space, public transit and neighborhood retail and employment.
- Encourage parking solutions such as alleys, parking courts and structured parking to minimize the visual impact of stored vehicles.

Design buildings that are appropriate and contextual.

- Create design standards for vertical and horizontal mixed use buildings to address market opportunities.
- Orient buildings toward public streets, neighborhood edges and open space areas to establish and urban neighborhood character.
- Concentrate building massing along major streets and corridors and adjacent to the Great Park and near convenient transit stops.

Create active frontages along streets and open spaces.

- Design retail buildings with storefront treatments that optimize indoor/outdoor spaces.
- Orient residential front doors, porches and patios to face walkable streets and away from major streets, non-residential uses and utility lines.
- Provide visual and physical access to connect to City planned trails and bikeways.

Manage infrastructure to accommodate optimal land uses.

- Coordinate the development of project infrastructure to foster future pedestrian opportunities.
- Encourage the timely development of shared infrastructure within the Mixed Use District.
- Facilitate development plans that provide shared parking and multi-modal access/parking within the mixed use area.

1.1 Purpose and Intent of the Specific Plan

The Euclid Mixed-Use Specific Plan provides zoning regulations for the project area by establishing permitted land use, development standards, infrastructure requirements, design guidelines and implementation requirements for future development. Development regulations and design guidelines are included to guide all site planning, architectural character, and landscape treatment within the site area to ensure a standard of excellence in community design throughout project development. The Specific Plan establishes the procedures and requirements to approve new development within the project area.

The purpose of the Specific Plan is to:

- Provide a flexible planning framework that responds to changing physical and market driven aspects of future development opportunities;
- Specify a coordinated phasing of infrastructure, utilities, and public services for this area of the Ontario Ranch;
- Promote compatible uses and interfaces between adjacent properties;
- Ensure the appropriate location and intensity of uses within the site area; and
- Conform to State laws and local ordinances and policies in the preparation of the Specific Plan.

The intent of the Specific Plan is to:

- Create a professional, well maintained and attractive environment for the development of a vibrant Mixed-Use development along Edison Avenue and a multi-purpose business park complex.
- Provide the entitlement and framework for a total of approximately 290,000 sq. ft. of office retail development and a maximum of 466 residential units.
- Provide the entitlements and framework for the development of approximately 1.39 million sq. ft. of business park uses.
- Provide employment opportunities for the surrounding community.
- Facilitate the implementation of roads, utilities, and other infrastructure investments that will be sufficiently sized to serve the Specific Plan area.
- Expand Ontario's retail, office and business park uses in proximity to local airports and regional transportation networks.
- Create an economic driver for future growth in western portion of Ontario Ranch that acts as a catalyst for the development of infrastructure improvements in the area and implementation the City's long term planning vision.
- Provide opportunities for residents to live, work and shop within close proximity.
- Provide a logical extension of planned community trails and bike ways.

1.2 Specific Plan Project

This Specific Plan is the regulatory document for the Euclid Mixed-Use site area, accommodating up to 290,131 sq. ft. of commercial retail/office uses, a total of 466 residential units and 1,386,776 sq. ft. of business park uses on approximately 84.1 acres of land. The Specific Plan provides a land use plan identifying allowed uses and zoning, circulation, infrastructure, streetscape, and landscape plans; establishes allowable uses and development standards for reviewing individual projects; presents design guidelines to create a visually attractive environment; summarizes the development review process; and specifies provisions for administration and implementation of the Specific Plan and outlines its consistency with The Ontario Plan.

Location and Specific Plan Boundary

The Specific Plan area is located along the western boundary of the City of Ontario, on the NE corner of Euclid Avenue and Edison Avenue adjacent to the City of Chino (***see Figure 1.1***). The Specific Plan site area is located within Ontario Ranch (***see Figure 1.2***). The Specific Plan area is bounded by Schaefer Avenue on the north, Sultana Avenue on the east, Edison Avenue on the south, and Euclid Avenue on the west. The Specific Plan area is currently divided into 16 separate parcels. (***see Figure 1.3***).

Employment Generation

At build out, the Euclid Mixed-Use is anticipated to create numerous of jobs in retail, food service, small business light manufacturing/assembly, warehousing, logistics, office, and administration. Actual job creation depends on the type of land uses ultimately developed, as a wide range of business park and Mixed-Use development such as office and retail uses are permitted within the Euclid Mixed-Use Specific Plan. Employment opportunities will range from entry level to highly skilled labor and will expand the City of Ontario's employment opportunities in the region. Euclid Mixed-Use will also provide expanded opportunities for start up businesses.

Infrastructure Framework

The Specific Plan will help establish the necessary framework to enable the continued growth and development of Ontario Ranch in cooperation with adjacent property owners and developers. The Specific Plan identifies master planned water, sewer, and storm drain infrastructure required to serve the Specific Plan site area. The extent of infrastructure to be provided by Euclid Mixed-Use will be established as part of the development agreement.

Community Connectivity and Compatibility

The Specific Plan land use concept includes an internal buffer between potential sensitive Mixed-Use developments and provides an open space corridor extending from Euclid Avenue and planned residential uses located to the east of the site area. The land use concept and development regulations limit the size of buildings to 58,000 s.f. along the frontage of Euclid Avenue to ensure smaller scale buildings that are compatible with future retail and high density residential uses are developed along these sensitive edges.

1.3 Specific Plan Requirements

The range of issues contained in a specific plan is left to the discretion of the decision-making body. However, all specific plans must, at a minimum, address the following:

- The distribution, location, and extent of the uses of land, including open space, within the area covered by the plan.
- The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan.
- Standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources, where applicable.
- A program of implementation measures including regulations, programs, public works projects, and financing measures necessary to carry out the above identified items.

1.4 Authority and Scope

The Ontario Plan requires approval of a Specific Plan as the Zoning for all future development within Ontario Ranch, to ensure coordinated communities and neighborhoods and to implement the City's goals and policies. This Specific Plan provides zoning regulations to govern development of the project site and shall take precedence over the City of Ontario Development Code. However, in instances where the Specific Plan is silent, the Development Code shall prevail.

The California Government Code (Title 7, Division 1, Chapter 3, Article 8, Sections 65450 through 65457) grants the City the authority to adopt a specific plan by ordinance. The minimum requirements of a specific plan are established by California Government Code Sections 65450 through 65457 and City of Ontario Code Sections 9-1.2100 to 9-1.2125. This Specific Plan is a regulatory document, providing land use and design guidance adopted by ordinance. Development plans, site plans, and tentative tract/parcel maps must be consistent with this Specific Plan and The Ontario Plan. The topics covered in this Specific Plan include land use, infrastructure, development standards, design guidelines, and implementation requirements.

1.5 California Environmental Quality Act Compliance

The Specific Plan is a discretionary project and is subject to the requirements of the California Environmental Quality Act (CEQA). Pursuant to State and local CEQA guidelines, an Environmental Impact Report addressing the impacts associated with the development of the project must be certified by the City prior to approval of the Specific Plan.

1.6 Organization of this Specific Plan

The Specific Plan is organized by Sections as follows:

1. ***INTRODUCTION.***
   This section states the purpose and intent of the Specific Plan, introduces the proposed project, summarizes specific plan requirements, and explains the scope and authority of the Specific Plan and its compliance with CEQA.

2. ***EXISTING CONDITIONS.***
   This section explains the baseline conditions for the project site including current and surrounding land uses, airport influence areas, circulation, utilities, and environmental conditions.

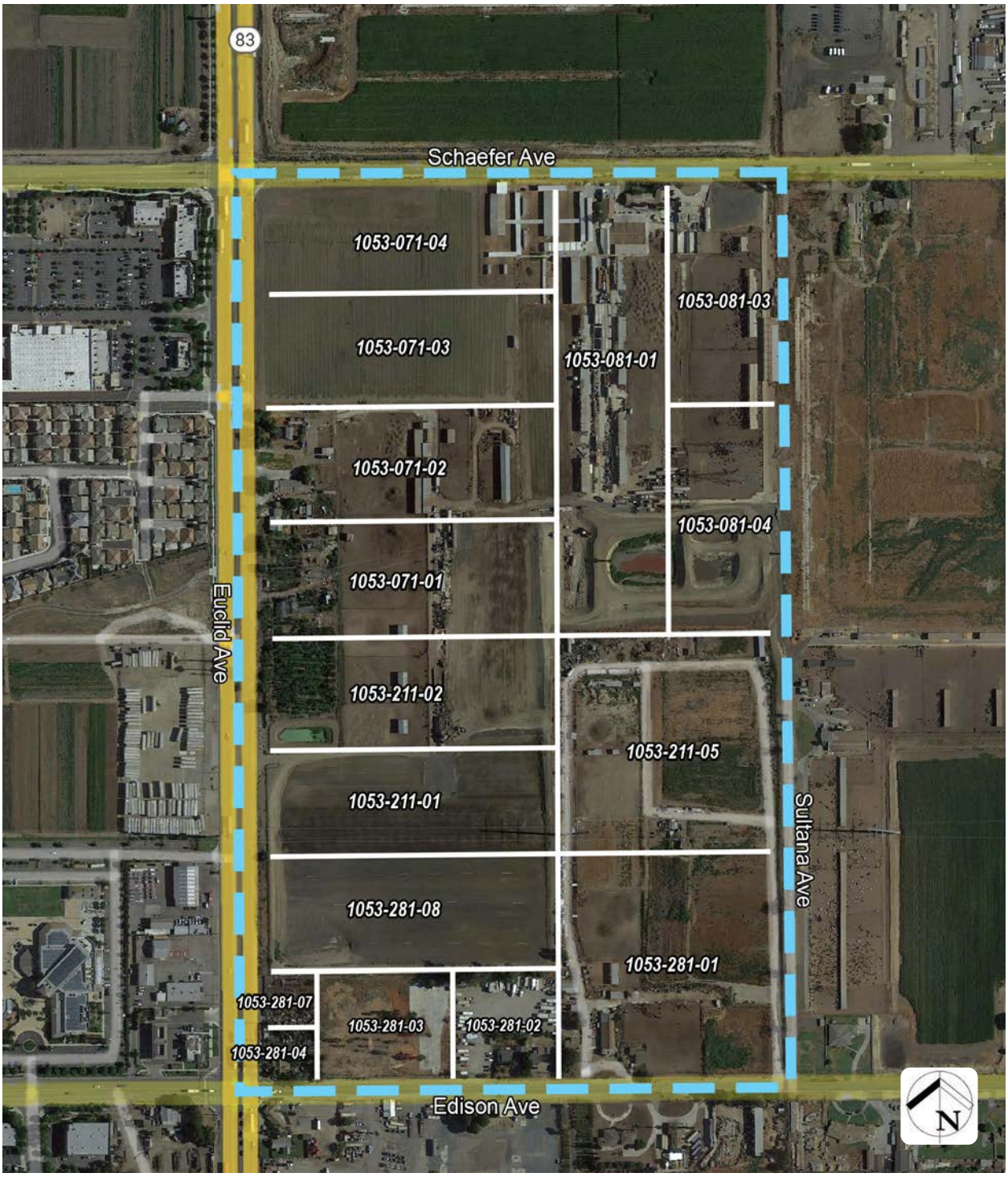
3. ***DEVELOPMENT PLAN.***
   This section establishes the overall development concept for the Specific Plan including the land use plan, infrastructure plans for water, sewer, utilities, and circulation, and the provision of public services such as fire, police, and solid waste disposal.

4. ***LAND USE AND DEVELOPMENT STANDARDS.***
   This section establishes the land use designations and regulations for the Specific Plan. Upon adoption of this Specific Plan, the land use and development standards within this chapter serve as the legal zoning for the Specific Plan area.

5. ***DESIGN GUIDELINES.***
   This section identifies the conceptual themes for site planning, architecture, and landscape design in the Specific Plan area.

6. ***SPECIFIC PLAN IMPLEMENTATION.***
   This chapter provides requirements for the development review and administration of the Specific Plan including amendment procedures and implementation priorities.

7. ***CONSISTENCY WITH THE ONTARIO PLAN.***
   This chapter describes the Specific Plan's conformance with The Ontario Plan.



SPECIFIC PLAN BOUNDARY

000-00-00 EXISTING ASSESSOR PARCEL NUMBER (APN)

FIGURE 1.3 SPECIFIC PLAN BOUNDARY

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2. EXISTING CONDITIONS

The following section documents the existing conditions including current development, airport influence areas, Williamson Act contracts, land use and zoning, existing circulation, and environmental conditions.

2.1 Existing Land Uses and Improvements

The Euclid Mixed Use Specific Plan and surrounding areas area are transitioning from agricultural use such as private dairy farms in response to regional market influences attracting urban development. Existing rural roadways and infrastructure is planned to be replaced with ultimate improvements to accommodate future development plans consistent with The Ontario Plan.

2.1.1 On-Site Uses

The project site is generally used for agricultural purposes, including the raising of livestock, dairy farming activities and a commercial nursery. The majority of the site exists as fallow or cultivated fields. There is a private recreational vehicle facility in the south western portion of the site and a scrap yard at the southwestern intersection (Euclid Avenue and Edison Avenue).

Numerous single family residential structure, as well as agricultural related buildings and open structures are located within the Specific Plan area. The buildings on-site are representative of older rural residential and farming buildings with the southern portion of the City of Ontario and characterize the original colonization of the region prior to the incorporation of the City of Ontario.

One or more of the ancillary farming buildings reflect an Art Deco architectural style reflective of early agricultural structures in the area and may represent an important City historical resource. The documentation and recordation of any significant historic resources will be addressed per the project Environmental Impact Report (EIR).

Two Southern California Edison (SCE) easements extend across the Euclid Mixed Use Specific Plan area. No structures are located within the SCE easements, however, they have been used for various agricultural uses historically. See the following examples:








2.1.2 Surrounding Uses

Existing uses in the vicinity of the Specific Plan area include similar uses to the uses within the project site. The area to the west, across Euclid Avenue, is within the City of Chino and has been developed with varied commercial and light industrial uses including a service station/convenience store at the northwestern corner of Euclid and Edison Avenue, low intensity commercial office, business park and truck trailer storage uses. Moving northerly, the adjacent development pattern in Chino transitions to a medium density single family neighborhood and a conventional neighborhood shopping center.

The remaining adjacent uses are within the City of Ontario. Ongoing crop farming is located to the north of the site and a vacant property that was a former dairy farm is located to the east of the site. The property to the south is currently residential, farming or trucking related uses. See photos below:





2.2 Existing and Surrounding Development

The Specific Plan area is occupied by rural uses, including a dairy farm and vacant land. Dairy farming and agriculture have been the primary uses of the property since before the 1930s.

Figure 2.1 shows the Specific Plan in context with the surrounding existing uses in the vicinity, which include:

- **North across Schaefer Avenue** - Existing dairy farm.
- **South across Edison Avenue** - Existing Trucking Facility.
- **East across Sultana** - Vacant and Existing Trucking Facility.
- **West across Euclid Avenue (City of Chino)** - Existing Commercial and Residential uses, Truck/trailer storage.

The Ontario Plan 2050 designates the surrounding areas in for Commercial, Residential and Mixed-Use development.

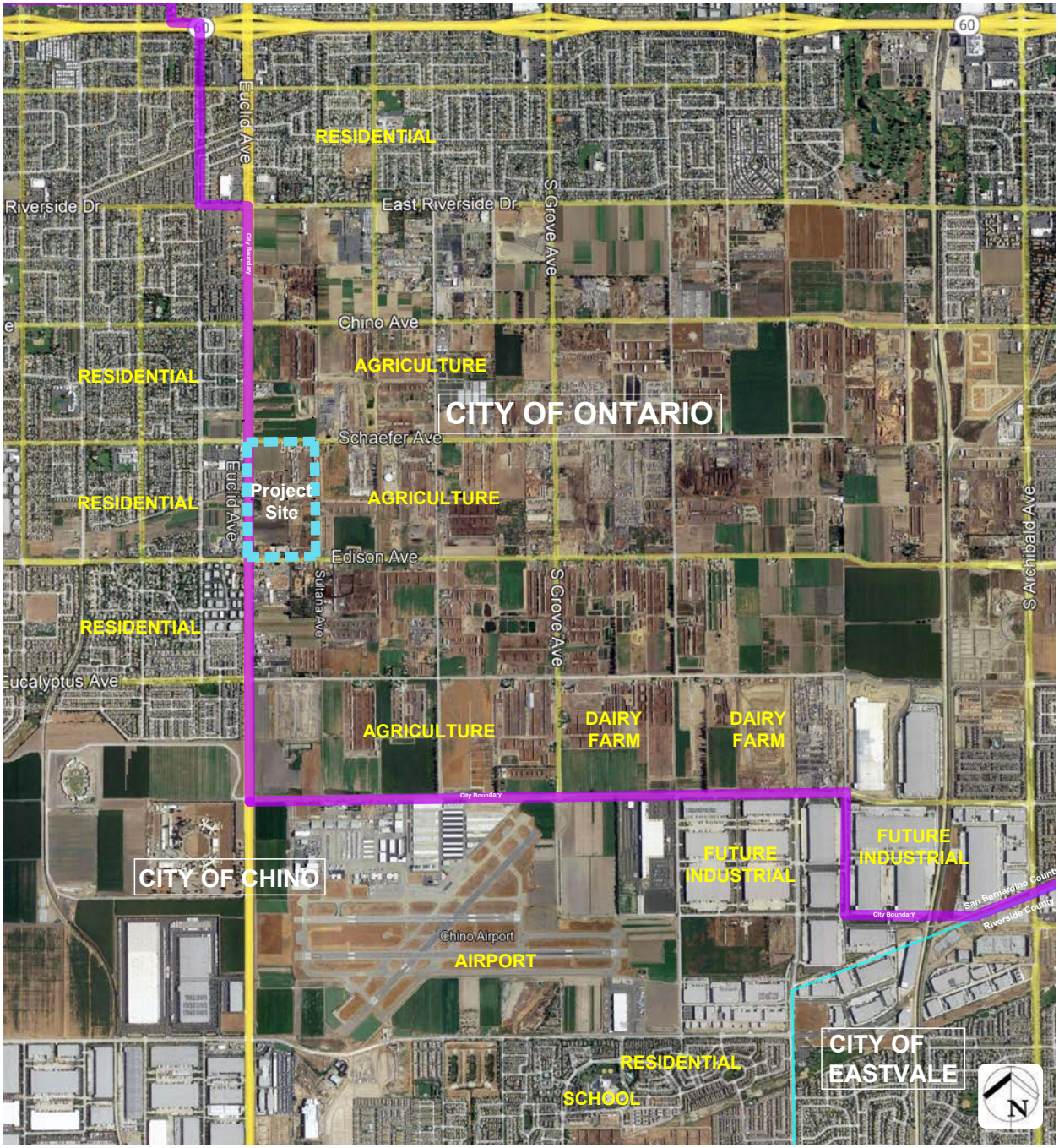


FIGURE 2.1 SURROUNDING LAND USES

2.3 Airport Influence Areas

Ontario International Airport

The Ontario International Airport Land Use Compatibility Plan (ONT ALUCP) was adopted by the Ontario City Council on April 19, 2011. The purpose of a compatibility plan is to avoid conflicts between airport operations and surrounding land uses. The Specific Plan area is not within the safety, noise impact, or airspace protection zones of the ONT ALUCP; however, it is within the Airport Influence Area, as is the entire City of Ontario.

Chino Airport

On August 2, 2022, the City Council of the City of Ontario approved and adopted a Development Code Amendment to establish the Chino Airport ("CNO") Overlay Zoning District ("OZD") and Reference I, Chino Airport Land Use Compatibility Plan ("CNO ALUCP"). The CNO OZD and CNO ALUCP established the Airport Influence Area for Chino Airport, solely within the City of Ontario, and limits future land uses and development within the Airport Influence Area, as they relate to safety, airspace protection, and overflight impacts of current and future airport activity. The CNO ALUCP is consistent with policies and criteria set forth within the Caltrans 2011 California Airport Land Use Planning Handbook. The specific plan is located within the Airport Influence Area of Chino Airport, Overflight Notification Zone and Airspace Protection Zone.

2.4 Williamson Act Contracts

The California Land Conservation Act of 1965, commonly known as the Williamson Act, enables local governments to enter into contracts with private landowners for the purpose of restricting specific parcels of land to agricultural or related open space use. In return, landowners receive property tax assessments that are much lower than normal based upon farming and open space uses as opposed to full market value. The motivation for the Williamson Act is to promote voluntary land conservation, particularly farmland conservation. There are no active Williamson Act contracts located within the Specific Plan area.

PROJECT SITE OVERVIEWS



North West View



North East View



South East View



South West View

SURROUNDING INTERSECTIONS



Schaefer Avenue and Euclid Avenue



Euclid Avenue and Edison Avenue



Edison Avenue and Sultana Avenue



Sultana Avenue and Schaefer Avenue

2.5 Ontario Plan 2050 and Zoning Designations

The Ontario Plan 2050 land use designations and current zoning map designations for the Specific Plan area (prior to adoption of the Euclid Mixed-Use Specific Plan) are shown in ***Figure 2.2***.

The Ontario Plan 2050 land use designations are:

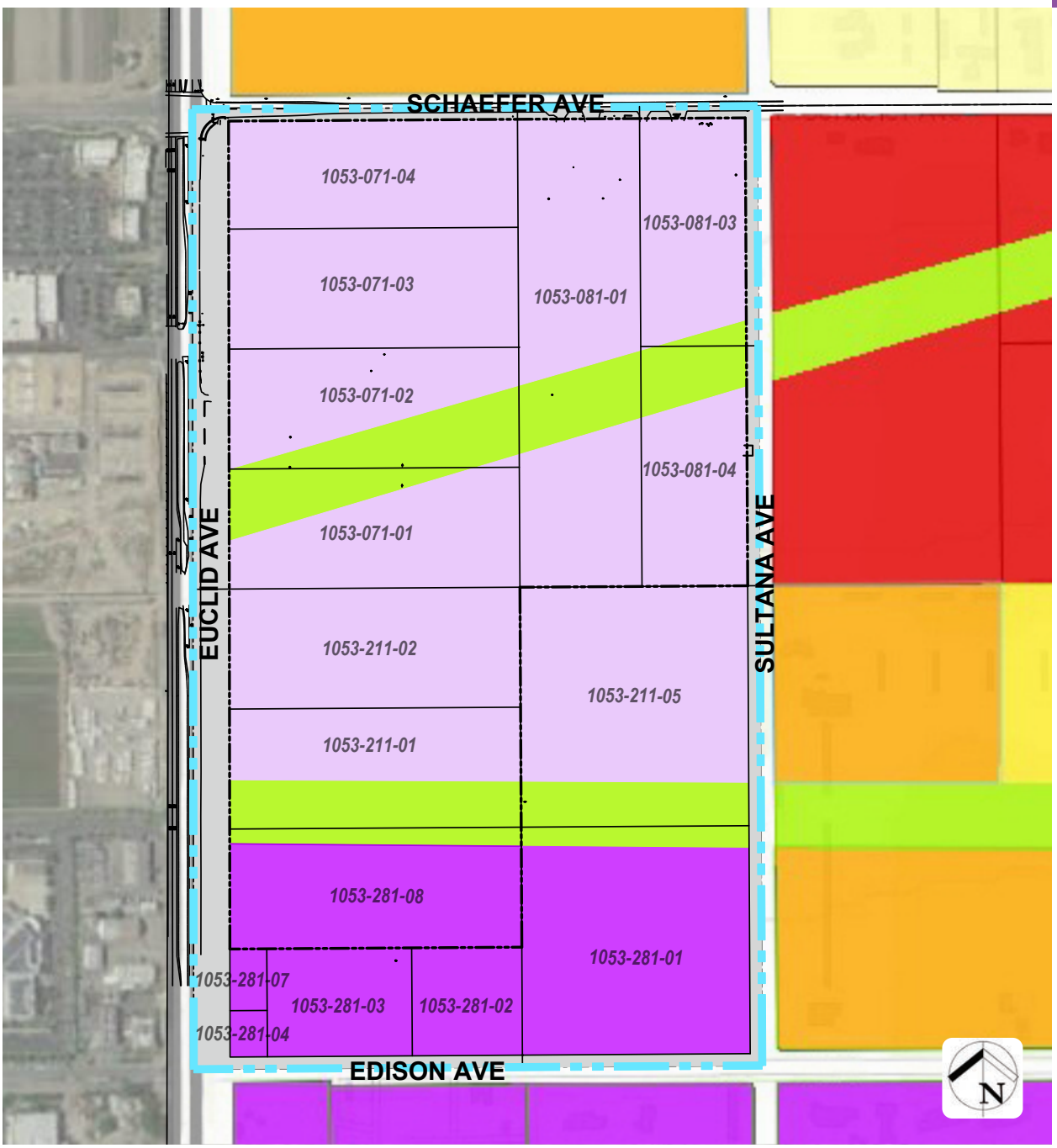
BUSINESS PARK (0.60 FAR) APN:

1053-071-01,
1053-071-02,
1053-071-03,
1053-071-04,
1053-081-01,
1053-081-02,
1053-081-03,
1053-081-04,
1053-211-01,
1053-211-02 and
1053-211-05.

MIXED-USE APN:

1053-281-01,
1053-281-02,
1053-281-03,
1053-281-04,
1053-281-05,
1053-281-07 and
1053-281-08.

The existing zoning designation is SP (Specific Plan) Zoning District. The SP District designation requires approval of a specific plan by the City for urban development of the project site. The Euclid Mixed-Use Specific Plan will be the zoning for the project site, consistent with The Ontario Plan 2050.



SPECIFIC PLAN BOUNDARY

000-00-00 EXISTING ASSESSOR PARCEL NUMBER (APN)

LOW DENSITY RESIDENTIAL (LDR)

LOW MEDIUM DENSITY RESIDENTIAL (LMDR)

MEDIUM DENSITY RESIDENTIAL (MDR)

COMMERCIAL

BUSINESS PARK

MIXED-USE

OPEN SPACE-NON RESIDENTIAL (OS-NR)

FIGURE 2.2 EXISTING LAND USE AND ZONING

2.6 Existing Circulation

The Specific Plan area is located approximately two and one half (2 ½) miles south of State Route 60 via State Route 83 (Euclid Avenue), which is located on the western boundary of the Specific Plan area, as shown in ***Figure 2.3***.

Vehicular circulation in the Specific Plan area is provided by Schaefer Avenue on the north, Edison Avenue on the south, Sultana Avenue on the east and Euclid Avenue on the west.

Existing improvements for Euclid Avenue include interim pavement and an unimproved dirt center median. Euclid Avenue has a fully dedicated right-of-way as specified in The Ontario Plan 2050.

Schaefer Avenue and Edison Avenue are paved in an interim condition, requiring ultimate right-of-way dedication and major street and parkway improvements.

On the eastern boundary of the Specific Plan area, Sultana Avenue is a fully dedicated yet unimproved street that exists only on paper, which will require major street and parkway improvements.

Traffic signals are located along Euclid Avenue at the Edison Avenue and Schaefer Avenue intersections.

Access to the site is currently provided via multiple private driveway entrances located on Euclid Avenue, Edison Avenue and Schaefer Avenue.

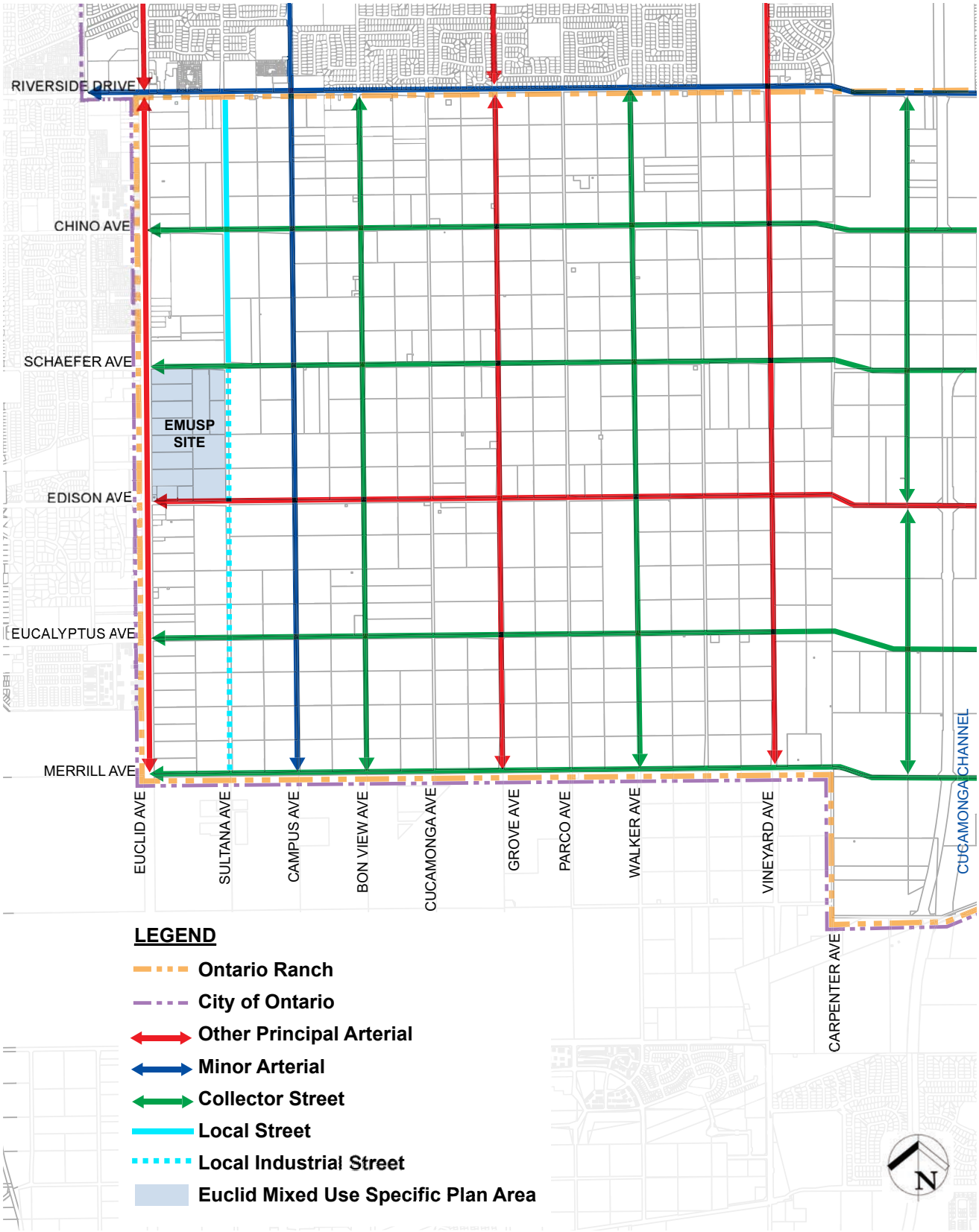


FIGURE 2.3 REGIONAL CIRCULATION

2.7 Existing Environmental Conditions

Topography

The overall project site is moderately flat, sloping from north to south with approximately a 25 ft. change in elevation.

Geology, Soils, and Seismicity

The Phase I environmental site assessment (ESA) included boring to depths of 10 to 30± ft. and trenching to depths of 4 to 12± ft.. Soils encountered through boring and trenching consist of highly organic soils to depths of 1 to 1½± ft.. The near surface soils possess low to medium expansion potentials. Groundwater was not encountered in any of the soil borings conducted as part of the assessment.

The near surface soils are considered corrosive to ferrous metals, including ductile iron pipe. Additionally, the near surface soils encountered at a boring located in the cattle pen area possessed chloride concentrations that can be deleterious to steel in reinforced concrete. A methane gas survey determined on-site levels are below the threshold.

A geotechnical feasibility study on the Specific Plan site indicated that the proposed development is considered feasible from a geotechnical standpoint. The subject site is located in an area that is subject to strong ground motions due to earthquakes. Research of available maps indicates that the Plan area is not located within an Alquist-Priolo Earthquake Fault Zone. Furthermore, a geotechnical feasibility study did not identify any evidence of faulting during the geotechnical investigation. Therefore, the possibility of significant fault rupture on the site is considered low.

The potential for other geologic hazards such as seismically induced settlement, lateral spreading, tsunamis, inundation, flooding, and subsidence affecting the site is considered low. Research of the San Bernardino County Land Use Services website indicates that the subject site is not located within a zone of liquefaction susceptibility. Based on the mapping performed by San Bernardino County and the conditions encountered at the boring locations, liquefaction is not considered to be a design concern for development within the Specific Plan area.

Each proposed development within the Specific Plan area will be required to have a project specific geotechnical investigation.

Hydrology

Storm runoff from the project site generally drains from north to south. There are two detention areas onsite, one located in the center of the site and the other at the southwestern portion of the site to the north of the rural residential lots along Euclid Avenue near the NEC of Euclid Avenue and Edison Avenue.
The southerly portion of the Specific Plan area surface drains southerly and surface flows on a southwesterly direction to the NEC of Euclid Avenue and Edison Avenue and is dispersed across the street to the south.

According to Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps, the project site is not located within a flood hazard zone.

Each proposed development within the Specific Plan area will be required to have a project specific hydraulics and hydrology report.

Biological Resources

The Specific Plan area is generally defined as being of low biological resource value due to highly disturbed site conditions and historic dairy/agricultural use, resulting in low biological diversity. There is limited vegetation on the majority of the site; the vegetation that exists includes ornamental and shade trees associated with the rural residential homes and generally consists of scattered native and non-native shrubs and non-native grasses and weeds.

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3. DEVELOPMENT PLAN

This Section provides the framework to guide development of the Euclid Mixed-Use Specific Plan. The Section presents the proposed planning areas, infrastructure plans, and public services to support the project.

3.1 Land Use Plan

The Specific Plan consists of three (3) Land Use Designations divided into five (5) Planning Areas to accommodate the development of a mix of land uses including retail commercial, general commercial/office, business parks, low intensity office/warehouse, technology and incubator space, light manufacturing/distribution uses, high density residential uses and open space areas that are compatible with the site's location and surrounding existing and proposed land uses. The Land Use Plan implements the vision and goals of the Ontario Plan by providing opportunities for employment in a variety of commercial and business industries designed to meet the demand of current and future market conditions. A list of allowable uses by Planning Area is presented in Section 4 (Development Criteria and Standards).

Table 3.1 provides the maximum development intensity (allowable gross building area and maximum residential development for each Planning Area based on the allowable floor area ratio or residential density respectively. Development standards (found in Section 4), such as setback requirements, parking, open space, minimum landscaping, infrastructure, and site design, may reduce the maximum gross square footage or density.

Figure 3.1 (Land Use Plan) identifies the location of the Planning Areas. Each Land Use Designation is described below:

BP (BUSINESS PARK) ZONING DISTRICT:

The Business Park District accommodates business park and related commercial, low intensity office uses, and certain light industrial uses. Development within this district is typically multi-tenant in nature; however, single-tenant buildings are not precluded.

Development within the Business Park District will be set back from Euclid Avenue, separated by a 50 ft. landscaped Neighborhood Edge with an 8 ft. wide multi-purpose trail. Smaller scale buildings will face Euclid Avenue and will be designed to create an attractive frontage that reflects a commercial/office character within the allowable building heights. Parking and vehicle storage areas will be sited behind buildings or will be heavily screened from perimeter street views.

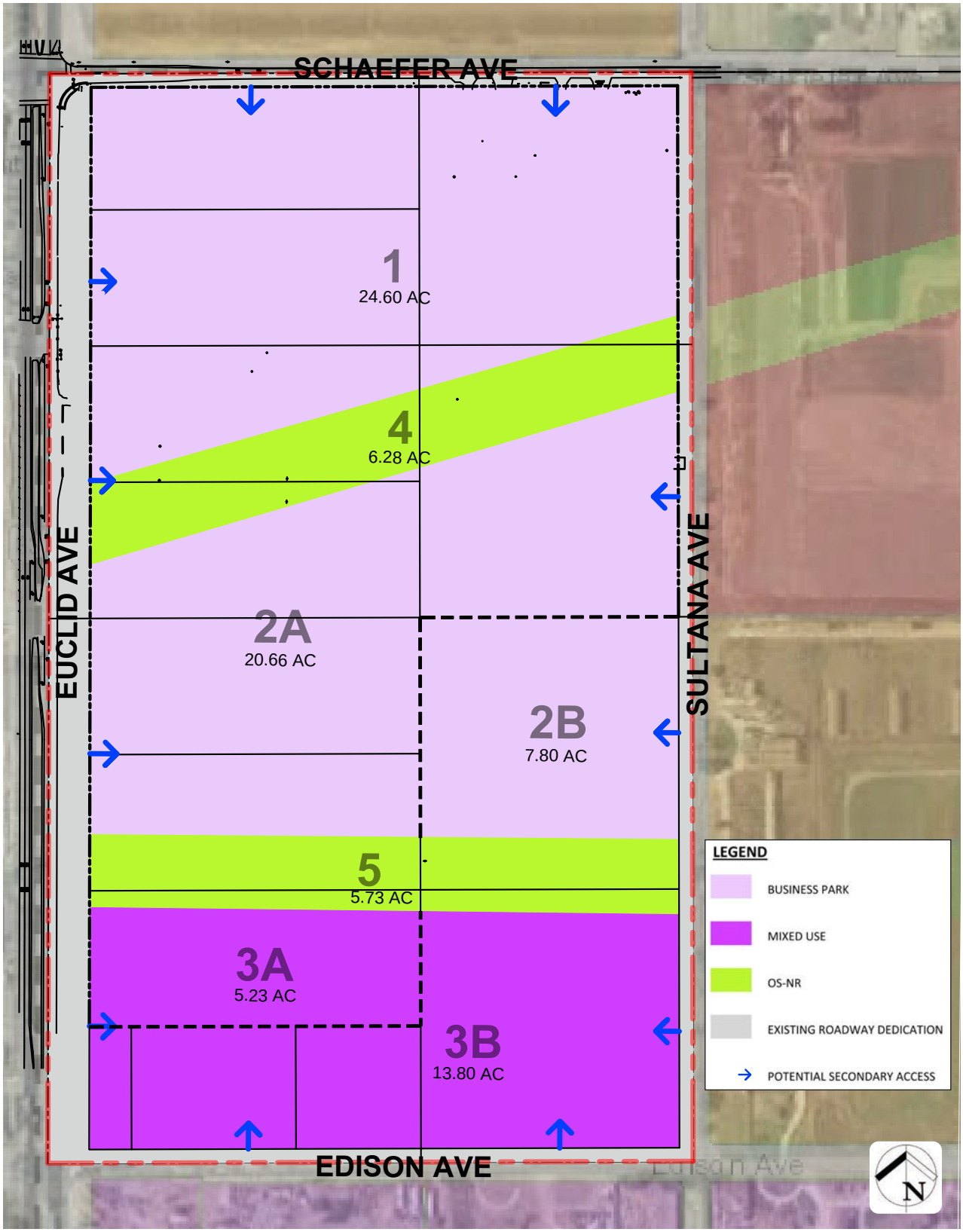


FIGURE 3.1 LAND USE PLAN

EUCLID MIXED USE SPECIFIC PLAN

LAND USE DEVELOPMENT TABLE

	PA	TOP USE	ACRES	ALLOWABLE DENSITY	ALLOWABLE FAR	MAXIMUM UNITS	MAXIMUM SQ. FT.	MIXED USE OPTIONS
	1	Business Park	24.60	N/A	0.6	N/A	642,946	N/A
	2A	Business Park	20.66	N/A	0.6	N/A	539,970	N/A
	2B	Business Park	7.80	N/A	0.6	N/A	203,861	N/A
TOTAL BUSINESS PARK			**53.06**				**1,386,776**	
	3	Mixed Use *	1.90	N/A	1.5	N/A	124,146	**OFFICE**
	3	Mixed Use *	3.81	N/A	1.0	N/A	165,964 **	**RETAIL**
	3	Mixed Use *	13.32	35	N/A	N/A	N/A	**RESIDENTIAL**
TOTAL MIXED USE*			**19.03**			**466**	**290,110**	
	4	OS-NR	6.28	N/A	N/A	N/A	N/A	N/A
	5	OS-NR	5.73	N/A	N/A	N/A	N/A	N/A
TOTAL OPEN SPACE			**12.01**					
TOTAL			**84.1**			**466**	**1,676,886**	

* PA 3 Totals allow a combination of Office, Retail and High Density Residential Development.
For Traffic Calculations, Mixed Uses are assumed to be 10% Office, 20% Retail and 70% Residential.
Assume a maximum of 124,146 s.f. OFFICE, 165,964 s.f. RETAIL and 466 D.U.

** SP proposes a minimum of 20,000 s.f. of RETAIL within PA 3.
Maximum density allowed may exceed 35 du/ac on any parcel as long as a maximum of 466 du is not exceeded within the Specific Plan area.

TABLE 3.1 DEVELOPMENT TABLE

MU (MIXED-USE) ZONING DISTRICT:

The MU zoning district accommodates a wide variety of retail commercial, office and high density residential development in conformance with The Ontario Plan 2050. It is anticipated that the Mixed-Use development will be comprised of 10% Office, 20% Retail and 70% Residential.

The southern portion of the site, comprised of approximately 20 acres along the north side of Edison Avenue, is zoned for Mixed Use development. This area is part of a much larger mixed use area identified in The Ontario Plan 2050 as the Great Park Mixed Use Area. Approximately 170 additional contiguous acres is located south of Edison Avenue. This Mixed Use Area is intended to encourage commercial/retail, office, and higher density residential development opportunities to serve the western portion of the Ontario Ranch and to provide a west anchor to the City of Ontario Great Park.

OS-NR (OPEN SPACE/NON-RECREATIONAL) ZONING DISTRICT:

The OS-NR zoning district defines the utility corridors (Southern California Edison) easement areas within the City. This zoning district allows low intensity uses such as vehicle and truck storage, nursery and limited agricultural uses, parking, etc. subject to written approval from Southern California Edison.

This "District" encompasses the utility easement corridors within the Euclid Mixed Use Specific Plan boundary. These areas are designated for non-recreational uses. While no buildings are proposed within this district, it is suitable for uses such as landscape plant nurseries, recreational vehicle and truck/trailer storage and other uses allowed by the City zoning.

3.2 Circulation Plan

The Circulation Plan facilitates movement of vehicles, pedestrians and cyclists around and within the Specific Plan area, consistent with the City of Ontario Roadway Classification System, shown in ***Figure 3.2***.

Figures 3.4 to ***3.7*** present typical street cross sections for Euclid Avenue, Schaefer Avenue, Sultana Avenue, and Edison Avenue. Conceptual streetscape design is presented in Section 5 (Design Guidelines). Roadway, sidewalk, and trail improvements within the Specific Plan area must be approved by the City's Engineering Department.

3.2.1 Local Circulation

Final site planning and off-site design shall be subject to City approval. In addition to the typical street section described and depicted, additional right-of-way and geometric enhancements such as an additional left turn and right turn lanes, including but not limited to those at intersections, may be required to adequately mitigate impacts identified in the Traffic Impact Analysis/Specific Plan EIR.

Driveways shall conform to access requirements of the Traffic and Transportation Design Guidelines. Driveway locations, specifically those that are in proximity to master planned or future traffic signals, shall be located so as not to interfere with traffic stacking and queues as projected in the The Ontario Plan 2050 SEIR Traffic Impact Analysis. Fair share responsibilities for street improvements will be addressed in a Development Agreement with the City.

3.2.2 Traffic Control Devices

All traffic signs regulating, warning, and/or guiding traffic on public roads will conform to the California Manual on Uniform Traffic Control Devices (MUTCD), latest edition. All traffic control signs, whether on public or private property, shall conform to the California MUTCD.

Additional traffic signals may be required based on locations of future access points and as identified in the Traffic Impact Analysis/Specific Plan EIR.

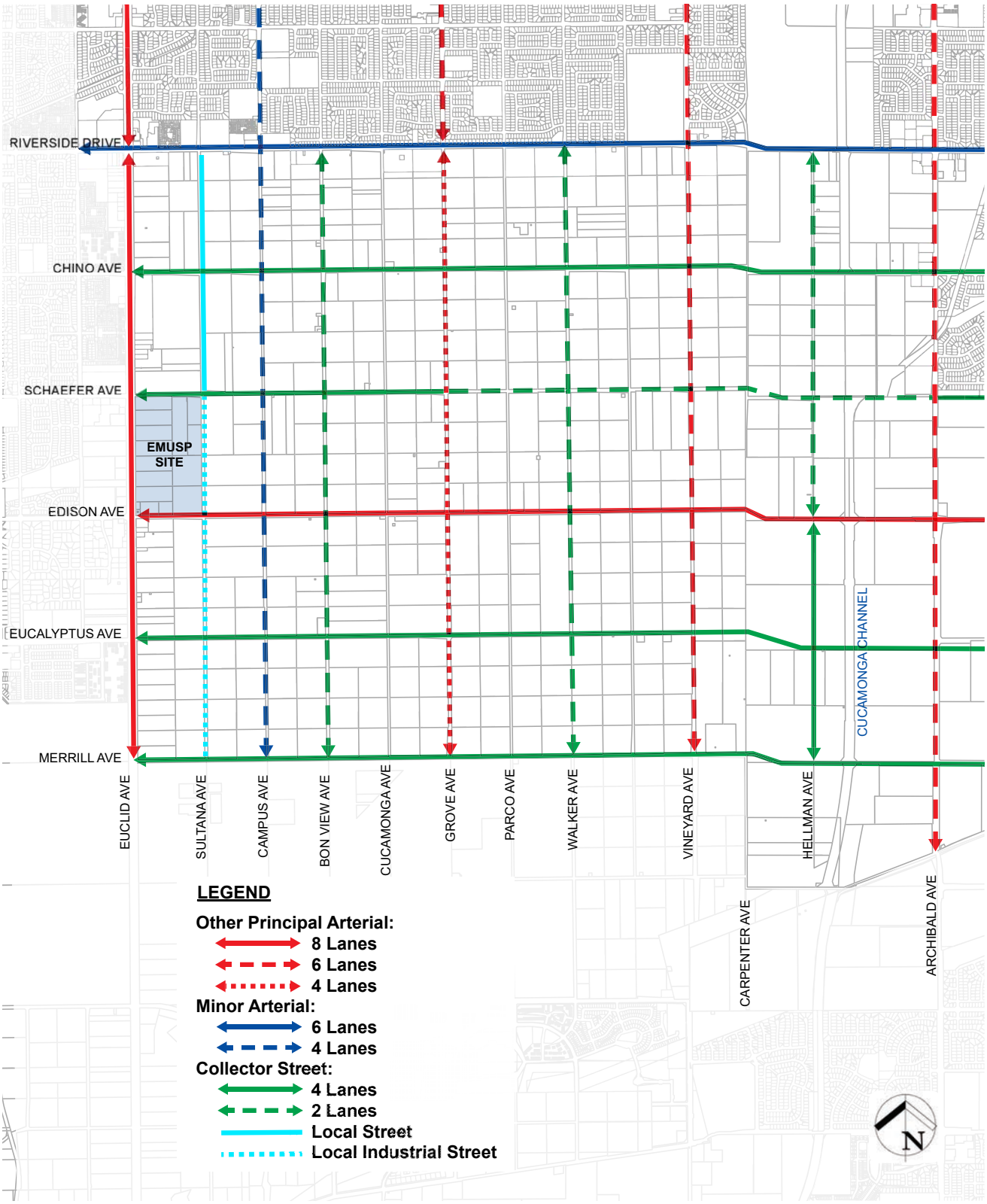


FIGURE 3.2 CITY OF ONTARIO ROAD CLASSIFICATION SYSTEM

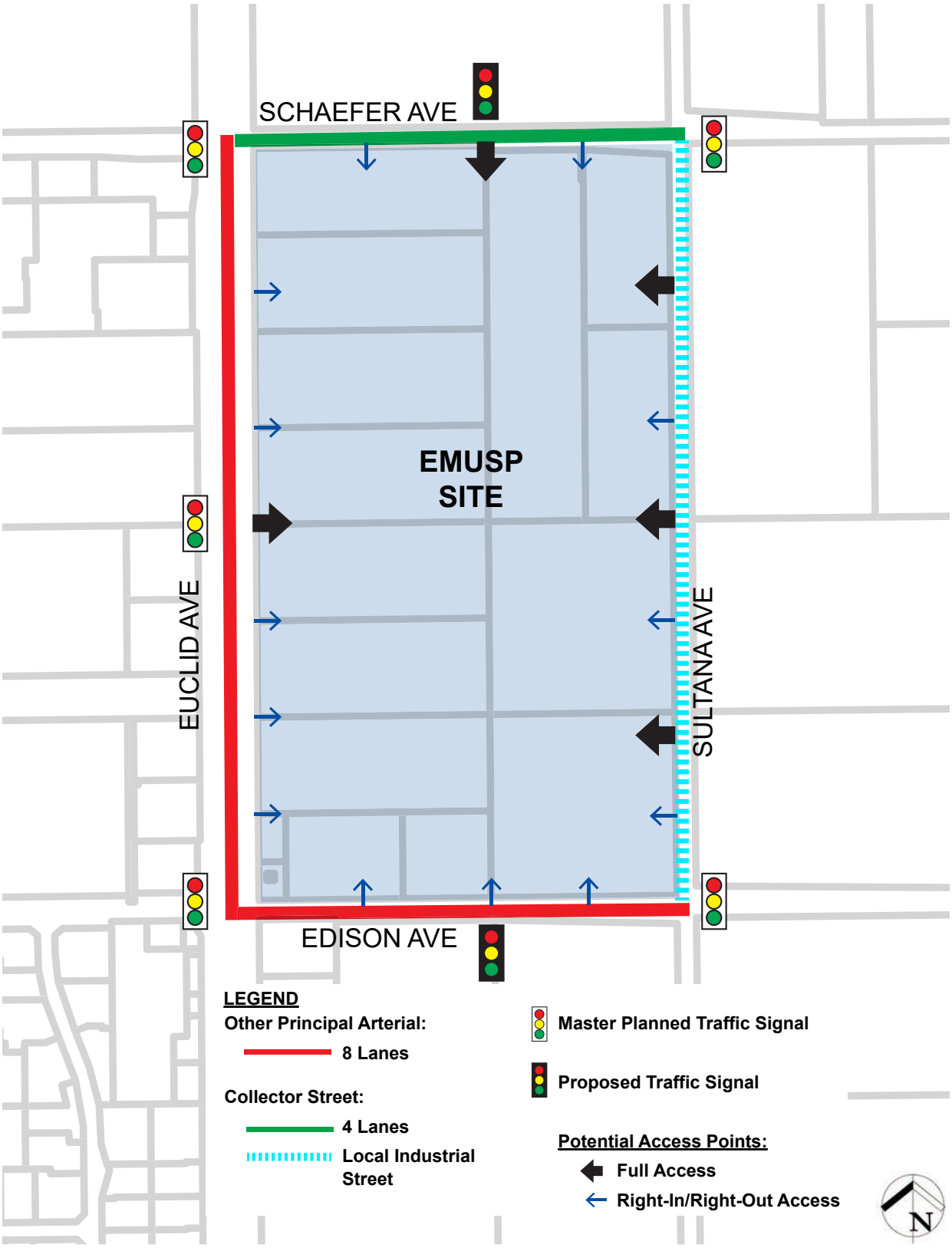
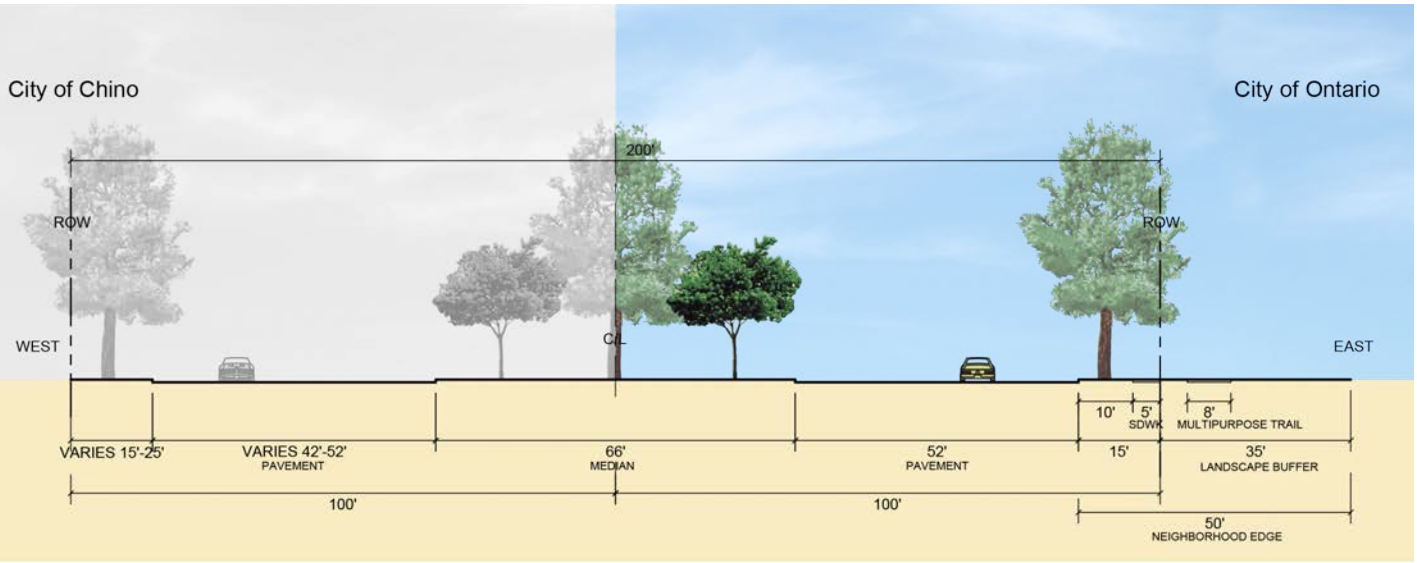


FIGURE 3.3 CIRCULATION PLAN

3.2.3 Euclid Avenue (Route 83)

Euclid Avenue is a State Route under Caltrans' jurisdiction that is designated as an eight lane Other Principal Arterial in The Ontario Plan 2050. The centerline of this street forms the boundary between the City of Ontario to the east and the City of Chino to the west. Euclid Avenue is designed with a 200 ft. wide right-of- way, a 66 ft. wide center median, and 52 ft. of pavement including curbs and gutter. The existing half-width street right-of-way is 100 ft.; therefore, no dedication is required.

The Euclid Avenue streetscape design illustrated in Section 5, Design Guidelines, for the east side of the street adjacent to the project site specifies a 15 ft. wide parkway including a 5 ft. wide sidewalk and an 8 ft. wide on-site multipurpose trail within a 35 ft. wide landscape buffer, creating a 50 ft. wide neighborhood edge as specified in the Ontario Ranch Colony Streetscape Master Plan.



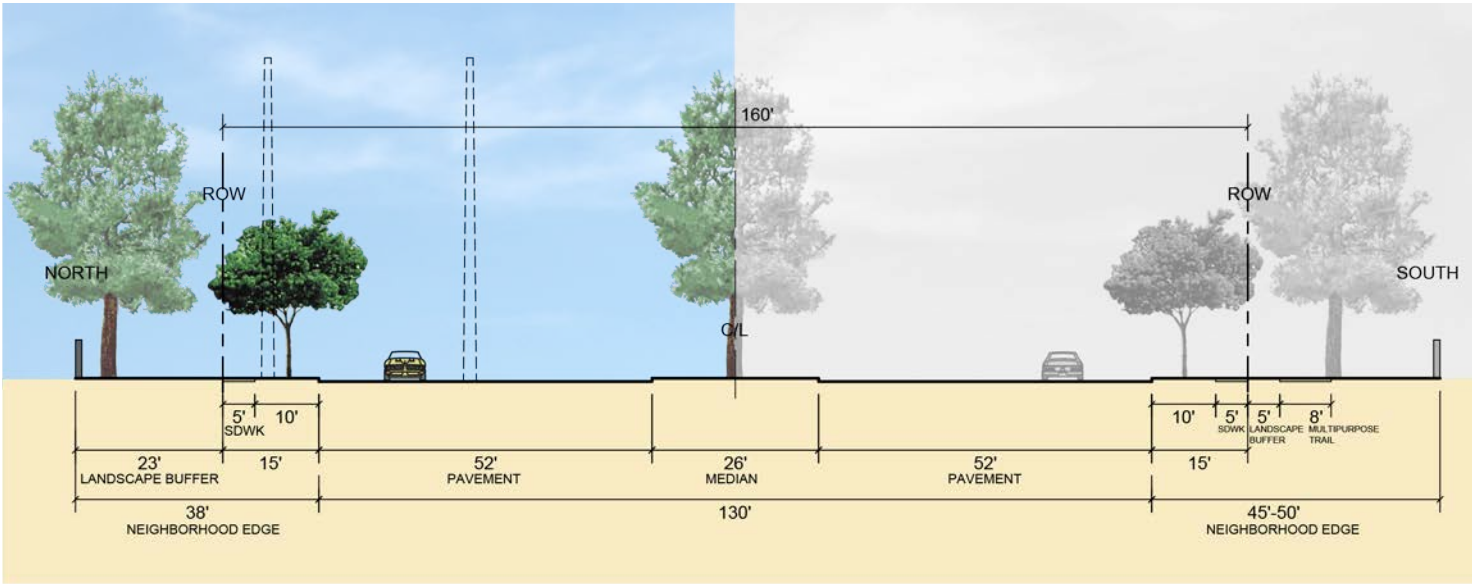
EUCLID AVENUE

FIGURE 3.4 EUCLID AVENUE STREET SECTION

3.2.4 Edison Avenue

Edison Avenue is located along the southern boundary of the Specific Plan area, providing east/west access to the site. Edison Avenue is designated as a Other Principal Arterial Street in The Ontario Plan 2050. The Specific Plan specifies an 160 ft. wide right-of-way with a 26 ft. landscaped median and a 52 ft. paved section on each side.

The Edison Avenue streetscape design presented in Section 5, Design Guidelines, for the north side of the street adjacent to the project site specifies a 15 ft. wide parkway including a 10 ft. wide curb-adjacent landscaped area and a 5 ft. wide sidewalk. The south side also provides an 8 ft. wide on-site multipurpose trail within a 23 ft. wide landscape buffer setback. Together, the parkway and landscape buffer setback create a 38 ft. wide neighborhood edge, per in the City's Master Plan of Streets.



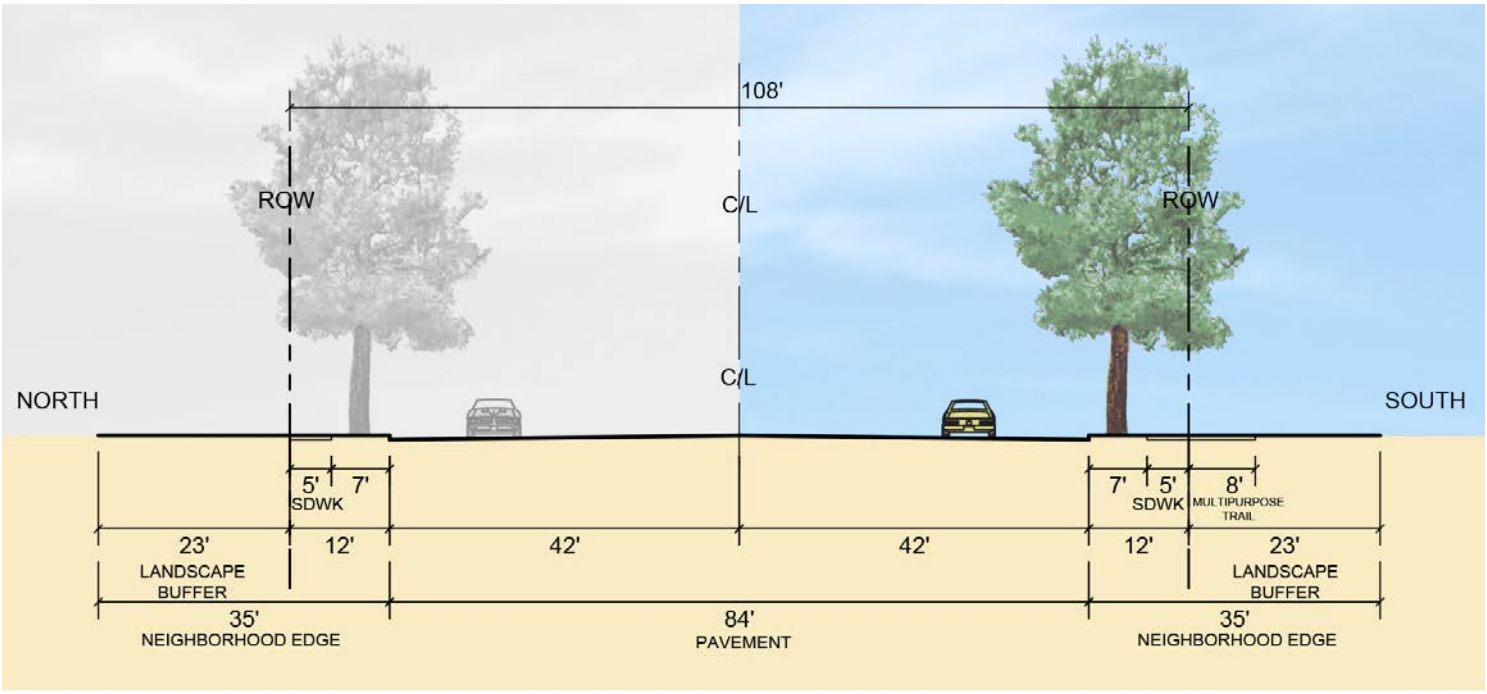
EDISON AVENUE

FIGURE 3.5 EDISON AVENUE STREET SECTION

3.2.5 Schaefer Avenue

Schaefer Avenue is designated as a four lane Collector Street per the City's Master Plan of Streets and provides east-west access to the project's northern boundary. The Specific Plan specifies an 108 ft. wide right-of-way and 84 ft. of pavement including curb and gutter for Schaefer Avenue.

The Schaefer Avenue streetscape design presented in Section 5, Design Guidelines, for the south side of the street adjacent to the project site includes a Class II on-street bike lane at the edge of the street, a 7 ft. wide curb-adjacent landscaped area, and a 5 ft. wide sidewalk. Together, these improvements establish a 35 ft. wide neighborhood edge, per in the City's Master Plan of Streets.

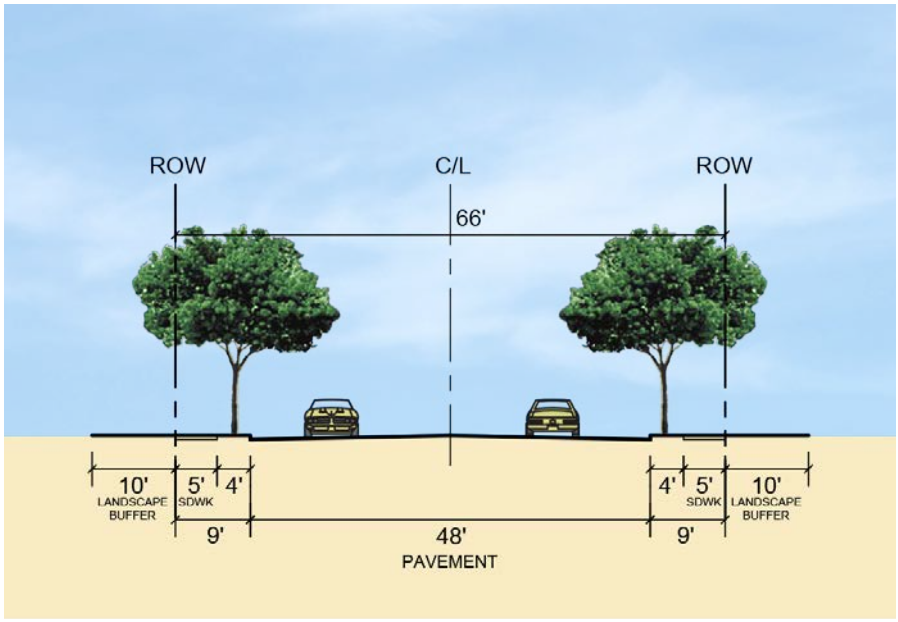


SCHAEFER AVENUE

FIGURE 3.6 SCHAEFER AVENUE STREET SECTION

3.2.6 Sultana Avenue

Sultana Avenue is designated as a local industrial street with a 66 ft. wide right-of-way and 48 ft. of pavement including curb and gutter. The Sultana Avenue streetscape presented in Section 5, Design Guidelines, specifies a 9 ft. wide parkway including a 4 ft. landscape and a 5 ft. wide sidewalk. The west side of the street adjacent to the project site provides a 10 ft. wide landscape buffer setback. Sultana Avenue is not yet developed adjacent to the Specific Plan area. However, the right-of-way exists, and no dedication is required.



SULTANA AVENUE

FIGURE 3.7 SULTANA AVENUE STREET SECTION

3.2.7 Pedestrian Circulation

To improve safety and the pedestrian experience, connect the various parts of the Specific Plan area, and expand access to nearby land uses, sidewalks will be provided along all streets abutting the Specific Plan area.

3.2.8 Trails and Bicyle Paths

The Ontario Plan Mobility Element specifies a Class II bicycle lane on the north side of Schaefer Avenue adjacent to the Specific Plan area. Class II bicycle lanes are defined as dedicated (striped) lanes along streets, with no parking allowed in the bicycle lane. This bicycle lane provides linkages to the City's bicycle path system (***Figure 3.8***).

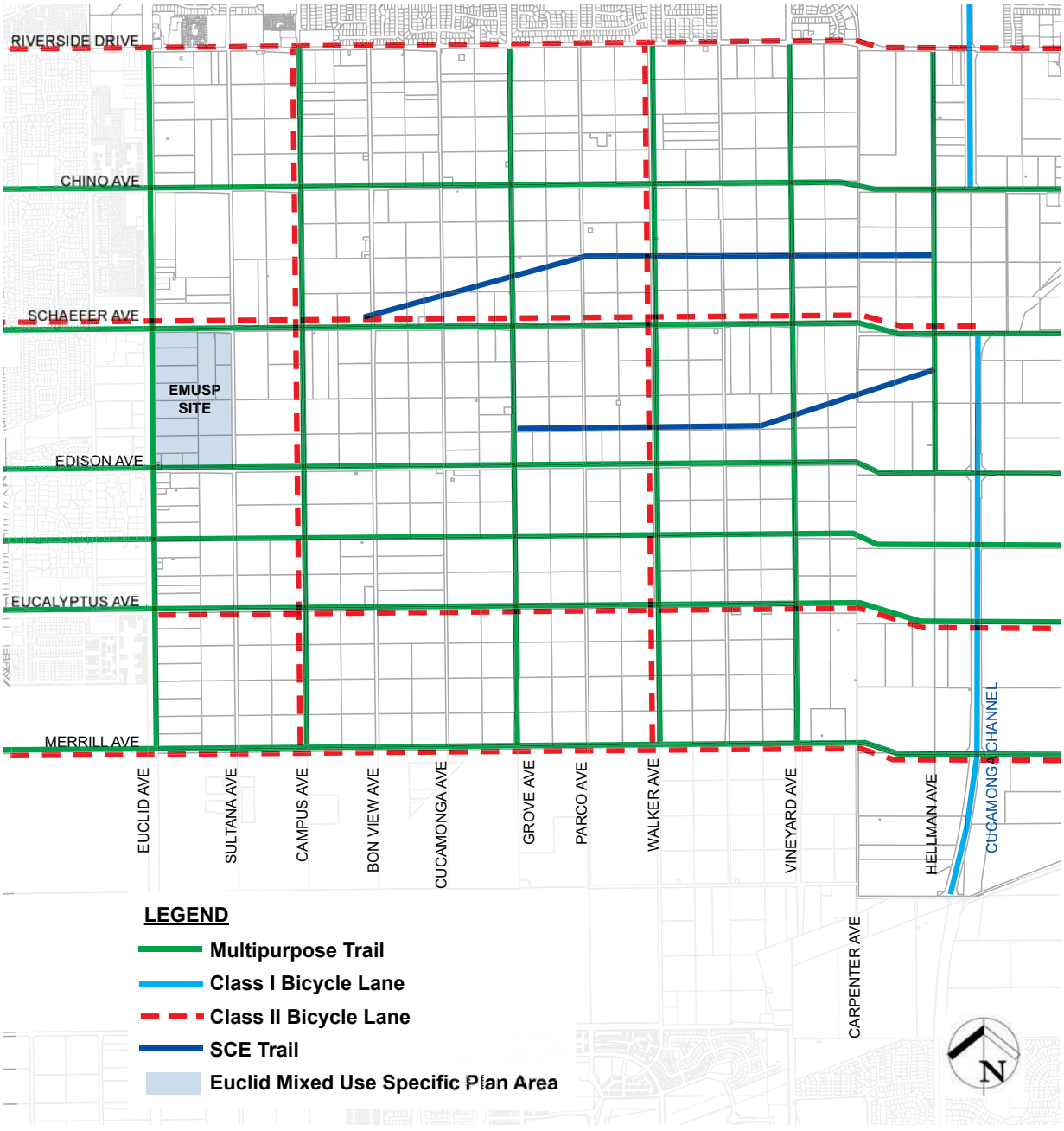


FIGURE 3.8 CITY OF ONTARIO TRAIL AND BICYCLE PATHS PLAN

Trails and bicycle paths will provide an additional mode of circulation in and around the Specific Plan area. Multipurpose trails will be provided on the east side of Euclid Avenue, on the south side of Schaefer Avenue and on the south side of Edison Avenue (***Figure 3.9***).

The trail and bicycle path improvements will be installed along the project frontages in conjunction with street improvements.

3.2.9 Transit

Transit options provide an alternative mode of transportation for motorists and a primary mode for the transit dependent. The City is coordinating with regional transit agencies to implement Bus Rapid Transit (BRT) service to target destinations and along corridors, including Euclid Avenue on the western boundary of the Specific Plan area.

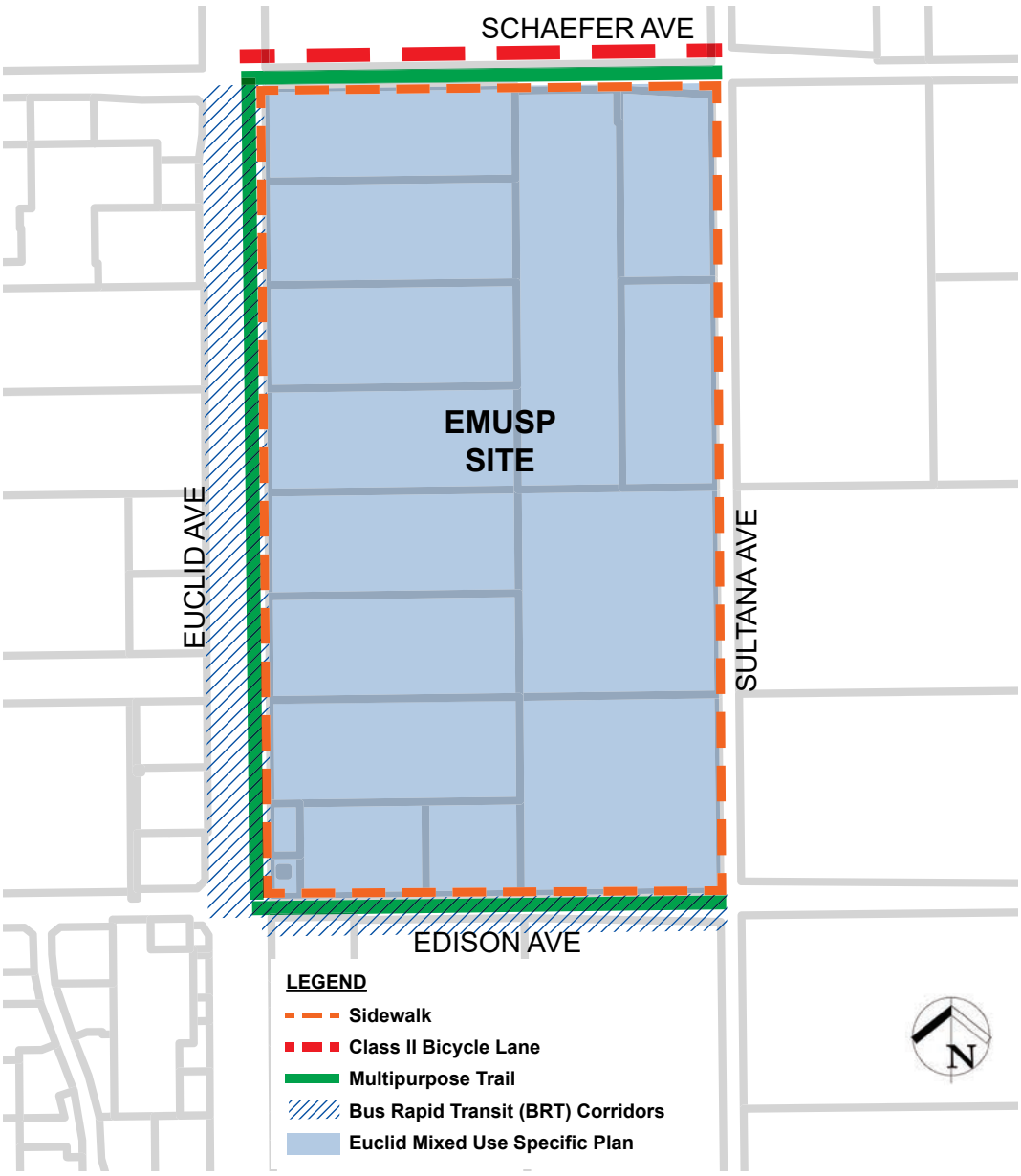


FIGURE 3.9 BICYCLE AND PEDESTRIAN PLAN

3.3 Potable Water Plan

The City's ultimate domestic water system will consist of five pressure zones. Most of Ontario Ranch (including the Specific Plan area) is in the 925 Pressure Zone. The overall water infrastructure plan to serve the City of Ontario as well as the required water infrastructure required to be constructed to serve the Euclid Mixed-Use Specific Plan area is shown on ***Figure 3.10***. The developer of the Euclid Mixed-Use Specific Plan will be responsible to provide the required water lines to connect to the existing improvements constructed by the Ontario Ranch Business Park development to the south of the site.

925 Pressure Zone (PZ) Phase 2 Potable Water System facilities will need to be constructed, by others, to serve the Project. These facilities include installing a 42-inch potable water main in Grove Avenue connecting from the 30-inch to the 42-inch potable water main in Grove Avenue at Chino Ave; installing a 42-inch potable main in Chino Avenue connecting from the 42-inch potable water main in Campus Avenue and extending to Francis Street; and, installing a 42-inch potable water main in Bon View Avenue connecting from the 42-inch potable water main in Francis Street and extending to the Bon View Avenue Reservoir site and to the Reservoir; and, installing a 9 million gallon reservoir on the Bon View Reservoir site; and, installing two 2,500 gpm wells with any treatment necessary to meet water quality standards and the 16-inch to 42-inch well collection mains from the wells to the reservoirs. The EUCLID MIXED-USE Project will be required to participate in the future Phase 2 Water System Improvements as detailed in the development agreement with the City.

In addition to extending the 925 Pressure Zone (PZ) Phase 2 West Backbone, described above, the Specific Plan area requires a connection between the 925 Pressure Zone (PZ) Phase 2 West Backbone and the 1010 Pressure Zone (PZ). This will supply a second source of potable water to the Specific Plan area. The connection to the 1010 Pressure Zone (PZ) will require extending the Phase 2 West Backbone at Eucalyptus Avenue and Grove Avenue by installing a 30-inch potable water main north on Grove Avenue to Chino Avenue. The connection to the 1010 Pressure Zone will require installing an 18-inch potable water main in Chino Avenue easterly to the existing 18-inch potable water main located on the west side of the Cucamonga Creek channel and installing a Pressure Reducing Station between the 1010 PZ and 925 PZ near the intersection of Grove Avenue and Chino Avenue.

Other elements of the Phase 2 Water System are shown on ***Figure 3.10***. The elements shown north of Chino Avenue will be constructed by others. The balance of Phase 2 Water System will be completed as required by future development of Ontario Ranch. The Project will be required to participate in the future Phase 2 Water System improvements, as detailed in the developmentt agreement with the City.

Water service to the Specific Plan area will be provided by the City of Ontario. Currently there are no City domestic water mains or City water infrastructure in the vicinity of the Specific Plan area. The extension of City master planned domestic water infrastructure is being developed within the western portion of Ontario Ranch. The Euclid Mixed-Use Specific Plan is responsible to provide domestic water service to serve future development and will construct a 16-inch line in Euclid Avenue and Schaefer Avenue, and a 12-inch line along the remaining perimeter of the Specific Plan in Sultana Avenue and Edison Avenue. The Specific Plan will extend the 16-inch line in Schaefer Avenue to connect to the future line at Grove Avenue and the 16-inch line in Euclid Avenue south to connect to the future line in Eucalyptus Avenue.

Water mains required to serve the project will need to be constructed prior to or concurrent with on-site water improvements. Within the project site, a private network of 2-inch to 4-inch water lines for domestic water service and 10-inch to 12-inch water lines for fire service water will be installed. The on-site water system includes connections to the water main in Edison Avenue, Euclid Avenue, Schaefer Avenue and Sultana Avenue.

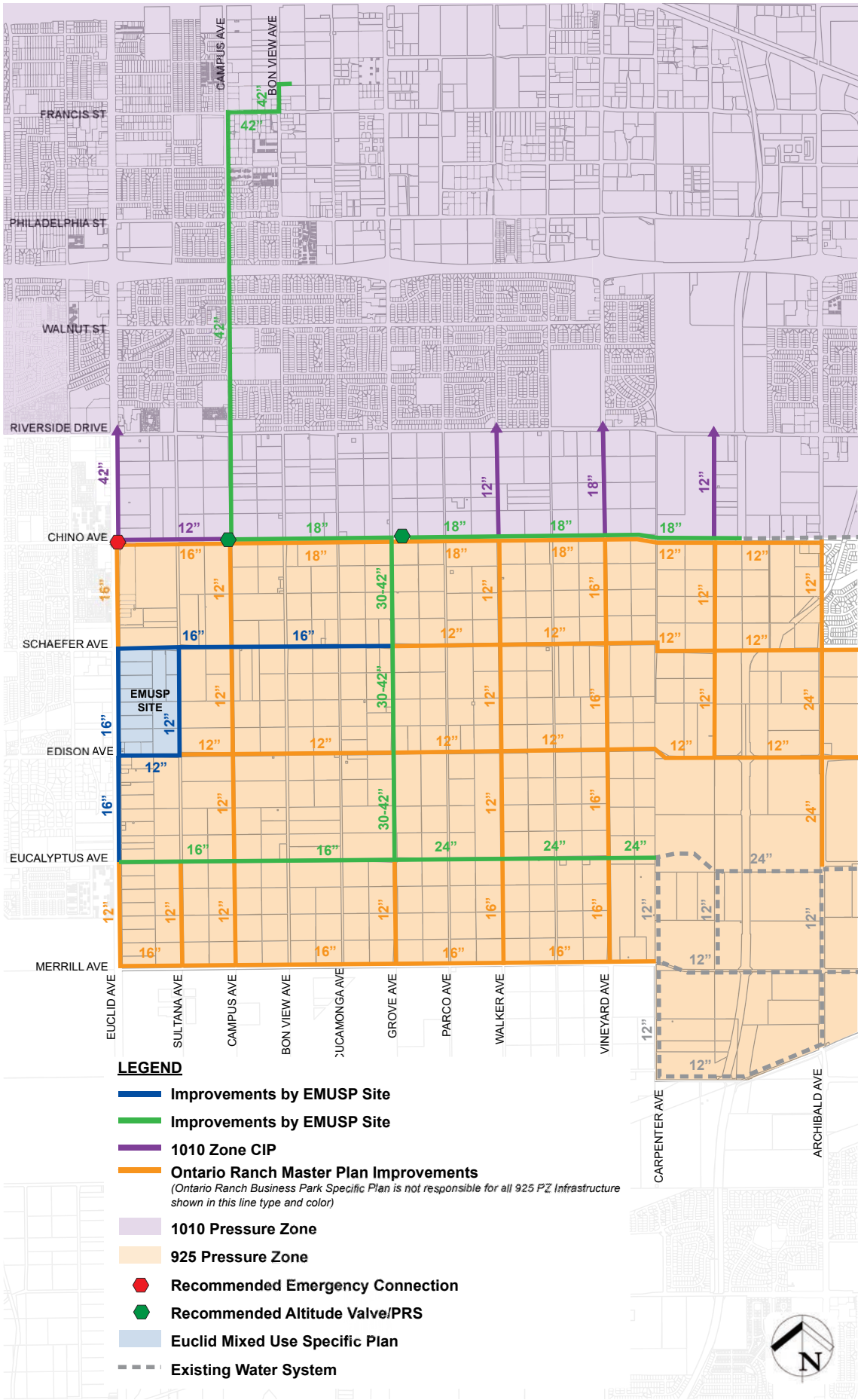


FIGURE 3.10 CITY OF ONTARIO ULTIMATE WATER SYSTEM

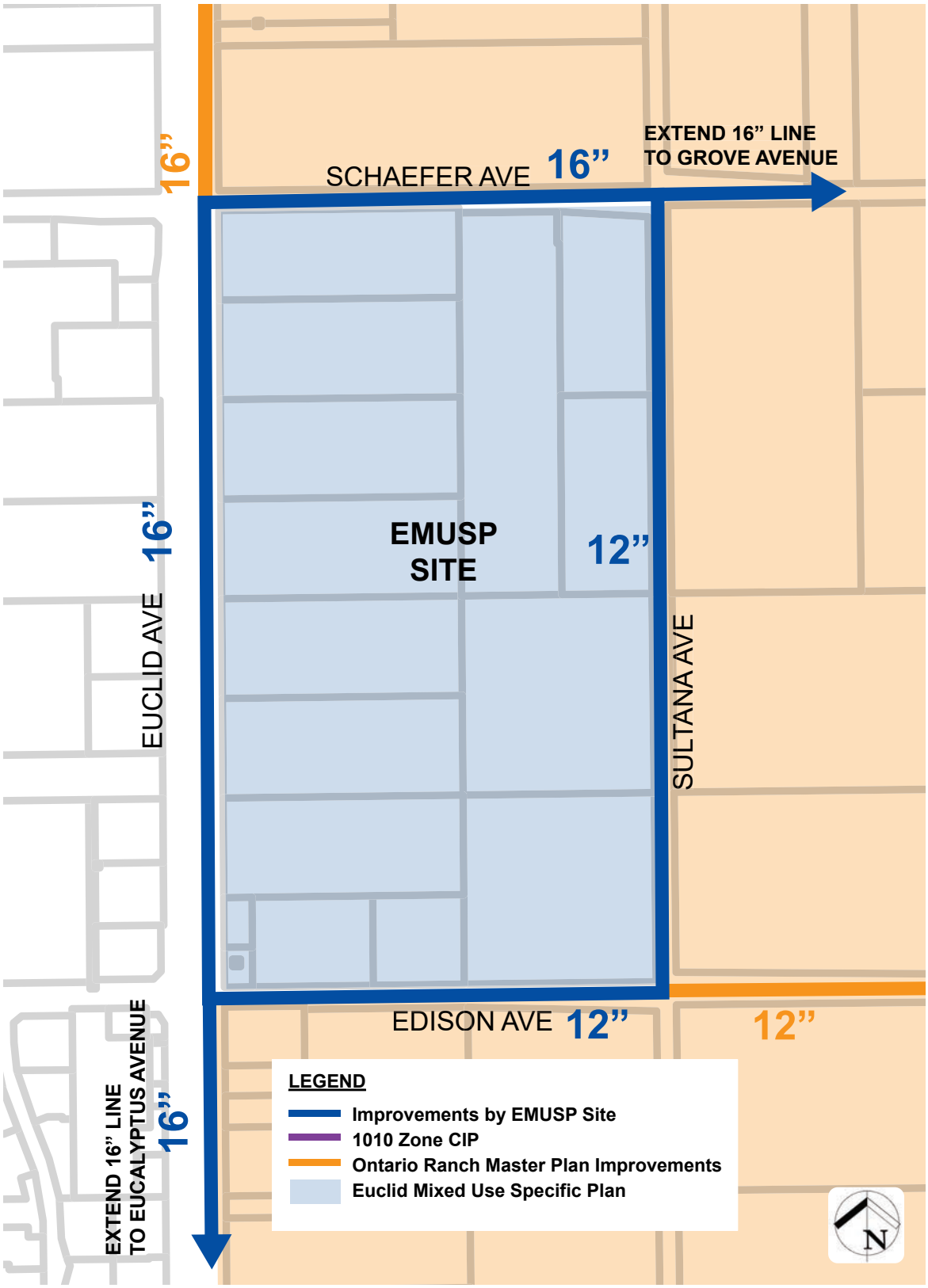


FIGURE 3.11 SPECIFIC PLAN DOMESTIC WATER PLAN

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3.4 Recycled Water Plan

Recycled Water is provided to the City of Ontario by the IEUA from its four wastewater reclamation plants. The entire Specific Plan area is within the City's master planned 930 Pressure Zone. Recycled water infrastructure improvements requiring the planning, design, and construction of new 930 Pressure Zone (PZ) Recycled Water Master Plan main lines area will be required. Refer to ***Figure 3.12***.

The City requires all new development in Ontario Ranch to connect to and use recycled water for all approved uses, including but not limited to landscape irrigation. Currently there are no City owned recycled water mains or City recycled water infrastructure in the vicinity of the Specific Plan area. There is an existing 30 inch Inland Empire Utility Agency (IEUA) recycled water main in Eucalyptus Avenue south of the Specific Plan area. The Euclid Mixed-Use Specific Plan is responsible to provide recycled water service to serve future development and will construct a 12" line in Euclid Avenue and a 8" line in Schaefer Avenue, Sultana Avenue and Edison Avenue. The Specific Plan will extend the 12" line in Euclid Avenue south to connect to the existing line in Eucalyptus Avenue.

An 8" line may be required in Sultana Ave to provide service to parcels that only front on Sultana Ave.

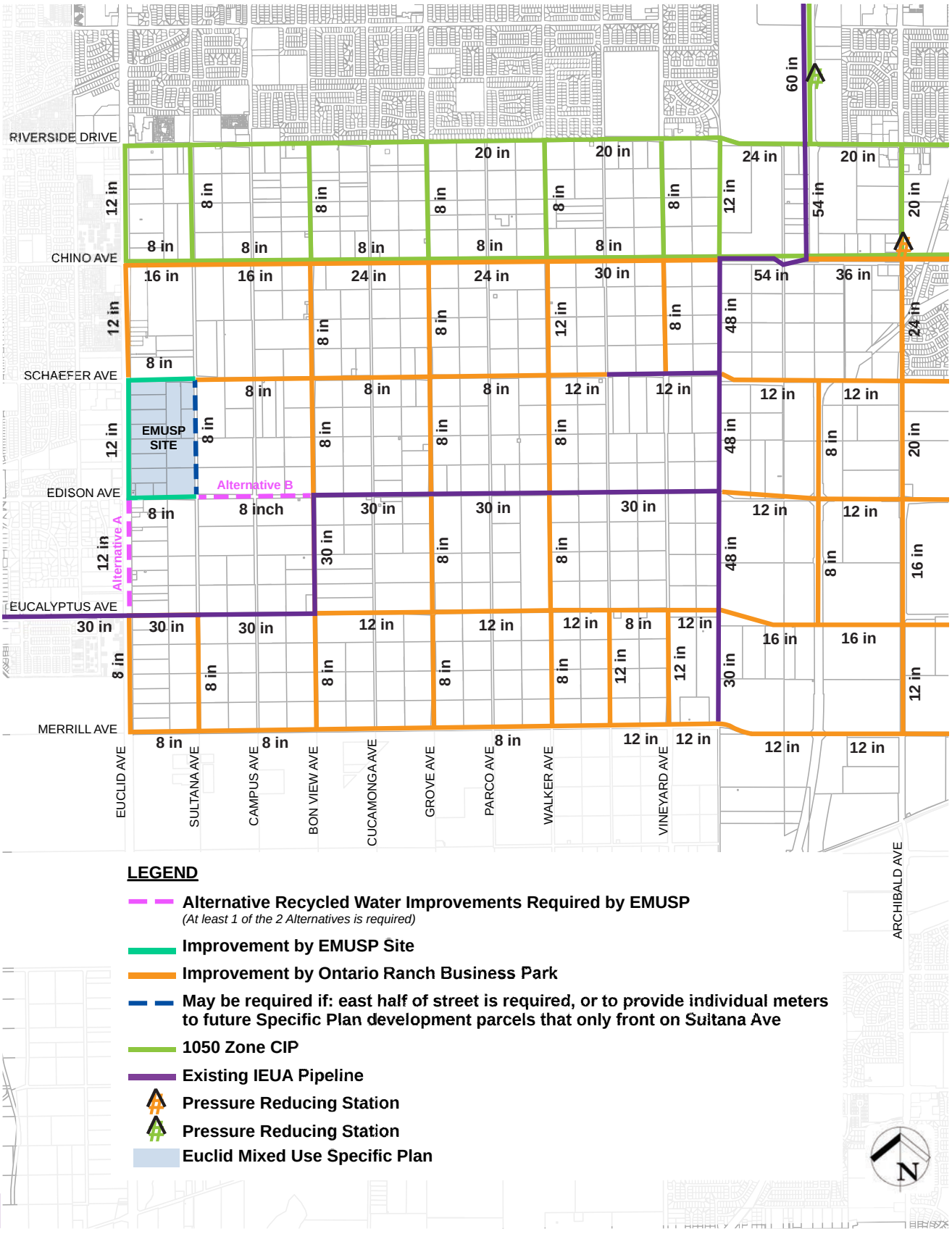


FIGURE 3.12 CITY OF ONTARIO ULTIMATE RECYCLED WATER SYSTEM

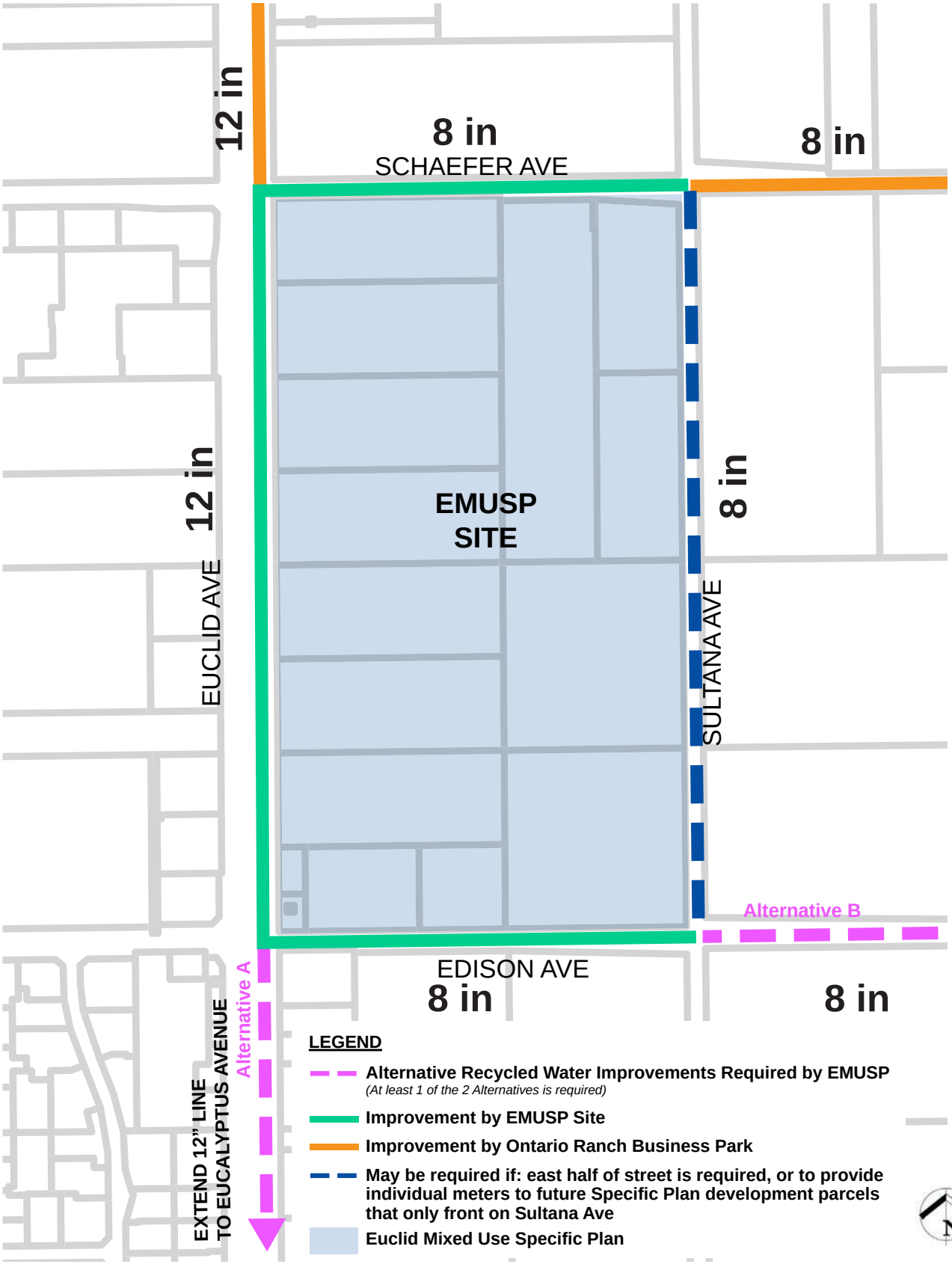


FIGURE 3.13 SPECIFIC PLAN RECYCLED WATER PLAN

3.5 Sewer Plan

Regional wastewater treatment services are provided to the City of Ontario by the Inland Empire Utilities Agency (IEUA). Several regional trunk sewers collect sewage generated in the City and transport it to IEUA's Regional Plant No.1 and Regional Plant No.5 for treatment. Sewer Main Sizes to be determined by final design requirements and criteria.

There are no sewer mains located in Euclid Avenue or the other streets adjacent to the Specific Plan area. The extension of City master planned sewer infrastructure is being developed within the western portion of Ontario Ranch. The City's master planned sewer system has been constructed in Euclid Avenue at Eucalyptus Avenue and along Eucalyptus Avenue between Euclid and Sultana Avenues.

The Euclid Mixed-Use Specific Plan is responsible to provide sewer service to serve future development and will construct a 16" line approximately 2,650 ft. along the entire frontage of the project in Euclid and extend an 18" main line along the Euclid Avenue to the south to connect to the Kimball Interceptor Sewer. The Specific Plan will construct an 8" line along approximately 1,320 ft. of the eastern boundary of the Specific Plan in Sultana Avenue to Edison Avenue and extend an 8" line in Edison Avenue to connect to the 18" main line in Euclid Avenue.

Actual sewer pipe size will be determined during final design by hydraulic calculations through a Sewer Study or Sewer Sub-Area Master Plan (SSAMP). Refer to ***Figure 3.15***.

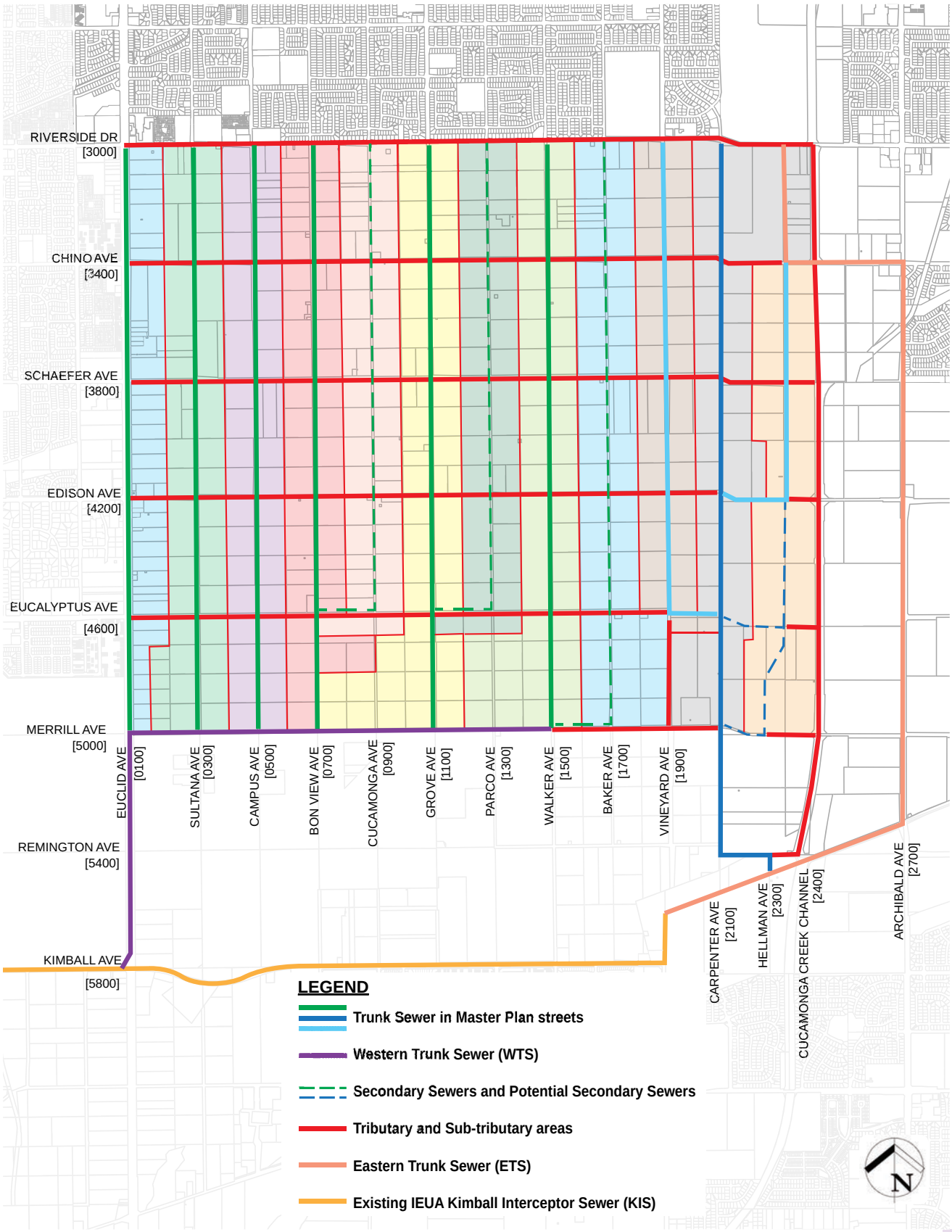


FIGURE 3.14 CITY OF ONTARIO OVERALL SEWER PLAN

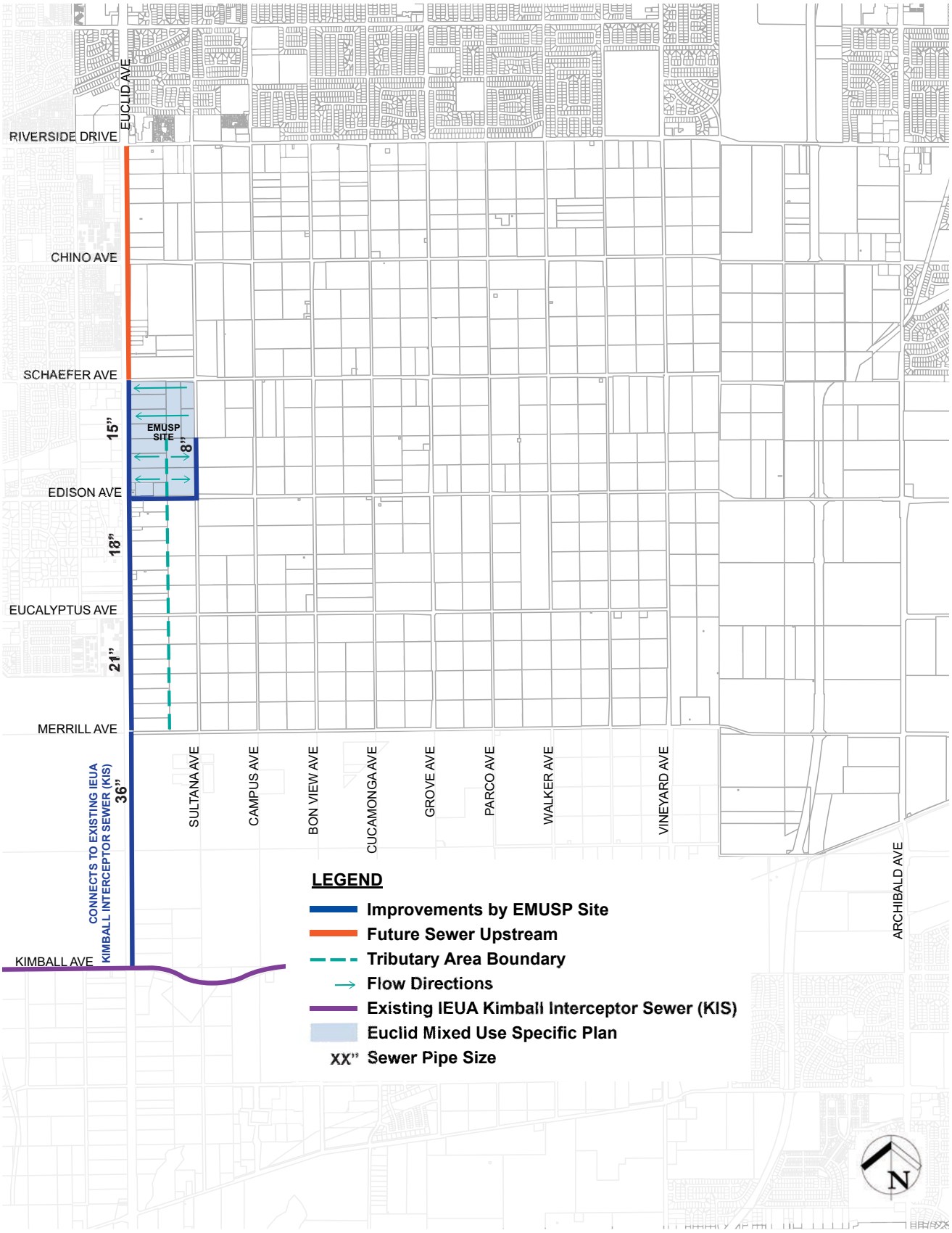


FIGURE 3.15 CITY OF ONTARIO ULTIMATE SEWER SYSTEM

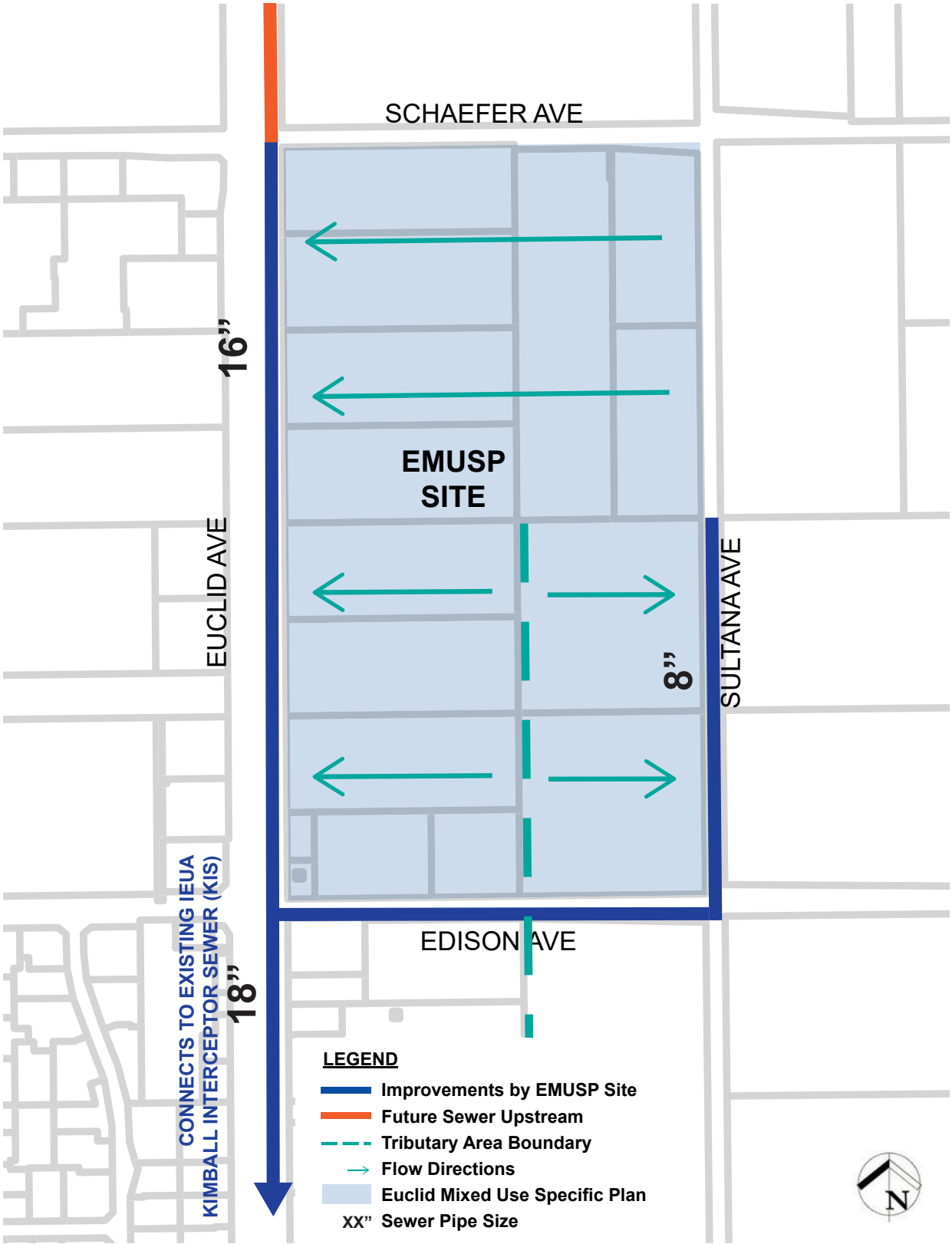


FIGURE 3.16 SPECIFIC PLAN SEWER PLAN

3.6 Conceptual Grading Plan

Site topography is moderately flat, sloping from the north to the south. There is an approximately 25 ft. elevation change across the Specific Plan area.

The grading activities for the Specific Plan area will generally consist of clearing and grubbing, demolition of existing structures, and moving surface soils to construct building pads, driveways and streets.

A Conceptual Grading Plan will be prepared in conjunction with future subdivision mapping and approvals. The grading plan will provide a balance of cut and fill for the Specific Plan area. Grading plans for each development project within the Specific Plan area will be reviewed and approved by the City of Ontario prior to the issuance of grading permits. Grading plans and activities will conform to the City's grading ordinance and dust and erosion control requirements.

All landscaped areas within the Specific Plan area shall be designed to accept runoff water from impervious surfaces. Landscape slopes shall not be greater than 3:1 on all perimeter slopes, including within neighborhood edge areas and slopes over 5 ft. in height.

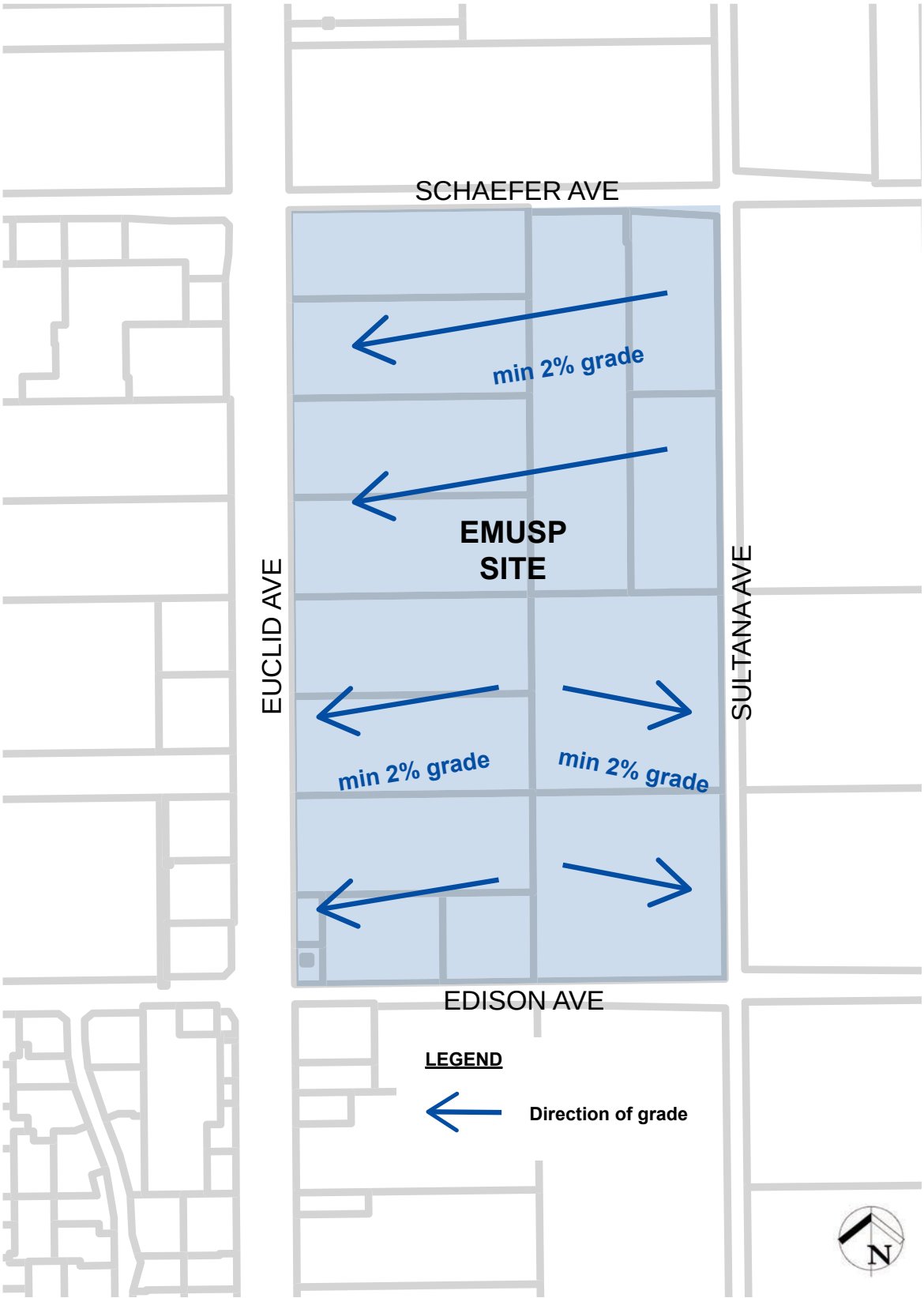


FIGURE 3.17 SPECIFIC PLAN CONCEPTUAL GRADING PLAN

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3.7 Dry Utilities Plan

Utility services provided to the site will be installed underground in accordance with City of Ontario guidelines.

3.7.1 Communication System

Developments in Ontario Ranch are required to install and provide fiber conduit to all improved lots. Proposed on-site facilities will be placed underground within a duct and structure system that will be installed by the developer. Pursuant to the City of Ontario 2013 Fiber Optic Master Plan, the fiber optic network will be owned and operated by the City of Ontario and as such maintenance of the installed system will be the responsibility of the City and/or Special District fiber optic entity and not the developer. According to the City's Fiber Optic Master Plan, the proposed fiber optic infrastructure, including approximately 23 miles of backbone fiber south of Riverside Drive, is an investment into a long term capital asset using newly constructed and existing conduit to provide high speed communication links to key locations throughout the City. The Specific Plan area will be connected to the City's system as shown on ***Figure 3.18***.

3.7.2 Natural Gas

The Gas Company will provide natural gas to the Specific Plan area. Gas mains will be installed to the individual development projects by the Gas Company, as necessary.

3.7.3 Electricity

Southern California Edison will provide electricity to the Specific Plan area from existing facilities in the vicinity. All new lines within the Specific Plan area shall be installed according to City of Ontario requirements.

Undergrounding of existing overhead power lines will be subject to Section 7-7 of the Ontario Municipal Code. Existing power poles along Edison Avenue will need to be relocated. The existing location is within the ultimate roadway.

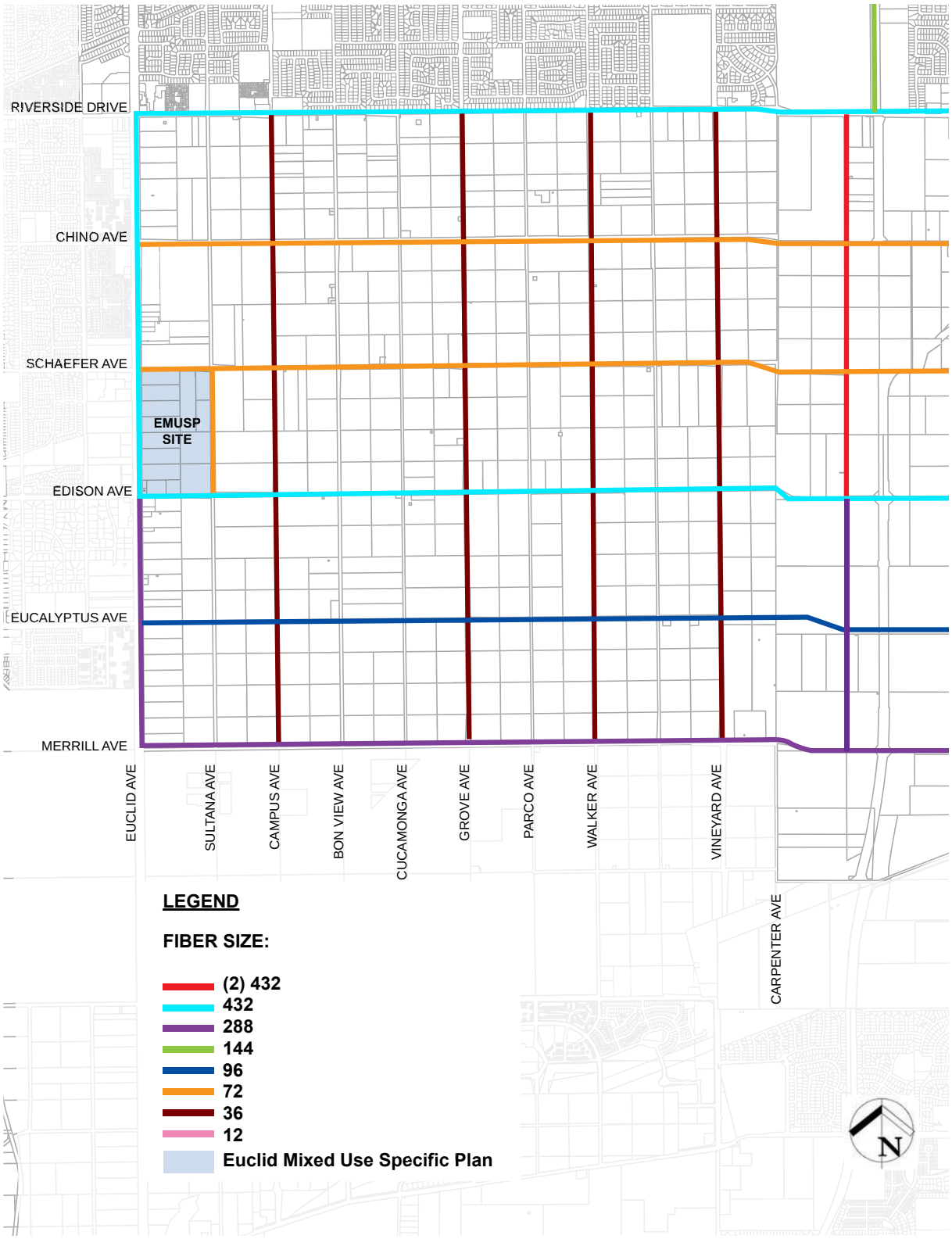


FIGURE 3.18 CITY OF ONTARIO ULTIMATE FIBER OPTICAL SYSTEM

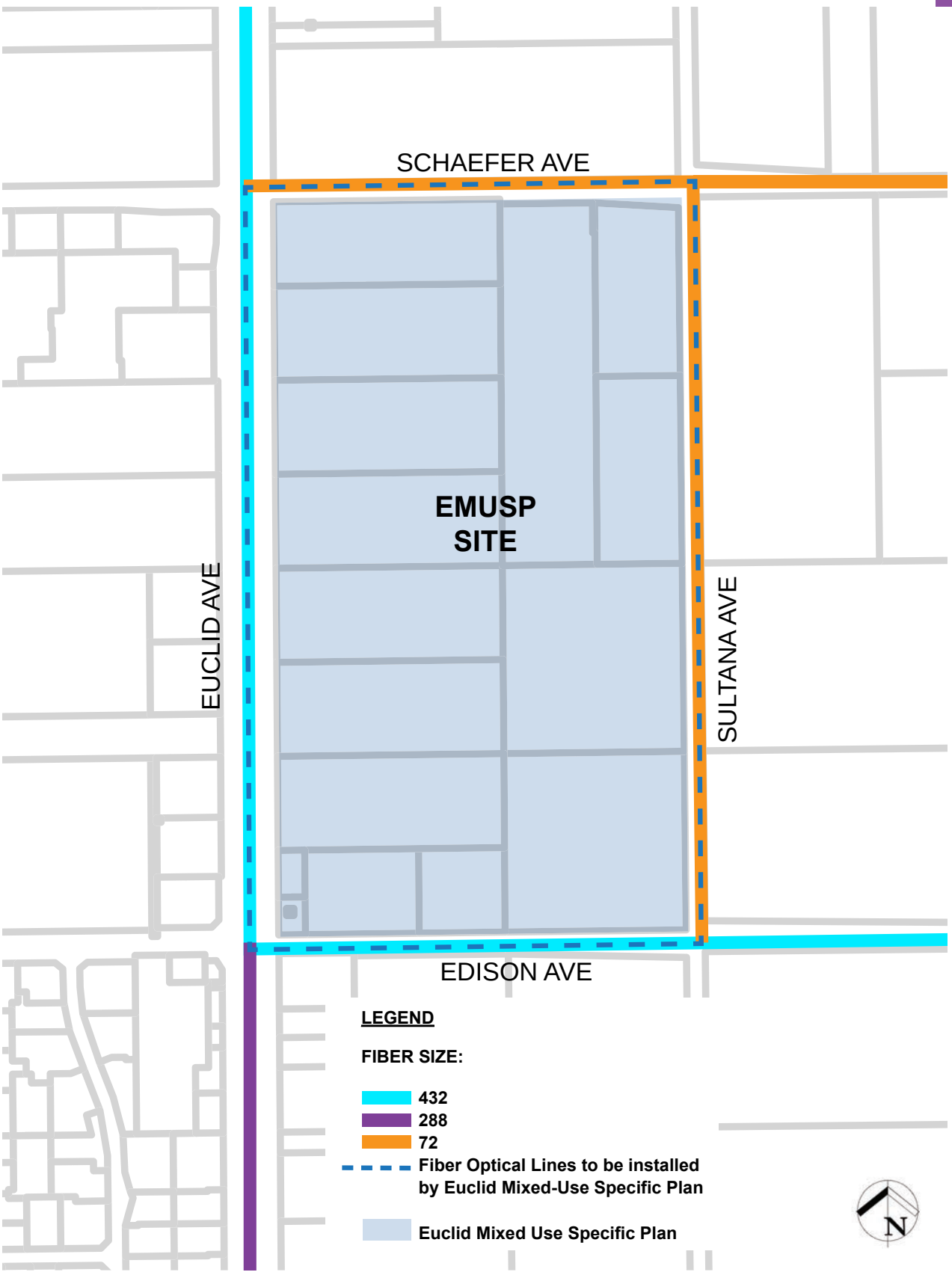


FIGURE 3.19 SPECIFIC PLAN FIBER OPTICAL PLAN

3.8 Storm Drain Plan

Storm Drain systems to serve the Specific Plan area will be installed according to the City of Ontario Storm Drain Master Plan. As of the establishment of the Specific Plan, there are no City domestic storm drain trunk lines in the vicinity of the Specific Plan area. The extension of City master planned storm drain infrastructure is being developed within the western portion of Ontario Ranch. The Euclid Mixed-Use Specific Plan is responsible to provide storm drain to serve future development and will construct a 90" line in Euclid along the western perimeter of the Specific Plan, a 48" to 90" line in Schaefer Avenue along the northern perimeter of the Specific Plan and a 78' to 96" in Edison Avenue along the southern perimeter of the Specific Plan. The Specific Plan will construct a 102" trunk line in Euclid Avenue south to connect to the existing 108" line at Euclid Avenue and Eucalyptus Avenue.

Catch basins located throughout the site will collect runoff. On-site storm drain systems serving the Specific Plan will connect to the master planned system in Euclid Avenue to serve the Specific Plan development. The Specific Plan area storm drain improvements are shown in ***Figure 3.20***.

3.8.1 NPDES Compliance

The grading and drainage of the Specific Plan area will be designed to retain/filter, harvest, and reuse or treat surface runoff to comply with the current requirements of the San Bernardino County NPDES Stormwater Program's Water Quality Management Plan (WQMP) for significant new development projects. Water quality impacts may be minimized through the implementation of site designs that reduce runoff and pollutant transport by minimizing impervious surfaces and maximizing on-site infiltration, employing Source Control Best Management Practices (BMP's), or using on-site structural Treatment Control BMP's where the infeasibility of installing Low Impact Development BMP's is demonstrated.

New development within the Specific Plan area will utilize a variety of Low Impact Development site drainage designs to manage stormwater, including but not limited to retention/filtration basins, trenches and swales, and above ground bio-retention systems. Development projects within the Specific Plan area will incorporate features including but not limited to:

- Landscape designs that promote water retention and incorporation of water conservation elements such as use of native plants and drip irrigation systems;
- Permeable surface designs in areas with low traffic;
- Parking lots that drain to landscaped areas to provide retention and infiltration, or bio-treatment where infiltration is infeasible; and
- Limit soil compaction during grading operations within landscaped storm water infiltration areas to no more than 80 percent compaction.

Prior to the issuance of a grading or construction permit, a Storm Water Pollution Prevention Plan (SWPPP), Erosion & Sediment Control Plan sheets, and a WQMP will be prepared and approved. The SWPPP and Erosion & Sediment Control Plan Sheets will identify and detail all appropriate BMP's to be implemented or installed during construction of the project, and the WQMP will describe all post-construction BMP's designed to address water quality and quantity of runoff for the life of the project.

All Priority Land Use (PLU) areas within the Specific Plan Area shall comply with the statewide Trash Provisions adopted by the State Water Resources Control Board (SWRCB) and trash requirements in the most current San Bernardino County Area-Wide MS4 Permit. Priority Land Use (PLU) includes high- density residential (defined as a land use with at least ten (10) dwelling units per acre), industrial, commercial, mixed urban, and public transportation station. Drainage from the PLU shall be designed with conveyance tributary to a sub-regional Full Trash Capture System such as a Debris Separating Baffle Box (DSBB), Continuous Deflective System (CDS), or an equivalent hydrodynamic separator which has been approved by the SWRCB.

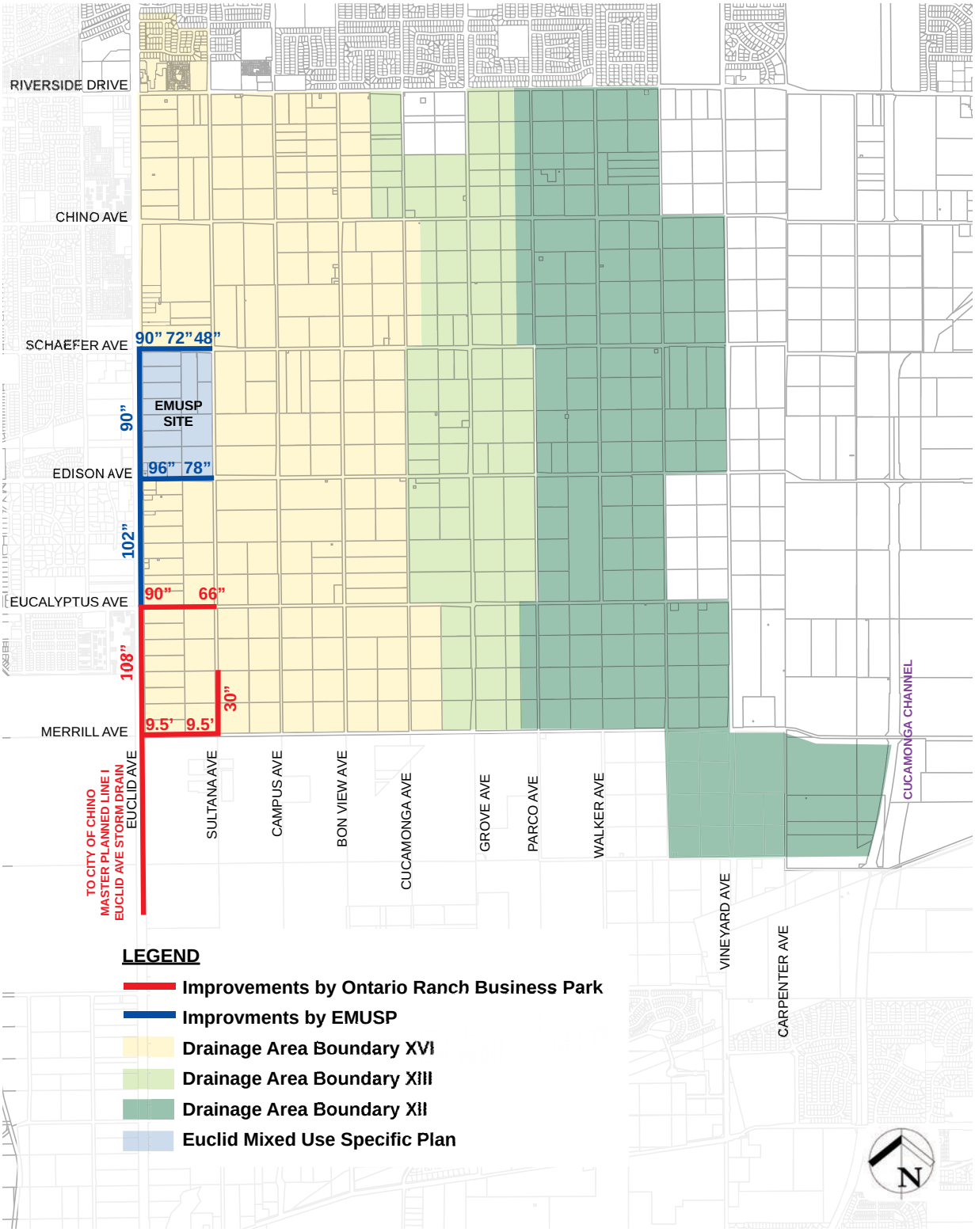


FIGURE 3.20 CITY OF ONTARIO ULTIMATE STORM DRAIN SYSTEM

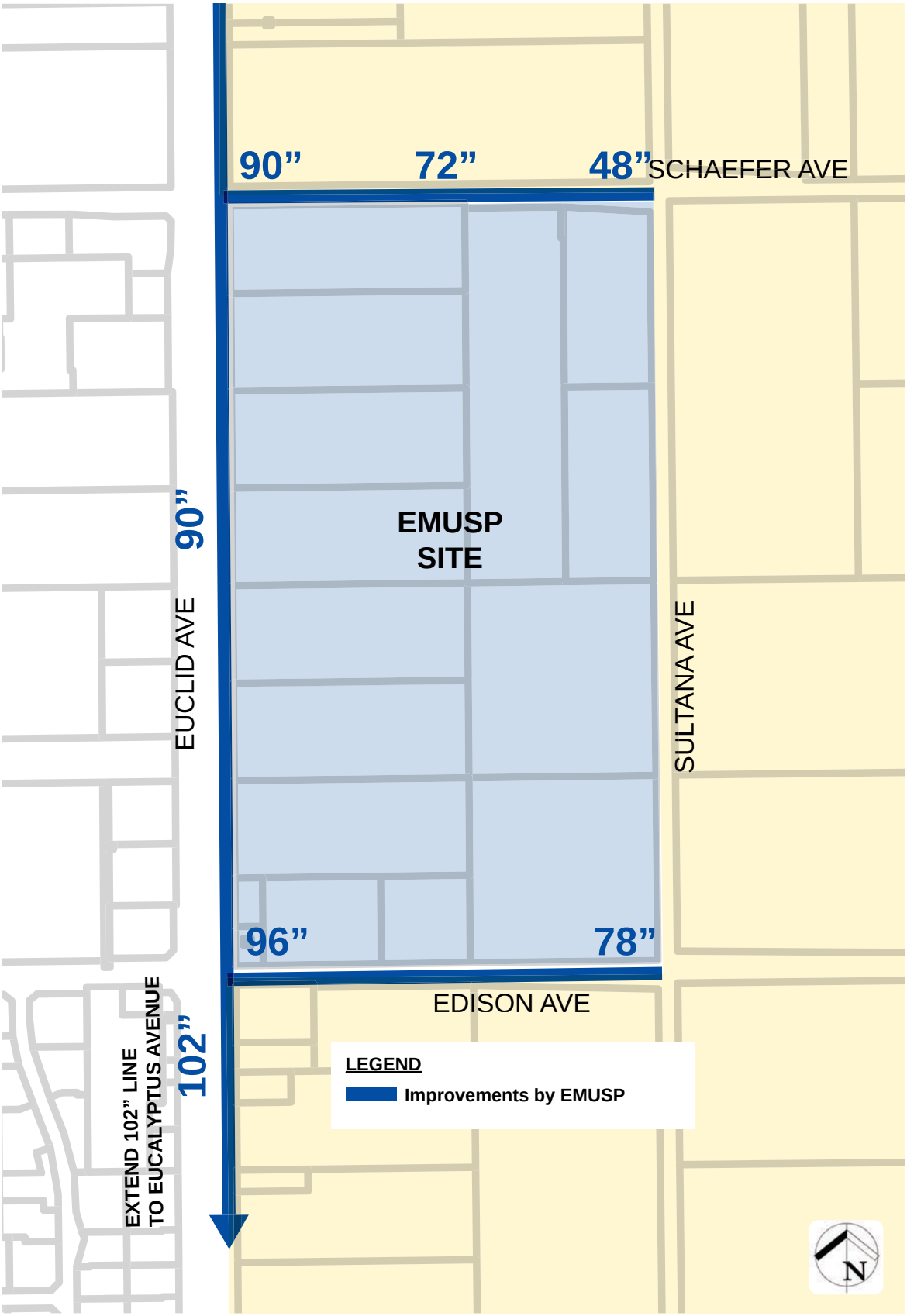


FIGURE 3.21 SPECIFIC PLAN STORM DRAIN PLAN

3.9 Public Services

Public services within the Specific Plan area, including police, fire and solid waste disposal services will be provided as follows:

3.9.1 Police

The City of Ontario will provide police services to the Specific Plan area. The closest police station is located approximately four miles north of the Specific Plan area at 2500 S. Archibald Avenue, just south of SR-60. This station is also the City of Ontario Police Department headquarters.

3.9.2 Fire

The City of Ontario will provide fire protection services to the Specific Plan area. The Ontario Fire Department currently has ten stations, which are staffed with eight four-man paramedic engine companies and two four-man truck companies. The closest operational fire station, Station 2, is located at 544 W. Francis Street, approximately three miles north of the Specific Plan area.

3.9.3 Solid Waste Disposal

The City of Ontario will provide solid waste services to the Specific Plan area. Solid waste facilities will follow the "Solid Waste Department Refuse and Recycling Planning Manual." The Manual establishes the City of Ontario's requirements for refuse and recycling storage and access for service, as well as addresses the City's recycling goals. The Mid-Valley Landfill is the nearest County of San Bernardino landfill located at 2390 N. Alder Avenue in the City of Rialto, approximately 20 miles northeast of the Specific Plan area.

3.10 Phasing Plan

Development phasing of the project site will be determined by the landowner and/or developer based upon real estate market conditions. Phasing will occur as appropriate levels of infrastructure are provided. Phasing sequencing is subject to change over time to respond to various market and local factors and as such, individual phases may overlap or develop concurrently. Infrastructure improvements, as required and approved by the City Engineer to support the development, will be installed by the developer. ***Figure 3.22***, Conceptual Phasing Plan, describes the general phases of development anticipated for the Euclid Mixed-Use Specific Plan area.

Specific Plan backbone infrastructure will be installed by the project developer, in accordance with the applicable City adopted infrastructure plan for the area, as well as the provisions of this Specific Plan and an approved Development Agreement. Fair share responsibilities for improvements will be addressed in a Development Agreement with the City of Ontario. The timing for installation of infrastructure and utilities within the Specific Plan area will be determined as part of the City's approval of future subdivision maps and development plans. Infrastructure will be constructed and made available in a timely manner as development progresses. Phasing of required infrastructure will be determined per separate Development Agreement.

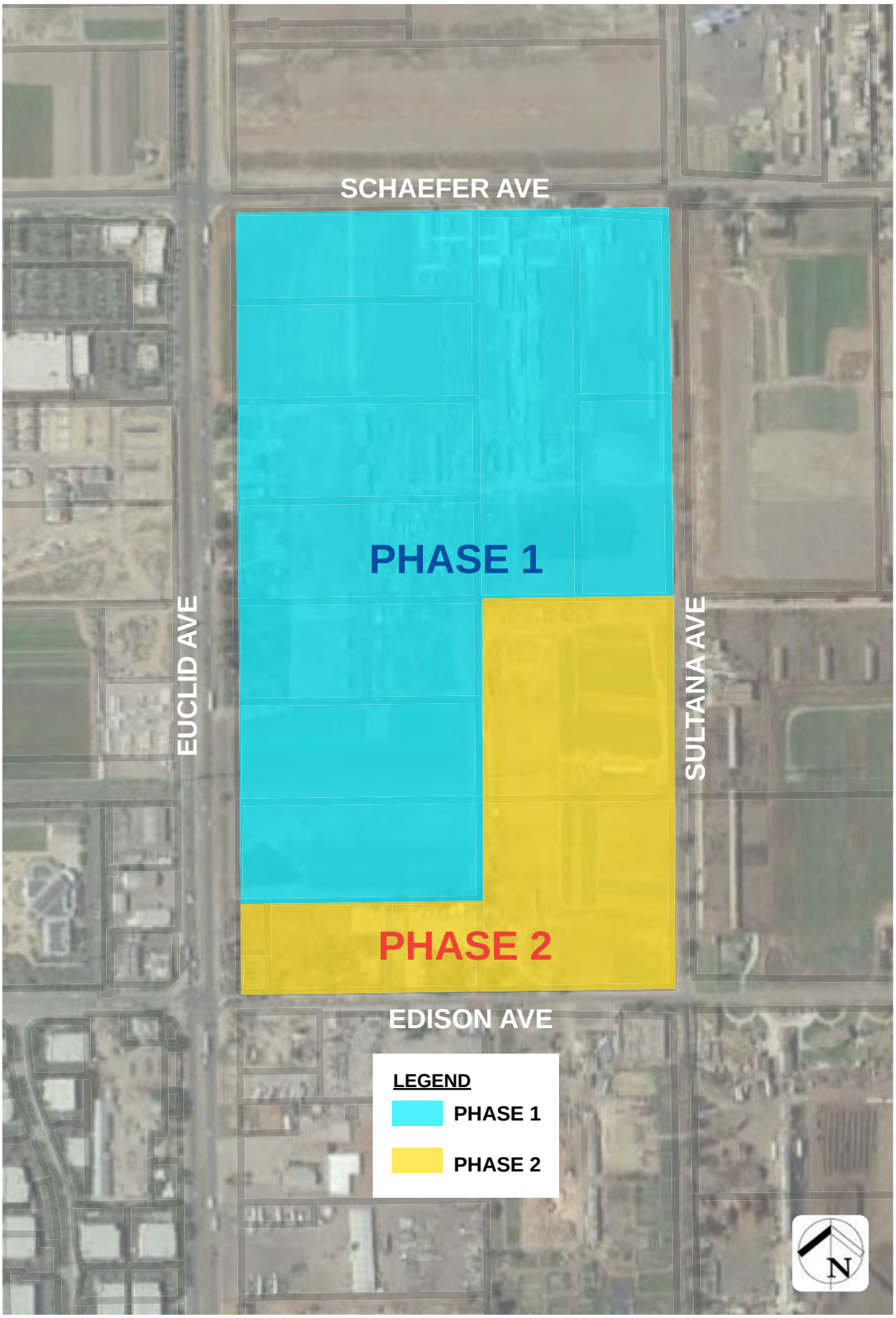


FIGURE 3.22 SPECIFIC PLAN PHASING PLAN

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4. LAND USE AND DEVELOPMENT STANDARDS

This chapter identifies the allowable uses and the standards for building heights, setbacks, parking, coverage, landscape, signage, and all other development standards within the Specific Plan area. The application of these regulations is intended to create a harmonious relationship within the Specific Plan area and with the surrounding land uses as well as to protect the health, safety, and general welfare of the community.

4.1 General Provisions

Upon adoption of the Specific Plan, the development standards and procedures established within the Specific Plan become the governing zoning standards for any new construction, addition, or remodel within the Specific Plan area. However, in reviewing individual projects requiring discretionary approval, additional conditions may be applied by the approving body to accomplish the goals and objectives of this Specific Plan.

4.1.1 Definition of Terms

The meaning of words, phrases, titles, and terms shall be the same as provided in the City of Ontario Development Code unless specifically provided herein.

4.1.2 Applicability

The Euclid Mixed-Use Specific Plan is a regulatory plan, which, upon adoption by ordinance, will constitute the zoning of the property. Development plans or agreements, tract or parcel maps, precise development plans, or any other action requiring ministerial or discretionary approval for the subject property must be consistent with the approved Specific Plan. Actions deemed to be consistent with the Specific Plan shall be judged to be consistent with The Ontario Plan 2050 Policy Plan (General Plan) as mandated in California Government Code, Section 65454. Should the regulations contained herein differ from the regulations of the City of Ontario Development Code, the regulations of the Specific Plan shall take precedence. Where the Euclid Mixed-Use Specific Plan is silent, City Code shall apply.

4.1.3 Severability

In the event that any regulation, condition, program, portion, or policy of this Specific Plan or the application thereof to any person or circumstance is held to be invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed separate, distinct, and independent provisions and shall not affect the validity of the remaining provisions of this Specific Plan or applications thereof which can be implemented without the invalid provision or application.

4.1.4 Administration

The Euclid Mixed-Use Specific Plan is adopted by ordinance and will serve as the implementation tool for The Ontario Plan 2050 Policy Plan as well as the zoning for the project site. The Specific Plan Development Regulations as outlined herein address general provisions, permitted uses, and development standards for the land uses within the project site.

4.1.5 Methods and Interpretation

Development within the Euclid Mixed-Use Specific Plan shall be implemented through the approval by the City of Ontario of parcel maps, tract maps, and development permits. The administration process described herein provides for the mechanisms for review and approval of development projects within Rich Haven consistent with the Specific Plan objectives.

Unlisted Uses

Any land use proposal not specifically covered by the provisions contained herein shall be subject to the City of Ontario Development Code.

Boundaries

The boundaries and acreage of the individual planning areas or portions thereof are approximate. Precise boundaries and acreages will be established in conjunction with the subdivision map or site development plan for each planning area or portions thereof within the project. Minor boundary and acreage variations (15% maximum deviation) shall be permitted without an amendment to this Specific Plan, subject to review by the Planning Director for conformance with the intent of the Specific Plan.

4.2 Allowable Uses

Table 4.1 (Land Use Matrix) shows the allowable land use, activity, or facility permitted within the Specific Plan's BP (Business Park) and MU (Mixed-Use) Zoning Districts, as discussed in Chapter 3. These uses include a variety of business-serving commercial, office, technology, light manufacturing, and high density residential uses. The letters/symbols used in ***Table 4.1*** shall have the following meanings:

"P" Permitted Land Uses

A Permitted Use (P) is permitted by right and may be established as the primary use of a building without the need for discretionary approval. Permitted Uses are subject to the development standards and guidelines applicable to the zoning district in which the use is located.

"C" Conditionally Permitted Land Uses

A Conditionally Permitted Use (C) is permitted upon issuance of a Conditional Use Permit (CUP) pursuant to Section 4.02.015 of the Ontario Development Code and City processing procedures.

"A" Administratively Permitted Uses

An Administratively Permitted Use (A) is permitted upon issuance of an Administrative Use Permit (AUP) pursuant to Section 4.03.015 of the Ontario Development Code and City processing procedures.

"--" Prohibited Land Uses

A land use indicated with a " --" symbol is prohibited within the zoning district.

Land Uses Not Listed

A land use not listed in ***Table 4.1*** shall be considered a prohibited land use. For land uses similar to those listed in ***Table 4.1***, but not expressly stated in this Specific Plan, the Planning Director or his/her designee has the authority to make a determination of the applicability of similar land uses.

TABLE 4.1 ALLOWABLE USES

LAND USE	BUSINESS PARK DISTRICT	MIXED-USE DISTRICT
AGRICULTURAL USES		
Temporary and Interim Agricultural Uses*	**P**	**P**
CONSTRUCTION		
Contractors (e.g.- building construction, site preparation, capital improvement projects)		
• Completely within a building	**P**	--
• With outdoor storage	--	--
MANUFACTURING		
Apparel Manufacturing	**C**	**C**
Artisan Crafts (made by hand) such as glassworks, jewelry, and pottery	**C**	**C**
Beverage Manufacturing	--	--
Chemical Manufacturing (excludes pesticides and fertilizers)	--	--
Computer and Electronic Product Manufacturing	**C**	--
Electrical Equipment, Appliance and Component Manufacturing	**C**	--
Fabricated Metal Product Manufacturing		
• Ammunition and Arms	**C**	--
Food Manufacturing, General (but excluding animal slaughtering and processing and seafood product preparation and packaging)	--	--
Food Manufacturing, Limited (bread, tortilla, snack foods, roasted nuts and peanut butter, coffee, tea, flavoring syrup, seasoning and dressing, spice extract)	**C**	--
Furniture and Related Product Manufacturing	**C**	--
Glass and Glass Product Manufacturing	--	--
Leather and Allied Product Manufacturing (excluding leather and hide tanning and finishing)	**C**	--
Machinery Manufacturing	--	--
Miscellaneous Manufacturing (medical equipment and supplies, jewelry, sporting goods, toys, office supplies, signs, etc.)	**C**	--
Paper Manufacturing	--	--
Pharmaceutical and Medicine Manufacturing (excludes biological product manufacturing)	**C**	--
Printing and Related Support Activities	**C**	--
Primary Metal Manufacturing	--	--
Petroleum and Coal Products Manufacturing	--	--
Plastics Product Manufacturing	--	--
Rubber Product Manufacturing	--	--
Textile Mills	--	--
Textile Product Mills	--	--
Transportation Equipment Manufacturing	--	--
Wood Product Manufacturing	--	--

* Restricted to existing agricultural and dairy uses.

LAND USE	BUSINESS PARK DISTRICT	MIXED-USE DISTRICT
WHOLESALE TRADE		
Merchant Wholesalers, Durable Goods - General (includes motor vehicles and parts, lumber and construction materials, metals and minerals other than petroleum, and machinery equipment and supplies)	--	--
Merchant Wholesalers, Durable Goods - Limited (includes furniture and home furnishings, professional and commercial equipment and supplies, hardware, plumbing, and heating equipment and supplies)	**P**	--
Merchant Wholesalers, Nondurable Goods (excludes industrial gases, petroleum bulk stations and terminals, and fireworks and explosives merchant wholesalers)	--	--
Wholesale Electronic Markets, Agents and Brokers (excludes automobile auctions)	**P**	--
HEALTHCARE AND SOCIAL ASSISTANCE		
Ambulatory Health Care Services	**P**	--
Child Day Care Services (Commercial Facilities)	--	**P**
Child Day Care Services (Employer Provided Services)	--	**P**
Medical Office	**P**	**P**
Urgent Care	**P**	**P**
Vocational Rehabilitation Services	**C**	**C**
COMMERCIAL USES		
Information		
Broadcasting	**P**	**P**
Data Processing, Health, and Related Services	**P**	**P**
Publishing Industries	**P**	**P**
Motion Picture and Sound Recording Facilities	**P**	--
Recording and Sound Studios	**P**	--
Wireless Telecommunication Facilities	**P**	**P**
Eating and Drinking Places, and Food Services		
Alcoholic beverage sales for consumption on the premises (includes all retailer's on-sale licenses issued by the State of California Department of Alcoholic Beverage Control)	**C**	**C**
Food Bank or Meal Delivery Services	**C**	--
Restaurant		
• Without Drive-Thru	**P**	**P**
• With Drive-Thru	**C**	**C**
Motor Vehicle Mechanical and Electrical Repair and Maintenance		
Servicing Facilities (limited to retail-oriented services, such as emissions testing, battery replacement and other similar retail activities that involves the limited use of pneumatic tools or equipment that create noise impacts)	**P**	--

LAND USE	BUSINESS PARK DISTRICT	MIXED-USE DISTRICT
General Repair Facilities		
(includes general motor vehicle mechanical and electrical repair and maintenance of air conditioning, brake, cooling, electric, exhaust, fuel, suspension system, engine, transmission, and drive train)		
• General Repair Facilities - Automobile, Light Truck and Van Repair and Maintenance	**C**	--
• General Repair Facilities - Large Truck, Bus and Similarly Large Motor Vehicle Repair and Maintenance	--	--
Automotive Body, Paint, Interior and Glass Repair		
• Automobile, Light Truck and Van Body, Paint, and Interior Repair and Customization	**C**	--
• Minor Customization Work (limited to the "bolt-on" replacement or addition of parts only -- no body or paint work is allowed)	**C**	--
• Large Truck and Bus Body, Paint, and Interior Repair and Maintenance	--	--
• Electronic and Precision Equipment Repair and Maintenance	--	--
Personal Services		
Couriers and Messengers	**P**	**P**
Fitness and Recreational Sports Center		
• Gross Floor Area less than 10,000 sq. ft.	**P**	**P**
• Gross Floor Area 10,000 sq. ft. or more	**C**	**C**
Industrial Laundry and Linen Supply	**C**	--
Personal and Household Goods Repair and Maintenance	**P**	--
Pet Boarding and Kennels		
• Day only (e.g. Doggie Daycare)	**C**	**C**
• Overnight Stays	**C**	**C**
Postal Services	**P**	**P**
Passenger Car Rental and Leasing	**C**	--
Truck, Utility Trailer, and Recreational Vehicle Rental and Leasing	**C**	--
Offices		
Administrative and Support Services	**P**	**P**
Business management	--	**P**
Finance and Insurance Offices	**P**	**P**
General Offices	--	**P**
Government offices	--	**P**
Management of Companies and Enterprises	**P**	**P**
Office Ancillary to a Primary Industrial Use (less than 10% of GFA)	**P**	**P**
Professional, Scientific, and Technical Services (e.g. accounting, tax preparation, architecture, bookkeeping, legal, engineering, consulting)	**P**	**P**
Real Estate Offices	**P**	**P**

LAND USE	BUSINESS PARK DISTRICT	MIXED-USE DISTRICT
Retail		
Antique Shop	--	P
Alcoholic beverage sales for consumption off the premises (includes all retailer's off-sale licenses issued by the State of California Department of Alcoholic Beverage Control)	--	C
Appliance Store	--	P
Art Supply Store	--	P
Auction Houses	C	C
Automotive Parts and Accessories (including tires)	P	--
Bakery Retail	--	P
Banks/Credit Unions	--	P
Banks, and Credit unions with drive-thru in accordance with the City of Ontario Development Code and Section 5.5.8.5 herein	--	C
Barber/Beauty Shops	--	P
Beauty Supply Store	--	P
Billiard parlor/Pool hall	--	C
Book Store	--	P
Bowling alleys	--	C
Camera Supply Store	--	P
Car wash-full service	--	--
Car wash-self-service as an ancillary use	C	--
Catering Services and Facilities	P	--
Clothing and Accessory Store	--	P
Coffee House/Cafe	--	P
Commercial Sports Facilities such as Batting Cages, etc.	C	--
• Virtual Recreational Sports such as Golf Simulator	C	C
Computer and Home Electronics Retail	--	P
Computer, Electronics Home Repair	P	P
Convenience Stores (without alcoholic beverage sales)	P	C
Cutlery	P	P
Dance Hall/Studio Hall	--	--
Delicatessen/Cafeteria	--	P
Drug store/pharmacy with drive-thru in accordance with the City Development Code and Section 5.5.8.8 herein	--	C
Dry Cleaners (commercial off-site cleaning operations only)	--	P
Electric Vehicle Charging Stations (Automobiles)	--	C
Electric Vehicle Charging Stations (Commercial Trucks)	C	--

LAND USE	BUSINESS PARK DISTRICT	MIXED-USE DISTRICT
Family entertainment centers (Mini-golf, trampoline parks, etc.)	C	--
Financial Services	--	P
Florist Shop	--	P
Furniture Sales	--	P
Gasoline Fueling Station with Convenience Store (without alcoholic beverage sales)	C	C
General Merchandise/Retail Store	--	P
Garden Supply/Hardware store	--	--
Grocery store	--	P
Health Clubs	--	P
Health/Specialty food store	--	P
Hobby supply store	--	P
Hotels	--	C
Ice cream parlor	--	P
Internet Fulfillment/Warehousing/Distribution (E-Commerce)	P	--
Jewelry store	--	P
Jewelry, watch and clock repair	--	P
Liquor store	--	C
Live performance facility, night club	--	C
Locksmith/key shop	--	P
Luggage and leather goods	--	P
Medical Clinic/Healthcare Center/Urgent Care	--	P
Nursery School/Day Care Facility/Child Care Center	--	P
Office supplies and equipment	P	P
On-site alcoholic beverage sales establishment	--	C
Personal service shops	--	P
Pet and pet supply stores	--	P
Photocopy services	--	P
Photography studio	--	P
Places of worship	C	C
Plant nurseries (retail)	C	C
Recreational equipment sales (e-bikes, kayaks, etc.)	--	--
Restaurant, family full service, specialty and fast food	--	P
Schools, Colleges, Universities, Professional Schools	--	C
Shoe store, repair	--	P
Sporting goods store	--	P
Stationary & gift shops	--	P
Travel agencies	--	P
Video Arcade	--	C

LAND USE	BUSINESS PARK DISTRICT	MIXED-USE DISTRICT
Industrial Retail Sales		
(Retail sales of goods and/or products either manufactured, warehoused or wholesaled on-site)		
• Maximum 15% of building floor area or 8,000 sq. ft., whichever is less	**A**	--
• Over 15% of building floor area or 8,000 sq. ft.	**C**	--
Non-Store Retailers (includes electronic shopping and mail-order houses, vending machine operators, and other direct selling establishments (excluding fuel/petroleum dealers)	**P**	--
WAREHOUSING		
Warehousing and Storage (General and Other)		
• Completely within a building	**P**	--
• Outdoor Storage Accessory to an Allowed Use	**A**	--
• Outdoor Storage as the Primary Use	--	--
Outdoor truck/trailer storage/long term parking	**C**	--
RESIDENTIAL USES		
Single-Family Attached / Multi-Family Residences		
• Attached and Detached Condominiums	--	**P**
• Townhomes	--	**P**
• Stacked Flats	--	**P**
• Multiple Family Dwellings/Apartments	--	**P**
Residential Community Care Facility (6 or less)	--	**P**
Home Occupation	--	**P**
Public School K-12 in accordance with the City Development Code	--	**P**
Model Homes and temporary related signage, sales, and parking facilities	--	**A**
Senior Center	--	**C**
Senior Housing	--	**C**
Assisted Living/Congregate Care in accordance with the City of Ontario Development Code	--	**C**
Convalescent Facility	--	**C**
Live/Work Units	--	**C**
Places of Public Assembly (including places of worship)	**C**	**C**
Residential Day Care Facilities serving up to 14 children	--	**C**
Private Recreation	**C**	**C**
Home Occupations	**A**	**A**
Single-Family Dwellings	--	**P**
Single Room Occupancy (SRO) Facilities	--	**C**

LAND USE	BUSINESS PARK DISTRICT	MIXED-USE DISTRICT
Accessory Residential Structures		
• Accessory Dwelling Units	--	P
• Accessory Residential Structures (includes guesthouses, garages, car-ports, garden and tool sheds, and other ancillary buildings and structures determined appropriate by the Planning Director)	--	P
• Enclosed, screened outdoor storage	--	--
• Maintenance facilities and structures	--	--
Animal Keeping		
• 4 or fewer pets	P	P
Community Gardens, Urban Farms, and Related Uses	A	A
Employee (Farmworker) Housing		
• 6 or fewer employees	--	C
Vocational/Trade Schools	C	C
Temporary Uses and Interim Use		
• Amusement (i.e. circuses, carnivals etc.)	A	A
• Christmas Tree, Pumpkin, and similar lots	A	A
• Outdoor displays	A	A
• Parking lot sales	A	A
• Street/Craft fairs and Farmer Markets	A	A
• Temporary Structures	A	A
SPECIALTY USES		
Police Store Front/Sub Station/Fire Station/Emergency Services	P	P
Public Parks, Community Centers, and similar facilities	P	P
Public utilities	C	C

4.3 Development Standards

Table 4.2 (Development Standards) provides a summary of the development standards applicable to the land uses, structures, and related improvements located within the Specific Plan area. Refer to the Ontario Development Code for any standard not addressed in ***Table 4.2***.

4.3.1 Business Park/Mixed-Use Development Standards

TABLE 4.2 BUSINESS PARK AND MIXED-USE DEVELOPMENT STANDARDS

DEVELOPMENT STANDARD	BUSINESS PARK DISTRICT	MIXED-USE DISTRICT
Minimum Lot Area	10,000 sq ft	10,000 sq ft
Minimum Lot Dimensions		
1. Lot Width	100 ft	100 ft
2. Lot Depth	100 ft	100 ft
Maximum Floor Area Ratio [1]	0.60	Commercial = 1.0 Office = 1.5
Maximum Building Footprint [6]	175,000 sq ft	130,000 sq ft
Minimum Landscape Setback [2]		
1. Euclid Avenue	35 ft	35 ft
2. Edison Avenue	N/A	23 ft
3. Schaefer Avenue	23 ft	N/A
4. Sultana Avenue	10 ft	10 ft
5. Interior Side	N/A	N/A
6. Interior Rear	N/A	N/A
Minimum Building Setback [2] [3]		
1. Euclid Avenue	35 ft	35 ft
2. Edison Avenue	N/A	23ft
3. Schaefer Avenue	23ft	N/A
4. Sultana Avenue	10 ft	10 ft
5. Interior Side	10 ft	10 ft
6. Interior Rear	10 ft	10 ft
Minimum Parking Space and Drive Aisle Separations		
1. Parking Space or Drive Aisle to Street Property Line	20 ft	10 ft
2. Parking Space or Drive Aisle to Interior Property Line	5 ft	5 ft
3. Parking Space to Buildings, Walls, and Fences	Areas adjacent to public entries and office areas: 10 ft Areas adjacent to other building areas: 5 ft Within screened loading and storage yard areas: 0 ft	
4. Drive Aisles to Buildings, Walls, and Fences [4]	5 ft	5ft
5. Drive Aisles within Screened Loading and Storage Yard Areas	0 ft	0 ft
Maximum Building Height [5]	45 ft	55 ft
Minimum Landscape Coverage (Aggregate)	10%	10%
Walls, Fences, and Hedges: Per Ontario Development Code and Section 5.2 (Buffering and Screening) of this Specific Plan.		

Footnotes:

1. Land Use Distribution for Mixed Use district = 10"% Office, 20% Commercial and 70% Residential.
2. All setback areas shall be measured from the property line and shall be landscaped.
3. Within yard areas fully screened by a decorative wall, there shall be no minimum drive aisle or parking space setback required.
4. The minimum separation area between a building, wall, or fence, and a parking space or drive aisle shall be fully landscaped. The separation area may include pedestrian walkways, as necessary; however, a minimum 5 ft. wide planter area shall be maintained between a building wall and a pedestrian walkway. The minimum separation dimension does not include any area devoted to vehicle overhang.
5. Architectural projections, mechanical equipment, and focal elements may be allowed to exceed maximum height up to 10 percent above the prescribed height limit.
6. Building within the Business Park District that front onto Euclid Avenue shall be limited to a maximum building footprint of 54,000 sq. ft.

4.3.1.1 Business Park/Office Parking and Loading Standards

Parking and Loading standards for Business Park and Office development will be consistent with the standards outlined in the Ontario Development Code.

Sufficient off-street loading and unloading spaces shall be provided on each development site, and adequate provisions and space shall be made for maneuvering freight vehicles and handling freight.

Loading activity, including turnaround and maneuvering, shall be made on site. Buildings, structures, and loading facilities shall be designed and placed on the site so that vehicles, whether rear loading or side loading, may be loaded or unloaded at any loading dock, door, or area without extending beyond the property line.

4.3.2 Mixed-Use Development Standards

The following standards provide the lot development criteria for Retail Commercial and Office uses within the Mixed-Use portion of the Specific Plan. Refer also to General Standards in Section 4.1.

TABLE 4.3 MIXED-USE DEVELOPMENT STANDARDS

DEVELOPMENT STANDARD	RETAIL COMMERCIAL AND OFFICE
Minimum Lot Size/Area	**10,000 sq ft**
Floor Area Ratio (Calculated based on gross site average)	
From Euclid Avenue Right-Of-Way Minimum Retail Commercial	**0.2:1**
From Euclid Avenue Right-Of-Way Maximum Office	**0.5:1**
Minimum Landscape Coverage	10%, all setback from right-of-way areas shall be landscaped
Building Setbacks (minimum)	
From Euclid Avenue Right-Of-Way	**35 ft** [4]
From Edison Avenue Right-Of-Way	**35 ft** [4]
From Schaefer Avenue Right-Of-Way	**23 ft**
From Private or Local Street	**15 ft** [2]
From detached residential on adjacent property	**25 ft**
From SCE Property Line/Easements	**0 ft**
Parking Setbacks (minimum) [1] [3]	
From Euclid Avenue Right-Of-Way	**35 ft**
From Edison Avenue Right-Of-Way	**35 ft**
From Schaefer Avenue Right-Of-Way	**23 ft**
From Private or Local Street	**10 ft**
From detached residential on adjacent property	**5 ft**
From SCE Property Line/Easements	**0 ft**
Building Height (maximum) [5]	
Structures	**45 ft**
Architectural Projections (including towers, focal elements, cupulas, etc.)	**55 ft**

Footnotes:

1. Per the City of Ontario Development Code. Commercial parking standards still apply.
2. Refer to Section 5, Landscape Design Guidelines for further setback/design requirements.
3. Parking stalls perpendicular to street shall be screened by landscaping, berms, or decorative walls that match architectural style of nearest development. Screening shall mature to a minimum height of 36" (to screen car grilles).
4. Buildings shall be set back to the Neighborhood Edge or to the given setback from R.O.W., whichever is more restrictive. Where a Neighborhood Edge condition does not exist, setbacks from R.O.W. shall govern.
5. Maximum building heights shall comply with the requirements of Chino Airport Land Use Compatibility Plan ("CNO ALUCP").

4.3.2.1 Circulation

The Euclid Mixed-Use Specific Plan shall have street frontage monumentation announcing the major entrance to the development from Edison Avenue. Within the Specific Plan, vehicular access to commercial/office development shall be clearly designated and supplemented with special paving, landscaping and signage. Parking areas should include clearly marked pedestrian pathways to building entrances.

4.3.2.2 Parking Standards

Parking requirement for Commercial development will be consistent with the standards outlined in the Ontario Development Code.

4.3.2.3 SCE Easement Parking

Surface parking and vehicular/truck/trailer storage are permitted uses within SCE easements subject to approval from utility provider. This surface parking may not be included towards meeting minimum resident, guest or commercial parking requirements.

4.3.2.4 Patio Dining

Outdoor seating, in conjunction with business, is encouraged to enliven the street scene along Euclid Avenue and Edison Avenue. Patio dining seating area must have a minimum dimension of 10 ft. clear. Along Euclid Avenue and Edison Avenue, patio dining may encroach a maximum of 10 ft. into the neighborhood edge. Patio areas may be enclosed by the tenant by open rail compatible with the architecture of the building, hedges or other suitable separation.

4.3.2.5 Drive-Thru Facilities

a. Development and/or uses with drive thru facilities will comply with the standards outlined in the Ontario Development Code.

A drive-through facility shall be operated only as (a) part of a restaurant which also has an indoor dining area, (b) a banking facility or (c) a drug store or similar retail use, subject to satisfying the requirements listed below.

b. Separation from Sensitive Land Uses

1. A drive-through facility shall be separated from any residential building by no less than 150 ft. This standard may be modified, particularly for non-restaurant drive-through uses, subject to approval from the City of Ontario Planning Director.
2. The drive-through facility shall be architecturally treated with service and delivery “back of house” areas visually screened from residential development and public streets.

TABLE 4.4 STAND ALONE RESIDENTIAL DEVELOPMENT STANDARDS

DEVELOPMENT STANDARD	MEDIUM HIGH / HIGH DENSITY RESIDENTIAL
Density (DU/AC)	**11.1 - 35.0**
Lot Criteria	
Min. Lot Size	**10,000 sq ft**
Minimum Setbacks [1] [2]	
Streetside Setback	
• Living Area to sidewalk or paving	**5 ft**
• Porch [3]	**3 ft**
• Garage to 20' Alley [7]	**5 ft**
Minimum Building Separation	
Front to Front	**25 ft**
Side / Side	**12 ft**
Rear / Rear [8]	**30 ft**
Front to Side	**20 ft**
Between Covered Porches Front to Front	**10 ft**
Between Garden Walls less than 3' in Height	**10 ft**
Lot Coverage	
Max. Coverage	**60%**
Maximum Building Height [4]	
Main Structure	**55 ft**
Walls, Fences and Hedges	
Maximum Height at Front of Building [5]	**3 ft**
Maximum Height at Side or Rear of Building [6]	**6 ft**
Private Open Space	
Ground Floor Units:	
Min. Square Footage per Dwelling Unit	**140**
Min. Dimension	**10 ft**
Upper Unit:	
Min. Square Footage per Dwelling Unit	**50**
Min. Linear dimension	**5 ft**
Storage Space:	
Min. Interior Storage Space	**160 CF per Unit [8]**

Footnotes:

1. Architectural projections may project a maximum of 3 ft. into required front, rear or side setback areas; however, in no case shall such projection be closer than 3 ft. to any property line. An architectural projection is defined as an element that articulates the building elevation such as eaves, window and door pop-out surrounds, media niches, bay windows, pot shelves, chimneys, enhanced window sills, shutter details, window trim, balconies and entry gates, and other similar elements.
2. All front and corner side setbacks are measured from the back of sidewalk. All other setbacks measured from Property Line unless noted otherwise.
3. The minimum depth of a porch shall be 7 ft., with an area of 70 sq. ft. of clear space. The porch depth may be reduced to 5 ft., where appropriate to mass and scale of the building, subject to Planning Department review and approval.
4. Architectural projections may exceed the maximum height by an additional 10%.
5. Solid masonry walls or fencing may be permitted subject to a 3 ft. minimum setback from the front property line. Fences, walls, hedges or similar view obstructing structures or plants that reduce safe ingress or egress of vehicles or pedestrians shall not exceed 3 ft. in height in any required front yard.
6. Walls may exceed 6 ft. in height and pilasters may exceed 6.5 ft. in height only for noise attenuation purposes subject to an Acoustical Study and Planning Department approval. Up to 2 ft. retaining wall may be incorporated with the 6 ft. maximum wall so that maximum exposed wall shall not exceed 8 ft..
7. Measured from foundation, not recessed garage door. Eaves and second floor projections may encroach up to 18 inches.
8. Interior storage includes finished areas under stairs, finished attic space with a minimum dimension of 24" and garage space including hanging racks with a min. depth of 18".

4.4 Open Space Planning Areas

The Euclid Mixed-Use Specific Plan area includes two Southern California Edison (SCE) easements which traverse the site in an East/West direction. The northern SCE easement is identified as PA 4 and diagonally bisects the Business Park District. The southern SCE easement is identified as PA 5 and provides a separation between the Business Park District and the Mixed-Use District. Both of the easements are designate as open space-non-residential (OS-NR). The Euclid Mixed-Use Specific Plan outlines allowable uses and the development standards within the SCE easements in PA 4 and PA 5.

4.4.1 Allowable Uses within the SCE Easement Areas

All uses and improvements within PA 4 and PA 5 of the Euclid Mixed-Use Specific Plan are subject to review and approval by Southern California Edison Company and The City of Ontario. Land Uses allowed within the SCE easements are shown in ***Table 4.5***:

TABLE 4.5 ALLOWED USES SUBJECT TO SCE APPROVAL

LAND USES	OPEN SPACE
Agriculture (except community gardens, urban farms and cannabis production)	P
Beekeeping and production	P
Community Gardens, Urban Farms and related uses	A
Electric Vehicle Charging Facilities (ancillary to a permitted land use)	P
Parking Lots, Vehicle and Truck/Trailer short term and long term storage	C
Commercial and Recreational Vehicle Storage	C
Nurseries (subject to tree height limitations)	P
Open Space/Parks and Trails (publicly owned or accessible)	P
Police and Fire Protection (no structures)	P
Solar/Wind Energy Power Generation	C
Boat and RV short/long term storage	C

4.4.2 Development Standards within the SCE Easement Areas

Allowable uses within the SCE easement areas generally do not include permanent or temporary structures or buildings. No building setbacks are required from the SCE easement line.

Uses allowed within the SCE easements shall comply with all applicable utility corridor development standards per the City of Ontario development code.

Uses such as parking and outdoor storage are required to be screened using walls and/or landscaping identified in Section 5 of the Specific Plan. Security walls or fencing is allowed up to 14 ft. high along the easement boundary.

Lighting for security and/or safety within the SCE easements shall be allowed subject to the requirements that illumination be contained within the easement area and directed away from any sensitive surrounding land uses.

5. DESIGN GUIDELINES

This chapter identifies conceptual themes for site planning, architecture, and landscape design within the Euclid Mixed-Use Specific Plan area. The guidelines are intended to ensure a cohesive and attractive development that meets the following objectives:

1. Demonstrates high quality development that complements and integrates into the community and adds value to the City.
2. Creates a functional and sustainable place that ensures the Euclid Mixed-Use Specific Plan area is competitive regionally and appropriate in the Ontario Ranch community.
3. Illustrates the distinctive characteristics of the two land use plan zones - Business Park and Mixed-Use.
4. Establishes criteria for building design and materials, landscape design, and site design that provide guidance to developers, builders, architects, landscape architects, and other professionals preparing plans for construction.
5. Provides guidance to City staff and the Planning Commission in the review and evaluation of future development projects in the Euclid Mixed-Use Specific Plan area.
6. Incorporates construction and landscape design standards that promote energy and water conservation strategies.
7. Implements the goals and policies of The Ontario Plan and the intent of the Ontario Development Code.

5.1 General Design Guidelines

5.1.1 Architectural Design

The architectural character within the Euclid Mixed-Use Specific Plan is intended to reinforce the rich architectural diversity of the City Of Ontario while providing a cohesive aesthetic treatment for the varied anticipated uses and building types including one and two story business park buildings, neighborhood commercial and retail buildings, low-rise office buildings and two and three story, high density, attached residential buildings. The architectural design and features shall consider the following design objectives:

1. Create a palette of architectural styles and design criteria to encourage a cohesive community character within the Specific Plan area while promoting a variety of traditional and timeless architectural expressions.
2. Utilize high quality and sustainable materials on building exteriors to reduce maintenance and ensure a long lasting attractive appearance.
3. Orient buildings along perimeter roadways with front building elevations, front entries and enhanced materials defining the character of development.
4. Buildings within the Business Park district shall be in a scale and proportion that minimizes the visual impact of buildings fronting along Euclid Avenue.

5. Commercial and Office buildings design should emphasize building entries utilizing focal elements such as towers, trellises, architectural detailing, etc. and enhanced building treatments or materials. Service areas should be oriented away from public spaces and/or screened from off-site views.
6. Residential buildings should be designed with enhanced architectural treatments/features on all visible elevations. Utility features should be oriented along internal private drives and screened with landscaping wherever possible.

These guidelines will further serve to implement the objectives, policies and principles of the City's TOP by drawing upon the rich architectural diversity, quality and history of Ontario's established neighborhoods. Business Park Guidelines are included in Section 5.2, Regional Commercial/Mixed-Use Design Guidelines in Section 5.3 and High Density Residential Design Guidelines in Section 5.4.









5.1.2 Landscape Design

The overall landscape treatment within the Specific Plan is intended to provide a unifying element and to establish a unique setting for future development. Landscape designs shall consider the following design objectives:

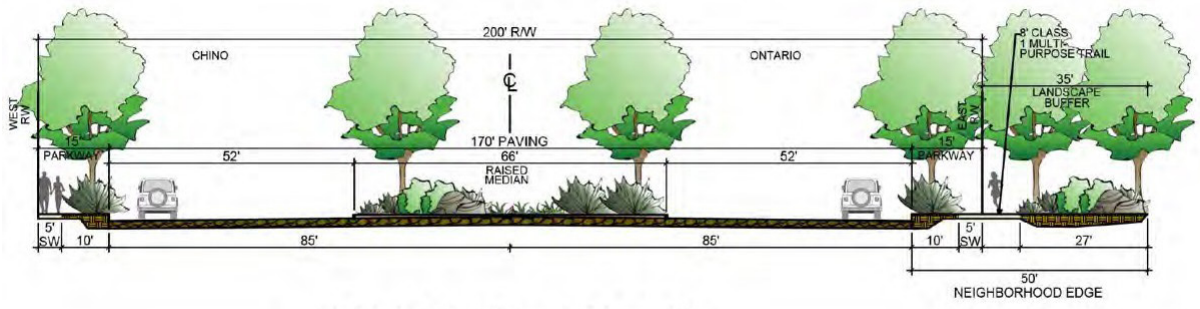
1. Incorporate Neighborhood Edge planting along Euclid Avenue and Edison Avenue to provide the general landscape framework and establish a sense of place for the varied land uses.
2. Utilize a hierarchy of monumentation signage and focal planting to define the Specific Plan area at primary intersection locations.
3. Develop a palette of appropriate street trees to be used along internal public streets, private drives and parking areas within the Mixed-Use area of the Specific Plan.
4. Open parking areas should be screened from perimeter streets. Parking areas shall be screened using evergreen shrubs, low walls or berms or a combination of screening methods.
5. Vehicle storage areas shall be screened with decorative walls. Screen walls to be softened with vertical evergreen shrubs and/or trees.

5.1.3 Streetscapes

Streetscape design creates an aesthetically pleasing view for pedestrians and motorists, screens parking and loading areas from the public right-of-way, and integrates the development into the surrounding community. The streetscape designs presented are conceptual only; final grading, plantings, and tree locations will be determined on a project-by-project basis.

5.1.3.1 Euclid Avenue Streetscape

Euclid Avenue features a wide raised landscaped median planted with trees, a 15 ft. wide parkway and a 35 ft. wide landscape setback. The parkway will include a 10 ft. wide curb-adjacent landscape strip generally planted with trees and groundcover and a 5 ft. wide sidewalk. Tree species along the perimeter of Euclid Avenue will include Grevillea robusta in the parkway, Cedrus deodara groups behind the sidewalk alternating with a double row of Quercus agrifolia with Schinus molle intermixed as accents in appropriate locations in the median. Combined, the parkway and landscape setback create a 50 ft. "Neighborhood Edge" as established in the Ontario Ranch Streetscape Master Plan, which is intended to provide a buffer at the Specific Plan boundary as well as a pleasing visual statement along the major City thorough (***Figure 5.1***).

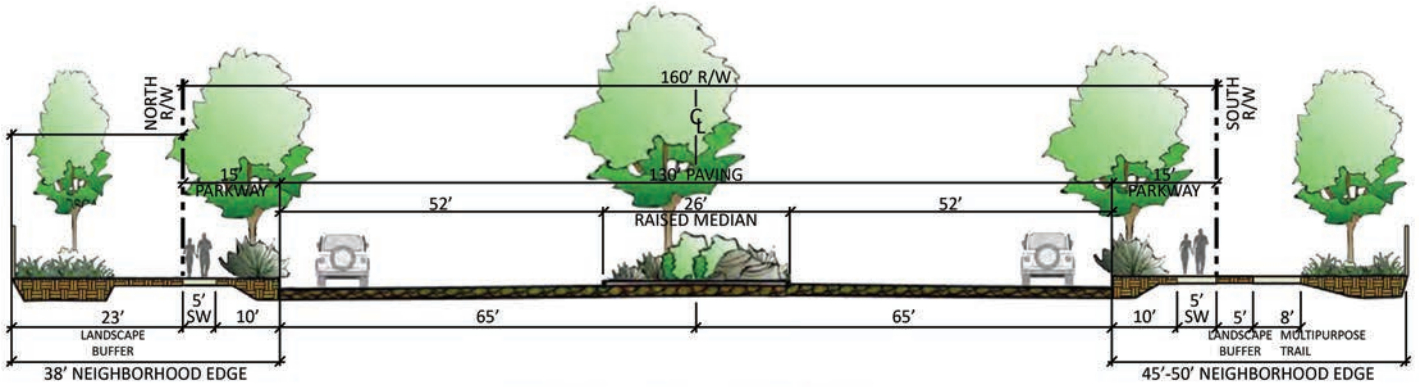


EUCLID AVENUE (200' ROW)

FIGURE 5.1 EUCLID AVENUE STREETSCAPE

5.1.3.2 Edison Avenue Streetscape

The typical Edison Avenue section will feature an 8 ft. multipurpose trail, 15 ft. wide parkway and 23 ft. wide landscape setback. The parkway will include a 10 ft. wide curb-adjacent landscape strip and a 5 ft. wide sidewalk. Tree species along Edison Avenue will include Quercus agrifolia in the parkway with clusters of Lagerstroemia i. 'Natchez' and Pinus eldarica in the neighborhood edge along the south and north side. The median includes Pinus eldarica with clusters of Lagerstroemia i. 'Natchez'. The parkway and landscape setback will combine to form the 38 ft. Neighborhood Edge buffer (***Figure 5.2***).

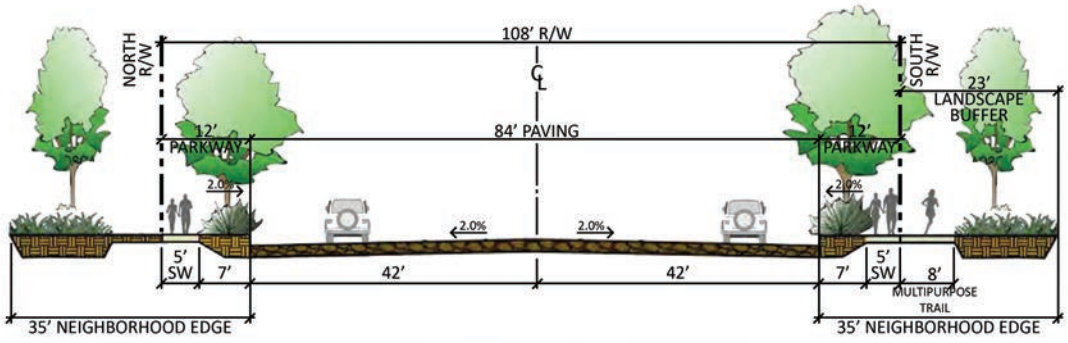


EDISON AVENUE (160' ROW)

FIGURE 5.2 EDISON AVENUE STREETSCAPE

5.1.3.3 Schaefer Avenue Streetscape

The typical Schaefer Avenue section will feature a 12 ft. wide parkway and 23 ft. wide landscape setback to create a 35 ft. Neighborhood Edge. The parkway will include a 7 ft. wide curb-adjacent landscape strip generally planted with trees and groundcover and a 5 ft. wide sidewalk. Tree species along Schaefer Avenue will include Pistacia chinensis trees in the parkway and Pistacia chinensis with clusters of Tristaniopsis laurina in the neighborhood edge. The Neighborhood Edge creates a buffer along the Specific Plan boundary as well as a visual statement (***Figure 5.3***).



SCHAEFER AVENUE (108' ROW)

FIGURE 5.3 SCHAEFER AVENUE STREETSCAPE

5.1.3.4 Sultana Avenue Streetscape

The typical Sultana Avenue section will feature a 9 ft. wide parkway and 10 ft. wide landscape set-back. The parkway will include a 4 ft. wide curb-adjacent landscape strip and a 5 ft. wide sidewalk. Tree species along Sultana Avenue will include Koelreuteria paniculata and behind the sidewalk will include Quercus ilex (***Figure 5.4***).

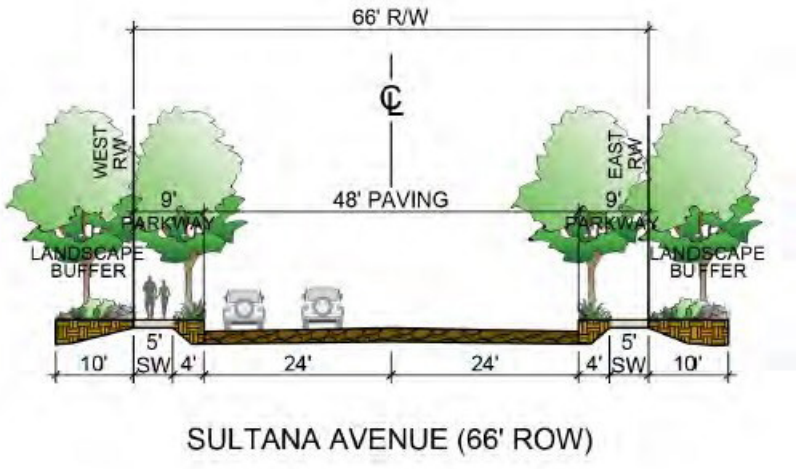


FIGURE 5.4 SULTANA AVENUE STREETSCAPE

5.1.3.5 Landscape Framework

A Landscape Framework has been developed to guide the overall character of the Euclid Mixed-Use Specific Plan from concept through implementation to ensure the intended planned design is fulfilled. The landscape treatment consist of several design elements including community arrival markers and gateway monumentation, perimeter landscaping and connections within the neighborhood edges and landscape buffers and potential locations for harmonious district entries into individual land uses such as business parks, office parks, retail centers and residential neighborhoods. Refer to ***Figure 5.5*** Landscape Framework.

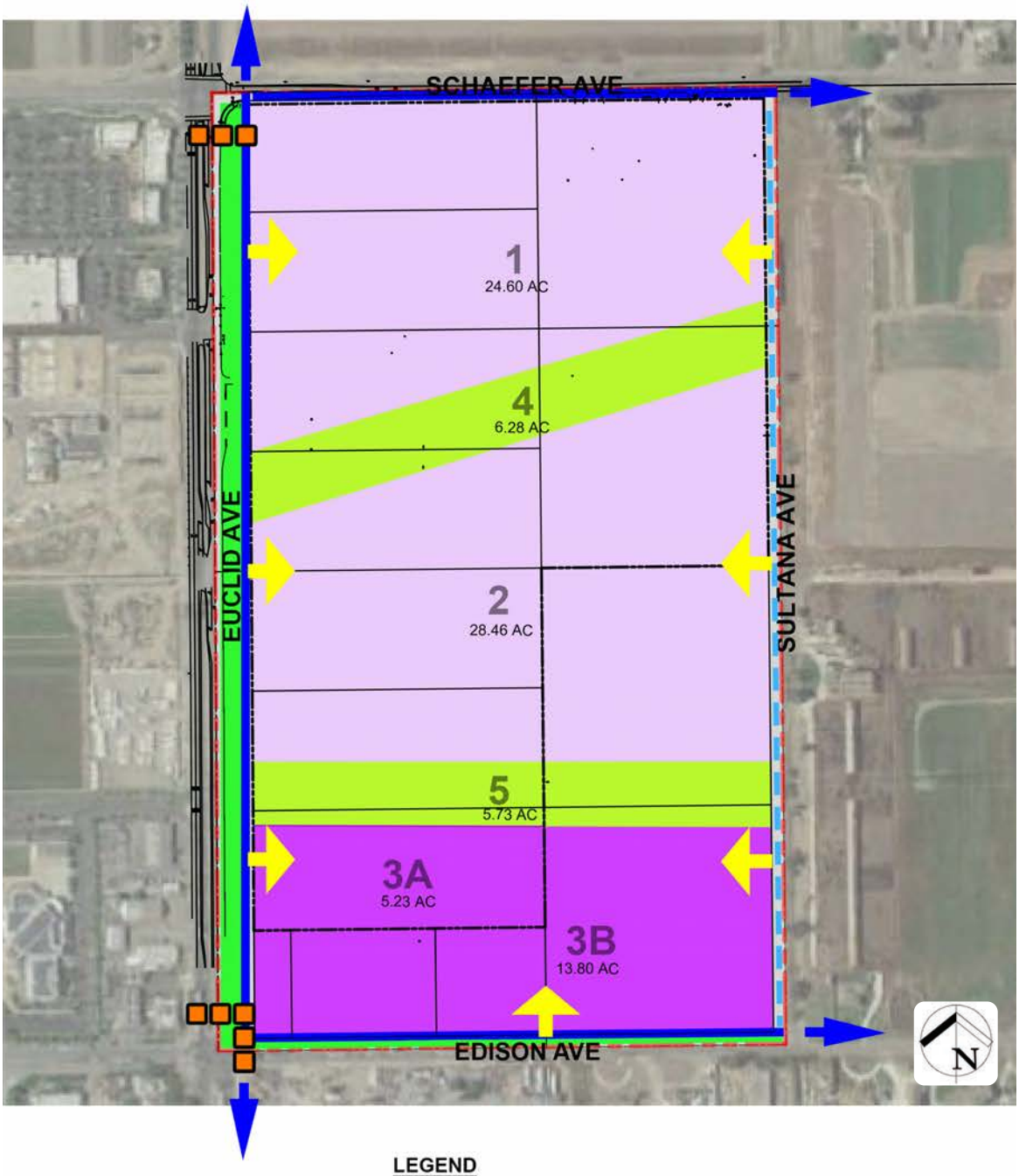


FIGURE 5.5 LANDSCAPE FRAMEWORK

5.1.3.6 Euclid Gateway

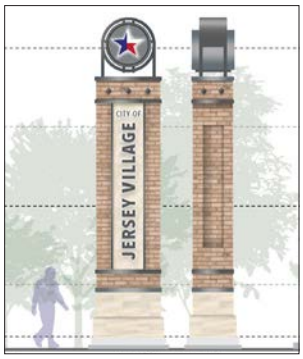
The Euclid Mixed-Use Specific Plan's location along the City's most prominent avenue at the gateway to the primary arterial roadway through the Ontario Ranch will be celebrated with special "Gateway Monument" features.

The primary arrival monument is the Euclid Gateway with two tower features. The Euclid Gateway features will be located at the northeast corner of the intersection of Euclid Avenue and Edison Avenue.

The objectives of the Euclid Gateway are as follows:

1. Create a distinctive architectural feature to establish a sense of arrival and a welcoming landmark to western gateway to The Ontario Ranch.
2. Identify the Specific Plan area as an example and quality standard for Mixed-Use and Business Park development within the City.
3. Utilize durable and lasting materials and a sustainable monument design reflecting the proposed architectural character of development within the Specific Plan area.
4. Incorporate a climate sensitive and water wise planting plan to soften and accentuate the monument feature to create a unique landscape aesthetic integrated into the City streetscape plant palette.







The Euclid Gateway monuments will reflect paired contemporary vertical block towers. The tower design will be capped with an angular top. The tower features a massive steel panel that mirrors the angular top of each gateway tower reinforcing the impressive scale and rich color of the signage. The overall height of the tower will be 14+ ft. to optimize its visibility and to allow for the inclusion of the City of Ontario logo near the top of the tower.

The landscape treatment around the Gateway monuments will consist of low growing plant species to accentuate the vertical form of the towers. Drought tolerant plant material will be utilized to create a layered landscape base. Plants that reinforce the architectural character of the Gateway such as native grasses, Agaves and other larger succulents and colorful xeriscape plants will provide a sustainable focal landscape treatment. Vertical planting around the Euclid Gateway monuments will be avoided, allowing for the towers to be set against the backdrop of the master planned streetscape trees within the neighborhood edges of Euclid Avenue and Edison Avenue. Refer to ***Figure 5.6*** Euclid Gateway Concept.

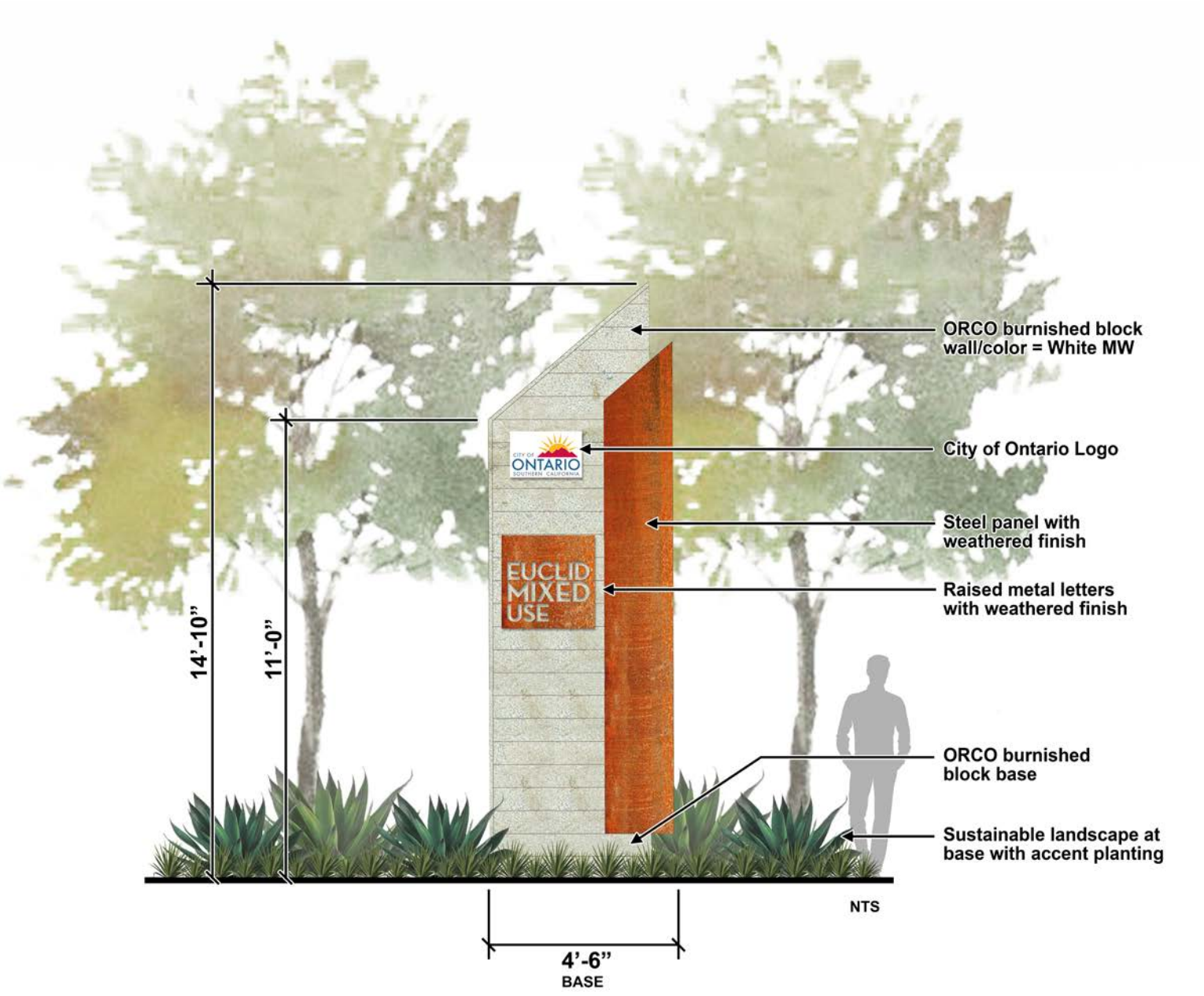


FIGURE 5.6 EUCLID GATEWAY CONCEPT

5.1.3.7 Specific Plan Gateway

A secondary arrival monument is located near the southeast corner of the intersection of Euclid Avenue and Schaefer Avenue within the 50 ft. wide neighborhood edge at the north end of the Business Park District. This Specific Plan Gateway is smaller in scale and reflects a horizontal proportion that is compatible with the architectural form and character of the future Business Park development. Refer to ***Figure 5.7*** Specific Plan Gateway Concept.



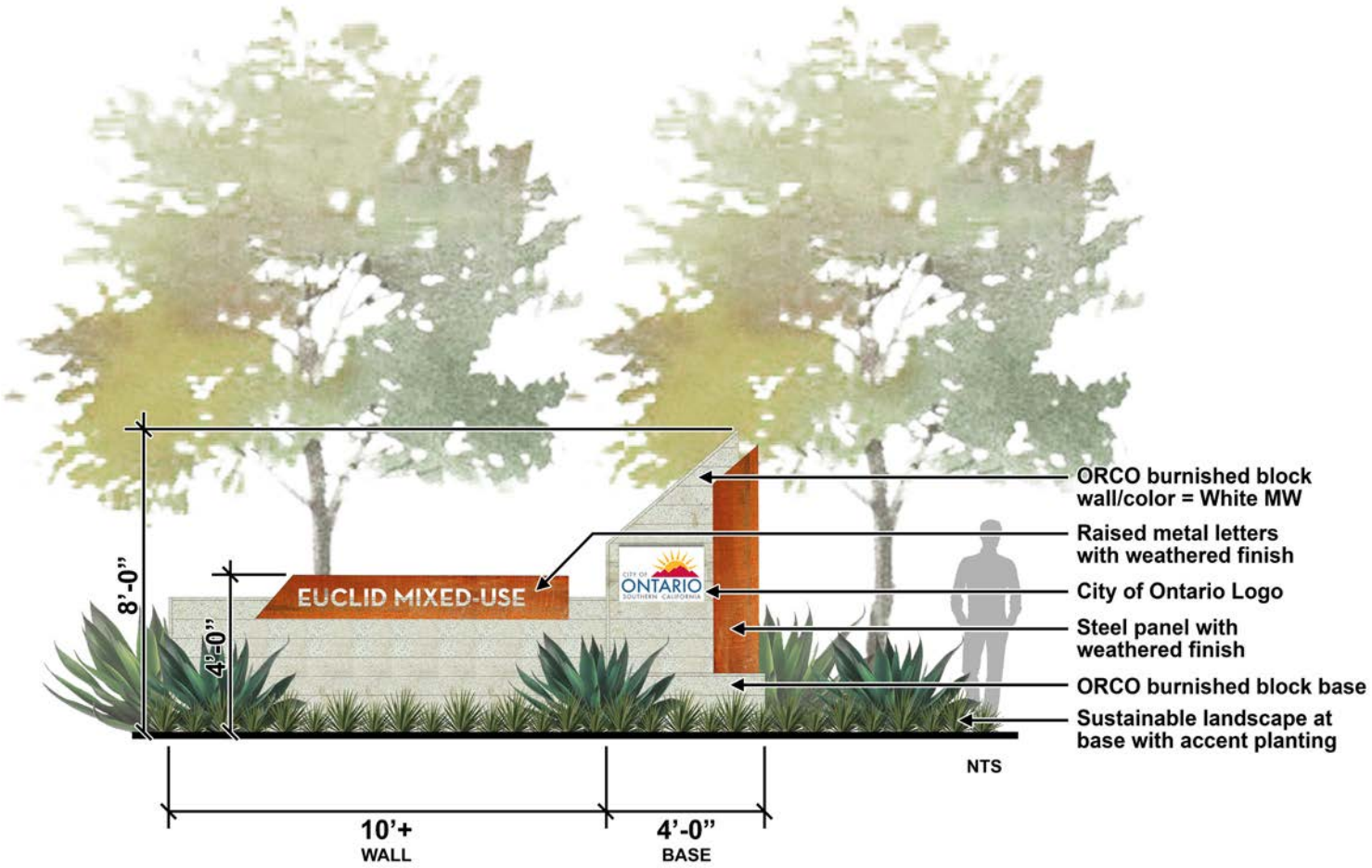


FIGURE 5.7 SPECIFIC PLAN GATEWAY CONCEPT

5.1.4 Plant Palette

The Plant Palette shown in ***Table 5.1*** establishes a base palette for the Specific Plan area and includes a variety of groundcovers, shrubs, ornamental grasses, and evergreen and deciduous trees. The selection complements the design theme of the Euclid Mixed-Use Specific Plan area and features water-efficient, drought-tolerant species native to the region. Similar plant materials may be substituted for the species listed in ***Table 5.1*** if the alternative plants are climate appropriate and enhance the thematic setting.

TABLE 5.1 PLANT PALETTE

BOTANICAL NAME	COMMON NAME	USE
Chilopsis linearis	Desert Willow	Tree
Chitalpa tashkentensis	Chitalpa	Tree
Cinnamomum camphora	Camphor Tree	Tree
Cupressus sempervirens	Italian Cypress	Tree
Heteromeles arbutifolia	Toyon	Tree
Juniperus s. 'Skyrocket'	Skyrocket Juniper	Tree
Koelreuteria bipinnata	Chinese Flame Tree	Tree
Lagerstroemia i 'Muskogee'	Crape Myrtle	Tree
Olea europaea	Olive	Tree
Pinus canariensis	Canary Island Pine	Tree
Pinus eldarica	Afghan Pine	Tree
Pistacia chinensis	Chinese Pistache	Tree
Platanus acerifolia	London Plane	Tree
Platanus racemosa	California Sycamore	Tree
Quercus agrifolia	Coast Live Oak	Tree
Schinus molle	California Pepper	Tree
Tristania conferta	Brisbane Box	Tree
Washingtonia filifera	California Fan Palm	Tree
Phoenix dactylifera	Date Palm	Tree
Acca sellowiana	Pineapple Guava	Shrub
Buxus j. 'Green Beauty'	Japanese Boxwood	Hedge
Callistemon 'Little John'	Dwarf Bottle Brush	Shrub
Carissa macrocarpa 'Tuttle'	Natal Plum	Shrub
Cistus 'Sunset Pink'	Sunset Pink Rockrose	Shrub
Dianella 'Little Rev'	Dwarf Dianella	Shrub
Dianella tasmanica	Dianella	Shrub
Dodonaea viscosa 'Purpurea'	Hopseed Bush	Shrub
Eleagnus pungens	Silverberry	Shrub
Leucophyllum f. 'Green Cloud'	Texas Ranger	Shrub
Ligustrum j. texanum	Texas Privet	Shrub
Pittosporum tobira 'Variegata'	Variegated Mock Orange	Hedge

BOTANICAL NAME	COMMON NAME	USE
Pittosporum t. 'Wheeleri'	Wheeler's Dwarf	Shrub
Rhaphiolepis i. 'Clara'	Indian Hawthorn	Hedge
Rhaphiolepis i. 'Springtime'	Indian Hawthorn	Hedge
Rhamnus californica	Coffeeberry	Shrub
Rhamnus c. 'Mound San Bruno'	Dwarf Coffeeberry	Shrub
Rosmarinus o. 'Tuscan Blue'	Rosemary	Shrub
Salvia c. 'Allen Chickering'	Allen Chickering Sage	Shrub
Salvia greggii	Autumn Sage	Shrub
Salvia leucantha	Mexican Sage	Shrub
Westringia fruticosa	Coast Rosemary	Shrub
Xylosma congestum	Shiny Xylosma	Hedge
Agave 'Blue Flame'	Blue Flame Agave	Accent
Aloe maculata	Soap Aloe	Accent
Aloe petricola	Stone Aloe	Accent
Aloe polyphylla	Spiral Aloe	Accent
Aloe striata	Coral Aloe	Accent
Echeveria 'Ruffles'	Ruffles Echeveria	Accent
Hesperaloe parviflora	Red Yucca	Accent
Acacia redolens 'Low Boy'	Dwarf Acacia	Groundcover
Baccharis p. 'Pigeon Point'	Dwarf Coyote Bush	Groundcover
Baccharis p. 'Centenial'	Coyote Bush	Groundcover
Carex pansa	California Meadow Sedge	Grass
Carex tumulicola	Foothill Sedge	Grass
Festuca mairei	Altas Fescue	Grass
Festuca o. 'Glauca'	Blue Fescue	Grass
Lonicera j. 'Halliana'	Hall's Honeysuckle	Groundcover
Muhlenbergia capillaris	Pink Muhly	Grass
Myoporum parvifolium	Myoporum	Groundcover
Rosa 'Flower Carpet' - Red	Red Flower Carpet Rose	Groundcover
Rosmarinus o. 'Huntington Carpet'	Prostrate Rosemary	Groundcover
Salvia 'Bee's Bliss'	Bee's Bliss Sage	Groundcover
Senecio mandraliscae	Blue Fingers	Groundcover
Sesleria autumnali	Moor Gras	Grass
Trachelopspermum jasminiode	Star Jasmin	Groundcover
Distictus buccinatoria	Blood-red Trumpet Vine	Vine

5.2 Business Park Guidelines

The following Design Guidelines have been developed to ensure a quality-cohesive design structure for Business Park development in the Euclid Mixed-Use Specific Plan. They will provide the City with the necessary assurances that the Specific Plan will develop in accordance with the appropriate design quality and character.

The design guidelines are intended to be flexible and illustrative in nature, with the capability of responding to unanticipated conditions, the market and design trends, while maintaining the following overall objectives:

1. To secure the long-term vitality of The Ontario Plan by implementing its objectives, policies and principles.
2. To provide the City with the necessary assurances that the Specific Plan area will develop in accordance with the design quality and character proposed herein.
3. To serve as design criteria for developers, builders, engineers, architects, landscape architects and other professionals in preparing plans for construction.
4. To lend guidance to the City staff, Planning Commission and City Council in the review and evaluation of future development projects in the Specific Plan area.
5. To provide for the development of Business Park uses which utilize the site's prime location to Ontario Airport.
6. To create a high quality Business Park development that attracts an array of businesses and provides employment opportunities to area residents.
7. To provide Business Park uses within the project boundaries which are compatible with surrounding uses.

5.2.1 Architectural Design

The building design, materials, colors, and textures establish its theme and character. Architecture shall be compatible and complementary with other buildings within the Specific Plan area; however, design diversity is encouraged to provide visual interest. Although development within Planning Area 1 and Planning Area 2 differ in building height and scale, similar design concepts apply as follows:

5.2.1.1 General Architectural Guidelines:

1. Ensure scale, massing, fenestration, materials, and colors are consistent with the building's architectural style and compatible with the overall design in the Specific Plan area.
2. Avoid blank walls by providing articulation on building elevations visible from a public right-of-way through elements such as cornices, parapets, expression lines, and changes in materials and/or colors.
3. Provide the greatest level of articulation on the front facades that are visible from the public rights-of-way and at the main entrances.
4. Design entry features as a significant aspect of a building's overall composition through massing, detailing, architectural treatments, and/or special materials and colors.
5. Employ recessed or covered building entrances to provide shade and visual relief.

6. Design office buildings, business parks, and office areas of warehouse buildings with an emphasis on the use of windows, architectural details, and building articulation.
7. Integrate the design of warehouse office areas into the overall building composition so they create powerful architectural statements and not visually disjointed "add-ons."
8. Employ a minimum of four different colors, materials, and/or textures on each building.
9. Avoid terminating a change in material or color at a building edge; instead, select a logical termination point in relation to the architectural features or massing.
10. Paint exposed downspouts, service doors, and mechanical screens the same color as the adjacent wall. Exposed downspouts are not permitted on elevations that front onto a street.

5.2.1.2 Site Design

Business Park developments in the Euclid Mixed-Use Specific Plan will allow for employment opportunities to be created for the City of Ontario and surrounding region. Residents of Ontario Ranch will have the ability to access employment not only by automobile but also via pedestrian multi-purpose trails along surrounding arterial streets.

Business Park uses should implement appropriate site planning, architectural and landscape design techniques to be complimentary to the adjacent land uses.

Site design should facilitate the intended functions of developed and open space areas and provide for appropriate interactions between buildings, activity areas, vehicular access, parking, pedestrian paths and bicycle travel.

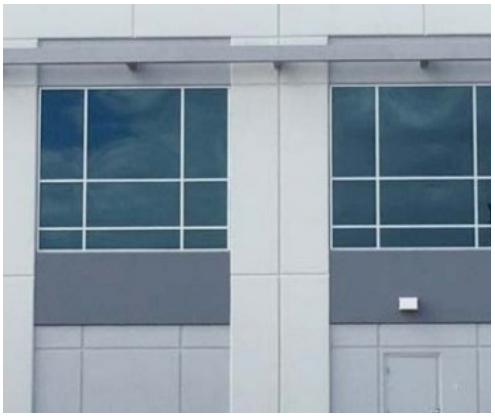




5.2.1.3 Building Orientation

Buildings within the Business Park area shall be designed to establish an attractive street character along the Specific Plan.

1. Provide a well-organized site plan that emphasizes pedestrian connectivity and attractive landscape areas for the public through the location and arrangement of buildings, circulation, and parking areas.
2. Buildings should be oriented to provide for an aesthetically pleasing streetscape edge along publicly visible edges including Euclid Avenue and Schaefer Avenue.
3. Building sides which are oriented to visible edges should provide more architectural detail and interest such as color blocking, material changes, windows, building wall offsets, pop-outs and architectural accent features to avoid long expanses of monotonous, blank, untreated walls.
4. Orient buildings towards street frontages to create an inviting public perimeter. Enhanced elevations shall be provided for buildings that front Euclid Avenue and Schaefer Avenue.







5. Provide visible pedestrian access to buildings from the street, parking areas, and perimeter sidewalks through signage, prominent architectural features, and landscape design.
6. Locate loading and storage areas away from streets when feasible, ensure adequate space for vehicle backing and maneuvering on-site, and provide adequate parking for loading vehicles so normal traffic flow is not impeded.
7. Orient and screen elements such as trash enclosures, loading bay doors, and service docks to minimize their visibility.
8. Locate service entrance to prevent conflict with front entry.
9. Place electrical rooms and transformers away from front entries and street views.







5.2.2 Landscape Design

Conceptual landscape plans encourage durable landscape materials and designs that enhance the aesthetics of structures, create and define public and private spaces, and provide shade and environmental benefits. The following guidelines ensure that landscaping plans within the Specific Plan area will comply with City of Ontario Landscape Development Guidelines.

5.2.2.1 General Landscape Guidelines:

1. Landscape and irrigate all areas of the site not covered by buildings, structures, paving, or impervious surfaces.
2. Design and grade projects to direct storm runoff from building roofs and paved areas into swaled landscape areas for retention/infiltration. Landscape areas may be used for storm water basins and swales at no greater than 40 percent of the available landscape area and may not obstruct the mature root zone of required tree locations.
3. Provide shade for expanses of paving, except with the SCE easement areas, with irrigated shade trees located in appropriate areas where space permits to reduce the impacts of heat gain.
4. Design parking lot landscaping to reduce associated heat buildup, improve aesthetics, and integrate with on-site landscape and adjacent streetscape.
5. Use landscaping to aid in the screening and buffering of mechanical equipment, trash collection areas, loading docks and outside storage areas from public view.
6. Show utilities on plan and keep utilities clear of required tree locations. Coordinate with the landscape plans. Utilities such as backflow devices and transformers shall be screened using landscaping that provides at least 75 percent coverage. Backflow devices and transformers shall be located at least 5 ft. from hardscape to ensure space for landscape screening.
7. Prepare landscape plans that meet the requirements of the Landscape Development Guidelines and provide for the efficient use of water. Plants shall be selected and planted based upon their adaptability to the climate and topographical conditions of the project site.
8. Select drought-tolerant plants such as colorful shrubs and groundcovers, ornamental grasses and succulents, evergreen and deciduous trees, and species native to Southern California or naturalized to the arid Southern California climate.
9. Incorporate water conservation features in landscape and irrigation plans.
10. Place a landscape planter island every ten parking spaces single row and one for every five spaces double row. Planter islands shall be at least 5 ft. in width exclusive of curbs and the length of the abutting parking space. Planter islands shall include at least one tree on every four spaces, appropriate shrubs, and groundcover. Parking areas located within the SCE easement areas or behind screen walls shall not be subject to this provision.

5.2.2.2 Buffering and Screening

To alleviate the unsightly appearance of parking, loading and service areas, buffering and screening design features should be used to enhance the overall development. Any proposed entry gates shall be reviewed and approved by the City of Ontario Traffic and Transportation Division prior to installation.

5.2.2.2.1 Parking Lots

1. Buffer parking lots adjacent to and visible from public streets using a combination of architectural wing walls, buildings, decorative screen walls, evergreen hedges, and landscape buffers.
2. Use plants for screening that are a minimum of 3 ft. tall at the time of installation.



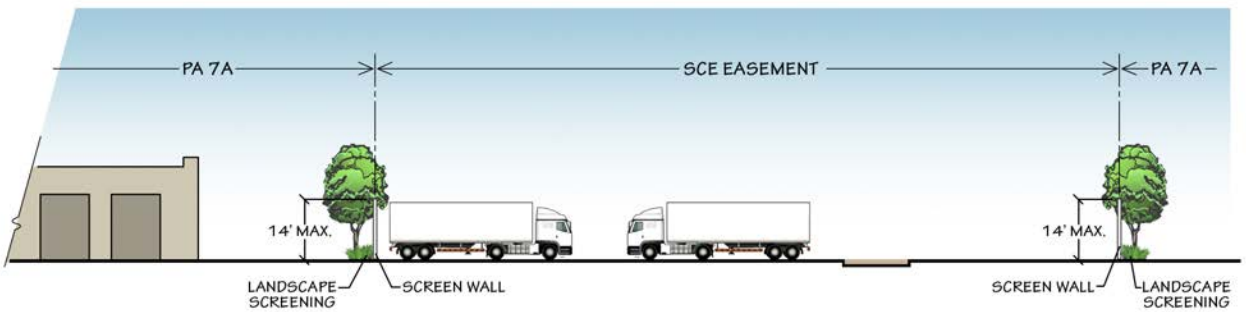


5.2.2.2.2 Loading and Service Areas (Truck Courts)

1. Screen loading docks and truck parking areas visible from Euclid Avenue, Eucalyptus Avenue, and Sultana Avenue. Screening may include portions of buildings and/or decorative walls. Landscaping and evergreen hedges shall be provided to soften screen walls.
2. Incorporate gated/screened entrances to loading areas into the overall architectural design of the development.
3. Design walls and fencing a minimum of 8 ft. high and a maximum of 14 ft. high, as measured from finished grade, to screen truck courts and hide views of the top of loading bays or trailers.
4. Utilize portions of a building, architectural wing walls, and/or landscaping to screen service areas.
5. Screen ground- and roof-mounted mechanical equipment from public view. Ground-mounted equipment shall be screened with decorative walls or landscaping. Building architecture shall be designed to screen roof-mounted equipment.
6. Ensure refuse containers are easily accessible by service vehicles yet screened from public view within the building's façade or within a walled enclosure.







5.2.2.3 Walls and Fences

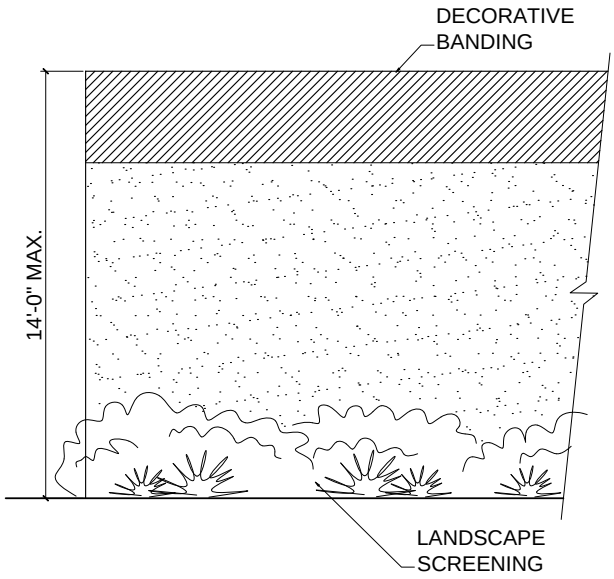
Walls and fences are an important design feature intended to both complement building and landscape architecture and provide functional elements. Any proposed entry gates shall be reviewed and approved by the City of Ontario Traffic and Transportation Division prior to installation and will be permitted only if approved.

Key provisions include:

1. Provide attractive, durable, and complementary wall and fencing materials consistent with the building design.
2. Offset and/or architecturally treat long expanses of wall surfaces along perimeter streets every 50 ft. with material changes, pilasters and posts, staggered walls, or landscape treatments to prevent visual monotony.
3. Soften the appearance of fencing with plants that reach the height of the wall or fence at maturity.
4. Construct sliding gates visible from a public street with tubular steel, vertical steel pickets, or high-density perforated metal screening painted to match or complement adjacent walls. Interior gates not visible to public view may be galvanized steel or chain link.
5. Prohibit chain link fencing visible to the public.

5.2.2.3.1 Solid Walls

a. Solid walls shall not exceed 14 ft. in height unless expressly required in a sound study conducted by a qualified acoustic engineer.
b. Walls facing and/or viewed by the public spaces shall be decorative in nature. Approved materials include concrete tilt-up walls with a decorative banding or finish detailing, split face block or stucco.
c. Walls along perimeter streets in excess of 50 ft. long shall include a decorative pilaster or horizontal plane break every 50 ft..
d. Wall materials and colors shall match or be in harmony with adjacent buildings or architectural features.

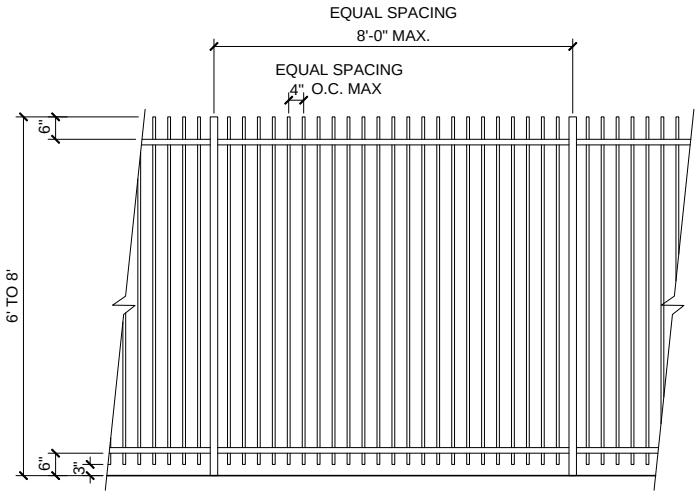


5.2.2.3.2 Perimeter Fencing

a. Perimeter fencing may be implemented along SCE easements, compatible land uses or where visual access is deemed appropriate.

b. Perimeter fencing shall consist of 6 to 8 ft. high tubular steel or aluminum fencing with or without vertical pickets. The maximum height of fencing installed along the SCE Easements within the interior of the Specific Plan area may be increased to 14 ft. to provide additional site security.

c. Perimeter fencing shall be black in color and appropriately treated to prevent rust. Alternative colors may be approved subject to approval by the Planning Director.



5.2.2.4 Lighting

Site lighting provides illumination for operations, safety, security, and ambiance in parking lots, loading dock areas, pedestrian walkways, building entrances, signage, and architectural and landscape features.

Key provisions include:

1. Choose lighting fixtures that complement the building architecture and promote consistency throughout the Planning Areas.
2. Install ground or low mounted fixtures to provide safety and convenience along pedestrian walkways, entrances, activity areas, steps, ramps, and special features.
3. Allow building-mounted accent lighting for general illumination, provided there is no light spill or distraction onto roadways or adjacent property. Plain shoebox or unshielded wall packs are not permitted.
4. Direct exterior lighting fixtures downward to avoid unnecessary light spill and glare.
5. Limit pole-mounted, building-mounted, or tree-mounted lighting fixtures to no more than 30 ft. in height to minimize light spill and glare.
6. Shield and direct pole-mounted lights away from public streets.
7. Ensure exterior lighting is consistent with the Chino Airport Land Use Compatibility Plan.
8. Design parking lot lighting to avoid placing fixtures in required tree locations.

5.2.2.5 Signage

Approval of a comprehensive sign program shall be required for development within the Specific Plan area. A sign program facilitates integration of signs with the overall site and building design to create a unified visual statement and provide for flexible application of sign regulations in the design and display of multiple signs.

Key provisions include:

1. Install an entry monument at the northeast corner of Euclid Avenue and Edison Avenue to identify the Ontario Ranch and the Euclid Mixed-Use Specific Plan areas. Entry monuments shall be designed in accordance with City of Ontario Traffic and Transportation Guidelines for monument placement.
2. Employ signage to identify a center and tenants within a center, direct vehicular traffic, and provide on-site way-finding for pedestrians.
3. Employ signage to give directions to loading and receiving, visitor parking, and other special uses.
4. Provide a unifying sign theme in developments with multiple users.
5. Coordinate signage with the building design, materials, color, size, and placement.
6. Select signage with backlit or internally illuminated individual channel letters. Can-type box signs with translucent backlit panels are discouraged.
7. Avoid covering significant architectural elements with signage.
8. Position flush-mounted signs with respect to architectural features and align with signs on other buildings to maintain a pattern.
9. Place street address signs perpendicular to approaching vehicular traffic.
10. Ensure signage located within a landscaped planter is not blocked or damaged by plant materials.
11. Conserve energy by utilizing an automatic illumination shut-off mechanism when businesses are closed.
12. Construct signs from high quality materials and avoid exposed wiring, ballasts, conduits, fasteners, raceways, or similar hardware.





5.3 Mixed-Use Commercial/Office Guidelines

Euclid Mixed-Use Specific Plan allows for Commercial and Office developments within Planning Areas 3A and 3B along Euclid Avenue and Edison Avenue. These areas combine for approximately 19 acres and will be designed to create a place for surrounding residents to have access to shopping and employment opportunities nearby. Surrounding residents will have the ability to access services by foot, or ride their bicycles to work via pedestrian trails connecting the community to the overall Ontario Ranch and the rest of the City of Ontario.

The location of PA 3A and 3B along Euclid creates the opportunity for a major gateway monument. This gateway will provide a sense of place for the Euclid Mixed-Use area and will establish a cohesive development design character defining the western City boundary. In order to maintain an overall character of Euclid Mixed-Use area, combining Business Park and Mixed-Uses, future commercial and/or office development is expected to be developed with a compatible and harmonious quality.

These Commercial/Office Design Guidelines will help direct the development of the area to enhance the pedestrian experience that positively contributes to the character of Euclid Mixed-Use Specific Plan area. These guidelines are general in nature and are not intended to be strictly enforced rules, but as a tool in aiding the design process. Developers of future commercial and/or office projects will be required to submit Development Plans to demonstrate consistency with the Euclid Mixed-Use Specific Plan, including these Guidelines, for City approval.









5.3.1 Architectural Design

5.3.1.1 Guiding Principles

Guiding Principles for commercial/office design for Euclid Mixed-Use Specific Plan are:

Buildings should contribute to a qualitative nature of the overall neighborhood.

- Proper scale and proportions in massing and details should be used
- Pedestrian open spaces should be provided
- Massing and articulation should be varied
- Buildings shall be designed at a human-scale

Buildings should have an enduring quality.

- Design should draw inspiration from the rich and diverse Southern California architectural heritage
- Materials and colors typical to Southern California should be used
- Details and ornamentation should be authentic
- Design shall create an inviting place to shop and work









5.3.1.2 Site Planning

Orientation

Buildings should be oriented for optimal visibility from the street. Windows and entries should face the street avoiding blank walls dominating public views. Stores with entries not visible from the street may be oriented towards pedestrian open space and all primary entries should face onto a street or a connecting walkway.

Building clusterings are recommended to help define parking lot areas and encourage walking between stores. Building entries and storefronts should be positioned close to one another to reduce walking distances between them.

Driveways and Sidewalks

The site shall be provided with an adequate number of driveways to facilitate circulation and also reduce the traffic impact along the surrounding arterials. Pedestrian crossing distances should be minimized at driveways. All driveways and sidewalks shall be constructed per City Standards and to the satisfaction of the City Engineer. No decorative paving will be allowed in the public right-of-way unless otherwise approved by the City Engineer.

Street Frontage and Buildings

Streetside buildings, or those with no parking separating them from the street, should use windows and entry features to soften the building's appearance to the street.

Streetside Setbacks and Buildings

The sides of buildings along street edges shall be landscaped within the setback to soften the building's appearance as well as designed with windows or design elements.

Refuse Containers, Utility and Mechanical Equipment

Refuse containers and equipment shall be easily accessed by service vehicles. They shall be screened from view of the streets, parking lots, and connecting walkways through roof forms, walls and/or landscaping.

Screening details should incorporate elements that are compatible to the architectural style of the buildings. Proper landscaping, including trellises, may also help to screen these elements. Equipment and enclosures shall not be located near pedestrian walkways. Roof-mounted equipment shall be screened by the roof/ parapet.

Sidewalks

Sidewalks shall be located along natural pedestrian travel paths. Public sidewalks should be a minimum of 5' wide. All walkways shall be a minimum of 4 ft. wide and all walkways within developments in the Specific Plan area will comply withe ADA standards for accessibility.

5.3.1.3 Building Design

Massing

With larger buildings, appropriate massing becomes more important to maintain the human-scale of the development and create a visually pleasing environment. Bay windows, stepped buildings, height changes and setback variations between stores help to break up large buildings as well as indicate entries and store locations to customers. Tower elements or monumental features are encouraged at focal points, such as corners, plazas, major entrances, or where walkways meet streets.

Varying setbacks along the front façade of buildings are recommended to create small outdoor public spaces for pedestrians to gather and sit.

Roof Forms

Roof pitches shall be compatible to the architectural style of the buildings. Flat roofs should vary in height and be accompanied by cornice, trim or other accent features.

Arcades and Awnings

Outdoor arcades along store fronts are encouraged over pedestrian walkways. Arcades may be used to connect separate buildings providing a more pleasing experience for pedestrians. Trellises or awnings may also be used to create a covered walkway to protect pedestrians from the sun and rain.

Entry Design

Building entries shall be prominent and easily identified. Various elements can be used to enhance the entry features including massing variation, materials and color change, change in roof form, and awnings. For smaller retail buildings, part of a cluster or strip, arcades, awnings and simple signage may be acceptable as entries.

No signs shall be placed in the public right-of-way and shall be in accordance with City standards regarding corner site distance.

Design Flexibility

Retail spaces exceeding 30,000 s.f. should be designed with the flexibility to be divisible into smaller retail spaces, should future market demand change.

Façades that are visible from adjacent streets or walkways should display even greater visual interest by using architectural elements that break up the massing of large buildings, such as windows, arcades, awnings, porticos, and other architectural features.

Base and Top Treatments

Base and top treatments help to balance the “weight” of the building visually. Bases should appear to “ground” the building, while tops create a defined edge to the roofline. Possible treatment techniques are as follows:

Base:

- Natural materials
- Enriched landscaping with a mature height of at least 18”
- Pre-cast materials
- Other decorative, durable materials as approved by the City
- Thicker walls

Tops:

- Cornice treatments
- Roof overhangs with brackets
- Stepped parapets
- Textured materials - Colored “stripes” are not acceptable as the only treatment.

Exterior Materials

Recommended materials include, but are not limited to stucco, exterior plaster, brick, wood siding, tile, pre-cast concrete or stone. Exterior materials that appear pre-fabricated are not recommended.

Selected materials and detailing should have an enduring appearance. Foam products should be avoided at the pedestrian level.

Roof Materials

Roofing materials that are generally acceptable include standing metal seam, concrete tile, tile and slate or slate-like materials. Asphalt or wood shingles are prohibited.

Colors

Color selection shall be consistent with the selected architectural style.







5.3.2 Landscape Design

The Mixed-Use area of the Euclid Mixed-Use Specific Plan will be developed both architecturally and through landscape treatments to create a distinct community character and to ensure a cohesive aesthetic with the Business Park areas of the Specific Plan. The land plan encourages integration of the Business Park and Mixed-Use areas by providing for a consistent landscape treatments along the frontage on Euclid Avenue and Edison Avenue, while also incorporating a major gateway monument.

5.3.2.1 Minimum Landscape Requirements

1. Builder/developer shall refer to City of Ontario standards for the percentage of gross commercial site acreage required to be landscaped.
2. All areas of the site not occupied by buildings, parking or otherwise utilized shall be landscaped with groundcover, turf or tree materials from the community plant list.
3. Appropriate street trees should be utilized adjacent to street frontage integrating the site into the overall community setting.
4. Side yard and rear service yard use areas should be screened with a combination of a 6 ft. wall and dense landscape buffer. Tubular steel fencing and gates should be used adjacent to interior residential streets to control access points.
5. Accent tree entry planting should be incorporated at the site's vehicular access points.
6. No shrubs higher than 3 ft. and no tree canopy lower than 7 ft. as to allow officers on patrol the ability to view the business.
7. Plants by low-lying windows may have thorns as a deterrent.





Parking Areas

- Where a parking lot contains 10 or more parking spaces and is visible from a street, no less than 10% of the total area (excluding any perimeter landscaping), shall be landscaped. Such landscaping shall not be concentrated in any one location. A minimum of 50% of the plant material shall be canopy or shade trees and shrubs shall be 3 ft. high or less to provide clear visibility.
- All rows of parking spaces shall be provided with landscape islands at each row terminus to protect parked vehicles, ensure visibility, confine moving traffic to drive aisles and driveways, and provide space for landscaping. Within each row of parking spaces, landscape islands shall be placed one for every 10 spaces a single row and one for every 5 spaces double row to prevent more than 10 vehicles from being parked side-by-side in an abutting configuration. These landscape islands shall measure a minimum of 5 ft. in width, exclusive of curbs. Creation of large planting islands (tree groves) are encouraged as opposed to small pockets of individual trees.
- Planter islands for a single row of parking spaces shall be landscaped with at least one (1) tree for every 4 spaces and vegetative groundcover or turf. Planter islands for a double row of parking spaces shall contain not less than two (2) trees and vegetative groundcover or turf.
- Landscaped areas shall be delineated with a concrete curb which may have curb cuts to facilitate sheet flow runoff from parking lots to infiltrate the landscape planters.
- Parking area landscaping is required for the screening of large parking areas to limit their visual impact.
- When parking is located adjacent to a public street or interior residential street, a combination of landscaped berms and/or planting totaling 3 ft. high is to be used to screen views of parked cars.
- Wherever possible, pedestrian traffic should be separated from vehicular traffic by additional sidewalks. The parking lot should have crosswalks highlighted with decorative or varied texture paving.

5.3.2.2 Landscape and Open Space Design

Landscaping

Landscaping helps to soften the feel of the buildings and parking lot, while enhancing the visual aspect of the site. The following landscaping techniques may be used:

- Provide special landscaping treatment at all project and building entries.
- Provide shade/canopy trees within parking areas.
- Use plants to define outdoor spaces such as along edges, outdoor plazas, or pathways between parking and building entrances.
- Plantings shall provide a continuity of form across the entire project.

Site Accessories

Site accessories, such as recycling bins, bike racks, litter cans, planters, benches and transit shelters, should use materials and have an architectural character consistent with the overall project. These accessories should be graffiti-resistant with materials that are easy to clean and paint.

Connecting Walkways

Walkways within commercial and/or office areas of the Specific Plan shall connect the various buildings to each other and to the sidewalks along adjacent arterials. Use of trellises, landscaping, seating areas and building placement adjacent to one another will encourage pedestrian activity within retail areas. A typical walkway shall be a minimum of 6' wide. In large parking lots, pedestrian walkways shall be provided within the median of at least 1 parking aisle for 8 aisles of 20 stalls or more.

Pedestrian walkways that may also be used for emergency access must allow minimum clearance of 26' wide and 14' vertical clearance. Off-site connections shall be provided from the neighborhood center to Euclid Mixed-Use's residential development.





Outdoor Storage Areas

Outdoor storage areas should be incorporated into the design of a project to avoid visual impacts on the site. Outdoor storage areas shall be located away from the street, behind or to the side of buildings. Walls and landscaping shall be used to screen stored materials. Materials placed in front of buildings are not permitted.

Transit Shelters

Transit shelters should be incorporated into the design of neighborhood center. The design of transit related structures shall be integrated architecturally with the project through its color, materials and architectural style. Walkways shall be provided for easy accessibility by pedestrians moving to and from transit stops to the Neighborhood Center.

Fence and Wall Design

Except for security fencing adjacent to the SCE easements, chain-link fencing, barbed wire, corrugated metal fencing and tennis windscreens are not permitted. Fences and walls should be built with attractive, durable materials, including (but not limited to) wrought iron, textured concrete block, or formed concrete with reveals. Fences or walls should be consistent with architectural style, materials and designs used throughout the project.

Perimeter walls and fences constructed with commercial or office development adjacent to residential areas within the MIxed Used District shall not exceed a maximum height of 6 ft. unless required for noise attenuation or visual screening and approved by the Planning Director.

Walls over 6 ft. tall shall be an enhanced material/finish such as textured block/block patterns, enhanced textured or sculpted concrete walls or similar enhancement.

Along streets, walls and fences should not exceed 36” in height and long expanses of uninterrupted fences and walls should be avoided. Use of openings, planter boxes, material changes, pilasters or posts are acceptable. Openings shall be provided to connect walkways directly to the street avoiding long, inconvenient walking paths. These pedestrian portals should be announced by pilasters, trellis, special landscaping, or other features.

Lighting

On-site lighting standards shall provide adequate illumination throughout the site during the nighttime hours. Lighting fixtures shall be designed to be compatible with the architectural styles selected for the project. All light standards should have an attractive base and top.

Along pedestrian walks, lighting fixtures should not exceed 12’ in height and may include lighting within bollards. Pedestrian lighting shall provide appropriate illumination at a human scale without too much glare. Lighting within larger parking lots shall not exceed 25’ in height, providing enough visibility for customers and employees to walk safely to their vehicles. The same bulb type shall be used for all parking lot and pedestrian lighting fixtures within the development. Service area lighting should be positioned, so no bulbs can be seen from public view. Any street light within the public right-of-way shall be per City standards and to the satisfaction of the City Engineer.

5.4 Mixed-Use Residential Guidelines

The residential design concept for Euclid Mixed-Use seeks to blend the traditional architectural styles found in the surrounding region with contemporary lifestyles, building methods, technologies and materials. The specific architectural influences selected as appropriate for The Euclid Mixed-Use Specific Plan include Adaptive Spanish, Transitional Farmhouse and Modern Contemporary styles. The design aspects of each of these styles will be further described in the following guidelines.

5.4.1 Architectural Design

5.4.1.1 Guiding Principles

Guiding Principles residential design for Euclid Mixed-Use Specific Plan are:

1. Reinforce a unique and interesting architectural heritage as the community develops
2. Ensure compatible and complementary styles, colors, materials and detailing
3. Establish massing, setbacks and articulation which are appropriate and fundamentally sound
4. Create a neighborhood that effects historical relevance and timelessness
5. Provide design criteria that is adaptable and flexible to changing market desires

5.4.1.2 Architectural Influences

There are three Architectural Influences in the Mixed-Use Specific Plan:

1. Adaptive Spanish
2. Transitional Farmhouse
3. Modern Contemporary
4. Art Deco

Adaptive Spanish

History and Character:

The Adaptive Spanish style is an expression of historic European regional and Southwest American architectural styles. The design incorporates the simple massing and forms of Spanish estates and the simple forms such as arches, curved walls and recessed openings to emphasize the clean lines and simple detailing, typical of modern building design to develop more contemporary interpretation that reflects Southern European influences. This style includes interpretations of Spanish, Monterey, and Santa Barbara architecture.

General Attributes:

- Simple building massing to reinforce the intended historic style.
- Large simple hip and gable roofs with mission tile. Accent parapet/flat roofs allowed.
- Smooth stucco finish with deep recesses or pop-outs.
- Square or vertically proportioned windows with simple or no trim details.
- Light exterior building colors with contrasting details such as wood trim/fascias, window frames, and doors.
- Simple accents such as extended rafters, window shutters and wrought iron details.







Transitional Farmhouse

History and Character:

The Transitional Farmhouse style is an interpretive style based upon early American architecture. The design inspiration uses modern building forms and construction materials to develop more contemporary designs to reflect the character of a typical Midwestern town from an simpler time period. The Transitional Farmhouse style incorporates clean lines and simplified architectural detailing to reinforce the intended aesthetic character. This style includes interpretations of Colonial and American Traditional vernaculars.

General Attributes:

- Vertical building massing to reflect historic building forms.
- Simple gable roof planes, including symmetrical and asymmetrical forms/pitches and limited flat roofs.
- Flat roof tile or architectural shingle roof materials.
- Horizontal or vertical siding or stucco finish with limited masonry accents.
- Predominately vertically proportioned windows with simple or trim. Decorative window shutters.
- Contrasting exterior building shades with accented details such as fascias, shutters, window frames, doors and gable detailing.







Modern Contemporary

History and Character:

Modern or contemporary design integrates traditional concepts about residential design with a revivalist interpretation, using current construction materials to develop more functional designs that reflect the surrounding climate and environmental considerations such as solar aspect, etc. Modern Contemporary architecture uses horizontal building proportions with vertical accent forms. This style incorporates minimal ornamentation and clean, simplified architectural detailing. This style includes contemporary architecture such as International, Mid Century Modern and Art Deco interpretations.

General Attributes:

- Building massing to reinforce the intended period style.
- Large simple roof planes, including asymmetrical roof forms and limited flat roofs.
- Horizontal siding or smooth stucco finish.
- Square or vertically proportioned windows with simple or no trim details.
- Light exterior building shades with contrasting details such as wood trim/fascias, window frames, doors and simple window shutters.
- Wall plane breaks and massing forms with accent materials.
- Utilize window accents such as awnings and window framing to add visual interest and shade.







Art Deco

History and Character:

The Art Deco style, including the Moderne style, became popular in the mid 1920's, combining elements of contemporary architecture with elements of the decorative arts movement.
This design, utilized a repetition of building massing and fenestration using form and decorative patterns. Art Deco architecture uses strong colors and geometric shapes with accenting vertical forms and utilizes clean, simplified architectural detailing. This style includes contemporary sub-styles such as such as Art Moderne and Streamline styles.

General Attributes:

- Symmetrical building massing and aerodynamic forms to reinforce the intended character.
- Narrow, simple building cap elements or curved roof forms, including projecting roof forms and the use of flat roofs.
- Accent siding or decorative panels or smooth stucco finish.
- Predominantly vertically proportioned windows with simple or no trim details.
- Bold exterior accent colors on muted building with contrasting highlighted elements such as metal trim/fascia detailing, simple window and door frames and use of glass block.
- Wall plane breaks and massing forms with accent materials.
- Horizontal window canopies used to add visual interest and horizontal elevation changes.







5.4.1.3 Building Design

Massing

Building massing shall be appropriately scaled to the sensitive surrounding uses. The composition of the building mass shall include the incorporation of one and two story elements into three to five story buildings, variable setbacks along building elevations to minimize large unarticulated building façades, and the development of four-sided elevations through articulation and detailing.

Roof Forms

Roof forms are critical in creating interest to the building mass. Roof forms and material finishes help blend the structures into the landscape through shadow patterns, texture, color variations and visual interruption of vertical walls and planes. Visible roof forms, lines and ridges should be varied. Architectural features, materials and roof pitches should be consistent with each style.

Window and Doors

The window treatment should be consistent with the style of architecture. Appropriate window treatments such as recessed windows, windows with divided lights/multi-paned windows, rectangular or arched forms should be incorporated into all visible primary windows to reinforce the building character.

Window sizing and scale must be consistent with the architectural character and building massing. Decorative elements such as shutters should be properly sized to the window opening.

5.4.2 Landscape Design

Residential Landscape Design Guidelines describe the key elements of the proposed landscape treatments for residential development within the Euclid Mixed-Use Specific Plan area, which will develop over several years. These guidelines will help maintain a consistent design theme in a high quality, visually attractive and resource efficient framework.

The objectives of these Landscape Design Guidelines are:

1. To provide guidance to developers and builders, as well as to engineers, architects, landscape architects and other professionals, as to the quality and character of the landscape treatment within the Euclid Mixed-Use Specific Plan.
2. To assure the City of Ontario that Euclid Mixed-Use area will develop in accordance with the guidelines provided herein.
3. To provide guidance to City decision makers in the review of future residential development projects in Euclid Mixed-Use Specific plan.
4. To provide guidance in formulating Covenants, Conditions and Restrictions.

These Landscape Design Guidelines are intended to be flexible and are, therefore, illustrative in nature. As a flexible document, the guidelines can, over time, accommodate changing community desires, economic conditions and the marketplace.

5.4.2.1 Minimum Landscape Requirements

1. Landscaping in public areas should reflect the overall design character and landscape treatment to reinforce a comprehensive and unified “sense of place” and quality of appearance established by the Euclid Mixed-Use Specific Plan and these Guidelines.
2. All City maintained landscaping shall be consistent with the City of Ontario Landscape requirements and the Ontario Ranch Streetscape Master Plan.
3. Private streets, drives and common landscape areas shall be consistent with the City Of Ontario landscape requirement and this Specific Plan.
4. Private streets and drives within residential neighborhoods where garages and parking stalls do not front onto the drive shall be designed to accommodate pedestrian accessibility. A 4 ft. minimum landscaped parkway should be provided along unloaded private streets and drives where walkways occur.
5. Landscaped areas should be designed to be as water-efficient as possible and shall be irrigated with automatic systems using recycled water.
6. Turf areas should be limited to open areas such as gathering spaces or play areas and should not be used in landscape parkways and slope areas.
7. Parking areas shall provide a minimum 9 ft. wide planting island to allow for the long term sustainability of appropriate tree species.
8. Trash enclosures shall be located with minimum 5 ft. wide planting areas to allow for vertical shrubs/hedges to soften the enclosure walls.

5.4.2.2 Common Area Landscape Design

Landscape design is an important element within residential neighborhoods. Landscaping helps to soften walls and building edges and enhances and reinforces the overall architectural character of the neighborhood. Landscaping design should accentuate building entries, identify walkways and support wayfinding and accessibility to open space and amenities, provide shade for walkways and parking areas and provide a visual continuity within the neighborhood and the surrounding uses in and around the Euclid Mixed-Use Specific Plan area.

Neighborhood Connectivity

Connectivity between residential neighborhoods and other compatible uses within the Euclid Mixed -Use Specific Plan should be encouraged at a pedestrian level and should also consider bicycles and other non-vehicular modes of travel. Pedestrian walkways should be designed to be safe and efficient and should be shaded by trees wherever feasible.

An SCE easement (PA 5) extends in an East/West direction through the Specific Plan area separating the Business Park District and the Mixed-Use District. This easement may provide an opportunity for additional pedestrian and bicycle connectivity within the Euclid Mixed-Use Specific Plan area.

Parks/Open Space

Residential developments within the Euclid Mixed-Use Specific Plan shall provide park areas for recreational amenities on-site and also provide private open space for each unit.

- On site parks will be provided to meet the needs of future residents. A minimum of 2.0 acres/1000 residents shall be provided within the residential neighborhood per The Ontario Plan.
- Onsite parks shall be at least 0.25 acres in size with a minimum dimension of 30 ft. wide.
- Parks and recreational amenities shall be designed to be visible from internal streets. Residential units should be oriented to face “eyes” onto parks and common open spaces.
- Private open space shall be provided for all residential units:
  - Ground floor units with patios shall be required to provide 140 s.f. of private open space per unit with a minimum dimension of 5 ft..
  - Units on upper floors and ground floor units without patios shall provide a minimum of 50 s.f. of private enclosed open space such as a courtyard or balcony with a minimum dimension of 5 ft.

Parking Areas

Resident and guest parking should be conveniently located within each individual neighborhood. Parking areas should be softened with landscaping and shaded by trees to enhance the aesthetic character and reduce heat gain associated with paved areas.

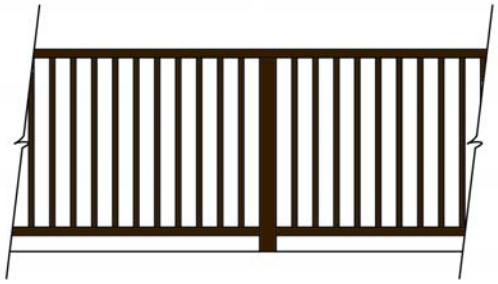
- Residential parking lots shall be designed to screen parked cars from adjacent public streets. Acceptable screening methods include any combination of decorative walls, landscape berms and evergreen plant material.
- Parking spaces shall be limited to 8 or less spaces in a row. A landscape planter shall be installed to accommodate a shade tree in parking areas.

- Landscape planters should be provided at cross-walk locations.
- Pedestrian accessibility and connectivity should be facilitated within parking areas. Decorative paving should be utilized at crosswalks and where walkways and parking driveways intersect.

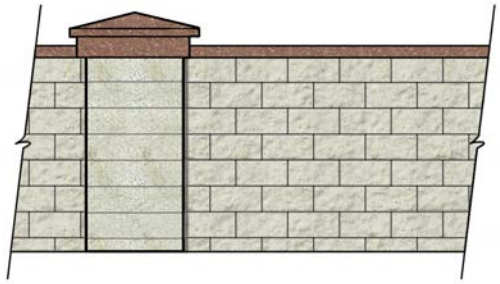
Fence and Wall Design

Community fences and walls are design features which can help unify the landscape character within a planned area. Perimeter community fences and walls within the Euclid Mixed-Use Specific Plan shall reflect a design aesthetic that will coordinate the varied uses allowed in the Business Park and Mixed-Use Districts. Community walls and accent pilasters will utilize colors and material that are compatible with the Gateway monuments. Community pilasters will mirror the simple forms, durable materials and clean lines and details of the Gateways. Within the Specific Plan area, all visible perimeter walls within the Mixed-Use District shall be consistent with the approved Community Wall detail below. Interior residential walls should be compatible in design and color of the overall wall treatment within the Euclid Mixed-Use Specific Plan area.

Community Fences will be tubular steel with a simple vertical picket design with a top rail and minimal ornamentation per the Community Fence detail below. The fence color will be compatible with the approved Community Pilasters. See Community Pilaster detail below.



TUBULAR STEEL VIEW FENCE
Open tubular steel fencing is typically utilized in rear yards where view preservation is desirable.



COMMUNITY THEME WALL AND PILASTER
Community theme wall with colored block pilaster along project perimeter.



COMMUNITY THEME WALL
Community theme colored split-face block wall along project border.

Landscape Lighting

Landscape and other exterior lighting within the Euclid Mixed-Use Specific Plan shall be designed to be compatible and reflect a unified design character. Landscape lighting in residential neighborhoods should reflect a contemporary design and maintain a uniformity in style material and color.
Direction signs and address signage shall be back-lit or directly illuminated. All walkways and open space areas will be illuminated to provide a safe and inviting experience for pedestrians. Pathway lighting shall be low voltage.

6. SPECIFIC PLAN IMPLEMENTATION

This section of the Specific Plan summarizes the process for implementation of the Euclid Mixed-Use Specific Plan and provides for the orderly development of the Specific Plan area.

6.1 Applicability

The provisions, guidelines, and regulations contained within this Specific Plan provide the standards for land uses and development within Euclid Mixed-Use Specific Plan area. The Specific Plan supersedes the development standards and regulations of the Ontario Development Code, unless stated otherwise in this document. Whenever the provisions development standards and regulations of the Specific Plan conflict with those of the Ontario Development Code, the Specific Plan shall take precedence. Where the Specific Plan is silent, the Ontario Development Code shall apply.

6.1.1 Definition of Terms

The definitions of terms used within the Specific Plan shall mean the same as the Ontario Development Code, unless otherwise noted.

6.2 Severability

The Specific Plan serves as the implementation tool for the City's Policy Plan (The Ontario Plan). In the event that any provision of this Specific Plan or its application to any person or circumstance is held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct and independent, and shall not affect the validity of the remaining provisions of this Specific Plan or applications thereof, which can be implemented without the invalid provision or application.

6.3 Interpretation

If a condition or situation occurs that is not sufficiently covered or provided for in this Specific Plan, those that are applicable for the most similar issue, condition, or situation shall be used. Any interpretation of a condition or situation concerning the content or application of the Specific Plan shall be resolved by the City Planning Director in a manner consistent with the goals, policies, objectives, and intent established in the Specific Plan.

6.4 Consistency with Other Plans and Regulations

This sub-section discusses consistency of the Specific Plan with other relevant plans and regulations including The Ontario Plan, Ontario International and Chino Airport Compatibility Plans, State of California building Codes and CEQA.

6.4.1 Consistency with The Ontario Plan

No land use, activity, or facility shall be permitted that is inconsistent with the objectives, policies, general land uses, and programs of The Ontario Plan, as amended. The Euclid Mixed-Use Specific Plan entitlement application proposes land use designations of Business Park and Mixed-Use development consistent with The Ontario Plan 2050.

6.4.2 Consistency with Airport Land Use Compatibility Plans

Projects located within the Specific Plan area are subject to the restrictions and provisions of the Airport Land Use Compatibility Plans prepared for Ontario International Airport and Chino Airport.

6.4.3 Consistency with California Building Code

Projects located within the Specific Plan area must comply with the State of California Building Code as adopted and implemented by the City of Ontario.

6.4.4 Consistency with CEQA

The City of Ontario is defined as the lead agency under the California Environmental Quality Act (CEQA) based upon its authority to approve this Specific Plan. Concurrent with approval of this Specific Plan, the City Council will be required to certify the associated Environmental Impact Report (EIR), including a Mitigation Monitoring and Reporting Program to ensure that all approved EIR mitigation measures are implemented. The Planning Director shall be responsible for confirming that mitigation measures have been implemented through each project's approved plans.

6.5 Specific Plan Revisions

It is recognized that modifications to the text or exhibits of this Specific Plan may be warranted in the future to accommodate unforeseen conditions or events. Revisions shall be processed in a manner prescribed by the City of Ontario Planning Department pursuant to the provisions in this section.

6.5.1 Minor Modifications

Minor modifications to the Specific Plan will be processed administratively without the submission of a formal Specific Plan Amendment application and will not require a public hearing or review by the Planning Commission. The Planning Director shall have the authority to review and make a determination of approval, approval with conditions, or denial of a request for minor modification to the Specific Plan. The Planning Director may, at his/her discretion, refer any such request to the Planning Commission or the City Council.

Minor modifications are defined as:

1. Expansions or reductions to a Planning Area boundary or acreage, provided that the total acreage within each affected Planning Area is not modified by more than 20 percent.
2. An increase in maximum building area for single- and multi-tenant buildings of up to 15 percent, provided that the maximum square footage for the Planning Area established by this Specific Plan is not exceeded.
3. A modification of up to 20 percent of a project's required minimum lot area, minimum lot dimensions, or setback if compatible with the surrounding land uses and consistent with the overall design character of the Euclid Mixed-Use Specific Plan.
4. Additions, deletions, or modifications to ***Table 4.1***, Allowable Uses, which lists the permitted and conditionally permitted uses in the Specific Plan area, provided the Planning Director determines the changes to be consistent with the objectives and intent of the Specific Plan.

5. Minor modification of conceptual design criteria for architectural features and materials, landscape treatments, lighting, signage, and sustainable design strategies.
6. Revisions to roadway alignment when the change results in centerline shift of less than 250 ft.
7. Revisions to infrastructure facility sizing and precise location for dry utilities, water, sewer, and Storm Drain improvements subject to approval of the City Engineer.
8. Changes to the Phasing Plan, provided infrastructure is available to serve the phase as determined by the City Engineer.
9. Revisions to exhibits in the Specific Plan that do not substantially change its intent or character and modifications to the Specific Plan text to those listed above, which are deemed minor by the Planning Director and conform to the purpose and intent of this Specific Plan and The Ontario Plan 2050.
10. Any modifications to land use, planning areas, densities, or infrastructure that does not result in an increase to water demands in any single water pressure zone or an increase in sewer wastewater generation in any single sewer tributary subarea.
11. Revisions to Land Uses within the Specific Plan area to allow consistency with TOP Land Use Plan updates.

6.5.2 Specific Plan Amendments

Proposed changes to this Specific Plan that do not meet the criteria for a Minor Modification will be subject to a formal Specific Plan Amendment application process pursuant to the Ontario Development Code and California Government Code Section 65450. If the proposed amendment requires supplemental environmental analysis pursuant to CEQA, the applicant will adhere to the City's adopted procedures and CEQA Guidelines.

6.6 Subdivision Maps

Development within the Specific Plan area may require the processing of tentative and final tract or parcel maps and/or lot line adjustments or mergers. Subdivision maps and lot changes shall be reviewed and approved pursuant to the Ontario Development Code and other applicable City codes and regulations, California Government Code Section 66410 (Subdivision Map Act), as well as the provisions of this Specific Plan.

6.7 Development and Land Use Review Procedures

Review procedures for development and land use within the Specific Plan area shall be as provided in this Specific Plan and in accordance with the Ontario Development Code.

6.7.1 Development Plan Review

Development proposed within the Specific Plan area will be subject to Development Plan review pursuant to the Ontario Development Code. The review is intended to ensure compliance with the provisions of this Specific Plan, protect the integrity and character of the physical composition of the City, and encourage high quality development.

6.7.2 Conditional Use Permit

A Conditional Use Permit is required for uses deemed "conditionally permitted" in ***Table 4.1*** (Allowable Uses). Applications for a Conditional Use Permit will be processed pursuant to the Ontario Development Code.

6.7.3 Administrative Use Permit

An Administrative Use Permit is required for uses deemed "administratively permitted" in ***Table 4.1*** (Allowable Uses). Applications for an Administrative Use Permit will be processed pursuant to the Ontario Development Code.

6.7.4 Appeals

Appeals of decisions of the Development Advisory Board, Zoning Administrator, Planning Director or the Planning Commission regarding implementation of this Specific Plan may be made by the applicant or other aggrieved party pursuant to Division 2.04 of the Ontario Development Code.

6.8 Development Agreement

Approval of a statutory development agreement authorized pursuant to California Government Code Section 65864 et seq. is required by this Specific Plan. The Development Agreement shall include, but not be limited to, methods for financing, acquisition, and construction of necessary infrastructure. The Development Agreement shall be fully executed prior to recordation of the first Final Map.

6.9 Specific Plan Phasing

Implementation of this Specific Plan is anticipated to occur in two phases, as discussed in Section 3.11, Phasing Plan:

- Phase 1: Construction of Planning Areas 1, 2 and 3A.
- Phase 2: Construction of Planning Area 3B.

These phases may be developed as sub-phases and/or occur sequentially/concurrently with one another.

All of the Specific Plan required infrastructure by Section 3.3 (***Figure 3.10***) for Potable Water, Section 3.4 (***Figure 3.12***) for Recycled Water, and Section 3.5 (***Figure 3.14***) for Sewer Phasing will be determined per separate Development Agreement.

6.9.1 Phasing Objectives

Development phasing shall meet the following objectives:

1. The orderly build-out of the project based upon market and economic conditions;
2. The provision of adequate parking, infrastructure, and public facilities concurrent with the development of each phase; and
3. The protection of the public health, safety, and welfare.

6.9.2 Findings for Modification of the Phasing Plan

The Planning Director shall have the authority to approve modification of the Phasing Plan, subject to the following findings:

1. The modification is consistent with the Policy Plan (The Ontario Plan);
2. The modification will not adversely affect the implementation of the Specific Plan;
3. The modification will not be detrimental to public health, safety, and general welfare; and
4. The modification will not delay the construction of infrastructure improvements necessary to serve the development.

6.10 Maintenance Plan

Final determination of maintenance responsibilities for the public and private improvements constructed in association with this Specific Plan shall be specified in the approved Development Agreement, which shall be executed prior to recordation of the first Final Map. However, it is anticipated that maintenance shall be generally shared by three entities as described below and outlined in ***Table 6.1***, Maintenance Responsibilities.

6.10.1 City of Ontario, Community Facilities District & other Special District

The establishment of a community facilities district, landscape and lighting district, or other special district to fund the maintenance of public facilities shall be at the City's discretion. It is anticipated that public maintenance shall include the following:

1. Right-of-way for public streets, sidewalk, landscape, and traffic signals within the Specific Plan area (Euclid Avenue, Schaefer Avenue, Edison Avenue and Sultana Avenue) shall be dedicated to the City of Ontario per the provisions of this Specific Plan (Section 3, Development Plan) and as approved by the City Engineer.
2. Landscape improvements and public street lights within the public right-of-way and neighborhood edge shall be maintained through a landscape and lighting district or other special maintenance district established by the City.
3. The City shall maintain off-site infrastructure improvements, including water, recycled water, sewer, Storm Drain facilities and city broadband communications after they are accepted by the City.
4. The City shall maintain NPDES facilities located within the curb-to-curb area of public streets after they are accepted by the City. Operation and maintenance requirements for NPDES storm water runoff source control and treatment control Best Management Practices shall be identified in the approved Water Quality Management Plan for the project.

6.10.2 Property Owners Association

A Property Owners Association (POA) shall be established for the maintenance of common areas, including such improvements as on-site landscape areas and parking and drive aisles within Euclid Mixed-Use. It is anticipated that improvements maintained by the POA will include the following:

1. Driveways;
2. On-site open spaces, on-site landscape areas, common areas, parking lots, and walkways;
3. Landscaping within setback/landscape buffer areas along Sultana Ave;
4. NPDES facilities within landscape setbacks and on-site common areas;
5. Property identification signage and architectural elements located within the landscaped buffer; and
6. Fencing and walls, including graffiti removal.
7. Water, sewer, recycled water facilities and Storm Drain facilities located on-site shall be constructed by the developer and are considered privately owned and maintained by property owners or Property Owners Association, however the Property Owners Association shall maintain permanent on-site water quality basins, trenches, swales and biotreatment filters required by the San Bernardino County MS4 Permit and Water Quality Management Plan.

TABLE 6.1 MAINTENANCE RESPONSIBILITIES

AREA OF RESPONSIBILITY	CITY OF SPECIAL DISTRICT	PROPERTY OWNERS ASSOCIATION	UTILITY
Master Planned Roadways: Euclid Avenue, Schaefer Avenue and Edison Avenue			
Curb-to-curb improvements	X		
Behind the curb improvements - landscaping within the public right-of-way (parkways), sidewalks and neighborhood edge	X		
Other Improvements			
Traffic Signals and Traffic Control Signs on public streets	X		
Streetlights in the public right-of-way	X		
Drive aisles		X	
On-site parking areas		X	
Common open space		X	
Landscaping within setback/landscape buffer areas		X	
Monument signage		X	
Walls and fences		X	
Stormwater drainage/water quality control facilities within the curb-to-curb area of public streets	X		
Stormwater drainage/water quality control facilities behind the curb		X	
Water, recycled water, and sewer infrastructure in the public right-of-way	X		
Dry utilities: electricity, natural gas, communication systems			X

7. CONSISTENCY WITH THE ONTARIO PLAN

California Government Code (Title 7, Division 1, Section 3, Article 8, Section 65440- 65457) permits the adoption and administration of Specific Plans as an implementation tool for elements contained within a jurisdiction's local General Plan. Approval of the Euclid Mixed-Use Specific Plan is based on the finding that the regulations, guidelines, and programs contained within this Specific Plan are consistent with The Ontario Plan. The Ontario Plan establishes the direction and vision for the City of Ontario and provides a single comprehensive document to shape its future. The Ontario Plan provides for policies to accommodate change over its 30 year lifespan. The Ontario Plan consists of a six part Component Framework: 1) **Vision**, 2) **Governance Manual**, 3) **Policy Plan**, 4) **City Council Priorities**, 5) **Implementation**, and 6) **Tracking and Feedback**.

The following sections demonstrate how the Ontario Ranch Mixed-Use Specific Plan implements the goals and policies of the City's Policy Plan (General Plan).

7.1 Land Use Element

GOAL LU-1:

A community that has a spectrum of housing types and price ranges that match the jobs in the City and that make it possible for people to live and work in Ontario and maintain a quality of life.

Policy LU-1.1 Strategic Growth

We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, foster the development of transit, and support the expansion of the active and multimodal transportation networks throughout the City. (Link to Mobility Element Policies M2-M-2.1, M3-M-3.3; Community Design Element Image and Identity Section; Community Design Policies CD-3.1, CD-3.3, CD-3.6)

The Euclid Mixed Use Specific Plan encourages concentrated development including high density residential neighborhoods, office and business park employment uses and retail and mixed use centers along major arterial roadways where future transit stops, multi-use trials and bikeways are planned. The Design Guidelines in Section 5 encourage site planning criteria and architectural standards to create a unique and cohesive aesthetic character for the project area.

Policy LU-1.2 Sustainable Community Strategy

We integrate state, regional, and local Sustainable Community/Smart Growth principles into the development and entitlement process.

The Euclid Mixed-Use Specific Plan encourages the efficient use of energy resources in design, product selection, and operational techniques. The Design Guidelines in Section 5 address lighting, bicycle parking, sustainable landscaping, and sustainable design strategies. Landscape provisions

require the use of native drought resistant vegetation and shade trees to conserve water and reduce heat islands. The sustainable design strategies include design and construction of energy efficient buildings to reduce air, water, and land pollution and environmental impacts from energy production and consumption. Protecting water quality, reducing runoff, and reducing water demand for landscaping are promoted in the Development Plan in Section 3 through the recycled water plan and storm drainage facilities source control and treatment practices.

Policy LU-1.3 Adequate Capacity

We require adequate infrastructure and services for all development.

The Euclid Mixed-Use Specific Plan establishes a Phasing Plan that has been coordinated with affected infrastructure providers and ensures that uses on the project site will be adequately served. The Specific Plan requires infrastructure development to occur in a timely manner. Potable and recycled water, sewer, fiber optic communications, and storm drain infrastructure improvements that will ultimately serve the Specific Plan area are addressed in Section 3, Development Plan. Infrastructure and services will be consistent with City of Ontario infrastructure master plans and the approved development agreement.

Policy LU-1.4 Multimodal Mobility

We require development and urban design, where appropriate, that reduces reliance on the automobile and capitalizes on active transporttion, transit, electric vehicles, and multimodal transportation opportunities (Link to Mobility Element Policies M-2.1, M-3.3; Community Design Element Policy CD-2.6, CD-3.1, CD-3.3, CD3.6).

The Euclid Mixed Use Specific Plan requires the construction of multi-purpose trails along Euclid and Schaefer Avenues and public accessible sidewalk along Euclid, Schaefer and Sultana Avenues and Edison Avenue. These improvements are integral elements to create accessibility and mobility within the project site and surrounding area. The Specific Plan requires the location and construction of transit turnouts within the Specific Plan area.

Policy LU-1.5 Jobs-Housing Balance

We coordinate land use, infrastructure, and transportation planning and analysis with regional, county, and other local agencies to further regional and subregional goals for jobs-housing balance. (Link to Community Economics Element Policy CE-1.1; Mobility Element Policy M-1.6).

The Euclid Mixed Use Specific Plan requires all infrastructure needed to develop the property to be constructed per The City approved master plans as indicated in Section 5 of the Specific Plan. The Land Use Plan allows for up to 466 housing and a variety of employment generating land uses totaling over 1,676,886 S.F.to encourage a balance of jobs and nearby housing.

Policy LU-1.6 Complete Community

We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers, and visitors have a wide

spectrum of choices of where they can live, work, shop and recreate within Ontario. (Link to Community Economics Element Complete Community Section; Community Design Element Urban, Mixed Use, and Transit-oriented Place Types Section).

The Euclid Mixed Use Specific Plan allows for up to 466 housing and over 1,676,886 S.F. of employment generating land uses to accommodate the design of a complete community with a balance of uses to allow a spectrum of choices for future employers, employees, residents and visitors. The allowable land uses will allow for a balanced plan to support Ontario residents in all stages of life.

GOAL LU-2:

Compatibility between a wide-range of uses and resultant urban patterns and forms.

Policy LU-2.3 Hazardous Uses

We regulate the development of industrial and similar uses that use, store, produce or transport toxic substances, air emissions, other pollutants or hazardous materials. (Link to Safety Element Hazardous Materials & Waste Section, including Policies S-6.4 and S-6.5).

Uses within the Euclid Mixed-Use Specific Plan are required to comply with federal, state, and local regulations pertaining to the use, storage, disposal, and transportation of hazardous materials, toxic substances, and other pollutants.

Policy LU-2.5 Regulation of Uses

We regulate the location, concentration and operations of uses that have impacts on surrounding uses.

The Euclid Mixed-Use Specific Plan land use plan contained in Section 3, Development Plan, utilizes the Business Park designation (Planning Area 1 and 2) and Mixed-Use designation (Planning Area 3) to buffer varied existing land uses located across Euclid Avenue within the City of Chino. Section 4, Land Use and Development Standards, restricts Planning Area 1 and 2 to smaller buildings along the Euclid frontage. Furthermore, the conceptual site plan for the business park places truck traffic ingress and egress and visible loading docks away from the existing residential uses.

Policy LU-2.6 Infrastructure Compatibility

We require infrastructure to be aesthetically pleasing and in context with the community character.

The Euclid Mixed-Use Specific Plan design guidelines (Section 5) are intended to support high-quality development that complements the surrounding community. Landscaped areas and drive entrances will be planned to separate parking areas and keep the parking lot from being the dominant visual element of the site. The Specific Plan also establishes landscape setback requirements (Section 4, Land Use and Development Standards) and conceptual streetscape design (Section 5, Design Guidelines) along all roadways within the Specific Plan area to create safe and attractive streets for pedestrians and motorists and ensure cohesive patterns of development.

Policy LU-2.9 Methane Gas Sites

We require sensitive land uses and new uses on former dairy farms or other methane-producing sites be designed to minimize health risks.

The Euclid Mixed-Use Specific Plan incorporates into its Implementation Plan (Section 6) requirements for the project to comply with any mitigation measures identified in the project Environmental Impact Report, including those for soil remediation and proper venting to address the potential existence of methane gases within the Specific Plan area.

Policy LU-2.11 Context-Aware Transitions and Connections

We require new development projects and land-planning efforts to provide context-aware and appropriate transitions and connections between existing and planned neighborhoods, blocks, sites, and buildings.

The Euclid Mixed Use Specific Plan includes the construction of multi-purpose trails along Euclid and Schaefer Avenues and public accessible sidewalks along Euclid, Schaefer and Sultana Avenues and Edison Avenue. These improvements provide transitions and connectivity to existing and planned neighborhoods.

GOAL LU-3:

Staff, regulations and processes that support and allow flexible response to conditions and circumstances in order to achieve the Vision.

Policy LU-3.1 Development Standards

We maintain clear development standards which allow flexibility to achieve our Vision and provide objective standards that ensure predictability and deliver the intended physical outcomes. (Link to Community Design Element Design Quality and Urban, Mixed Use, and Transit-oriented Place Types Sections).

The Euclid Mixed Use Specific Plan provides development standards intended to address the site and surrounding conditions and achieve the City's overall Vision for urban, mixed use and transit oriented land uses.

GOAL LU-4:

Development that provides short-term value only when the opportunity to achieve our Vision can be preserved.

Policy LU-4.1 Commitment to Vision

We are committed to achieving our Vision but realize that it may take time and several interim steps to get there.

The Euclid Mixed Use Specific Plan allows for phased development coordinated with infrastructure improvements. Interim and transitional uses are permitted in order to allow for planned development to occur to achieve the City's long term Vision for land uses.

Policy LU-4.3 Infrastructure Timing

We require that the necessary infrastructure and services be in place prior to or concurrently with development.

The Euclid Mixed Use Specific Plan requires the construction of all infrastructure needed to develop the property to be constructed per The City approved master plans as indicated in Section 5 of the Specific Plan.

GOAL LU-5:

Integrated airport systems and facilities that minimize negative impacts to the community and maximize economic benefits.

Policy LU-5.1 Coordination with Airport Authorities

We collaborate with FAA, Caltrans Division of Aeronautics, airport owners, neighboring jurisdictions, and other shareholders in the preparation, update, and maintenance of airport-related plans.

The Euclid Mixed Use Specific Plan will comply with all ALUCP requirements for the Ontario and Chino Airports as outlined in Section 2.3 of the Specific Plan and future development will be required to meet all requirements and procedures outlined by airport related governmental agencies .

Policy LU-5.2 Airport Planning Consistency

We coordinate with airport authorities to ensure The Ontario Plan is consistent with state law, federal regulations, and/or adopted master plans, and airport land use compatibility plans for ONT and Chino Airport.

The Euclid Mixed Use Specific Plan will comply with all ALUCP requirements for the Ontario and Chino Airports as outlined in Section 2.3 of the Specific Plan and future development will be required to meet all requirements and procedures outlined by airport related governmental agencies and mitigation measures identified in the project Environmental Impact Report.

Policy LU-5.5 Airport Compatibility Planning for ONT

We create and maintain the Airport Land Use Compatibility Plan for ONT.

The Euclic Mixed-Use Specific Plan area is within the Ontario International Airport Influence Area and the Chino Airport Influence Area. The Specific Plan discusses compliance with the ALUCP requirements for the Ontario Airport and the Chino Airport in Section 2, Section 2.2, Airport Influence Areas.

Policy LU-5.7 ALUCP Consistency with Land Use Regulations

We comply with state law that requires general plans, specific plans, and all new development to be consistent with the policies and criteria set forth within an Airport Land Use Compatibility Plan for any public-use airport.

The Euclid Mixed-Use Specific Plan area is within the Ontario International Airport Influence Area and the Chino Airport Influence Area. The Specific Plan discusses compliance with the ALUCP requirements for the Ontario Airport and the Chino Airport in Section 2, Section 2.2, Airport Influence Areas.

Policy LU-5.8 Chino Airport

We will support the creation and implementation of the Airport Land Use Compatibility Plan for Chino Airport.

The Euclic Mixed-Use Specific Plan area is within the Ontario International Airport Influence Area and the Chino Airport Influence Area. The Specific Plan discusses compliance with the ALUCP requirements for the Ontario Airport and the Chino Airport in Section 2, Section 2.2, Airport Influence Areas.

7.2 Housing Element

GOAL H-1:
Stable neighborhoods of quality housing, ample community services and public facilities, well-maintained infrastructure, and public safety that foster a positive sense of identity.

Policy H-1.2 Neighborhood Conditions

We direct efforts to improve the long-term sustainability of neighborhoods through comprehensive planning, provision of neighborhood amenities, rehabilitation and maintenance of housing, and community building efforts.

The Euclid Mixed Use Specific Plan allows for up to 466 housing and recreational open space consistent with The Ontario Plan standards for parks/open space and neighborhood recreational amenities.

Policy H-1.3 Community Amenities

We shall provide adequate public services, infrastructure, open space, parking and traffic management, pedestrian, bicycle, and equestrian routes and public safety for neighborhoods consistent with City master plans and neighborhood plans.

The Euclid Mixed Use Specific Plan requires all infrastructure, open space, trails and bikeways needed to develop the property to be constructed concurrently with future development per The City approved master plans as indicated in Section 3 of the Specific Plan. The Land Use Plan allows for up to 466 housing.

Policy H-1.4 Historical Preservation

We support the preservation and enhancement of residential structures, properties, street designs, lot configurations, and other reminders of Ontario's past that are considered to be local historical or cultural resources.

The Euclid Mixed Use Specific Plan area includes existing buildings that reflect the agricultural history as an important cultural resource of the City. The Specific Plan provides design guidelines for future buildings in Section 5 that include architectural styles that reinforce the City's rich agricultural history. Future development will comply with City requirements for documenting historical resources and mitigation measures identified in the project Environmental Impact Report.

GOAL H-2:

Diversity of types of quality housing that are affordable to a range of household income levels, accommodate changing demographics, and support and reinforce the economic sustainability of Ontario.

Policy H-2.1 Corridor Housing

We revitalize transportation corridors by encouraging the production of higher density residential and mixed-uses that are architecturally, functionally, and aesthetically suited to corridors.

The Euclid Mixed Use Specific Plan includes a Mixed Use District that will allow up to 466 residential units and a density of 35 to 60 du/ac to be developed along Edison Avenue in close proximity to transit turnouts within the Specific Plan area. The Specific Plan provides design guidelines for future buildings in Section 5 that include architectural styles and building guidelines to provide aesthetically pleasing and functional residential buildings.

Policy H-2.4 Ontario Ranch

We support a premier lifestyle community in the Ontario Ranch, distinguished by diverse housing, highest design quality, and cohesive and highly amenitized neighborhoods.

The Euclid Mixed Use Specific Plan allows for the development of up to 466 high density attached residential units linked to surrounding retail and open space uses by local sidewalks and walkways and master planned trails and bikeways. The Specific Plan provides design guidelines for future residential development in Section 5 that include architectural criteria that establish a high level of design and construction quality and encourage a cohesive neighborhood design character.

Policy H-2.5 Housing Design

We require architectural excellence through adherence to City design guidelines, thoughtful site planning, environmentally sustainable practices, and other best practices.

The Euclid Mixed Use Specific Plan provides design guidelines for future residential development in Section 5 that include site planning considerations, emphasize sustainable design and establishes architectural criteria to ensure a high level of design excellence.

GOAL H-5:

A full range of housing types and community services that meet the special housing needs for all individuals and families in Ontario, regardless of income level, age, or other status.

Policy H-5.2 Family Housing

We support the development of larger rental apartments that are appropriate for families with children, including, as feasible, the provision of services, recreation, and other amenities.

The Euclid Mixed Use Specific Plan allows for the development of up to 466 high density attached residential units that are suited for a range of future buyers or renters including families with children. Future residential development will be required to provide parks at a minimum of 2 acres/1000 residents. The Specific Plan also includes multi-purpose trails along Euclid and Schaefer Avenues and public accessible sidewalks along Euclid, Schaefer and Sultana Avenues and Edison Avenue.

7.3 Parks and Recreation Element

GOAL PR-1:

A system of safe and accessible parks that meets the needs of the community.

Policy PR-1.1 Access to Parks

In all new residential development areas, we strive to provide a park and/or recreational facility within walking distance (¼ mile) of every residence and prioritize the establishment of parks in environmental justice areas that do not have adequate access to parks.

The Euclid Mixed Use Specific Plan will comply with the City requirement to provide two acres of Park per 1,000 residents onsite and pay an in-lieu fee for the equivalent of three acres of park per 1,000 residents for a total of five acres per 1,000 residents to ensure that recreational facilities are within walking distance of future residents within the Specific Plan area.

Policy PR-1.5 Acreage Standard

We strive to provide 5 acres of parkland (public and private) per 1,000 residents.

The Euclid Mixed Use Specific Plan will comply with the City requirement to provide five acres of Park per 1,000 residents by providing two aces on-site and paying an in-lieu fee for the equivalent of three acres of park per 1,000 residents.

Policy PR-1.6 Private Parks

We expect development to provide a minimum of 2 acres of developed private park space per 1,000 residents.

The Euclid Mixed Use Specific Plan will comply with the City requirement to provide two acres of Park per 1,000 residents on-site.

Policy PR-1.9 Phased Development

We require parks be built in new communities before a significant proportion of residents move in.

The Euclid Mixed Use Specific Plan allows for phased development coordinated with required park improvements and payment of in-lieu park fees.

Policy PR-1.12 Trails

We promote connections between parks and local trails including those managed by other public agencies.

The Euclid Mixed Use Specific Plan will comply with the City requirement to provide two acres of Park per 1,000 residents on-site and will develop the public multi-purpose trails in Euclid and Schaefer Avenues along the project frontage to provided planned connection to Citywide parks and trail systems including the Great Park.

Policy PR-1.14 Multi-family Residential Developments

We require that new multi-family residential developments of five or more units provide recreational facilities or open space, in addition to paying adopted impact fees.

The Euclid Mixed Use Specific Plan will include development standards to provide two acres of Park per 1,000 residents on-site for all types of residential development including multi-family neighborhoods.

Policy PR-1.15 Trail Connectivity

We strengthen and improve equestrian, bike, and multipurpose trail connections within the City and work to improve trail connections into adjacent jurisdictions.

The Euclid Mixed Use Specific Plan will develop the public multi-purpose trails in Euclid and Schaefer Avenues along the project frontage to provided planned connection to Citywide parks and trail systems including the Great Park.

7.4 Environmental Resources Element

GOAL ER-1:

A reliable and cost-effective system that permits the City to manage its diverse water resources and needs.

Policy ER-1.3 Conservation and Sustainable Water Supply

We work with regional water providers and users to conserve water and ensure sustainable local water supplies as more frequent droughts reduce long term local and regional water availability.

The Euclid Mixed-Use Specific Plan incorporates water conservation strategies into its development plan and design guidelines. The use of recycled water to irrigate landscape areas is required consistent with the City of Ontario Recycled Water Master Plan (Section 3, Development Plan). Landscape and irrigation plans are encouraged to use water conservation features such as drought-tolerant plant species native to the region and drip irrigation (Section 5, Design Guidelines). The Specific Plan encourages the design and construction of energy-efficient buildings to reduce air, water, and land pollution and environmental impacts from energy production and consumption.

Policy ER-1.5 Water Resource Management

Environmental justice areas are prioritized as we coordinate with local agencies to protect water quality, prevent pollution, address existing contamination, and remediate contaminated surface water and groundwater.

In Section 3.8, Storm Drain Plan, the Specific Plan stipulates that prior to issuance of grading or construction permits, a Storm Water Pollution Prevention Plan (SWPPP) be prepared and approved by the City. The SWPPP will identify and detail appropriate Best Management Practices (BMPs) to prevent pollutant discharge into storm drain systems and natural drainages and aquifers. In addition to the preparation of a SWPPP, a WQMP will be prepared and approved that will enforce long-term BMPs to prevent pollutant discharges into storm drain systems, for the life of the project. Section 5.8.2, Water Quality, requires the provision of on-site landscape swales to collect and treat stormwater run-off.

Policy ER-1.6 Urban Run-off Quantity

We encourage the use of low impact development strategies, including green infrastructure, to intercept run-off, slow the discharge rate, increase infiltration, and ultimately reduce discharge volumes to traditional storm drain systems.

The Euclid Mixed-Use Specific Plan (Section 3.8, Storm Drain Plan) incorporates low impact development strategies including landscape designs that promote water retention; permeable surface designs in parking lots and areas with low traffic; parking lots that drain to landscaped areas to provide treatment, retention, or infiltration; and limited soil compaction during grading.

Policy ER-1.7 Urban Run-off Quality

We require the control and management of urban run-off, consistent with Regional Water Quality Control Board regulations.

In Section 3.8, Storm Drain Plan, the Specific Plan states that prior to issuance of grading or construction permits, a Water Quality Management Plan (WQMP) is required to minimize stormwater runoff and provide on-site opportunities for groundwater recharge integrated into project design and amenities. The grading and drainage of the Specific Plan area will be designed to retain/infilter, harvest & re-use or biotreat surface runoff to comply with the current requirements of the San Bernardino County NPDES Stormwater Program's WQMP for significant new development projects.

Policy ER-1.8 Wastewater Management

We require the management of wastewater discharge and collection consistent with waste discharge requirements adopted by the Regional Water Quality Control Board.

In Section 3.6, Sewer Plan, the Specific Plan provides for design of a wastewater system consistent with City and Regional Water Quality Board requirements. The Specific Plan includes a network of new public sewer mains consistent with the City of Ontario's Ultimate Sewer System Plan.

GOAL ER-3:

Cost-effective and reliable energy system sustained through a combination of low impact buildings, site and neighborhood energy conservation, and diverse sources of energy generation that collectively helps to minimize the region's carbon footprint.

Policy ER-3.1 Conservation Strategy

We require conservation as the first strategy to be employed to meet applicable energy-saving standards.

The Specific Plan incorporates energy-saving conservation strategies into its design guidelines (Section 5) by addressing lighting, bicycle parking, sustainable landscaping, and energy efficiency. Sustainable design strategies (Section 5.8) include design and construction of energy-efficient buildings to reduce air, water, and land pollution and environmental impacts from energy production and consumption.

Policy ER-3.3 Building and Site Design

We require new construction to incorporate energy efficient building and site design strategies, which could include appropriate solar orientation, maximum use of natural daylight, passive solar, and natural ventilation.

The Euclid Mixed-Use Specific Plan encourages the use of passive design to improve building energy performance through skylights, building orientation, landscaping, and use of select colors.

Policy ER-3.6 Generation - Renewable Sources

We promote the use of renewable energy sources (e.g., solar, wind, biomass) in public and private sector development.

The Euclid Mixed Use Specific Plan promotes renewable energy resource including passive solar collection, subject to consistency with City of Ontario policies and development regulations, within the Business Park and Mixed Use Districts. Proposed architectural guidelines and development standards encourage siting and orienting Building with considerations for solar orientation and buildings with roof designs that allow for passive solar collectors. Residential buildings will be prewired or solar collection improvements.

GOAL ER-4:

Improved indoor and outdoor air quality and reduced locally generated pollutant emissions.

Policy ER-4.1 Land Use

We reduce GHG and other local pollutant emissions through compact, mixed use, and transit-oriented development and development that improves the regional jobs-housing balance.

The Euclid Mixed Use Specific Plan allows for up to 466 housing and a maximum of 1,676,886 S.F. of employment generating land uses within the project area. The Specific Plan included future transit stops and in close proximity to planned transit lines and helps to improve jobs housing balance in the City and the surrounding region with the provision of varied land use alternatives within the MIxed Use District.

Policy ER-4.3 Greenhouse Gases (GHG) Emissions Reductions

We will reduce GHG emissions in accordance with regional, state, and federal regulations.

The Euclid Mixed Use Specific Plan will comply with the regional, State and Federal laws and regulations to reduce GHG emissions and will require future development projects to comply with all City regulations to reduce GHG emissions and mitigation measures identified in the project Environmental Impact Report.

Policy ER-4.4 Indoor Air Quality

We comply with State Green Building Codes relative to indoor air quality. We will comply with State Green Building Codes relative to indoor air quality. We seek funding to improve indoor air quality for households with poor indoor air quality, with priority for lower income households in environmental justice areas.

The Euclid Mixed-Use Specific Plan requires development projects in the Specific Plan area to comply with the State of California Building Code as adopted and implemented by the City. The Specific Plan's Sustainable Design Strategies (Section 5.8) include the design and construction of energy-efficient buildings to reduce air, water, and land pollution.

Policy ER-4.5 Transportation

We promote mass transit and non-motorized mobility options (walking, biking) to reduce air pollutant emissions.

The Euclid Mixed Use Specific Plan requires the construction of multi-purpose trails along Euclid and Schaefer Avenues and public accessible sidewalks along Euclid, Schaefer and Sultana Avenues and Edison Avenue. The Specific Plan requires the location and construction of transit turnouts within the Specific Plan area. These improvements encourage non-motorized mobility options to reduce air pollutant emissions.

Policy ER-4.8 Tree Planting

We protect healthy trees within the City and plant new trees to increase carbon sequestration and help the regional/local air quality. We expand the tree canopy in environmental justice areas to enhance air quality and reduce the "heat island" effect.

The Euclid Mixed Use Specific Plan will implement the City of Ontario's master street plan including the provision for planting street parkway and median trees and will provide landscape installation, including trees, within all neighborhood edges. Section 5, Design Guidelines include criteria for landscaping parks, open space and other common areas.

GOAL ER-5:

Protected high value habitat and farming and mineral resource extraction activities that are compatible with adjacent development.

Policy ER-5.2 Entitlement and Permitting Process

We comply with state and federal regulations regarding protected species.

The Euclid Mixed-Use Specific Plan acknowledges that all projects within the Specific Plan area shall comply with any and all mitigation measures of the project Environmental Impact Report.

7.5 Community Economics Element

GOAL CE-1:

A complete community that provides for all incomes and stages of life.

Policy CE-1.1 Jobs-Housing Balance

We pursue improvement to the Inland Empire's balance between jobs and housing by promoting job growth that reduces the regional economy's reliance on out-commuting.

The Euclid Mixed-Use Specific Plan anticipates the creation of jobs in warehousing, logistics, light manufacturing, and administration within the Specific Plan area, which helps improve the region's jobs-housing balance. Actual job creation depends on the type of land uses ultimately developed on the site as a wide-range of commercial, office, and business park uses are permitted in the Specific Plan. The Land Use Plan (Section 3.1) implements the vision of The Ontario Plan by providing opportunities for employment in manufacturing, distribution, research and development, service, and supporting retail at intensities designed to meet the demand of current and future market conditions.

Policy CE-1.5 Business Attraction

We proactively attract new and expanding businesses to Ontario in order to increase the City's share of growing sectors of the regional and global economy.

The Euclid Specific Plan provides for opportunities for new businesses in the City within the Business Park District and the Mixed Use District. In Section 3.1, Land Use Plan, the Specific Plan provides for the construction of 1.6 square ft. of business park, commercial and/or office development in compliance with City and regional planning goals.

Policy CE-1.6 Diversity of Housing

We collaborate with residents, housing providers, and the development community to provide housing opportunities for every stage of life; we plan for a variety of housing types and price points to encourage the development of housing supportive of our efforts to attract business in growing sectors of the community while being respectful of existing viable uses.

The Euclid Mixed Use Specific Plan allows for the development of up to 466 high density attached residential units within the Mixed Use District. This will add to the housing diversity and choices for ownership or rental housing within the Ontario Ranch to accommodate people who live and/or work in the City.

Policy CE-1.7 Retail Goods and Services

We seek to ensure a mix of retail businesses that provide the full continuum of goods and services for the community.

The Euclid Mixed Use Specific Plan allows for a maximum of 1,676,886 S.F. of business park, retail or office uses. The Specific Plan provides opportunities for future business to contribute to the provision of continued goods and services within the Business Park and Mixed Use Districts.

Policy CE-1.12 Circulation

We continuously plan and improve public transit and non-vehicular circulation for the mobility of all, including those with limited or no access to private automobiles.

The Euclid Mixed Use Specific Plan provides for both public transit, including future transit stop locations, and multi-purpose trails and sidewalks to encourage non-vehicular circulation within the project area.

GOAL CE-2:

A City of distinctive neighborhoods, districts, corridors, and centers where people choose to be.

Policy CE-2.1 Development Projects

We require new development and redevelopment to create unique, high-quality places that add value to the community.

The Euclid Mixed-Use Specific Plan contains design guidelines in Section 5 to guide future development, consistent with the vision for Ontario Ranch. The guidelines are intended to ensure high quality, cohesive and attractive development that complements and integrates into the community and adds value to the City. The Specific Plan also establishes landscape setbacks along all roadways within the Specific Plan area to create safe and attractive streets for pedestrians and motorists.

Policy CE-2.2 Development Review

We require those proposing new development and redevelopment to demonstrate how their projects will create appropriately unique, functional, and sustainable places that will compete well with their competition within the region.

The Euclid Mixed-Use Specific Plan establishes a land use plan (Section 3.1) and design guidelines (Section 5) concerning site design, building design, and landscape design that ensure high-quality, functional and sustainable development that is regionally competitive and appropriate for the Ontario Ranch community.

Policy CE-2.4 Protection of Investment

We require that new development and redevelopment protect existing investment by providing architecture and urban design of equal or greater quality.

The Euclid Mixed Use Specific Plan has provisions to ensure that the development of up to 466 high density attached residential will create attractive and high quality architecture and urban planning that is equal or greater to similar development in the surrounding neighborhoods. The Specific Plan provides design guidelines for future residential development in Section 5 that include architectural criteria that establish a high level of design and construction quality.

Policy CE-2.5 Private Maintenance

We require adequate maintenance, upkeep, and investment in private property because proper maintenance on private property protects property values.

The Euclid Mixed-Use Specific Plan includes a Maintenance Responsibility Matrix (Section 6.10) identifying the public, private, or utility providers responsible for maintenance of roadways, parkways, trails, sidewalks, common areas, walls and monuments, infrastructure, and utilities within the Specific Plan area. A Property Owners Association will be established for the maintenance of on-site common areas, including such improvements as landscape areas and drive aisles.

Policy CE-2.6 Public Maintenance

We require the establishment and operation of maintenance districts or other vehicles to fund the long-term operation and maintenance of the public realm whether on private land, in rights-of-way, or on publicly-owned property.

The Euclid Mixed-Use Specific Plan includes a Maintenance Responsibility Matrix (Section 6.10) identifying the public, private, or utility providers responsible for maintenance of roadways, parkways, trails, sidewalks, common areas, walls and monuments, infrastructure, and utilities within the Specific Plan area. Right-of-way for public streets within the Specific Plan area and infrastructure improvements shall be dedicated to the City of Ontario for maintenance purposes. Landscape improvements and public streetlights within the public right-of-way shall be maintained through a landscape and lighting district or other special maintenance district established by the City. Dry utilities such as electricity, natural gas, and communication systems will be maintained by the appropriate utility company.

7.6 Safety Element

GOAL S-1:

Minimized risk of injury, loss of life, property damage, and economic and social disruption caused by earthquake-induced and other geologic hazards.

Policy S-1.1 Implementation of Regulations and Standards

We require that all new habitable structures be designed in accordance with the most recent California Building Code adopted by the City, including provisions regarding lateral forces and grading.

The Euclid Mixed-Use Specific Plan requires all future development projects to comply with the State of California Building Code as adopted and implemented by the City.

Policy S-1.2 Entitlement and Permitting Process

We follow state guidelines and the California Building Code to determine when development proposals must conduct geotechnical and geological investigations.

The Euclid Mixed-Use Specific Plan acknowledges that all projects within the Specific Plan area shall comply with state guidelines and the California Building Code. Research of available maps indicates that the Specific Plan site is not located within an Alquist-Priolo Earthquake Fault Zone. Furthermore, there was no visible evidence of faulting during a geotechnical investigation conducted in 2015.

GOAL S-2:

Minimized risk of injury, loss of life, property damage and economic and social disruption caused by flooding and inundation hazards.

Policy S-2.1 Entitlement and Permitting Process

We require hydrological studies prepared by a state-certified engineer when new development is located in a 100-year or 500-year floodplain to assess the impact that the new development will have on the flooding potential of existing development down-gradient.

The Euclid Mixed-Use Specific Plan acknowledges that all projects within the Specific Plan area shall comply with any and all applicable mitigation measures of the project Environmental Impact Report, state guidelines, and the California Building Code regarding flooding and inundation hazards.

GOAL S-3:

Reduced risk of death, injury, property damage and economic loss due to fires, accidents and normal everyday occurrences through prompt and capable emergency response.

Policy S-3.3 Fire and Emergency Medical Services

We maintain sufficient fire stations, equipment and staffing to respond effectively to emergencies and meet the needs of the community and state requirements.

The Euclid Mixed Use Specific Plan requires all infrastructure, including water systems needed to provide fire safety to be constructed concurrently with future development. The Specific Plan is located within the service area of Fire Station #2.

Policy S-3.8 Fire Prevention through Environmental Design

We require new development to incorporate fire prevention consideration in the design of streetscapes, sites, open spaces, and buildings.

The Euclid Mixed-Use Specific Plan acknowledges that all projects within the Specific Plan area shall comply with the City's development review process, which provides for review by the City's Fire Department and potential redesign to incorporate fire prevention design elements within streetscapes, sites, open spaces, and buildings.

GOAL S-4:

An environment where noise does not adversely affect the public's health, safety, and welfare.

Policy S-4.1 Noise Mitigation

We utilize the City's noise ordinance, building codes, and subdivision and development codes to mitigate noise impacts.

The Euclid Mixed-Use Specific Plan acknowledges that all projects within the Specific Plan area shall comply with any and all mitigation measures of the project Environmental Impact Report, the City's noise ordinance, subdivision and development codes, and the California Building Code to mitigate noise impacts.

GOAL S-5:

Minimize the risk of injury, property damage, and economic loss resulting from windstorms and wind-related hazards.

Policy S-5.1 Dust Control Measures

We require the implementation of Best Management Practices for dust control at all excavation and grading projects.

The Euclid Mixed-Use Specific Plan acknowledges that all projects within the Specific Plan area shall comply with any and all mitigation measures of the project Environmental Impact Report, the construction management plan, and any subdivision and development codes regarding dust control.

Policy S-5.2 Grading in High Winds

We prohibit excavation and grading during strong wind conditions, as defined by the Building Code.

Future construction within the Euclid Mixed Use Specific Plan will comply with all City regulations and will comply with the City approved construction management plan and mitigation measures identified in the project Environmental Impact Report.

GOAL S-6:

Reduced potential for hazardous materials exposure and contamination.

Policy S-6.9 Remediation of Methane

We require development to assess and mitigate the presence of methane, per regulatory standards and guidelines.

The Euclid Mixed-Use Specific Plan acknowledges that all projects within the Specific Plan area shall comply with any and all mitigation measures of the project Environmental Impact Report.

GOAL S-7:

Residential neighborhoods, commercial areas, and industrial districts that are kept safe through a multi-faceted approach of prevention, suppression, and community involvement in public safety.

Policy S-7.4 Crime Prevention through Environmental Design (CPTED)

We require new development to incorporate CPTED in the design of streetscapes, sites, open spaces and buildings.

The Euclid Mixed-Use Specific Plan acknowledges that all projects within the Specific Plan area shall comply with the City's development review process, which provides for review by the City's Police Department and potential redesign to incorporate crime prevention design elements in streetscapes, sites, open spaces, and buildings. Parcel lighting (Section 5.6, Lighting) addresses illumination of parking lots, loading dock areas, pedestrian walkways, building entrances, signage, and architectural and landscape features. A key provision includes the installation of ground or low mounted fixtures to provide for safety and convenience along pedestrian walkways, entrances, activity areas, steps, ramps, and special features. Section 5.1, Site Design, also encourages delineation of pedestrian access to on-site buildings from adjacent streets and parking areas by marking building entrances with signage, prominent architectural features, and/or landscaping features.

GOAL S-9:

Incorporate energy efficient practices and renewable energy systems to improve air quality, comfort, and energy reliability during temporary power outages.

Policy S-9.1 Solar Energy

We support and may incentivize the installation of residential and commercial solar panels and battery storage systems that can provide electricity during power outages.

Future construction of residential units within the Euclid Mixed Use Specific Plan will comply with all Federal, State and City regulations for solar energy. The Specific Plan provides design guidelines for future residential development in Section 5 that include site planning and design criteria to encourage future solar panel installation.

7.7 Mobility Element

GOAL M-1:

A system of roadways that meets the mobility needs of a dynamic and prosperous Ontario.

Policy M-1.1 Roadway Design and Maintenance

We require our roadways to:

1. Comply with federal, state, and local design and safety standards;
2. Meet the needs of multiple transportation modes and users;
3. Handle the capacity envisioned in the City of Ontario Master Plan of Streets and Highways;
4. Be maintained in accordance with best practices;
5. Be compatible with the streetscape and surrounding land uses;
6. Promote the efficient flow of all modes of traffic through the implementation of intelligent transportation systems and travel demand management strategies.

The Euclid Mixed-Use Specific Plan complies with the Functional Roadway Classification Plan of the Mobility Element and, therefore, aims to comply with federal, state, and local design and safety standards; meet the needs of multiple transportation modes and users; and maintain a Level of Service of E or better at all intersections addressed in the project Environmental Impact Report. Specific Plan site design strives to minimize the effects of truck traffic on nearby residential uses by locating truck entries and loading docks away from residential use.

Policy M-1.2 Mitigation of Impacts

We require development to mitigate its traffic impacts.

The Euclid Mixed-Use Specific Plan requires in Section 6.3.4, Compliance with CEQA, that projects within the Specific Plan area comply with all mitigation measures, conditions, and project design features identified in the project Environmental Impact Report. Section 5.1, Site Design, provides guidelines to ensure buildings, structures, and loading facilities will be designed so loading and unloading activities occur on-site without extending beyond the property line.

GOAL M-2:

A system of trails and corridors that facilitate and encourage active modes of transportation.

Policy M-2.2 Bicycle System

We provide off-street multipurpose trails and Class II bikeways as our preferred paths of travel and use the Class III for connectivity in constrained circumstances. When truck routes and bicycle facilities share a right-of-way, we prefer Class I or Class IV bicycle facilities. We require new development to include bicycle facilities, such as bicycle parking and secure storage areas.

The Euclid Mixed-Use Specific Plan includes a Circulation Plan in Section 3 to provide connectivity to the trails and bikeway corridors identified in the Ontario Multipurpose Trails and Bikeway Corridor Plan, including installation of multipurpose trails along Euclid Avenue and Edison Avenue.

Policy M-2.3 Pedestrian Walkways

We require streets to include sidewalks and visible crosswalks at major intersections where necessary to promote safe and comfortable mobility between residential areas, businesses, schools, parks, recreation areas, and other key destination points.

The Euclid Mixed-Use Specific Plan street sections and streetscape designs (Section 3.1, Circulation Plan and Section 5.3, Landscape Design) provide for construction of 5 ft. wide public pedestrian sidewalks for Euclid Avenue, Schaefer Avenue, and Sultana Avenue and Edison Avenue to connect with adjacent existing and planned pedestrian circulation systems. Pedestrian sidewalks are separated from vehicular travel lanes by a landscaped parkway. Proposed improvements for the Specific Plan area streets are consistent with the City's Ontario Ranch Streetscape Master Plan.

Policy M-2.4 Network Opportunities

We use public rights-of-way and easements such as, utility easements, levees, drainage corridors, road rights-of-way, medians, and other potential options to maintain and expand our bicycle and pedestrian network. In urban, mixed- use, and transit-oriented Place Types, we encourage the use of underutilized public and private spaces to expand our public realm and improve pedestrian and bicycle connectivity.

The Euclid Mixed Use Specific Plan includes the construction of multi-purpose trails along Euclid and Schaefer Avenues and public accessible sidewalks along Euclid, Schaefer and Sultana Avenues and Edison Avenue. Potential pedestrian and bicycle connectivity to neighborhoods within and adjacent to the Mixed Use District will be incorporated into future residential development plans.

GOAL M-3:

A public transit system that is a viable alternative to automobile travel and meets basic transportation needs of the transit-dependent.

Policy M-3.2 Alternative Transit Facilities at New Development

We require new development adjacent to an existing or planned transit stop to contribute to the creation of transit facilities, such as bus shelters, transit bays and turnouts, and bicycle facilities, such as secure storage areas.

The Euclid Mixed-Use Specific Plan discusses (in Section 3.2.9, Transit) that the City is coordinating with regional transit agencies to implement Bus Rapid Transit (BRT) service to target destinations and along corridors, including Euclid Avenue on the western boundary of the Specific Plan area.

GOAL M-4:

An efficient flow of goods through the City that maximizes economic benefits and minimizes negative impacts.

Policy M-4.1 Truck Routes

We designate and maintain a network of City truck routes that provide for the safe and efficient transport of goods while minimizing negative impacts on local circulation and noise-sensitive land uses, as shown on Exhibit M-04, Truck Routes. We will minimize conflicts on truck routes through the design and implementation of buffers between travel lanes and pedestrian and bicycle facilities on designated truck routes.

The Euclid Mixed-Use Specific Plan is designed to enable easy vehicular access to the truck route network and to encourage its business park users to implement effective goods movement strategies. The Land Use and Circulation Plans for the Specific Plan area (Section 3, Development Plan) are designed to direct truck traffic away from nearby residential use in the City of Chino.

Policy M-4.4 Environmental Considerations

We support both local and regional efforts to reduce/eliminate the negative environmental impacts of goods movement through the planning and implementation of truck routing and the development of a plan to evaluate the future needs of clean fueling/recharging and electrified truck parking.

The Euclid Mixed Use Specific Plan implements the City of Ontario master planned street network and provides for the construction of circulation improvements to support adequate infrastructure for safe and efficient truck routing and supports Citywide efforts to evaluate and address future needs for clean fueling/recharging and electrified truck parking.

7.8 Community Design Element

GOAL CD-1:

A dynamic, progressive city containing distinct and complete places that foster a positive sense of identity and belonging among residents, visitors, and businesses.

Policy CD-1.2 Place Types

We establish Place Types in urban, mixed use, and transit-oriented areas to foster the City's identity as a premier community and require new development within each Place Type to incorporate prescribed urban patterns, forms, and placemaking priorities.

The Euclid Mixed Use Specific includes design guidelines in Section 5 that include architectural criteria that establish a Gateway design treatment with landscaping and monumentation to create a unique entry to the Ontario Ranch community and the City overall. This placemaking element will establish a unique and high quality community and neighborhood design character for future development within the Specific Plan area.

Policy CD-1.4 Transportation Corridors

We will enhance our major transportation corridors within the City through landscape, hardscape, signage and lighting. The extent of enhancement should be appropriate to the use, type, and context of each corridor.

The Euclid Mixed Use Specific Plan requires the construction of landscaped neighborhood edges along Euclid and Schaefer Avenues and Edison Avenue per the City master plans for these major transportation corridors. Section 5, Design Guidelines include criteria for landscaping these neighborhood edges and other common areas.

GOAL CD-2:

A high level of design quality resulting in neighborhoods, commercial areas, public spaces, parks, and streetscapes that are attractive, safe, functional, human- scale, and distinct.

Policy CD-2.1 Quality Building Design and Architecture

We encourage all development projects to convey visual interest and character through:

1. Building volume, massing, and height to provide context-appropriate scale and proportion;
2. A true architectural style which is carried out in plan, section, and elevation through all aspects of the building and site design and appropriate for its setting; and
3. Exterior building materials that are articulated, high quality, durable, and appropriate for the architectural style.

The Euclid Mixed-Use Specific Plan design guidelines (Section 5) ensure that: 1) scale, massing, fenestration, materials, and colors are consistent with the building's architectural style and compatible with the overall design in the Specific Plan area, 2) articulation is provided through elements such as cornices, parapets, expression lines, and changes in materials and/or colors, 3) use of a variety of colors, materials, and/or textures on each building is appropriate to the architectural features or massing.

Policy CD-2.2 Neighborhood Design

We create distinct residential neighborhoods that promote a sense of community and identity by emphasizing access, connectivity, livability, and social interaction through such elements as:

1. A pattern of smaller, walkable blocks that promote activity, safety, and access to nearby amenities and services;
2. Varied parcel sizes and lot configurations to accommodate a diversity of housing types;
3. Traffic calming measures to slow traffic and promote walkability while maintaining acceptable traffic flows and emergency evacuation access;
4. Floor plans that encourage views onto the street and de-emphasize the visual and physical dominance of garages (introducing the front porch as the "outdoor living room"), as appropriate;
5. Landscaped parkways, with sidewalks separated from the curb and designed to maximize safety, comfort, and aesthetics for all users.

The Euclid Mixed Use Specific Plan has provisions to allow for the development of up to 466 high density attached residential units within the Mixed Use District. The Specific Plan provides design guidelines for future residential development in Section 5 that include criteria for site planning/neighborhood design and architecture including considerations for access, connectivity, livability and social interaction.

Policy CD-2.3 Commercial Areas

We desire commercial areas and centers to be distinctive, pedestrian friendly, functional, and vibrant with a range of businesses, places to gather, and connectivity to the neighborhoods they serve.

The Euclid Mixed Use Specific Plan allows for maximum of 1,676,886 S.F. of employment generating land uses within the Business Park and Mixed Use Districts. The Specific Plan provides design guidelines for future development in Section 5 that include architectural criteria to encourage the development of a variety of distinctive commercial businesses that are pedestrian friendly, connected to other surrounding uses, functional and vibrant elements of the overall neighborhood.

Policy CD-2.4 Urban, Mixed Use, and Transit-oriented Areas

We establish Place Types to require mixed use, urban, and transit-oriented areas to be designed and developed as pedestrian oriented areas that are integrated with adjacent neighborhoods and promote a vibrant, comfortable, and functional environment, as defined for each Place Type.

The Euclid Mixed Use Specific Plan includes a Mixed Use District that will allow up to 466 residential units and a maximum of 290,110 S.F. of retail or office uses along Edison Avenue in close proximity to transit turnouts within the Specific Plan area. The Specific Plan provides design guidelines for future development in Section 5 that include planning and design criteria to create a unique and high quality community and neighborhood design character for future development within the Specific Plan area that will be integrated into surrounding neighborhoods.

Policy CD-2.5 Streetscapes

We design new and, when necessary, retrofit existing streets to improve walkability, bicycling and transit integration, strengthen connectivity, and enhance community identity through improvements to the public right-of-way such as sidewalks, street trees, parkways, curbs, street lighting and street furniture.

Section 3.3, Circulation Plan, addresses connectivity, street improvements, pedestrian and bicycle plans, and transit. In Section 5.3, Landscape Design, the Euclid Mixed-Use Specific Plan identifies street improvements and streetscape including parkways, street trees, sidewalks, landscape buffers, and street lighting for Euclid Avenue, Eucalyptus Avenue, Merrill Avenue, and Sultana Avenue within the Specific Plan area, which are consistent with the Circulation Element of The Ontario Plan. The Euclid Mixed-Use Specific Plan streetscape design creates an aesthetically pleasing view for pedestrians and motorists, screens parking and loading areas from the public right-of-way, and visually integrates the development into the surrounding Ontario Ranch community.

Policy CD-2.6 Connectivity

We promote development of local street patterns, multimodal networks, and connected public spaces that create and unify neighborhoods, rather than divide them, and create cohesive and continuous corridors, rather than independent "islands" through the following means:

1. Local street networks that provide access both between subdivisions and within neighborhoods and discourage through traffic;
2. A local street system that is logical and understandable for the user. A grid system is preferred to avoid circuitous and confusing travel paths between internal neighborhood areas and adjacent arterials and to provide adequate emergency and evacuation access; and
3. Pedestrian and bicycle networks that provide convenient access to neighborhoods and nearby destinations, such as schools, parks, other public spaces, commercial areas, and transit stops.

The Euclid Mixed Use Specific Plan includes design guidelines for future development within the Mixed Use District in Section 5 that include planning and design criteria to create safe and efficient circulation systems and connectivity for future development within the Specific Plan area and surrounding neighborhoods.

Policy CD-2.7 Sustainability

We collaborate with the development community to design and build neighborhoods, streetscapes, sites, outdoor spaces, landscaping, and buildings to reduce energy demand through solar orientation, maximum use of natural daylight, passive solar and natural ventilation, building form, mechanical and structural systems, building materials, and construction techniques.

The Euclid Mixed-Use Specific Plan is committed to sustainable design strategies that integrate principles of environmental stewardship into the design, construction and operation process. The Specific Plan incorporates sustainability principles into its design guidelines such as drought tolerant landscaping, skylights in warehouse areas of buildings to provide natural light and reduce lighting demand, high performance dual pane glazing in office storefronts, and LED products for energy efficient site lighting. Design strategies include the design and construction of energy efficient buildings to reduce air, water, and land pollution and environmental impacts from energy production and consumption. The use of recycled water to irrigate landscape is required by the Specific Plan's Recycled Water Plan (Section 3.4), consistent with the City of Ontario Recycled Water Master Plan.

Policy CD-2.8 Safe Design

We incorporate defensible space design into new and existing developments to ensure the maximum safe travel and visibility on pathways, corridors, and open space and at building entrances and parking areas by avoiding physically and visually isolated spaces, maintaining visibility and accessibility, and using lighting.

The Euclid Mixed Use Specific Plan includes design guidelines for future development within the Mixed Use District in Section 5 that include criteria to create safe and efficient walkway and common areas that are visible and well lighted at night for future development within the Specific Plan.

Policy CD-2.9 Landscape Design

We encourage durable, sustainable, and drought-tolerant landscaping materials and designs that enhance the aesthetics of structures, create and define public and private spaces, and provide shade and environmental benefits.

Consistent with the vision for Ontario Ranch as outlined in the Ontario Ranch Streetscape Master Plan, the Euclid Mixed-Use Specific Plan (Section 5.3, Landscape Design) provides for landscaped setbacks and landscaped parkways adjacent to bike lanes and sidewalks, defining these public spaces. The landscaped setbacks and parkways will include drought-tolerant plants featuring colorful shrubs and groundcovers, ornamental grasses and succulents, evergreen and deciduous trees, and species native to Southern California or naturalized to the arid Southern California climate to promote durable plant materials. The plant selection will complement the design theme of the Specific Plan area. Parking lot landscaping will reduce associated heat buildup, improve aesthetics, and integrate into onsite landscape design and adjacent streetscapes. Swaled landscape areas will retain/infiltrate stormwater run-off to improve water quality and promote groundwater recharge where feasible. Shade trees thoughtfully located near expanses of paving, building walls, roofs, and windows will reduce the impacts of heat gain.

Policy CD-2.10 Parking Areas

We require all development, including single-family residential, to minimize the visual impact of surface, structured, and garage parking areas visible from the public realm in an aesthetically pleasing, safe and environmentally sensitive manner. Examples include:

1. Surface parking: Shade trees, pervious surfaces, urban run-off capture and infiltration, and pedestrian paths to guide users through the parking field.
2. Structured parking: facade articulation, screening, appropriate lighting, and landscaping.
3. Garage parking: providing access to single-family residential garages through alley access, recessing garages from the frontage to emphasize front doors or active living spaces.

The Euclid Mixed Use Specific Plan includes design guidelines for future development within the Mixed Use District in Section 5 that include planning and design criteria to minimize the visual impact of surface parking and garages for future development within the Specific Plan area and surrounding neighborhoods.

Policy CD-2.11 Entry Statements

We encourage the inclusion of amenities, signage, and landscaping at the entry to neighborhoods, commercial centers, mixed use areas, industrial developments, and public places that reinforce them as uniquely identifiable places.

The Euclid Mixed-Use Specific Plan establishes design guidelines to ensure high-quality development and a sense of place. As discussed in Section 5.3, Landscape Design, Euclid, Eucalyptus, Schaefer and Sultana Avenue and Edison Avenue will feature landscaped setbacks adjacent to the Specific Plan area that will provide attractive entries to the site. An entry monument will be located at the northeast corner of Euclid Avenue and Edison Avenue to identify the Ontario Ranch area and/or the Euclid Mixed-Use Specific Plan area.

Policy CD-2.12 Site and Building Signage

We encourage the use of sign programs that utilize complementary materials, colors, and themes. Project signage should be designed to effectively communicate and direct users to various aspects of the development and complement the character of the structures.

The Euclid Mixed-Use Specific Plan (Section 5.7, Signage) requires approval of a comprehensive sign program to address parcel identification, building identification and directional signage within the Specific Plan area. A comprehensive sign program will integrate project signage with the overall design of the site and structures to create a unified visual statement. A comprehensive sign program provides a means for flexible application of sign regulations to provide incentive and latitude in the design and display of multiple signs. Business park uses on the site will also be appropriately signed to give direction to loading and receiving, visitor parking, and other special uses.

Policy CD-2.16 Transit Stops

We require transit stops be conveniently located, well lit, safe, and clearly accessible to pedestrians, bicyclists, and people of all abilities.

The Euclid Mixed Use Specific Plan requires the location and construction of transit turnouts within the Specific Plan area.

GOAL CD-3:

Vibrant urban environments that are organized around intense buildings, pedestrian and transit areas, public plazas, and linkages between and within developments that are conveniently located, visually appealing and safe during all hours.

Policy CD-3.1 Unique Identity

We promote development that heightens the unique character and identity of each Place Type by requiring compatible land uses and land planning, site design, and building design that promotes an active public realm.

The Euclid Mixed Use Specific Plan includes design guidelines for future development within the Mixed Use District in Section 5 that include planning and design criteria to establish a unique character and sense of identity for future development within the Specific Plan area and surrounding neighborhoods.

Policy CD-3.2 Comfortable, Human-Scale Public Realm

We require that public spaces, including streets, parks, and plazas on both public and private property be designed to maximize safety, comfort and aesthetics and connect to the citywide pedestrian, vehicular, and bicycle networks.

The Euclid Mixed Use Specific Plan includes design guidelines for future development within the Mixed Use District in Section 5 that include planning and design criteria to maximize safety, comfort and aesthetics and connect to the Citywide pedestrian, vehicular and bicycle networks.

Policy CD-3.3 Complete and Connected Network

We require that pedestrian, vehicular, and bicycle circulation on both public and private property be coordinated to provide connections internally and externally to adjacent neighborhoods and properties (existing and planned) through a system of local roads and trails that promote walking and biking to nearby destinations (including existing and planned parks, commercial areas, and transit stops) and are designed to maximize safety, comfort, and aesthetics.

The Euclid Mixed Use Specific Plan includes design guidelines for future development within the Mixed Use District in Section 5 that include planning and design criteria to ensure that all modes of circulation and neighborhood connectivity are provided and coordinated with the Citywide pedestrian, vehicular and bicycle network to maximize safety, comfort and aesthetics.

Policy CD-3.4 Context-Aware and Appropriate Design

We require appropriate building and site design that complements existing development, respects the intent and identity of the Place Type, and provides appropriate transitions and connections between adjacent uses to ensure compatibility of scale, maintain an appropriate level of privacy for each use, and minimize potential conflicts.

The Euclid Mixed Use Specific Plan includes design guidelines for future development within the Mixed Use District in Section 5 that include planning and design criteria to ensure that future development complements existing surrounding development and provides adequate transitions and buffers between less compatible uses and minimizes potential conflicts.

Policy CD-3.5 Active Frontages

We create lively pedestrian streetscapes by requiring primary building, business, and residential entrances, outdoor dining, and storefronts be located on ground floors adjacent to sidewalks or public spaces and designed to maximize safety, comfort, aesthetics, and the intended functionality (as defined by the Place Type).

The Euclid Mixed Use Specific Plan includes design guidelines for future development within the Mixed Use District in Section 5 that include planning and design criteria to create active pedestrian streetscapes and orient building frontages, business entrances, residential courtyards and balconies towards sidewalks and common open areas maximize safety, comfort and aesthetics.

GOAL CD-5:

A sustained level of maintenance and improvement of properties, buildings, and infrastructure that protects the property values and encourages additional public and private investments.

Policy CD-5.1 Maintenance of Buildings and Property

We require all public and privately-owned buildings and property (including trails and easements) to be properly and consistently maintained.

The Euclid Mixed-Use Specific Plan includes a Maintenance Responsibility Matrix in Section 6, Implementation, identifying the parties responsible for maintenance of roadways, parkways, trails, sidewalks, common areas, walls and monuments, infrastructure, and utilities within the Specific Plan area. Privately owned buildings will be maintained as specified by the Property Owners Association (Section 6.10.2).

Policy CD-5.2 Maintenance of Infrastructure

We require the continual maintenance of infrastructure.

The Euclid Mixed-Use Specific Plan includes a Maintenance Responsibility Matrix in Section 6, Implementation, identifying the parties responsible for maintenance of roadways, parkways, trails, sidewalks, common areas, walls and monuments, infrastructure, and utilities within the Specific Plan area.

7.9 Social Resources Element

GOAL SR-2:

A range of educational and training opportunities for residents and workers of all ages and abilities that improves their life choices and provides a skilled workforce for our businesses.

Policy SR-2.4 Access to Schools

We work with local and regional partners to improve the safety in and around schools and to improve access for citizens of all ages and abilities to schools and community services, such as after school and other programs.

The Euclid Mixed Use Specific Plan evaluated the accessibility and capacity of existing schools. Future residential development will be reviewed by the applicable school districts and will address the mitigation measures identified in the project Environmental Impact Report.

GOAL SR-5:

Local heritage, entertainment, and cultural experiences that enrich the lives of Ontario's residents, workers, and visitors and serve to attract residents and businesses to the City.

Policy SR-5.3 Public Art

We encourage public art in buildings, parks, open spaces, and other public and private spaces.

The Euclid Mixed Use Specific Plan does not require public art within the Business Park and Mixed Use Districts specifically. Future development plans for commercial or office uses should consider public art improvements or amenities according to City policy.

LAND DEVELOPMENT DIVISION
CONDITIONS OF APPROVAL

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

Date Prepared: 7/8/2024

File No: PSP22-001

Related Files: PMTT23-005 & PDEV23-011

Project Description: A Specific Plan (File No. PSP22-001 – Euclid Mixed Use Specific Plan) to establish the land use districts, development standards, guidelines, and infrastructure improvements for the potential development of up to 1,386,776 square feet of Business Park land uses, 290,110 square feet of office and retail land uses, and 466 dwelling units on the 84-acre of land generally located east of Euclid Avenue, south of Schaefer Avenue, west of Sultana Avenue and north of Edison Avenue**;** (APNs: 1053-071-01; 1053-071-02; 1053-071-03; 1053-071-04; 1053-211-01; 1053-211-02; 1053-211-05; 1053-281-01; 1053-281-02; 1053-281-03; 1053-281-04; 1053-281-07; 1053-281-08; 1053-081-01; 1053-081-02; 1053-081-03; 1053-081-04); **submitted by Euclid Land Investment LLC.**

Prepared By: Edmelynne V. Hutter, AICP, Senior Planner
Phone: 909.395.2429 (direct)
Email: ehutter@ontarioca.gov

The Planning Department, Land Development Section, conditions of approval applicable to the above-described Project, are listed below. The Project shall comply with each condition of approval listed below:

1.0 Standard Conditions of Approval. The project shall comply with the *Standard Conditions for New Development*, adopted by City Council Resolution No. 2017-027 on April 18, 2017. A copy of the *Standard Conditions for New Development* may be obtained from the Planning Department or City Clerk/Records Management Department.

2.0 Special Conditions of Approval. In addition to the *Standard Conditions for New Development* identified in condition no. 1.0, above, the project shall comply with the following special conditions of approval:

2.1 Specific Plan/Specific Plan Amendment. The following shall be submitted to the Planning Department within 30 days following City Council approval of the Specific Plan/Specific Plan Amendment:

(a) Three copies of the final Specific Plan document.

(b) One complete, unbound copy of the final Specific Plan document.

(c) One USB drive, or download link, containing a complete Microsoft Word, or editable, copy of the final Specific Plan document, including original figures, images and all required revisions.

2.2 Additional Fees.

(a) Within 5 days following final application approval, the Notice of Determination ("NOD") filing fee shall be provided to the Planning Department. The fee shall be paid by check, made payable to the "Clerk of the Board of Supervisors", which shall be forwarded to the San Bernardino County Clerk of the Board of Supervisors, along with all applicable environmental forms/notices, pursuant to the requirements of the California Environmental Quality Act ("CEQA"). Failure to provide said fee within the time specified will result in the extension of the statute of limitations for the filing of a CEQA lawsuit from 30 days to 180 days.

CITY OF ONTARIO *Agenda Report* **September 3, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Development Administration Prepared By: Pablo De Lara Department: Prepared By: Pablo De Lara Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 7

SUBJECT: **AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA23-004) BETWEEN THE CITY OF ONTARIO AND EUCLID LAND INVESTMENT, LLC**

RECOMMENDATION: That the City Council consider and adopt an Ordinance approving a Development Agreement (File No. PDA23-004) between the City of Ontario and Euclid Land Investment, LLC, to establish the terms and conditions associated with Tentative Parcel Map 20714 (File No. PMTT23-005), a 60-acre property located east of Euclid Avenue, south of Schaefer Avenue, west of future Sultana Avenue and north of Edison Avenue within the Euclid Mixed Use Specific Plan.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: The proposed Development Agreement (File No. PDA23-004) will not have a direct fiscal impact on the City's General Fund. The Development Agreement will provide funding from the formation of a Community Facilities District (CFD) for City services and facilities required to support the Euclid Mixed Use Specific Plan (Specific Plan) development, thereby mitigating the increased costs associated with such services. In addition, the City will receive development impact, compliance processing, licensing, and permitting fees. No General Fund revenue will be used to support the Ontario Ranch development.

BACKGROUND & ANALYSIS: On August 20, 2024, the City Council held a public hearing to introduce and waive further reading of an Ordinance Approving the Development Agreement (File No. PDA23-004).

The Ontario Ranch financial commitments required for construction of properties within a specific

plan are substantial. Therefore, in order to adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules, and regulations, Euclid Land Investment, LLC ("Owner"), has requested that the City enter into negotiations to create a Development Agreement ("Agreement").

The Agreement is proposed outside of the NMC Builders Construction Agreement development area and was established in coordination between the City Attorney and the Owner's legal counsel. The provisions of the Agreement are consistent with the commitments to assure adequate public infrastructure improvements are constructed or funded by the Owner.

The Agreement proposes to include 60 acres of land within the Euclid Mixed Use Specific Plan, as shown on the attached Exhibit A. The Agreement grants the Owner a vested right to develop Tentative Parcel Map 20714 ("Map"), provided the Owner complies with the terms and conditions of the Specific Plan and related Environmental Impact Report (EIR).

The Map (see attached Exhibit B) is generally bounded by Schaefer, Sultana, Edison and Euclid Avenues, and proposes to subdivide 60 acres of land into 13 numbered lots and 2 lettered lots to facilitate the construction of 12 business park buildings, totaling 882,538 square feet, and the associated landscape, common interest amenities, and facilities that are necessary for the project.

The term of the Agreement is for 10 years, with a 5-year option to renew. The main points of the Agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees (DIF) for construction of public improvements (i.e. streets and bridges, sewer, water, storm drain and fiber); and the creation of a Community Facilities District (CFD) for the maintenance of public facilities. Additionally, the Owner shall pay in lieu-fees to the City for the future construction and completion of Ontario Ranch Regional Water and Storm Drain improvements.

In considering the Agreement at their meeting on July 23, 2024, the Planning Commission found the Agreement to be consistent with State law, The Ontario Plan, and the City's Development Agreement policies. As a result, the Planning Commission adopted Resolution No. PC24012 with a 6 to 0 vote, recommending City Council approval of the Agreement.

ENVIRONMENTAL REVIEW: The Specific Plan is located in what was formerly the City of Ontario Sphere of Influence (“SOI”) area, which consists of roughly 8,200 acres at the south end of the City. On January 7, 1998, the City of Ontario adopted the New Model Colony (“NMC”) General Plan Amendment, setting forth a comprehensive strategy for the future development of the SOI. The NMC is bounded by Riverside Drive to the north, Hamner Avenue to the east, Euclid Avenue to the west, and Merrill Avenue/Bellegrave to the south.

Since the adoption of the NMC General Plan Amendment, the City has updated the General Plan on different occasions. On January 27, 2010, the City adopted The Ontario Plan and certified the accompanying Environmental Impact Report (SCH# 2008101140). On August 16, 2022, the City adopted The Ontario Plan 2050 (TOP 2050), which was an update to The Ontario Plan adopted in 2010 and included the certification of an accompanying Supplemental Environmental Impact Report (SCH# 2021070364). The Policy Plan component of TOP 2050 serves as the General Plan for

the entire City, including the NMC (now referred to as “Ontario Ranch”). TOP 2050 identified many areas that might have potentially significant impacts on the environment. These areas included 1) Aesthetics; 2) Biological Resources; 3) Geology and Soils; 4) Hazards and Hazardous Materials; 5) Hydrology and Water Quality; 6) Land Use and Planning; 7) Mineral Resources; 8) Population and Housing; 9) Public Services; 10) Recreation; and 11) Utilities and Service systems. Through the EIR process, these potential impacts were analyzed, revisions were incorporated into the plan, and/or mitigation measures were identified that reduced the potential environmental impacts to a level that was less than significant.

TOP 2050 also identified several potential impacts that, even with revisions and/or mitigation measures, could not be reduced to a level of less than significant. These areas included Air Quality, Cultural Resources, Noise, and Transportation. While these impacts will be significant and unavoidable, the City determined that the benefits of the Ontario Ranch development outweigh the potential unavoidable, adverse impacts of the plan. As a result, the City adopted a Statement of Overriding Considerations for those impacts that could not be fully mitigated to a level of less than significant.

The TOP 2050 EIR analyses focused on the program, or “big picture” impacts associated with development. With the submittal of the EMUSP, staff is charged with evaluating the potential impacts of development at the project level, looking specifically at the project proposal and any potential environmental impacts associated with it. Staff completed an Initial Study for the Project and determined that an EIR should be prepared for the EMUSP. Through the Initial Study preparation and scoping meeting discussion, an EIR was prepared for the EMUSP addressing the following issues:

- Aesthetics
- Agricultural and Forestry Resource
- Air Quality Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Noise
- Population and Housing
- Public Services
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems

The EMUSP EIR evaluates each of these various areas and identifies mitigation measures and/or revisions to the plan to lessen the level of significance. The EIR analyzed EMUSP Phase 1 based on the proposed EMUSP land uses, development intensities, conceptual designs, infrastructure requirements, and onsite surveys and studies. However, access to properties within Phase 2 could

not be obtained and, therefore, the level of impact cannot be known for categories such as Biological Resources, Geology and Soils, and Hazards and Hazardous Materials since onsite surveys could not be conducted. It is conceivable that, when development of Phase 2 is proposed and onsite access is obtained, the potentially significant impacts on Biological Resources, Geology and Soils, and Hazards and Hazardous Materials in Phase 2 can be mitigated to less than significant. Nevertheless, since level of impact cannot be known for Phase 2 areas at this time, the EMUSP EIR conservatively concludes that there are significant and unavoidable impacts.

With the implementation of the various mitigation measures, many of the potential adverse impacts can be reduced to a level of less than significant. Of the 17 areas considered by the EIR, all but seven areas were less than significant or mitigated to a level of less than significant. The seven remaining impact areas, even with the mitigation measures, could not be reduced to less than significant, resulting in some impacts remaining potentially significant and unavoidable. These areas are:

- Agricultural and Forestry Resources
- Air Quality
- Biological Resources (Phase 2 only)
- Cultural Resources
- Geology and Soils (Phase 2 only)
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials (Phase 2 only)

While mitigation of all potential impacts to a level of less than significant is desirable, the fact that seven areas will remain significant and unavoidable is not unexpected. The identification of these areas as significant and unavoidable also validates the work previously completed for TOP 2050. Staff continues to believe that the benefits of the proposed development outweigh the potential impacts associated with it. Therefore, staff recommends the Planning Commission recommend certification of the EIR to the City Council and that a Statement of Overriding Considerations be adopted for the Project.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA23-004, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND EUCLID LAND INVESTMENT, LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE PARCEL MAP 20714 (FILE NO.PMTT23-005), A 60 ACRE PROPERTY LOCATED EAST OF EUCLID AVENUE, SOUTH OF SCHAEFER AVENUE, WEST OF SULTANA AVENUE AND NORTH OF EDISON AVENUE WITHIN THE EUCLID MIXED USE SPECIFIC PLAN (FILE NO. PSP22-001); (APNS: 1053-071-01; 1053-071-02; 1053-071-03; 1053-071-04; 1053-211-01; 1053-211-02; 1053-281-08; 1053-081-01; 1053-081-02; 1053-081-03; 1053-081-04)

WHEREAS Euclid Land Investment, LLC ("Applicant") has filed an application for the approval of a Development Agreement, File No. PDA23-004 as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 60 acres of land, located east of Euclid Avenue, south of Schaefer Avenue, west of Sultana Avenue and north of Edison Avenue within a proposed Euclid Mixed Use Specific Plan (File No. PSP22-001); and

WHEREAS, the applicant submitted Tentative Parcel Map 20714 (File No. PMTT23-005) to subdivide 60 acres of land into 13 numbered lots and 2 lettered lots to facilitate the construction of 12 business park buildings collectively totaling 882,538 square feet, and the associated landscape, common interest amenities, and facilities that are necessary for the project; and

WHEREAS, the environmental impacts of this project were reviewed in conjunction with the Euclid Mixed Use Specific Plan (File No. PSP22-001), for which an Environmental Impact Report (State Clearinghouse No. 2023020281) was prepared. This application introduces no new significant environmental impacts; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and make recommendations to the City Council on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration

of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and make recommendations to the City Council on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as "ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on July 23, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, on August 20, 2024, the City Council of the City of Ontario, California, conducted a hearing to consider the Project and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the recommending authority for the Project, the City Council has reviewed and considered the information contained in the EIR and supporting documentation. Based upon the facts and information contained in the EIR and supporting documentation, the City Council finds as follows:

(1) The Environmental Impact Report (State Clearing House No. 2023020281) was approved for City Council consideration by the Planning

Commission on July 23, 2024. This application introduces no new significant environmental impacts; and

(2) The EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The EIR reflects the independent judgment of the City Council; and

(5) The proposed project will introduce no new significant environmental impacts beyond the EIR, and all mitigation measures adopted with the EIR, are incorporated herein by this reference.

SECTION 2: ***Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the EIR that will require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the EIR was prepared, that will require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified/adopted, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

(d) Mitigation measures or alternatives considerably different from

those analyzed in the EIR would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

SECTION 3: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is not one of the properties in the Housing Element Sites contained in Tables B-1 and B-2 (Housing Element Sites Inventory) of the Housing Element Technical Report.

SECTION 4: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

(1) On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP; and

SECTION 5: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the City Council hereby concludes as follows:

(1) The Development Agreement applies to approximately 60 acres of land, located east of Euclid Avenue, south of Schaefer Avenue, west of Sultana Avenue and north of Edison Avenue within a proposed Euclid Mixed Use Specific Plan (File No. PSP22-001); and

(2) The Development Agreement establishes parameters for the development of land within the Euclid Mixed Use Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Euclid Mixed Use Specific Plan; and

(3) The Development Agreement grants the Applicant a vested right to develop Tentative Parcel Map 20714 (File No. PMTT23-005) as long as the Applicant complies with the terms and conditions of the Euclid Mixed Use Specific Plan and EIR. Tentative Parcel Map 20714 is located east of Euclid Avenue, south of Schaefer Avenue, west of Sultana Avenue and north of Edison Avenue within the Euclid Mixed Use Specific Plan, and to subdivide 60 acres of land into 13 numbered lots and 2 lettered lots to facilitate the construction of 12 business park buildings collectively totaling 882,538 square feet; and

(4) The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

(5) The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

(6) This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan. The Environmental Impact Report (State Clearing House No. 2023020281) was approved for City Council consideration by the Planning Commission on July 23, 2024; and

(7) This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

SECTION 6: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby RECOMMENDS THE CITY COUNCIL APPROVE the herein described Application, subject to each and every condition set forth in the Development Agreement (File No. PDA23-004) attached hereto as "Attachment A," and incorporated herein by this reference

SECTION 7: ***City Council Required Actions***. Approval of this Application is contingent upon City Council approving the following:

(1) Euclid Mixed Use Specific Plan (File No. PSP22-001)

(2) Euclid Mixed Use Specific Plan EIR (SCH #2023020281)

If the City Council does not approve the Euclid Mixed Use Specific Plan (File No. PSP22-001) and the Euclid Mixed Use Specific Plan EIR (SCH #2023020281), this Resolution should become null and void and of no further force and effect.

SECTION 8: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 9: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 10: ***Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 11: ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 12: ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 3rd day of September, 2024.

_____

PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held August 20, 2024 and adopted at the regular meeting held September 3, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held September 3, 2024 and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

FILE NO. PDA23-004

DEVELOPMENT AGREEMENT

By and Between

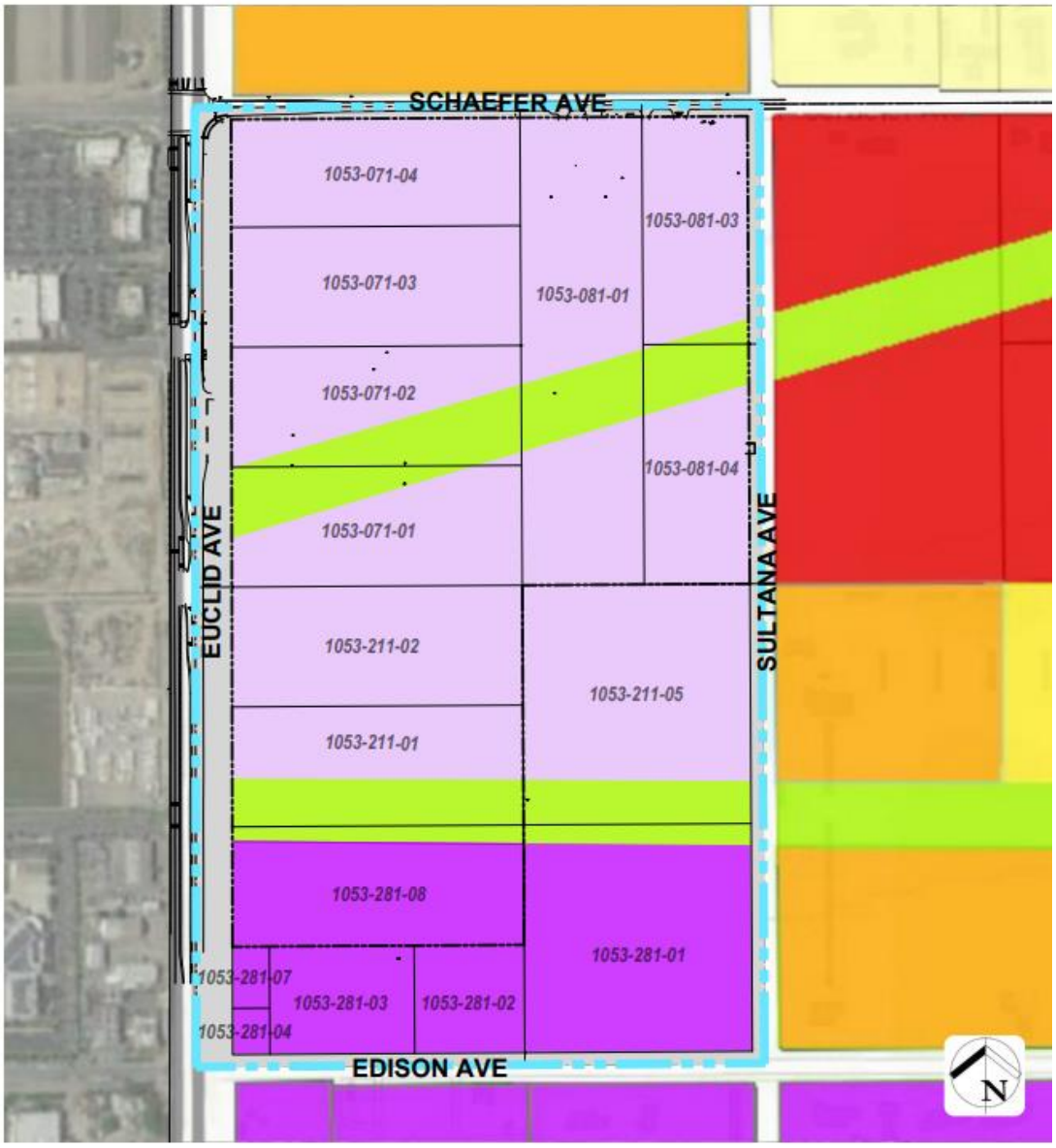
City of Ontario
a California municipal corporation

and

Euclid Land Investment, LLC
A Delaware limited liability company

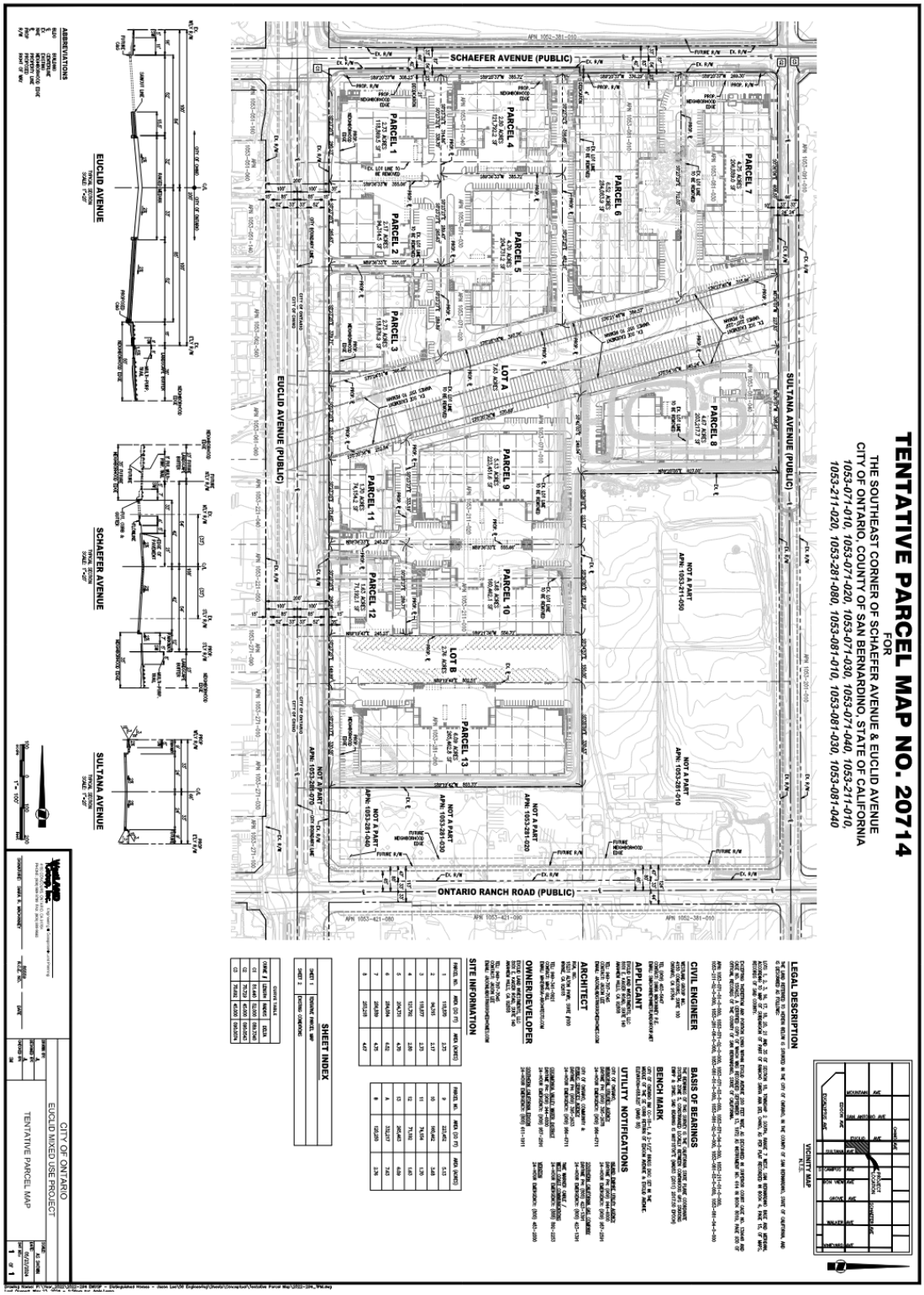
(Development Agreement to follow this page)

Exhibit A— Euclid Mixed Use Specific Plan (File No. PSP22-001)



SPECIFIC PLAN BOUNDARY
000-00-00 EXISTING ASSESSOR PARCEL NUMBER (APN)
LOW DENSITY RESIDENTIAL (LDR)
LOW MEDIUM DENSITY RESIDENTIAL (LMDR)
MEDIUM DENSITY RESIDENTIAL (MDR)
COMMERCIAL
BUSINESS PARK
MIXED-USE
OPEN SPACE-NON RESIDENTIAL (OS-NR)

Exhibit B— TENTATIVE PARCEL MAP 20714



RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Space above this line for Recorder's Use Only Exempt from Fees Per Gov. Code § 6103

File No. PDA23-004

DEVELOPMENT AGREEMENT

By and Between

CITY OF ONTARIO
a California municipal corporation

and

Euclid Land Investment, LLC
A Delaware limited liability company

_____, 2024

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA23-004

This Development Agreement (hereinafter "Agreement") is dated for reference purposes only as of the ____ day of _____, 2024 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), Euclid Land Investment, LLC a Delaware limited liability company (hereinafter "OWNER"):

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code and Section 4.01.015 of the Ontario Development Code; and

WHEREAS, OWNER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of CITY; and

WHEREAS, by electing to enter into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all of the procedures of the California Environmental Quality Act, Pub. Res. Code § 21000, et seq. ("CEQA") have been met with respect to the Project and the Agreement in that certain Euclid Mixed Use Specific Plan Amendment Subsequent Environmental Impact Report (State Clearinghouse No. State Clearinghouse No. 2023020281 (the "FEIR").

WHEREAS, on _____the City Council found and determined that the FEIR was prepared in accordance with the requirements of CEQA and adequately describes the impacts of the Project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Euclid Mixed Use Specific Plan and

WHEREAS, all actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, development of the Project Site, as more particularly described and depicted in **Exhibits A** and **B**, respectively (the "Property") in accordance with this Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Section 65864 et seq. of the Government Code are intended; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "CITY" means the City of Ontario, California, a California municipal corporation.

1.1.3 "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of public infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.4 "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

(a) general plans and general plan amendments; and specific plans and specific plan amendments;

(b) tentative and final subdivision and parcel maps;

(c) development plan review.

1.1.5 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.6 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4. For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

1.1.7 "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.8 "Effective Date" means the date that the ordinance approving this Agreement goes into effect.

1.1.9 "Existing Development Approvals" means all Development Approvals approved or issued on or prior to the Effective Date. Existing Development Approvals includes the Approvals incorporated herein as Exhibit "C" and all other Approvals which are a matter of public record on the Effective Date.

1.1.10 "Existing Land Use Regulations" means all Land Use Regulations in effect on the date of the first reading of the ordinance adopting and approving this Agreement. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit "D" and all other Land Use Regulations that are in effect and a matter of public record on such date.

1.1.11 "General Plan" means The Ontario Plan adopted on August 16, 2022, as amended up to the date of the first reading of the ordinance adopting and approving this Agreement.

1.1.12 "Improvement" or "Improvements" means those public improvements required to support the development of the Project as described in the Parcel Map conditions for Parcel Map No. 20714 ("Parcel Map") as further described in Exhibit "E" and depicted in Exhibit “F”(together, the "Infrastructure Improvements Exhibit").

1.1.13 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;

(e) the exercise of the power of eminent domain.

1.1.14 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.15 "OWNER" means the persons and entities listed as owner on page 1 of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.16 "Owner Affiliate" shall mean, (i) any entity that directly or indirectly controls, is controlled by, or is under common control with OWNER, or (ii) an entity at least a majority of whose economic interest is owned by OWNER. For purposes of this definition, the term “control” means the power to direct the management of such entity through voting rights, ownership or contractual obligations.

1.1.17 “Phase” means the development area described in the Infrastructure Improvements Exhibit to this Agreement.

1.1.18 “Phase 2 Water Participation Fee” means the fee paid to the CITY for the Project, to fund the Property’s respective share of the project costs of the design and construction of the Phase 2 Water Improvements by the CITY. The Phase 2 Water Participation Fee shall be the calculated amount of the Regional Water DIF for the Project based upon the number of square feet, acreage, and land use category for non-residential square footage of the Project.

1.1.19 "Project" means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.20 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

1.1.21 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.4 of this Agreement.

1.1.22 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Euclid Mixed Use Specific Plan".

1.1.23 "Subsequent Development Approvals" means all discretionary Development Approvals required subsequent to the Effective Date in connection with development of the Property. Subsequent Development Approvals shall be deemed to be subject to the provisions of this Agreement, without any further action needed on the part of either the CITY or OWNER.

1.1.24 "Subsequent Land Use Regulations" means any discretionary Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" — Legal Description of the Property.

Exhibit "B" — Map showing Property and its location.

Exhibit "C" — Existing Development Approvals.

Exhibit "D" — Existing Land Use Regulations.

Exhibit "E" — Description of Required Infrastructure Improvements

Exhibit "F" — Depiction of Infrastructure Improvements Exhibits

Exhibit "G" – Form of Certificate of DIF Credit to be issued by CITY

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of this Agreement.

2.2 Ownership of Property. OWNER represents and covenants that it is the owner of fee simple title or the lessee or an optionee of the Property or a portion(s) thereof. To the extent applicable, OWNER has obtained written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. Upon approval by the City Manager, without the need for City Council approval, the term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) OWNER provides at least 180 days written notice to CITY prior to expiration of the initial term; and

(b) OWNER is not then in uncured default of this Agreement.

2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement with respect to the portion of the Property sold and be made in strict compliance with the following:

(a) Except as expressly provided for herein, no sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned.

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this section 2.4.

(d) Notwithstanding the foregoing, OWNER shall have the right to assign this Agreement to an Owner Affiliate subject to the notice requirements to CITY as described in Paragraph (b) of this Section 2.4.1, above.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring OWNER shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring owner of the following conditions:

(a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed an agreement as required under Paragraph (b) of Subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER (if any) to secure performance of its obligations hereunder which are to be performed upon portion of the Property sold, transferred or assigned.

2.4.3 Effect of Assignment and Release of Obligations. In the event of a sale, transfer or assignment pursuant to the provisions of Section 2.4.1 and notwithstanding the release provisions of Section 2.4.2 above:

(a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

(b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

2.4.4 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.5 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one (1) year) of any parcel which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user of the parcel. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one (1) year) to a member of the public or other ultimate user; and,

(b) A certificate of occupancy has been issued for a building on the parcel, and the fees set forth under Section 4 of this Agreement have been paid.

2.4.6 Partial Assignment and Assumption. CITY and OWNER agree OWNER may partially assign its obligations and rights under this Agreement, and all amendments hereto, to a purchaser, transferee or assignee of a lot, which has been subdivided subject to provisions of a partial assignment and assumption agreement in a form approved by CITY. Any such complete and executed partial assignment and assumption of this Agreement shall be submitted to CITY for approval pursuant to Section 2.4.1 of this Agreement. Within thirty (30) days following such complete submittal, CITY shall review, and if the above conditions are satisfied, may approve the partial assignment and release and notify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.6 shall cause, or otherwise affect, a release of OWNER from the duties and obligations under this Agreement that are retained by OWNER and excluded from the transfer or assignment.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. Any amendment of this Agreement, which amendment has been requested by OWNER, shall be considered by the CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement. Either party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the

first instance. Notwithstanding the foregoing sentence, if the CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to the OWNER of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.6 Minor Modification. Upon the written application of OWNER, minor modifications and changes to the Development Plan including modifications to building design or footprint (not affecting minimum setbacks), parking layout and design, and landscape area design may be approved by the Director of the Planning Department without the need to amend this Development Agreement. Other changes in the Development Plan shall be processed pursuant to the City Zoning Ordinance. It is also contemplated by CITY and OWNER that OWNER may, from time to time, seek amendments to one or more of the Development Approvals. Any such amendments are contemplated by CITY and OWNER as being within the scope of this Agreement as long as they are consistent with the Land Use Regulations and shall, upon approval by CITY, continue to constitute the Development Approvals as referenced herein. The parties agree that any such modifications or amendments shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

2.7 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and service mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY on which construction has not yet begun shall be refunded to OWNER by CITY within ten (10) business days.

2.8 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to CITY:
Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario, CA 91764

If to OWNER:
Euclid Land Investment, LLC, A Delaware limited liability company

By: RCCD, Inc. a California corporation, Its Manager

By: Richard Cisakowski, Its President

8101 E. Kaiser Blvd. Suite 140Anaheim Hills, CA 92808

With a copy to:
Ruben Duran, City Attorney
Best Best & Krieger, LLP
2855 E Guasti Road
Ontario, CA 91761

With a copy to:
John Condas
Allen Matkins Leck Gamble Mallory & Natsis LLP
2010 Main Street, Suite 800, Irvine, CA 92614

Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority in Section 3.4, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the

maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority in Section 3.4, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.3.1 Infrastructure Improvement Exhibit. Attached hereto as Exhibits “E” and "F" are a description and depiction, respectively, of the Improvements needed for the development of the Property. In the event of any discrepancy between Exhibit E and Exhibit F, Exhibit F shall control.

3.4 Reservations of Authority.

3.4.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;

(c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan and the building codes in effect as of the Effective Date;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the occupants of the Project and/or of the immediate community from a condition perilous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan and which do not impose additional obligations, costs, and expenses on OWNER or the Project;

(f) Regulations that may conflict with this Agreement but to which the OWNER consents.

3.4.2 Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Plan and/or the Existing Development Approvals, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan and/or the Existing Development Approvals.

3.4.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.4.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.4.4 Intent. The parties acknowledge and agree that CITY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to CITY all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if

necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

3.5 Public Works; Utilities. If OWNER is required by this Agreement or a condition of Project approval to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same standards as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval, OWNER shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility services necessary for the Project, as further described and depicted in the Infrastructure Improvements Exhibit. As a further condition of development approval, OWNER shall to the extent possible contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY. As a further condition of development approval, to the extent OWNER does not own the Property in fee simple, OWNER will provide to CITY the written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof, pursuant to Section 2.2.

3.5.1 OWNER agrees that development of the Project shall require the construction of storm drain Improvements from the Property described in Exhibit E and depicted in Exhibit F. OWNER shall be responsible for payment of a fee in-lieu (the Euclid Avenue Storm Drain In-Lieu Fee) of actual construction of the ultimate Euclid Avenue storm drain Improvements, south of Merrill Avenue. OWNER shall pay the CITY prior to the issuance of the first building permit, Nine Hundred Forty-Four Thousand Two Hundred Eighty Seven Dollars and Ninety Four Cents ($944,287.94). Upon OWNER'S complete payment of the Euclid Avenue Storm Drain In-Lieu Fee, the CITY shall issue a Certificate of DIF Credit in the Regional Storm Drain category equal to the amount paid to the CITY. Such Regional Storm Drain DIF Certificate shall be issued by CITY within thirty (30) business days of the receipt of such required payment. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY, and OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings prior to payment of the Euclid Avenue Storm Drain In-Lieu Fee and construction of the storm drain Improvements described in Exhibit E and depicted in Exhibit F. CITY and OWNER mutually acknowledge and agree, that upon OWNER's complete payment of the Euclid Avenue Storm Drain In-Lieu Fee, such obligation shall be deemed satisfied and CITY shall not hold up a request for final occupancy permit for any buildings on the Property, based on the actual construction and completion of the ultimate Euclid Avenue storm drain Improvements. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion of the storm drain improvements.

3.5.2 OWNER agrees that development of the Project shall require the construction of street Improvements as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that CITY may issue grading, building and other required

permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY, and OWNER agrees that OWNER shall not request, and CITY shall not issue a final occupancy permit for any buildings on the Property prior to Substantial Completion of the street Improvements as described in Exhibit E and depicted in Exhibit F. For purposes of the foregoing, street Improvements shall be deemed "Substantially Complete" even if the final lift of pavement has not been completed (i.e., OWNER may install the final lift after completion of all other construction). CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion and subject to final acceptance by CITY of the street Improvements. OWNER agrees that the street improvements shall be completed and subject to final acceptance by CITY prior to the release of any security for the construction of the street improvements. OWNER and CITY agree that a portion of the street Improvements described in Exhibit E and depicted in Exhibit F may be constructed by others, or pursuant to a cooperative agreement with others. If such street Improvements are constructed by others, or in cooperation with others, and are completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those street Improvements constructed and completed by others and accepted by CITY.

3.5.3 OWNER agrees that development of the Property shall require the construction of water utility Improvements as described in Exhibit E and depicted in Exhibit F consisting generally of the construction of the potable water Improvements to serve the Property as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY upon completion of sufficient water improvements to serve the Property from at least one point of connection. OWNER and CITY agree that OWNER may, in-lieu of utilizing recycled water during grading and construction, utilize water from existing agricultural wells on the Property subject to the terms of a separate Well Use Agreement between the CITY and OWNER. OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings on the Property until the completion of the potable water improvements described in Exhibit E and depicted in Exhibit F. City agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion of the water improvements if there is available permanent water service from a minimum of two (2) points of connection and sufficient water is available for fire protection purposes for any buildings while under construction. OWNER and CITY agree that a portion of the water Improvements described in Exhibit E and depicted in Exhibit F may be constructed by others, or pursuant to a cooperative agreement with others. If such water Improvements are constructed by others, or in cooperation with others, and are completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those water Improvements constructed and completed by others and accepted by CITY.

3.5.4 OWNER agrees that development of the Property shall require the construction of sewer Improvements as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY, and OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings prior to completion of the sewer improvements described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to the completion of the sewer improvements described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that a portion of the sewer Improvements described in Exhibit E and depicted in Exhibit F may be constructed by others, or pursuant to a cooperative agreement with others. If such sewer Improvements are constructed by others, or in cooperation with others, and are completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those sewer Improvements constructed and completed by others and accepted by CITY.

3.5.5 OWNER agrees that development of the Property shall require the construction of recycled water utility improvements to serve the Property, consisting generally of the construction of recycled water utility Improvements as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that the CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY upon completion of sufficient water and recycled water improvements to serve the Property from at least one point of connection and OWNER agrees that OWNER shall not request and CITY shall not issue any occupancy permit for any buildings on the Property until the completion of the water improvements described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request a temporary occupancy permit for a building and, if OWNER requests that a temporary certificate of occupancy be issued for a building prior to the completion of the extension of permanent master planned recycled water utility Improvements to serve the Property that CITY may consider such request and may issue temporary certificates of occupancy on a building-by-building basis prior to completion of recycled water improvements if there is available permanent recycled water service connection and sufficient recycled water is available. OWNER and CITY agree that all, or a portion of, the permanent master planned recycled water utility Improvements described in Exhibit E and depicted in Exhibit F may be constructed by others. If such recycled water utility Improvements are constructed by others and completed and accepted by CITY prior to OWNER'S request to CITY of the required grading, building, or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those permanent master planned recycled water utility Improvements.

3.5.6 OWNER agrees that development of the Property shall require the construction of fiber optic communications infrastructure, at OWNER's sole cost and expense, as described in the attached Exhibit E and depicted in Exhibit F consisting generally of the construction of fiber optic communications infrastructure to serve the

Property. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY and OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings prior to completion of the fiber optic communications infrastructure, as described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to the completion of the fiber optic communications infrastructure, as described in Exhibit E and depicted in Exhibit F.

3.6 Acquisition of Offsite Provision of Real Property Interests. In any instance where OWNER is required by any Development Approval or Land Use Regulation to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), the CITY and OWNER shall cooperate in acquiring the necessary legal interest ("Offsite Property") as described below in Section 3.7. This Section 3.6 is not intended by the parties to impose upon the OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act or other legal authority.

3.7 Real Property Interests.

3.7.1 CITY Acquisition of Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, Sections 3.7.1 and 3.7.2 shall control the acquisition of the Offsite Property. If the OWNER is unable to acquire such Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY may, initiate proceedings utilizing its power of eminent domain to acquire the Offsite Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Offsite Property, subject to the conditions set forth in this Section 3.7.1 The CITY and OWNER acknowledge that the timelines set forth in this Section 3.7.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.7.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Offsite Property, whereupon CITY shall cease such proceedings. CITY may provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on

CITY's intent to consider the adoption of a resolution of necessity as to any Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then the CITY may proceed to consider and act upon the Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY may institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Offsite Property.

3.8 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies. CITY agrees to cooperate fully, at no cost to CITY, with OWNER in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations or policies of the CITY.

3.9 Tentative Parcel Maps. With respect to applications by OWNER for tentative parcel maps for portions of the Property, CITY agrees that OWNER may file and process tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of CITY's subdivision ordinance, as the same may be amended from time to time. In accordance with the provisions of Section 66452.6 of the Government Code, each tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be deemed to have been granted an extension of time to and until the expiration, cancellation, or termination of this Agreement.

3.10 Specific Plan Charge. Pursuant to Government Code section 65456, the City Council may consider adopting a specific plan charge upon persons seeking CITY approvals that are required to be consistent with the Specific Plan. Any such charges shall, in the aggregate, defray, but not exceed, the estimated cost of preparation, adoption, and administration of the Specific Plan, including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.). As nearly as can be estimated, the charges shall be a prorated amount in accordance with the applicant's relative benefit derived from the Specific Plan. If such charges are adopted, the CITY shall use such charges to reimburse the OWNER who originally paid the cost of preparing the Specific Plan, including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) to the extent the OWNER paid more than its relative benefit from the Specific Plan. Such charges, if adopted, shall be imposed on persons seeking CITY approvals that are required to be consistent with the Specific Plan, to the extent such person(s) has/have not entered into a reimbursement agreement with, and satisfactory to, the person(s) originally responsible for the cost of preparing the Specific Plan, including costs incurred pursuant to CEQA.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by OWNER. The Development Impact Fee amounts to be paid by OWNER shall be the amounts that are in effect at the time such amounts are due. Nothing contained in this Agreement shall affect the ability of the CITY to impose new Development Impact Fees or amend the amounts of existing Development Impact Fees. Additionally, nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by CITY to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Section 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable building (subject to the application/use of available fee deferrals or credits), except for the Species, Habitat Conservation, and Open Space Mitigation Development Impact Fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the area wide infrastructure construction within the vicinity of the Project shall be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as described and depicted in the Infrastructure Improvements Exhibit and any and all parcel map conditions. Unless otherwise specified in the Parcel Map conditions, and subject to the provisions of Section 3.5 and 3.6, all other required Improvements for the parcel map, shall be substantially completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a final occupancy permit for any buildings to be constructed on the Property within the applicable parcel map. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel Map conditions for Parcel Map No. 20714.

4.3.3 Construction of Public Infrastructure by Third Parties. CITY and OWNER acknowledge that a portion of the Improvements described in Exhibit E and depicted in Exhibit F are necessary for the development of surrounding properties within the Ontario Ranch and the other property owners are also obligated to construct the Improvements or portions thereof. As such, CITY agrees that OWNER's obligation to construct the

Improvements may be satisfied by third party owners pursuant to separate written agreements between OWNER and said third party undertaking the construction of the Improvements. Nothing in this Agreement shall be construed to prohibit the coordination of the construction of the Improvements between private parties, including the allocation of costs for the construction of the Improvements. Notwithstanding anything to the contrary herein, any applicable DIF Credits may be transferred and assigned from one (1) party to another with respect to the construction of the Improvements and such transfer or assignment shall not require the conveyance of any real property.

4.3.4 Availability and Use of Recycled Water. OWNER agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property. OWNER and CITY agree that OWNER may, in-lieu of utilizing recycled water during grading and construction, utilize water from existing agricultural wells on the Property subject to the terms of a separate Well Use Agreement between the CITY and OWNER.

4.3.5 Construction of DIF Program Infrastructure. To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitations on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. OWNER may be eligible to receive DIF Credit from OWNER's construction of DIF Program Infrastructure. Any such DIF Credit shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Water Availability.

4.5.1 Water Availability. The Property requires the completion of the Phase 2 Water Improvements (Phase 2A and 2B) for permanent water system capacity and supply. Until the Phase 2 Water Improvements are fully constructed and completed, OWNER acknowledges that the Project shall have sufficient water capacity and supply on an interim basis made available through the construction of the Potable Water Improvements (as described in Exhibit E), the Phase 2A Water Improvements, and the Interim Chino Avenue Loop depicted in Exhibit F. OWNER acknowledges and agrees that the CITY shall not issue final certificates of occupancy for the Project until the completion of the Potable Water Improvements (as described in Exhibit E), the Phase 2A Water Improvements and the Interim Chino Avenue Loop, as depicted in Exhibit F. OWNER further acknowledges and agrees the Property requires the Phase 2 Water Improvements as depicted in Exhibit F.

4.5.2 Phase 2 Water Construction Fee. Prior to CITY's issuance of a grading permit (with the exception of the grading permit for PTUP24-043) for any parcel of the Property (each, a "Grading Permit"), OWNER shall pay to CITY the applicable Phase 2 Water Construction Fee. The Phase 2 Water Construction Fee shall be calculated based

on the following formula: (a) the regional water development impact fee, based on the square footage of developable property and the approved land use category for each Phase of the Project (the "Base Regional Water DIF"), PLUS (b) OWNER's pro rata share of the difference between the total projected cost of construction of the Phase 2 Water Improvements (the "Pro Rata Share") and the Base Regional Water DIF. To determine the Pro Rata Share, which may fluctuate over time, CITY shall, at the time OWNER applies for a Grading Permit, calculate the total projected cost of construction of the Phase 2 Water Improvements and subtract from that amount (y) all Phase 2 Water Construction Fees previously collected and (z) the aggregate Base Regional Water DIF to be paid by OWNER and all developers then at that time obligated to pay a Base Regional Water DIF specifically for use of the Phase 2 Water Improvements (together, the "Phase 2 Water Developers"). If the difference is zero or a number less than zero, then there is no Pro Rata Share and the Phase 2 Water Construction Fee shall equal the sum of all Base Regional Water DIF to be paid by all Phase 2 Water Developers. If the difference results in a positive number, the funding gap (the "Funding Gap") shall be divided by the total acreage of land to be developed by the Phase 2 Water Developers to obtain a Funding Gap "per acre" amount (the "Funding Gap Per Acre Amount"). Each Phase 2 Water Developer's respective total acreage to be developed shall then be multiplied by the Funding Gap Per Acre Amount to obtain each Phase 2 Water Developer's Pro Rata Share, which will then be added to each Phase 2 Water Developer's Base Regional Water DIF to obtain the Phase 2 Water Construction Fee due and payable at the time of issuance of the applicable Grading Permit.

4.5.3 DIF Credit for Phase 2 Water Construction Fees. Within thirty (30) days of OWNER's payment of each Phase 2 Water Construction Fee, CITY shall issue a certificate of DIF Credit which may be used to offset OWNER's DIF obligations in the Regional Water DIF Category. The form of the Certificate of DIF Credit shall be as described in Exhibit G, attached hereto and incorporated herein. OWNER acknowledges that any Regional Water DIF Credit issued to OWNER shall not be used to satisfy Phase 2 Water Construction Fees and may only be used to offset OWNER's DIF obligations in the Regional Water DIF Category.

4.5.4 Additional Contributions for Phase 2 Water Improvements. OWNER acknowledges and agrees that, as of the Effective Date of this Agreement, the CITY does not have sufficient funding to construct and complete the Phase 2 Water Improvements. OWNER agrees to provide the CITY with additional contributions for the Phase 2 Water Improvements prior to the issuance of a Grading Permit (with the exception of the grading permit for PTUP24-043) for any Phase within the Project, pursuant to the Pro Rata Share calculation as set forth in Section 4.5.2 above. OWNER acknowledges and agrees that the CITY has the right to conduct subsequent reviews of the available funding for the construction of, or continuation of the construction of, the Phase 2 Water Improvements. If at any time outside of OWNER's submission of a request for a Grading Permit the CITY determines that there is not sufficient funding for the construction of, or continuation of the construction of, the Phase 2 Water Improvements necessary to support current and anticipated future development within the Ontario Ranch area served by the Phase 2 Water Improvements, OWNER agrees to pay such

subsequent additional contribution payment necessary from the OWNER (on a pro rata basis with other Phase 2 Water Developers then existing at the time) to the CITY to initiate construction of, or continue construction of, the Phase 2 Water Improvements. The CITY shall determine OWNER's additional contribution amount (above and beyond OWNER's Pro Rata Share) and such amount shall be due and payable to the CITY within thirty (30) days of written notice from the CITY to OWNER.

4.5.5 Future Reimbursement of Pro Rata Share of Phase 2 Water Construction Fees. OWNER agrees that the CITY will be responsible for the construction and completion of the Phase 2 Water Improvements, as depicted in Exhibit F. Subject to the successful completion of the Phase 2 Water Improvements, CITY and OWNER shall meet periodically and/or as needed from the date of completion of the Phase 2 Water Improvements, to jointly develop a plan and mutually enter into an agreement for the reimbursement of OWNER's Pro Rata Share of Phase 2 Water Construction Fees that may be reimbursed from future development in the 925 Zone as depicted in the City's Domestic Water Master Plan, following any reallocation of each Phase 2 Water Developer's Pro Rata Share, CITY's collection of additional Regional Water DIF in connection with construction of the Phase 2 Water Improvements, and after the completion of the Phase 2 Water Improvements. Such agreement shall be approved at the sole discretion of the Ontario City Council.

4.5 Compliance with Public Benefits Requirements.

4.5.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.5, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement, thereby entitling CITY to any and all remedies available to it, including, without limitation, the right of CITY to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability. Nothing herein shall waive OWNER's right to assert a default (or failure to perform) by CITY has excused OWNER's performance under this Agreement.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). OWNER agrees that, prior to the recordation of any Parcel Map, the property subject to such Parcel Map shall be included in a CFD to finance CITY services through annual special taxes that will initially be Twenty-Five Cents ($.25) per square foot for non-residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year, unless otherwise modified by CITY. Depending on the fiscal year that the CFD is formed and the CFD tax is levied, the annual special taxes may be higher. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without

limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.1 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit CITY's ability to take any and all necessary steps requisite to the formation of the CFD to finance CITY services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district.

6. [OMITTED]

7. REVIEW FOR COMPLIANCE.

7.1 Periodic and Special Reviews.

7.1.1 Time for and Initiation of Periodic Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY's intent to conduct a Special Review pursuant to Sections 7.1.2 through 7.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

7.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(a) Recommendation of the Planning staff;

(b) Affirmative vote of at least four (4) members of the Planning Commission; or

(c) Affirmative vote of at least three (3) members of the City Council.

7.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special review of this Agreement to the OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

7.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the OWNER must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the OWNER.

7.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the OWNER has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

7.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the City Council in accordance with the CITY's rule for consideration of appeals in zoning matters generally.

7.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 7.1.6(b), the CITY determines to proceed with modification or termination of this Agreement, the CITY shall give notice to the property OWNER of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

7.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate this Agreement or modify this Agreement and

impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

7.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

8. [OMITTED]

9. DEFAULT AND REMEDIES.

9.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof. In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that (i) CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages and (ii) OWNER shall not be liable in damages to CITY, or to any other person, and CITY covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

9.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY and OWNER as provided in Section 9.1 above.

(b) Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

9.3 Release. Except for non-damage remedies, including the remedies of judicial review and of specific performance as provided for in Sections 7.3 and 9.2, respectively,, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

9.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Sections 7.2 and 7.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

9.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has

failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

10. THIRD PARTY LITIGATION.

10.1 General Plan Litigation. CITY has determined that this Agreement is consistent with the General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

10.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify OWNER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

10.3 Indemnity. In addition to the provisions of Section 10.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, to the extent relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action. OWNER’s indemnity obligation shall terminate following CITY’s legal acceptance of (i.e. taking of title to) the Improvements.

10.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, to the extent based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation

relating to industrial hygiene or to environmental conditions on, under or about the Property during OWNER'S period of ownership of the Property, including, but not limited to, soil and groundwater conditions caused by OWNER, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

10.5 Reservation of Rights. With respect to Sections 10.2, 10.3 and 10.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

10.6 Survival. The provisions of this Sections 10.1 through 10.6, inclusive, shall survive the termination of this Agreement.

11. MORTGAGEE PROTECTION.

11.1 Mortgagee Protection. The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement

(e) In the event of a default by OWNER, any Mortgagee shall have the right to remedy, or cause to be remedied, such default within sixty (60) days following the later to occur of (i) the date of Mortgagee's receipt of the notice referred to in Section 9.4 above, or (ii) the expiration of the period provided herein for OWNER to remedy or cure such default, and CITY shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by OWNER; provided, however, that (i) if such default is not capable of being cured within the timeframes set forth in this Section and Mortgagee commences to cure the default within such timeframes, then Mortgagee shall have such additional time as is required to cure the default so long as Mortgagee diligently prosecutes the cure to completion and (ii) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

12. MISCELLANEOUS PROVISIONS.

12.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within ten (10) days after the CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the CITY terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

12.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

12.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

12.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

12.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

12.6 Singular and Plural. As used herein, the singular of any word includes the plural.

12.7 Joint and Several Obligations. Pursuant to Section 2.4, if at any time during the term of this Agreement the Property is subsequently owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

12.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

12.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

12.10 No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

12.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods,

earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, governmental orders related to statewide or national pandemics, any third party court actions challenging the Project (including but not limited to writs of mandate, restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

12.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

12.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

12.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

12.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

12.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

12.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall

promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the CITY.

12.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

12.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto.

12.20 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. OWNER shall pay to CITY all costs incurred by CITY in connection with the issuance of estoppel certificates requested by OWNER under this Section 12.20 prior to CITY's issuance of such certificates.

12.21 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

12.22 Prevailing Wage. OWNER, for itself, its successors, and assigns, agrees, covenants, and warrants that the development of the Property, if any, shall comply with all applicable federal and state labor laws (including, without limitation, the requirement under California law to pay prevailing wages and hire apprentices), and all obligations as set forth herein.12.22.1 CITY makes no representations concerning prevailing wages in compliance with California Labor Code Section 1770 et seq.

12.22.2 OWNER acknowledges and agrees that it shall be independently responsible for reviewing the applicable laws and regulations with respect to the payment of prevailing wages and complying therewith. OWNER shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law.

12.22.3 The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Property by OWNER, its successors or assigns. OWNER shall be solely responsible for determining and effectuating compliance with such laws.

12.22.4 OWNER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES CITY FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO OWNER PURSUANT TO LABOR CODE SECTION 1781 OR THE DAVIS BACON ACT. RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 12.22, OWNER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542, WHICH READS AS FOLLOWS: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

INITIALS. BY INITIALING BELOW, OWNER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

_____

(Owner's Initials)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT
FILE NO. PDA23-004

"OWNER"

Euclid Land Investment, LLC
A Delaware limited liability company

By: _____

Authorized Signatory

Date: _____

ATTEST:

_____
City Clerk, Ontario

APPROVED AS TO FORM:

BEST BEST & KRIEGER, LLP

_____
City Attorney

"CITY"

CITY OF ONTARIO

By:_____
Scott Ochoa
City Manager

Date: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On this ___ day of _____, 2023 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On this ___ day of _____, 2023 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____ (Seal)

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ONTARIO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 1, 2, 3, 16, 17, 18, 20, 21 AND 35 OF SECTION 18, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN
BERNARDINO BASE AND MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, AS PER PLAT RECORDED IN BOOK 6, PAGE 15, OF MAPS, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM ANY PORTION LYING WITHIN EUCLID AVENUE 200 FEET WIDE, AS DESCRIBED IN SUPERIOR COURT CASE NO. 139648 AND CASE NO. 150425, A CERTIFIED COPY OF WHICH WAS RECORDED SEPTEMBER 13, 1972 AS INSTRUMENT NO. 614 IN BOOK 8019, PAGE 930 OF OFFICIAL RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA.

APN: 1053-071-01-0-000
APN: 1053-071-02-0-000
APN: 1053-071-03-0-000
APN: 1053-071-04-0-000
APN: 1053-211-01-0-000
APN: 1053-211-02-0-000
APN: 1053-281-08-0-000
APN: 1053-081-01-0-000
APN: 1053-081-02-0-000
APN: 1053-081-03-0-000
APN: 1053-081-04-0-000

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location

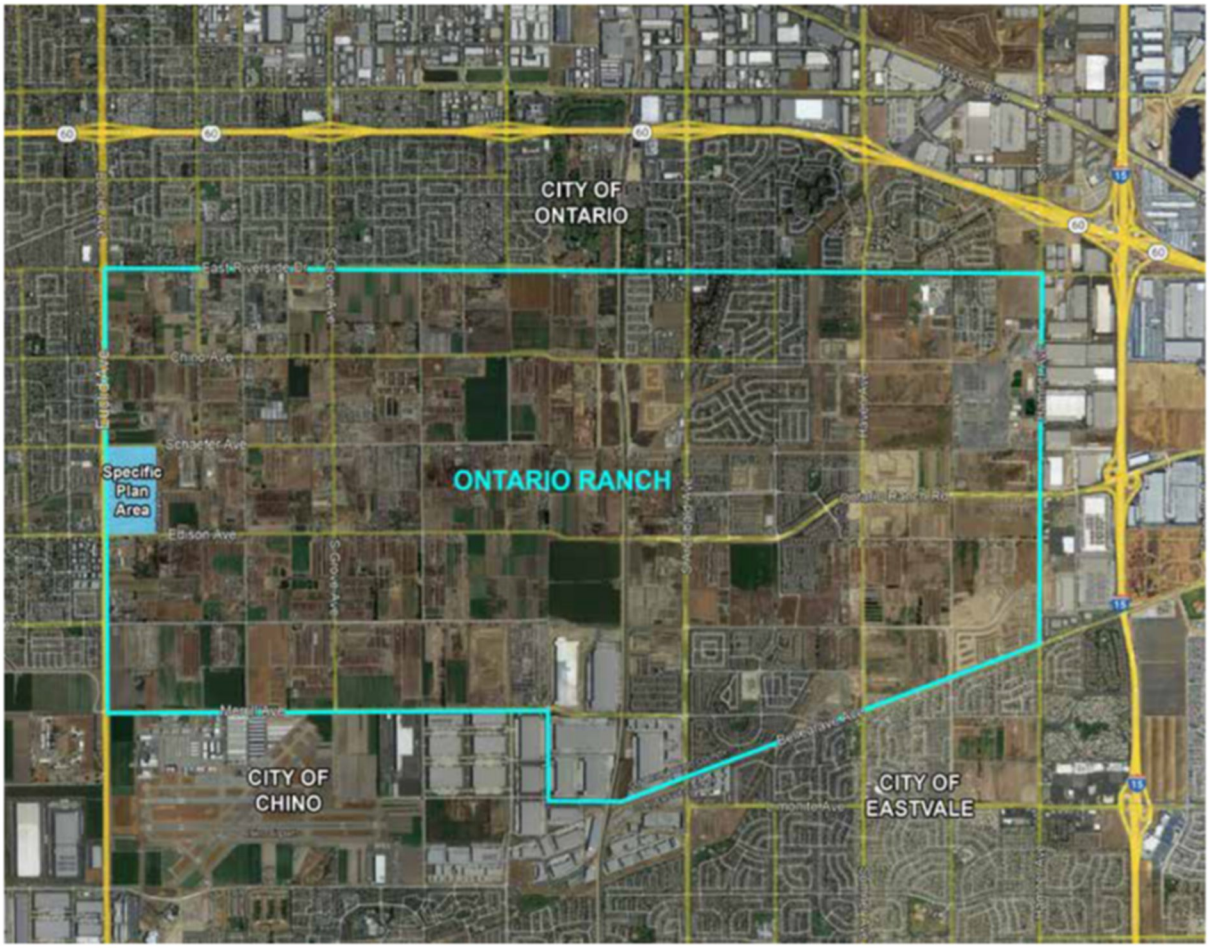


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On, July 23, 2024, the Planning Commission:

a) Issued Resolution No._____ recommending City Council certification of the Euclid Mixed Use Specific Plan EIR (SCH#2023020281); and

b) Issued Resolution No._____ recommending City Council approval of the Euclid Mixed Use Specific Plan (File No. PSP22-001)

On, August 20, 2024, the City Council:

a) Adopted and certified the Euclid Mixed Use Specific Plan Environmental Impact Report (SCH#2023020281) and issued Resolution No._____; and

b) Adopted Ordinance No._____ approving the Euclid Mixed Use Specific Plan (File No. PSP22-001)

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

1. Euclid Mixed-Used Specific Plan, Ordinance No._____ (File No. PSP22-001)
2. Euclid Mixed-Used Specific Plan EIR, Resolution No._____ (SCH#2023020281)
3. City of Ontario Municipal Code:
    a. Six – Sanitation & Health
    b. Seven – Public Works
    c. Eight – Building Regulations
    d. Nine – Development Code
    e. Ten – Parks and Recreation

EXHIBIT "E"
TO THE DEVELOPMENT AGREEMENT

DESCRIPTION OF REQUIRED IMPROVEMENTS

OWNER shall design, construct, and complete the following Street, Sewer, Storm Drain, Potable Water, Recycled Water, and Fiber Optic improvements, prior to OWNER's request for any final certificate of occupancy permit for any building within the Property.

Street (ST) Improvements

a. ST improvements on Schaefer Ave from Euclid Ave to Sultana Ave
b. ST improvements on Euclid Ave from Schaefer Ave to Edison/Ontario Ranch Rd.
c. ST improvements on Sultana Ave along the project frontage

Potable Water (PW) Improvements

a. PW improvements on Schaefer Ave from Euclid Ave to Grove Ave
b. PW improvements on Euclid Ave from Schaefer Ave to Eucalyptus Ave
c. PW improvements on Sultana Ave

Storm Drain (SD) Improvements

a. SD improvements on Schaefer Ave from Euclid Ave to Sultana Ave
b. SD improvements on Euclid Ave from Schaefer Ave to Eucalyptus Ave

Recycled Water (RW) Improvements

a. RW improvements on Schaefer Ave from Euclid Ave to Sultana Ave
b. RW improvements on Euclid Ave from Schaefer Ave to Eucalyptus Ave
c. RW improvements on Sultana Ave

Sewer (SW) Improvements

a. SW improvements on Euclid Ave from Schaefer Ave to Eucalyptus Ave

Fiber Optics (FO) improvements

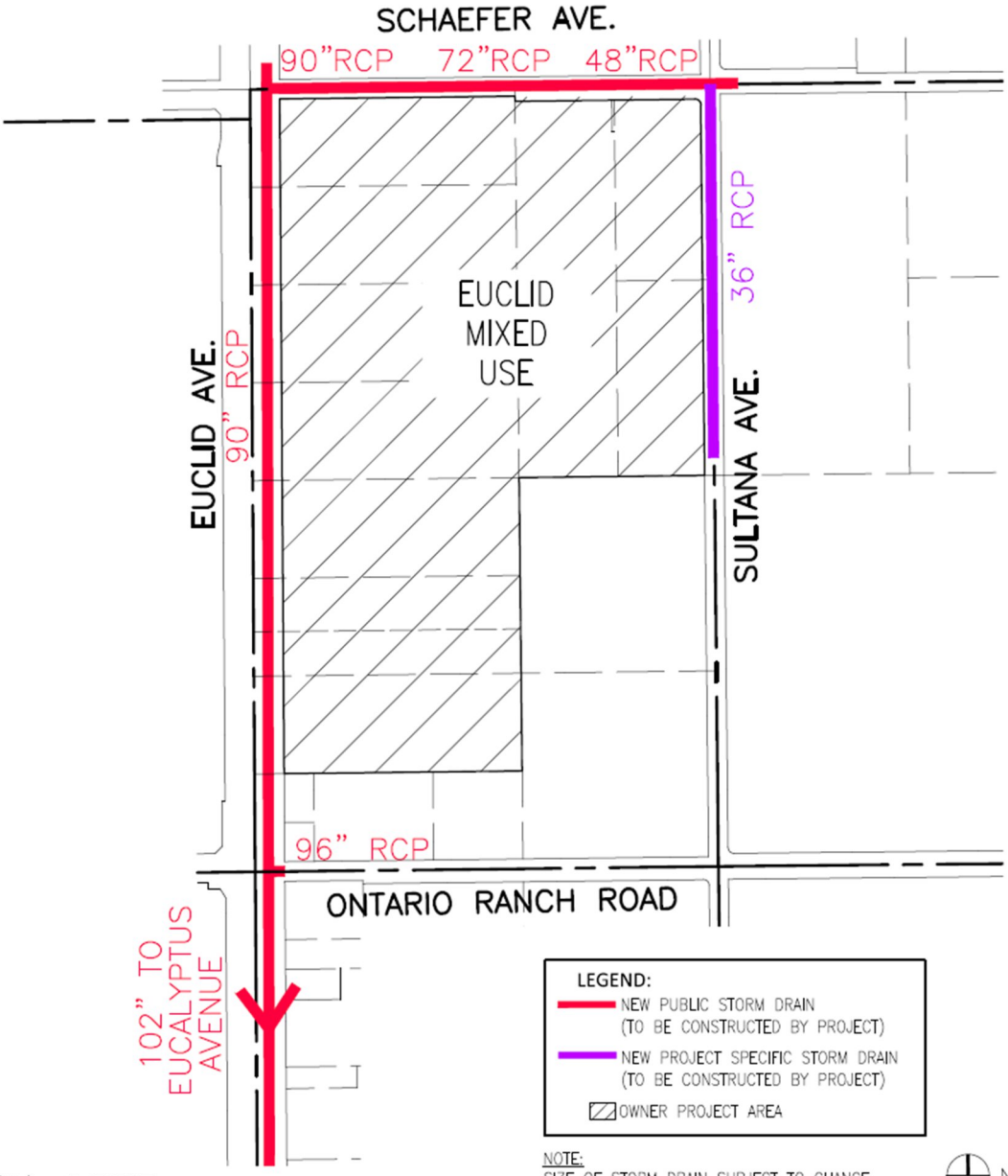
a. FO improvements on Schaefer Ave from Euclid Ave to Sultana Ave
b. FO improvements on Euclid Ave along project frontage
c. FO improvements on Sultana along project frontage

EXHIBIT "F"
TO DEVELOPMENT AGREEMENT

Required Infrastructure Improvements

(**SEE ATTACHED EXHIBITS**)

EXHIBIT F-1
STORM DRAIN IMPROVEMENTS

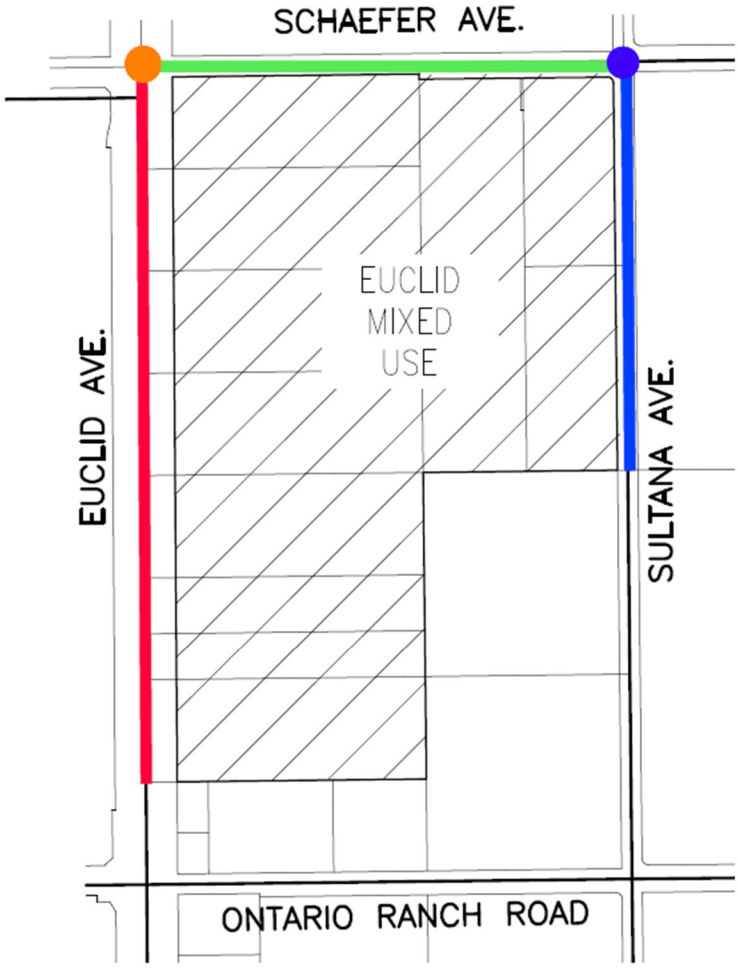


WestLAND Group, Inc.
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
Land Surveyors • Civil Engineers • GIS

Euclid Mixed Use Specific Plan • Development Agreement

DATE: 01/24/2024

EXHIBIT F-2
STREET IMPROVEMENTS



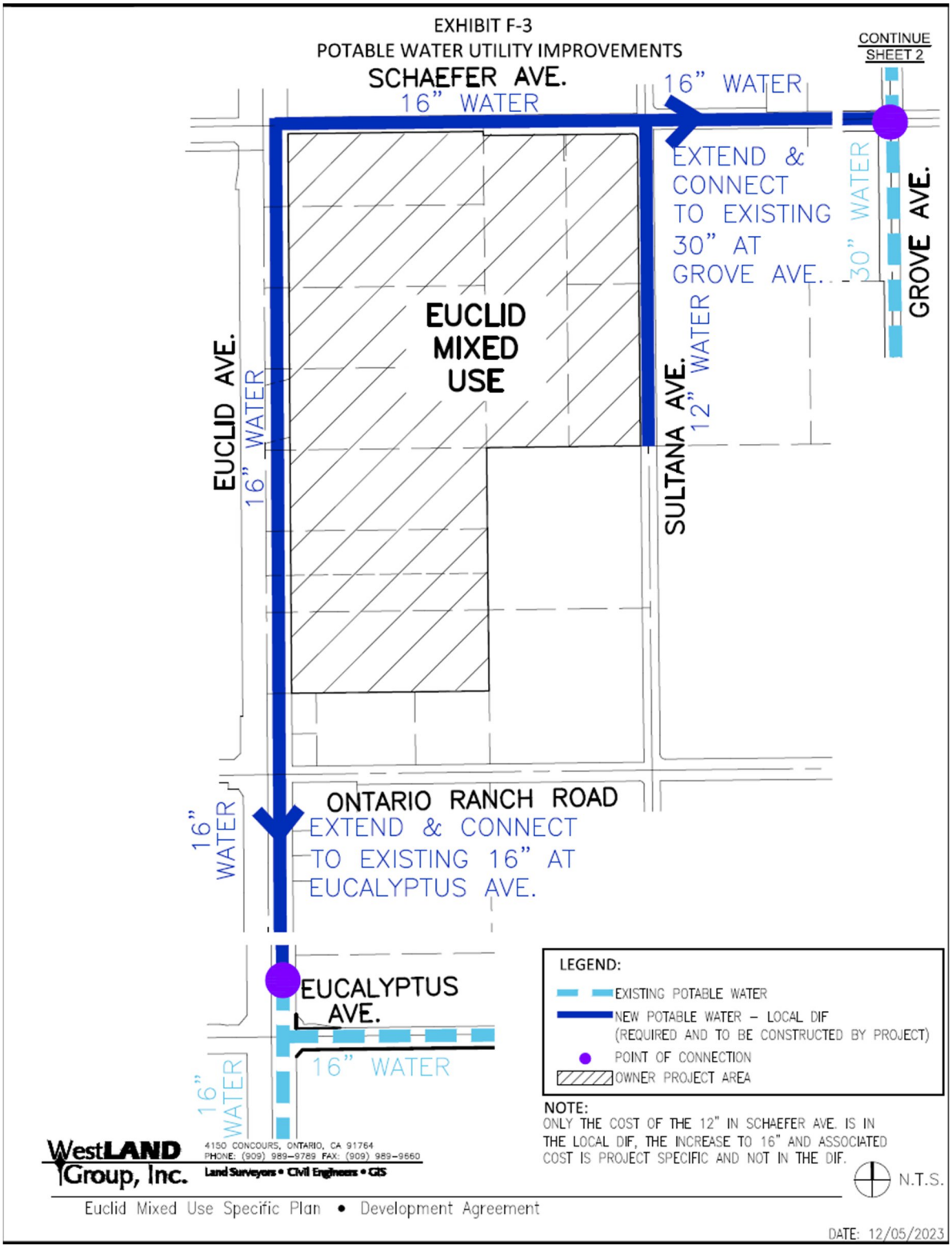
NOTES:
PCC PAVEMENT REQUIRED AT ALL SIGNALIZED INTERSECTIONS ALONG TRUCK ROUTES

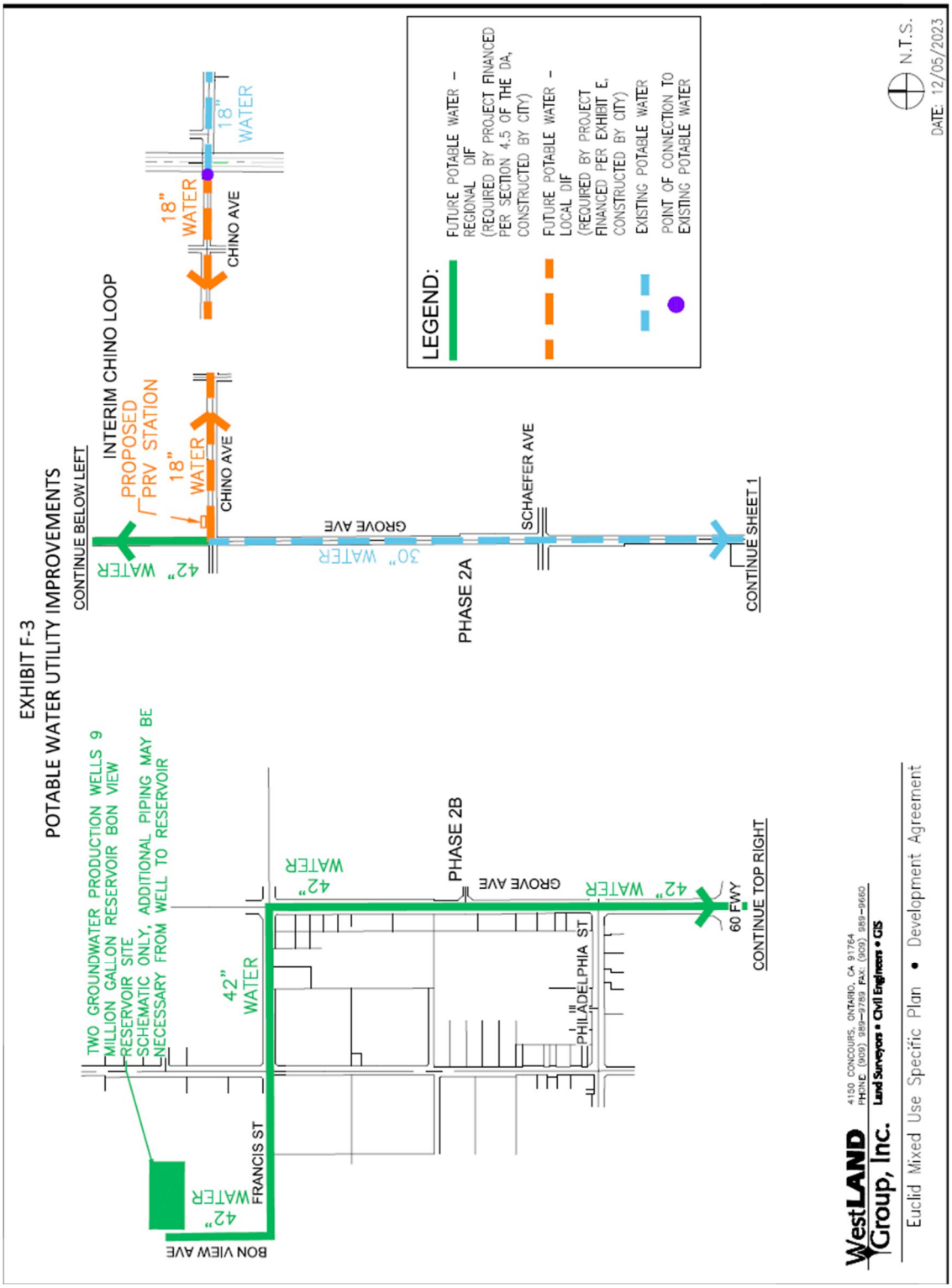
LEGEND:
- PRINCIPAL ARTERIAL (ULTIMATE EAST SIDE IMPROVEMENTS)
- LOCAL COLLECTOR (ULTIMATE SOUTH SIDE IMPROVEMENTS)
- LOCAL INDUSTRIAL (ULTIMATE WEST SIDE & CURB AND GUTTER EAST SIDE IMPROVEMENTS)
- ALL WAY STOP
- EXISTING SIGNALIZED INTERSECTION TO BE MODIFIED
- OWNER PROJECT AREA

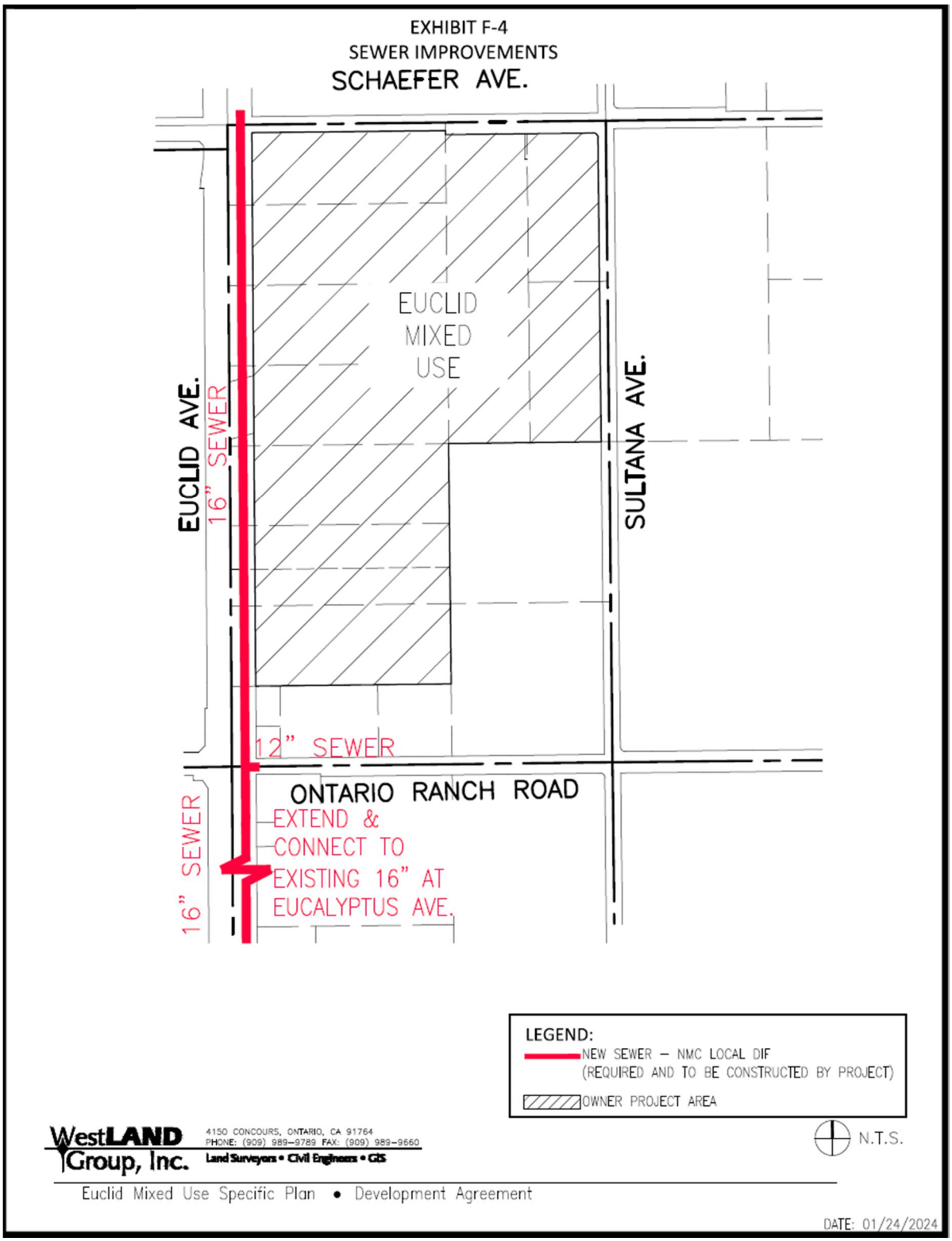
WestLAND Group, Inc.
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
Land Surveyors • Civil Engineers • GIS

Euclid Mixed Use Specific Plan • Development Agreement

DATE: 01/24/2024


EXHIBIT F-3
POTABLE WATER UTILITY IMPROVEMENTS
SCHAEFER AVE.
16" WATER
16" WATER
CONTINUE SHEET 2
EXTEND & CONNECT TO EXISTING 30" AT GROVE AVE..
30" WATER
GROVE AVE.
EUCLID MIXED USE
EUCLID AVE.
16" WATER
SULTANA AVE.
12" WATER
ONTARIO RANCH ROAD
16" WATER
EXTEND & CONNECT TO EXISTING 16" AT EUCALYPTUS AVE.
EUCALYPTUS AVE.
16" WATER
16" WATER
LEGEND:
EXISTING POTABLE WATER
NEW POTABLE WATER – LOCAL DIF (REQUIRED AND TO BE CONSTRUCTED BY PROJECT)
POINT OF CONNECTION
OWNER PROJECT AREA
NOTE:
ONLY THE COST OF THE 12" IN SCHAEFER AVE. IS IN THE LOCAL DIF, THE INCREASE TO 16" AND ASSOCIATED COST IS PROJECT SPECIFIC AND NOT IN THE DIF.
N.T.S.
WestLAND Group, Inc.
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
Land Surveyors • Civil Engineers • GIS
Euclid Mixed Use Specific Plan • Development Agreement
DATE: 12/05/2023


EXHIBIT F-3
POTABLE WATER UTILITY IMPROVEMENTS
INTERIM CHINO LOOP
CONTINUE BELOW LEFT
42" WATER
PROPOSED PRV STATION
18" WATER
CHINO AVE
18" WATER
CHINO AVE
18" WATER
GROVE AVE
30" WATER
SCHAEFER AVE
PHASE 2A
CONTINUE SHEET 1
LEGEND:
FUTURE POTABLE WATER - REGIONAL DIF (REQUIRED BY PROJECT FINANCED PER SECTION 4.5 OF THE DA, CONSTRUCTED BY CITY)
FUTURE POTABLE WATER - LOCAL DIF (REQUIRED BY PROJECT FINANCED PER EXHIBIT E, CONSTRUCTED BY CITY)
EXISTING POTABLE WATER
POINT OF CONNECTION TO EXISTING POTABLE WATER
N.T.S.
DATE: 12/05/2023
TWO GROUNDWATER PRODUCTION WELLS 9 MILLION GALLON RESERVOIR BON VIEW RESERVOIR SITE
SCHEMATIC ONLY, ADDITIONAL PIPING MAY BE NECESSARY FROM WELL TO RESERVOIR
42" WATER
42" WATER
PHASE 2B
GROVE AVE
42" WATER
60 FWY
CONTINUE TOP RIGHT
PHILADELPHIA ST
BON VIEW AVE
42" WATER
FRANCIS ST
WestLAND Group, Inc.
4150 CONCOURS, ONTARIO, CA 91764
PHONE (909) 989-9779 FAX: (909) 989-0660
Land Surveyors • Civil Engineers • GIS
Euclid Mixed Use Specific Plan • Development Agreement


EXHIBIT F-4
SEWER IMPROVEMENTS
SCHAEFER AVE.
EUCLID MIXED USE
EUCLID AVE.
16" SEWER
SULTANA AVE.
12" SEWER
ONTARIO RANCH ROAD
16" SEWER
EXTEND & CONNECT TO EXISTING 16" AT EUCALYPTUS AVE.
LEGEND:
NEW SEWER – NMC LOCAL DIF (REQUIRED AND TO BE CONSTRUCTED BY PROJECT)
OWNER PROJECT AREA
N.T.S.
WestLAND Group, Inc.
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
Land Surveyors • Civil Engineers • GIS
Euclid Mixed Use Specific Plan • Development Agreement
DATE: 01/24/2024

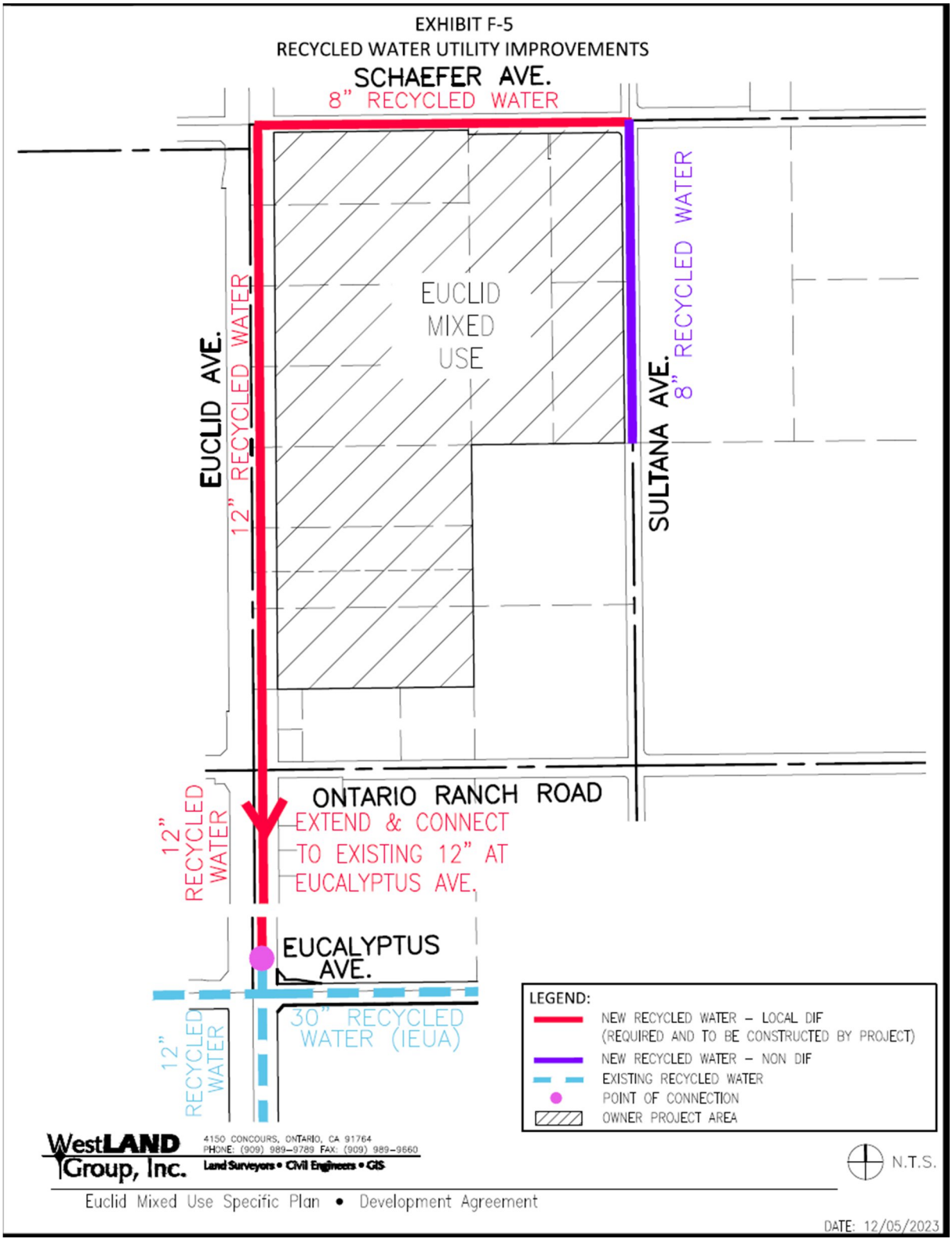
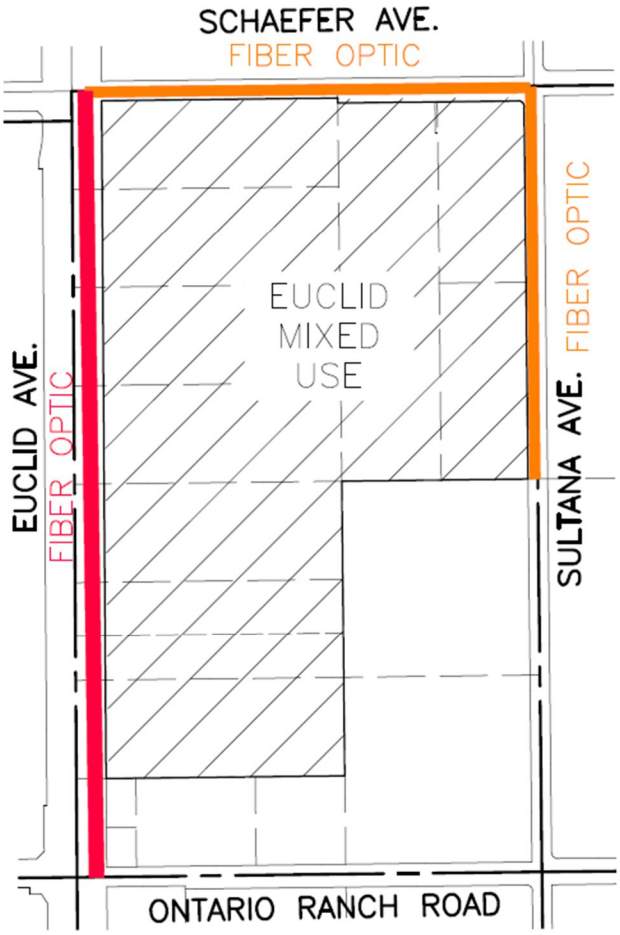

EXHIBIT F-5
RECYCLED WATER UTILITY IMPROVEMENTS
SCHAEFER AVE.
8" RECYCLED WATER
EUCLID AVE.
12" RECYCLED WATER
EUCLID MIXED USE
SULTANA AVE.
8" RECYCLED WATER
ONTARIO RANCH ROAD
12" RECYCLED WATER
EXTEND & CONNECT TO EXISTING 12" AT EUCALYPTUS AVE.
EUCALYPTUS AVE.
30" RECYCLED WATER (IEUA)
12" RECYCLED WATER
LEGEND:
NEW RECYCLED WATER – LOCAL DIF (REQUIRED AND TO BE CONSTRUCTED BY PROJECT)
NEW RECYCLED WATER – NON DIF
EXISTING RECYCLED WATER
POINT OF CONNECTION
OWNER PROJECT AREA
WestLAND Group, Inc.
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
Land Surveyors • Civil Engineers • GIS
N.T.S.
Euclid Mixed Use Specific Plan • Development Agreement
DATE: 12/05/2023

EXHIBIT F-6
FIBER OPTIC IMPROVEMENTS



N.T.S.

LEGEND:
- NEW PRIMARY RING FIBER OPTIC (TO BE CONSTRUCTED BY PROJECT)
- NEW LATERAL FIBER OPTIC (TO BE CONSTRUCTED BY PROJECT)
- OWNER PROJECT AREA

WestLAND Group, Inc.
4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 989-9789 FAX: (909) 989-9660
Land Surveyors • Civil Engineers • GIS

Euclid Mixed Use Specific Plan • Development Agreement

DATE: 09/27/2023

Exhibit "G"

TO DEVELOPMENT AGREEMENT

FORM OF CERTIFICATE OF REGIONAL DIF CREDIT

Pursuant to Section 4.5.3 of this Agreement by and between the City of Ontario and _____, dated _____, 20__, the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called the "Development Agreement', the City of Ontario hereby certifies that OWNER is entitled to the following amount and nature of DIF Credits in the Regional Water DIF Infrastructure Category:

Amount of Credit: $_____

_____
Scott Ochoa, City Manager

Dated:_____

CITY OF ONTARIO *Agenda Report* **September 3, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Financial Services Prepared By: Stephanie Castro Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Claudia Hernandez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 8

SUBJECT: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 52 (SUNDANCE PARK)**

RECOMMENDATION: That the City Council consider and adopt an Ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 52 (Sundance Park).

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: The use of Mello-Roos financing in the Sundance Park residential development is projected to generate approximately $379,366 per year, at build-out, to fund administrative fees and municipal services; and approximately $21.4 million in bond proceeds to be used to fund a portion of the public infrastructure improvements needed to serve the project. Mello-Roos bonds are not a direct obligation of the City and are paid from special taxes levied on each taxable parcel in the District; therefore, there is no fiscal impact to the General Fund from the issuance of Mello-Roos bonds. City Council approval will be required to process annual special tax levies in future years.

BACKGROUND & ANALYSIS: The Mello-Roos Community Facilities Act of 1982 (the Act) provides local government, with the consent from a majority of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to finance various public infrastructure facilities and to fund municipal services.

At a public hearing conducted by the City Council on August 20, 2024, the City Council adopted a Resolution of Formation of Community Facilities District No. 52 (Sundance Park); authorized the levy of a special tax; established an appropriations limit of the Community Facilities District; and called a special election for the Community Facilities District. On that date, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the

two-thirds vote required by the Act. Adoption of the proposed ordinance to authorize the levy of special taxes within the Community Facilities District will conclude the formation process for the City of Ontario Community Facilities District No. 52 (Sundance Park).

The Sundance Park project addresses the development of two zones: Zone 1 is approximately 8.98 gross acres located west of Mill Creek Avenue, east of Haven Avenue, south of Chino Avenue, and north of Schaefer Avenue; and Zone 2 is approximately 23.89 gross acres located west of Mill Creek Avenue, east of Haven Avenue, south of Ontario Ranch Road, and north of Edison Avenue. At build-out, the project is expected to include a total of 418 residential units, comprised of 120 townhome units in Zone 1, and 298 units in Zone 2 (88 single-family and 210 townhomes).

ORDINANCE NO._____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING A SPECIAL TAX WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 52 (SUNDANCE PARK)

WHEREAS, on July 2, 2024, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District Proposed to be Named City of Ontario Community Facilities District No. 52 (Sundance Park) and to Authorize the Levy of a Special Tax Therein," stating its intention to establish City of Ontario Community Facilities District No. 52 (Sundance Park) (the "Community Facilities District") and to authorize the Community Facilities District to levy a special tax (the "Special Tax") within the Community Facilities District for the purpose of financing certain public facilities (the "Facilities") and services (the "Services"); and

WHEREAS, on August 20, 2024, the City Council held a noticed public hearing on the establishment of the Community Facilities District, as required by the Act; and

WHEREAS, subsequent to the close of said hearing, the City Council adopted resolutions entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of City of Ontario Community Facilities District No. 52 (Sundance Park), Proposing that the Community Facilities District Be Authorized to Levy a Special Tax and Proposing that an Appropriations Limit of the Community Facilities District Be Established" (the "Resolution of Formation"), "A Resolution of the City Council of the City of Ontario, California, Deeming it Necessary for City of Ontario Community Facilities District No. 52 (Sundance Park) to Incur Bonded Indebtedness" and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 52 (Sundance Park)," which resolutions established the Community Facilities District, proposed that the Community Facilities District be authorized to levy the Special Tax within the Community Facilities District, proposed that an appropriations limit of the Community Facilities District be established and called a special election to submit to the qualified electors of the Community Facilities District the combined ballot proposition to authorize the Community Facilities District to incur bonded indebtedness, to authorize the Community Facilities District to levy the Special Tax and to establish the appropriations limit of the Community Facilities District; and

WHEREAS, on August 20, 2024, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act; and

WHEREAS, the City Council is the legislative body of the Community Facilities District;

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby authorizes and levies the Special Tax within the Community Facilities District pursuant to Sections 53328 and 53340 of the Act, at the rate and in accordance with the method of apportionment set forth in Exhibit B to the Resolution of Formation (the "Rate and Method"). The Special Tax is hereby levied commencing in fiscal year 2024-25 and in each fiscal year thereafter until the last fiscal year in which the Special Tax is authorized to be levied pursuant to the Rate and Method.

SECTION 2. The City Council may, pursuant to subdivision (b) of Section 53340 of the Act, provide, by resolution, for the levy of the Special Tax in the current tax year or in future tax years at the same rate or at a lower rate than the rate provided by this Ordinance. In no event shall the Special Tax be levied on any parcel within the Community Facilities District in excess of the maximum tax specified therefor in the Rate and Method.

SECTION 3. The Special Tax shall be levied on all of the parcels in the Community Facilities District, unless exempted by law or by the Rate and Method.

SECTION 4. The proceeds of the Special Tax shall only be used to pay, in whole or in part, the cost of providing the Facilities and Services and incidental expenses pursuant to the Act.

SECTION 5. The Special Tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same penalties and the same procedure, sale and lien priority in the case of delinquency as is provided for *ad valorem* taxes or in such other manner as the City Council shall determine, including direct billing of the affected property owners.

SECTION 6. If for any reason any portion of this Ordinance is found to be invalid, or if the Special Tax is found inapplicable to any particular parcel within the Community Facilities District, by a court of competent jurisdiction, the balance of this Ordinance and the application of the Special Tax to the remaining parcels within the Community Facilities District shall not be affected.

SECTION 7. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 3rd day of September, 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held August 20, 2024 and adopted at the regular meeting held September 3, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held September 3, 2024 and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **September 3, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Andrea Ampig Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 9

SUBJECT: ACCEPTANCE OF SENATE BILL 1383 LOCAL ASSISTANCE GRANT PROGRAM FUNDING FROM CALIFORNIA'S DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

RECOMMENDATION: That the City Council Authorize the City Manager, or his designee, to execute all documents necessary to accept grant award funds in the amount of $476,003 from California's Department of Resources Recycling and Recovery (CalRecycle) for the Senate Bill (SB) 1383 Local Assistance Grant Program.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The City has been awarded $476,003 from CalRecycle for the SB 1383 Local Assistance Grant Program. This is a prefunded grant and no cost sharing is required. If approved, appropriations in the Integrated Waste Fund will be included in future quarterly budget updates to the City Council for approval.

BACKGROUND & ANALYSIS: Governor Jerry Brown signed SB 1383, Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions, into law in September 2016. In November 2020, CalRecycle released the final regulations for SB 1383. CalRecycle began enforcement actions on January 1, 2022. SB 1383 builds upon Assembly Bill 1826 (organic waste recycling law), which previously went into effect on April 1, 2016.

The goal of SB 1383 is to reduce methane emissions resulting from the decomposition of organic waste in landfills. This is accomplished through implementing comprehensive organics recycling programs and reducing the amount of edible food being landfilled. In turn, cities are required to manage robust programs such as outreach to residents and commercial entities, tracking and distribution of edible food produced at certain food businesses, and overseeing the procurement of recycled organics products.

Funding received from the SB 1383 Local Assistance Grant Program will be used to administer various programs and fund purchases for the City to achieve compliance with SB 1383. This includes purchasing bins and lids for organic waste collection and printing informational pamphlets and truck signs promoting the City's recycling programs. The grant award will also be used to partially fund the SMART SB 1383 software created by GO2Zero, a food donation and rescue software that the Integrated Waste Department has been utilizing since December 2023 and the Routeware routing optimization and service confirmation software that the Integrated Waste Department has utilized in their operations since October 2021.

City Staff is required to submit Progress Reports to Calrecycle periodically throughout the grant term ending on April 1, 2026.

Request for Approval

Revised May 2024

To: **Karen Kayfetz**
Acting Deputy Director, Division of Circular Economy

From: **Michelle Martin**
Branch Chief, Financial Resources Management Branch

Request Date: **February 14, 2024**

Decision Subject: Awards for the SB 1383 Local Assistance Grant Program (Greenhouse Gas Reduction Fund, Fiscal Year 2022–23)

Action By: February 20, 2024 May 24, 2024

Summary of Request

Staff requests approval of 387 grant awards in the amount of $109,515,543~~$109,590,543~~ for the SB 1383 Local Assistance Grant Program (Program) for fiscal year (FY) 2022–23.

Funding

The FY 2022–23 Budget Act allocated $180,000,000 to be used to assist local jurisdictions in the implementation of regulations adopted by the Department of Resources Recycling and Recovery pursuant to Chapter 395 of the Statutes of 2016, with $9,000,000 reserved to cover administrative costs. CalRecycle allocated $90,000,000 to the SB 1383 Local Assistance Grant Program. The remaining funds were allocated to the Organics Grant Program to fund immediate, critical infrastructure needed to process organic waste as required by SB 1383. After award of the Organics Grant Program, there was $19,590,543 remaining. Those funds were moved to the SB 1383 Local Assistance Grant making the total amount available for award to $109,590,543.

Table 1. Funding

Fund Source	Amount Available	Amount to Fund Item	Amount Remaining	Line Item
Greenhouse Gas Reduction Fund	$109,590,543	$109,515,543 ~~$109,590,543~~	$75,000 ~~$0~~	Local Assistance Grants

Background and Findings

Statutory Authority

Senate Bill (SB) 1383 Lara, Chapter 395, Statutes of 2016, set methane emissions reduction targets for California in a statewide effort to reduce emissions of short-lived climate pollutants. The Budget Act of 2022 authorizes CalRecycle to award grants to local jurisdictions to assist in the implementation of programs to meet these statutory requirements.

Program Background

The SB 1383 Local Assistance Grant Program provides funding to assist local jurisdictions with meeting the requirements below:

- Provide organics collection services to all residents and businesses
- Conduct education and outreach to the community
- Secure access to recycling and edible food recovery capacity
- Establish edible food recovery program
- Procure recyclable and recovered organic products
- Monitor compliance and conduct enforcement

Criteria and Process

The Eligibility Criteria and Evaluation Process was approved by the Deputy Director on July 19, 2023 and was presented at the July 2023 CalRecycle Monthly Public Meeting. The Notice of Funds Available was placed on the CalRecycle web site on September 14, 2023, with an appropriate notice sent to interested parties.

Applications were due November 15, 2023, with a secondary due date of December 20, 2023, for authorizing documentation submission. CalRecycle received 390 applications requesting $78,899,869. Staff reviewed the applications in accordance with the approved evaluation and criteria. Subsequently, three applications did not meet the eligibility requirements and are therefore ineligible. The base grant award is $75,000 for eligible entities. The remaining funds will be distributed to eligible entities based on per capita calculations using the Department of Finance's January 2023 population statistics and data provided by special districts. Staff proposes to fund 387 applications.
If additional monies become available, staff recommends funding the remaining applicants.

Listed below are the types of projects recommended for funding. The types of projects recommended for funding include but are not limited to: green bins and food waste counter pails, development of education and outreach materials, record keeping subscriptions, equipment for food rescue, compost procurement, enforcement and inspections, and personal and administrative costs.

Recommendation

Staff recommends approval of 387 grant awards as listed below for $109,515,543~~$109,590,543~~.

Table 2. Recommended Awards

Applicant	Award Amount
Alameda County	$388,722
Amador County • City of Amador • City of Ione • City of Jackson • City of Plymouth • City of Sutter Creek	$450,000
Castro Valley Sanitary District	$173,811
Central Contra Costa Solid Waste Authority dba RecycleSmart • City of Lafayette • City of Orinda • City of Walnut Creek • Town of Danville • Town of Moraga	$531,371
City and County of San Francisco	$2,161,472
City of Adelanto	$103,014
City of Agoura Hills	$75,000
City of Alameda	$208,212
City of Alhambra	$218,610
City of Aliso Viejo	$139,546
City of American Canyon	$75,000
City of Anaheim	$858,835
City of Antioch	$306,999
City of Arcata	$75,000
City of Artesia	$75,000
City of Atwater	$89,452
City of Auburn	$75,000
City of Avalon	$75,000
City of Avenal	$75,000
City of Bakersfield	$1,065,428
City of Banning	$89,017
City of Barstow	$75,000
City of Beaumont	$154,625
City of Bell Gardens	$107,651
City of Bellflower	$207,272
City of Belmont	$77,478
City of Benicia	$75,891
City of Berkeley	$328,023
City of Beverly Hills	$90,074
City of Big Bear Lake	$75,000
City of Blythe	$75,000
City of Brawley	$79,409
City of Brea	$132,861

Applicant	Award Amount
City of Brentwood	$175,139
City of Brisbane	$75,000
City of Buellton	$75,000
City of Buena Park	$224,342
City of Burbank	$278,760
City of Burlingame	$86,133
City of Calabasas	$75,000
City of Calexico	$108,298
City of Calimesa	$75,000
City of Camarillo	$187,556
City of Canyon Lake	$75,000
City of Capitola	$75,000
City of Carlsbad	$304,687
City of Carpinteria	$75,000
City of Cathedral City	$141,273
City of Ceres	$131,683
City of Chico	$286,162
City of Chino	$249,249
City of Chino Hills	$207,619
City of Chula Vista	$719,552
City of Citrus Heights	$230,349
City of Claremont	$103,281
City of Clayton	$75,000
City of Clovis	$330,511
City of Coachella	$118,046
City of Coalinga	$75,000
City of Colfax	$75,000
City of Colton	$145,729
City of Compton	$250,756
City of Concord	$324,170
City of Corcoran	$75,000
City of Corona	$414,610
City of Coronado	$75,000
City of Costa Mesa	$295,972
City of Culver City	$110,849
City of Cupertino	$161,264
City of Cypress	$137,092
City of Daly City	$270,827
City of Davis	$174,062
City of Del Mar	$75,000
City of Delano	$142,034
City of Desert Hot Springs	$92,533
City of Diamond Bar	$146,317
City of Dinuba	$75,000
City of Dixon	$75,000

Applicant	Award Amount
City of Dos Palos	$75,000
City of Downey	$296,174
City of Dublin	$193,876
City of East Palo Alto	$82,120
City of Eastvale	$188,087
City of El Cajon	$278,977
City of El Centro	$123,181
City of El Cerrito	$75,000
City of El Monte	$283,529
City of El Segundo	$75,000
City of Elk Grove	$466,392
City of Emeryville	$75,000
City of Encinitas	$166,263
City of Escalon	$75,000
City of Escondido	$395,953
City of Eureka	$75,785
City of Fairfield	$317,573
City of Ferndale	$75,000
City of Fillmore	$75,000
City of Folsom	$229,471
City of Fontana	$561,790
City of Fort Bragg	$75,000
City of Fortuna	$75,000
City of Foster City	$92,779
City of Fountain Valley	$155,653
City of Fremont	$602,222
City of Fresno	$1,415,099
City of Fullerton	$378,021
City of Galt	$75,000
City of Garden Grove	$451,318
City of Gardena	$162,960
City of Glendale	$503,362
City of Goleta	$92,104
City of Grass Valley	$75,000
City of Gustine	$75,000
City of Half Moon Bay	$75,000
City of Hawaiian Gardens	$75,000
City of Hawthorne	$229,999
City of Hayward	$421,847
City of Hemet	$240,915
City of Hermosa Beach	$75,000
City of Hesperia	$267,124
City of Hidden Hills	$75,000
City of Highland	$153,056
City of Holtville	$75,000

Applicant	Award Amount
City of Hughson	$75,000
City of Huntington Beach	$514,832
City of Huntington Park	$146,058
City of Imperial	$75,000
City of Imperial Beach	$75,072
City of Indio	$243,294
City of Industry	$75,000
City of Inglewood	$283,195
City of Irvine	$792,738
City of Jurupa Valley	$279,920
City of Kerman	$75,000
City of Kingsburg	$75,000
City of La Habra	$168,205
City of La Mesa	$164,536
City of La Puente	$104,826
City of La Quinta	$106,439
City of La Verne	$91,104
City of Laguna Beach	$75,000
City of Laguna Hills	$87,140
City of Laguna Niguel	$175,628
City of Laguna Woods	$75,000
City of Lake Elsinore	$194,453
City of Lake Forest	$233,689
City of Lakewood	$215,635
City of Lancaster	$456,996
City of Lathrop	$98,934
City of Lawndale	$88,065
City of Lemon Grove	$79,101
City of Lemoore	$77,001
City of Lincoln	$143,552
City of Livermore	$227,646
City of Livingston	$75,000
City of Lodi	$179,747
City of Lomita	$75,000
City of Lompoc	$120,716
City of Long Beach	$1,194,492
City of Los Alamitos	$75,000
City of Los Altos	$88,425
City of Los Angeles	$9,758,951
City of Lynwood	$179,579
City of Malibu	$75,000
City of Manhattan Beach	$96,873
City of Martinez	$102,722
City of Maywood	$75,000
City of Menifee	$292,997

Applicant	Award Amount
City of Menlo Park	$92,197
City of Millbrae	$75,000
City of Milpitas	$217,999
City of Mission Viejo	$245,907
City of Modesto	$569,930
City of Montclair	$105,184
City of Montebello	$167,713
City of Monterey Park	$161,611
City of Moorpark	$99,117
City of Moreno Valley	$547,390
City of Morgan Hill • City of Gilroy	$290,583
City of Mountain View	$224,560
City of Murrieta	$292,904
City of Napa	$207,005
City of National City	$165,976
City of Newark	$130,984
City of Norco	$75,000
City of Norwalk	$270,003
City of Oakdale	$75,000
City of Oakland	$1,094,382
City of Oakley	$124,605
City of Oceanside	$451,008
City of Ojai	$75,000
City of Ontario	$476,003
City of Orange	$368,156
City of Orange Cove	$75,000
City of Oroville	$75,000
City of Oxnard	$519,396
City of Pacifica	$104,117
City of Palm Desert	$139,155
City of Palm Springs	$122,267
City of Palmdale	$437,684
City of Palo Alto	$182,321
City of Palos Verdes Estates	$75,000
City of Paramount	$143,202
City of Pasadena	$362,784
City of Patterson	$75,000
City of Pico Rivera	$165,978
City of Pinole	$75,000
City of Pittsburg	$201,796
City of Placentia	$144,054
City of Placerville	$75,000
City of Pleasant Hill	$94,576
City of Pleasanton	$206,068

Applicant	Award Amount
City of Point Arena	$75,000
City of Porterville	$170,155
City of Poway	$133,635
City of Rancho Cordova	$218,128
City of Rancho Cucamonga	$457,434
City of Rancho Mirage	$75,000
City of Rancho Palos Verdes	$114,339
City of Rancho Santa Margarita	$129,967
City of Redding	$247,509
City of Redlands	$194,451
City of Redondo Beach	$185,221
City of Redwood City	$219,107
City of Reedley	$75,000
City of Rialto	$274,747
City of Richmond	$302,018
City of Ridgecrest	$80,305
City of Rio Dell	$75,000
City of Rio Vista	$75,000
City of Ripon	$75,000
City of Riverbank	$75,000
City of Riverside	$820,247
City of Rocklin	$192,398
City of Rolling Hills	$75,000
City of Rolling Hills Estates	$75,000
City of Roseville	$404,054
City of Sacramento	$1,349,680
City of San Bruno	$116,990
City of San Buenaventura	$286,025
City of San Carlos	$84,476
City of San Diego	$3,551,023
City of San Dimas	$96,342
City of San Fernando	$75,000
City of San Gabriel	$107,700
City of San Jacinto	$148,186
City of San Jose	$2,491,720
City of San Juan Capistrano	$98,957
City of San Leandro	$234,647
City of San Marcos	$252,856
City of San Mateo	$275,609
City of San Pablo	$89,149
City of San Ramon	$222,667
City of Sanger	$76,049
City of Santa Ana	$783,881
City of Santa Barbara	$229,264
City of Santa Clara	$351,102

Applicant	Award Amount
City of Santa Cruz	$171,801
City of Santa Fe Springs	$75,000
City of Santa Maria	$291,555
City of Santa Monica	$245,580
City of Santa Paula	$89,465
City of Santee	$161,453
City of Scotts Valley	$75,000
City of Seal Beach	$75,000
City of Selma	$75,000
City of Shafter	$75,000
City of Solana Beach	$75,000
City of South Gate	$247,931
City of South Lake Tahoe	$75,000
City of South San Francisco	$174,647
City of Stanton	$109,300
City of Stockton	$835,924
City of Suisun City	$81,822
City of Sunnyvale	$412,829
City of Taft	$75,000
City of Tehachapi	$75,000
City of Temecula	$290,059
City of Thousand Oaks	$326,482
City of Torrance	$378,497
City of Tracy	$255,665
City of Trinidad	$75,000
City of Tulare	$188,509
City of Turlock	$191,561
City of Tustin	$214,092
City of Twentynine Palms	$75,241
City of Union City	$180,941
City of Upland	$211,031
City of Vacaville	$269,105
City of Vallejo	$323,093
City of Vernon	$75,000
City of Victorville	$363,315
City of Villa Park	$75,000
City of Visalia	$378,430
City of Vista	$266,591
City of Wasco	$77,035
City of Watsonville	$137,242
City of West Sacramento	$148,404
City of Westlake Village	$75,000
City of Westminster	$242,417
City of Whittier	$234,113
City of Wildomar	$102,186

Applicant	Award Amount
City of Willits	$75,000
City of Winters	$75,000
City of Woodlake	$75,000
City of Woodland	$163,146
City of Yorba Linda	$181,754
City of Yucaipa	$147,896
Contra Costa County	$459,414
Costa Mesa Sanitary District	$315,341
Del Norte Solid Waste Management Authority • City of Crescent City • Del Norte County	$150,000
El Dorado County	$416,857
El Dorado Hills Community Services District	$126,168
Fresno County	$419,377
Garden Grove Sanitary District	$455,122
Heber Public Utility District	$75,000
Helendale Community Service District	$75,000
Home Garden Community Services District	$75,000
Humboldt County	$191,655
Imperial County	$95,705
Kensington Police Protection and Community Services District	$75,000
Kern County	$793,965
Kings County	$87,593
Lake County	$125,832
Los Angeles County	$2,592,030
Madera County	$199,091
Marin City Community Services District	$75,000
Marin County Hazardous and Solid Waste Management Joint Powers Authority • City of Belvedere • City of Larkspur • City of Mill Valley • City of Novato • City of San Rafael • City of Sausalito • Marin County • Town of Corte Madera • Town of Fairfax • Town of Ross • Town of San Anselmo • Town of Tiburon	$1,157,867

Applicant	Award Amount
Mariposa County	$75,000
Mendocino County	$165,846
Merced County	$242,717
Midway City Sanitary District	$274,786
Modoc County	$75,000
Montara Water & Sanitary District	$75,000
Monterey County	$277,986
Monterey Regional Waste Management District (dba ReGen Monterey) • City of Carmel-by-the-Sea • City of Del Rey Oaks • City of Marina • City of Monterey • City of Pacific Grove • City of Sand City • City of Seaside • Pebble Beach Community Services District	$612,849
Mountain House Community Service District	$75,000
Nevada County	$182,132
Novato Sanitary District	$163,454
Orange County	$350,165
Oro Loma Sanitary District	$357,637
Phelan Pinon Hills Community Services District	$75,360
Placer County	$297,821
Plumas County	$75,000
Rancho Murieta Community Services District	$75,000
Regional Waste Management Authority • City of Live Oak • City of Marysville • City of Wheatland • City of Yuba City • Sutter County • Yuba County	$667,656
Riverside County	$1,048,132
Rodeo Sanitary District	$75,000
Sacramento County	$1,557,735
Salinas Valley Solid Waste Authority • City of Gonzales • City of Greenfield • City of King City • City of Salinas • City of Soledad	$722,025

Applicant	Award Amount
San Benito County Integrated Waste Management Regional Agency • City of Hollister • City of San Juan Bautista • San Benito County	$269,157
San Bernardino County	$778,319
San Diego County	$1,328,221
San Gabriel Valley Council of Governments • City of Arcadia • City of Azusa • City of Baldwin Park • City of Covina • City of Duarte • City of Glendora • City of Irwindale • City of La Canada Flintridge • City of Monrovia • City of Pomona • City of Rosemead • City of San Marino • ~~City of Sierra Madre~~ • City of South El Monte • City of South Pasadena • City of Temple City • City of Walnut • City of West Covina	$2,314,899 ~~$2,389,899~~
San Joaquin County	$416,125
San Luis Obispo County	$321,734
San Luis Obispo County Integrated Waste Management Authority • Avila Beach Community Services District • California Valley Community Service District • Cambria Community Services District • Cayucos Sanitary District • City of Arroyo Grande • City of Atascadero • City of Grover Beach • City of Morro Bay • City of Paso Robles • City of Pismo Beach • City of San Luis Obispo • Heritage Ranch Community Service District • Los Osos Community Services District • Nipomo Community Service District	$1,430,723

Applicant	Award Amount
• Oceano Community Service District • San Miguel Community Services District • San Simeon Community Services District • Templeton Community Service District	
San Mateo County	$165,976
Santa Barbara County	$365,114
Santa Clara County	$245,397
Santa Cruz County	$338,133
Santa Lucia Community Services District	$75,000
Shasta County • City of Anderson • City of Shasta Lake	$328,282
Siskiyou County • City of Dorris • City of Dunsmuir • City of Etna • City of Fort Jones • City of Montague • City of Mount Shasta • City of Tulelake • City of Weed • City of Yreka	$750,000
Solano County	$75,000
Sonoma County Waste Management Agency • City of Cloverdale • City of Cotati • City of Healdsburg • City of Petaluma • City of Rohnert Park • City of Santa Rosa • City of Sebastopol • City of Sonoma • Sonoma County • Town of Windsor	$1,537,564
Stanislaus County	$292,184
Tamalpais Community Services District • Almonte Sanitary District • Alto Sanitary District • Bolinas Community Public Utility District • Homestead Valley Sanitary District • Las Gallinas Valley Sanitary District • Strawberry Recreation District	$535,781

Applicant	Award Amount
Tehama County Solid Waste Management Agency • City of Corning • City of Red Bluff • City of Tehama • Tehama County	$340,333
Town of Apple Valley	$202,280
Town of Atherton	$75,000
Town of Colma	$75,000
Town of Hillsborough	$75,000
Town of Loomis	$75,000
Town of Mammoth Lakes	$75,000
Town of Paradise	$75,000
Town of Portola Valley	$75,000
Town of Truckee	$75,000
Town of Woodside	$75,000
Town of Yucca Valley	$75,000
Tulare County	$354,476
Tuolumne County • City of Sonora	$211,328
Upper Valley Waste Management Agency • City of Calistoga • City of St Helena • Napa County • Town of Yountville	$300,000
Ventura County	$246,469
West Contra Costa Integrated Waste Management Authority • City of Hercules	$76,194
West Valley Solid Waste Management Authority • City of Campbell • City of Monte Sereno • City of Saratoga • Town of Los Gatos	$374,757
Yolo County	$99,195
Total Award	**$109,515,543** ~~**$109,590,543**~~

Revisions were made to the RFA because one of the participating jurisdictions was not able to resolve the outstanding debt issue in time and were subsequently removed from the grant award.

Deputy Director Action

On the basis of the information and analysis in this Request for Approval and the findings set out herein, I hereby conditionally approve the grant awards for the SB 1383 Local Assistance Grant Program as listed in Table 2. Each proposed grantee's award is subject to three conditions:

1. The recommended grantee must pay all outstanding debts due to CalRecycle, or bring current any outstanding payments owed to CalRecycle, within 60 days of the date of the award email.
2. The recommended grantee is responsible for submitting all outstanding documents required by CalRecycle during the application process, as well as those identified in the Application Guidelines and Instructions, prior to the release of funding.
3. The recommended grantee must have a valid Resolution in place within 60 days of the date of the award email.

Signed By: Karen Kayfetz, Acting Deputy Director	May 30, 2024
Karen Kayfetz Acting Deputy Director	Dated

CITY OF ONTARIO *Agenda Report* **September 3, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Information Technology Prepared By: Samantha Robles Staff Member Presenting: Colin Fernandes, Executive Director Information Technology Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 10

SUBJECT: AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH COLLABORATIVE SOLUTIONS, LLC FOR WORKDAY SERVICE SUPPORT

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 2 to the Professional Services with Collaborative Solutions, LLC of Teaneck, New Jersey, for ongoing full-suite Workday support and configuration services, increasing the authorized contract amount by $216,020 for a total contract not-to-exceed amount of $514,824.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes appropriations from the Information Technology Fund for consulting services, appropriations from the Human Resources Fund for miscellaneous services and appropriations from the Finance Fund for other professional services. The proposed Amendment to the Professional Services Agreement includes $200,000 for an additional 1,000 consultant hours and 200 project associate hours to use throughout the end date of the contract, December 31, 2028, and $16,020 for a benefits tenant analysis and plan, and increases the authorized contract amount by $216,020 for a total contract not-to-exceed amount of $514,824 over the five-year term. The fixed billing rates specified in the current Agreement will determine the amount charged for services and reflect the actual services provided. If approved, appropriations will be added to the future years' budgets consistent with the annual budget adoption process.

BACKGROUND & ANALYSIS:

The consulting firm Collaborative Solutions, LLC has provided the City with on-demand support services for Workday Human Capital Management (HCM) for over five years, on-demand support services for Workday Finance Enterprise Resource Planning (ERP) for over a year, and was also the City's implementation partner for Workday Finance Enterprise Resource Planning (ERP) system.

The City approved a new Agreement in 2023 for three years (with two optional years) with a not-to-

exceed amount of $298,804 to provide on-going Workday support and configuration services. The City has relied on Collaborative Solutions, LLC's deep understanding of the City's Workday HCM and ERP configuration and business rules to help ensure proper execution of short-term requirements while laying the foundation of long-term stability and growth. An expanded engagement with Collaborative Solutions, LLC will aim to address the long-term growth and flexibility of the Workday HCM and ERP systems. In addition to maintenance services needed to upkeep the Workday system, the expanded engagement seeks to provide a comprehensive assessment of the City's HCM benefits and Finance ERP configuration to keep the system up-to-date with current and future business processes and requirements. Staff requests City Council approval to amend the Agreement to increase the not-to-exceed amount to $514,824 with no change to the Agreement term.

CITY OF ONTARIO
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PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
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RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND COLLABORATIVE SOLUTIONS, LLC

1. Parties and Date.

This Amendment No. 2 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and Collaborative Solutions, LLC, a Virginia limited liability company ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Consultant have entered into a "Professional Services Agreement" dated November 21, 2023 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to extend the terms and revise/add the scope of work. The Parties have heretofore entered into that Amendment No. 1, dated April 26, 2024.

2.3 Amendment Authority. This Amendment No. 2 is authorized pursuant to Section 3.1.1 General Scope of Service Term, 3.1.3 Deliverable and Acceptance, and 3.2.1 Compensation of the Agreement.

3. Terms.

3.1 Amendment. Section 3.1.1 General Scope of Services and Sections 3.1.3 Deliverable and Acceptance of the Agreement is hereby amended in its entirety to read as follows:

General Scope of Services. "Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional consulting services necessary for the Project ("Services"). The Services are more particularly described in mutually agreed upon Statements of Work document(s) ("SOW") and Project Change Order ("PCO") dated August 2, 2024, included in the Agreement as Exhibit "B," and Exhibit "C" which the Parties shall execute. In addition, Consultant will provide to the City certain results or proceeds of the Services that are defined as deliverables in each Statement of Work (collectively, the "Deliverables"). All Services shall be subject to, and performed in accordance with, this Agreement, and all applicable local, state and federal laws, rules and regulations related to the performance of Consultant's Services. Each Statement of Work and Project Change Order shall specifically identify this Agreement and indicate that it is subject to the terms hereof. Unless otherwise set forth herein or expressly identified in the SOW of PCO as a modification to a specified provision of this Agreement, to the extent there are any conflicts or inconsistencies between this Agreement and any Statement of Work or Project Change Order, the provisions of this Agreement shall govern and control. Any Affiliate of Consultant may itself provide Services directly to City and any Affiliates of City under this Agreement by executing SOWs and PCOs in its own name, exclusive of Consultant, and only for the purposes of any such SOW(s), shall be considered "Consultant" as that term is used in this Agreement."

Deliverable and Acceptance. "Deliverables, if any, under this Agreement will be as set forth under any SOW and PCO. Each SOW and PCO will describe, if applicable, the Deliverables that Consultant is obligated to furnish to City hereunder, the acceptance criteria for each of the Deliverables (the "Acceptance Criteria") and the completion criteria, if any, to signify completion of each phase of a project. City shall review, evaluate and/or test, as the case may be, each of the Deliverables within the applicable time period set forth in a SOW and PCO (with respect to each Deliverable, the "Acceptance Period") to determine whether or not such Deliverable satisfies the applicable Acceptance Criteria in all material respects. If City does not furnish a written notice to Consultant specifying that a Deliverable has failed to satisfy its Acceptance Criteria in all material respects prior to the end of the Acceptance Period therefor and/or if City commences using the Deliverables commercially or in a production environment, then City will be deemed to have accepted such Deliverable. If any Deliverable fails to satisfy its Acceptance Criteria in any material respect, then City will notify Consultant in writing specifying the respects in which such Deliverable does not conform to the applicable Acceptance Criteria and what modifications are necessary to make it conform thereto. Thereafter, Consultant shall use its diligent commercially reasonable efforts to modify such Deliverable to so conform and the Deliverable will be resubmitted for acceptance by City . If, after repeated attempts, Consultant is unable to remedy any non-conforming portion of any Deliverable, City may terminate pursuant to Section 12.2 herein.

Amendment. Section 3.2.1 Compensation of the Agreement is hereby amended in its entirety to read as follows:

Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in the mutually agreed upon Project Change Order included in the Agreement as "Exhibit B" and Exhibit "C." The Agreement will increase by two-hundred sixteen thousand twenty dollars ($216,020) for a revised total not to exceed compensation of five-hundred fourteen thousand eight hundred and twenty-four dollars ($514,824) without the written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 2, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 2. From and after the date of this Amendment No. 2, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 2.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 2.

3.4 Severability. If any portion of this Amendment No. 2 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 2 TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND COLLABORATIVE SOLUTIONS, LLC

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 2 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

COLLABORATIVE SOLUTIONS, LLC

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

cognizant

Project Change Order

This change order form is used for requesting, documenting and approving changes to the Workday deployment including but not limited to changes to project scope; changes for a major configuration element; project timeline/schedule changes; integration specifications changes; addition of resources; or any other deliverable change from the originally planned Workday deployment.

Summary

Client:	City of Ontario, California
SOW/Project Name:	PROJ_62508/ City of Ontario CVS Renewal 23-28
Change Order #:	C01
Project Manager (Client):	Choon Vu Lam, City of Ontario, California
Project Sponsor (Client):	Choon Vu Lam, City of Ontario, California
Engagement Manager (Cognizant):	Lauren Rayens, Cognizant
Acceptance Due Date:	August 31, 2024
Change Type:	Other (details in request description)
Impact Assessed by:	Lauren Rayens, Graham Huber, Reed Sigler
Priority:	Normal
Billing:	Bill separately under a new project
Contract Line Type:	Time and Material
Is new PO# required?	No new PO# needed

Request Description

The City of Ontario requested a Benefits Tenant Analysis and Plan (TA&P). This change order provides the scope, estimated timeline, and estimated effort.

Business Purpose / Reason for Change

The City of Ontario requested to do a Benefit Tenant Analysis and plan.

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Impact Assessment

Project Activities Affected:

Benefits Tenant Analysis and Plan

Stage	CSLLC Services	Client Responsibilities
Plan	• Assemble the CSLLC project team • Create the project plan • Jointly schedule TA&P workshops • Participate and support the project kickoff meeting • Schedule recurring project meetings and status reporting • Provide stage sign-off document	• Identify and provide project team and project Subject Matter Experts ("SMEs") • Client will provide any pre-identified, priority issues • Provide input into the project plan • Approve and sign off on project plan
Analyze	• Manage the project plan • Lead weekly project meetings • Provide stage sign-off document Workday TA&P: • Conduct a remote TA&P workshop for each Workday functional area as identified to meet with key functional leads to review challenges and known pain points in the current setup and opportunity areas • Review Workday tenant configuration and conduct a quality tenant analysis for best practices • Review Workday configuration structures, business processes, Workday security, calculations, and rules per relevance to each functional area identified • Review and identify new Workday functionality found within tenant analysis area and functionality subscribed to but not utilized within tenant analysis area	• Provide input to the project plan • Participate in weekly project meeting • Provide project SMEs for TA&P workshops • Complete data gathering workbooks and submit • Participate in TA&P workshops
Recommend	• Manage the project plan • Lead weekly project meetings • Conduct weekly workstream meetings • Provide stage sign-off document • Develop recommendations Deliverable • CSLLC will estimate the level of effort for the "Top Ten" recommendations (or recommendations are identified) • Conduct a meeting, to review the tenant analysis finding with the Client team using a high-level PowerPoint summary	• Provide input to the project plan and participate in weekly project meetings • Provide input to baseline review session on recommendation findings • Participate in the final review session
Deliverables	• Recommendations document (Microsoft Word) detailing recommended Workday	• Sign off on stage

	configuration changes in more depth, including a recommended approach to the Client, based upon priority, dependency, and complexity • Presentation (Microsoft PowerPoint) of key recommendations per functional area
Deliverables Affected:	• Detailed Findings and Recommendations Report • Summary of Findings and Recommendations Presentation
Project Schedule Impact:	Start Date: 10/07/24 End Date: 01/24/25

Tenant Analysis Timeline by Stage

	Plan	Analyze	Recommend	Total Weeks
Weeks	4	8	4	16
Estimated Start Date	10/07/24	11/04/24	12/30/25	
Estimated End Date	11/01/24	12/27/24	01/24/25	

Pricing Matrix:

The following is the change in effort and cost estimate:

CSLLC will invoice and Client shall compensate CSLLC on a Time and Materials Basis ("T&M Basis") based upon the hourly rates set forth in the table below for Services rendered and expenses incurred on a monthly basis, with the exception of the Managed Services costs, which will be invoiced in full upon execution of this SOW. Invoices will be paid subject to the terms and conditions of the Agreement. Total estimated cost of the engagement is listed in the table below:

Pricing Matrix

CSLLC T&M Basis	Hourly Rate	Hours	Total
Benefits Consultant	$197	60	$11,820
Total Hours	60		
Consulting Services			$11,820
Enhanced Managed Services			$4,200
Subtotal			$16,020
Estimated Expenses			$0
Grand Total			$16,020

Payment Terms

- This change order will be invoiced as Time & Materials at the rate prescribed in the SOW and shown in the Estimated Effort and Cost table above.
- The Enhanced Managed Services Fee on this Change Order will be invoiced upon execution by both parties at the rates identified in the Pricing Matrix above.

Assumptions

- All Assumptions from the SOW dated 01 January 2024 apply to this Change Order

Authorization

City of Ontario, California Authorization Signature	Collaborative Solutions Authorization Signature
Name	Name
Job Title	Job Title
Date	Date

cognizant

Project Change Order

This change order form is used for requesting, documenting and approving changes to the Workday deployment including but not limited to changes to project scope; changes for a major configuration element; project timeline/schedule changes; integration specifications changes; addition of resources; or any other deliverable change from the originally planned Workday deployment.

Summary

Client:	City of Ontario, California
SOW/Project Name:	PROJ_62508/ City of Ontario CVS Renewal 23-28
Change Order #:	C02
Project Manager (Client):	Choon Vu Lam, City of Ontario, California
Project Sponsor (Client):	Choon Vu Lam, City of Ontario, California
Engagement Manager (Cognizant):	Lauren Rayens, Cognizant
Acceptance Due Date:	August 12, 2024
Change Type:	Change in Scope (additional hours added)
Impact Assessed by:	Lauren Rayens, Graham Huber, Michelle Nguyen
Priority:	Normal
Billing:	Bill under current project
Contract Line Type:	Time and Material
Is new PO# required?	No new PO# needed

Request Description

The request is to add an additional 1,000 consultant hours and 200 Project Associate hours to the project.

Additionally, the client is able to access their full bucket of hours throughout the end date of the contract, December 31, 2028, without being restricted to a specific number of hours each year. The total contract, including this change order, should not exceed $498,804.

Business Purpose / Reason for Change

The client has requested to add additional hours to continue receiving Lean On support.

cognizant

Impact Assessment

Project Activities Affected:	N/A
Deliverables Affected:	N/A
Project Schedule Impact:	End Date: December 31, 2028
Pricing Matrix:	The following is the change in effort and cost estimate: CSLLC will invoice and Client shall compensate CSLLC on a Time and Materials Basis ("T&M Basis") based upon the hourly rates set forth in the table below for Services rendered and expenses incurred on a monthly basis, with the exception of the Managed Services costs, which will be invoiced in full upon execution of this SOW. Invoices will be paid subject to the terms and conditions of the Agreement. Total estimated cost of the engagement is listed in the table below: Pricing Matrix

CSLLC T&M Basis	Hourly Rate	Hours	Total
CVS Consultant	$197	1,000	$197,000
Total Hours		1,000	
Consulting Services			$197,000
Managed Services			$38,000
Subtotal			$235,000
CSLLC Investment			-$35,000
Estimated Expenses			$0
Grand Total			$200,000

Payment Terms

- This change order will be invoiced as Time & Materials at the rate prescribed in the SOW and shown in the Estimated Effort and Cost table above.
- The Managed Services Fee on the Change Order will be invoiced upon execution by both parties at the rates set forth in the SOW and as identified in the Pricing Matrix above.

Assumptions

- All Assumptions from the SOW dated 01 January 2024 apply to this Change Order

Authorization

City of Ontario, California Authorization Signature	Collaborative Solutions Authorization Signature
Name	Name
Job Title	Job Title
Date	Date

CITY OF ONTARIO *Agenda Report* **September 3, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Community Life and Culture Prepared By: Lacey A Rightmer Staff Member Presenting: Helen McAlary, Executive Director Community Life and Culture Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 11

SUBJECT: AMERICORPS STATE COMPETITIVE CONTINUATION GRANT FOR 2024-25

RECOMMENDATION: That the City Council authorize the City Manager or designee to execute grant documents and accept a $368,000 AmeriCorps Competitive Continuation Grant for October 2024 through September 2025 to fund the Ontario Promise Corps project.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

FISCAL IMPACT: The Community Life & Culture Agency has been awarded $368,000 from AmeriCorps, a federal agency, for the Fiscal Year 2024-25 AmeriCorps Competitive Continuation Grant to fund the 2024-25 Ontario Promise Corps program year. The City is required to provide a cash match of $507,833, which includes $194,890 towards the living allowance of the AmeriCorps members, $85,605 in in-kind services related to existing personnel and administrative fees associated with the grant. The program partners (Ontario-Montclair Schools Foundation and Hope Through Housing Foundation) will reimburse up to $135,000 of the City's cash match. The number of AmeriCorps members recruited for those locations will determine the exact reimbursement amount. Additionally, $22,500 is requested to replace laptops assigned to the AmeriCorps members. The requested funds for the General Fund cash match will be added as needed at a future Quarterly Budget update. The grant period is from October 08, 2024 through September 30, 2025.

BACKGROUND & ANALYSIS: On August 20, 2019, the City Council approved a 12-month AmeriCorps State Planning Grant for the City of Ontario. This grant was used to develop the Ontario Promise Corps program, a cradle-to-career collective impact program. The program implements services that aim to improve school readiness, improve school attendance, and increase college access and success within the local community. The AmeriCorps grant is administered on the state level by California Volunteers, and office of the State of California.

The Planning Grant outlined activities focusing on AmeriCorps' national service focus area of education. These activities provide services that contribute to improving educational outcomes for

economically disadvantaged children and youth.

In 2020, in alignment with the City's commitment to increasing educational opportunities, the City of Ontario submitted a successful grant application to fund AmeriCorps members to implement the strategies developed during the Planning Grant phase. On August 4, 2020, the City Council approved a 12-month round of the Ontario Promise Corps program, funded through the AmeriCorps State Formula Grant. With subsequent approvals from City Council, the program received AmeriCorps grants for Fiscal Years 2021, 2022 and 2023.

The Ontario Promise Corps program aims to recruit sixteen (16) Full-Time AmeriCorps members each program year. These members provide one-on-one educational support for low-income and at-risk students, foster mentor-mentee relationships, and offer information and resources for higher education to Ontario residents. The program operates in partnership with Hope Through Housing Foundation, Ontario-Montclair Schools Foundation, Ontario City Library, and Ontario Recreation & Community Services Department.

This year, AmeriCorps has awarded the Community Life & Culture Agency a $368,000 AmeriCorps Competitive Continuation Grant to continue these programs. Highlights of the grant budget include a full-time Administrative Specialist position who is 100% responsible for the day-to-day operations of the grant at a total cost of $108,935; 16 AmeriCorps members with a state-mandated living allowance set at $30,000, health care, office supplies, training, and equipment costs. It also fund a part-time Program Specialist that will focus on outreach and program support. This one-year grant supports AmeriCorps member activities from October 2024 through September 2025. Staff will submit a new application in 2025 for future funding.

The Community Life & Culture Agency requests that the Ontario City Council approve the execution of the 2024-2025 grant documents, accept the grant funds, and approve the City cash match for the 2024-2025 Ontario Promise Corps program year.

CITY OF ONTARIO *Agenda Report* **September 3, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Human Resources Prepared By: Amanda Elias Department: Prepared By: Amanda Elias Staff Member Presenting: Angela C. Lopez, Executive Director Human Resources Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 12

SUBJECT: **A PROFESSIONAL SERVICES AGREEMENT WITH ATHENS INSURANCE SERVICES, INC. FOR THIRD-PARTY ADMINISTRATION SERVICES FOR WORKERS' COMPENSATION CLAIMS**

RECOMMENDATION: That the City Council approve and authorize the City Manager, or his designee, to execute a three-year Professional Services Agreement with Athens Insurance Service, Inc. of Concord, California, for third-party administration and training services for workers' compensation claims for a total not-to-exceed amount of $1,814,460.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Maintain the Current High Level of Public Safety

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Workers Compensation Fund for these services. The Agreement has a total not-to-exceed amount of $1,051,550 over three years. Two (2) one-year terms may be exercised at the City's sole discretion for an additional $762,910. The total recommended expenditure authorization for Athens Insurance Service, Inc., is $1,814,460. The consultant will be compensated for the scope of work at the approved billing rates, as outlined in the Agreement.

BACKGROUND & ANALYSIS:

In accordance with California's workers' compensation laws, the City operates as a self-insured entity and oversees the workers' compensation program through a third-party claims administrator (TPA). The TPA is responsible for monitoring claims and disability status, approving medical treatments, and processing medical bills. In addition, the TPA ensures compliance with workers' compensation best practices and the State of California Division of Workers' Compensation.

On March 29, 2024, the City solicited proposals for workers' compensation related to claims administration to evaluate cost and service options across the industry. City Staff reviewed seven qualifying proposals for third-party claims administration services for workers' compensation.

Consideration was given to the overall claims experience in managing workers' compensation programs for clients and cities in California, the expertise of each firm's personnel and medical examiners assigned to the City's account, safety-related educational/training initiatives for supervisors, competitive fee structures, and the comprehensiveness and organization of the proposal responses.

Amongst these, the City interviewed four (4) firms to include the top three (3) qualified and the City's existing service provider as follows:

Name	**Main Location**
AdminSure, Inc.	Ontario, CA
Athens Insurance Service, Inc.	Concord, CA
Corvel	Irvine, CA
LWP Claims Solutions, Inc	Mill Valley, CA

City Staff from the Human Resources/Risk Management Agency, Fire Department, and the Police Department reviewed the proposals and interviewed the abovementioned firms. After the initial interviews, three (3) firms moved forward to a second interview with leadership from Human Resources/Risk Management Agency and Management Services. Athens Insurance Service, Inc. was determined to provide the best overall service, claims management, technology (access, data, reporting, and real-time service), oversight for the City's workers' compensation program, and educational/training program for supervisors.

City Staff recommends that the City Council approve an Agreement with Athens Insurance Service, Inc., given their outstanding reputation for providing top-notch customer service as a family-owned organization for 47 years. As one of the top-performing TPAs in the industry, Athens Insurance Service, Inc. has been recognized as a Best Place to Work and achieved a 98% client retention rate for the past five years. The Agreement ensures a cost-effective option and enables the City to uphold high service standards, enhance operational efficiency, and maintain the current high level of public safety.

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") **and Athens Insurance Service, Inc. an S Corporation**, with its principal place of business at **2552 Stanwell Drive, Concord, CA 94520** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing **workers' compensation claims administration, medical bill review, utilization review, training and ancillary services** to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional services for the **workers' compensation claims administration, medical bill review, utilization review, training and ancillary services** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the **professional workers' compensation claims administration services** necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal

laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **November 1, 2024, to October 31, 2027**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two (2) additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **one million, fifty-one thousand, five-hundred fifty dollars ($1,051,000) for the three-year period. Two (2) one-year terms may be exercised at the City's sole discretion for an additional $762,910. The total compensation shall not exceed two million, five hundred thousand dollars ($1,814,460)** without written approval of the City Council or City Manager, as applicable

3.2.2 without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.3 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.2.4 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "B" of this Agreement.

3.2.5 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.2.6 Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Consultant shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Consultant in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Consultant is not entitled: (1) Consultant shall immediately notify the City and the financial institution; (2) Consultant shall not withdraw any of the funds which were erroneously deposited or to which Consultant is not entitled; and (3) Consultant authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Consultant is not entitled.

3.3 Responsibilities of Consultant.

3.3.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Any personnel performing the Services on behalf of Consultant shall not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultants officers, employees or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Schedule of Services. Consultant shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.3.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this

Agreement for cause. The key personnel for performance of this Agreement are as follows: **James Jenkins, President.**

3.3.5 City's Representative. The City hereby designates **Angela C. Lopez, Executive Director of Human Resources/Risk Management**, or designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Consultant's total compensation subject to the provisions contained in this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.3.6 Consultant's Representative. Consultant hereby designates **James Jenkins, President** or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.3.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.3.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.3.9.2 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

3.3.9.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.10 Laws and Regulations; Employee/Labor Certification.

3.3.10.1 Compliance with Laws. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause.

3.3.10.2 Employment Eligibility; Consultant. Consultant certifies that it fully complies with all requirements and restrictions of state and federal law respecting the

employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Consultant certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.3.10.3 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.4 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq*.); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.10.6 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.11 Insurance.

3.3.11.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.3.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than $2,000,000 per occurrence and no less than $4,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than $2,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than $1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant’s profession with limits of not less than $2,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

3.3.11.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability: (1) Additional Insured: The City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions): (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. “Covered Professional Services” as designated in the policy must specifically include work performed under this Agreement. The policy must “pay on behalf of” the insured and include a provision establishing the insurer’s duty to defend.

(D) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.3.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.3.11.6 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.3.11.7 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.3.11.8 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.3.11.9 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.3.11.10 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(F) Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.3.11.11 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations (“DIR”). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants.

3.4.3 Compliance Monitoring. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

3.4.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Services.

3.5 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant, may, by written notice to City, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to City of such termination, and specifying the effective date thereof, at least one hundred eighty (180) days before the effective date of such termination. (City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6 Indemnification.

3.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which

is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.7 General Provisions.

3.7.1 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.2 Independent Contractors and Subcontracting.

3.7.2.1 Use of Consultants. Consultant is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018). To ensure that Consultant is in compliance with the California Labor Code, Consultant shall only utilize its employees to provide the Services. Consultant may not provide the services through any independent contractor, subcontractor or subconsultant ("Subcontractor(s)") unless approved by the City as set forth in Section 3.7.2.2 below. Consultant represents and warrants that all personnel who perform the Services on Consultant's behalf are Consultant's employees, and that Consultant complies with all applicable laws, rules and regulations governing its employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

3.7.2.2 Prior Approval Required. Consultant shall not use any Subcontractor to provide the Services, or any portion of the work required by this Agreement, without prior written approval of City. In the event that City authorizes Consultant to use a Subcontractor, Consultant shall enter into a written agreement with the Subcontractor, which must include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors, subcontractors or subconsultants without the City's prior written consent.

3.7.3 Delivery of Notices. All notices permitted or required under this Agreement

shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:	**Athens Insurance Service, Inc.** **DBA Athens Administrators** **2552 Stanwell Drive** **Concord, CA 94520** **ATTN: James Jenkins, President**
City:	City of Ontario 303 East "B" Street Ontario, CA 91764 ATTN: Angela C. Lopez, Executive Director of Human Resources/Risk Management

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.7.4 Ownership of Materials and Confidentiality.

3.7.4.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.7.4.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.7.4.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.7.4.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.7.4.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.7.4.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public

Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the release notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of an objection notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.7.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.7.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.7.7 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.7.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.7.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.7.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.7.12 Assignment or Transfer. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.7.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.7.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.7.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.7.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.7.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.7.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.7.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.7.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7.21 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

SIGNATURES ON NEXT PAGE

SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND ATHENS INSURNCE SERVICE, INC.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

ATHENS INSURANCE SERVICE, INC

By: _____

Its: _____

Printed Name: James Jenkins

By: _____

Its: _____

Printed Name: _____

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

EXHIBIT "A"
SCOPE OF SERVICES

Services sought under this proposal include workers' compensation claims administration, medical bill review, and utilization review services. The selected consultant will serve as a third-party administrator and will perform all services required to supervise and administer a self-insured workers' compensation program for the City, including but not limited to:

- Implement effective case management practices.
- Ensure timely adjudication of City employees' workers' compensation claims by licensed adjusters under the California Workers' Compensation Act.
- Maintain consistent excellent customer service to City employees.
- Contact injured employees within 48 hours of receiving a claim.
- Respond to inquiries or questions from claimants in a timely manner.
- Keep the City informed and involved in all accepted or denied claims.
- Notify the City of any changes to a claimant's work restrictions.
- Inform the City of all outside case management services, including defense attorneys, nurse case managers, vocational experts, and investigative consultants.

Program Goals

- Differentiate between the concerns of City employees and the concerns of the City as an organization
- Ensure that employees sustaining work-related injuries or illnesses receive prompt and high-quality medical care and treatment.
- Develop and implement strategies that aim to reduce the frequency and severity of claims.
- Develop a coordinated and high-performance approach between City and vendor representatives for an efficient workers' compensation program.
- Continuously review and implement best practices for administering the City's workers' compensation program.
- Maintain high standards of excellence by providing comprehensive training, excellent customer service, management support for City employees.
- Ensure claimants receive appropriate medical and rehabilitative services to achieve maximum medical recovery and facilitate a safe and expedient return to work.

EXHIBIT "B"
COMPENSATION

Additional Services

Annual Administration Fee - Includes the noted services below:	$5,000

Banking - includes management of (1) City bank account with monthly escrow replenishment. Each additional account will be charged at a rate of $600 per month.

Data Management	Included
Account Management	Included
Claim Reporting (web, fax, telephonic)	Included
Dash Board Risk Management Web Site	Included
On-Line System Access (Up to 5 Users)	Included
Annual Stewardship Report	Included
Electronic Delivery of Monthly Loss Runs	Included

Medical Bill Review

Medical Fee Schedule Reduction (OMFS) Includes – Medical, Pharmacy and Supplies	**$8.75 Per Bill**
Hospital In Patient and Hospital Outpatient Fee Schedule Reductions	**$600 Per Bill**
PPO Network & Specially Bill Negotiations	**23.00% of Savings**
Duplicate Bills	**No Charge**

Utilization Review

Concurrent, Prospective and Retrospective Review	**$160 Flat Fee**
UR Appeals: Peer to Peer	**$300 Per Hour**
Authorization Only	**$45 Flat Rate**

Case Management

Telephonic Nurse Case Management	**$125 Per Hour**
Field Case Management	**$135 Per Hour + Travel and Mileage**
Catastrophic Case Management	**$145 Per Hour + Travel and Mileage**

Peer Review

Physician Peer Review	**$350 Flat Fee**
Records Review	**$250 Per Hour**

Medical Review, Utilization Review, Case Management & Peer Review Fees are subject to 3.5% annual increases on the anniversary date of agreement.

Additional Related Services

Pharmacy Benefits Management (PBM)	**Included**
Claim Reporting	**Included**
Predictive Modeling	**Included**
Jarvis Claim Communication System	**Included**
New Loss Text Messaging to Injured Workers	**Included**
CMS Reporting (Verisk)	**Included**
Pharmacy Drug Review	**$125 Per Hour**
Central Index Bureau & First and Subsequent Report of Incident Reporting	**$25 Per Request**
Subrogation Recovery	**25% of Gross Recovery**
MPN (Only applies if MPN is in place)	**$5.75 Per Bill**
IT Special Projects (Custom report creation API feeds & special conversions)	**$180 Per Hour**

Nurse Triage	**$175 Per Claim**

CITY OF ONTARIO *Agenda Report* **September 3, 2024**	**SECTION:** **PUBLIC HEARINGS**
Department: Planning Prepared By: Rudy Zeledon Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 13

SUBJECT: **AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION FOR FILE NOS. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015 AND PDET23-016**

RECOMMENDATION: That the City Council conduct a public hearing on the Appeals and after receiving all public testimony, uphold the Planning Commission's decision to uphold Zoning Administrator Decision No's. ZA23-024 (File No. PDET23-005), ZA23-030 (File No. PDET23-007), ZA23-031 (File No. PDET23-008), ZA23-032 (File No. PDET23-009), ZA23-033 (File No. PDET23-010), ZA23-038 (File No. PDET23-015) and ZA23-039 (File No. PDET23-016) and deny the Appeals.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner

FISCAL IMPACT: There is not a direct fiscal impact associated with this action.

BACKGROUND & ANALYSIS: In 2020, the Executive Director of Finance ("License Official") sent out a Notice of Assessment for Transient Occupancy Tax (TOT) (''Notice of Assessment"), which found that the following business operators (hereinafter referred to as "Hotels") were delinquent with unpaid Transient Occupancy Taxes (Attachment "A" on each Planning Commission Resolution).

- Hotel Hacienda (File No PDET23-005), located at 2425 South Archibald Avenue;
- Bright Star Motel (File No. PDET23-007), located 1530 West Mission Boulevard;
- Days Inn Ontario Motel (File No. PDET23-008), located at 1405 East 4th Street;
- Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue;
- Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard;
- Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard; and
- West Coast Inn (File No. PDET23-016) located at 1211 North Grove Avenue.

In 2021, the License Official, sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held hearings for the Hotels listed above. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect.

The Hotels were represented by Attorney Frank A. Weiser. Mr. Weiser argued that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients and argued that transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. The operators provided evidence that the Hotels rent rooms to guests for longer than 30 days and argued that these guests, having stayed longer than 30 days at the Hotels, are exempt from taxation as they no longer meet the definition of transient. Under Ontario Development Code section 5.03.250(E)(1), no hotel can rent to a guest for longer than 30 days.

The License Official's jurisdiction is to determine the proper tax to be remitted and give such determination and the amount of such tax, interest, and penalties (O.M.C. § 3-6.09). The License Official does not have the jurisdiction to interpret or make a determination regarding the applicability of the Ontario Development Code (ODC), that the Hotels where a guest exceeds 30-day occupancy are exempt from the definition of transient as described in ODC Section 5.03.250(E)(l). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. After the testimony was completed, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) to the Hotels.

In November and December of 2023, the Zoning Administrator issued Determination of Use Decisions for each of the Hotels and made the findings that the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Hotels (Attachment "A" on each Resolution). ODC Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Hotel or Motel is to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. A Hotel or Motel permitting guests occupancy longer than 30 days are in violation and not exempt from ODC Section 5.03.250(E)(1). Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

On May 28, 2024, the Planning Commission conducted a public hearing to consider the appeal of the Zoning Administrator denial. Following the staff's presentation and after receipt of all public correspondence and testimony, the Planning Commission noted agreement with the Zoning Administrator. The Zoning Administrator acted within his limited authority to interpret the Ontario Development Code (ODC). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. Further, the Planning Commission found that the appellant introduced irrelevant legal arguments which did not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellant takes issue with the implementation of legislation of the Ontario Development Code. For example, Ordinance No. 1569, which imposed the TOT, was passed in 1965 – fifty-nine years ago. To address

these constitutional arguments for a legislative action that occurred in 1965 goes beyond the scope of the Zoning Administrator's role. Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

As a result, the Planning Commission voted 7-0 to adopt Resolution No's PC24-018 (File No. PDET23-005), PC24-019 (File No. PDET23-007), PC24-020 (File No. PDET23-008), PC24-021 (File No. PDET23-009), PC24-022 (File No. PDET23-010), PC24-023 (File PDET23-015) and PC24-024 (File No. PDET23-016) upholding the Zoning Administrator's decision and denying the appeals.

APPEAL TO COUNCIL: On June 6, 2024, the Appellant submitted an Appeal to the City Council, appealing the Planning Commission's decision to uphold the Zoning Administrator's decision. The Appellant raises the argument that the Planning Commission's decision is not supported by the information, findings, and recommendations presented in the Background and Analysis Section of the Zoning Administrator's Decision report.

The Appellant argues that the Planning Commission was required to adopt an Environmental Impact Report as part of their decision, and that the Zoning Administrator's decision violated the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.

A copy of the Appeal applications and Appellant's statement is included as Appendix A of this report. Staff has reviewed the appeals and provides a response for each issue raised by the Appellant's:

Appellants' Issue No. 1: *The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

- The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and
- The Resolutions were reviewed with respect to the applicability of the California Environmental

Quality Act of 1970 ("CEQA"), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a "project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the "common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA Guidelines Section15378(B)(4).

Here, there is no physical project undertaken and the TOT's effect is fiscal. Thus, the TOT Ordinance is a funding mechanism not a "project" and an EIR is not required under CEQA.

Appellant's Issue #2: *The Zoning Administrator's decision violated the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case, ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellant takes issue with the implementation of legislation of the ODC. Ordinance No. 1569, which imposed the TOT, was passed in 1965 – fifty-nine years ago. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

CITY OF ONTARIO PLANNING DEPARTMENT

PLANNING COMMISSION AGENDA REPORT

May 28, 2024

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

FILE NOS: PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015, and PDET23-016 (APPEAL)

SUBJECT: An appeal of Zoning Administrator's interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the following hotels and motels: 1) Hotel Hacienda (File No. PDET23-005), located at 2423 South Archibald Avenue; 2) Bright Star Motel (File No. PDET23-007), located at 1530 West Mission Boulevard; 3) Days Inn Ontario Motel (File No.PDET23-008, located at 1405 East 4th Street; 4) Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue; 5) Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard; 6) Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard; and 7) West Coast Inn (File No. PDET23-016), located at 1211 North Grove Avenue; (APNS: 1083-071-26, 1011-221-15, 0108-381-32, 1051-071-04, 1049-141-25, 1101-211-03 and 1047-451-25)**. Submitted by Frank A. Weiser – Attorney at Law**

PROPERTY OWNER: See attached Exhibit A.

RECOMMENDED ACTION: That the Planning Commission consider and deny the appeals and uphold Zoning Administrators Decision No's. ZA23-024 (File No. PDET23-005), ZA23-030 (File No. PDET23-007), ZA23-031 (File No. PDET23-008), ZA23-032 (File No. PDET23-009), ZA23-033 (File No. PDET23-010), ZA23-038 (File No. PDET23-015) and ZA23-039 (File No. PDET23-016), pursuant to the facts and reasons contained in the staff report and attached Resolutions.

PROJECT ANALYSIS:

Background — In 2020, the Executive Director of Finance Arman Harkalyan ("License Official"), sent out a Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment"), which found that the following business operators (hereinafter referred to as "Hotels') were delinquent with unpaid Transient Occupancy Taxes (Attachment "A" on each Resolution).

- Hotel Hacienda (File No PDET23-005), located at 2423 South Archibald Avenue;
- Bright Star Motel (File No. PDET23-007), located 1530 West Mission Boulevard;
- Days Inn Ontario Motel (File No. PDET23-008), located at 1405 East 4th Street;
- Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue;
- Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard;

Case Planner:	Rudy Zeledon CDA Assistant Director
Planning Director Approval:	
Submittal Date:	11/16/2023 and 01/11/2024

Hearing Body	*Date*	*Decision*	*Action*
DAB	N/A	N/A	N/A
PC	05/28/2024	Denied	Final
CC			

- Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard; and
- West Coast Inn (File No. PDET23-016) located at 1211 North Grove Avenue.

Chapter 6: *Transient Occupancy Taxes* of the City of Ontario Municipal Code ("OMC"), allows the City of Ontario to impose a Transient Occupancy Tax (TOT) of eleven and three-quarters percent (11¾%) of the rent, charged by operator, to transient guest for the privilege of occupancy of any hotel or motel. The Ontario Municipal Code (Section 3.6.02 Definitions) defines "Transient" as any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

All hotel or motel operators are required to collect and hold in trust for the account and benefit of the City the tax imposed at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged. In addition, hotel and motel operators are required to report and remit TOT imposed on or before the last day of the month following the close of each calendar month, make a return to the Tax Administrator, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. Any hotel/motel operator who fails to report and remit TOT are subject to penalties and become delinquent.

In 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held hearings for the hotels/motels as stated above. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect.

The Hotels were represented by attorney Frank A. Weiser who offered legal arguments orally at the hearings. Under the representation of Mr. Weiser, the Hotels argued that under the Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients and argued that transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. The operators provided evidence that the Hotels rent rooms to guests for longer than 30 days and argued that these guests, having stayed longer than 30 days at the Hotels, are exempt from taxation as they no longer meet the definition of transient. The License Official's jurisdiction is to determine the proper tax to be remitted and give such determination and the amount of such tax, interest, and penalties (" O.M.C. § 3-6.09). The License Official does not have the jurisdiction to interpret or make a determination regarding the applicability of the Ontario Development Code that the Hotels where a guest exceeds 30-day occupancy is exempt from the definition of transient as described in Ontario Development Code (ODC) Section 5.03.250(E)(l). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is

responsible for, the administration and application of the regulations and provisions of this Development Code. After the testimony was completed, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the hotels/motels.

In November and December of 2023, the Zoning Administrator issued Determination of Use Decisions for each of the Hotels and made the findings that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Hotels (Attachment "A" on each Resolution). The ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Hotel or Motel is to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. A Hotel or motel permitting guests occupancy longer than 30 days are in violation and not exempt from the ODC Division 5.03, Section 5.03.250(E)(1). Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

Appeal — On November 16, 2023 and January 11, 2024, Frank A. Weiser, Attorney at Law (Appellant representative), submitted appeals to the Zoning Administrators interpretation and determination decisions that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the following hotels and motels:

- Hotel Hacienda (File No PDET23-005), Appellant: Naman Patel;
- Bright Star Motel (File No. PDET23-007), Appellant: Purushottam Patel/Esha Smah;
- Days Inn Ontario Motel (File No. PDET23-008, Appellant: Kisham Patel;
- Economy Inn (File No. PDET23-009), Appellant: Mehesh Patel;
- Mayfair Inn (File No. PDET23-010), Appellant: Dilip Payaran;
- Sands Motel (File No. PDET23-015), Appellant: Purushottam Patel; and
- West Coast Inn (File No. PDET23-016) Appellant: Anil Patel.

A copy of the Appeal applications and Appellant's statement is included as Appendix A of this report. Staff has reviewed the appeals and provides a response for each issue raised by the Appellant's:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth*

Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal

Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states that a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies, ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld.

CORRESPONDENCE: As of the preparation of this Agenda Report, Planning Department staff has not received any written or verbal communications from the owners or occupants of properties surrounding the Project site or from the public in general, regarding the subject application.

Exhibit A – Property Owners

1. PATEL & JOSHI HOSPITALITY CORP (Hotel Hacienda (File No PDET23-005), located at 2423 South Archibald Avenue).

2. PATEL, RAMANBHAI G & MANJULABEN R RV (Bright Star Motel (File No. PDET23-007), located 1530 West Mission Boulevard).

3. BRIGHT MORNING STAR LLC (Days Inn Ontario Motel (File No. PDET23-008, located at 1405 East 4th Street).

4. DESAI, JAY P & SMITA ET AL (Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue).

5. SHIVASMT, INC (Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard).

6. SANDS LIMITED PARTNERSHIP (Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard).

7. PATEL, NARAYAN AMBALA (West Coast Inn (File No. PDET23-016) located at 1211 North Grove Avenue).

Appendix A

(Appeal Applications to follow this page)

Hotel HACIENDA

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA 23-024

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: NAMAN PATEL DOA HOTEL HACIENDA
Address: 2423 SOUTH ARCHIBALD AVENUE
ONTARIO, CA 91751
Phone: (909) 215-6366
Email: NAMAN@haciendaontario.com

Appellant's Representative: FRANK A. WEBER - ATTORNEY AT LAW
Address: 3460 Wilshire Blvd, Ste. 1212,
Los Angeles, CA 90010
Phone: (213) 384-6964 (Voice) · (213) 399-7806 (Cell)
Email: Maimonr@aol.com

(For staff use only)
File No(s): PDET23-005
Date: 11/16/2023
Rec'd by: DB
Fees Paid: $902.00
☐ Cash ☐ Check (#)
☒ Credit Card
Receipt No.: 347815

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator
☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission Planning Commission

Hearing 4/30/24

Appeal Application Form

Project File No(s).: PDET23-005 Date of Action/Decision:

The application being appealed requests the following *(attach additional sheets as necessary)*:

Reverse Zoning Administrator Decision dated November 7, 2023 that Ontario Development Code (OMC) Division 5.03, Section 5.03.250 CE1(1) is applicable to Hacienda + Enforceable Motel

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary):

Reverse Zoning Administrator Decision dated November 7, 2023 that OMC, Division 5.03 Section 5.03.250(E)(1) is Applicable and enforceable to Hacienda Motel, and therefore OMC Section 3-6.02(C)(g) defining "transient" for purposes of transient occupancy tax shall be imposed on the Hacienda Motel

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☐ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The Decision violates the First Amendment of the U.S. Constitution Petition and Grievance Clause, the Fourth Amendment of the U.S. Constitution Search & Seizure clause, the Fifth Amendment Takings Clause of the U.S. Constitution, the procedural & substantive components of the U.S. Constitution and the Equal Protection Clause of the U.S. Constitution and the Contracts Clause of the U.S. Constitution the Privileges & Immunities Clause of the U.S. Constitution. Further, the Appellant has a pre-existing entitlement to rent beyond 30 days at the Motel and has owned and operated the Motel prior to the City's adoption of OMC 5.03.250(E)(1) and thus the Applicability of the section violates the Takings Clause of the Fifth Amendment of the U.S. Constitution and the Due Process Clause and Equal Protection Clause of Fourteenth Amendment of the U.S. Constitution. Appellant was never given a hearing on the Applicability of OMC 5.03.250(E)(1) to his hotel which violates Due process. The decision was not supported by the record.

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form,** and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 11-16-23 Signature: Frank A. Wein - Attorney For Appellants

Name (print or type): Frank A. Wein

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-005
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 2425 S ARCHIBALD AV, ONTARIO, CA 91761

Receipt No. 347815

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	AB-20231116-6.1	$902.00	11/16/2023			

Owner Info.: PATEL & JOSHI HOSPITALITY CORP
2425 S ARCHIBALD AVE
ONTARIO, CA 917616502

Work Description: Referral to Zoning Administrator and Stay of Decision for the Hotel Hacienda (Formally America's Best Value Inn), located at 2425 South Archibald Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(I) as to the Hotel (APN: 1083-071-26); submitted by Transient Occupancy Tax License Official for the City of Ontario.

Invoice Detail

Permit ID #: PDET23-005
Invoice #: 405579
Invoice Date: 11/16/2023 15:23:31

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-030

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

BRIGHT STAR MOTEL

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Purshottam Patel / ESHA SHAH / Bright Star Motel
Address: 1530 West Mission Blvd; Ontario, CA 91762

Phone: (909) 241-2157 or (909) 568-8100
Email: pbpupland@yahoo.com

Appellant's Representative: Frank A. Weiser - Attorney at Law
Address: 3460 Wilshire Blvd. Ste. 1212
L.A., CA 90010
Phone: (213) 384-6464 (voice) (213) 383-7368
Email: Maimony@aol.com

(For staff use only)

File No(s): PDEV23-007
Date: 1/11/24
Rec'd by: AA
Fees Paid: 902.00
☐ Cash ☐ Check (#)
☒ Credit Card
Receipt No.: 349485

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator

☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

Hearing 1/22/24

Appeal Application Form

Project File No(s).: PDET 23-007 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision dby the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.25-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral From City of Ontario Transient Occupancy TAX License Official Arman Hartoloyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days And that guests are thus subject to OMC 3-6.02(a) for transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is grandfathered in as to the allowance stays of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250(E)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First Amendment Petition Clause, Fourth Amendment Search & Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's Decision is requested to be reversed and that a decision be granted on appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02(a) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: Frank A. Wacker - Attorney at Law

Name (print or type): Frank A. Wacker - Attorney at Law

Invoice Detail

Permit ID #: PDET23-007
Invoice #: 407389
Invoice Date: 01/11/2024 16:20:37

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-007
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 1530 W MISSION BL, BLDG# 1 ONTARIO, CA 91762

Receipt No. 349485

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-9.1	$902.00	01/11/2024			

Owner Info.: BRIGHT STAR LIMITED PARTNERSHIP
P O BOX 1858
ONTARIO, CA 91762

Work Description: Referral to Zoning Administrator and Stay of Decision for the Bright Star Motel ("Hotel"), located at 1530 West Mission Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1011-221-15); submitted by the City of Ontario Transient Occupancy Tax License Official.

Rev. 10.01.2020

CITY OF ONTARIO PLANNING DEPARTMENT

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

ZA 23-031

Appeal Application Form

DAYS INN ONTARIO motel

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Krishna Patel / DAYS INN ONTARIO

Address: 1401 East 4th ST. ONTARIO, CA

Personal Mailing Address - 2176 S. Harbor Blvd, Anaheim, CA 91764 92802

Phone: (562) 858-9398

Email: aksmhospitality1@gmail.com

Appellant's Representative: FRANK A. WEISER - ATTORNEY AT LAW

Address: 3460 Wilshire Blvd. Ste. 1212

L.A. CA 90010

Phone: (213) 384-6964 (voice) (213) 383-7368

Email: Mimanj@aol.com

(For staff use only)

File No(s): PDEV23-059

Date: 1/11/24

Rec'd by: AR

Fees Paid: 902.00

☐ Cash ☐ Check (#)

☒ Credit Card

Receipt No.: 349496

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator

☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

Hearing 4/2/24

Appeal Application Form

Project File No(s).: PDET23-008 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision dby the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.25o-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral From City of Ontario Transient Occupancy TAX License Official Arman Hamlalyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days And that guests are thus subject to OMC 3-6.02a(g) for transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

FAUL

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is guaranteed in arc to the allowance stays of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250 (E)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First Amendment Petition Clause, Fourth Amendment SEARCH & SEIZURE clause, the Fifth Amendment Takings clause, the Fourteenth Amendment Due Process clause (substantive and procedural) and EQUAL Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's decision is requested to be reversed and that a decision be granted this appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02a(g) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: [signature] - ATTORNEY AT LAW

Name (print or type): FRANK A. WEIGEL - ATTORNEY AT LAW

Invoice Detail

Permit ID #: PDET23-008
Invoice #: 407388
Invoice Date: 01/11/2024 16:18:24

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-008
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 3560 E SHADOW CREEK WY, ONTARIO, CA 91761

Receipt No. 349486

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-9.2	$902.00	01/11/2024			

Owner Info.: SANDRA M BERNSTEIN
3560 SHADOW CREEK WAY
ONTARIO, CA 91761

Work Description: Referral to Zoning Administrator and Stay of Decision for the Days Inn Ontario ("Hotel"), located at 1405 East 4th Street, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(I) as to the Hotel (APN: 108338132); submitted by the City of Ontario Transient Occupancy Tax License Official.

Rev. 10.01.2020

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-032

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

ECONOMY INN

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Mehesh (MAC) Patel/ECONOMY INN

Address: 2301 South Euclid Avenue, ONTARIO, CA 91762

Phone: (909) 957-1714

Email: Nddamp@aol.com

Appellant's Representative: FRANK A. WEISER - ATTORNEY AT LAW

Address: 3460 Wilshire BLVD. Ste. 1212 L.A. CA 90010

Phone: (213) 384-6464 (Voice) (213) 383-7368

Email: Mximony@aol.com

(For staff use only)

File No(s): PDET23-009

Date: 1/11/24

Rec'd by: AM

Fees Paid: 902.00

☐ Cash ☐ Check (#)

☑ Credit Card

Receipt No.: 349487

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator

☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

Hearing — 2/8/24

Appeal Application Form

Project File No(s).: PDET 23-009 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision by the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.250-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral From City of Ontario Transient Occupancy TAX License Official Arman Hartoloyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days. And that guests are thus subject to OMC 3-6.02(g) for transient occupancy tax for all occupants as "transients".

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

FAIL.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is grandfathered in as to the allowance stays of 30 days or more consecutively. The City's decision is not supported by the record and thus subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250(E)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First, ~~Fourth~~ Amendment Petition Clause, Fourth Amendment Search & Seizure Clause, the Fifth Amendment Takings clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's Decision is requested to be reversed and that a decision be granting the appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02(g) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: [signature] - ATTORNEY AT LAW

Name (print or type): FRANK A. WERGE - ATTORNEY AT LAW

Invoice Detail

Permit ID #: PDET23-009
Invoice #: 407390
Invoice Date: 01/11/2024 16:23:30

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-009
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 2301 S EUCLID AV, ONTARIO, CA 91761

Receipt No. 349487

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-9.3	$902.00	01/11/2024			

Owner Info.: JAYANTI P DESAI
2817 E EDMONTON ST
ONTARIO, CA 91761

Work Description: Referral to Zoning Administrator and Stay of Decision for the Economy Inn ("Hotel"), located at 2301 South Euclid Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(I) as to the Hotel (APN:1051-071-04); submitted by the City of Ontario Transient Occupancy Tax License Official.

CITY OF ONTARIO PLANNING DEPARTMENT

303 East B Street Ontario California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

Appeal Application Form

ZA23-033

MAYFAIR INN

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: D.V.P PAYARAM, KNIGHTS INN/MAYFAIR INN
Address: 1120 EAST HOLT BLVD., ONTARIO, CA 91761
Phone: (213) 440-0329
Email: MayFairOnt@gmail.com

Appellant's Representative: FRANK A. WEISER - ATTORNEY AT LAW
Address: 3460 WILSHIRE BLVD. STE. 1212 L.A. CA 90010
Phone: (213) 384-6464 (Voice) (213) 383-7368
Email: Mlimony@aol.com

(For staff use only)

File No(s): PDET23-010

Date: 1/11/24
Rec'd by: AR
Fees Paid: 902.00
☐ Cash ☐ Check (# _____)
☑ Credit Card
Receipt No.: 3494993

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☑ Zoning Administrator

☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

HEARING 4/16/24

Appeal Application Form

Project File No(s).: PDET 23-010 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision of the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.250-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral from City of Ontario Transient Occupancy TAX License Official Arman Hamlalyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days. And that guests are thus subject to OMC 3-6.02a(g) for transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- [X] Abuse of discretion.
- [ ] Decision was not supported by the record.
- [X] Abuse of discretion and decision was not supported by the record.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the Zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is guaranteed in arc to the allowance stayer of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250 (E)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First Amendment Petitions Clause, Fourth Amendment Search & Seizure clause, the Fifth Amendment Takings clause, the Fourteenth Amendment Due Process Clause (substantive and procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's decision is requested to be reversed and that a decision be granting the appeal and finding that OMC 5.03.250 (E)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02a(g) and not subject to transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: Frank A. Wiese - Attorney at Law

Name (print or type): Frank A. Wiese - Attorney at Law

Invoice Detail

Permit ID #: PDET23-010
Invoice #: 407387
Invoice Date: 01/11/2024 16:14:11

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-010
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 1120 E HOLT BL, ONTARIO, CA 91761

Receipt No. 349488

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-10.1	$902.00	01/11/2024			

Owner Info.: INC SHIVASMT
1120 E HOLT BLVD
ONTARIO, CA 91761

Work Description: Referral to Zoning Administrator and Stay of Decision for the Knights Inn ("Hotel"), located at 1120 Eas Holt Blvd. , within the industrial park zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(I) as to the Hotel (APN: 1049141-25); submitted by the City of Ontario Transient Occupancy Tax License Official.

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-038 SANOS motel

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Purshtam PATEL/ANDY PATEL/SANOS MOTEL

Address: 1210 WEST 1ST MISSION BLVD, ONTARIO, CA 91762

Phone: (909) 241-2157 OR (909) 568-8100

Email: PBPUPLAND@YAHOO.COM

Appellant's Representative: FRANK A. WEISER - ATTORNEY AT LAW

Address: 3460 WILSHIRE BLVD. STE. 1212 L.A. CA 90010

Phone: (213) 384-6464 (VOICE) (213) 383-7368

Email: MAIMON7@AOL.COM

(For staff use only)

File No(s): PDEV23-015

Date: 1/11/24

Rec'd by: AA

Fees Paid: 902.00

☐ Cash ☐ Check (#)

☒ Credit Card

Receipt No.: 349409

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator

☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

HEARING 1/8/24

Appeal Application Form

Project File No(s).: PDET23-015 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision by the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.250 CE)C.1

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral From City of Ontario Transient Occupancy TAX License Official Arman Hartoloyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days And that guests are thus subject to OMC 3-6.02a(g) For transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

FILED.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is grandfathered in as to the allowance stays of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250(E)(1), both on its face, and as applied to the Appellant violated his constitutional rights under the First, ~~Four~~ Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings clause, the Fourteenth Amendment Due Process Clause (substantive and procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's Decision is requested to be reversed and that a decision be granted this appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02a(g) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: Frank A. Wacker - Attorney at Law

Name (print or type): FRANK A. WACKER - ATTORNEY AT LAW

Invoice Detail

Permit ID #: PDET23-015
Invoice #: 407391
Invoice Date: 01/11/2024 16:28:35

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-015
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 630 S OAKS AV, ONTARIO, CA 91762

Receipt No. 349489

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-10.2	$902.00	01/11/2024			

Owner Info.: MARILEE RUTH TRUST 2016 VAN
630 S OAKS AVE
ONTARIO, CA 91762

Work Description: Referral to Zoning Administrator and Stay of Decision for the Sands Motel ("Hotel"), located at 1240 West Mission Blvd. , within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1011-211-03); submitted by the City of Ontario Transient Occupancy Tax License Official.

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-039 West Coast Inn

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Anil Patel / West Coast Inn
Address: 1211 North Grove Avenue, Ontario, CA 91764
Phone: (323) 215-5120
Email: apatel815@gmail.com

Appellant's Representative: Frank A. Weiser - Attorney at Law
Address: 3460 Wilshire Blvd. Ste. 1212 L.A. CA 90010
Phone: (213) 384-6464 (voice) (213) 383-7368
Email: Mmimony@aol.com

(For staff use only)

File No(s): PDEV23-016
Date: 1/11/24
Rec'd by: AA
Fees Paid: 902.00
☐ Cash ☐ Check (#)
☒ Credit Card
Receipt No.: 349490

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator
☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

Hearing 1/8/24

Appeal Application Form

Project File No(s).: PDET 23-016 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision by the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.250-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral from City of Ontario Transient Occupancy TAX License Official Arman Hartoloyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days And that guests are thus subject to OMC 3-6.02a(g) for transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(CE)(1) and is grandfathered in as to the allowable stays of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250 (CE)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First Amendment Petition Clause, Fourth Amendment Search & Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (substantive and procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(CE)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's decision is requested to be reversed and that a decision be granted this appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02a(g) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: - ATTORNEY AT LAW

Name (print or type): FRANK A. WERNER - ATTORNEY AT LAW

Invoice Detail

Permit ID #: PDET23-016
Invoice #: 407392
Invoice Date: 01/11/2024 16:30:40

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-016
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 1205 N GROVE AV, BLDG# 1 ONTARIO, CA 91764

Receipt No. 349490

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-10.3	$902.00	01/11/2024			

Owner Info.: NARAYAN AMBALAL PATEL
5321 ROCKY MOUNTAIN CT
RANCHO CUCAMONGA, CA 91737

Work Description: Referral to Zoning Administrator and Stay of Decision for the Pepper Tree Motel ("Hotel"), located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1047-451-25); submitted by the City of Ontario Transient Occupancy Tax License Official.

RESOLUTION NO. PC24-018

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-005) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE HOTEL HACIENDA, LOCATED AT 2425 SOUTH ARCHIBALD AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF— APN: 1083-071-26.

WHEREAS, Noman Patel ("Applicant") operator of the Hotel Hacienda has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Hotel Hacienda, File No. PDET23-005, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to the Hotel Hacienda (Formally America's Best Value Inn) ("Hotel"), located at 2425 South Archibald Avenue, within the Community Commercial zoning district; and

WHEREAS, on April 30, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Hotel Hacienda. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 30, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Hotel Hacienda; and

WHEREAS, the Hotel Hacienda was approved (File No. 3472-S) by the City of Ontario in 1986 as a 55-unit Motel (known in 1986 as the Knice Inn); and

WHEREAS, on November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

WHEREAS, in 1988, the Motel was constructed; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Hotel Hacienda; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning

Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D).

The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Hotel Hacienda. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the April 30, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees

to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

- - - - - - - - - - - - - -

The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-018, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE America's Best Value Inn 2425 S. Archibald Ave. Ontario, CA 91751	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** License Official: Armen Harkalyan Date: 4/30/2021 Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. America's Best Value Inn ("Hotel") is a hotel located at 2425 S. Archibald Ave. in the City of Ontario. The Hotel is operated by Naman Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**($1,197.79)**
PENALTIES:	**$35.16**
INTEREST:	**$162.56**
TOTAL:	**$28,151.47**

The basis for this finding is $220,124.56 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "…the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony.

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the

exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to 'determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

CITY OF ONTARIO PLANNING DEPARTMENT

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

November 6, 2023

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-024**

FILE NO.: PDET23-005

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Hotel Hacienda (Formally America's Best Value Inn) ("Hotel"), located at 2425 South Archibald Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1083-071-26); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-005, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Hotel Hacienda, located at 2425 South Archibald Avenue, within the Commercial Zoning District, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Hotel Hacienda (known in 1986 as the Knice Inn) was approved (File No. 3472-S) by the City of Ontario in 1986 as a 55-unit Motel. On November 6, 1987, the Building Department approved the construction plans for the 55-unit motel and construction for the Motel concluded in 1988. Division 9.01 (Definitions) of the ODC, defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Hotel Hacienda. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03,

Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

WHEREAS, all legal prerequisites to the adoption of this Determination of Use have occurred.

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Hotel Hacienda is located at 2425 South Archibald Avenue, within the Community Commercial zoning district. Hotels or Motels are not permitted within the Community Commercial zoning district. The existing Hotel Hacienda is a legal nonconforming use;

(b) The Hotel Hacienda was approved (File No. 3472-S) by the City of Ontario in 1986 as a 55-unit Motel (known in 1986 as the Knice Inn);

(c) On November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

(d) In 1988, the Motel was constructed; and

(e) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Hotel Hacienda; and

(f) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(g) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(h) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(i) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(j) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-005, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Hotel Hacienda. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the April 30, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

APPROVED AND ADOPTED this 6th day of November 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-019

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-007) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE BRIGHT STAR MOTEL, LOCATED AT 1530 WEST MISSION BOULEVARD SOUTH ARCHIBALD AVENUE, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1011-221-15.

WHEREAS, Purushottam Patel and Esha Smah ("Applicant") operator of the Bright Star Motel ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Bright Star Motel, File No. PDET23-007, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to the Bright Star Motel, located at 1530 West Mission Boulevard, within the Light Industrial zoning district. The existing Bright Star Motel is a legal nonconforming use; and

WHEREAS, on January 22, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Bright Star Motel. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 22, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Bright Star Motel; and

WHEREAS, the City of Ontario Building Department issued building permits, between 1956 and 1962, for the construction of Motel; and

WHEREAS, on November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior

walkways consistent with the City approval and design layout for the Bright Star Motel; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning

Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Bright Star Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the January 22, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify

the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-019, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE

Bright Star Motel
1530 W. Mission Blvd.
Ontario, CA 91762

REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION _____

License Official: Armen Harkalyan
Date: 1/22/2021
Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Bright Star Motel ("Hotel") is a hotel located at 1530 W. Mission Blvd. in the City of Ontario. The Hotel is operated by Esha Shah ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$47,514.30**
PENALTIES:	**$950.29**
INTEREST:	**$4,829.73**
TOTAL:	**$53,294.31**

The basis for this finding is $404,377.00 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D.**

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E.**

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F.**

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "...the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G**.

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-030**

FILE NO.: PDET23-007

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Bright Star Motel ("Hotel"), located at 1530 West Mission Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1011-221-15); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-007, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Bright Star Motel, located at 1530 West Million Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Bright Star Motel property is zoned Light Industrial. Between 1956 and 1962 the City of Ontario Building Department issued permits for the construction of Motel. The permitted Motel was constructed in conformance with all regulations of the Municipal Code at the time of development; however, at present, it is not in compliance with the current Light Industrial zoning district. Consequently, the existing Motel use is deemed "legal nonconforming". Division 3.01 (Nonconforming Lots, Uses and Structures), Section 3.01.015: Nonconforming Land Uses, outlines the regulations for the continuance of a nonconforming use.

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Bright Star Motel. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide

additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

WHEREAS, all legal prerequisites to the adoption of this Determination of Use have occurred.

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Bright Star Motel is located at 1530 West Mission Boulevard, within the Light Industrial zoning district. Hotels or Motels are not permitted within the light industrial zoning district. The existing Bright Star Motel is a legal nonconforming use;

(b) The City of Ontario Building Department issued building permits, between 1956 and 1962, for the construction of Motel; and

(c) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Bright Star Motel; and

(d) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(e) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(f) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(g) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(h) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-007, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Bright Star Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the January 1, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-020

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-008) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE DAYS INN ONTARIO MOTEL, LOCATED AT 1405 EAST 4TH STREET, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0108-381-32.

WHEREAS, Kisham Patel ("Applicant") operator of the Days Inn Ontario Motel ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Days Inn Ontario Motel, File No. PDET23-008, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Days Inn Ontario is located at 1405 East 4th Street, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on April 2, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Days Inn Ontario. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 2, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Days Inn Ontario Motel; and

WHEREAS, in 1985, The Planning Commission approved a Conditional Use Permit (File No. 3225-CUP) to establish 53-unit Days Inn Ontario Motel (known as Youngs Motel); and

WHEREAS, in 1987, the City of Ontario Building Department issued building permits for the construction of Days Inn Ontario Motel (Known as "Youngs Motel"); and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Days Inn Ontario; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Days Inn Ontario. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the April 2, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify

the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-020, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE Days Inn Ontario 1405 E 4th Street Ontario, CA 91764	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** _____ License Official: Armen Harkalyan Date: 4/2/2021 Time: 2:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Days Inn Ontario ("Hotel") is a hotel located at 1405 E 4th Street in the City of Ontario. The Hotel is operated by Kisham Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$23,619.98**
PENALTIES:	**$472.40**
INTEREST:	**$2,276.79**
TOTAL:	**$26,369.17**

The basis for this finding is $201,021.08 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "...the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G.**

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-031**

FILE NO.: PDET23-008

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Days Inn Ontario("Hotel"), located at 1405 East 4th Street, within the Neighborhood Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 0108-381-32); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-008, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Days Inn Ontario, located at 1405 East 4th Street, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Days Inn Ontario is 1405 East 4th Street and zoned Neighborhood Commercial. In 1985, the Planning Commission approved a Conditional Use Permit (File No. 3225-CUP - Youngs Motel) to establish a 53-unit motel at 1405 East 4th Street. In 1987, the City of Ontario Building Department issued building permits for the construction of Motel (Known as "Youngs Motel").

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Days Inn Ontario. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

WHEREAS, all legal prerequisites to the adoption of this Determination of Use have occurred.

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Days Inn Ontario is located at 1405 East 4th Street, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

(b) In 1985, The Planning Commission approved a Conditional Use Permit (File No. 3225-CUP) to establish 53-unit motel; and

(c) In 1987, the City of Ontario Building Department issued building permits for the construction of Motel (Known as "Youngs Motel"); and

(d) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Days Inn Ontario; and

(e) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(f) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(g) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(h) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(i) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-008, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Days Inn Ontario. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the April 2, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-021

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-009) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE ECONOMY INN, LOCATED AT 2301 SOUTH EUCLID AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1051-071-04.

WHEREAS, Mehesh Patel ("Applicant") operator of the Economy Inn ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Economy Inn, File No. PDET23-009, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Economy Inn is located at 2301 South Euclid Avenue, within the Community Commercial zoning district. Hotels or Motels are permitted within the Community Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on February 5, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Economy Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on February 5, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Economy Inn; and

WHEREAS, in 1984, The Planning Commission approved a Conditional Use Permit (File No. 3051-CUP) to establish 47-unit Economy Inn Motel; and

WHEREAS, in 1985, the City of Ontario Building Department issued building permits for the construction of the Economy Inn Motel; and

WHEREAS Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate,

to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Economy Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning

Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Economy Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the February 5, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify

the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-021, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE Economy Inn 2301 S. Euclid Ave. Ontario, CA 91762	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** _____ License Official: Armen Harkalyan Date: 2/5/2021 Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Economy Inn ("Hotel") is a hotel located at 2301 S. Euclid Ave. in the City of Ontario. The Hotel is operated by Mahesh Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$18,580.28**
PENALTIES:	**$371.61**
INTEREST:	**$1,873.64**
TOTAL:	**$20,825.52**

The basis for this finding is $158,130.00 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D.**

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E.**

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F.**

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "…the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G.**

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-032**

FILE NO.: PDET23-009

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Economy Inn ("Hotel"), located at 2301 South Euclid Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1051-071-04); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-009, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Economy Inn, located at 2301 South Euclid Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Economy Inn is located at 2301 South Euclid Avenue and zoned Community Commercial. In 1984, The Planning Commission approved a Conditional Use Permit (File No. 3051-CUP) to establish a 47-unit motel at 2301 South Euclid Avenue. In 1985, the City of Ontario Building Department issued building permits for the construction of Motel.

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Economy Inn. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

WHEREAS, all legal prerequisites to the adoption of this Determination of Use have occurred.

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Economy Inn is located at 2301 South Euclid Avenue, within the Community Commercial zoning district. Hotels or Motels are permitted within the Community Commercial zoning district subject to approval of a Conditional Use Permit; and

(b) In 1984, The Planning Commission approved a Conditional Use Permit (File No. 3051-CUP) to establish 47-unit motel; and

(c) In 1985, the City of Ontario Building Department issued building permits for the construction of Motel; and

(d) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Economy Inn; and

(e) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(f) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(g) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(h) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(i) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-009, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Economy Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the February 5, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-022

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-010) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE MAYFAIR INN, LOCATED AT 1120 EAST HOLT BOULEVARD, WITHIN THE INDUSTRIAL PARK ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1049-141-25.

WHEREAS, Dilip Payaram ("Applicant") operator of the Mayfair Inn ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Mayfair Inn, File No. PDET23-010, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Mayfair Inn (formally known as the Knights Inn) is located at 1120 East Holt Boulevard, within the Industrial Park zoning district. Hotels or Motels are not permitted within the Industrial Park zoning district. The existing Mayfair Inn is a legal nonconforming use; and

WHEREAS, on April 16, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Mayfiar Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 16, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Mayfair Inn; and

WHEREAS, in 1985, the Planning Commission approved a Development Plan (File No. 3294-S) for the construction of 37-unit Mayfair Inn motel; and

WHEREAS, in 1987, City of Ontario Building Department issued permits for the construction of Mayfair Motel; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate,

to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Mayfair Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning

Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Mayfair Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the April 16, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify

the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-022, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE Knights Inn 1120 E. Holt Blvd. Ontario, CA 91761	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** _____ License Official: Armen Harkalyan Date: 4/16/2021 Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Knights Inn ("Hotel") is a hotel located at 1120 E. Holt Blvd. in the City of Ontario. The Hotel is operated by Dilip Payaram ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$103,487.11**
PENALTIES:	**$2,069.74**
INTEREST:	**$8,721.73**
TOTAL:	**$114,278.58**

The basis for this finding is $880,741.37 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "...the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G.**

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

CITY OF ONTARIO PLANNING DEPARTMENT
303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-033**

FILE NO.: PDET23-010

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Mayfair Inn ("Hotel"), located at 1120 East Holt Boulevard, within the Industrial Park zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1049-141-25); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-010, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Mayfair Inn (Formally known as "Knights Inn"), located at 1120 East Holt Boulevard, within the Industrial Park zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Mayfair Inn is located at 1120 East Holt Boulevard and zoned Industrial Park. In 1985, the Planning Commission approved a Development Plan (File No. 3294-S) for the construction of 37-unit motel. In 1987, City of Ontario Building Department issued permits for the construction of Motel. The permitted Motel was constructed in conformance with all regulations of the Municipal Code at the time of development; however, at present, it is not in compliance with the current Industrial Park zoning district. Consequently, the existing Motel use is deemed "legal nonconforming". Division 3.01 (Nonconforming Lots, Uses and Structures), Section 3.01.015: Nonconforming Land Uses, outlines the regulations for the continuance of a nonconforming use.

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Mayfair Inn. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional

services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

WHEREAS, all legal prerequisites to the adoption of this Determination of Use have occurred.

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Mayfair Inn is located at 1120 East Holt Boulevard, within the Industrial Park zoning district. Hotels or Motels are not permitted within the Industrial Park zoning district. The existing Mayfair Inn is a legal nonconforming use;

(b) The Planning Commission approved a Development Plan (File No. 3294-S) for the construction of 37-unit motel; and

(c) In 1987, City of Ontario Building Department issued permits for the construction of Motel; and

(d) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Mayfair Inn; and

(e) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(f) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(g) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(h) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(i) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-010, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Mayfair Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the April 16, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

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APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-023

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-015) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE SANDS MOTEL, LOCATED AT 1240 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1101-211-03.

WHEREAS, Purushottam Patel and Andy Patel ("Applicant") operator of the Sands Motel ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Sands Motel, File No. PDET23-015, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Sands Motel is located at 1240 West Mission Boulevard, within the Light Industrial zoning district. Hotels or Motels are not permitted within the Light Industrial zoning district. The existing Sands Motel is a legal nonconforming use; and

WHEREAS, on January 1, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Sands Motel. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 1, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Sands Motel; and

WHEREAS The City of Ontario Building Department issued permits for the construction of Sands Motel in the 1956; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Sands Mote; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of

legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Sands Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the January 1, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify

the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-023, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE Sands Motel 1240 W. Mission Blvd. Ontario, CA 91762	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** _____ License Official: Armen Harkalyan Date: 1/8/2021 Time: 2:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Sands Motel ("Hotel") is a hotel located at 1240 W. Mission Boulevard in the City of Ontario. The Hotel is operated by Andy Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$36,399.14**
PENALTIES:	**$727.98**
INTEREST:	**$3,012.29**
TOTAL:	**$40,139.42**

The basis for this finding is $309,779.94 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "…the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G**.

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-038**

FILE NO.: PDET23-015

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Sands Motel ("Hotel"), located at 1240 West Mission Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1101-211-03); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-015, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Sands Motel, located at 1240 West Mission Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Sands Motel is located at 1240 West Mission Boulevard and zoned Light Industrial. The City of Ontario Building Department issued permits for the construction of the Motel in the early 1956. The permitted Motel was constructed in conformance with all regulations of the Municipal Code at the time of development; however, at present, it is not in compliance with the current Light Industrial zoning district. Consequently, the existing Motel use is deemed "legal nonconforming". Division 3.01 (Nonconforming Lots, Uses and Structures), Section 3.01.015: Nonconforming Land Uses, outlines the regulations for the continuance of a nonconforming use.

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Sands Motel. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide

additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

WHEREAS, all legal prerequisites to the adoption of this Determination of Use have occurred.

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Sands Motel is located at 1240 West Mission Boulevard, within the Light Industrial zoning district. Hotels or Motels are not permitted within the Light Industrial zoning district. The existing Sands Motel is a legal nonconforming use;

(b) The City of Ontario Building Department issued permits for the construction of a Motel in the 1956; and

(c) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Sands Motel ; and

(d) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(e) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(f) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(g) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(h) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-015, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Sands Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the January 8, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-024

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-016) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE WEST COAST INN, LOCATED AT 1211 NORTH GROVE AVENUE, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1047-451-25.

WHEREAS, Anil Patel ("Applicant") operator of the West Coast Inn ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation West Coast Inn, File No. PDET23-016, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the West Coast Inn is located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on January 8, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the West Coast Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 8, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to West Coast Inn; and

WHEREAS in 1987, the City of Ontario Building Department issued building permits for the construction of West Coast Inn Motel (known as "Grove Avenue Motel"); and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the West Coast Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of

legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the West Coast Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the January 8, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify

the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-024, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE

West Coast Inn
1211 N. Grove Ave.
Ontario, CA 91764

REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION

License Official: Armen Harkalyan
Date: 1/8/2021
Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. West Coast Inn ("Hotel") is a hotel located at 1211 N. Grove Ave. in the City of Ontario. The Hotel is operated by Anil Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$57,236.84**
PENALTIES:	**$1,144.74**
INTEREST:	**$5,994.89**
TOTAL:	**$64,376.46**

The basis for this finding is $487,122.00 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "...the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G**.

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-039**

FILE NO.: PDET23-016

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the West Coast Inn ("Hotel"), located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1047-451-25); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-016, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the West Coast Inn, located at 1211 North Grove Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations.

The West Coast Inn (Formally known as the Grove Avenue Motel) is located at 1211 North Grove Avenue and zoned Neighborhood Commercial. In 1987, the City of Ontario Building Department issued building permits for the construction of Motel (Known as "Grove Avenue Motel").

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the West Coast Inn. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days

as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

WHEREAS, all legal prerequisites to the adoption of this Determination of Use have occurred.

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The West Coast Inn is located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

(b) In 1987, the City of Ontario Building Department issued building permits for the construction of Motel (Known as "Grove Avenue Motel"); and

(c) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the West Coast Inn; and

(d) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(e) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(f) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(g) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(h) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-016, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the West Coast Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the January 8, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

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APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

CITY OF ONTARIO PLANNING COMMISSION/ HISTORIC PRESERVATION MEETING

MINUTES

May 28, 2024

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CITY OF ONTARIO PLANNING COMMISSION/ HISTORIC PRESERVATION MEETING

MINUTES

May 28, 2024

REGULAR MEETING: City Hall, 303 East B Street
Called to order by Chairperson Ricci at 6:30 PM

COMMISSIONERS Present: Chairperson Ricci**,** Vice-Chairman DeDiemar, Anderson, Del Turco, Gage, Lampkin

Absent: Dean

OTHERS PRESENT: Community Development Assistant Director Zeledon, City Attorney Guiboa, Planning Director Noh, Sustainability Manager Ruddins, Principal Planner Eoff IV, Senior Planner Ayala, Senior Planner Grahn, Associate Planner Aguilo, Associate Planner Torres, Assistant City Engineer Lee, and Planning Secretary Berendsen

PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was led by Commissioner Del Turco.

ANNOUNCEMENTS

Mr. Noh stated there were no changes to the agenda.

PUBLIC COMMENTS

No person from the public wished to speak at this time.

CONSENT CALENDAR ITEMS

A-01. MINUTES APPROVAL

Planning/Historic Preservation Commission Minutes of April 23, 2024.

PLANNING COMMISSION ACTION

It was moved by DeDiemar, seconded by Lampkin, to approve the Consent Calendar as written. Roll call vote: AYES, Anderson, DeDiemar, Del Turco, Lampkin, Ricci; NOES, none; RECUSE, none; ABSENT, Dean, Gage. The motion was carried 5-0.

PLANNING/HISTORIC COMMISSION PUBLIC HEARING ITEMS

B. ENVIRONMENTAL ASSESSMENT AND DEVELOPMENT AGREEMENT REVIEW FOR FILE NO. PDA21-010: A public hearing to consider a Development Agreement (File No. PDA21-010) between the City of Ontario and SL Ontario Development Company, LLC to

Mr. McDonald stated they either stay in the lobby area or go to the area businesses.

Ms. DeDiemar wanted to clarify that they give economic output.

Mr. McDonald stated yes.

Mr. Del Turco wanted to know if the facility would be used for Ontario residents or from other cities.

Mr. Wong stated for participants within surrounding cities.

Mr. Del Turco wanted to clarify they have vendors contracts to supply food.

Mr. Wong stated that is correct.

Mr. Del Turco wanted to clarify that they won't be using the surrounding restaurants in the area.

Mr. Wong stated they would use the restaurants in the area.

Ms. Anderson wanted to know if the clients that attend the facility aloud to go out of the building.

Mr. Wong, during business hours they use their transportation and have supervised outings.

Ms. Anderson wanted to know what kind of food vendors they buy food from.

Mr. Wong stated they use bakeries and Chinese food and food for events is kind of a mix.

Ms. Anderson wanted to know the percentage of various ethnicities that attend.

Mr. Wong stated that the majority are Asian but will take anyone who would like to join the program.

As there was no one else wishing to speak, Chairperson Ricci closed the public testimony.

Mr. Lampkin spoke regarding the need for senior facilities and spoke regarding concerns and the characteristics of the building for the use.

PLANNING COMMISSION ACTION

It was moved by Lampkin, seconded by Anderson; to deny the Appeal of the Zoning Administrator's decision for File No. PCUP23-018, subject to conditions of approval. Roll call vote: AYES, Anderson, Del Turco, Lampkin; NOES, DeDiemar, Ricci; RECUSE, none; ABSENT, Dean, Gage. The motion was carried 3-2.

H. **APPEAL OF ZONING ADMINISTRATOR DECISION FOR FILE NOS. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015, AND PDET23-016:** An appeal of Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the following hotels and motels; 1) Hotel Hacienda (File No PDET23-005), located at 2423 South Archibald Avenue; 2) Bright Star Motel (File No. PDET23-005), located at 1530 West Mission Boulevard; 3) Days Inn Ontario Motel (File No.PDET23-008, located at 1405 East 4th Street; 4) Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue; 5) Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard; 6) Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard and 7) and the West Coast Inn (File No. PDET23-016), located at 1211 North Grove Avenue. The appeal is not subject to the California

Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. (APNS: 1083-071-26, 1011-221-15, 0108-381-32, 1051-071-04, 1049-141-25, 1101-211-03 and 1047-451-25). **Submitted by Frank A. Weiser – Attorney at Law**

Mr. Zeledon introduced Andrew Lopez, the attorney representing the City for this item.

Assistant Community Development Director Zeledon presented the staff report. Mr. Lopez explained the appellant's issues and city's response to them. He stated that staff is recommending the Planning Commission deny the appeal of the Zoning Administrator's decision for, File Nos. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015 AND PDET23-016, pursuant to the facts and reasons contained in the staff report and the attached Resolutions.

PUBLIC TESTIMONY

Frank Weiser explained his procedural objections regarding CEQA applying, and that this issue relates to housing and the due process clause with the TOT audit and that they were due a hearing before the Zoning Administrator. He stated the motels are grandfathered in and there are constitutional issues, and that there can't be contradictory ordinances. He requested they either deny the Zoning Administrator hearing or have an EIR be produced and there should be a hearing.

Mr. Lampkin wanted to clarify that Mr. Weiser believes that staff believes that CEQA doesn't apply.

Mr. Weiser stated he believes CEQA does apply because it is a housing issue and an EIR should be done.

Mr. Lampkin asked the deputy city attorney how CEQA applies to this appeal.

Mr. Zeledon responded and stated CEQA doesn't apply as there are no physical changes to the environment. He clarified the TOT, and 30-day limitation was approved in 1965 and amendments have been made since then.

Mr. Weiser stated the Development Code was amended in 2017 or 2018 and his clients did not receive notification and that there cannot be contradictory applications of an ordinance.

Mr. Lampkin asked the Zoning Administrator if it is his opinion that CEQA does not apply in this situation because it is not a new development.

Mr. Zeledon stated that is correct, it is not a project defined under CEQA.

Mr. Lampkin clarified that's why Mr. Zeledon didn't abdicate that they comply with CEQA as it didn't apply.

Mr. Zeledon stated that is correct and the CEQA exemption is sited in the Zoning Administrator decision and in the Planning Commission agenda report.

Mr. Weiser stated he respectively disagreed.

Mr. Lampkin asked the attorney what his opinion is regarding the Toronto Open Space Committee vs. Marion Counties decision in regard to property not developed.

Attorney Lopez diverted to the specifics of the case as he hasn't been briefed on the case.

Ms. DeDiemar wanted clarification on the definition of transient.

Mr. Weiser stated under the TOT it is defined as 30 days or less and these people were given a permanent exemption beyond that.

Attorney Lopez explained that Ontario Development Code does have the transient definition as written, which states hotels can't rent longer than 30 days.

Ms. DeDiemar asked if this would be considered a lease or rent after 30 days.

Attorney Lopez stated the Zoning Administrator based the decision on the Development Code, which says longer than 30 days is not permitted.

Mr. Zeledon responded with the definition of transient within the Development Code which states a 30-day max., which is what he needed to apply for this decision.

Mr. Weiser rebutted, disagreed with Attorney Lopez.

Mr. Zeledon responded.

As there was no one else wishing to speak, Chairperson Ricci closed the public testimony.

Mr. Lampkin spoke regarding the staff addressing the issue succinctly and the issues from the appellant that didn't apply.

Mr. Del Turco asked Mr. Zeledon if the hotels were aware of the standard.

Mr. Zeledon stated yes.

PLANNING COMMISSION ACTION

It was moved by Lampkin, seconded by Del Turco, to deny the Appeal of the Zoning Administrator's decision for File Nos. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015 AND PDET23-016. Roll call vote: AYES, Anderson, DeDiemar, Del Turco, Lampkin, Ricci; NOES, none; RECUSE, none; ABSENT, Dean, Gage. The motion was carried 5-0.

Mr. Ricci stated that this decision can be appealed within 10 days.

Attorney Guiboa stated that there was confusion regarding the voting for Item D and that some Commissioners did not intend to deny the EIR and asked the Commission if they would like to reconsider that vote and make a motion to continue that item to the next Planning Commission meeting.

It was moved by Lampkin, seconded by Anderson, to reconsider the Item D decision and to continue that Item to the next Planning Commission meeting. Roll call vote: AYES, Anderson, DeDiemar, Del Turco, Lampkin, Ricci; NOES, none; RECUSE, none; ABSENT, Dean, Gage. The motion was carried 5-0.

MATTERS FROM THE PLANNING COMMISSION

Old Business Reports From Subcommittees

Historic Preservation (Standing): Did not meet this month.

New Business

Nominations for Special Recognition

None at this time.

DIRECTOR'S REPORT

Mr. Noh stated the Monthly Activity Reports were available, reminded the Commissioners about the Model Colony Award presentation and talked about Ms. Nancy DeDiemar receiving the Prism Award from the Soroptimist International of Montclair/Inland Valley Chapter.

ADJOURNMENT

Ricci adjourned the meeting at 9:52 PM, to the next meeting on June 25, 2024.

Secretary Pro Tempore

Chairman, Planning Commission

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-005) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE HOTEL HACIENDA, LOCATED AT 2425 SOUTH ARCHIBALD AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1083-071-26.

WHEREAS, Noman Patel ("Applicant") operator of the Hotel Hacienda has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Hotel Hacienda, File No. PDET23-005, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to the Hotel Hacienda (Formally America's Best Value Inn) ("Hotel"), located at 2425 South Archibald Avenue, within the Community Commercial zoning district; and

WHEREAS, on April 30, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Hotel Hacienda. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 30, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Hotel Hacienda; and

WHEREAS, the Hotel Hacienda was approved (File No. 3472-S) by the City of Ontario in 1986 as a 55-unit Motel (known in 1986 as the Knice Inn); and

WHEREAS, on November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

WHEREAS, in 1988, the Motel was constructed; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate,

to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Hotel Hacienda; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section 15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the

Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-018 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-005; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Hotel Hacienda. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the April 30, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission’s Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 5: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 3rd day of September, 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 3, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held September 3, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-007) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE BRIGHT STAR MOTEL, LOCATED AT 1530 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1011-221-15.

WHEREAS, Purushottam Patel and Esha Smah ("Applicant") operator of the Bright Star Motel ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Bright Star Motel, File No. PDET23-007, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to the Bright Star Motel, located at 1530 West Mission Boulevard, within the Light Industrial zoning district. The existing Bright Star Motel is a legal nonconforming use; and

WHEREAS, on January 22, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Bright Star Motel. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 22, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Bright Star Motel; and

WHEREAS, the City of Ontario Building Department issued building permits, between 1956 and 1962, for the construction of Motel; and

WHEREAS, on November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Bright Star Motel; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

   (1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of

the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-019 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-007; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Bright Star Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the January 22, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 3rd day of September, 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 3, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held September 3, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-008) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE DAYS INN ONTARIO MOTEL, LOCATED AT 1405 EAST 4TH STREET, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0108-381-32.

WHEREAS, Kisham Patel ("Applicant") operator of the Days Inn Ontario Motel ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Days Inn Ontario Motel, File No. PDET23-008, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Days Inn Ontario is located at 1405 East 4th Street, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on April 2, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Days Inn Ontario. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 2, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Days Inn Ontario Motel; and

WHEREAS, in 1985, The Planning Commission approved a Conditional Use Permit (File No. 3225-CUP) to establish 53-unit Days Inn Ontario Motel (known as Youngs Motel); and

WHEREAS, in 1987, the City of Ontario Building Department issued building permits for the construction of Days Inn Ontario Motel (Known as "Youngs Motel"); and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior

walkways consistent with the City approval and design layout for the Days Inn Ontario; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

   (1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-020 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-008; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Days Inn Ontario. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the April 2, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission’s Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 3rd day of September, 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 3, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held September 3, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-009) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE ECONOMY INN, LOCATED AT 2301 SOUTH EUCLID AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1051-071-04.

WHEREAS, Mehesh Patel ("Applicant") operator of the Economy Inn ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Economy Inn, File No. PDET23-009, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Economy Inn is located at 2301 South Euclid Avenue, within the Community Commercial zoning district. Hotels or Motels are permitted within the Community Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on February 5, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Economy Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on February 5, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Economy Inn; and

WHEREAS, in 1984, The Planning Commission approved a Conditional Use Permit (File No. 3051-CUP) to establish 47-unit Economy Inn Motel; and

WHEREAS, in 1985, the City of Ontario Building Department issued building permits for the construction of the Economy Inn Motel; and

WHEREAS Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Economy Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

   (1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning

Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-021 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-009; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Economy Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the February 5, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 5: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 3rd day of September, 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 3, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held September 3, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-010) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE MAYFAIR INN, LOCATED AT 1120 EAST HOLT BOULEVARD, WITHIN THE INDUSTRIAL PARK ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1049-141-25.

WHEREAS, Dilip Payaram ("Applicant") operator of the Mayfair Inn ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Mayfair Inn, File No. PDET23-010, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Mayfair Inn (formally known as the Knights Inn) is located at 1120 East Holt Boulevard, within the Industrial Park zoning district. Hotels or Motels are not permitted within the Industrial Park zoning district. The existing Mayfair Inn is a legal nonconforming use; and

WHEREAS, on April 16, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Mayfiar Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 16, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Mayfair Inn; and

WHEREAS, in 1985, the Planning Commission approved a Development Plan (File No. 3294-S) for the construction of 37-unit Mayfair Inn motel; and

WHEREAS, in 1987, City of Ontario Building Department issued permits for the construction of Mayfair Motel; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Mayfair Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State

CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which

imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-022 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-010; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Mayfair Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the April 16, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 5: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 3rd day of September, 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 3, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held September 3, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-015) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE SANDS MOTEL, LOCATED AT 1240 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1101-211-03.

WHEREAS, Purushottam Patel and Andy Patel ("Applicant") operator of the Sands Motel ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Sands Motel, File No. PDET23-015, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Sands Motel is located at 1240 West Mission Boulevard, within the Light Industrial zoning district. Hotels or Motels are not permitted within the Light Industrial zoning district. The existing Sands Motel is a legal nonconforming use; and

WHEREAS, on January 1, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Sands Motel. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 1, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Sands Motel; and

WHEREAS The City of Ontario Building Department issued permits for the construction of Sands Motel in the 1956; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Sands Mote; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff’s response:

1. *Appellants’ Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants’ argument is flawed because the TOT ordinance was not a “project” under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission’s decision to uphold the Zoning Administrator’s decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

   (1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

   (2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will

result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator

to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-023 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-015; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Sands Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the January 1, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 3rd day of September, 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 3, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held September 3, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-016) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE WEST COAST INN, LOCATED AT 1211 NORTH GROVE AVENUE, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1047-451-25.

WHEREAS, Anil Patel ("Applicant") operator of the West Coast Inn ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation West Coast Inn, File No. PDET23-016, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the West Coast Inn is located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on January 8, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the West Coast Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 8, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to West Coast Inn; and

WHEREAS in 1987, the City of Ontario Building Department issued building permits for the construction of West Coast Inn Motel (known as "Grove Avenue Motel"); and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the West Coast Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

   (1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

   (2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State

CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section 15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which

imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject appeal Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-024 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-016; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the West Coast Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the January 8, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 3rd day of September, 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 3, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held September 3, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)