



TUSTIN LEGACY DEVELOPMENT AND DISPOSITION MANUAL



TABLE OF CONTENTS

- Executive Summary 8**
- Chapter 1 Introduction 12**
- Chapter 2 The City as Executive Developer 22**
 - 2.1 Executive Developer Responsibilities 24**
 - 2.1.1 Marketing of Tustin Legacy 25
 - 2.1.2 Development Solicitation 25
 - 2.1.3 Property Negotiations 26
 - 2.1.4 Proprietary Design Review 26
 - 2.1.5 Backbone Infrastructure Development 26
 - 2.1.6 Land Sale Proceeds Management 27
 - 2.2 Additional City Roles and Responsibilities. 28**
 - 2.2.1 Local Reuse Authority 28
 - 2.2.2 Property & Asset Management 32
 - 2.2.3 Regulatory Oversight/Land-Use Authority. 33
 - 2.2.4 Interim Use Leasing and Licensing Administration 33
 - 2.2.5 Public Agency Coordination 33
 - 2.3 Successes 34**
 - 2.4 Lessons Learned. 37
 - 2.4.1 Large Mixed-Use Projects by “Master” Developers have been Unsuccessful . . 37
 - 2.4.2 Competitive Solicitations have been Advantageous to the City 42
 - 2.4.3 Using Proven Successful Developers at Tustin Legacy Expedites Development 42
 - 2.4.4 Negotiate with Developers, not End-Users. 42
 - 2.4.5 Participate in Developer Success (Profit Participation). 43
 - 2.4.6 Private Entities Unlikely to Construct Public Infrastructure. 44
 - 2.4.7 Disposition Offering Phasing and Size Should be Flexible 44



- 2.4.8 Implement Tax B (Maintenance & Service Tax) to Ensure Future Stability 45
- 2.4.9 Reduce Risk to General Fund (Self-Sustaining Development) 45
- 2.4.10 Prepare for Change and Unpredictability. 46
- Chapter 3 Development Strategy 48**
- 3.1 Development Approach/Goals and Objectives 49**
- 3.1.1 Encourage Development Adjacent to Existing Infrastructure and Completed Vertical Improvements. 50
- 3.1.2 Enforce Momentum. 50
- 3.1.3 Maintain Control. 50
- 3.1.4 Orderly Approach to Planning and Development 50
- 3.1.5 Control of Development Team. 51
- 3.1.6 Land Sale in Segments to Optimize Value 51
- 3.1.7 Low Cost of Financing 51
- 3.1.8 Disposition Flexibility 51
- 3.1.9 Resetting of Market Comparables. 51
- 3.2 Guiding Principles 52**
- 3.2.1 Community Building/Quality Design (Exceptional Development). 52
- 3.2.2 Minimize City Financial Risk (No General Fund Burden) 53
- 3.2.3 Maximize Land-Sale Price (Highest Price) 54
- 3.2.4 Expedite Development (Build Fastest) 54
- 3.2.5 Use Qualified Developers (Best in their Field) 55
- 3.2.6 Long-Term Land Revenue (Sales vs. Ground Leasing) 55
- 3.2.7 Housing Affordability/Attainability 56
- 3.2.8 Ensure Project Success (Monitor Absorption/Profit Participation) 56
- 3.3 Undeveloped Portions of Tustin Legacy 57**
- 3.4 Impediments/Constraints 62**
- 3.4.1 Lease in Furtherance of Conveyance (LIFOC) 63
- 3.4.2 Surplus Land Act (SLA) 64
- 3.4.3 Infrastructure Development 72
- 3.4.4 High Groundwater Table 73
- 3.4.5 Development Phasing 73

- 3.5 Disposition Opportunities 77**
- 3.5.1 Early Opportunity Sites 80
- 3.5.2 Longer-Term Disposition Areas 84
- 3.6 Ground Leasing 88**
- 3.7 Interim Use/Licensing 89**
- 3.8 South Hangar Rehabilitation 90**
- 3.9 Affordable/Attainable Housing 92**
- 3.9.1 State Density Bonus Law. 93
- 3.9.2 Affordable Housing Financing and Phasing 93
- 3.10 Infrastructure Program Overview 94**
- 3.10.1 Backbone Infrastructure Program. 95
- 3.10.2 Local Infrastructure 99
- 3.11 Community Facilities District (CFD) – Tax B. 100**
- 3.12 Tustin Unified School District Community Facilities District (CFD 15-2) 102**
- Chapter 4 Development Process 104**
- 4.1 Conceptual Design 105**
- 4.2 Predevelopment Activities 106**
- 4.3 Community Engagement 107**
- 4.4 Infrastructure Installation 107**
- Chapter 5 Developer Solicitation & Selection 108**
- 5.1 Minimum Qualifications 109**
- 5.2 Competitive Request for Proposal (RFP) Process. 110**
- 5.3 Preferred Developer 110**
- 5.4 Use of Commercial Real Estate Brokers 111**
- 5.5 Unsolicited Proposals 112**
- 5.6 Standard City Terms 112**



EXHIBITS, TABLES, AND APPENDICES

Exhibit 1: Regional Context Map13
Exhibit 2: Tustin Legacy Status February 2023	15
Exhibit 3: Specific Plan Neighborhoods Map.	17
Exhibit 4: Specific Plan Land Use Map	19
Exhibit 5: Remaining Navy Property at Tustin Legacy	47
Exhibit 6: Remaining Navy Property at Tustin Legacy	63
Exhibit 7: Overall Disposition Area Map	79
Exhibit 8: Early Opportunity Sites.	80
Exhibit 9: Longer-Term Disposition Areas	84
Exhibit 10: CFD Map	101
Table 1: Development Summary	14
Table 2: Specific Plan Land-Use Categories	20
Table 3: Land Sales Table	34
Table 4: Public Projects	35
Table 5: Pre-2011 Land Sales Table	36
Table 6: Preliminary Marketing Timeline For Early Opportunity Sites	81
Table 7: Preliminary Marketing Timeline For Longer-Term Disposition Areas.	85
Appendix 1: Tustin Legacy Backbone Infrastructure Program	



EXECUTIVE SUMMARY

This Development and Disposition Manual (Development Manual) provides a recommended framework to implement the City of Tustin's vision for the redevelopment of the former Marine Corps Air Station (MCAS) Tustin, as identified in the Specific Plan, in compliance with all federal, state, and local regulations. This document focuses on the calculated conveyance and development of City-owned property at Tustin Legacy and seeks to provide flexibility in adapting to changing market conditions, and land and infrastructure constraints. It provides guidance in making property disposition decisions by the City which acts in the capacity of Executive Developer for Tustin Legacy.

Additionally, this Development Manual will inform the public on how development is implemented at Tustin Legacy, as well as inform potential developers of future development opportunities and the typical processes and compliance requirements for disposition of City-owned property at Tustin Legacy.

On April 25, 2011, the Tustin City Council confirmed that the City would act as Executive Master Developer of Tustin Legacy after the termination of the Disposition and Development Agreement (DDA) and Development Agreement (DA) with private master developer Tustin Legacy Community Partners (TLCP) in the summer of 2010, due to non-performance of development obligations. The purpose of the effort was to reframe the City's approach for marketing and development of the property, and to specifically identify potential early implementation opportunities.

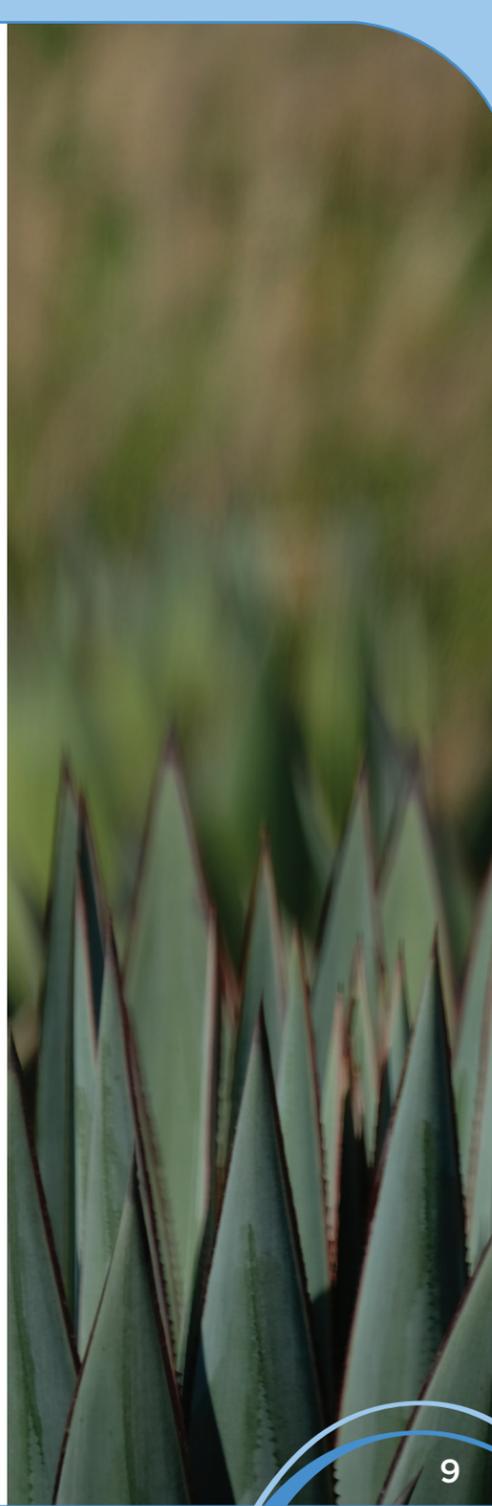
Prior to entering into a DDA with TLCP in 2006 for the "Master Developer Footprint" (approximately 805 acres), the City had already acted in an Executive Developer role at Tustin Legacy and implemented the disposition and development of such projects as the Tustin Field I and II residential communities and The District shopping center.

Since the City assumed the role of Executive Developer at Tustin Legacy again in 2011, the City has generated approximately \$220 million in land sale proceeds, \$66 million in Tustin Legacy Backbone Infrastructure Finance Program (Backbone Program) fair share contributions, and \$37 million in project participation on the disposition of nearly 190 acres (not inclusive of parks and rights-of-way) consisting of the following which is further detailed in Section 2.3:

- 100,000 sq. ft. Retail
- 506,000 sq. ft. Office
- 993 For-Sale Homes
- 758 Apartments (262 Affordable)
- Public and Institutional
 - Orange County Rescue Mission
 - Tustin Unified School District Schools
 - South Orange County Community College District
 - OC Animal Care
 - OC Social Services
 - OC Fire Authority Fire Station
 - Army Reserve Facility
 - Sheriff Training Academy (Rancho Santiago Community College District)

While there have been many successes at Tustin Legacy, it is important to also identify some of the failed attempts, setbacks, and lessons learned in order not to repeat these endeavors throughout the course of pursuing future development. These shortcomings have influenced and refined the City's approach toward disposition of property in order to ensure adherence to the vision of the Specific Plan and the timely execution of development. This Development Manual and updated timelines for marketing dispositions are intended to incorporate these insights gained while acting in the capacity of Executive Developer since 2011. Notable lessons learned over the course of the last 10+ years of development include the following which are further detailed in Section 2.4:

- Large Scale Mixed-Use Projects by "Master" Developers have been Unsuccessful
- Competitive Solicitations have been Advantageous to the City
- Using Proven and Successful Developers at Tustin Legacy Expedites Development
- Negotiate with Developers not End-Users
- Participate in Developer Success (Profit Participation)
- Private Entities are Unlikely to Construct Public Infrastructure
- Disposition Offering Phasing and Size Should be Flexible
- Implement Tax B (Maintenance & Service Tax) to Ensure Future Stability
- Reduce Risk to General Fund (Self-Sustaining Development)
- Prepare for Change and Unpredictability



Many of the Guiding Principles identified within the 2011 Disposition Strategy document remain relevant today. This Development Manual incorporates these pertinent Guiding Principles and expands upon them based on development experience since 2011, as well as the guidance provided to City staff from the City Council over successive years and City Councils. The Guiding Principles outlined below provide a framework to evaluate and achieve the vision of Tustin Legacy, but it should be acknowledged that a number of these Guiding Principles have the potential to conflict with one another depending on the proposed project. In determining the appropriate approach to each disposition, the City will need to balance these Guiding Principles based on the particular site, land use, City needs, timing, and market conditions:

- Community Building/Quality Design (Exceptional Development)
- Minimize City Financial Risk (No General Fund Burden)
- Maximize Land Sales Price (Highest Price)
- Expedite Development (Build Fastest)
- Use Qualified Developers (Best in their Field)
- Long-Term Land Revenue (Sales vs. Ground Leasing)
- Housing Affordability/Attainability
- Ensure Project Success (Monitor Absorption/Profit Participation)

Recent State of California legislative mandates have resulted in significant changes from how the City had previously disposed of property at Tustin Legacy, and has altered the approach and process for future property conveyances. Assembly Bill (AB) 1486 (Ting), which became law on January 1, 2020, amended the Surplus Land Act (SLA) and removed the ability of the City to dispose of property for economic generation purposes. While the City maintains the assertion that Tustin Legacy is exempt from the SLA, the City has nevertheless chosen to comply with the law, as prescribed, in order to continue expedited development of Tustin Legacy. Impediments to development, including the SLA, which influence the City as a public agency in disposing of property at Tustin Legacy are further detailed in Section 3.4.

By understanding the City's development strategy and processes as outlined within this Development Manual, the hope is that both the public and potential development partners will better comprehend the City's perspective toward property conveyance and development at Tustin Legacy. Shared experiences and lessons learned by the City can provide the necessary background to understand how the City implements development at Tustin Legacy and help avoid some of the mistakes that have occurred.

The intent is for the City to craft disposition offerings to meet the goals and objectives of both the City and developer. The developer solicitation and selection process is detailed in Chapter 4 to provide guidance to the development community seeking to participate in the buildout of Tustin Legacy. Ultimately this document serves to inform both the policy-level decision makers at the City on recommended approaches of how to proceed with development at Tustin Legacy and the private sector development community on how to acquire and navigate development opportunities.

CHAPTER 1

Introduction



Tustin Legacy is a master planned, mixed-use community, centrally located in the heart of Orange County, California, consisting of a 1,606 acre project area which includes 1,511 acres in the City of Tustin (City) and approximately 95 acres in the City of Irvine. Excellent access to the site is provided by a number of major arterial roadways and regional connections including State Route 55 (SR-55), State Route 261 (SR-261) toll road, and Interstate 5 (I-5) freeway. The adjacent Tustin Metrolink commuter rail line, located across Edinger Avenue, is the closest rail station to John Wayne Airport (SNA), which is less than two miles from Tustin Legacy.

At buildout, the project is anticipated to include over 6,800 residential units, up to 9.5 million sq. ft. of commercial/non-residential uses (office, retail, entertainment, and research and development), educational facilities, and up to 170 acres of new parks and open space per the existing Final Joint Environmental Impact Report/Environmental Impact Statement (Final EIS/EIR) approvals.

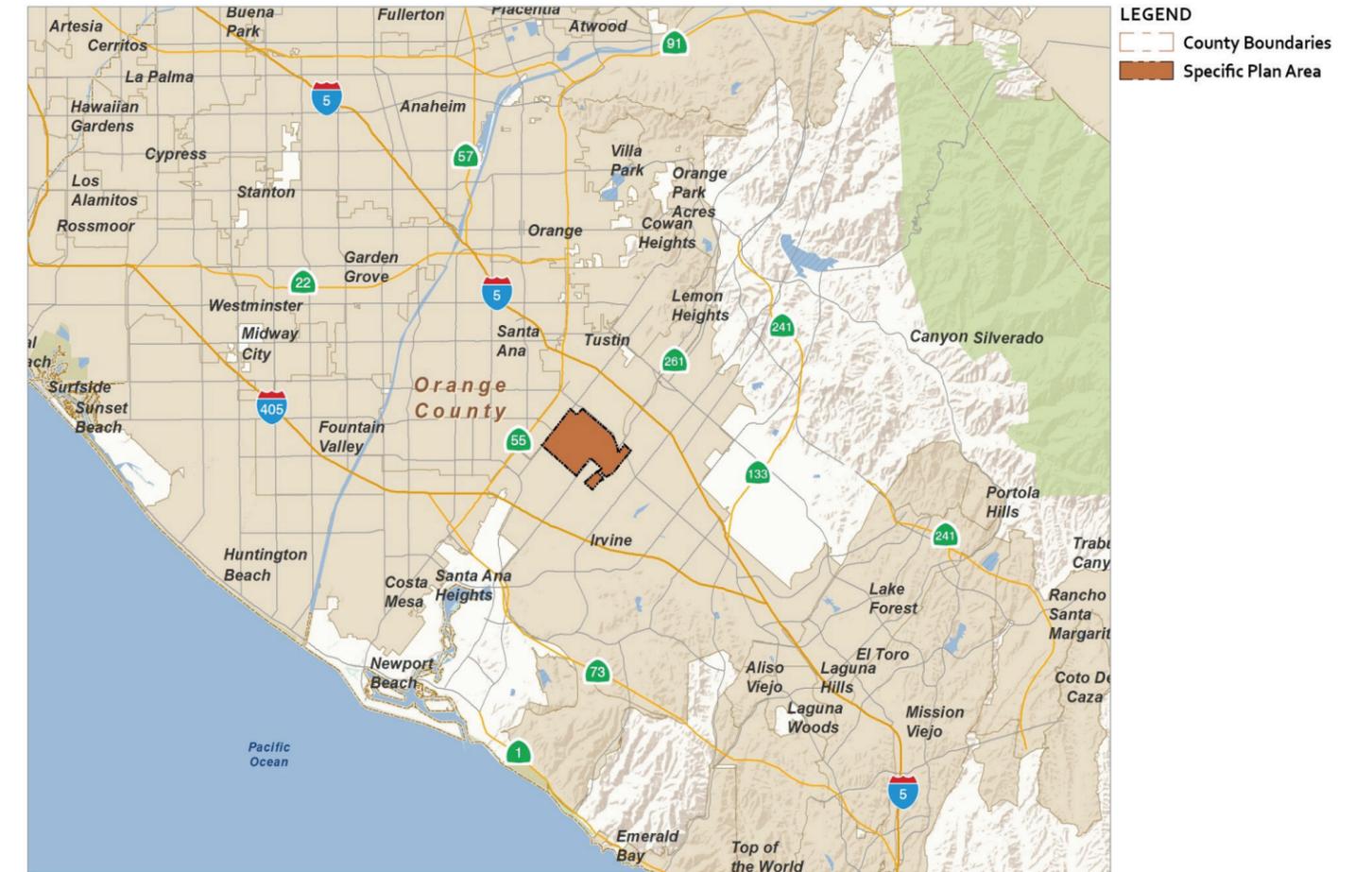


Exhibit 1: Regional Context Map

As of year end 2022, approximately 1,000 acres of Tustin Legacy has been developed by the City and others, with approximately 565 acres remaining (approximately 480 of which are under City control). Total development summary at Tustin Legacy:

RESIDENTIAL PROJECTS (18% TOTAL AFFORDABILITY)		COMMERCIAL PROJECTS	
Tustin Field I & II	565 units	The District shopping center	1,000,000 sq ft
Villages of Columbus (Square & Grove)	1,540 units	The Village neighborhood shopping center	200,000 sq ft
Greenwood	375 units	Flight creative office campus	372,000 sq ft
Amalfi	533 units	Total	1,572,000 sq ft
Anton Legacy	225 units	PUBLIC & INSTITUTIONAL PROJECTS	
Levity	218 units	County of Orange Animal Care facility	
The Landing	400 units	County of Orange Social Services campus	
Total	3,856 Units	Orange County Rescue Mission	
PARKS AND OPEN SPACE PROJECTS		Orange County Fire Authority Fire Station #37	
Victory Park	5 acres	Army Reserve facility (new)	
Tustin Legacy Park Phase 1	26 acres	Tustin Unified School District (TUSD) Heritage Elementary	
Veterans Sports Park	32 acres	TUSD Legacy Magnet Academy (middle/high school)	
Neighborhood parks with public access	29 acres	Sheriff Training Academy (Rancho Santiago Community College District)	
Total	92 acres	Advanced Technology Education Park (ATEP) by South Orange County Community College District	

Table 1: Development Summary

Tustin Legacy Present Development Status

- TUSTIN LEGACY BOUNDARY
- RESIDENTIAL (3,856 UNITS)
- COMMERCIAL (1.6 M SF)
- PUBLIC & INSTITUTIONAL
- PARK (OVER 90 ACRES)
- UNDEVELOPED & NOT CONTROLLED BY CITY
- UNDEVELOPED CITY PROPERTY
- LIFOC BOUNDARY

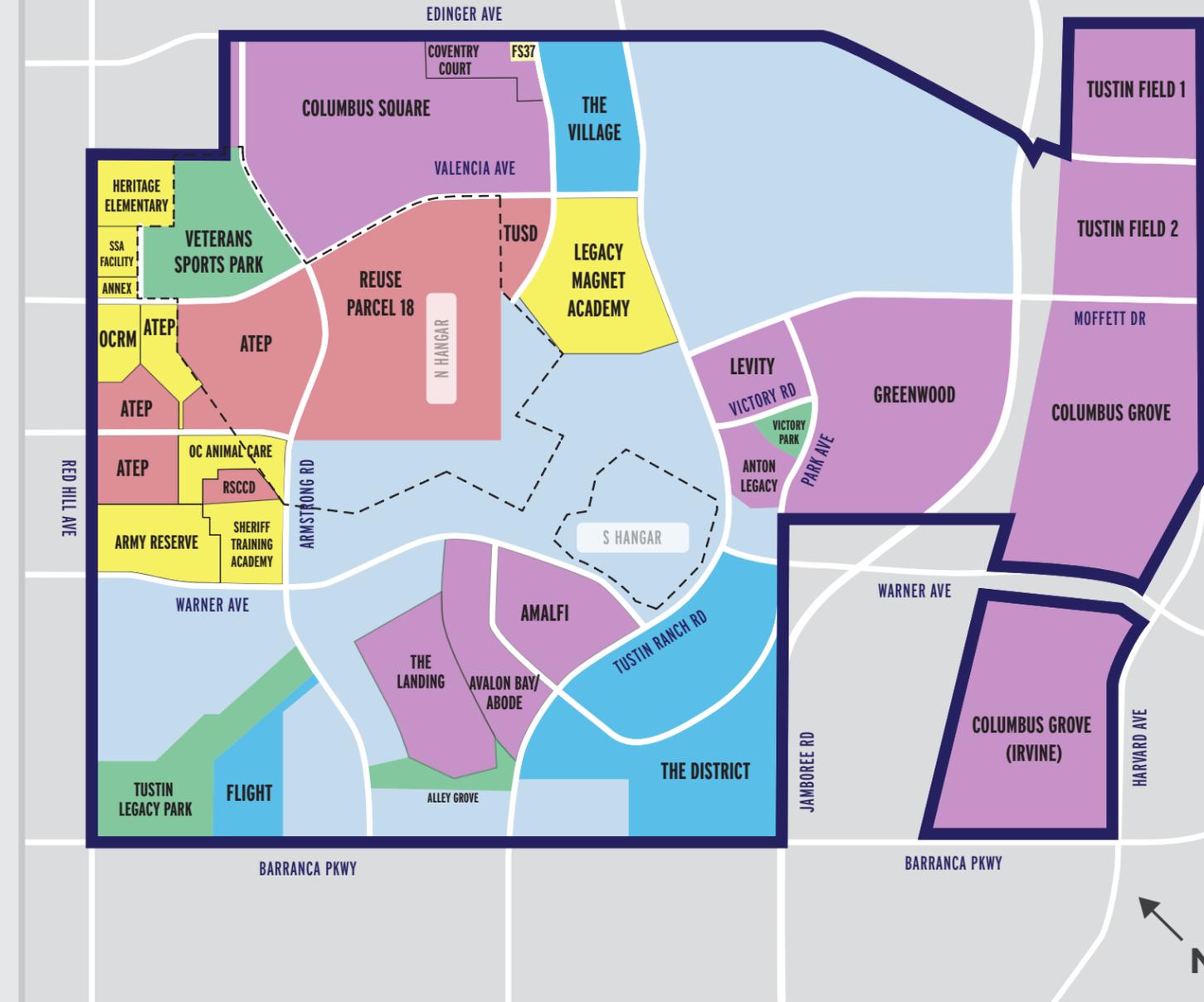


Exhibit 2: Tustin Legacy Status February 2023

On July 2, 1999, the former Marine Corps Air Station (MCAS) Tustin was realigned and closed in accordance with the Federal Base Realignment Closure Act. Tustin Legacy began to take shape with the first conveyance of this property to the City on May 13, 2002. The City, designated as the Local Reuse Authority (LRA) by the Federal Government to lead redevelopment of the former base, determined that the most appropriate tool to guide the conversion of the base from military to civilian use, and to facilitate entitlements and permitting, was the development of a combined Specific Plan/Reuse Plan. The MCAS Tustin Specific Plan/Reuse Plan, now known as the Tustin Legacy Specific Plan (Specific Plan), is the culmination of this planning effort.

The Specific Plan is the prevailing land-use policy document for the project area and contains the development and reuse regulations that constitute the zoning for the property and govern what can be built at Tustin Legacy. The Specific Plan includes detailed planning, policies, regulations, and implementation procedures necessary to guide the long-term reuse and development of the Specific Plan area.

Implementation of the Specific Plan is an ongoing process and there are unique and challenging circumstances associated with converting a former military base to civilian use. The Specific Plan is intended to be practical in economic terms, visionary in terms of its mix of land uses and ability to create and respond to future market opportunities, and detailed in terms of important public realm and urban form elements.

The Specific Plan also assures builders that their investments will be protected through high-quality development standards and guidelines applied throughout Tustin Legacy. At the same time, the Specific Plan is intended to offer sufficient flexibility to respond to ever-changing market conditions. A careful balance between certainty and flexibility underlies the provisions of the Specific Plan.

The Tustin Legacy Development Manual is a tool for implementing the Specific Plan vision. Land-use planning itself is not a primary component of the Development Manual and this document does not offer development and reuse regulations or property zoning. Defined land-use policies and development standards are contained within the Specific Plan. Periodically, amendments occur to the Specific Plan pertaining to land-use changes which are publicly posted and publicly attended. This Development Manual outlines the City's role as the Executive Developer implementing the land-use vision of the Specific Plan to phase development and convey property.

TUSTIN LEGACY SPECIFIC PLAN BACKGROUND

The Specific Plan was originally adopted in 2003 and has undergone subsequent amendments with the most recent amendment in 2017. Future amendments are anticipated, in particular by the end of 2024, to accommodate the City's recently adopted General Plan Housing Element. This section offers a brief summary of the land-use framework under the Specific Plan, along with a number of illustrative maps which identify development areas as designated within the document. Further information may be referenced in the Specific Plan document itself which is available on the City's website.

The land-use plan is a collection of neighborhoods which will have their own characteristics and set of functions to perform within the Specific Plan area. A neighborhood may be comprised of more than one land-use designation. The neighborhoods defined in the plan are intended to establish an overall cohesive community structure for the Specific Plan and provide the basis for the range of land uses, intensity of development, urban design characteristics, and development regulations within the Specific Plan. The land-use plan contains eight neighborhoods, each assigned a letter, as shown on Exhibit 3.

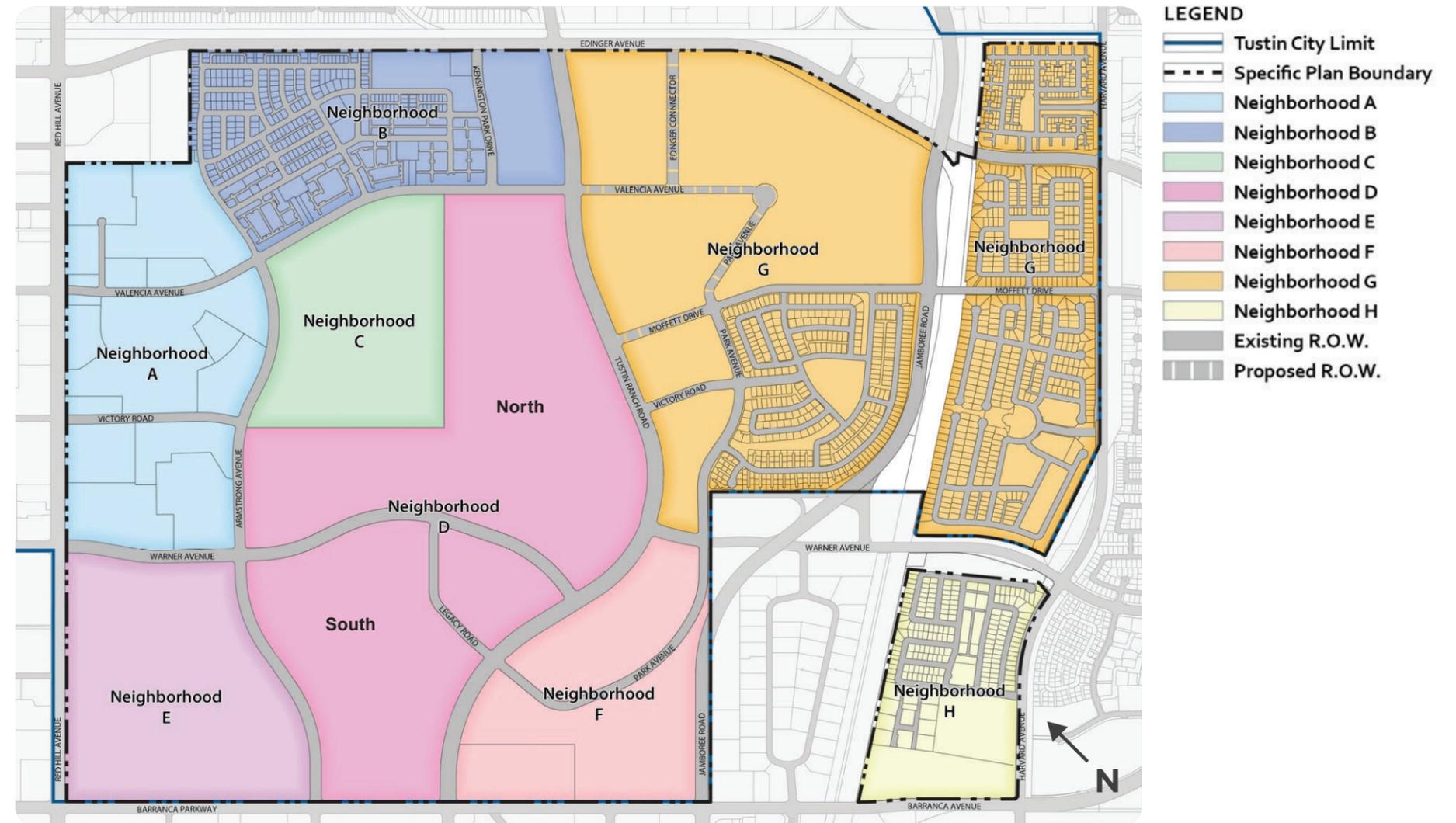


Exhibit 3: Specific Plan Neighborhoods Map

The land-use plan is also broken down into ten land-use designations, including an overlay designation. Land-use designations range from residential to commercial, and include opportunities for vertical and horizontal mixed-use developments, providing a flexible plan that can adapt to changing market demands. The land-use designations have been assigned a Planning Area number. Planning Areas are the basis for the use and development regulations. Some of the Planning Areas have been combined from the originally approved Specific Plan to better achieve the land-use objectives of the current Specific Plan.

The land use plan reflects the vision and goals of the Specific Plan by providing a healthy balance of market-driven, private-sector uses with a wide range of public-serving uses and amenities. With a focus on the remaining undeveloped lands in the Specific Plan area, the land use plan also responds to the issues identified during the planning process including pre-existing traffic congestion, environmental impacts and remediation, and the local and city-wide need for additional open space/recreational areas.

The land-use plan contains a variety of housing and employment opportunities, and educational and community support uses to complement the urban fabric, as well as strengthen the economic base of the area. Upon buildout, the site will be unlike any other place in Orange County with its unique mix of uses, functional and physical connections between uses, historical setting, and vitality.

LEGEND

-  Tustin City Limit
-  Specific Plan Boundary
-  Mixed-Use Transit
-  Mixed-Use Urban
-  Commercial
-  Commercial / Business
-  Residential
-  Park
-  Tustin Legacy Park Overlay
-  Transitional/Emergency Housing
-  Education Village
-  Existing R.O.W.
-  Proposed R.O.W.
-  Planning Area

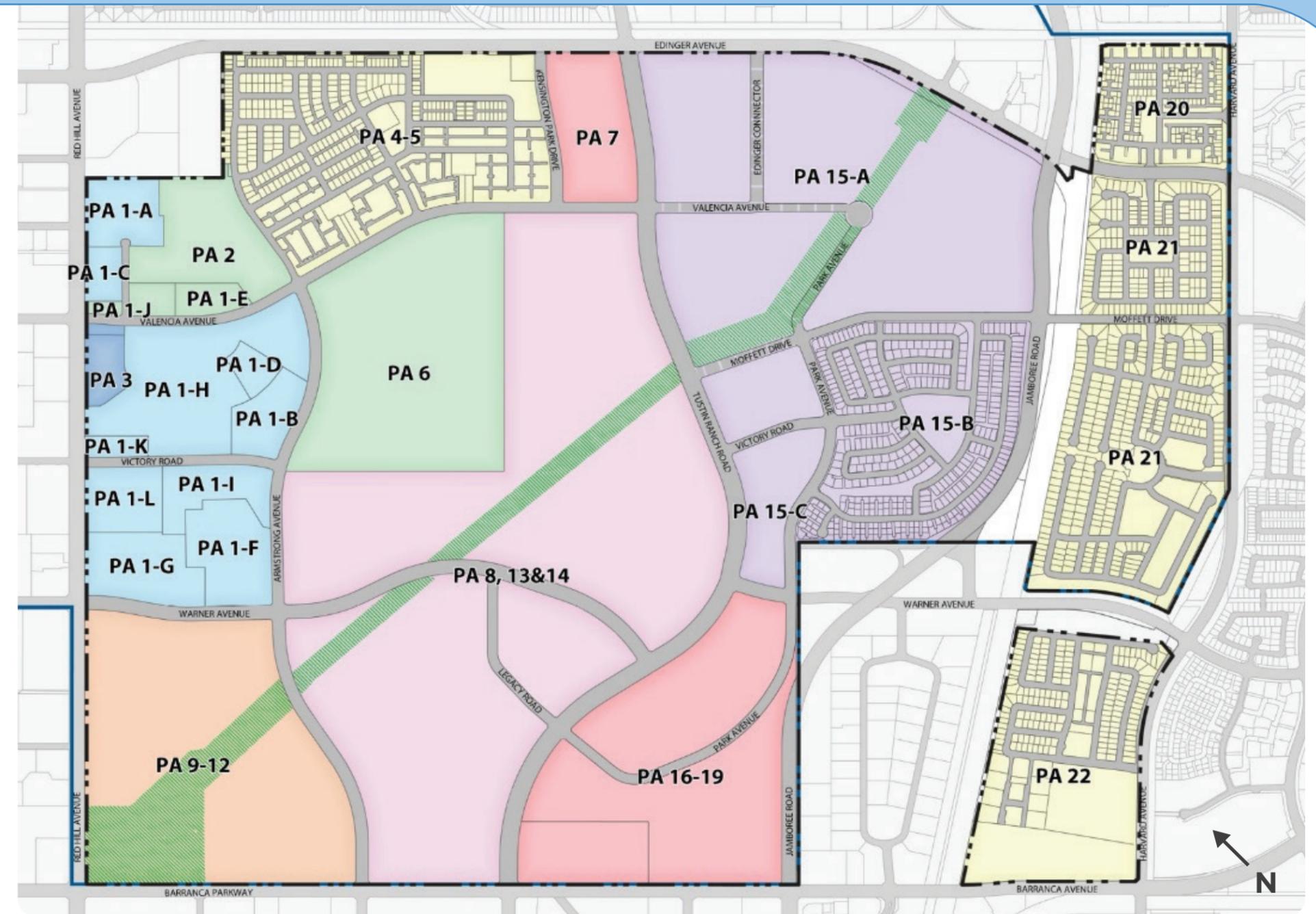


Exhibit 4: Specific Plan Land Use Map

DESIGNATION	DESCRIPTION
Mixed-Use Transit	Provides for transit-oriented, mixed-use developments with commercial retail and/or office on the ground floor and either residential units or office on upper floors. Allows for stand-alone commercial uses, residential uses as well, including senior housing.
Mixed-Use Urban	Provides for mixed-use developments with commercial retail and/or office on the ground floor and either residential units or offices on upper floors. Allows for stand-alone commercial and residential uses as well. This designation also allows for hotel, entertainment, and commercial sports facilities. This designation also requires the inclusion of a major segment of the Tustin Legacy Park.
Commercial	Provides for development of a variety of retail and service commercial uses with the intent of supporting and complementing uses in the plan area and surrounding development.
Commercial/Business	Provides for the development of a variety of uses, including research and development, professional and creative office, retail, senior care facilities, and specialized employment and merchandizing uses.
Residential	Provides for a range of residential development and housing types, including single-family detached and attached and multifamily homes. This designation also requires the inclusion of parks, open space, and trails.
Park	Provides for passive community park uses, community-level sports, and active recreation uses, including internal paseos and trails. It also provides for establishment of a major urban recreation amenity for community and countywide use.
Tustin Legacy Park Overlay	Provides for the creation of a continuous Tustin Legacy Park (linear park) that runs in a diagonal direction across the project area and will include a variety of recreation, visitor-serving, and community-serving activities, as well as a trail system and dual-purpose park/detention area. The boundaries of the Tustin Legacy Park Overlay, shown on Exhibit 4, are intended to be conceptual, pending final design.
Transitional/ Emergency Housing	Provides for transitional housing and the adaptive use of existing military dormitory type structures for emergency housing, single occupancy housing, or congregate care uses. Also allows for supporting services, including food service.
Education Village	Provides for a mix of public-serving, office, institutional, and/or government uses. Supporting office, research and development, and commercial uses are permitted to complement educational uses.
Public Street Right-of-Way (ROW)	Accommodates local roads within the project. Does not include private drives or alleys.

Table 2: Specific Plan Land-Use Categories

Key features of the Specific Plan include the following:

- Uses with the best revenue generation potential are in areas positioned for early development in order to help fund the infrastructure needed to make other areas of the site developable in the future. Many of these residential and commercial areas have already been developed.
- Residential uses have been built and continue to be planned in the northern and eastern portion of the site, adjacent to existing residential neighborhoods, as well as within mixed-use areas.
- Mixed-use areas near the Tustin Metrolink Station and the urban core of the Specific Plan will provide a unique, higher density area for people to live and work in the City of Tustin.
- Commercial and office uses are predominately located in the central and southern portions of the site, which is compatible with existing surrounding uses.
- Parcels along the western edge of the Specific Plan area have been developed for education and social service purposes. A number of educational institutions intend to provide community college-level programs, job training, incubator (start-up) business development opportunities, and other educational opportunities on these sites.
- Approximately 170 acres of the Specific Plan area is intended to be developed for public recreation and open space uses, including a combination of large community and neighborhood parks dispersed within the residential enclaves. In addition, neighborhood parks and recreation facilities and private open space areas within the existing housing areas can be used for nearby activities for future residents.
- The Mixed-Use Urban core area of the Specific Plan permits a variety of future development opportunities when market conditions are suitable for high-value use of the property. It is envisioned as an active, urban environment where the uses are integrated and oriented around a well-designed and activated public realm. The public realm includes a walking street concept for the “Main Street,” and Tustin Legacy Park, a continuous linear park that connects to the adjacent planning areas.
- The completed extension of Tustin Ranch Road and Warner Avenue through the Specific Plan area added significant segments of the regional arterial system. The circulation plan will continue to create new capacity for the region, as well as accommodate traffic generated by the Specific Plan.

CHAPTER 2

The City as Executive Developer



As the Executive Developer, the City solicits and encourages developers to continue development in areas that can be largely served by existing infrastructure or where there could be cost-efficient installation of new priority backbone infrastructure in conjunction with any proposed development. The ability for developers to move forward on parcels is facilitated by, and contingent on, the City's ability to fund and install mainline infrastructure at Tustin Legacy (major roads, sewer, water, traffic control, etc.) which is cost prohibitive for successful private sector development. The City is then able to offer for purchase and convey appropriately sized parcels adjacent to the installed mainline infrastructure for the next development project.

While certain infrastructure required to serve development opportunities and project segments can often be jumpstarted by the City, subsequent improvements may be included as a developer obligation under any land sale transaction or as a condition of development. The objective is to propose project segments that can be marketed for sale and development if the City ensures that certain important City goals and objectives can be met. The following broader objectives should be taken into account where land parcels are proposed to be sold for development:

- Creating a logical, orderly, and planned sequencing of any proposed sale of property and development
- Creating a sense of place in any planned phasing, and a sense that a master planned development is progressing
- Completing planned roadway/infrastructure loops and routes, and creating continuity and cost efficiency in any backbone infrastructure phasing approach
- Ensuring completion of all master-planned amenities proposed in any phasing approach
- Providing focus on issues of public health, safety, and welfare
- Demonstrating that the City is acting in the best interests of its residents by maximizing the return on this unique asset. As cash flow is generated from the property and invested in backbone infrastructure supporting the base redevelopment, or to support construction and maintenance of parks and community facilities, the benefits of the property sales would accrue to the residents of Tustin, rather than only to a private development company.

2.1 EXECUTIVE DEVELOPER RESPONSIBILITIES

The City provides oversight and management for the marketing, sale, and development of Tustin Legacy. As the Executive Developer, the City has the responsibility to administer and direct the implementation of the development of the land uses envisioned in the Specific Plan. The City utilizes the expertise of contracted professionals, as needed, to ensure that the implementation process is timely, orderly, and cost-effective; that the myriad issues that need to be addressed in implementing the disposition process and conveyance of property are dealt with efficiently; and that the City and community's best interests are secured and protected.

The Economic Development Department (ED) is the lead department for managing Tustin Legacy and, with the City Council's guidance, directing the implementation of the Specific Plan to facilitate dispositions and high-quality development projects that meet Tustin's goals and aspirations for Tustin Legacy. The Economic Development Department manages the primary staff functions assigned to the Project along with contract property management support, real estate and development advisor professionals, and financial consulting services, as needed. City operating departments also provide technical assistance which is supplemented by outside engineering consultant support (where the City assumes construction of any backbone infrastructure improvements). The City employs adequate personnel to support these activities and can outsource and procure expert consultants or developer advisors in accordance with Project needs.

The City Council and ED staff working on Tustin Legacy have had to adopt a mindset similar to a "for-profit" business and act accordingly as the Executive Developer, similar to such private master development corporations as Irvine Company. For Tustin Legacy, the City acts almost as a private sector developer by placing revenue generation as a significant objective and balancing that with serving the public interest and maintaining the long-term goal of building a vibrant and lively mixed-use community.

Further, sometimes public agencies have difficulty making decisions rapidly to take advantage of opportunities due to the limited authority of staff. The City recognizes this and has identified and supported a select staff within ED to adopt these practices and facilitate development of Tustin Legacy in a timely manner. The City Council is well informed of development at Tustin Legacy in order to provide direction and make expeditious decisions on development. Staff's close coordination with the City Council ensures that the City role as Executive Developer remains effective and does not delay progress.



2.1.1 Marketing of Tustin Legacy

The City's primary marketing role will be to stimulate private sector investment by providing coordination on the planning, marketing, negotiations, and disposition process for the redevelopment of the remaining undeveloped portions of City-owned property within Tustin Legacy. This includes the marketing of phased land sales, and overseeing the development strategy and any developer or City infrastructure improvement program. The City has also used brokers to assist with marketing Tustin Legacy or a specific solicitation to broaden the reach of Tustin Legacy and development opportunities, as further discussed in Section 5.4.

In addition, the City is responsible for the physical marketing of Tustin Legacy via branding and signage. A master sign program and branding package has been adopted that indicates potential locations of boundary and major placemaking signage. Developers are encouraged to develop their own neighborhood and project marketing signage, in accordance with the principles of the master sign program. Major gateway signage to Tustin Legacy is currently visible at strategic locations.

2.1.2 Development Solicitation

Development solicitation is another major responsibility of the City acting as Executive Developer. The City can permit marketing and development of smaller portions of Tustin Legacy which are incremental and smaller than the entirety of the remaining approximate 480 acres of City-owned property at Tustin Legacy. This enables development to proceed earlier, as portions of Tustin Legacy may be delayed for a period of time until construction of required backbone infrastructure can be financed and built and/or until the remaining Department of the Navy (Navy-owned) parcels are finally transferred to the City (see Section 3.4.1).

Disposition offerings may be developed internally and solicited directly by the City or composed in conjunction with a commercial real estate brokerage firm. In the latter case, the commercial brokerage firm will handle all facets of communication and marketing with the development community and serve as an advisor/evaluator to the City in the developer selection process.

2.1.3 Property Negotiations

ED staff and the City Manager serve as the lead negotiators for property disposition at Tustin Legacy with the assistance of other City operating departments, special real estate counsel, the contract City Attorney's office, as well as other third-party consultants when deemed necessary. All negotiation costs for staff, legal, and third-party consultants are paid by the selected developer, unless otherwise negotiated. Ultimately the City Council will evaluate all proposed dispositions and projects brought before them and will make the final decision on approval at a public meeting.

2.1.4 Proprietary Design Review

Proprietary design review is one of the most important roles the City plays as Executive Developer, and sets it apart from the traditional regulatory role a public agency plays of simply processing development project entitlements. Enduring and high-quality design creates a sense of place and leaves a lasting impression for years to come while bringing permanent investment to a community. Exemplary projects can be catalysts for future development and can establish the aspirations of the local-built environment. The City favors innovative approaches to development which offer creative developers a platform to showcase unique projects. Developers can expect a comprehensive proprietary design review process prior to entitlement submittal and will be expected to achieve the level of standards agreed upon under this process. The City is amenable to land price adjustments in order to achieve higher-quality design and additional publicly accessible amenities that create a unique place and deliver community benefits.

2.1.5 Backbone Infrastructure Development

As the Executive Developer, the City has divided the major infrastructure requirements to serve the entirety of Tustin Legacy down into smaller sized portions to ensure that development momentum is achieved. A degree of control and level of land optimization is achieved with a focus on the completion of limited major backbone facilities for certain segments, or phases, of Tustin Legacy and marketing of sites.

While it is preferable to transfer certain obligations for the installation of both backbone and non-backbone infrastructure to private sector developers, it's not always financially feasible for a developer to accept that obligation given the extent and scale of most required infrastructure.

In addition to the significant financial cost of infrastructure there are also legal concerns that must be considered whereby certain public infrastructure installation can trigger potential prevailing wage requirements on the private side of the development, rendering a project financially infeasible. As such, the City has found itself in the position of continuing to fund and install major infrastructure in order to facilitate development at Tustin Legacy in conjunction with private development projects.

A benefit of installing the backbone infrastructure to unlock portions of Tustin Legacy is that it allows the City to phase the development and time sale of phases or segments of Tustin Legacy to meet market demand and the development intensity supported by the current Final Joint Environmental Impact Report/Environmental Impact Statement (Final EIS/EIR).

Focusing on the incremental sale and development of smaller segments or individual vertical parcels provides revenue for funding future portions of backbone infrastructure planning and construction. This generally creates a scenario where the City installs backbone infrastructure to serve a neighborhood, thereby creating parcels to market and sell. Once the parcels are sold, revenue from the land sales can be used to fund the next phase of backbone infrastructure, creating new parcels to market and sell. This cycle is critical to maintain development momentum at Tustin Legacy, as discussed in Section 2.1.6.

The City routinely performs grading activities associated with construction of public streets and utilities. However, grading for superpads, vertical parcels, or development sites has a perceived and often real liability exposure greater than a typical public works project. Individual and future homeowners may be quick to litigate for issues such as foundation settlement, cracked slabs, poor drainage, and damaged property line walls. As such, the City avoids grading activities where possible and tries to limit grading activity to mass-grading efforts only. It is not recommended that a majority of the grading for actual development or vertical parcels be undertaken by the City ahead of actual Disposition and Development Agreements (DDAs) as an individual project site's needs can change and pre-grading work may need to then be redone to meet changing plans. In addition, the City insists that each purchaser of land accept a segment or parcel in an "as-is, where-is, and with all faults" condition and fully indemnify the City against any claims related to site grading by the City.

2.1.6 Land Sale Proceeds Management

The City's Finance Department is tasked with tracking land-sale proceeds, and plays an integral role in assuring revenue is set aside for future infrastructure improvements when budgeting land-sales revenues. It is a combined effort of City departments in recommending to the City Council priority projects at Tustin Legacy and associated phasing when reserving and allocating financial resources. At times this may necessitate advancing funding for backbone infrastructure for projects where the backbone financing program is currently deficient in order to accomplish a particular project that is ready to proceed (see Section 3.10).



The City must balance the social return versus a financial return when determining the type and timing of projects to fund. Oftentimes the projects which will yield a greater financial return such as roadway and utility infrastructure to allow future land sales, go unnoticed by the public and may not have the same visibility to a resident such as a park or pedestrian bridge. While parks provide a high social benefit and can offer a longer-term value return in the desirability of a neighborhood, there is not an immediate financial return to the City on those expenditures and they create an ongoing maintenance cost obligation.

Prioritization of City projects is always likely to be debatable, but as the Executive Developer, the City must act as a fiduciary to ensure the continued self-sustainability of development at Tustin Legacy which will often prioritize the ability to maintain development momentum.

A continuing goal of the City should be to reinvest appropriate land-sale proceeds back into Tustin Legacy to create a self-sustaining development for years to come. Using land-sale proceeds to balance the General Fund or to fund projects outside of Tustin Legacy should be carefully considered and be balanced based on these needed investments for infrastructure and ongoing maintenance obligations.

2.2 ADDITIONAL CITY ROLES AND RESPONSIBILITIES

While the predominate focus of the City's role as Executive Developer lies with the development of Tustin Legacy, there are additional roles and responsibilities assumed by the City at Tustin Legacy. These responsibilities and obligations include the City's federal obligations, its proprietary role, and its governmental role.

2.2.1 Local Reuse Authority

In 1992, the City was designated as the Local Reuse Authority (LRA) for former MCAS Tustin by the Office of Economic Adjustment (OEA) within the Department of Defense (DOD) and was re-confirmed as the LRA in 1994. The City, as the LRA, determined that the most appropriate tool to guide the conversion of the base from military to civilian use, and to facilitate entitlements and permitting, was the preparation of a combined Specific Plan/Reuse Plan. The MCAS Tustin Specific Plan/Reuse Plan, now known as the Tustin Legacy Specific Plan, was the culmination of this planning effort.

As the LRA, the City performs a critical role and is/was responsible for specific tasks in the closure and reuse of former MCAS Tustin by:

- Developing the Reuse Plan for the former base
- Facilitating community input during the reuse planning process
- Developing the homeless accommodation plan
- Approving or denying all applications for Public Benefit Conveyances (PBC)

- Implementing the Economic Development Conveyance (EDC)
- Serving as the single point of contact between the Federal Government and community interests during and after the closure process

Some of the ongoing duties and powers of the LRA include:

- Working with PBC applicants on implementation issues
- Amending the Reuse Plan, as needed, due to changing market/land-use interests or non-performance by other entities
- Conducting public meetings to receive updates or take other actions related to former MCAS Tustin

Pursuant to the Department of Defense Base Closure and Realignment Act of 1990, as amended (Base Closure Act), the LRA conducted a public reuse planning process that led to the adoption of the MCAS Tustin Reuse Plan/Specific Plan that was reviewed and approved by the United States Department of Housing and Urban Development (HUD), and utilized by the Navy in its ongoing MCAS Tustin disposal process.

Since the adoption of the Reuse Plan/Specific Plan, the LRA functions of the City have been minimal, as development of former MCAS Tustin has occurred in substantial compliance with the original plan.

REUSE PARCEL 18

The City recently re-engaged its role as the LRA in response to lack of performance development issues related to Reuse Parcel 18 (Parcel 18), an approximately 85-acre site that contains the North Hangar (also known as Hangar 1 or Building 28) and approximately 50 smaller former military buildings.

The history of Parcel 18 dates back to 1963, when the County of Orange (County) identified a regional park site at former MCAS Tustin should it ever close. During the closure process, the County submitted a PBC application to the Department of the Interior (DOI) for a regional park site that was approved. In the early 2010s, the County initiated a revised concept for the Regional Park PBC that contained revenue generating uses which was adopted by the County but not approved by DOI due to the introduction of revenue-generating uses which are not in compliance with the PBC.

In 2013, the North Hangar experienced a partial roof collapse during a windstorm that required stabilization by the Navy at a cost of several million dollars (with a six-figure annual monitoring system) and has created significant uncertainty of the North Hangar's future use. From 2013-2020, Parcel 18 experienced significant physical deterioration, numerous public safety incidents that necessitated a City response (at the City's expense), and minimal maintenance by the Navy.



In October 2020, the LRA requested that a public forum be held to receive development updates from, and ask questions of, the various public agencies responsible for development at former MCAS Tustin, including Parcel 18 and the County Regional Park. On February 23, 2021, the LRA convened the following entities to provide updates on development project(s) and to answer questions from the LRA:

- City
 - EDC Development
 - Community Park PBC (Veterans Sports Park)
- Orange County Rescue Mission (OCRM)
 - Homeless Accommodation
- South Orange County Community College District (SOCCCD)
 - Advanced Technology Education Park (Part of City EDC Property)
- Rancho Santiago Community College District (RSCCD)
 - Sheriff Training Academy (Part of City EDC Property)
- Tustin Unified School District (TUSD)
 - Elementary School PBC (Heritage Elementary)
 - Legacy Magnet Academy (Part of City EDC Property)
- County
 - Social Services Facility PBC (Tustin Family Campus)
 - OC Animal Care Facility (Part of City EDC Property, subleased from SOCCCD)
 - Regional Park PBC

All entities above provided timely updates and development plans, with the exception of the County, when discussing the proposed Regional Park PBC on Parcel 18. The County's testimony indicated an unwillingness to take a license or interim lease to secure and maintain Parcel 18, and also indicated that there is no current timeline, plan, or funding source identified for when or how the Regional Park would be constructed. Due to a lack of County response to letters from the LRA and a determination that action be taken, the LRA decided to convene an additional meeting of the LRA focused exclusively on Parcel 18.

On August 11, 2021, the LRA held a public meeting on Parcel 18. At this meeting, the LRA made certain findings based on the County's inadequate responses to the LRA, and the County's refusal to take responsibility for the site by accepting a license or interim lease for maintenance and security of Parcel 18. The LRA also took the following actions:

- Adopted LRA Resolution 21-01, revising the Federal Reuse Plan for former MCAS Tustin to exclude the County Regional Park from Parcel 18
- Directed staff to inform the Navy and the DOI of the intent to adopt a revised Federal Reuse Plan for Parcel 18 and to request that the Navy and DOI revoke the County's PBC application
- Directed staff to work with the Navy on an amendment to the existing City license or an interim lease for the City/LRA to assume maintenance and security on Reuse Parcel 18
- Directed staff to return to the LRA with several Federal Reuse Plan alternatives for Reuse Parcel 18 at a later date

Since August 11, 2021, the following have occurred:

- DOI removed support for County PBC application
- City accepted a license for maintenance and security of Parcel 18
- City has spent \$330,000 on property maintenance, security, and cleanup work

Because DOI has removed its sponsorship of the County PBC application, the LRA will proceed with initiating a reuse planning process for Parcel 18 in compliance with all applicable state and federal laws and regulations.

The reuse planning process may take more than two years and will be comprised of the following:

- Retain contract reuse planning consultants
- Seek support from Office of Local Defense Community Cooperation (OLDCC)
- Develop reports, studies, analyses on property conditions
- Analyze screening alternatives
- Develop Reuse Plan alternative(s) development and selection
- Perform Joint California Environmental Quality Act/National Environmental Protection Act (CEQA/NEPA) by City/LRA
- Adopt Reuse Plan (and corresponding implementation plan)

The end result of this City/LRA commitment to a reuse planning process will be a new land-use plan and accompanying environmental analysis for the 85 acres of Parcel 18. Based on consultation between the City/LRA and the Navy, some, all, or none of Parcel 18 property may be transferred to the City. However, the City will perform the reuse planning process given its role and responsibilities as the LRA.

The final determination of property ownership will be based on the final land-use plan and associated infrastructure costs, mitigation measures, and negotiations with the Navy. A final determination of the North Hangar and outlying buildings remains uncertain at this time.

2.2.2 Property & Asset Management

The City is responsible for management of the property and facilities located at Tustin Legacy whether owned by the City or leased by the City from the Navy. The current acreage managed by the City is approximately 565 acres, which may be reduced from time to time as property conveys.

Property management and caretaker services on City-maintained properties at Tustin Legacy continue to be an ongoing responsibility of the City to ensure protection of public health and safety. Failure to ensure all erosion and sediment controls are properly installed and regularly maintained can subject the City to penalties of up to \$10,000 a day and potential third-party lawsuits. Additionally, the City is responsible for maintaining regulatory permits obtained from the Regional Water Quality Control Board, Army Corps of Engineers, and the California Department of Fish and Wildlife that were assumed from the former master developer TLCP which provide the necessary authorizations to remove certain wetland channels across the site in support of development within Tustin Legacy.

Property maintenance (i.e. weed control/abatement, litter collection) must continue to be performed to protect existing grading and fill sites that have been created for certain Tustin Legacy infrastructure improvements such as Tustin Ranch Road, Warner Avenue, Armstrong Avenue, Moffett Drive, and any proposed pedestrian bridges. Fire prevention, access control to the property, maintenance of security fencing and gates, and maintenance of the South Hangar are also critical aspects of the City's caretaker responsibilities.

As Executive Developer for Tustin Legacy, the City will need to maintain the property until it is fully developed and/or transferred to other parties to ensure no new conditions are created leading to issues impacting future dispositions. The City, to date, has contracted for the majority of these services.

2.2.3 Regulatory Oversight/Land-Use Authority

The City serves as the local land-use regulatory agency in charge of zoning and permitting of projects for Tustin Legacy under its governmental capacity (except for the portions of Tustin Legacy located in the City of Irvine). There is a distinction between the City's governmental role and proprietary interests. All projects at Tustin Legacy must undergo the same relevant entitlement processes and permitting as other projects within the City through the City's Community Development Department (CDD). In most cases, Tustin Legacy projects have an additional layer of approval as a Development Agreement (DA) is also required by the City.

2.2.4 Interim Use Leasing and Licensing Administration

Over the years, the City has found ways to utilize vacant property for temporary uses to generate interim revenue prior to development commencing and avoiding impacts to new development. These uses also assist in maintenance of vacant property as licensees are required to secure and maintain their license area. More information on this can be found in Section 3.7.

2.2.5 Public Agency Coordination

The City plays many roles in the development of Tustin Legacy as the Executive Developer, LRA, land use authority, Lead Agency for environmental review, and numerous other roles previously mentioned. As such, the City often finds itself as a facilitator and coordinator of outside agencies. These outside agencies include federal, state, local, and special districts that may involve life safety, civil engineering, mapping and surveying, environmental, educational, utility, and other sectors.

2.3 SUCCESSES

Success should not be measured solely by quantity of dispositions, scale of development, or maximum sales price. The interest of the City incorporates quality of development and the benefits of longer-term value derived from such developments. Investing in projects of a higher caliber leads to increased land values for future sales and establishes a robust tax base for ongoing operational revenue to support the City.

The disposition goals for Tustin Legacy combine the desire to build an exceptional community and maximize land-sales proceeds. The following Table 3 provides examples of this balance and identifies the land-sale transactions and quality developments that have occurred under the City's direct management as Executive Developer since 2011.

DDA EXECUTED	PROJECT NAME	DESCRIPTION	ACREAGE	PURCHASE PRICE	BACKBONE FEE	PARTICIPATION
2012	Anton Legacy	225 Apartments (225 Affordable)	22	\$1	\$7,134,448	N/A
2012	Amalfi	533 Apartments (37 Affordable)	13	\$30,148,000	\$15,300,644	N/A
2014	Greenwood	375 For-Sale Homes	74	\$56,000,000	\$16,934,704	\$30,675,263
2015	The Village	243,000 SF Retail and Medical Uses	21	\$8,494,383	\$10,305,617	N/A
2016	Flight	386,000 SF Office	18	\$25,984,847	\$6,499,347	N/A
2018	Levity	218 For-Sale Homes	14	\$34,202,712	\$1,341,143	\$5,350,739
2019	The Landing	400 For-Sale Homes	25	\$61,500,000	\$8,000,000	TBD
	TOTAL	1,751 UNITS/629,000 SF	187	\$216,329,943	\$65,515,903	\$36,026,002

Table 3: Land Sales Table

The achievements identified in Table 3 are a direct result of the approach of breaking Tustin Legacy up into smaller phases or segments and then marketing those segments to the right entities that can perform and deliver projects. This was the approach originally recommended by City staff and consultants to the City Council in 2003, in the City's original operational plan for Tustin Legacy, and in the City's request for the Economic Development Conveyance (EDC) from the Navy.

In addition to land-sales transactions and development of property by private sector partners, the City has executed on the installation of significant infrastructure improvements at Tustin Legacy which include both backbone and non-backbone facilities. (The difference is discussed in Section 3.10). These facilities are inclusive of horizontal and vertical development consisting of utility and roadway infrastructure, as well as park and institutional building uses such as the OCFA Fire Station #37.

In partnership with other public agencies, the City has helped facilitate the development of school facilities with the Tustin Unified School District (TUSD), the South Orange County Community College District (SOCCCD), and the Rancho Santiago Community College District (RSCCD). The City has also processed land exchanges among various public agencies at Tustin Legacy in order to create more development-friendly parcels, or to expedite development projects.

YEAR	PROJECT NAME	YEAR	PROJECT NAME
2013	Tustin Ranch Road	2018	TUSD Legacy Magnet Academy Grading and Funding
2013	Warner Avenue	2018	Tustin Temporary Emergency Shelter
2014	OCFA Fire Station #37	2018	Legacy Road Phase 1/Moffett Drive
2015	Victory Park	2018	Park Avenue Widening
2015	Army Reserve Land Exchange	2019	Red Hill Widening
2015	SOCCCD/City/County Land Exchange	2019	Moffett Bridge
2015	Heritage Elementary	2019	Peters Canyon Channel Widening
2016	Armstrong Avenue Phase 2	2020	Veterans Sports Park
2017	Victory Road	2020	Tustin Legacy Annex
2017	Tustin Legacy Park Phase 1	2021	Neighborhood D South Phase 1 Infrastructure

Table 4: Public Projects

PRE-2011 EXECUTIVE DEVELOPER EXPERIENCE

The City had been proceeding as the Executive Developer with the sale of property and private developer's construction of Tustin Field I and II (67 acres of land and 565 residential units). In these transactions, the agreement between the City and the homebuilder required the homebuilder to construct local infrastructure and limited backbone infrastructure, provide an additional contribution toward the City's construction of other Tustin Legacy backbone infrastructure, purchase the property from the City at a fixed price, and allowed the City to achieve profit participation as a percentage of gross unit sales. The City received the base sale price, Backbone Program fees, and participation payments on both of these projects for total payments or revenues to the City of almost \$77 million, with no City obligations for infrastructure construction in the transactions.

The City also undertook a similar approach with the sale of The District to Vestar/Kimco, transferring responsibility for major construction of backbone infrastructure onto the developer with repayment for any infrastructure over-sizing by the developer to be made as future land-sale proceeds are generated. The total value of their transaction with the City included a contract price of \$33,414,161 for 87 acres of land, plus a minimum \$36,330,000 backbone infrastructure contribution by Vestar/Kimco to the transaction, for a total value of \$69,744,161. Vestar remains obligated to construct portions of improvements to the Barranca Channel.

DDA EXECUTED	PROJECT NAME	DESCRIPTION	ACREAGE	PURCHASE PRICE	BACKBONE FEE	PARTICIPATION
2003	Tustin Field I	376 For-Sale Homes	32	\$32,700,680	\$4,960,000	\$1,911,452
2003	Tustin Field II	189 For-Sale Homes	36	\$29,300,000	\$4,773,438	\$2,680,679
2004	The District	1M SF Retail Power Center	87	\$31,788,501	\$36,330,000	\$70,099
	TOTAL	565 UNITS/1M SF	155	\$93,789,181	\$46,063,438	\$4,662,230

Table 5: Pre-2011 Land Sales Table

2.4 LESSONS LEARNED

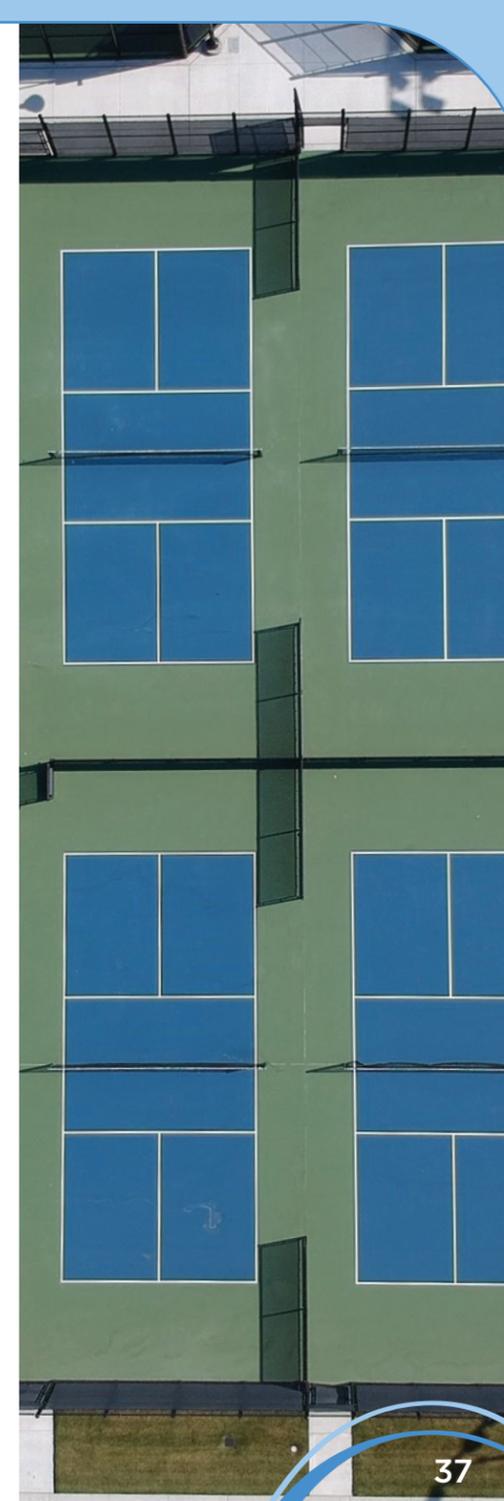
Over the course of the past twelve years (since the original Disposition Strategy was confirmed), there have been ups and downs in the development of Tustin Legacy. The original Disposition Strategy itself was crafted in response to the failure of master developer TLCP and based on the City's previous experiences as the Executive Developer prior to 2006 as discussed in Section 2.3. A panel of expert consultants and City staff provided an extensive analysis of alternative methods and the City's role in future disposition decisions and concluded with a recommendation that the City should act as Executive Developer, which was confirmed by the City Council on April 25, 2011.

At that time in 2011, the economy was still recovering from the Great Recession of 2007-2009 and a year later the City would see the dissolution of Redevelopment Agencies in California in 2012. A pandemic in early 2020 stopped progress in its tracks and upended any notion of market cycles performing as usual. Beyond market adjustments attributed to phenomena such as the changing online retail landscape, work from home office pervasiveness, and the acute housing shortage, the City has had to adapt to numerous constraints imposed upon it as a municipal agency, including increased state control over local government autonomy and authority witnessed in amendments to the Surplus Land Act, Regional Housing Needs Assessment (RHNA) allocation methodology, and the Department of Housing and Community Development's (HCD) increased scrutiny of General Plan Housing Elements.

Navigating through these events and many other direct development experiences have contributed to the lessons learned identified below. The expectation is that these experiences and the rationale behind them help to guide future City Council members and City staff in determining the appropriate strategy for disposition of property at Tustin Legacy.

2.4.1 Large Mixed-Use Projects by "Master" Developers have been Unsuccessful

Solicitation and selection of a master developer for 820 acres at Tustin Legacy occurred in 2003. After a lengthy competitive selection process, TLCP was selected to act in the role of the master developer, the land-development entity that would entitle the property, build out certain defined Tustin Legacy backbone infrastructure, and then sell finished development parcels to third-party residential builders for construction of vertical improvements (homes) in Neighborhood G and rough graded parcels to builders for construction of vertical residential and non-residential (commercial) development in Neighborhoods B, D, and E. TLCP indicated its associated entities would also act as vertical builders for a large portion of Tustin Legacy. The City executed a Disposition and Development Agreement (DDA) with TLCP in 2006.



Unfortunately, with the deterioration of the real estate market which began in early 2008, TLCP defaulted on its obligations under the DDA and failed to cure the defaults under its agreement with the City. Little tangible progress had been made and the City terminated its agreement with TLCP and reached a settlement agreement in 2010.

The termination followed the developer's significant and continuing defaults under its contract with the City, including its requirement to construct required infrastructure as a condition to the City's initial conveyance of certain property to TLCP. With the lagging economy, which made real estate development difficult across the County, the City worked diligently with the developer to help the developer meet its contractual obligations. The City offered extensions to the developer's performance schedule, modifications to the location and timing of development, and timing and phasing of infrastructure and extensions to the land-conveyance schedule, ultimately to no avail.

In the end, the developer was unable to perform or agree to a plan that would prevent risk to the City and taxpayers. Based on the termination agreement, the City recovered the transferred property when TLCP quitclaimed to the City its interest in the original 335 acres conveyed in July 2007. The entire process, spanning from 2003 to 2010, absorbed a significant amount of time involving property solicitation, negotiation, planning, and ultimately the unwinding of agreements involving substantial legal hours for the City to "claw" back the property from TLCP and lenders with little development progress to show for it.

The City has since incorporated many protections within DDA documents to help avoid these types of scenarios from occurring in the future and to ensure stricter performance timelines from prospective developers. The lessons learned from the TLCP process have had the most profound influence on the City's methods of property disposition and protecting the City's interest by avoiding the significant risk of turning over and tying up huge swaths of land at Tustin Legacy to any single developer at one time.

Despite the failure of master developer TLCP, the City was not deterred from working with private sector master developers. In an attempt to increase the likelihood of success for another master developer, the project size and scope was narrowed to target a mixed-use community core development which could serve as a catalyst for future development and fulfill the City's vision for a retail and entertainment district where residents could live, work, and play.

In an attempt to expedite the previously lengthy and burdensome Request for Proposal (RFP) process of selecting a master developer, the City joined in partnership with private sector firm Coldwell Banker Richard Ellis (CBRE) to market the project and solicit interest from qualified developers. It soon became clear that the pool of qualified developers to undertake a mixed-use project of this scale had diminished since 2003, likely as a result of the Great Recession and ongoing recovery.

On November 3, 2015, the City entered into an Exclusive Negotiating Agreement (ENA) with master developer Oliver McMillan (OM) to develop approximately 123 acres with a mixed-use urban core, anchored with retail, hotel, residential, office, and entertainment uses with special consideration to the adaptive reuse of the South Hangar. OM presented the City with a compelling vision for the project and had recently executed on exceptional projects in other states. OM and the City worked collaboratively on developing a master plan for the mixed-use urban core with both parties agreeing to share pre-development costs. However, through the course of planning and negotiations it became apparent that OM would not be able to deliver on the vision and master plan presented and agreed upon by the City.

The vision deteriorated with subsequent iterations as the quality of development, level of developer engagement, and development intensity slipped. OM made it clear that they were unable to execute on various land-use components such as the envisioned office development and repurposing of the South Hangar, and did not have development partnerships lined up or the equity sources to fulfill the vision presented. Further, the developer continued to offer land pricing that was well below fair market value while continually downgrading the product.

In a final effort to salvage a deal, OM significantly changed the land-use proposal by proposing that a large portion be devoted to for-sale homes where equity could be sourced to assist in completing the required infrastructure. Ultimately, the developer could not overcome the high initial infrastructure costs and the unknown timing of Navy-owned property conveyance within the project area to the City for transfer to OM. Despite the City providing foreknowledge of the Navy conveyance uncertainty and large infrastructure costs to the developer, the ENA was mutually terminated nearly three years after execution.

These experiences have further refined and reinforced the City's focus on moving forward on disposition of property with specialized developers in the product field that can demonstrate access to existing capital or the ability to source capital required to complete projects, rather than risk entering into agreements on a speculative basis.

The concept of selecting a private master developer to assume the obligations of developing Tustin Legacy has theoretical benefit, however, the following downsides have been determined through practical experience to be detrimental and unworkable in advancing the buildout and achieving the vision of Tustin Legacy on such a large scale:

- **Loss of Control.** The City would be required to cede control over certain aspects of the redevelopment process and infrastructure priorities. A master developer is typically looking at a much narrower window of opportunity, resulting in their willingness to change and/or downgrade the approved Specific Plan vision to accomplish short-term returns, often to the detriment of public amenities and the community's vision.
- **Bulk Sale Discount on Land.** A project the size of Tustin Legacy would most likely be heavily financed by expensive equity from multiple sources. This financial structure is very limited and expensive and can lead to conflict between various partners whose financial goals and targets can change over the long life of a project. Given how land-sale transactions are financed, the City would expect significant discounting under a bulk sale of the property, thus, reducing the City's share of upside revenues.
- **Small Pool of Master Developer Candidates with the Financial Capacity and Commitment Level.** A company's management team and vision are critical factors in selecting a master developer. However, since the timeframe for accomplishing such a large project is so long, it is highly likely that there will be significant management turnover as was the case with the TLCP transaction. Management changes often result in company objectives and culture changes. It is nearly impossible to predict the future philosophy of any company which exposes the City to the unknown risk of a partner whose future strategy may clash with that of the City.

The list of potential master developers with adequate capabilities is much smaller than it was in 2006. Therefore, there is a more limited number of developer candidates qualified to purchase large areas of property, finance the necessary horizontal infrastructure improvements, and carry and manage a project of this magnitude over multiple years.

This is particularly true for Tustin Legacy, because it includes a number of very different land-use products (residential and non-residential uses). Non-residential planning, product development, and marketing is dramatically different than residential product planning, development, and marketing. In addition, real estate companies experience large swings in financial health over time. Given the long-term nature of Tustin Legacy development, it is almost impossible to count on the long-term financial capabilities of one entity to successfully execute on the different land-use products planned.

Master developers that might be able to finance an entire project will be return driven and less likely to invest funds beyond three to five years. Cash flow is critical to finance plans and a master developer is likely to bring the minimum ideas required to get the City's approval, but will be less likely to innovate once the contract is approved. Offers from potential master developers would most likely be heavily weighted on the back end for cash flow to the City, with limited upfront cash to the City, putting the City's return at greater financial risk.

The City is not isolated in its experience with master developers. By way of example, there are significant parallels and precedents in Northern California, in which the 770-acre Alameda Point (Alameda Air Station) initially hired a master developer, Alameda Point Community Partners (a joint-venture of Centex and Shea Properties), which eventually defaulted on their agreement with the City of Alameda. The City of Alameda then attempted to broker a deal between Catellus and Lennar to take over the project, which was also unsuccessful.

The City of Alameda then entered into an agreement for a new master developer, Sun Cal, which was then terminated due to poor market conditions in 2007-2009. Since then, Concord has negotiated with Alameda Point Partners (a venture by Thompson Dorfman Partners, SRM Ernst Development Partners, and Madison Marquette) for disposition and development of portions of the former base.

Through the course of twenty (20) years and all of the initial work done, the many master developers of Alameda Point accomplished little. The portions of Alameda Point that have been successfully completed are the smaller residential and commercial parcels outside of the areas solicited for master developers.

The former Concord Naval Weapons Station (managed by the City of Concord) has had its own experience and issues related to master developers. The over 5,000-acre site was closed in 2005 and an Area Plan was adopted in 2012 that called for residential, commercial, and educational development on approximately 2,300 acres of the site.

In 2016, Concord selected Lennar Five Point as master developer, however the company pulled out of the project in March 2020. This was due to the infeasibility of the project from Concord's mandate of 25%+ affordability and the required use of prevailing wage union labor for the project.

In April 2021, Concord released an RFQ for a new master developer and ultimately selected Concord First Partners (a partnership of Discovery/Seeno Cos., the Lewis Group of Cos. and California Capital Investment Group) in March of 2022, primarily due to their ability to secure a Project Labor Agreement with the Contra Costa building trades council. Since that time, Concord First Partners have requested several extensions to their ENA and requested that Concord pay for all third-party costs preparing agreements, the Specific Plan, and entitlements if the project is never ultimately approved. Concord City staff and the Concord City Council have taken exception to these proposals. In January 2023, Concord rejected a new term sheet proposed by Concord First Partners which ended the ENA thereby restarting the master developer selection process all over again. Any development start and the project's future remains unclear.

Yet another example is the development of the former Marine Corps Air Station El Toro which closed in July 1999. Heritage Fields El Toro LLC, a partnership of Lennar, Rockpoint Real Estate Fund I, Blackacre Institution Capital Management, and others, was awarded development of the almost 3,800-acre site through a winning online auction bid of \$650 million in 2005. The plan for the former base was generally mandated by county-wide Measure W that passed in 2001, calling for a "Great Park" comprised of park uses and multi-use development. Heritage Fields El Toro (now called FivePoint) has struggled since the bid award to deliver on the public uses of the project, primarily due to the Great Recession in 2007-2009.

Since 2014, FivePoint has continually turned more and more of the public portions of the Great Park over to the City of Irvine, while at the same time requesting additional entitlements for FivePoint-owned portions. The City of Irvine is restricted from building residential through its agreement with FivePoint, creating a difficult political environment and continual plan updates that have strayed from the original concepts.

On October 11, 2022, the Irvine City Council approved the Great Park Framework Plan (new plan) and authorized the City Manager to restructure existing contractual obligations with Heritage Fields El Toro LLC so that Irvine has the development control and the funding necessary to implement Irvine's vision for the Great Park. This would terminate agreements as amended with Heritage Fields El Toro LLC and would remove the developer's ability to prohibit development or exercise a right of first refusal over development at the Great Park. The City of Irvine would assume all major infrastructure development obligations at the Great Park and relieve the developer of such obligations as negotiated between the parties. This is yet another example of a city having to step in and reassume development responsibility on a large project of a similar scale where a master developer has been unable to perform and deliver on a development for a community.





2.4.2 Competitive Solicitations have been Advantageous to the City

Competition among developers has proven to work for a variety of reasons, including a willingness by developers to push the level of design and pricing. The City RFP/Offering process detailed in Section 5.2 is akin to a design competition which puts weight on both design and pricing. The City can be assured of achieving fair market value for property in a competitively bid process. In order to avoid attempts of collusion among developers, the pool of candidate developers should be wide enough to discourage any such behavior.

The City has undergone competitive solicitations for numerous disposition offerings ranging from for-sale and rental residential development, to retail and office/commercial uses. These competitive solicitations have led to the development of high-quality projects conveyed at fair market value.

2.4.3 Using Proven and Successful Developers at Tustin Legacy Expedites Development

Opportunities for individual developers who demonstrate success on initial development opportunities within Tustin Legacy may be provided with rolling take-down options on future phases or segments, SLA permitting (see Section 3.4.2). Previously, this strategy has proved successful in expediting the development of high-quality projects, but going forward it may now prove to be severely constrained by the requirements of the SLA.

This strategy of rewarding high-performing existing developers has been successful since there is a base of institutional knowledge from both parties in negotiating the complicated transaction documents required for property agreements and property closings, namely ENAs, DDAs, and DAs, which can reduce the timeline of the negotiation period. There is also a benefit to the City of knowing that the development partner can work within the City framework of development and execute on a project. More information on this approach of a preferred developer concept can be found in Section 5.3.

2.4.4 Negotiate with Developers, not End-Users

The City has had very poor experiences and outcomes in its attempts to negotiate land deals with end-users (tenants) having no experience in real estate development of ground-up projects. The lack of development experience leads to unrealistic expectations and an inability to consolidate ideas and move a project forward. Further, there is often an inability to source capital or even spend existing capital based on limitations on how these businesses operate/function.

A good example of this is when Broadcom approached the City in 2013 to acquire property for a corporate headquarters. While the City committed to and spent funds to grade a site for Broadcom in anticipation of this end-user building, in the end, Tustin was simply used as leverage in striking a better deal in the City of Irvine for the business. While Broadcom was able to build a corporate campus in Irvine, the company was sold in 2015, occupied only a portion of the building for a limited period of time, and eventually sold off the campus. As developed, the campus was not ideally suited for repurposing.

Preferably, end-users should focus on their core business functions and seek to partner with a developer to realize their facility vision. The City's strong preference will be to entertain corporate campus proposals for build-to-suit users when accompanied by a developer that can execute on the type of development. These build-to-suit opportunities could be appropriate for a preferred developer which has demonstrated previous success at Tustin Legacy or elsewhere.

2.4.5 Participate in Developer Success (Profit Participation)

Because the City has already invested substantial infrastructure, public amenities, and financial resources in Tustin Legacy, and will help to create value in the development as it goes forward, it expects to participate in upside profits. Many times, the City has traded a higher development standard for a slightly lower land price upfront in the hopes of achieving greater value and return in the long run.

Profit participation agreements allow the City to share in any upside that may result from an enhanced project in the market place or extreme positive fluctuations in value. This helps insulate the City from missing out on any market cycles which may create a swing in real estate valuation over a prolonged project. These agreements also further reinforce the partnership between the City and developer to achieve shared success. At no time shall the City be required to share or reimburse a developer for negative cash flow.

To date, the City has received over \$36M in participation since 2014. The Greenwood residential development of 375 homes was an extremely successful example in providing an additional \$30M+ in profit participation to the City as the development was able to capitalize on an upswing in real estate valuations as a result of the Great Recession.

One other example is that the City also has a profit participation agreement with The Landing, a 400 for-sale home development by Brookfield which will be calculated once the community is sold out. Other profit participation measures have been used, including a one-time payment to the City upon the opening of the Stater Brothers at The Village, and participating in the share of excess rent received by Vestar for certain tenants at The District from 2007-2017.

2.4.6 Private Entities Unlikely to Construct Public Infrastructure

Upfront costs of installing major infrastructure improvements have been an impediment to development at Tustin Legacy. The high initial costs and prolonged return on investment have previously rendered projects infeasible for many private developers. While creating projects of an appropriate scale can help to absorb infrastructure costs to make them more manageable and “spread” costs throughout a project’s various cost centers, numerous larger projects have still proven that the infrastructure demand can be insurmountable.

To combat this impediment to development, the City has been willing to install both backbone and local infrastructure to prime an area for development. As a general policy, the City has delayed initiating extensive infrastructure projects until such time as a deal is in place (typically a DDA) for the associated improvements and a financial source is identified to replenish backbone or other City financing commitments which have been allocated to the area. DDAs will typically have a nonrefundable deposit associated with execution, which ensures the City will receive at least some financial compensation for the investment in infrastructure associated with a proposed project if the developer walks away from the deal or defaults.

Developers have also had a genuine concern regarding prevailing wage requirements impacting on-site vertical development which could increase the costs of construction between 20-30%, resulting in project infeasibility. Increased legal scrutiny over public infrastructure and private development at the state and local level have led to this justified concern. Each project, developer, and their legal counsel will view the risk profile differently depending upon the required scope of public improvements and the relative cost of such improvements compared to the overall project costs.

2.4.7 Disposition Offering Phasing and Size Should be Flexible

Real estate cycles are not always predictable nor are future opportunities that may present themselves. Nimbleness and the ability to pivot are not always associated with government, but are necessary attributes for an Executive Developer to capitalize on a given situation. While opportunities present themselves on an ongoing basis, the City needs to be selective with whom they engage to ensure time and resources are not wasted on faulty projects or promises.

Having said this, risk is an ordinary part of real estate development and it is not uncommon for deals to fall through, as it happens all the time in the private sector marketplace with little to no public knowledge. As a public entity, deals that do not come to fruition can be very public given the nature of City government transparency. The City strives to always have alternative plans with the next possible disposition offering at Tustin Legacy.

Sometimes priorities change due to circumstances involving land complications which may not be overcome by any developer, and it is not always the fault of the City or developer when a deal falls through. The City should strive to incorporate flexibility in disposition offerings where possible and when meeting the goals and vision of the Specific Plan to ensure that development momentum can continue.

The City has had success with this concept in regards to Neighborhood D North during and after the OM ENA (see Section 2.4.1). The City was able to quickly pivot toward Neighborhood D South and execute on development agreements and infrastructure placement that is currently under construction on a similar timeframe as what was projected for the OM development. This came to fruition by having an alternative approach identified and the ability to execute under the preferred developer concept for a catalyst project (the 400 home Landing project by Brookfield).

2.4.8 Implement Tax B (Maintenance & Service Tax) to Ensure Future Stability

The City has established Community Facilities Districts (CFDs) at Tustin Legacy to fund facility construction (Tax A) and/or to fund services such as police and fire; maintenance of parks, streets, sidewalks, and drainage facilities; and other general City services (Tax B). The need to supplement ad valorem property tax at Tustin Legacy in order to fund services is a result of the substantially lower portion of property tax that is distributed to the City at Tustin Legacy.

Most areas of the City see approximately 11-12% of their basic levy property taxes redistributed to the City. Properties at Tustin Legacy only contribute approximately 3% of basic levy property taxes back to the City, given the property tax rate that was established during its prior military use.

Tax B is for ongoing services and not to fund bonded facilities improvements at Tustin Legacy. As such, Tax B exists in perpetuity and annual escalations are instituted into the rate and method of apportionment (RMA) included with the formation documents. Discussion of CFDs, and Tax B more specifically, can be found in Section 3.11.

2.4.9 Reduce Risk to General Fund (Self-Sustaining Development)

Fiscal prudence and stewardship are often necessary with the large sums of one-time payments that the City receives from land-sale proceeds. As discussed earlier, as a public agency, the City can be subject to increased scrutiny to deliver projects sooner even outside of Tustin Legacy. It can be tempting to spend one-time land-sale proceeds generated at Tustin Legacy to contribute to other projects within the City. However, the spending of land-sale proceeds needs to be evaluated carefully as there remain substantial costs to the City to develop the infrastructure and amenities long term, thus continuing to reinvest in Tustin Legacy to ensure continued development progress. The City should not rely on Tustin Legacy land-sale proceeds to backfill any operating deficits that exist in the General Fund.

Conversely, the General Fund should not be relied upon or put at risk to fund development of Tustin Legacy unless absolutely necessary, such as through debt service or other means. In order to have Tustin Legacy advance as a self-sustaining development, land-sale proceeds will need to be preserved to safeguard the ability of the City as Executive Developer to implement and install needed infrastructure and amenities. A balanced approach to reinvestment of land-sale proceeds at Tustin Legacy is necessary to unlock future phases for development. At the conclusion of vacant property development at Tustin Legacy, the General Fund and Tustin Legacy should exist separately and successfully, and not be reliant on one another for operational deficiencies.

2.4.10 Prepare for Change and Unpredictability

Perhaps one of the most important Lessons Learned is that change is inevitable. From environmental standards and new opportunities, to market conditions and changing priorities, the City must be quickly responsive to changing conditions to continue development momentum while adjusting to unplanned circumstances.

Former military base cleanup and redevelopment can be a very slow process with new issues arising and cleanup standards constantly changing. The original Navy conveyance documents that were executed in 2002 anticipated that while not all environmental issues would be remediated, all property would be conveyed to the City and others by 2008. As of September 2022, over 200 acres remain to be transferred to the City and others with no clear transfer date.

For brief background, the Navy (in consultation with the California Department of Toxic Substance Control (DTSC) and the California Regional Water Quality Control Board - Santa Ana (RWQCB)) leads all environmental remediation oversight and implementation at former MCAS Tustin, with input from City staff and the community. Former MCAS Tustin is not on the National Priorities List (aka a superfund site).

A Federal Facility Site Remediation Agreement (FFSRA) between the Navy and the DTSC was signed for former MCAS Tustin, which governs the Navy's corrective action and response obligations under the Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The Navy is able to transfer property with ongoing environmental remediation once the system treating the environmental issue is Operating Properly and Successfully (OPS) for a three-year period. This means that the Navy can transfer property even with ongoing cleanup activities, as long as the remedy selected for that particular issue is in place and performing.

The difficulty over the last 10+ years with the Navy transferring property has been changing environmental standards which have made OPS unobtainable. For example, in 2017 the State of California established a Maximum Contaminant Level (MCL) for 1,2,3 - trichloropropane (1,2,3-TCP) of .005 mg/l when the previous MCL was 0.5 mg/l. This significant change in cleanup goals required the Navy to re-mobilize, re-sample several times, and ensure that the existing treatment system was successfully remediating to the new 1,2,3-TCP cleanup goal.

Additionally, the recent emergence of per- and polyfluoroalkyl substances (PFAS) has created a new contaminant that will require extensive research, sampling, and potentially a new treatment strategy. Any conveyances will likely be delayed until more information on PFAS has been collected, as well as guidance is given from the Environmental Protection Agency (EPA) to the Department of Defense (DOD) and ultimately to the Navy.

Even on areas that do not have ongoing environmental issues or delays, new opportunities and priorities can arise over the years that can alter or delay the development phasing plan. As a public agency, the City must respond to community issues, opportunities, and concerns that can require extensive analysis, reorder staff time and priorities, and require new direction. For example, it is public knowledge that on multiple occasions the City had discussions with a major league sports team to potentially relocate to the City in an area that was not planned for development for some time. These discussions required extensive analysis to determine financial feasibility and community benefit. The work devoted to that proposal took away from the focus on the next planned development projects. The City is always open and willing to explore opportunities and perform due diligence efforts on these types of endeavors and interesting future opportunities that can impact the community, however this work often delays development in other areas.

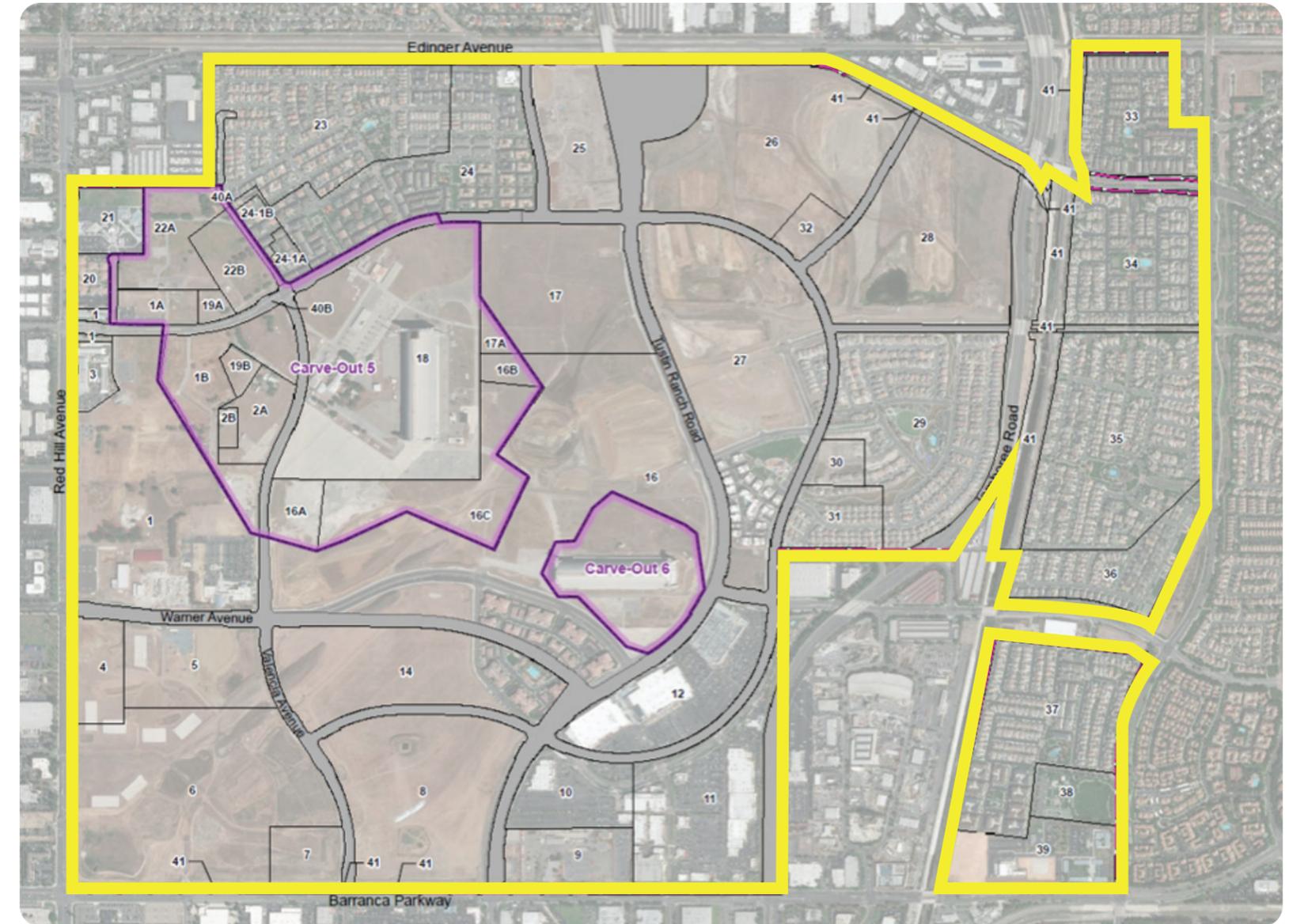


Exhibit 5: Remaining Navy Property at Tustin Legacy

CHAPTER 3

Development Strategy



The City seeks to dispose of property at Tustin Legacy in an expeditious and orderly manner which facilitates physical development of the property reflective of the Specific Plan. Developers are expected to build in a timely fashion upon conveyance in accordance with a schedule of performance and phasing plan (if applicable). Patience will be employed where unfavorable market conditions do not lend themselves to development of a particular product at a particular time to achieve the vision of the Specific Plan. The City is steadfast in delivering the community vision for Tustin Legacy as approved in the Specific Plan.

Remaining portions of Tustin Legacy which are not yet owned, but instead controlled by the City include portions of the property under a Lease In Furtherance of Conveyance (LIFOC) between the Navy and the City. These Navy-owned parcels present challenges to development, both in the limitations imposed on them by the Navy, as well as the irregular boundaries that negatively influence development of the adjacent parcels owned by the City and outside agencies (see Section 3.4.1). Additionally, recent legislation at the state level, in particular amendments to the SLA, have created barriers to the expeditious development of Tustin Legacy. Several options are available as approaches to compliance with the SLA. Discussion of the SLA and recommendations for compliance options are found in Section 3.4.2.

3.1 DEVELOPMENT APPROACH/GOALS AND OBJECTIVES

Tustin Legacy is a City asset and should be managed as such, which entails taking advantage of opportunities and minimizing unnecessary risks. Developing a site in the unimproved condition that exists at the scale of Tustin Legacy is a long-term effort, regardless of the existing economic conditions and future economic cycles. Progress should be measured in incremental steps or building blocks that will serve to advance development with an eye toward the future. The implementation of the Specific Plan through property dispositions needs to be carefully managed, remain flexible, and be responsive to the market and anticipate meaningful trends, including the impact advanced technologies have on the way people live, work, and play.

A major goal of the City in its capacity as Executive Developer is to sell parcel(s) to single land developers large enough to achieve economies of scale and infrastructure development, but not so large as to delay construction of projects or undermine the City's land-sale price. Segments or phases to be chosen should include similar land-use designations so that property is sold to developers with expertise in development of specific land uses and not for holding land for speculation purposes. The timeframe for any sale of segments or phases would be a function of projected market absorption, infrastructure constraints, environmental document development, phasing thresholds, and completion of environmental remediation by the Navy.

The City intends to divide the development parcels into smaller-sized portions of the larger remaining 480 acres to ensure that development momentum and the Specific Plan land-use goals are achieved. Some degree of control and level of land optimization can be achieved with a focus on the completion of limited major backbone facilities for certain segments or phases and marketing of City rough-graded sites within certain smaller segments. This would also allow the City to phase the development and time sale of phases or segments to meet market demand and the development intensity supported by the current EIS/EIR thresholds. The later phases would be of a higher density, when the market will reward that intensity. While the City assumes the responsibility for overall master planning and backbone infrastructure, it seeks to shift the responsibility for financing, development, and construction of horizontal improvements to third parties wherever possible.

Goals and Objectives for how the City manages development of Tustin Legacy as the Executive Developer are noted below.

3.1.1 Encourage Development Adjacent to Existing Infrastructure and Completed Vertical Improvements

The City should capitalize on the success of completed development and completed backbone infrastructure. By marketing and selling development segments or phases immediately adjacent to existing backbone infrastructure and developments, the revenues from sale of such parcels could provide additional working capital to complete certain future major infrastructure improvements, thereby creating additional parcels to capitalize on.

3.1.2 Enforce Momentum

Construction activity sends a message to the local community and development community that Tustin Legacy is moving forward, which creates a desire by other potential parcel purchasers to be included. Momentum can be achieved in the implementation of both private, as well as public improvement projects.

3.1.3 Maintain Control

Control of Tustin Legacy permits the City to effectively manage timing and phasing, and facilitate appropriate development absorption. The City has the opportunity to determine and size development opportunities provided to developers based on a developer's commitment to achieve specific City Goals and Objectives. Exposure of Tustin Legacy to developers interested in purchasing property through outreach, networking, private consultations, and/or focus groups will assist the City in fine-tuning financial feasibility.

One key to the success of large land owners and Executive Developers such as Irvine Company and Rancho Mission Viejo is that they generally do not need to compromise on the "vision" for a short-term return. Such owners have been willing to plan the vision of the community and hold their land assets while waiting for the market to come to them, at the price and quality they desire.

3.1.4 Orderly Approach to Planning and Development

As the Executive Developer, the City controls the location of specific segments or parcels to be sold which avoids the potential for "leap frogging" into undeveloped areas and having a less logical sequencing of infrastructure and ultimate development. City control creates efficiencies with infrastructure investment and reduces isolated, stand-alone projects.

3.1.5 Control of Development Team

The City outsources and hires the same consultants as many private master developers. The City uses discretion in hiring the most capable consultants, and is careful to avoid creating conflicts of interest with consultants hired by a private master developer, should any exist. By acting as both the lead agency (regulatory capacity) and the owner/proponent (proprietary capacity), the City has extensive influence over development of Tustin Legacy.

3.1.6 Land Sale in Segments to Optimize Value

With the City managing the development of major horizontal infrastructure and sale of phases or segments (or vertical parcels), the benefit of selling parcels at higher prices rather than at significantly discounted wholesale prices for large bulk sales (in the case of sale to one single master developer) would accrue to the City. Further, the City can develop a strategy where it can delay a sale of certain parcels to enhance land values or the feasibility of a specific development project that is desired.

3.1.7 Low Cost of Financing

The City, as the owner/proponent, has access to low-cost public financing sources and can use Community Facilities District (CFD) financing, Infrastructure Finance District (IFD) financing, and other financing sources to support development of certain horizontal backbone infrastructure. The City may also be able to obtain federal or state grants to assist in financing of backbone infrastructure.

In addition to other public financing sources, the City can consider other financing avenues, such as bond financing secured on a projec-by-project basis. This was the mechanism the City used with the Tustin Field I and II projects where land-sale proceeds secured the notes. This should only be used in cases where the General Fund is not impacted, as discussed in Section 2.4.9.

3.1.8 Disposition Flexibility

The City retains the flexibility at any point, for reasons of public policy or economics, to choose to sell other larger portions of the property or more than one segment at a time.

3.1.9 Resetting of Market Comparables

The best comparable sale is often one that has already occurred at Tustin Legacy or within the immediate vicinity. Each development at Tustin Legacy strives to improve upon the prior in terms of design execution, as well as pricing. Therefore, every project should be raising the bar for a new standard of excellence in all facets.

3.2 GUIDING PRINCIPLES

The Guiding Principles presented in this section have merit unto themselves, however, several principles can be contradictory of one another in their application. For example, maximizing the land-sale price (Section 3.2.3) could occur with lowering the design expectation for a project (Section 3.2.1). This could provide a short-term cash benefit, but may actually be costlier in the long run by degrading future land-sales pricing due to the poor quality design adjacent to future development opportunities. The City will need to weigh the emphasis on particular Guiding Principles when evaluating disposition offerings and associated project proposals on a case-by-case basis.

3.2.1 Community Building/Quality Design (Exceptional Development)

Planning for development that can withstand the test of time will reap rewards in both establishing a community with pride of ownership, as well as enhanced future property values. The designed environment within the public realm and private property can go a long way in creating a desirable community which is coveted by owners and visitors alike. Tustin Legacy can and will be the place that people want to live, work, and play. This doesn't happen by chance, but rather through establishing a standard of excellence that remains consistent and carries through successive administrations and continues to improve upon itself with each subsequent project.

Demanding high-quality materials and finishes along with progressive architecture which defines a place will seed the area and continue to inspire creative and timeless design. The City puts a great deal of emphasis on architectural design to create an exceptional community and the willingness of a developer to engage with a standout architectural firm is recommended when considering developer selection. Developers can get a sense of

the City's expectations by referencing design guidelines for neighborhoods within Tustin Legacy. Community and design objectives introduced in the original Disposition Strategy remain relevant and are summarized below.

PLANNING AND COMMUNITY OBJECTIVES

Development plans will be required to conform to the program of uses and development envelopes entitled in the Specific Plan and Final EIS/EIR and the following:

- Establish a new center of activity in the City and region
- Create a unique sense of place
- Establish a complementary relationship to the surrounding community
- Create livable communities



NEIGHBORHOOD D SOUTH DESIGN GUIDELINES

Tustin Legacy - City of Tustin, California

URBAN DESIGN OBJECTIVES

In addition to the urban design guidelines in the Specific Plan, seven principles shall guide the urban design of Tustin Legacy:

1. Sociable neighborhoods
2. Integration with public uses
3. A mixed-use core
4. Interconnected open spaces
5. Lively multi-modal streets
6. Human scale
7. Sustainable design

3.2.2 Minimize City Financial Risk (No General Fund Burden)

While the City can help create value in the project, the City is not in a position to take on development risks. Risks associated with market timing, cost increases, financing terms, construction performance, litigation, environmental issues, and other aspects of development must be assumed by the developer. In this vein, the City will not guarantee the developer a minimum financial return or make other commitments that will render it vulnerable in the event of negative cash flow by developer.

- Self-sustaining development — The City strives to treat Tustin Legacy along the same lines as a separate self-sustaining enterprise which does not leverage or burden the City's General Fund. Tustin Legacy should pay for itself which may occur through various funding mechanisms such as low-cost capital of bonding, to no-cost land sale revenues that "pay as you go" in funding public projects at Tustin Legacy. Reinvesting project proceeds in land development will create long-term value at Tustin Legacy.
- Developer pays predevelopment costs — The City's predevelopment costs, after selection of a developer, are to be paid by the developer. Examples of pre-development costs include staff time, consultants, outside counsel, and any other legitimate expenditures required to negotiate and draft the land development transaction documents including the Disposition and Development Agreement (DDA), the land entitlements, and the Development Agreement (DA).
- Positive fiscal impact — The City is prepared to work with developers to explore the potential for various financing mechanisms and the reinvestment of land-sale proceeds. However, the City expects development of the transaction site to result in a positive fiscal impact for the General Fund, and the terms of the disposition transaction will need to protect the City's General Fund from any financial obligations that cannot be met from the proceeds of the project itself.

- Tax-exempt financing — City sponsored tax exempt instruments (e.g. Certificates of Participation (COPs), revenue bonds), and tax-exempt land-secured funding (e.g., Mello-Roos or other special assessments) may be used as appropriate for backbone infrastructure and public facilities subject to meeting the requirements of these public finance mechanisms and at the discretion of the City.

However, these financing mechanisms may not be used for the developer's in-tract improvements. In instances where tax-exempt vehicles are appropriate, they will be used in combination with private financing to lower borrowing costs and enhance the value of the land, ensuring that costs are allocated among land uses in proportion to the benefit received. The City expects to participate in the value creation resulting from investment of public funds.

3.2.3 Maximize Land-Sale Price (Highest Price)

Fair market value should be achieved in all transactions unless there is a unique circumstance that would dictate otherwise. This ensures that the City is achieving the maximum benefit and return for the funding, time, and effort exerted in master planning and developing Tustin Legacy. This will benefit the Tustin Legacy community directly, as well as the entire City in bolstering community programs and projects.

Conveyance at fair market value is also necessary to avoid any gift of public funds or subsidies which could require a project to construct all improvements at prevailing wage and substantially raise the cost of the development.

Land value can be enhanced through effective positioning and marketing of the property, quality development and value creation strategies, market-driven infrastructure investment, and other development strategies the City employs as the Executive Developer similar to the private sector. Additionally, the City can enhance value by holding the land for successive purchasing opportunities by the developer, facilitating entitlement and approvals, providing public financing where appropriate, and expediting other public agency functions.

3.2.4 Expedite Development (Build Fastest)

The buildout of Tustin Legacy in a timely manner is a high priority of the City, but not at the expense of sacrificing the Specific Plan vision. Patience is needed in implementing a plan which may have unfavorable land uses in a current market cycle.

- Higher density and commercial uses take longer — Given the market conditions at the time of printing, the City could most easily dispose of property for lower-density housing and simply create a bedroom community similar to the Great Park Neighborhoods in Irvine, but this would not fulfill the desire of creating a mixed-use environment which would also provide jobs, retail, commercial, and entertainment uses close to residents. This single use approach could also create unnecessary competition with other housing projects under construction or in planning, and slow sales and construction as discussed below. In general, the higher the density and greater commercial orientation of a project, the more complex it becomes and accordingly more prolonged development duration.

- Simultaneous development of non-competing land uses — There are opportunities to expedite development by executing on the simultaneous development of projects with different proposed land uses that do not directly contend with one another. This allows each respective land-use product the opportunity to be successful by selling and/or leasing without over saturating the market on pricing or rent levels. In turn, this quicker absorption can increase the City's probable profit participation amount through quicker buildout and sales.
- Competing land use development — Another avenue to accelerate development timelines is to create smaller development packages with similar products and have developers build and compete with one another. This would ensure more builders constructing at the same time. Conversely, this approach could lower rents or sales prices as developers compete with one another on absorption, and in turn could lower profit participation payments, if any.

Additionally, it could be more time consuming to solicit and negotiate multiple DDAs for smaller packages and may not be possible to achieve economies of scale to accomplish certain infrastructure segments which may be necessary. This approach could be advantageous in a "hot" market for a particular product, but given development and negotiation timelines it would be difficult to time such a cycle.

3.2.5 Use Qualified Developers (Best in their Field)

This principle is simple: Choose a competent developer that can build what they say they are going to build. Reputation precedes most developers in the industry and they become defined by what they have built and can produce. Existing projects are certainly important in reviewing a developer's work product, but so is their reputation in the industry for negotiating in good faith and delivering on their commitment. While the City has experience with a number of developers, it is good practice to reference a commercial broker's opinion of the developer and obtain any due diligence of the history of a developer's deals and negotiation practices.

3.2.6 Long-Term Land Revenue (Sales vs. Ground Leasing)

Tustin Legacy is a long-term project due to the extent of development required to achieve the vision, and the unknown timeline associated with transfer of portions of the property from the Navy to the City and others. The primary function of generating land-sale proceeds is to achieve buildout of Tustin Legacy. The purpose of the associated Tax B (Services) is to ensure an adequate level of service provision to the community.

At buildout, it may be the case that the City has received more revenue from land-sale proceeds than it has expended at Tustin Legacy, to the benefit of the General Fund. These would be one-time revenues that should not be relied upon to sustain maintenance and operations at either Tustin Legacy or the City as a whole.

The City may also consider as a matter of fiscal policy if it would make sense to enter into long-term ground leases for portions of Tustin Legacy, where appropriate, to establish a steady annual and ongoing income stream in addition to land sales. Property management is not an essential function of the City, but long-term ground leases could be structured to relieve some portions of the property of the City's obligation for maintenance and administration of Tustin Legacy. For more information on the City's approach to ground leasing, see Section 3.6.

3.2.7 Housing Affordability/Attainability

The provision of affordable housing has always been at the forefront of land-use policy at Tustin Legacy where both rental and for-sale affordable housing developments have been constructed and are in operation. There has never been a question of whether or not to provide affordable housing, but rather how much to build and where. The recent amendments to the SLA, discussed in Section 3.4.2, have significantly altered the City's approach to affordability and property disposition.

The SLA stipulations requiring every residential project to contain an affordability component greatly constrains the City's ability to generate the needed revenue from land-sales proceeds in order to continue to develop future infrastructure and amenities. The minimum requirements of the SLA do not bode well for a mix of market rate and affordable units which are unlikely to be selected for grants and other forms of subsidized funding.

Strictly 100% affordable project developers are unlikely to pay fair market value for the land in comparison with a market rate project, and 100% affordable projects cannot afford to fund the infrastructure needed to redevelop a former military base. This leaves the City in a very difficult position of navigating projects to maximize land value in order to generate funds to redevelop the base, while still balancing affordability requirements.

One of the SLA exemptions (as discussed in Section 3.4.2) can be utilized when providing 25% affordability and still allow the City to select a best-in-class developer, control design, and possibly achieve a higher land residual payment if accepting a joint venture with a market rate developer and an affordable developer. At this time, this approach appears to be the best available option to achieving high-quality design and fair market values.

3.2.8 Ensure Project Success (Monitor Absorption/Profit Participation)

Project absorption (building and selling/leasing rates) is of critical importance to developers and the City. For the developer, the sooner a project achieves stabilization (a completed project that has achieved the desired occupancy ratio for the product type, for example multi-family development at 90% occupancy), the sooner they can reposition a project to obtain alternative financing which allows the developer to effectively complete the financial terms and obligations of the project to investors.

For the City, a successfully absorbed project exemplifies the strength of the local market and enhances the desirability of Tustin Legacy. Lingering projects are not beneficial to the developer or the City and can reduce profit participation and create undesirable competition among common land uses. Development is inherently risky and developers at Tustin Legacy should be rewarded according to their level of risk with protections to allow them to lease up or sell as soon as possible and achieve anticipated returns.

3.3 UNDEVELOPED PORTIONS OF TUSTIN LEGACY

Remaining undeveloped parcels owned or controlled by the City comprise approximately 480 acres, the majority of which can be attributed to gross acreage. The exception being Neighborhood D South which has been subdivided and developed with mainline utility infrastructure, roadways, and designated open space and public right-of-way.

Due to the City reacting to market demands and conditions, there have been numerous conveyances that span and comprise different portions of the original proposed development areas, meaning that actual dispositions did not fit neatly into any one Disposition Area. The current Disposition Areas follow the general framework of their predecessors, but have been updated to account for prior conveyances, changes in ownership, infrastructure installation, and subsequent subdivision of the various areas.

It should be noted that Neighborhood C (Parcel 18), as designated in the Specific Plan, was previously identified as an Orange County Regional Park and not included as a Disposition Area. As previously mentioned, the area is comprised of approximately 85-acres and includes the North Hangar. The site is currently owned by the Navy and will be subject to a reuse planning process which is further detailed in Section 2.2.1. If all or any portions of Parcel 18 are eventually conveyed to the City in the future, then such area or areas would be added to the proposed disposition timelines.

Neighborhood D

Neighborhood D consists of approximately 319 acres and is more generally described as two areas, Neighborhood D North and Neighborhood D South which are divided by Warner Avenue stretching from Armstrong Avenue to Tustin Ranch Road. The Specific Plan identifies this larger neighborhood as a mixed-use urban core which may provide unique entertainment and recreational opportunities to supplement retail, housing, and office uses.

Neighborhood D South contains approximately 127 acres which are currently under development or to be developed. Existing uses within this area include the Amalfi Apartments consisting of 533 apartment units which are owned and were developed by Irvine Company.

The City has completed construction of major roadway and utility infrastructure for the first phase of improvements within Neighborhood D South. Future City improvements in the area will consist of additional roadway and utility improvements to provide access to some of the uppermost parcels (Lots 14 and 15) adjacent to Warner Avenue. In addition, open space improvements for the continuation of Tustin Legacy Park (Lots A and B) along with pedestrian bridges are in design and are expected to be implemented in the coming years. The Alley Grove Promenade connecting the Flight office development to The District shopping center in a portion of Lot 1 is anticipated to be under construction and completed in 2023.



The Landing - Terra

Coinciding with the initial infrastructure improvements is the ongoing construction of 400 for-sale homes called The Landing by Brookfield Residential Southern California (Brookfield). Residents are occupying these units and the community is anticipated to be built out by 2024. The City is currently in an Exclusive Negotiating Agreement (ENA) with a developer for the potential disposition and development of 1,208 apartment homes (25% of which will be for persons and families of lower incomes) dispersed on three street blocks adjacent to Legacy Road on parcels comprising approximately 19.4 acres (Lots 11, 12, and 13 of Tract No. 18197).

Remaining undeveloped areas of Neighborhood D South include portions of Lot 1 adjacent to Barranca Parkway which have been designated for office and hospitality uses with limited supporting retail. Lots 3 and 4 along Armstrong Avenue and Lots 14 and 15 adjacent to Warner Avenue are flex blocks to accommodate a senior housing continuum of care community or an office development.



The Landing - Cira



TUSD Legacy Magnet Academy

Neighborhood D North comprises approximately 192 acres. The only recent development within the area consists of the Tustin Unified School District (TUSD) Legacy Magnet Academy which occupies 33 acres and contains a middle school and high school. An administration campus for TUSD has been proposed for future development on an additional seven acres across Legacy Road from Legacy Magnet Academy. Very limited infrastructure inclusive of portions of Moffett Drive and Legacy Road has been installed with the primary function of supporting the Legacy Magnet Academy.

To the southwest of the Legacy Magnet Academy lies the South Hangar. More information on the South Hangar and current/future use can be found in Section 3.8. City plans for the area immediately adjacent to the South Hangar currently involve open space programming and a focal park in front of the west side of the South Hangar.



Conceptual Rendering of N-D North

Obstacles to development within Neighborhood D North are prevalent due to the existing Navy-owned property boundaries which create irregular parcels and involve associated remediation efforts (see Section 3.4.1). These irregular boundaries render many of the adjacent parcels owned in fee by the City as infeasible for development at this time. The high cost of infrastructure development has also proven to be an obstacle for development of the area.

A grid system street block network is envisioned to subdivide portions of Neighborhood D North to create a walkable urban mixed-use setting. Existing parcelization does not currently reflect this street grid pattern, and the area will need to be re-mapped prior to development. City staff will continue to study the

viability of advancing development on City-owned portions of the site which would not conflict with Navy-owned parcels and can still fit the Specific Plan objectives for the area. Due to the aforementioned significant development constraints, Neighborhood D North is likely to be one of the last areas of Tustin Legacy to undergo development.

Neighborhood E

Situated at the westerly corner of Tustin Legacy at the intersection of Barranca Parkway and Red Hill Avenue, Neighborhood E is intended as an employment center accommodating office, research and development, and commercial business uses with supporting retail and recreational uses. Neighborhood E is entirely within the Santa Ana Unified School District, unlike most of Tustin Legacy which is within the Tustin Unified School District.



Flight

A prominent feature within the neighborhood is the first phase of Tustin Legacy Park and primary arrival monumentation at the corner which frames views of the hangars and the Saddleback Mountains. Tustin Legacy Park bifurcates Neighborhood E diagonally and extends upward into Tustin Legacy from the corner of Barranca Parkway and Red Hill Avenue to Armstrong Avenue. South of Tustin Legacy Park is commonly referred to as the Cornerstone I area which includes the Flight creative office campus consisting of approximately 374,200 sq. ft. of office use and a 11,750 sq. ft. food hall. A future Cornerstone I office development is envisioned for the parcel adjacent to the Flight office campus. This parcel is comprised of approximately 21 gross acres and is bounded by Barranca Parkway, Airship Avenue, and Armstrong Avenue. All mainline utilities and surrounding infrastructure have been installed and are available for connection.

The area known as Cornerstone II is situated to the north of Tustin Legacy Park on approximately 50 gross acres which has been undeveloped and is deficient of infrastructure. Development potential for Cornerstone II is currently limited to 718,198 sq. ft. of commercial use predominately designated for office use per the Tustin Legacy Specific Plan and associated Final EIS/EIR. Timing for disposition of Cornerstone II is largely dependent on the development and absorption of future office and commercial use within Cornerstone I. Market acceptance will also play a critical role in the willingness of office developers to pursue the site.

Neighborhood F

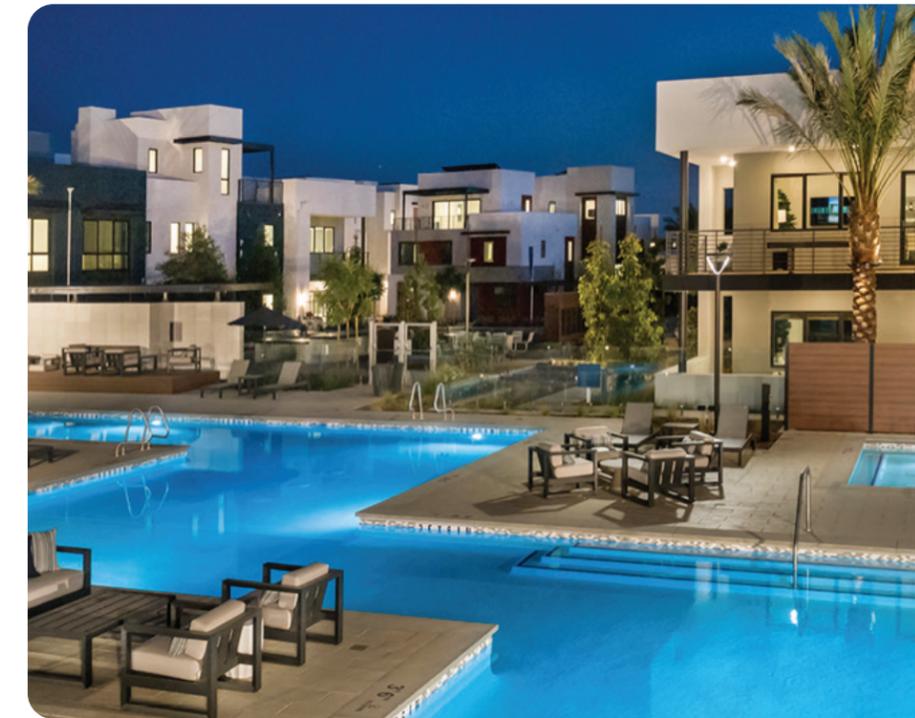
Predominately built out with The District shopping center, Neighborhood F is located at the intersection of Jamboree Road and Barranca Parkway and, is further bound by Tustin Ranch Road and Warner Avenue. The only remaining portion of Neighborhood F to be redeveloped is the approximately 14-acre Army Reserve site at the southeasterly corner of Tustin Ranch Road and Barranca Parkway.



Flight

In 2015, the City effectuated a land transfer exchange with the Army Reserve to relocate their existing facility operations elsewhere on Tustin Legacy along Red Hill Avenue at the intersection of Warner Avenue. This resulted in the construction of a new Army Reserve Center in 2016 and the City taking ownership of the former site adjacent to The District shopping center. The Site currently contains a 35,000 sq. ft. administration building and 10,000 sq. ft. maintenance building, along with paved parking and gravel storage areas. Adaptive reuse of the administration building could be considered in the future. A portion of the property is being utilized for a temporary homeless shelter with other portions of the site under limited short-term licenses for parking, staging, and other business operations.

Neighborhood G



Levity

Neighborhood G is located in the eastern most corner of Tustin Legacy adjacent to the Metrolink commuter rail station and bordering the City of Irvine. The area is currently comprised of numerous residential communities consisting of Tustin Field I and II, Columbus Grove, Greenwood, Anton Legacy, and Levity encompassing 1,222 total residential units. Remaining undeveloped land in Neighborhood G largely consists of approximately 180 gross acres within Planning Area 15-A, which is commonly referred to as the Transit Village, given its location directly adjacent to the rail line transit stop across Edinger Avenue.

There is an additional smaller vacant parcel of approximately three acres in size which lies across Warner Avenue north of the Costco and immediately south of Anton Legacy. Approximately one acre of this parcel within Planning Area 15-C was recently conveyed to the City from the Navy and will be considered for inclusion as part of a larger disposition offering which includes portions of Planning Area 15-A. A mixed-use, transit-oriented development is envisioned for the larger Planning Area 15-A (Transit Village) which seeks to capitalize on the adjacent Metrolink commuter rail station. The area provides flexibility for residential, office, retail, and other commercial uses in either a vertical or horizontal mixed-use format.

A key component of the planning area is the continuation of Tustin Legacy Park which will connect pedestrians and other multi-modal forms of transit to the other neighborhoods within Tustin Legacy. This is a particularly critical segment of Tustin Legacy Park as it serves as a primary entry to Tustin Legacy from the Metrolink station and provides the opportunity to encourage alternative means of transit both to and from Tustin Legacy in linking the entirety of the site as well as ultimately providing connections to the adjacent Irvine Business Complex (IBC) area.



Greenwood

3.4 IMPEDIMENTS/CONSTRAINTS

Many challenges still lie ahead in the redevelopment of the former MCAS Tustin more than twenty years after the initial conveyances of property to the City in 2002. The Navy still retains over 200 acres of Tustin Legacy due to ongoing environmental investigation and remediation efforts. The City has taken on the responsibility of maintaining many of these Navy-owned properties via a Lease in Furtherance of Conveyance (LIFOC) until the Navy is ready to convey. Certain interim opportunities for subleasing for uses of these LIFOC properties may exist for appropriate land uses which benefit the City and wider community.

One of the most significant government interventions on how the City disposes of property and in turn delays timeliness of development at Tustin Legacy has come from the State of California in the form of recent amendments to the SLA passed in 2019. Changes to the SLA have considerably inhibited the City’s ability to generate revenue through land sales and in turn to fund future infrastructure and community amenities. In addition, the SLA has significantly expanded the developer selection and disposition timeline, slowing development, and leading to uncertainty in the ability to select qualified developers and control local land-use decisions to implement the Specific Plan.

The high upfront infrastructure costs of establishing a circulation network and mainline utility service in redeveloping a former military base has proven to be a difficult hurdle to overcome in larger land-use projects at Tustin Legacy, in particular Neighborhood D North. Substantial infrastructure costs which are not easily phased over time are challenging to overcome for the development community given the prolonged time period of development with no returns.

Beyond simply providing enhanced connections to and through Tustin Legacy, the park will be a focal point of the Transit Village neighborhood given its intended size and placement within the middle of the site extending diagonally from the corner of Tustin Ranch Road and Moffett Drive upwards to the crossing at Edinger Avenue linking to the rail station. The footprint of the park physically divides the area into two segments which lend themselves to facilitating phased development of the Planning Area.

An initial phase of the Transit Village area will be considered to the south of Tustin Legacy Park and consists predominately of residential uses which contain differing product types, building typologies, and densities including rental apartments, and for-sale single family and multiple family dwellings in compliance with the SLA. This should provide for a multitude of housing options for varying income levels.

The majority of the “low hanging fruit” at Tustin Legacy has been developed around the perimeter of Tustin Legacy adjacent to existing infrastructure, however, more complicated infrastructure needs within the interior of the site remain. Creative partnerships between well-established and highly capitalized developers and the City will be needed to tackle the more difficult areas of Tustin Legacy which require significant infrastructure investment.

3.4.1 Lease in Furtherance of Conveyance (LIFOC)

The original Economic Development Conveyance (EDC) between the Navy and City governs how 1,153 acres of the 1,600-acre former MCAS Tustin was to be transferred to the City (the remaining acreage was conveyed directly to other entities and agencies). Of the 1,153 acres transferred to the City, only 979 acres were deeded to the City in 2002. The remaining 174 acres were subject to a LIFOC which granted the City a lease over the 174 acres while the Navy undertook additional environmental investigation and/or remediation.

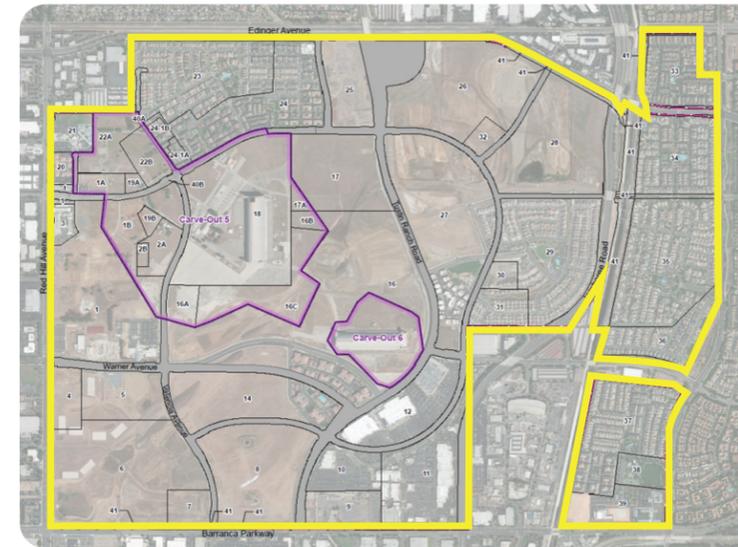


Exhibit 6: Remaining Navy Property at Tustin Legacy

The City also accepted an additional, separate LIFOC for 22 acres of the Veterans Sports Park site in 2004 which was not part of the EDC, but a Public Benefit Conveyance (PBC) to the City.

As seen in Exhibit 6, the size and boundaries of the remaining carve-out areas create difficult parcels to plan around. The LIFOC that governs these carve-out areas also contain provisions that create development challenges even for the most basic horizontal infrastructure development.

The first challenging provision in the LIFOC is that it can be terminated with 30 days’ notice if a national emergency is declared by the President of the United States. This results in underwriters unwilling to finance projects with such a broad and unchallengeable provision running with the land. This has not prevented public projects as they are not typically lender financed, but paid for through liquid public capital, resulting in projects such as Veterans Sports Park which was built on LIFOC property (and remains on LIFOC property to this day). This has also not been an impediment to temporary sub-leases or low impact uses, as these projects can be funded on a cash basis.

The 174 acres were divided into eleven (11) carve-out areas throughout the former base footprint. Since 2002, nine (9) of the eleven (11) carve-outs have been conveyed to the City, constituting approximately 60 acres. Two (2) of the eleven (11) carve-outs remain, totaling approximately 114 acres. The LIFOC term runs through May of 2052.

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As seen in Exhibit 6, the size and boundaries of the remaining carve-out areas create difficult parcels to plan around. The LIFOC that governs these carve-out areas also contain provisions that create development challenges even for the most basic horizontal infrastructure development.

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The second challenging provision is that any horizontal or vertical work in the carve-out boundary requires approval from the Navy, the California Department of Toxic Substance Control (DTSC) and the Santa Ana Regional Water Quality Control Board (RWQCB), no matter the size or scale of the project. This is primarily to ensure that any proposed development does not impact ongoing remediation systems, or create new pathways for groundwater or vapor to travel. This requires a more refined engineering approach, often times leading to much higher infrastructure costs to account for items like bentonite backfill or wrapping pipes in special fittings.

The City has been able to construct major backbone and local infrastructure in the carve-out areas to serve development not located in carve-out areas while complying with these provisions. Some of these provisions may survive transfer of the property to the City to ensure the remediation equipment and overall health and human safety is protected.

3.4.2 Surplus Land Act (SLA)

Development of public property has significantly changed over the last several years due to legislation passed in 2019 that substantially amended the SLA. These changes impact all public agencies when selling or leasing property, and have created especially challenging rules and regulations for public agencies disposing of large undeveloped areas such as Tustin Legacy.

The SLA has been law in California since the 1960s and requires public agencies disposing of property no longer needed for government use to offer the property for the development of affordable housing. However, the SLA did not contain any penalty for noncompliance, nor did it assert superiority over other sections of California law related to disposal of property. Many public agencies did not consider their land dispositions subject to the SLA due to other areas of California law that allowed dispositions for economic development or due to revenue needs for other development activities. The City did not consider Tustin Legacy subject to the SLA prior to 2020 for a variety of reasons, including:

- **Method of Acquisition:** The EDC between the City and the United States of America conveyed the vast majority of former MCAS Tustin to the City. The EDC requires the City to create jobs and housing for the surrounding community in accordance with a federally approved Reuse Plan for former MCAS Tustin. The City believes that this contract between the City and United States of America should supersede any state law requirements for disposition of property owned by the City.

- **Infrastructure Requirements:** Tustin Legacy requires significant cost to develop the modern backbone and local infrastructure needed as part of a redevelopment of a former military base. When the City began receiving property at former MCAS Tustin in 2002, none of the former military utilities were suitable for new development. Major drainage, streets, parks and utilities must be installed prior to larger neighborhoods being available and ready to be developed. Remnant parcels of “surplus property” that a public agency no longer has an intended use for typically involve parcels already connected to existing infrastructure, and does not involve property, such as Tustin Legacy, that the City has an established intended use for per a Federal Reuse Plan and an adopted Specific Plan and requires significant remaining infrastructure investment.

- **Revenue Needed to Continue with Development:** The City, acting as Executive Developer for Tustin Legacy, generates revenue from land sales or lease proceeds for reinvestment purposes to continue to advance residential and non-residential development progress at Tustin Legacy. A significant portion of revenues generated from land sales at Tustin Legacy are essential as they are reinvested back into the base to install the major infrastructure needed to open up more parcels for development, and to provide such amenities as parks, schools and public services for the Tustin Legacy community.

A portion of revenue at Tustin Legacy is also used for projects in other areas of the City, to pay down unfunded liabilities, or to help offset revenue losses that occur during an economic downturn or a crisis such as the COVID-19 pandemic. Given the City’s role as Executive Developer for Tustin Legacy, revenue generation is a necessary government function to advance development, and meet financial and Federal Reuse Plan obligations to create a mix of residential, institutional, employment opportunities, and parks and open space.

Major amendments to the SLA occurred via AB 1486 (Ting, 2019) that became law on January 1, 2020, with some portions retroactive to September 2019. Some of the major amendments to the SLA include:

- **Definition of Government Use and Surplus Land:**
 - Prior to January 1, 2020, revenue generation was considered an allowed government use, therefore not subject to the SLA. The new definition of government use (“agency’s use” in the SLA) explicitly removed revenue generation as a government use. The revised SLA includes very specific items that can be included in the definition of government use: land that is being used, or is planned to be used pursuant to a written plan adopted by the local agency’s governing board for agency work or operations, including, but not limited to, utility sites, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants as described in Government Code Section 54221(c)(1).
 - Since revenue generation is no longer an allowed government use, property that does not meet the very specific criteria is placed into a category of property called “surplus land.” Any property within this definition must go through a very specific disposition process, discussed below.
- **Definition of Disposition:** The revised SLA and the SLA Guidelines (discussed below) include sale and leasing of property as “disposition.” The issue of time, land improvements, and value of leases as “dispositions” has not been fully clarified, to date.

- **Penalties:** Perhaps the most impactful change to the SLA is the penalties that can be levied on public agencies for non-compliance. If HCD finds that a public agency violated the SLA process (outlined below), or the public agency is unwilling to comply, it may issue a 30% fine of the final lease or sale price (first offense) or a 50% fine of the final lease or sale price (second offense or more). On major dispositions, 30-50% can have a detrimental impact on land sale revenue to a public agency.
- **SLA Disposition Process:**
 - *No Prior Negotiations.* Prior to January 1, 2020, City staff and the City Council could discuss development proposals from third parties at any time, without restrictions. The revised SLA now prohibits City staff, City Council members, developers, etc. from participating in any negotiation discussions regarding price or terms on property prior to the land being offered to affordable housing developers first through a Notice of Availability (NOA). (NOA is discussed below).
 - The implication is that if any entity (developer, end-user, etc.) desires to discuss a potential project with staff or the City Council, the City is prohibited from doing so prior to going through the NOA process. The City is only permitted to perform planning studies, develop marketing materials, have discussions with brokers (if the broker does not represent a potential buyer) and have discussions between City staff and elected officials (no third parties) without having to go through the NOA process. This is a severely limiting restriction on the City's ability to have a basic understanding of a potential development transaction, particularly on land intended for commercial uses, before then moving forward with NOA requirements.
 - *Declaration of Surplus Property.* Before issuance of an NOA, the City Council must adopt a resolution declaring the property that it desires to dispose of or have discussions on as "surplus" in addition to other findings. This must be adopted at a public meeting.
 - *Notice of Availability.* After the City Council has adopted a resolution, the City must develop and issue an NOA prior to having any discussions or negotiations with third parties. The NOA must be sent to:
 - California Department of Housing and Community Development (HCD)
 - All public agencies authorized to develop affordable housing where the surplus land is located (i.e., Tustin Unified School District, South Orange County Community College District, County of Orange)
 - All entities listed on the HCD interest list
 - The NOA may be sent to other entities outside of HCD's interest list as well
 - The NOA is required (at minimum) to contain:
 - Property address
 - Size
 - Zoning

- Density
- Asking price or appraisal

The NOA **may not** restrict the type of NOA responses that can be sent to the City, even if the zoning or land use intent is non-residential use for the NOA property. The revised SLA requires that, "*residential use shall be deemed an acceptable use for the surplus land for the purposes of good faith negotiations.*" The result is that even in an area planned for office, retail, or other nonresidential uses, the City must accept and negotiate with anyone proposing residential on the NOA property. The revised SLA states that, "*nothing ... shall restrict a local jurisdiction's authority or discretion to approve land use, zoning, or entitlement decisions in connection with the surplus land*" which indicates that the City Council in its governmental capacity is not required to change the zoning or entitlements for a particular parcel, but for the purposes of the NOA and the City's proprietary capacity, the City must entertain residential uses even on parcels planned for commercial use.

- *NOA Timeline.* Once the NOA is issued, any entity (even those that did not directly receive the NOA) may submit a notice of interest to the City for the subject property, or even portions thereof, within sixty (60) calendar days. The entity is only required to submit a notice of interest, and is not required to include documentation such as proposed purchase price, site plan, etc.

If any notices of interest are received during the sixty (60) day response period, the City **must** enter into at least ninety (90) calendar days of good faith negotiations with all respondents. During the ninety (90) days, the City must comply with the following:

- Cannot prohibit residential use of the surplus land as a condition of a sale or lease
- Cannot reduce the authorized number of residential units or the maximum lot coverage of the surplus land below what is allowed by zoning or general plan requirements
- May not require, as a condition of sale or lease, any design standards or architectural requirements that would have a substantial negative effect on the viability or affordability of a housing development for very low-, low- or moderate-income households, other than the minimum standards required by general plan, zoning, and subdivision standards and criteria



The third item above is a critical element when discussing design and planning for Tustin Legacy as a whole. Not only can the City not prohibit residential, it cannot control how a project is designed. The City has taken great pride over recent years in design and function of projects. This requirement of the ninety (90) day negotiations may lead to lesser quality projects that do not meet the design intent of the Specific Plan and the design guidelines in place for Tustin Legacy. It is a huge restriction placed on the City's proprietary capacity and ability to deliver projects of a high quality of design, but the City must comply with the process if choosing this disposition option.

The City may reject offers and end negotiations when price and terms cannot be agreed upon. The revised SLA does not require the City to sell property for less than fair market value, and "terms" could be interpreted to give the City some control over the business terms and design of a project.

A key takeaway from these revised SLA regulations, is that even if the City was ready to move forward with a disposition, this potentially one hundred fifty (150) day process will need to be adhered to and accounted for and could result in the property not being made available in an open competitive market subject to the NOA negotiations.

- **Post NOA Period:** One (1) of four (4) outcomes can occur following the NOA Period:
 1. City receives interest during sixty (60) day period and agrees on price and terms for all NOA property during the ninety (90) day negotiation period
 - Proceed to an ENA between the City and the entity
 2. City receives interest during sixty (60) day period and agrees on price and terms for portions of the NOA property during the ninety (90) day negotiation period
 - Proceed to an ENA for the applicable portions of the NOA property
 - City free to market and dispose of balance of NOA property, as long as a 15% total affordability covenant is recorded against the property if ten (10) or more residential units are constructed
 3. City receives interest during sixty (60) day period and does not agree on price and terms for any or all NOA property during the ninety (90) day negotiation period
 - City free to market and dispose of portions or entirety of NOA property, as long as a 15% total affordability covenant is recorded against the property if ten (10) or more residential units are constructed
 - Subject to challenge by any interested party in the transaction and reviewed by HCD
 4. City receives no interest during the sixty (60) day period
 - City does not need to proceed to ninety (90) day negotiation period

- City free to market and dispose of portions or entirety of NOA property, as long as a 15% total affordability covenant is recorded against the property if ten (10) or more residential units are constructed
- **Exemption Options:** Given the difficulty and uncertainty presented in the NOA process above, the revised SLA grants exemptions for various types of dispositions that can be used in lieu of the NOA process. These exemptions must be adopted by the City Council through a resolution declaring the subject property as "exempt surplus land" with findings supporting how the disposition will comply with the applicable exemption. These exemptions include:
 - Property that is subject to an ENA or other disposition agreement that was executed by September 30, 2019, as long as the property is disposed of by December 31, 2022
 - Specific affordable housing projects (Government Code 25539.4 or 37364).
 - Land sold to an owner of adjacent property that:
 - Is less than 5,000 sq. ft.
 - Is less than the minimum legal residential building lot size for the jurisdiction in which the parcel is located or 5,000 sq. ft. (whichever is less)
 - Has no record access, is less than 10,000 sq. ft. and is not contiguous to land owned by a state or local agency that is used for open-space or low- and moderate-income housing purposes
 - Land exchanged for another property necessary for the agency's use
 - Land transferred to another local, state, or federal agency for the transferee agency's use
 - Land that is a former street, right of way, or easement, and is conveyed to an owner of adjacent property
 - Land that is advertised to all entities identified in subdivision (a) of Section 54222 of the Government Code and who are then invited to participate in the competitive bid process for either of the purposes identified below:
 - A housing development (including mixed-use developments with ancillary commercial ground floor uses) that restricts 100 percent of the residential units to persons and families of low or moderate income, with at least 75 percent of the residential units restricted to lower-income households as affordable housing. In no event shall the maximum affordable sales price or rent level be higher than 20 percent below the median market rents or sales prices for the neighborhood in which the site is located.

- A mixed-use development that is more than one acre in area, that includes not less than 300 housing units, and that restricts at least 25 percent of the residential units to lower-income households, as defined in Health and Safety Code Section 50079.5 as affordable housing (discussed later in this document as City’s current preferred alternative/exemption route)
- If used for one of the purposes above, the local agency must put the land out for open, competitive bids. All entities identified in Section 54222 of the Government Code must be invited to participate in the competitive bid process.
- Surplus land subject to valid legal restrictions (not imposed by the disposing agency) such as covenants, or other restrictions that are and that would make housing prohibited, unless there is a feasible method to satisfactorily mitigate or avoid the prohibition on the site. An existing non-residential land-use designation is not, per se, a legal restriction that would make housing prohibited.
- Land that was granted by the state in trust to a local agency or that was acquired by the local agency for trust purposes by purchase or exchange, and for which disposal of the land is authorized or required subject to conditions established by statute
- Land that is subject to Education Code Sections 17388, 17515, 17536, 81192, 81397, 81399, 81420, and 81422 and Part 14 of Division 31 of the Health and Safety Code commencing with Health and Safety Code Section 53570 (school district property), unless compliance with the SLA is expressly required.
- Land that is used by a district for agency’s use expressly authorized in Government Code Section 54221(c)
- Land that was transferred before June 30, 2019, by the state to a local agency pursuant to Streets and Highways Code Section 32667 and has a minimum planned residential density of at least 100 dwelling units per acre and includes 100 or more residential units that are restricted to persons and families of low or moderate income pursuant to Government Code Section 54221(f)(1)(K)
- **Affordability & Density Bonus Law:** The revised SLA requires that 15%-25% (depending on disposition route) of the total number of units be affordable to lower-income persons whereas State Density Bonus Law calculates the affordability percentage on base units not inclusive of any density bonus units. This SLA affordability calculation requirement on total units is in direct conflict with how established density bonus law is implemented, and requires a much higher level of affordability for public agencies than a typical project would be subject. A 15% or a 25% requirement has a significant impact to land sales and revenue generation realized at Tustin Legacy. Additionally, the revised SLA only counts extremely low, very low and low income as “affordable” and excludes moderate income.
- **Requirements Prior to Final Disposition:** Whether disposing of property through the NOA process or through one of the exemptions, HCD retains the final disposition approval before property can be conveyed. Transaction documentation must be submitted to HCD for review.
 - If using NOA process:
 - Resolution declaring property “surplus land”
 - NOA and NOA distribution list

- Correspondence during NOA period, if any
- Description of negotiations, if any, during NOA period
- Final draft of disposition agreement (DDA, lease, etc.)
- 15% affordability covenant, if applicable
- If using exemption process:
 - Resolution declaring property “exempt surplus land”
 - Final draft of disposition agreement (DDA, lease, etc.)
 - Other items specific to certain exemptions

HCD has the ability to review the above documents for a thirty (30) day period to provide any comments or revisions needed. If HCD approves or does not respond, the disposition is approved and may move forward. If revisions are needed, the City has sixty (60) days to correct any issues or provide justification to HCD. If issues remain, HCD may allow the disposition to move forward but the disposition may be subject to a 30%-50% fine. The consequence of this section is that HCD has final “veto rights” of a disposition agreement even after a several hundred-page DDA has been painstakingly negotiated at great expense between the City and a developer, and the developer has advanced the design of the project through the City entitlements process. The City and any developer will incorporate this review timeline into development schedules.

In April 2021, HCD issued the [SLA Guidelines](#) that further refined how the SLA will be administered, since HCD is tasked with enforcing the SLA and issuing guidance for compliance. The SLA Guidelines clarify certain areas but also include HCD’s own interpretation of the law and its implementation in other areas. HCD may continue to modify the SLA Guidelines or issue other guidance over time which may clarify or confuse the process even further. The Legislature may also propose and pass laws that change portions of the SLA.

HCD has been extremely active in enforcing the SLA, notifying public agencies of potential violations, and options to come into compliance. Many affordable housing advocacy groups are also sending potential violations to HCD for investigation. High-profile public agency property dispositions (Anaheim’s Angel Stadium, San Diego’s Pechanga Arena) have been caught up in the changes to the SLA, most resulting in the public agency bringing the disposition into compliance with the SLA, cancellation of the disposition, or fines being issued. Many smaller, lower-profile public agency dispositions have been forced to make changes to be in compliance as well.



The revised SLA intent seems to have contemplated truly “surplus” parcels, such as infill sites that are surrounded by existing infrastructure or remnant parcels a city owns, retains, and are intended for some government use, but has determined that it will no longer need. The City supports the goal of the SLA that affordable housing should be given priority in these underused areas. The revised SLA works for those types of intended sites, since an agency is likely to own smaller acreage property and propose development for that entire site at once. The revised SLA does not account for large sites (such as Tustin Legacy), composed of hundreds of acres or property where a vast amount of entitlements and infrastructure/amenities remain to be developed over a long timeframe.

Absent a specific exemption for former military bases, or case law over conflicts with other laws and/or federal base closure law preemption, the revised SLA appears to place all City-owned portions of Tustin Legacy within the newly defined “surplus land” and therefore the City should approach all dispositions as subject to the SLA. While the City maintains the assertion that due to the direct conveyance of land from the Federal Government, Tustin Legacy is not subject the SLA, the City has not challenged the SLA on this basis. Therefore, the City has chosen to comply with the law as prescribed in order to avoid tying property up in lawsuits, and continue expedited development of Tustin Legacy until further clarification or judgment is rendered given the threat of substantial penalties for noncompliance (30% or 50% of final land sale or lease price).

3.4.3 Infrastructure Development

The existing infrastructure associated with the former MCAS Tustin was not suitable for re-use, and has added to the cost of development due to the necessity to remove portions of old base infrastructure. Infrastructure development at Tustin Legacy is primarily a funding constraint in that it can generally all be accomplished over time, but the financing aspect can be a major hurdle given the extent of required installation to unlock even small areas within the site. In many cases infrastructure sections must be connected over large land areas and thus there is an all-or-nothing approach where installation cannot be limited to certain segments which could potentially balance profitability of a project.

The City focuses on parcel segmentation where possible to capitalize on existing useable infrastructure and also minimize the large upfront costs and extent of infrastructure necessary for a particular project. Where extensive infrastructure is required, the City will need to compose disposition offerings of an appropriate scale to accommodate the required improvements or will need to reserve portions of Tustin Legacy Backbone Infrastructure Finance Program (Backbone Program) fair share contributions and or land-sale proceeds to fund larger infrastructure projects.

While LIFOC areas in and of themselves are problematic, they are not prohibitive of horizontal infrastructure development, but do require special construction techniques which add to the cost. As previously mentioned, the City has constructed horizontal improvements within LIFOC areas with the approval of the Navy, DTSC, and RWQCB. It should be mentioned that the special construction techniques within LIFOC areas are likely to remain in place even after subsequent remediation and conveyance to the City. Therefore, supporting project infrastructure may be proposed within LIFOC areas as the construction requirements are unlikely to change in the future. The additional costs associated with these improvements will need to be accounted for in planning new projects.

3.4.4 High Groundwater Table

Another constraint to account for in development at Tustin Legacy is the high groundwater table encountered throughout the site. Prior to the acquisition of the site by the Federal Government in 1943, locals called the area of former MCAS Tustin “La Cienega de Las Ranas.” or “The Swamp of the Frogs,” because of the high groundwater table and the soil being almost always moist. Construction anywhere on the site, including the original former MCAS Tustin development, has been impacted by this naturally occurring issue. (Fun fact: There are approximately 1,600 poured concrete piles 40-60 feet deep below each hangar to account for the high groundwater level).

While groundwater levels have fluctuated over time, the historic high has been documented at five feet below existing grade (grade prior to any new development, but post military development). Due to historic drought conditions, the level is much lower, but this level can raise at any time with significant precipitation.

Due to the high potential groundwater level, subsurface development is almost nonexistent and often risky at Tustin Legacy. Items such as tunnels and underground parking structures have been proposed and analyzed, but have ultimately been abandoned due to the potential cost of mitigation and maintenance. Developers should also prepare to mitigate this high groundwater table when installing deep utilities or at-grade amenities such as pools, which may require dewatering and groundwater treatment during construction.

3.4.5 Development Phasing

In order to capture market demand, development of many individual dispositions will require a considerable amount of up-front investment in backbone infrastructure and local infrastructure, which increases the risk to the City if developing said infrastructure without a development project ready to execute. Proposed Early Development Opportunities described in Section 3.5.1 are:

- Primarily focused in areas that take advantage of existing circulation and existing mainline utility infrastructure
- Sized appropriately to achieve economies of scale and prior infrastructure development while ensuring development momentum
- Phased to meet market demand and development intensity within the limits of current EIS/EIR thresholds
- Timed to manage product development in order to accelerate absorption and avoid a glut of product in the local market
- Located adjacent to existing development at Tustin Legacy to ensure a cohesive development pattern which takes advantage of the synergy created with neighboring communities at Tustin Legacy

Infrastructure Implementation with Projects

The City will need to weigh the risks and benefits of undertaking infrastructure development to unlock portions of Tustin Legacy for future development. The City's approach has been to advance design of necessary infrastructure which supports the goals and objectives of the Specific Plan, but to delay implementation until there is an executed DDA for conveyance of beneficiary property.

DDAs will typically have a nonrefundable deposit associated with execution, which ensures the City will receive at least some financial compensation for the investment in infrastructure associated with a proposed project DDA. This approach has proven successful in mitigating risk where land-sale proceeds have been directly identified to either fund the infrastructure development or replenish the City infrastructure fund (backbone infrastructure fund) to ensure the ability to construct future infrastructure segments and community amenities such as parks and recreational facilities.

A good example of this approach is the development of supporting infrastructure for approximately 100 gross acres remaining in Neighborhood D South in association with The Landing — a 400 unit for-sale residential project by Brookfield. The City developed a conceptual design for Neighborhood D South which Brookfield was able to utilize and adapt to their project. This project acts as a catalyst to seed the area and has provided the required funding in the form of land-sale proceeds to develop the roadways, drainage, utility, and open space infrastructure to support the entire neighborhood. Brookfield has also installed portions of the necessary infrastructure which further reduces risks to the City. Beyond funding of the critical infrastructure to support this development as well as the future development of adjacent vacant parcels, the land sale-proceeds from this disposition enable construction of neighborhood amenities such as segments of Tustin Legacy Park, and other open space and recreational areas.

Speculative Infrastructure Development

Should the City choose to advance infrastructure development on a more speculative basis to open areas of Tustin Legacy without a particular development proposal under negotiation, it would be doing so at considerable risk as to the timing of future development given market cycles and potential interruptions. Additionally, without a specific development project ready to go at such locations, the preinstallation of infrastructure runs the risk of failing to be appropriately sized for the capacity needs of any changes to land use. If charting a course of this nature, the City should attempt to fund such infrastructure through existing financial resources, as opposed to bonding against City resources.

The City has previously executed on speculative infrastructure development when constructing Tustin Ranch Road which opened in 2013. This was a unique case as Tustin Ranch Road serves as a major artery (and major arterial roadway) for Tustin Legacy linking the development to the rest of the city, as well as to the Irvine Business Complex (IBC) and opening up land-use opportunities within Tustin Legacy for future development.

This commitment by the City was necessary to advance more interior development of Tustin Legacy. Development of Tustin Ranch Road was a long-term calculated decision that could be demonstrated to result in future benefit of land-sale proceeds, which, in turn, would provide future capital resources to the City to further development. Costs and benefits in timing should be weighed carefully when installing such critical and costly infrastructure.

Appropriately Sized Development Packages

Right-sized development packages are catered toward the particular land use being solicited. Parcel sizing, development intensity, and density should be appropriate to the land use in question and be acceptable to the local market. Finding the balance between the extent of required infrastructure development and size of project yield to support such infrastructure development will be paramount to a project achieving financial feasibility.

Best-in-Class Developers

Beyond infrastructure, as noted in the Lessons Learned section, mixed-use projects of numerous unrelated land uses are difficult to execute and there are very few developers experienced in delivering on all facets. The highest likelihood of timely project success can be achieved by targeting best-in-class developers in their field. This removes the so-called middle man land developer that would be holding property and eventually be soliciting/transferring to other sub-developers.

By targeting best-in-class developers, the City is more likely to achieve the quality of design envisioned and higher pricing. Taking the time to research the marketplace by engaging with the development and brokerage community prior to releasing development solicitations will further ensure a higher probability of project success by crafting development packages best suited to particular products.

Adhering to the Vision

Specific Plan objectives may not achieve market feasibility and patience may need to be employed in waiting for the right opportunity for market acceptance to occur. Balancing the mix of land-use development at Tustin Legacy will mean timing market cycles of various land uses and staying disciplined by not jumping at "hot" land uses that may be transitory.

For example, recently, warehousing and industrial space has been in high demand in the local market and trading at unprecedented valuations. It would be easy to sell land for these particular uses, however, warehousing and industrial space do not meet the goals of the community and the Specific Plan. Conversely, office use has still not recovered from the COVID-19 pandemic and is currently showing weak demand in the market, but remains a long-term priority in the buildout of Tustin Legacy to create quality job opportunities and fulfill the City's obligations under the EDC and Federal Reuse Plan.

While development phasing is often projected with the best of intentions and the logical application of planning, development does not always adhere to a proposed schedule for one reason or another. This is evident in the departure from the proposed disposition offerings and timelines identified in 2011. The City has learned the value of remaining flexible in order to adjust to market cycles and other unforeseen obstacles that may arise, as well as capitalize on unique opportunities that may present themselves, none of which may conform to a proposed timeline.



Public Private Partnerships

Projects at Tustin Legacy are viewed as a partnership between the developer and City in order to achieve mutually beneficial outcomes. It is in the interest of the City to ensure development success for development partners from both a financial perspective, as well as for achieving a well-built community. The City often participates in the upside of profit for successful projects, in particular for-sale residential development.

Upon meeting certain return thresholds, the City may share in excess profit. The faster a development absorbs, or sells quickly, the greater the probability of meeting and exceeding thresholds to allow for profit sharing. This excess payment to the City can then be reinvested in other City endeavors. Releasing too much product at one time (similar to how housing development is released at the Great Park Neighborhoods in Irvine) floods the market and leads to slower sales, longer absorption, and ultimately a lower return on City investments. The amount of commercial space within the local market also needs to be closely monitored when advancing projects in order to ensure timely lease-up of space so that vacant storefronts or empty offices are not prevalent within the Tustin Legacy community. All of these factors reinforce the need to monitor supply and demand closely to ensure successful projects.

Connected Development

Creating a cohesive and connected network of neighborhoods is a priority for Tustin Legacy. Prior development at Tustin Legacy can appear as a patchwork of islands at times that lacked the desired degree of connectivity. Oftentimes this occurred out of necessity to create development momentum and may very well be necessary in the future with particular disparate sites. However, moving forward there is a desire to create a logical framework of development which capitalizes on existing improvements and adjacencies, and maintains interconnectivity.

Mixed-use Neighborhoods

Finding opportunities to incorporate a mix of uses (often horizontally integrated) within a community helps mitigate competition among the same land uses, while allowing concurrent development of vacant parcels for different complementary land uses. This is prevalent in the ongoing development of Neighborhood D South which will see for-sale residential, multi-family apartments, congregate care, and possibly office and hospitality uses constructed concurrently within the same neighborhood with overlapping schedules.

3.5 DISPOSITION OPPORTUNITIES

Remaining Sites: The remaining Disposition Areas (DAs) within Tustin Legacy vary in their condition to accept new development. The site as a whole is very flat and does not experience natural features prohibitive of development. While the flatness of the site lends itself well to vertical development, it provides challenges for drainage and gravity flow of storm and wastewater. Site selection is generally a function of available utilities and impositions such as ongoing remediation efforts. High water table issues are applicable to all project sites at Tustin Legacy and do not necessarily exempt any sites from likely dewatering and potential special construction techniques.

Environmental Studies: To provide a greater level of comfort to the development community, the City has an environmental insurance policy on all City-owned parcels and also performs broad Phase 1 and 2 environmental assessments prior to infrastructure installation. These items inform site selection decisions and identify potential issues for particular land uses such as residential versus commercial development. While environmental studies are provided to prospective land purchasers so they are informed of potential constraints, purchasers are encouraged to perform their own due diligence on environmental matters.

The majority of the remaining project sites are planned for the highest densities and intensities within Tustin Legacy and to accommodate a mix of different uses. The intensity of development and mixture of uses make these the most challenging project sites to execute in a timely manner and will likely necessitate smaller disposition offerings.

Early- vs. Longer-Term Site Development: Remaining sites have been segregated into both proposed early-opportunity sites along with longer-term sites. The longer-term sites often have added constraints or are secondary due to a preferred ordering of particular land uses to be developed first in one of the early opportunity sites so as not to compete with one another. The proposed early opportunity sites exhibit the following qualities:

- Optimize existing infrastructure and infrastructure planned to be installed by the City and by locating adjacent to successful development
- Parcel sizing, circulation patterns, and local infrastructure serving the site logically feed off of the backbone infrastructure and are effectively sized for development
- Have minimum physical constraints to development
- Avoid a leapfrog pattern and support the need to seed and nurture a well-planned community
- Provide for a diversity in residential and commercial products

Exhibit 7 depicts the remaining undeveloped portions of Tustin Legacy which are located in areas designated by the Specific Plan as Neighborhood D (Disposition Areas 2B, 2C, 3, 7B, 8A, 8B, 8C), Neighborhood E (Disposition Area 5), Neighborhood G (Disposition Areas 1A, 7A North and 7A South), and Neighborhood F (Disposition Area 9).

The corresponding Disposition Areas for each Specific Plan Neighborhood are reflective of the broader Disposition Areas proposed in 2011 which were based on potential development solicitation packages that could be broken down into smaller offerings. The Disposition Areas were based on the proposed TLCP development strategy. Over the years, minor adjustments to the Disposition Areas have occurred to further divide the parcels.

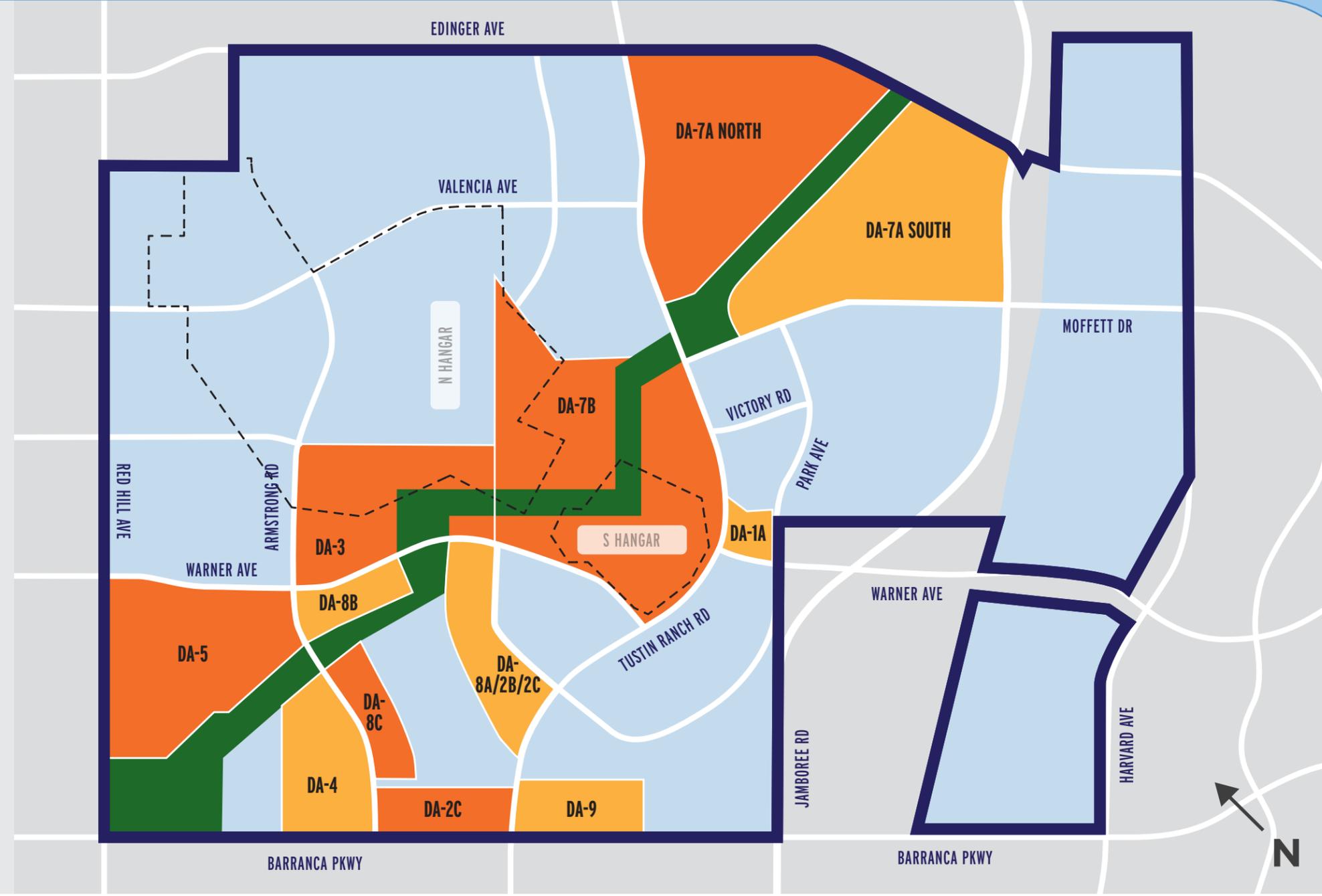


Exhibit 7: Overall Disposition Area Map

3.5.1 Early Opportunity Sites

Early opportunity sites have been selected based on the qualities listed in Section 3.5. The exhibit below depicts the location of these sites and Table 6 identifies the potential disposition timeline for each site and a description of potential land use. The Disposition Areas (DAs) listed below are likely to be divided or combined into disposition offerings.

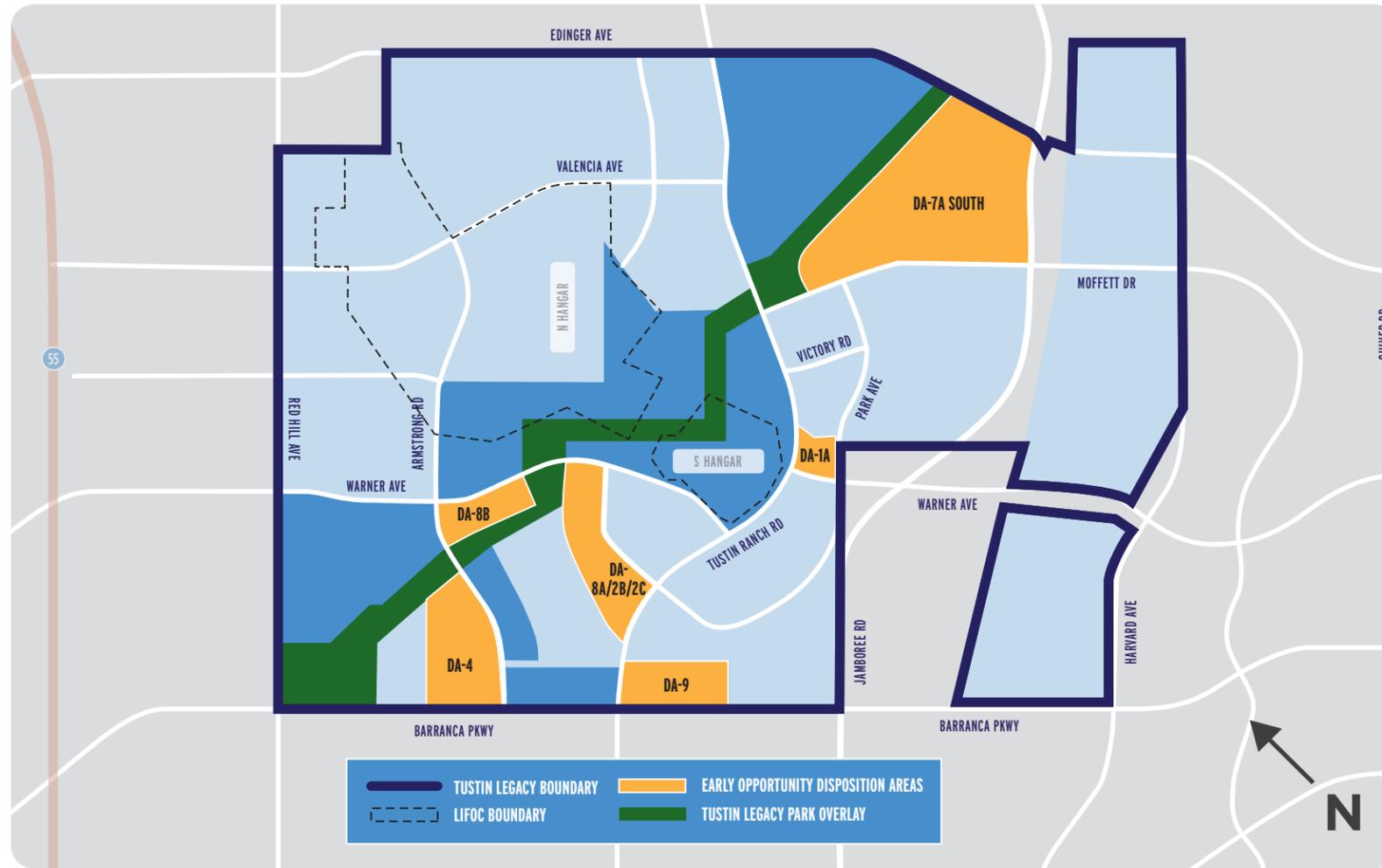


Exhibit 8: Early Opportunity Sites

DISPOSITION AREA	PROJECT	ACRES	MARKETING	DDA
8A/2B/2C	Multifamily	19 acres	2021	2023
8B	Congregate Care	9.5 acres	2021*	2023
4	Cornerstone 1 Phase 2	21 acres	2022	2024
7A South/1A	N-G Residential/Mixed Use	80 acres	2023*	2025
9	Army Reserve	14 acres	2024**	2026

Table 6: Preliminary Marketing Timeline For Early Opportunity Sites

* Can be all or portions of Disposition Area
 ** Predicated on Temporary Homeless Shelter

1. **Disposition Area 8A, portion of 2B, and 2C – Multifamily Mixed Use**

The City is currently in an ENA with a developer for the disposition and development of 1,208 multi-family apartments units with approximately 5,000 sq. ft. of retail use on three blocks comprising approximately 19.4 acres within Neighborhood D South after a disposition offering for the site. The development will consist of 25% or 302 units affordable to lower income households pursuant to SLA exemption as outlined in Section 3.4.2. DDA execution and the first phased conveyance is anticipated in 2023.

2. **Disposition Area 8B – Congregate Care Community**

This DA consists of two parcels (Lots 14 and 15 of Tract No. 18197) within Neighborhood D South adjacent to Warner Avenue which comprise roughly 6 and 3.3 acres respectively. Congregate care communities, which are nonresidential land uses, are envisioned for these blocks which are situated with frontage along future Tustin Legacy Park. Currently the combined sites are allocated as 521 senior living/ care units. Depending on market demand and absorption of a senior living project, land use flexibility may be instituted for a remaining block if the project is phased.

This DA will likely be split into multiple offerings, or the City could consider development of a single block with the potential for a successful developer to roll into a subsequent takedown of the second block/parcel. This package has previously completed the SLA process, and no further SLA restrictions remain. An offering of the first parcel was released in early 2023.

3. *Disposition Area 4 – Cornerstone I Phase 2*

Cornerstone I Phase 2 comprises approximately 21 gross acres and is generally bounded by Armstrong Avenue, Barranca Avenue, and Airship Avenue (private road) across from the completed Flight office campus within Neighborhood E. Future development of 479,560 sq. ft. of office and commercial use is currently allowable under the existing Final EIS/EIR. The Tustin Legacy Specific Plan designates this area for commercial business use and does not permit or envision residential uses.

Existing mainline utilities are available in the surrounding roadway network to serve the project site. A Master Association implementation document exists to establish shared roadway, utility, and access maintenance obligations with the Flight development. This site is suitable for both speculative and/or build-to-suit user applications.

4. *Disposition Area 7A South and 1A – Residential Mixed-Use Transit Village*

A mixed-use, transit-oriented development is designated for DA 7A per the Specific Plan due to its close proximity to the Tustin Metrolink commuter rail station which is the closest rail stop to John Wayne Airport (SNA) and the IBC. Tustin Legacy Park will play a prominent position in the development of this area in linking the commuter rail station to the other Tustin Legacy neighborhoods by providing a substantial connection at Edinger Avenue and crossing diagonally through the site to Tustin Ranch Road's future pedestrian bridge crossing. This diagonal park component bisects the approximately 180 gross acres of this site into a north and south division which lends itself well to both phasing and particular land uses in each area.

The southerly portion of DA 7A holds perimeter frontage along Moffett Drive with residential uses across the street in the Greenwood and Levity communities consisting of low and medium density for-sale housing. An appropriate land use transition from these residential uses would look to mirror development of a similar residential intensity across Moffett Drive and gradually taper the density/intensity of development upwards toward the Metrolink station.

Currently there are just over 2,000 residential units available in Neighborhood G per the Specific Plan, with more units anticipated in a future Specific Plan amendment due to the City's Housing Element Update which has designated this area as an opportunity site for additional housing units to meet state-mandated requirements.

Various opportunities exist in crafting multiple disposition offerings within DA 7A South to accommodate a variety of housing products and densities consisting of both for-sale and multi-family apartment residences. The City will focus on utilizing the mixed-use SLA exemption when disposing of property for residential use. This would require minimum disposition offerings of one acre in size consisting of at least 300 residential units of which 25% would be required to be affordable to lower income households, along with a minimal mixed-use commercial component. Larger disposition offerings exceeding 300 units are also probable to ensure appropriate scale and efficiencies for both the market rate, as well as for required affordable components to an overall project.

DA 1A consists of an approximately 3.5-acre site across the street from Costco at The District and sharing a property line with the Anton Legacy affordable housing community. Busy street frontage along Tustin Ranch Road, Warner Avenue, and Park Avenue provide great access to the site in general, but ingress/egress opportunities are limited due to the short perimeter length along major arterial roadways with an existing signalized intersection in close proximity.

Portions of this property were recently deeded to the City from the Navy after a Finding of Suitability to Transfer (FOST) was issued for the site, creating a full 3.5 acres in fee. DA 1A is included as an early opportunity site with DA 7A South as both areas are located within the same Specific Plan Planning Area (PA 15 - Neighborhood G). Opportunities may exist to combine DA 1A with a larger disposition offering to take advantage of scale and provide a more efficient offering to the development community.

5. *Disposition Area 9 – Former Army Reserve*

Pursuant to the Specific Plan, land uses within Neighborhood F, containing DA 9, are limited to commercial uses which do not permit residential development. While there are saturation issues related to retail commercial use and low demand for office space, the site itself is advantageously located along Barranca Parkway giving it great visibility and access, while also adjacent to such high-profile uses as The District shopping center. It is also in direct proximity to the IBC with its many daytime office users. The retail and office corridor along Barranca may attract potential developers with a vision for the site complementary with City goals. The site contains the former approximately 35,000 sq. ft. Army Reserve building which offers opportunities for repurposing.



3.5.2 Longer-Term Disposition Areas

The Exhibit 9 below depicts the location of longer-term Disposition Areas (DAs) and Table 7 identifies the potential disposition timeline for each site and a description of potential land use. The DAs are likely to be divided or combined into disposition offerings.

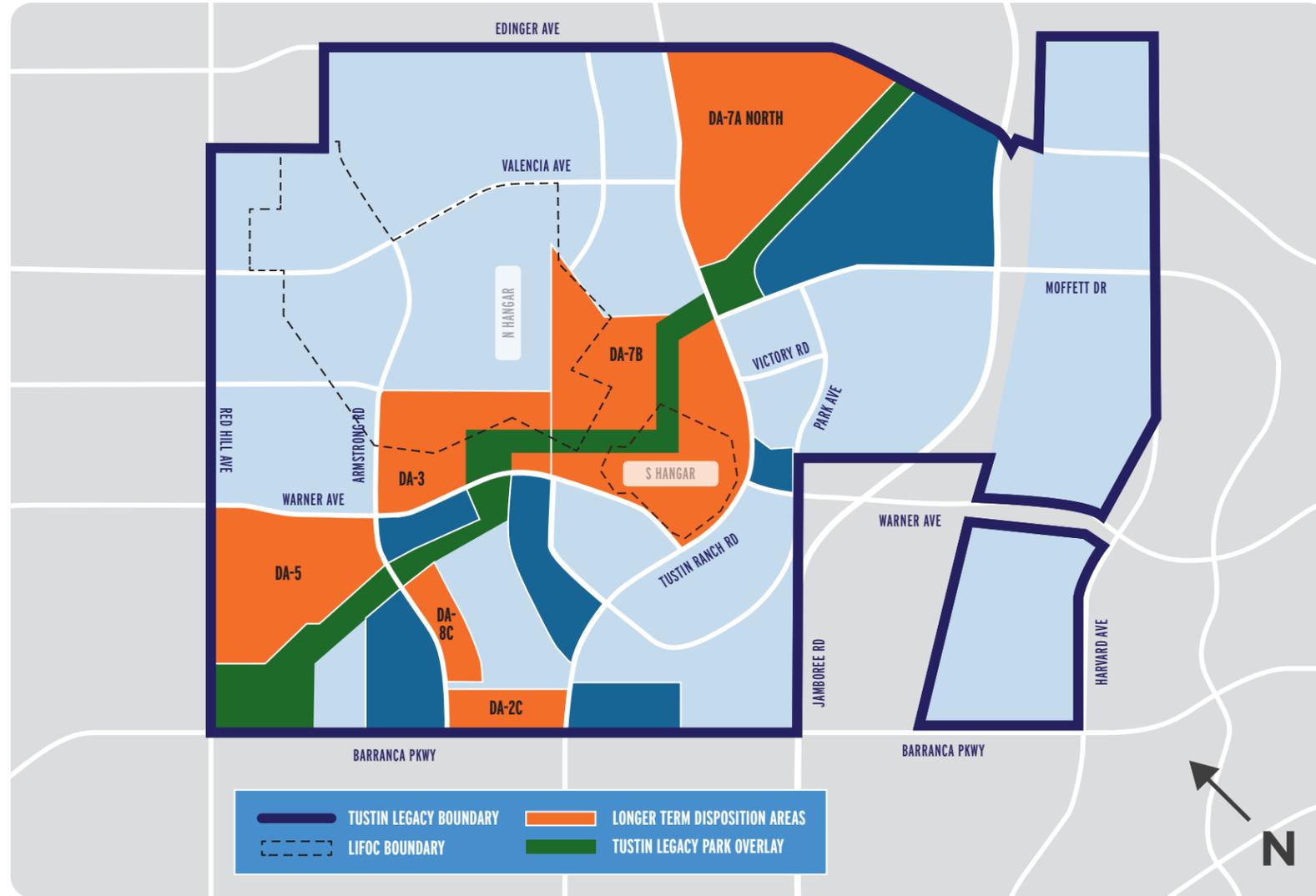


Exhibit 9: Longer Term Disposition Areas

DISPOSITION AREA	PROJECT	ACRES	MARKETING	DDA
5	Cornerstone II	52 acres	2024	2026
2C	D South Office	16 acres	2024	2026
8C	D South Office	7.5 acres	2024	2026
3	D North Mixed Use	44 acres	2021	2027**
7A North	N-G Commercial/Mixed Use	75 acres	2025*	2027
7B	D North Mixed Use	66 acres	2025*	2027**

Table 7: Preliminary Marketing Timeline For Longer-Term Disposition Areas

* Predicated on SPA (Housing/RHNA)

**Predicated on LIFO Transfer

1. Disposition Area 5 – Cornerstone II Office Development

Cornerstone II consists of approximately 50 gross acres located to the north of the Flight office campus and DA 4, directly across Tustin Legacy Park and situated at the intersection of Red Hill Avenue and Warner Avenue. The site is envisioned as a continuation of the commercial business center similar to the Flight campus and DA 4 which provide a job center for Tustin Legacy. The site is currently designated for up to 718,000 sq. ft. of office use, but can also accommodate other supporting commercial uses such as retail and hospitality.

This is a longer-term site given the desire to develop and absorb office square footage in DA 4 and also complete the Barranca Parkway edge with commercial uses prior to commencing construction in Cornerstone II. This schedule could be accelerated if there was interest from a major build-to-suit user looking to establish a corporate campus.

2. Disposition Area 2C – Office and Hospitality

A roughly 16-acre parcel (Lot 1 of Tract No. 18197) with extensive commercial frontage along Barranca Parkway within Neighborhood D South which is also bounded by Tustin Ranch Road and Armstrong Avenue. Intended uses include up to 280,000 sq. ft. of office use, 120-room hotel, and 10,000 sq. ft. of retail use. Flexibility is available as to the exact commercial development potential.



Along the northerly parcel boundary will be an enhanced promenade walkway and multi-modal path (Alley Grove Promenade) which will link the Flight office campus to The District shopping center, as well as serve as a buffer between existing for-sale residences at The Landing community and the future commercial development. This site would be secondary to DA 4 for future office space solicitations. Disposition could occur sooner if there is strong hospitality interest in that particular component of the site or if office demand exceeds available thresholds adjacent to the Flight campus and a larger requirement of land is needed.

3. *Disposition Area 8C – Office/Flex Use*

DA 8C consists of two street blocks along Armstrong Avenue opposite DA 4 containing an approximately 2-acre and 5.5-acre parcel (Lots 3 and 4 of Tract No. 18197) within Neighborhood D South. The site can accommodate up to 165,000 sq. ft. of office use, but maintains flexibility to be developed with an alternative land use. This package could be combined with DA 2C.

4. *Disposition Area 3 – Mixed Use Community Core*

DA 3 is also located within Neighborhood D North and involves the same level of constraints as DA 7B. This area is located west of future Legacy Road extension with perimeter street frontage along Warner Avenue and Armstrong Avenue. Portions of the property adjacent to Warner Avenue are owned in fee by the City with the northeasterly half of the property encumbered by the LIFOC. Opportunities may exist along Warner Avenue to tie into existing utility infrastructure and provide access to the site off Warner Avenue and Armstrong Avenue. The site roughly consists of 44 gross acres.

5. *Disposition Area 7A North – Commercial Mixed-Use Transit Village*

DA 7A North consists predominately of the commercial portion of the Transit Village within Neighborhood G (PA 15A). This area will be located north of Tustin Legacy Park along Edinger Avenue and Tustin Ranch Road. The northerly portion of DA 7A lends itself best to commercial land use due to its enhanced access points along Edinger Avenue and Tustin Ranch Road, as well as commercial land use adjacencies such as The Village shopping center and Jamboree Plaza.

Complexities of commercial development, coupled with market acceptance due to existing saturation, lack of current demand, and uncertainties in the future of commercial and retail space, deem this site appropriate for longer-term consideration for commercial endeavors, hence the secondary phasing designation north of Tustin Legacy Park.

While DA 7A North is anticipated to include the bulk of commercial uses within the Transit Village area, it is still envisioned to include multi-family residential apartment homes, as well as senior housing options. Additional multi-family units are anticipated to be added to the area in a future Specific Plan amendment due to the City's Housing Element Update (2021-2029) which has designated this area as an opportunity site for additional housing units to meet state-mandated requirements. Opportunities for high-density residential development may occur sooner within this area once similar uses are absorbed within the initial development of DA 7A South.

6. *Disposition Area 7B – Mixed Use Community Core*

Located on approximately 105 gross acres within Neighborhood D North and encompassing the South Hangar, DA 7B is encumbered with sizeable portions of the property being under lease from the Navy via the LIFOC (see Section 3.4.1). In addition, there is no existing infrastructure, therefore the high cost of infrastructure installation required in the area coupled with irregular parcels due to LIFOC boundaries have been an impediment to development and are anticipated to continue to be so for some time. Significant drainage improvements are required as this area would also need to accommodate drainage of the approximately 85-acre property to the north comprising Neighborhood C.

Opportunities may exist along Tustin Ranch Road to develop smaller portions of the property which may not require the entirety of infrastructure implementation if temporary improvements can be constructed. Further analysis and study are needed to determine the viability of this approach which would likely be more complex than other areas of Tustin Legacy.

While mixed-use residential development is targeted for this area, currently all residential units within Neighborhood D are located in the southern portion south of Warner Avenue where development is progressing. However, the City's recent Housing Element Update (2021-2029) has allocated new housing units to this particular area which would need to be evaluated/approved in a Specific Plan amendment.

3.6 GROUND LEASING

One option the City may consider is for potential ground-leasing opportunities at Tustin Legacy to provide an ongoing source of revenue for long-term endeavors, or on a more interim use approach under a limited timeframe to derive value out of vacant land. The extent of development required (based on the project) will determine the term length necessary to which a developer can receive an adequate return to justify the cost of development and investment. The City would need to weigh the balance of the desired buildout of Tustin Legacy and tying up property under a lease scenario for a given period of time. Long-term ground leasing (greater than five years) is subject to the SLA.

When considering ground leasing opportunities, the City should evaluate how the lease and proposed development would further the objective of implementing the Specific Plan. Some of the questions to consider when evaluating a lease opportunity are:

- Would this development serve as a catalyst in advancing future development at Tustin Legacy?
- What would be the impact to the existing surrounding community?
- Does this achieve the goals of the Tustin Legacy Specific Plan?
- Will the infrastructure required to serve the site be additive to the overall Specific Plan, or will it be project specific and need to be removed later?
- Would this lease potentially prohibit a foreseeable future development of a more permanent nature (buildout)?
- Is the lease consideration at fair market value with a return comparable to other opportunities?

Desirability of the land and scarcity of future development opportunities will determine how attractive ground leasing is for various development products. It's unlikely that Tustin Legacy has the same appeal for ground leasing as the County of Los Angeles property in Marina Del Rey and may not be able to attract market-rate housing due to other opportunities available to developers in Orange County and projected rent levels. However, ground leasing may be advantageous to developers of affordable housing in reducing the upfront costs of land acquisition and spreading them over time. It may also suit their business model better which does not include an exit strategy to dispose of property which would otherwise have a diminishing value as the lease term winds down.

Another potential area for leasing consideration could be the South Hangar which is currently subject to a LIFO with the Navy (see Sections 3.4.1 and 3.8). If the right user/use were to present itself, then it could be beneficial for the City to evaluate the responsibility for maintenance, upgrades and operations. Any use would have to involve a certain level of public access to the facility as this is an important community resource, and would likely involve rehabilitation of the building(s) and development of the surrounding area. There are also certain restrictions to be considered related to the South Hangar as it is a federally designated historic structure.

It is strongly recommended that the City avoid such uses as self-storage or similar types of uses that add little value to furthering the objectives of the Tustin Legacy Specific Plan as they do not create jobs, do not substantially contribute to the tax base, are used by few, and effectively create a "dead zone" in terms of activity. It is also recommended to avoid leasing property to assembly-type special interest uses which may result in the perception of favoritism or the inability of the City to accommodate other like uses and requests.

A competitive bid process should be followed where applicable for ground leasing akin to how the City generally disposes of property. Strictly business endeavors paying a market rate lease which do not have detachment issues, or constituencies that are not familiar with real estate terms, should be engaged with ground leasing opportunities as these are not viewed as permanent uses with an indefinite use of the land.

3.7 INTERIM USE/LICENSING

Development of Tustin Legacy has and will continue to take time. Over the years, the City has found ways to utilize vacant property for temporary uses to generate some interim revenue while not impacting new development. These uses also assist in the maintenance of vacant property as licensees are required to secure and maintain their licensed area.

The City has developed a form license agreement for various types of property that simplifies potential negotiations and timelines to implement temporary uses. Other City departments have developed form conditions that are included with the license agreement that can be modified based on the particulars of the final use. There may be a need for additional permits based on the final use and layout, but any basic temporary use that fits the form terms of the license agreement conditions can move forward with no additional evaluation. The current 2023 form license agreement (for simple temporary uses) requires a fee of \$12,000 per acre, per month and includes standard City insurance requirements. For more advanced or complex uses, the City will evaluate the use based on the land value of the proposed area, and develop a rent structure that delivers a return to the City in line with fair market value.

Examples of the types of licenses that have been issued by the City:

- Contractor laydown yards
- Parking of vehicles
- Storage of equipment or material
- Filming
- Tustin Legacy development support (development near City property, soil import/export, temporary signage, temporary power, etc.)

3.8 SOUTH HANGAR REHABILITATION

While the North Hangar's future remains uncertain (see Section 2.2.1), the City Council has continuously advocated that the South Hangar continue to be preserved, maintained, and upgraded (as funding becomes available) in order to be a publicly accessible building in the future and a community asset. The South Hangar (also called Hangar 2 or Building 29) is currently leased to the City via a LIFOC from the Navy. The City does not have fee ownership of the South Hangar which hinders the ability to upgrade and utilize the building (see Section 3.4.1).

The South Hangar is also listed on the National Register of Historic Places and governed by a Memorandum of Agreement (MOA) between the Navy, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation which states that until the South Hangar is conveyed from the Navy to the City, the South Hangar must be protected and maintained at the minimum levels recommended in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. This obligation has been passed from the Navy to the City via the LIFOC. Once the South Hangar is deeded to the City, no historic preservation obligations will exist as the MOA will have been satisfied.



No major improvements or upgrades have been made to the South Hangar since before former MCAS Tustin closed in 1999 (and likely well before that, since former MCAS Tustin was announced for closure in 1991). From 1999-2012, the South Hangar existed in a “mothballed” condition with no use or maintenance of the building, and all utilities were severed to the building with the construction of new major infrastructure surrounding it. In 2012, the City re-evaluated the use of the South Hangar and spent \$100,000+ on cleanup of the building and added features to make it more user friendly on a temporary basis. Since that time, the City has allowed uses that have generated some revenue to continue basic maintenance and operations of the South Hangar. Examples of these uses include:

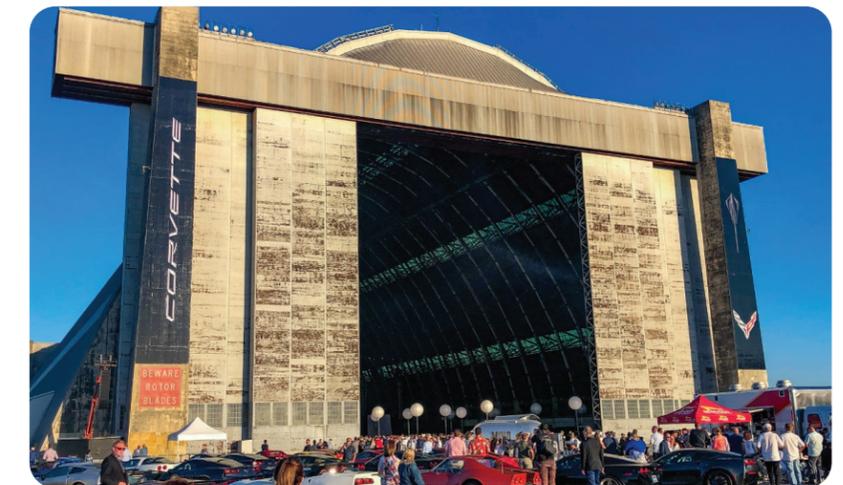
- Blimp construction and maintenance
- Commercial and film productions
- Product testing
- Civic events
- Private events

Temporary uses are evaluated on a case-by-case basis to ensure the use is compatible with the building's condition and in accordance with all applicable rules and regulations. More information about temporary uses of the South Hangar can be found at www.tustinca.org/766/renting.

In 2014, the City commissioned a structural assessment and reuse analysis of the South Hangar. The City engaged Page & Turnbull as consultants to lead this effort due to their experience on similar hangars at former Naval Air Station, Moffett Federal Field. After extensive analysis that included laser scanning, structural, wood sampling, egress/fire and life safety, mechanical/electrical/plumbing, and hazardous materials, a report was issued in 2017 (“Tustin Hangar 2 Conditions Assessment and Reuse Study”) that included a summary of conditions and recommendations for near-term and long-term upgrades of the South Hangar.

Some near-term recommendations, estimated at approximately \$15 million, have been incorporated into an approximately \$6 million Capital Improvement Program project scheduled to start in early 2023. The near-term recommendations are focused on increasing the building's feasibility for temporary uses (new electrical and lighting, and structural safety items), while longer-term recommendations are focused on adapting the building to accommodate permanent uses (structural upgrades, re-skin, etc.). The longer-term recommendations carry a potential price tag of over \$100 million.

Future adjacent development will need to accommodate utilities for the South Hangar. All utilities were severed to the South Hangar with construction of new roads such as Warner Avenue and Tustin Ranch Road. Utilities such as drainage, sewer and water for the South Hangar will need to be incorporated into the infrastructure analysis for Neighborhood D North.





Any level of substantial rehabilitation for private or public adaptability represents a costly endeavor with very limited expectations of return on investment. While the City's primary use of land-sales proceeds should be reinvested in Tustin Legacy to provide the necessary infrastructure and amenities to unlock future development opportunities and create value, there will always be additional funding needed for ongoing rehabilitation and maintenance associated with the South Hangar which is unlikely to be fully captured in the Backbone Program. However, as funding becomes available, the City will work to preserve this iconic structure.

3.9 AFFORDABLE/ATTAINABLE HOUSING

The City has always strived to provide housing at various income levels to support the need locally and within the region. As of this update, almost 18% of all the residential dwelling units constructed at Tustin Legacy are restricted as affordable units (very low, low, and moderate income) which includes both ownership and rental homes. As previously detailed, the SLA requires a minimum percentage of 15% affordability restricted to lower incomes and may require upward of 25%+ of all residential units on City-owned properties.

Unlike State Density Bonus Law (DBL), the SLA makes no distinction between base units and overall residential units. Therefore, the SLA puts an increasingly onerous burden on the City to provide a higher percentage of affordable housing than that required under State DBL. In accounting for the higher level of required affordability under the SLA, there is a direct negative impact reducing land values. These diminished land-sales proceeds hinder the City's ability to fund and develop future portions of Tustin Legacy infrastructure and amenities, thus slowing the pace of residential development. The City must continue to be creative in addressing and meeting the state-imposed requirements of the SLA, while ensuring adequate revenue to achieve the buildout of Tustin Legacy.

Entry level attainable housing opportunities at Tustin Legacy help to provide an inclusive community with individuals and families of varying economic backgrounds. These opportunities often come in the form of for-sale townhomes and flats residences of varying sizes and bedroom counts. The City is cognizant of the product segmentation within for-sale housing communities and finding a balance of housing types. The City further encourages the mixing of housing types as seen in the Landing development which has townhomes, flats, and detached single family homes mixed within development blocks.

3.9.1 State Density Bonus Law

The DBL is one of the tools available to developers to aid in meeting affordability requirements at Tustin Legacy. Provision of affordable residential units may allow for up to a 50% increase in the allowable units within a particular mixed income (market rate and affordable) project. The DBL also allows for reduced parking ratios which can amount to significant hard cost reductions where structured parking stalls can cost upward of \$20,000 to \$40,000 per stall. Further incentives/concessions and waivers of development standards may be requested by a developer and considered by the City. In addition, density bonus units do not count against the maximum residential unit cap at Tustin Legacy, however, these additional density bonus units are often still analyzed to ensure that utility capacity and other constraining factors can accommodate them, and that they are in compliance with the SLA.

3.9.2 Affordable Housing Financing and Phasing

Financing of affordable housing can be a complex process given the various disparate layers of funding, overlapping schedules, and performance obligations which all must come together to make a project happen. Federal and state capital resources are often limited, wrapped up in competitive grants, tax credits, and other funding mechanisms that require extensive application processes and compliance requirements. Competition for these resources has increased tremendously in recent years to the point where they are almost exclusively available to projects that are entirely affordable (no market rate) and that often have very specific program requirements. This is a disincentive to mix market rate housing with affordable housing in the same building or project, and by nature favors the segregation of market rate and affordable housing.

Given that mixed income (market rate and affordable) housing projects are unlikely to receive government funding sources due to the allocation preferences of these programs, the financial burden of providing affordable housing is exacerbated to the point of infeasibility for both the developer and City. The higher cost of providing affordable housing (upward of 15-25% overall under the SLA) at Tustin Legacy directly correlates to the land residual with which a developer can pay the City. In turn, these diminished land-sale proceeds restrict the City's ability to further develop Tustin Legacy. These constraints imposed by the state of California make it increasingly difficult to advance both market rate and affordable housing, as the City is left short of funds to advance infrastructure at the base which is far too costly for any developer to finance.

Economic factors associated with the significantly reduced land-sale proceeds of a mixed income project necessitate creativity to find ways to obtain financing sources. One way to achieve government financing of affordable housing is to allow partnerships of a market rate developer and an affordable housing developer to execute on their particular portions of a residential housing project. This would allow the affordable housing developer to build their portion of the project and have a better opportunity of success in obtaining government financing to off-set the gap of providing the affordable units and, in turn, the market rate developer could pay fair market value for their units without having to potentially subsidize the affordable component. Disposition offerings would need to be sized appropriately to evaluate densities and building typologies relative to the land site to share the two housing components.

Funding cycles for affordable housing typically occur on an annual or semi-annual basis without precise dates, and vary throughout the year based on the particular funding source. Often, multiple funding sources must be combined to make an affordable housing project financially feasible. Denial of any particular grant or credit program may necessitate waiting until the next cycle or seeking alternative funding sources.

Given the nature of the process and inherent unknowns, it is challenging to set specific performance milestones for development of affordable housing projects and the City should remain as flexible as possible to accommodate these unreliable timelines. Having said that, the market rate component of a project should not be held up by the financing of the affordable component. Timely construction of the market rate housing component is necessary to continue development momentum and help alleviate the housing demand locally and statewide.

Another opportunity that may be available to for-sale housing developments is the utilization of California's Accessory Dwelling Unit (ADU) laws which allow by-right ADUs. HCD has already confirmed that ADUs can be used to meet the affordability and housing requirements of the City's Housing Element/Regional Housing Needs Assessment (RHNA). For-sale housing developers could deed restrict a property with an ADU to require that the ADU may only be rented to lower-income individuals. This approach could also satisfy the affordability requirements of the SLA.

3.10 INFRASTRUCTURE PROGRAM OVERVIEW

As the Executive Developer, the City is responsible for the coordination and implementation of infrastructure at Tustin Legacy. Through the use of professional services consultants, the City directs conceptual design through construction documentation for the required infrastructure in order to implement the land-use planning identified in the Specific Plan.

Developers are encouraged to utilize professional services consultants who have experience and background working at Tustin Legacy in order to expedite development and avoid what can otherwise be a lengthy learning curve process with new consultants unfamiliar with all the nuances and intricacies associated with development at Tustin Legacy.

It is the preference of the City to pass along infrastructure obligations to private development partners when feasible. Major backbone infrastructure projects can often be costly upfront expenditures with no return to the developer for some time. The inertia required to overcome a significant upfront infrastructure cost can render a project infeasible before getting off the ground.

In these instances, the City will need to seed projects by installing mainline utilities and roadway infrastructure to access parcels. While this can occur through bonding, there is a risk that there may not be a future market at the time of completion to pay the bonds. When bonding, a dedicated revenue source for debt repayment should to be identified. Infrastructure should not be bonded on speculation. The City should not risk the General Fund as a backstop to bonding. The preferred financing approach to City-installed infrastructure is a "pay as you go" system where land-sales proceeds fund infrastructure and adequate resources can be identified prior to embarking on infrastructure projects. For larger projects this may mean building up reserves to accommodate anticipated construction.

The City as the Executive Developer is not insulated from public and private interests and pressure to:

- Complete backbone infrastructure (i.e., parks) in a less than optimal sequence, or out of sequence with what infrastructure is necessary to support a segment of Tustin Legacy
- Invest money in advance of Tustin Legacy-related needs or where adequate City General Funds are not available to operate and maintain certain public infrastructure and facilities
- Limit the City's flexibility in modifying the Specific Plan and land uses to respond to market realities.

3.10.1 Backbone Infrastructure Program

The Tustin Legacy Backbone Infrastructure Finance Program (Backbone Program) is part of a comprehensive financing and construction program to ensure completion of needed backbone infrastructure necessary to accommodate development within the Specific Plan area.

The purpose of the program is to facilitate early completion of improvements when needed, provide for a method of financing the backbone infrastructure network, to make provisions for development where certain Tustin Legacy backbone infrastructure is required as a condition of development, and to ensure that new development is aligned with adequately serving backbone infrastructure. The program is based, in part, on the environmental mitigation measures contained in the Final EIS/EIR, the Tustin Legacy Specific Plan and Tustin General Plan, and approved entitlements granted for development within Tustin Legacy.

Ongoing adjustments are necessary based on updated regulatory requirements, actual costs of construction to complete backbone elements, and inflationary increases. Certain required backbone infrastructure improvements needed to serve future development within Tustin Legacy are identified along with the corresponding source documents, including, but not limited to, the Final EIS/EIR and the Specific Plan which identify the level of development that can be accommodated upon their completion. The phasing of future development can generally be linked to the phasing of required backbone infrastructure under the Backbone Program.

All new private development within Tustin Legacy is required to pay a fair share contribution to the Backbone Program, or to design and construct Backbone Program improvements, and/or a combination, as agreed to by the City and developer. Fair share contributions correspond to actual costs for improvements which include necessary funding for engineering and construction costs of Backbone Program improvements; the City's administrative and construction management expenses related to such Backbone Program improvements; and any plan checking, inspection, and permitting expenses. The Backbone Program does not include maintenance or operational costs for backbone infrastructure improvements. Fair share contributions are limited to capital improvements that expand system capacity and shall not be spent on maintenance, personnel training, or other operating costs.



The most recent substantial update to the Backbone Program occurred in 2017 based on review by the City's Public Works Department, Economic Development Department, and supporting consultants to determine any adjustments to the program necessary to (1) reflect actual costs incurred or projected costs to design and install certain backbone improvements required under the program in accordance with the Tustin General Plan, the Tustin Legacy Specific Plan, and the Final EIS/EIR for the Disposal and Reuse of MCAS Tustin, as amended; (2) determine the need to eliminate and/or add any Backbone Program improvements based on subsequent planning or other events; and (3) reevaluate outside funding sources and determine if any additional funding sources are available for the program on certain development sites.

The seven categories of infrastructure facilities that are addressed in the Backbone Program include:

1. Transportation and circulation improvements
2. Drainage improvements which include retention and detention basins, storm drains and flood control channels, and water quality/mitigation improvements
3. Dry utility improvements
4. Parks, open space, and recreational improvements
5. Library improvements (completed)
6. Fire facility improvements (completed)
7. Community entry signage (completed)

Tustin Legacy Backbone Infrastructure Program Fair Share Contribution Process

Disposition and Development Agreements (DDAs), Development Agreements (DAs) and/or other transactional agreements, are utilized to implement the Backbone Program. The Backbone Program has distinct and separate fair share contributions for different dispositions and/or Planning Areas. The fair share contributions for each development area have been allocated based on the comprehensive methodology identified in the most recent 2017 analysis/update.

Developers or landowners may enter into agreements with the City to either design and construct, or provide cash or debt financing for their fair share contribution. One policy option the City could consider is if participating in the issuance of a CFD based on, and in anticipation of, a receipt of bond proceeds, the City may allow a developer/landowner to defer payment of its fair share contribution, provided that the deferral of the fair share contribution is secured by a performance bond or letters of credit in a form approved by the City. If the Backbone Program improvements are determined to be needed, at the City's sole discretion, the City could request an advance from the developer before bond proceeds are available or, in the event of developer's failure to be responsive, the City could call on the performance bonds or letters of credit.

Developers/landowners who participate in funding the design and construction of Backbone Program improvements may receive credit toward payment of their fair share contributions to the extent that such improvements are within the Backbone Program, costs are approved by the City, and such costs of improvements are equal to the development site's fair share contribution.

The current Backbone Program includes the estimated cost of constructing an improvement, including labor, materials, and equipment costs; the reasonable cost of designing and preparing the plans, including engineering services which generally are approximately 10% of construction costs (there are a few minor exceptions for more complex improvement items); and estimated fees paid to governmental agencies in order to obtain permits, licenses, or other necessary governmental approvals. The program also includes reviews and costs for professional services directly related to the construction, including engineering, legal, accounting, inspection, construction staking, materials, testing, and similar professional services, which would not exceed 5% of construction costs; construction management services, which would not exceed 5% of construction costs; and costs of payment, performance/maintenance bonds and insurance (including any title insurance). Each item of authorized costs includes only amounts actually paid to third parties and do not include overhead or other internal expenses.

Exemptions

The following categories which receive exemptions from payment of property taxes are also generally exempt from making fair-share contributions toward the Backbone Program, including: (1) churches, (2) religious organizations, (3) City or public agency-owned uses not being used for economic return, and (4) welfare uses. The final determination of whether a property is exempt will be based upon the verification of a property tax exemption for those specified categories of the latest Assessor's roll as defined for Orange County by the state of California.

Government-owned facilities and utilities are exempt from payment of fair share contributions if the facilities are not used for generating revenue or commercial purposes. Examples of exempt public uses include parks and park buildings, educational facilities, and other public buildings. Private possessory interests and private development on public property not owned by the City are not exempt from payment of any required fair share contributions. Updates to the Backbone Program may need to occur incrementally to reflect a redistribution of fair share contribution costs when these circumstances arise.



Application of Fair Share Contributions

When fair share contributions are collected prior to the time of a first building permit being issued for a development disposition or planning area, the fair share contribution shall be determined based on the authorized entitlements of development within an individual disposition or planning area based on the net acreage of the project.

Notwithstanding property tax exemptions, government-owned, or constructed facilities (including, but not limited to, counties and cities) which will generate revenue or be leased for commercial purposes are required to make a fair share contribution toward the program. Examples of this include the revenue-generating portions of airports, train stations, sports arenas, convention centers, bus terminals, hotels, and concessions on public lands.

The City currently has an agreement with the South Orange County Community College District (SOCCCD) for non-educational uses at the Advanced Technology Education Park (ATEP) campus that calls for a fair share contribution, currently at \$25.29 per sq. ft. as of May 2022.

Rights of Way

Rights-of-Way (ROW) for the Backbone Program are assumed to be dedicated to the City by developers/landowners in conjunction with development where required by the City or may have already been acquired or reserved by the City. Consequently, the costs for ROW have not been included in the program with the exception of minor arterial increments that were in the City of Irvine and needed to complete a missing link or intersection improvement as originally shown in the Backbone Program. ROW dedications are not creditable toward fair share contributions.

Future Updates to the Fair Share Contributions

The City, on a regular basis, will review the list of Backbone Program improvement components for possible revisions to update costs or changes to specific improvements. The basis for cost changes would generally be where amendments to program improvements are actually determined necessary and whether the subsequent design status of an improvement results in the need to re-examine and modify a cost estimate and as a result of normal increases in construction costs based on current economic conditions (i.e., cost of living adjustments, increases in commodity prices, etc.).

In the event that a fair share contribution or part thereof exceeds actual expenses for a Backbone Program improvement component, the City will reserve the right to reallocate excess contribution funding to cover other designated program costs. Once a fair share contribution has been made for a development area, no subsequent increases in the allocation of a fair share contribution shall be made to that development area unless otherwise provided for in a DA, DDA, or other real estate transaction agreement.

Additional detailed information on the Backbone Program may be found in the attached Appendix 1.

3.10.2 Local Infrastructure

While the Backbone Program is intended to cover the installation of major infrastructure components, it does not cover all major improvements required at Tustin Legacy nor does it account for more local infrastructure needs. Therefore, the cost allocations within the Backbone Program should not be viewed as comprehensive to build out Tustin Legacy.

The more localized infrastructure requirements are often some of the best opportunities for developers of adjacent property to assume responsibility, as these typically provide a direct benefit to the project and are often less costly due to a minimized scope of work. A developer's willingness to engage in infrastructure projects is also likely to be influenced by whether or not the facilities will be private with public access or publicly owned and maintained. Prevailing wage requirements for public works projects are required. Each project will need to be assessed based on the scope of public infrastructure requirements to be performed by the private property developer and the potential for prevailing wage requirements applicable to the totality of the project.

3.11 COMMUNITY FACILITIES DISTRICT (CFD) - TAX B

Six (6) CFDs have been formed to date at Tustin Legacy to fund facilities (Tax A - discussed in Section 2.4.8) and operational costs (Tax B) at Tustin Legacy due to the discrepancy in property tax revenue (3% of the basic levy (1.0%) at Tustin Legacy versus 11% City-wide on average). Tustin Legacy has significant operational and maintenance costs that can require more than the property tax revenue received outside of Tustin Legacy. Below is a breakdown of CFDs formed to date:

- CFD 04-01 (Tustin Field I and II)
 - Tax A and B
- CFD 06-01 (Villages of Columbus)
 - Tax A and B
- CFD 07-01 (The District)
 - Tax A and B
- CFD 13-01 (The Village at Tustin Legacy, Amalfi, Anton Legacy, Flight at Tustin Legacy, Legacy Magnet Academy)
 - Tax B only
- CFD 14-01 (Greenwood)
 - Tax A and B
- CFD 18-01 (Levity, The Landing, remaining undeveloped portions of Tustin Legacy)
 - Tax B only

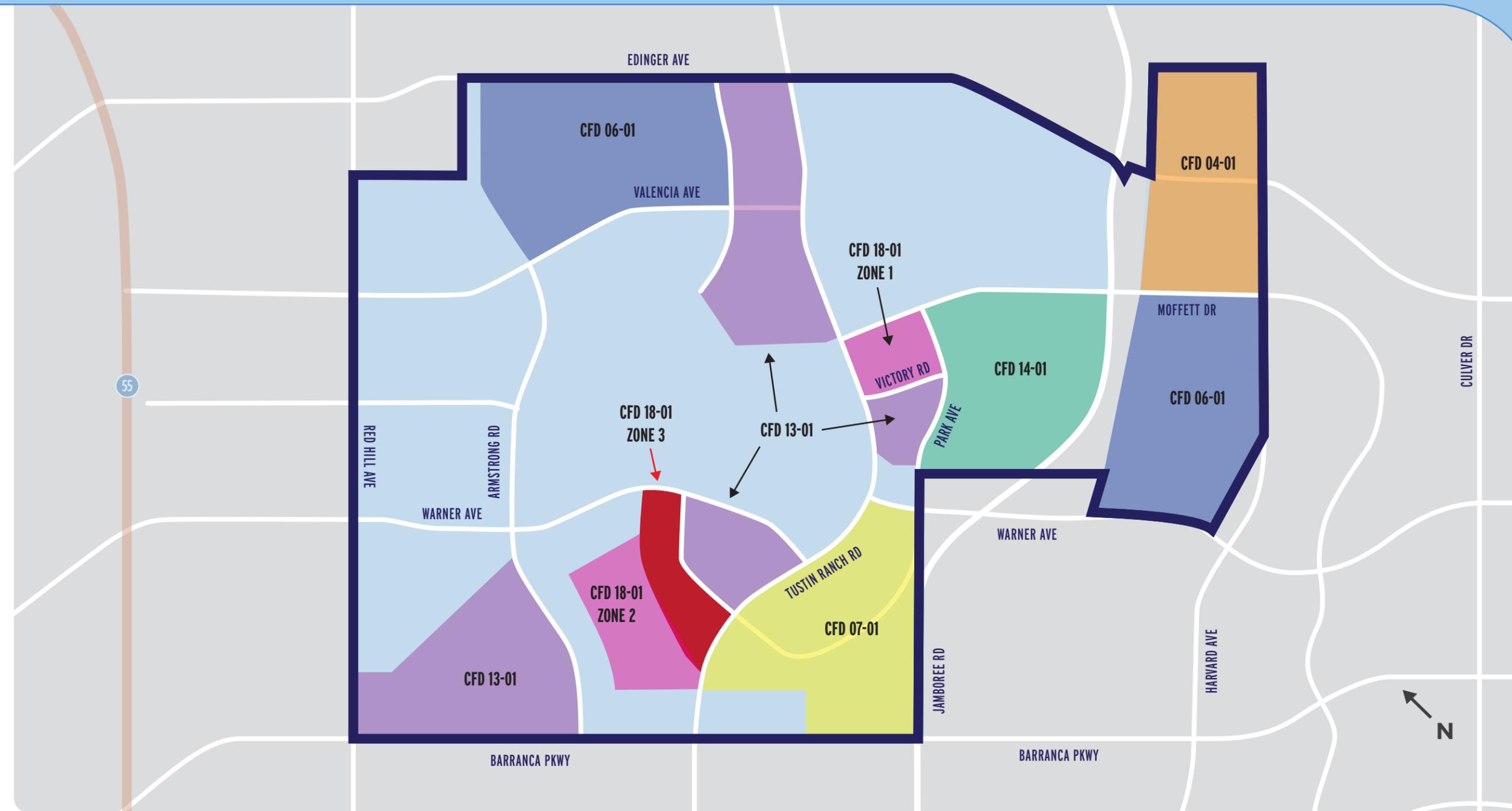


Exhibit 10: CFD Map

The City Council authorized formation of CFD 13-01 in 2013 for services (not facilities) such as police and fire; maintenance of parks, streets, sidewalks and drainage facilities; and other general City services associated with the development and maintenance of the undeveloped portions of Tustin Legacy. Since 2013, the plan for Tustin Legacy has evolved to include a variety of land uses not previously considered under CFD 13-01 (i.e., hotels and separate commercial uses). It became apparent that a new services CFD was needed to account for known and unknown land uses in the future.

CFD 18-01 was created in 2018 and is divided into Zones. Most of the property is identified as “Future Annexation Parcels” on the CFD 18-01 map(s). As projects are proposed, they will be analyzed at that time for their impact to City services. The intent is to ensure that each Zone meets the funding levels for the required services of that particular project and land use, which are then documented within the rate and method of apportionment (RMA) for the project. The City and the developer work in good faith to establish an appropriate RMA for the proposed project prior to conveyance of the property. Any property within the boundaries of CFD 13-01 and CFD 18-01 will be released of the CFD 13-01 obligation when the new Zone is annexed into CFD 18-01.

The City begins to receive Tax B revenue from a project shortly after the first building permit is pulled, with a typical escalation generally in line with the yearly change in the Consumer Price Index for Los Angeles, Riverside, and Orange Counties. CFD 18-01 Zones will exist in perpetuity to continue to offset the costs of services and maintenance at Tustin Legacy, unlike Tax A for bonding to construct facilities which typically expire in 30-40 years.

3.12 TUSTIN UNIFIED SCHOOL DISTRICT COMMUNITY FACILITIES DISTRICT (CFD 15-2)

In 2015, the City and TUSD entered into a School Facilities Implementation, Funding, and Mitigation Agreement (IM Agreement). The purpose of the IM Agreement is to fund new TUSD facilities including a middle school and high school (Legacy Magnet Academy opened in 2020) based on the planned residential units at Tustin Legacy. The sources of funds for constructing the facilities per the IM Agreement are: 1) TUSD school development fees collected when building permits are issued, and 2) TUSD Community Facilities District (CFD) 15-2 fees collected on a project-by-project basis either at the time of conveyance to a developer or assessed to the homeowners in the form of bonds.

The obligation of each project within the boundary of TUSD CFD 15-2 is based on the type of use (residential vs. nonresidential), as well as type of residential unit (single family vs. multifamily). The RMA for TUSD CFD 15-2 allows for prepayment of a project’s obligation to release it from the TUSD CFD 15-2 tax burden. Because of this, and in order to accelerate facility construction, the City has advanced portions of the TUSD CFD 15-2 fees to TUSD through project prepayment and City-direct advances of funds to TUSD. These advances and prepayments have allowed portions of Legacy Magnet Academy to be constructed and open as a benefit for Tustin Legacy residents, with later phases to be constructed by future fees and payments. Additionally, the advances and prepayments have allowed for additional tax capacity for the City to potentially capture through its Tax B CFD(s).

Future additions of residential units in excess of the units within the IM Agreement and TUSD CFD 15-2 would require additional school mitigation discussions between the City and TUSD.

CHAPTER 4

Development Process



This section seeks to provide guidance on how the City moves forward with site selection and ultimately solicitation of dispositions to implement the Tustin Legacy Specific Plan. Development stages typically range from conceptual design, to pre-development, and to construction of infrastructure necessary to facilitate development of an area.

4.1 CONCEPTUAL DESIGN

This first stage focuses on a particular Neighborhood or portion thereof within the Specific Plan area and begins to break down the site into potential land-use options. Land area sizes may range from approximately 50 acres to upward of 200 acres for more focused conceptual planning. Selection of a site is predicated on a number of such factors as existing constraints and impediments such as LIFOC areas which may delay future development, adjacent land use and existing infrastructure, and market acceptance of the prescribed land uses within the Specific Plan. While the Specific Plan offers flexibility in many areas to allow for a mix of uses, there are particular areas such as Neighborhood E which are limited to commercial uses which may have a bearing on development advancement.

Initial assessment of a site begins with an evaluation of the circulation patterns and connections to existing roadways to provide site access. In addition to vehicular access, multi-modal forms of circulation for pedestrian, bicycles, and other modes of travel are evaluated through additional open space connections, as well as the roadways. Ultimately a street hierarchy of arterial, collector, and local streets is developed and flexible parcel sizes to fit various configurations are developed.

Once a rough circulation plan has been studied, then land uses are applied to parcels which may necessitate tweaks to the circulation network. In situating land uses, existing development and adjacent use is contemplated to provide transitions from sensitive uses and create buffers between land uses as intensities of development change. Density yields and parking are tested on parcels to determine right sizing and adherence to the thresholds of development within the Specific Plan. At this point there is generally a pause and engagement with the development community inclusive of developers, commercial real estate brokers, architects, and engineers to test assumptions and assess the viability and market acceptance of proposed land uses. After feedback is received, then further refinement and land-use iterations are made.

Urban design follows land use planning and begins to shape the detail moments of particular street sections and how pedestrians interact within the Neighborhood in the public void space between buildings. Building orientation and general plotting is refined to create spaces and places that complement the streetscape to provide an inviting and active environment. Streetscape character and intention is defined to start creating a sense of place.

Finally, preliminary architectural and landscape design begins to take form as the massing of buildings creates a spatial relationship to the void space. The arrangement of windows and doors on the buildings, materials, and detailing concepts begin to play out in setting the design expectations for the community.

Ultimately these land use and design principles culminate in design guidelines for the proposed neighborhood. This neighborhood design guideline document helps to convey the minimum level of acceptable design standard to be applied to any development. It also sends a clear message to prospective developers of the level of execution that will be required and sets expectations for the quality of design. Developers need to plan accordingly with material selection and design features implemented into any proposal. A project of low-quality design is unlikely to be competitive in an RFP process regardless of offer pricing. It is the intent of the City to establish a high quality of design and architecture that will provide added value to Tustin Legacy over the long term, as discussed in Section 3.2.1.

Ideally the land uses contemplated will have already been evaluated within the Specific Plan and associated environmental approvals and known utility capacity are planned or in place to accommodate such proposed development. Given the array of uses which may be programmed in a mixed-use area, some reassessment of prior analyses may be required. Therefore, overlap of conceptual design and pre-development infrastructure studies may occur.

4.2 PREDEVELOPMENT ACTIVITIES

Upon concurrence of a conceptual plan for a particular area within Tustin Legacy, further studies may be necessary to determine if existing utility capacity can accommodate the proposed uses or if additional backbone infrastructure development is required. It is typical that with more land use refinement, the prescribed development potential within the Specific Plan may differ from that proposed use. This may necessitate such further analysis as traffic studies, wet utilities requiring updates to the Sub-Area Master Plan (SAMP) for the Irvine Ranch Water District (IRWD), or other studies.

Initial site characterization (Phase I and II studies) of environmental status is often performed by the City in advance of determining land uses and prior to any solicitation in an effort to expedite development by disclosing current site conditions prior to prolonged negotiations. Developers are encouraged to perform their own due diligence studies as all property is to be conveyed on an as-is, where-is, and with all faults basis.

As the City progresses toward a disposition offering, additional civil engineering and surveying commences. Third-party consultants are further engaged to develop preliminary mass and/or rough grading plans and evaluate drainage patterns as needed. The tentative mapping process also commences to adjust existing property lines and create the parcels for conveyance within the area. Preliminary infrastructure plans limited to the public roadway system and supporting mainline utility infrastructure are developed. Prior to finalizing working drawings or execution of these plans, the City will typically engage with a selected developer to coordinate scope of work and make project-related adjustments as necessary. The City does not design or develop private in-tract infrastructure for a development.

4.3 COMMUNITY ENGAGEMENT

Consistent with all other projects within the City, the majority of community-level participation occurs at public hearings once a particular project is identified and the public is able to view site plans, renderings, elevations, and other pertinent project components in order to visualize the look and feel of the project and understand general impacts. This occurs at the entitlement stage after a thorough vetting of the project through the regulatory review process by multiple City departments. In most cases, there will be several public hearings on a single project as it makes its way through both the Planning Commission and City Council for approvals.

Since any proposed dispositions aim to implement the previously approved Tustin Legacy Specific Plan and do not change allowable land uses, there are not prescribed public comment periods as staff prepare concept-level planning and infrastructure studies in order to create and release disposition offerings. The Tustin City Council provides staff with input and direction on how to proceed with development at Tustin Legacy on a regular basis.

The Specific Plan has gone through a process to receive extensive public comment and review before adoption and any subsequent amendment by the City Council. At times, amendments may be limited to a particular project which would be reviewed at the time of entitlements. In other cases, a more comprehensive amendment may be required and would also proceed through public hearings and review before the Planning Commission and City Council.

4.4 INFRASTRUCTURE INSTALLATION

The City's preference is to have a business deal (typically an executed DDA) in place prior to commencing any City-required installation of improvements for a particular sector at Tustin Legacy in order to reduce the City's financial risk. DDAs will typically have a nonrefundable deposit associated with execution, which ensures the City will receive at least some financial compensation for the investment in infrastructure associated with a proposed project. The City will limit the scope of any private property grading with no on-site/precise grading of improvements or finished pads. Where possible the City seeks to transfer the obligation of infrastructure installation to the developer.

The private sector has more of a financial incentive (a "for profit" mindset) and flexibility to respond and create cost efficiencies than the public sector in constructing infrastructure and minimizing costs. In contracting for services and improvements, the City is subject to prevailing wage requirements and if state and/or federal funding sources are used, additional wage provisions may be required. Each of these requirements necessitate that the City hire the "lowest responsible bidders." Often, the lowest responsible bidder does not possess the technical skills required for projects of the size and scope required at Tustin Legacy.

Further, if the City provides infrastructure subsidies for a proposed development segment, phasing, or a vertical development as part of a developer transaction, it may subject the developer to required payment of prevailing wages, which could add an additional 20-30% to infrastructure and vertical construction costs.

CHAPTER 5

Developer Solicitation & Selection



Competitive disposition offerings are the standard procedure for disposing of property at Tustin Legacy. A competitive process lends credibility to the development community that lobbying and outside interference over the process will not have influence over the outcome, and that every developer has a fair chance at acquiring land based on their merits and the quality of a project proposal. Limited circumstances may exist where the City chooses to engage with a previously approved developer that has already demonstrated a high level of performance and successful execution on a project at Tustin Legacy. This rewards success and proper execution of development while further expediting development with a trustworthy and competent developer who can execute. The City may also consider options for future property conveyance as part of certain DDAs.

5.1 MINIMUM QUALIFICATIONS

The City has established precedent for development at Tustin Legacy where only the most highly qualified developers with the proven ability to perform are provided opportunities at Tustin Legacy. A minimum threshold of qualifications is important for entry and will expedite the development process by excluding unqualified developers which would otherwise increase the length of the review process and, at worst, could burden the City with a developer that is incapable of ultimately executing the project. The minimum qualifications criteria will vary by project, but will generally reflect the following:

- Project Scale - Developer will have executed on the ground-up construction of a similarly sized project.
- Performance - Demonstrated ability to perform on time, on budget, and achieve the goals set forth (i.e., build what you say you are going to build).
- Public/Private Experience - Demonstrated ability of the project team consisting of legal counsel and developer to participate in a public-private partnership.
- Local Knowledge - Understanding of the local marketplace, context, and regulatory environment.
- Development Process - Experience in all phases of development relevant to the project including design, entitlements, financing, construction, management, marketing, and leasing, etc.
- Financing - Demonstrated ability to provide/source financing commitments without delay.
- Architecture - Developer or project team architect to have completed construction of similarly sized projects in the desired architectural aesthetic/motif commensurate with the quality and design features as identified in the pertinent Design Guidelines/RFP.

5.2 COMPETITIVE REQUEST FOR PROPOSAL (RFP) PROCESS

The City may prepare an RFP internally to solicit a disposition offering or may look to a commercial brokerage firm for assistance in crafting and soliciting an Offering Memorandum (OM)/RFP. The City has enjoyed success partnering with and utilizing the expertise of third-party commercial brokers to develop offerings for property solicitations.

A group of best-in-class proven developers are typically targeted directly, but the RFP/Offering is open to any qualified developer. Dependent upon SLA, the RFP/Offering may be required to be noticed to all housing sponsors on the HCD list (see Section 3.4.2).

The pool of potential developers is further refined due to the more extensive design component requirement with any response. The City's interests go beyond the highest price and involve balancing the quality of product and design proposed for the neighborhood. The competitive process for property at Tustin Legacy should be viewed as a design competition which incorporates pricing.

In order to maintain the integrity of a competitive disposition offering process and avoid the perception of favoritism, the City requests that developers and their representatives abstain from contact with elected or appointed officials regarding property disposition at Tustin Legacy. These requirements are built into RFP/Offerings and violations of such rules may result in disqualification from a development solicitation.

5.3 PREFERRED DEVELOPER

A qualified preferred developer is limited to developers with prior experience at Tustin Legacy who have proven themselves by successfully executing on projects to City standards. This rewards performance and offers further opportunities to qualified developers who have taken risks previously. Generally, this would allow developers to roll into subsequent land closings if it suits the City's interests and can conform to the SLA requirements after completion of their projects. This strategy of rewarding existing developers has been successful since there is a base of institutional knowledge from both parties in negotiating ENAs, DDAs, and DAs, which can reduce the timeline of the negotiation period substantially.

The preferred developer approach has been implemented successfully with the development of for-sale housing. More recent examples include the Levity 218 home community where the developer of Greenwood (Standard Pacific then CalAtlantic and then Lennar via mergers and acquisitions) was selected to roll into the additional adjacent site. Another example was the selection of Brookfield for The Landing 400-home development after having previously executed on the Greenwood community through the Huntley product of that development.

Less success has been experienced on the commercial side of development where subsequent ENAs have been executed with preferred developers, but where a DDA and a project have not come to fruition. The preferred developer approach can be beneficial in commercial settings where an end-user is in play and not a speculative development. A build-to-suit end-user is a good opportunity to connect with a preferred developer to jointly execute on a project.

Some of the drawbacks to this approach are the non-competitive nature of the transaction which may not maximize the land-sale funds or potentially not result in the desired creative design execution. To mitigate this impact, the City should rely upon a third-party appraisal of the property and intended development in order to assure land-sale payment is at fair market value. Further, it is unlikely that the City would enter a future transaction again with a developer that did not execute on the desired project design.

5.4 USE OF COMMERCIAL REAL ESTATE BROKERS

There are numerous advantages to utilizing a commercial real estate broker, including the broker's ability to:

- Push competitive pricing
- Expedite the solicitation process with additional resources to supplement City staff
- Lend additional credibility to the process with the reputation of a commercial broker and illustrate the City's willingness to negotiate
- Reduce red tape regarding what can otherwise be a highly bureaucratic process
- Provide the resources to vet potential respondents and proposals

Market knowledge and expertise associated with a commercial brokerage firm is invaluable to ensure that the City selects the appropriate development partner. Oftentimes the City does not have the extensive background on developers whereas a commercial broker will be able to draw upon a wide array of developers known to perform, and avoid developers who have failed or reneged on deals in the past.

One of the downsides to contracting with a commercial broker is paying the negotiated commission which, in turn, reduces the land-sales proceeds to the City. This can likely be off-set by the broker's ability to reach out to additional developers unknown to the City in order to create robust competition and increase pricing. Additionally, switching the commission obligation from the City to a developer buyer will still impact land-sale proceeds, but may be more acceptable.

5.5 UNSOLICITED PROPOSALS

Due to SLA regulations, the City is unable to negotiate over price and terms regarding City-owned property which has not been determined to be exempt or has not gone through the NOA process (see Section 3.4.2). This constrains/limits the City's ability to respond to unsolicited or unexpected opportunity proposals, understand the basic terms, and directly negotiate with developers.

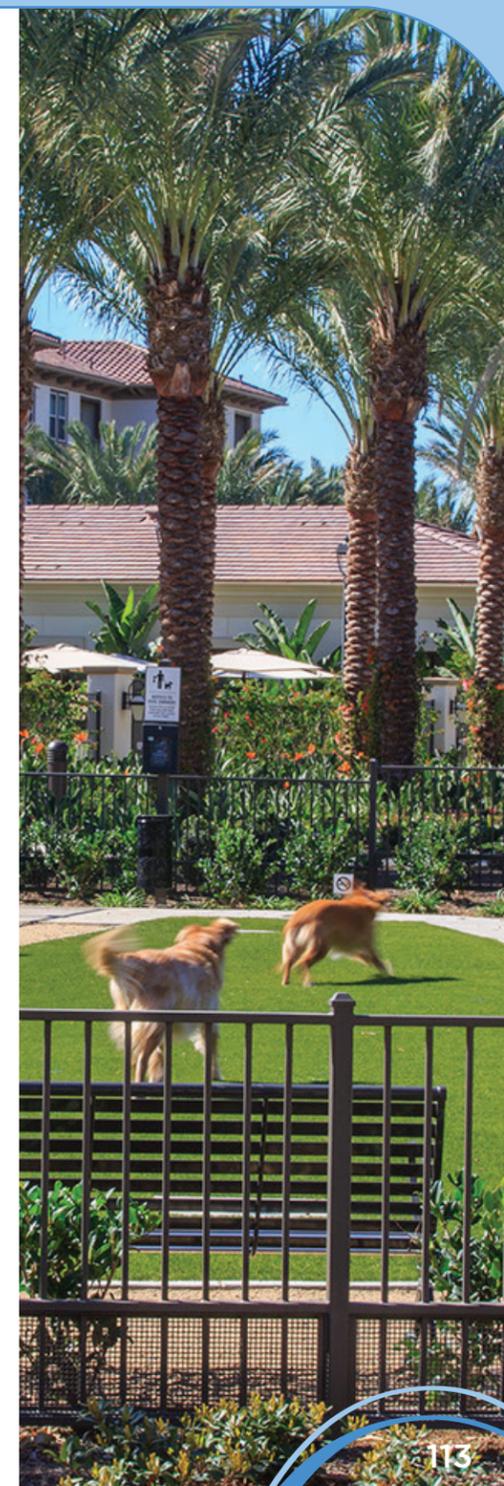
Due to the SLA regulations, it is recommended that all City-elected and appointed officials direct all land inquiries at Tustin Legacy to the Director of Economic Development or his or her appointee.

5.6 STANDARD CITY TERMS

Developers are encouraged to review prior DDAs to become familiar with how the City does business and the general terms and conditions applicable to conveyance of land at Tustin Legacy. While each deal is unique, there are a number of general terms which the City considers non-negotiable, given experiences in the past (See Section 2.4). The following are a list of standard terms that developers should anticipate in any DDA.

- Developer and City Expenses – Developer will be responsible for funding all developer costs and expenses, including but not limited to, the cost of design preparation and entitlement, and City transaction expenses inclusive of, but not limited to, City staff expenses, and third-party City project consultants including City legal counsel. This obligation begins upon ENA drafting and concludes upon issuance of a Certificate of Compliance.
- Good Faith Negotiations – During the ENA Period, both parties will agree to negotiate diligently and in good faith.
- Rights of Repurchase/Reversion – The City will retain rights of reversion and repurchase in the property, pursuant to the DDA.
- Guaranty – The City will require a completion guaranty for the project. The City expects the developer to guarantee project completion with corporate guarantees, performance bonds, or other security, as appropriate, as well as a deposit ensuring against any breach of contract that is not otherwise secured.
 - The City also wishes to ensure against partial project completion, and requires that development of the most profitable land uses are phased in with development of less profitable land uses. Conveyance of property may take place in phases based on performance measures, such as the timely construction of public and private improvements, and other measures to be further defined in the DDA. In addition, the City may retain a right of reversion for portions of the property until completion of defined improvements by phase.
- Conveyance – The subject site will be conveyed on an “as-is, where-is, and with all faults” basis to developer. Conveyance will occur subject to conditions within the DDA, one of which will include approved permit-ready plans.

- Project Performance – The developer will be selected for its ability to timely execute on the subject project. No speculation in land holding will be permitted. Project and schedule of performance standards will be included within the DDA to ensure timely execution.
 - The City wishes to ensure that all backbone infrastructure and public facilities planned to support Tustin Legacy are completed in a timely manner, and are integrated with existing improvements. To accomplish this, the City will require that necessary infrastructure improvements be provided to fully serve new development within a defined schedule of performance. The developer may also be required to oversize improvements, as needed, to maintain acceptable levels of service. The City will also require completion of park improvements in addition to any on-site recreational improvements constructed by builders. Finally, the City expects developers to facilitate and participate in other community-wide objectives providing public benefit.
- Assignment – Any assignment of rights will require approval of the City in its sole discretion. Assignment of rights to affiliated entities of developer may be allowed by right subject to negotiations.
- Subordination – Any indebtedness, liens, security instruments, or other developer/lender obligations associated with the project/site shall be subordinate to the DDA and any obligations thereunder.
- Closing – The City will not convey the site to the selected developer until all entitlements, plans, construction drawings, and financing are in place and verified by the City.
- Indemnification – In general, private developers establish special purpose entities or limited liability companies to limit their liability on a project. With the City's substantial assets, dissatisfied parties may wish to pursue what they perceive as the City's “deep pockets” for resolution of any conflicts or issues. The City may not have the same legal ability to establish a special entity to limit its liability. As such the City requires extensive indemnifications associated with the transfer of property, as well as all legal documents.
 - The developer shall covenant responsibility for compliance with all environmental laws and regulations and that they will not use property directly or indirectly for use, generation, treatment, release, or disposal of hazardous materials. The developer will be responsible for all liability related to asbestos remediation and lead-based paint with no liability to City.



- Although the Navy has responsibility for the remediation of certain substances as previously described, the developer shall provide environmental insurance naming the City as an additional insured, and shall indemnify, defend, and hold harmless the City from liability against all claims, judgments, suits, costs, or expenses including attorney costs arising out of the release, existence, presence, or disposal of hazardous substances in, on, under, about, or adjacent to the property after conveyance of property to the developer.
- Insurance Provisions – The City’s standard insurance provisions include the requirement for commercial general liability, automotive liability, workers compensation, builders’ risk, and environmental insurance. The required endorsements of each include specific additional insured (or blanket additional insured), waivers of subrogation, primary and noncontributory, and a 30+ day cancellation notice. Environmental insurance requirements typically include coverage for known and unknown conditions, a 10-year policy, and a \$100,000 deductible.
- Establishment of Master Associations – The majority of developments will be expected to establish a master association to manage and maintain the property and any associated public improvements. Landscape Installation and Maintenance Agreements are standard practice and the developer will likely be required to install and maintain surrounding parkways adjacent to the development. The master association process is essential to ensure the continuing maintenance responsibilities to create a sense of place for a large master-planned community.

