



City of Huntington Beach Planning and Building Department
STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning and Building
BY: Jennifer Villasenor, Associate Planner *JV*
DATE: October 26, 2010

SUBJECT: **APPEAL OF THE ZONING ADMINISTRATOR'S APPROVAL OF MITIGATED NEGATIVE DECLARATION NO. 09-001 (ATLANTA AVENUE WIDENING)**

APPLICANT: City of Huntington Beach, Public Works Department, 2000 Main Street, Huntington Beach, CA 92648

APPELLANT: Hart, King and Coldren, 200 Sandpointe, Fourth Floor, Santa Ana, CA 92707

PROPERTY

OWNER: Atlanta Avenue Right-of-Way: City of Huntington Beach; Pacific Mobile Home Park: Pacific Mobile Home Park, LLC, 80 Huntington Street, Huntington Beach, CA 92648

LOCATION: Atlanta Avenue Right-of-Way (between Huntington Street and Delaware Street); 80 Huntington Street, 92648 (south side of Atlanta Avenue between Huntington Street and Delaware Street – Pacific Mobile Home Park)

STATEMENT OF ISSUE:

- ♦ Mitigated Negative Declaration No. 09-001 request:
 - To analyze the potential environmental impacts associated with the Atlanta Avenue Widening Project, a City proposed project to widen Atlanta Avenue from Huntington Street to Delaware Street and associated improvements to comply with the primary arterial street classification of the City's General Plan Circulation Element and County Master Plan of Arterial Highways (MPAH).

- ♦ Staff's Recommendation:

Approve Mitigated Negative Declaration No. 09-001 based upon the following:

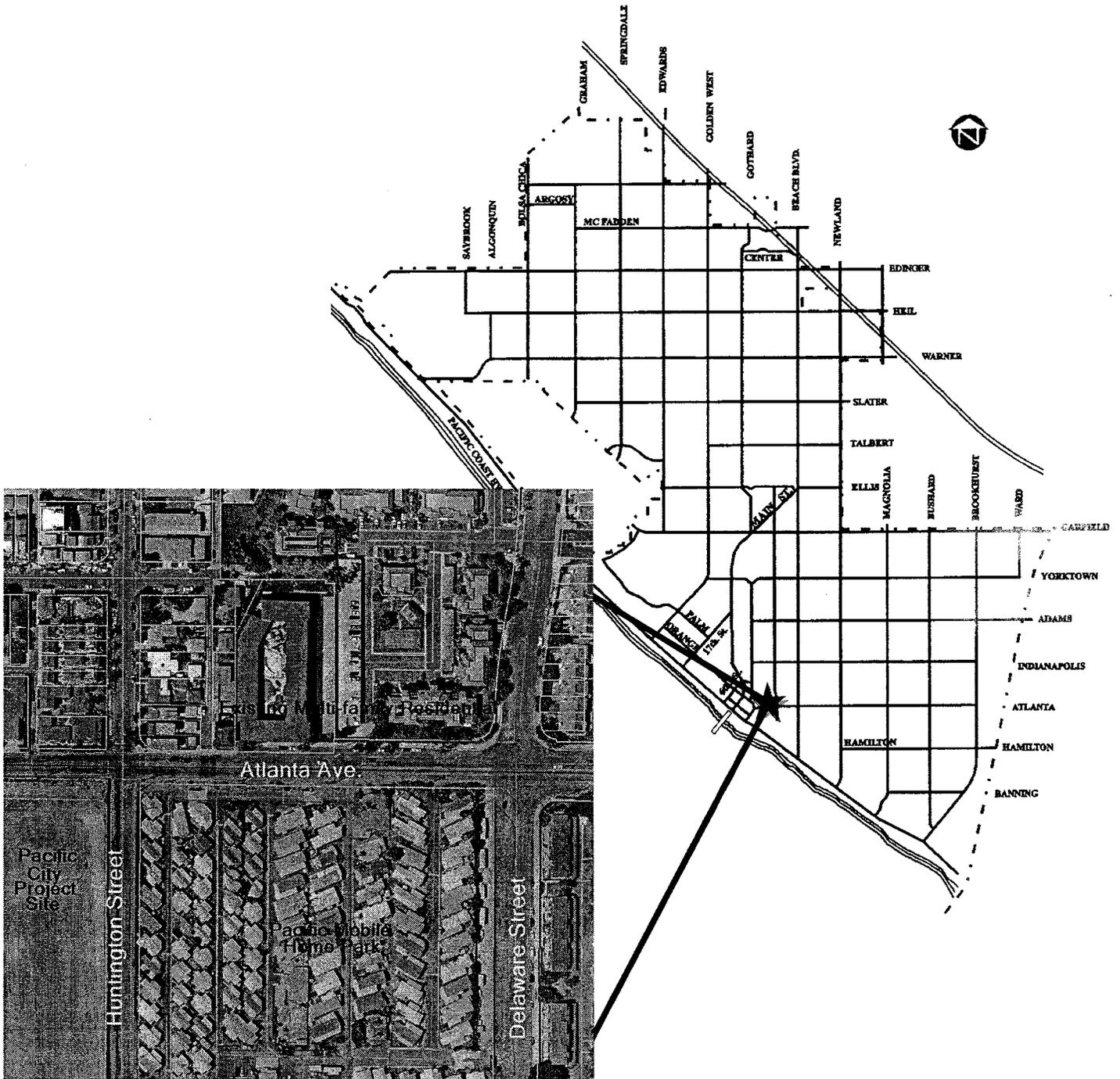
 - Mitigated Negative Declaration No. 09-001 was prepared in accordance with the California Environmental Quality Act (CEQA) and concludes that the proposed project, in light of the whole record, would not result in significant adverse environmental impacts with incorporation of the recommended mitigation measures.
 - All known potential environmental impacts are considered to be less than significant or less than significant with incorporation of mitigation based on established thresholds of significance.
 - None of the issues raised by the appellant in the appeal would constitute substantial evidence that the project would cause significant adverse environmental impacts such that a fair argument can be made to require preparation of an Environmental Impact Report (EIR) for the project.

RECOMMENDATION:

Motion to:

“Approve Mitigated Negative Declaration No 09-001 with suggested findings and mitigation measures (Attachment No. 1).”

#B-1



**VICINITY MAP
 MITIGATED NEGATIVE DECLARATION NO. 09-001
 (ATLANTA AVENUE WIDENING PROJECT)**

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. “Deny Mitigated Negative Declaration No. 09-001 with findings for denial.”
- B. “Continue Mitigated Negative Declaration No. 09-001 and direct staff accordingly.”

PROJECT PROPOSAL:

The proposed project would widen Atlanta Avenue from Huntington Street to Delaware Street and bring the subject segment of Atlanta Avenue into compliance with its General Plan classification as well as the Orange County Master Plan of Arterial Highways (MPAH). As defined in the General Plan, the primary arterial street classification provides sidewalk, curb, gutter, a bike lane, and two through lanes in each direction of travel, separated by a striped median. Currently, the subject segment of Atlanta Avenue provides one lane in each direction, a striped median, and on-street parking along a portion of the north side of the street.

Acquisition of Right-of-Way

The existing public street right-of-way along the subject segment of Atlanta Avenue varies from 60 feet wide (approximately 30 feet north and 30 feet south of street centerline) at Huntington Street to 85 feet wide (55 feet north and 30 feet south of street centerline) at Delaware Street. Consequently, construction of the proposed street improvements will require the acquisition of an additional 25 feet of public street right-of-way south of the centerline of Atlanta Avenue (i.e., the public street right-of-way is proposed at 55 feet south of street centerline). The additional 25 feet of right-of-way would come from an approximately 25 feet wide by 630 feet long strip of land from the Pacific Mobile Home Park located immediately south of Atlanta Avenue. The acquisition of the 25 feet would impact eight dwelling units (Unit Nos. 101, 102, 201, 301, 302, 401, 501, and 502) within the park. The impacted residents would need to be relocated pursuant to the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

Proposed Street Improvements

The proposed street improvements will provide an additional through lane and bike lane in each direction of travel. In addition, the project’s scope of work includes clearing and grubbing, the construction of asphalt concrete roadway, striping, curb, gutter, sidewalk, an 8-foot tall concrete block wall atop a variable height (7 feet max.) retaining wall, landscaping (including the removal or relocation of 25 trees within the existing mobile home park), reconstruction of a 26-foot wide drive aisle (circulation road) and two emergency access gates within the mobile home park, and utility and fire hydrant adjustment and relocation. The project also requires approval of a coastal development permit for development in the coastal zone and a conditional use permit for the proposed height of the retaining wall.

Background:

The Atlanta Avenue Widening Project was initially identified in the 2006 Federal Statewide Transportation Improvement Program (FSTIP) and 2008 Southern California Association of Governments (SCAG) Regional Transportation Plan (RTP). The project has been authorized by the Federal Highway Administration (FHWA) to receive funding through the Orange County Transportation Authority (OCTA). The California Department of Transportation (Caltrans) is the administering agency for FHWA and the lead agency for environmental clearance under the National Environmental Policy Act (NEPA).

Funding for the project is awarded in three phases: preliminary engineering, right-of-way and construction. Each phase cannot begin until the City receives Federal authorization to proceed. The City is currently working with Caltrans to obtain Federal authorization for the right-of-way phase in accordance with the timelines established by OCTA for the obligation of funds. The Federal authorization to proceed cannot be granted until environmental review for the project is completed pursuant to NEPA. Caltrans, as the lead agency for NEPA, will issue NEPA compliance pending completion of the City's CEQA process. In addition, the City cannot begin any work on the acquisition of right-of-way, including negotiations with the mobile home park property owners and impacted residents, prior to receiving Federal authorization to proceed. Therefore, the City is moving forward with the CEQA process in order to maintain funding for the project as well as begin discussions with the owners and residents of the mobile home park. The coastal development and conditional use permits require a public hearing before the Planning Commission and would be scheduled for a future meeting.

Zoning Administrator Action:

On September 15, 2010 the Zoning Administrator (ZA) considered MND No. 09-001, which analyzes the potential environmental impacts associated with the Atlanta Avenue Widening Project. Staff presented an overview of the project, the potential environmental impacts and discussed the CEQA process. Staff disclosed that five comment letters were received during the 30-day public review and comment period for the MND. The comment letters were forwarded to the ZA, along with responses to each of the comments raised in the letters, prior to the meeting. It was stated that a change in the number of displaced residents (from 14 to 16) was made to the MND based on one of the public comment letters. Staff noted that the change did not affect the conclusions of the MND. During the public hearing portion of the meeting, four members of the public, including three residents of the Pacific Mobile Home Park, asked questions related to project timing, potential relocation sites, site access during construction and relocation compensation requirements. The speakers did not voice support of or opposition to the project nor did they raise any issues regarding the environmental analysis in the MND. The appellant did not attend the meeting. The ZA approved the MND with findings and the recommended mitigation measures (Attachment No. 5).

Appeal:

On September 27, 2010 an appeal of the ZA's decision to the Planning Commission was filed by Hart, King and Coldren, a law firm representing the Pacific Mobile Home Park property owners. The appeal letter is provided as Attachment No. 2 and cites the following reasons as the basis for appeal:

1. "There is no substantial evidence of public necessity for the Project which involves the taking of private Park property on which resident mobile homes are located.
2. An Environmental Impact Report ("EIR") should have been prepared because the MND wrongfully fails to consider that part of the Project which involves relocation of Park residents, which relocation, if considered, would require preparation of an EIR.
3. An EIR should have been prepared because there is a fair argument that the Project, as mitigated, may have significant impacts on the environment, particularly regarding land use, housing, growth, air quality, drainage, noise and biological resource impacts."

Study Session:

The item was presented at the October 12, 2010 Planning Commission study session meeting. Staff gave a brief overview of the project including recent approval by the ZA and primary issues to consider for review. The appellant addressed the Planning Commission during public comments and reiterated several

of the appeal issues raised in the appeal letter. The Planning Commission asked questions related to the amount of grading required for the project, height of the proposed wall, timing of the City process with other agencies and what the next steps in the process would be after the Planning Commission takes action on the MND. In addition, the Planning Commission requested follow-up on several issues/questions, which are identified and addressed below:

1. *What is the timing for construction of the project?*

Should the City receive federal authorization to proceed with the right-of-way phase, acquisition and preparation of a relocation plan would take one and a half to two years. The relocation of the residents would likely take another year to complete. Construction of the widening project would last about six months. It is anticipated that the earliest the project would begin construction would be mid-year 2013.

2. *Is the project identified as a mitigation measure of the Pacific City project or Downtown Specific Plan update?*

The project is not identified in the Downtown Specific Plan EIR and, as such, is not identified as a mitigation measure for implementation of the update to the Downtown Specific Plan. The intersections of Atlanta Avenue and Huntington Street and Atlanta Avenue and Delaware Street are included in the Pacific City traffic study. However, no impacts were identified at these intersections and no mitigation measures affecting these intersections were adopted.

3. *How long has Atlanta Avenue been designated as a primary arterial street?*

Atlanta Avenue was initially designated as a primary arterial highway. In 1970, a portion of Atlanta Avenue, including the subject segment, was upgraded to a major arterial designation in order to accommodate traffic from street improvements and a new development plan in the downtown area. As the street improvements and development plan were not implemented, the subject segment of Atlanta Avenue was re-designated as a primary arterial in 1978 and has retained this designation to date.

4. *Would the project result in changes to the existing drainage system within the mobile home park?*

Drainage in the mobile home park is conveyed via a network of concrete v-gutters and flows southerly to an existing sump system within the park and then ultimately discharged to the Huntington Beach Channel. The street widening will require grading that may result in minor changes to the existing site elevation due to the relocation of the curb and gutter. Likewise, the reconstruction of the on-site drive aisle within the existing mobile home park will require grading work to transition from the “new” grades of the street widening to the existing elevations of the park. Ultimately, however, the storm water will continue to drain as it does today. Existing site conditions, including the amount of impervious area, site elevations, and drainage patterns would generally be the same upon completion of the project.

5. *Are the cases cited by Appellant applicable to the CEQA review conducted by the Planning Commission?*

At the study session, Appellant specifically referenced two CEQA cases, *Friends of “B” Street vs. City of Hayward* and *City of Antioch vs. City Council of the City of Pittsburg* in his assertion that an EIR should be prepared instead of a MND. The Planning Commission requested further information on these cases as they may relate to the proposed project. After further review of both

cases cited by Appellant, Staff, including the City Attorney's Office, does not believe that either case applies to the current set of facts. The discussion below is intended to provide the instant case in relation to the projects described in the cases cited by Appellant.

In the *Friends of "B" Street vs. City of Hayward* case, (a case that is cited for the courts discussion of attorney fees vs. CEQA) the City approved a negative declaration for the project. The court found that there was substantial evidence that the project would have significant environmental effects and therefore, an EIR was required. Among the effects the court found needing further analysis were the short-term effects during construction from increased dust, disruption of business, increased bank erosion and possible loss of wildlife habitat (during construction of a bridge). The court determined long-term effects of the project existed, which included increased traffic, noise, paving, removal of 153 mature trees, elimination of on-street parking, and displacement of two businesses and twelve families. The court determined that because of the scope of development (discussed above) the project would result in the loss of the residential community characteristic of the area and decrease residential property values. The residential desirability of adjacent residential properties would be adversely affected by increased noise and exposure to traffic, reduced setbacks of structures from the street, the loss of on-street parking, and a decreased visual or aesthetic quality of the area. The conversion of single-family to commercial or multi-family uses would be accelerated. The court determined that an EIR was necessary to address the unmitigated environmental issues.

The "Friends of B Street" case is very different from the proposed project. As described in MND No. 09-001, the proposed does not result in significant increases in traffic or noise, does not remove on-street parking, does not decrease the setback of structures from the street, and does not propose new uses or the conversion of existing uses to another use nor does it propose a change in the zoning or land use designation of the area. Further, as a condition of the proposed project, the removal of 25 existing trees must be replaced at a two to one ratio resulting in a general aesthetic improvement in the area with the addition of new and upgraded landscaping. Once the project is complete, the use of the existing road and mobile home park will be the same, albeit configured in a slightly different manner. In addition, in this case, the short-term impacts of the project during construction are considered less than significant or can be mitigated to a less than significant level as set forth in MND No. 09-001.

The project includes the removal of eight dwelling units from the mobile home park necessitated by the acquisition of 25 feet of additional right-of-way. However, the draft MND identifies the displacement of people/housing as a potentially significant impact. The impact (i.e. – displacement of people/housing) will be mitigated by requiring relocation of those displaced in accordance with the Federal Uniform Act. Finally, unlike the "Friends of B Street" case, there is no evidence that the project would result in the loss of the residential community characteristic; in fact, the community character will be enhanced with the improved road and landscaping.

The *City of Antioch vs. City Council of the City of Pittsburg* case is likewise distinguishable from the current project. In the Antioch case, the City approved a negative declaration for a project that involved construction of a new road, widening of an existing road and installation of sewer, storm drain and domestic water utilities in an undeveloped area. The argument for a MND was that because the road construction project and utilities would not connect to an existing street and utility lines, the project would therefore, not contribute to existing traffic and circulation impacts

or growth. The project proponent also stated that the improvements were consistent with the Circulation Element of the General Plan and the City's Master Plans. The court determined that the purpose of the project was to provide a catalyst for development in the area and that the extent of future development may have significant environmental impacts, which must be analyzed in an EIR.

The project cited in the *City of Antioch vs. City Council of the City of Pittsburg* case is not similar to the proposed project. The most critical distinction is that the proposed project is not located in an undeveloped area and is not proposed for the purpose of instigating development of the area surrounding the project area. There are no growth inducement elements to this project such that any comparison to the City of Antioch case can be made.

ISSUES:

Subject Property And Surrounding Land Use, Zoning And General Plan Designations:

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property:	Atlanta Avenue: Right-of-Way Pacific Mobile Home Park: RM-15 (Residential Medium Density – 15 units/acre)	Atlanta Avenue: Right-of-Way Pacific Mobile Home Park: RMP-CZ (Residential Manufactured Home Park – Coastal Zone overlay)	Right-of-Way; Pacific Mobile Home Park
North of Subject Property: (across Atlanta)	RM-15	RM-CZ (Residential Medium Density – Coastal Zone overlay)	Residential Apartments
East of Subject Property: (across Delaware)	RM-15	RM-CZ	Residential Condominiums
South of Subject Property:	RH-30-sp (Residential High Density – 30 units/acre – specific plan overlay)	SP5 (Downtown Specific Plan) – CZ	Remaining portion of Pacific Mobile Home Park; Waterfront Hilton
West of Subject Property: (across Huntington)	CV-F7-sp (Commercial Visitor – 3.0 Floor Area Ratio – specific plan overlay)	SP5-CZ	Pacific City project site

The project site consists of the existing Atlanta Avenue right-of-way from Huntington Street to Delaware Street and the northern portion of the Pacific Mobile Home Park, a 256-space mobile home park developed in the late 1950s. The project site is approximately 2.6 acres in area. The existing Atlanta Avenue right-of-way consists of approximately 1.57 acres of the project area and approximately 1.03 acres of the existing 18.24-acre mobile home park property makes up the remainder of the project area.

General Plan Conformance:

The Atlanta Avenue Widening Project is proposed to bring the subject segment of Atlanta Avenue into compliance with the Primary Arterial street classification of the General Plan Circulation Element as well as the County Master Plan of Arterial Highways. The following goals, policies and objectives of the General Plan apply to the proposed Mitigated Negative Declaration for the project:

Air Quality Element

Policy AQ 1.8.1: Continue to enforce construction site guidelines that require truck operators to minimize particulate emission.

Policy AQ 1.8.2: Require installation of temporary construction facilities (such as wheel washers) and implementation of construction practices that minimize dirt and soil transfer onto public roadways.

Policy AQ 1.9: Minimize sensitive uses (residential, hospitals, schools, etc) exposure to toxic emissions.

MND No. 09-001 includes a technical analysis of the proposed project's impacts on air quality and greenhouse gas emissions. The analysis concluded that the proposed project would result in less than significant impacts and recommends a mitigation measure to ensure that emissions during project construction would be reduced to a less than significant level. The mitigation measure would ensure that sensitive receptors surrounding the project site would not be exposed to substantial pollutant concentrations.

Circulation Element

Policy CE 1.1.1: Encourage the completion of missing roadway links and other related facilities by adopting the Circulation Plan of Arterial Highways and critical intersection improvements as shown in...this element.

Objective CE 1.2: Ensure adequate capacity for the City's circulation needs while minimizing significant negative environmental impacts.

Objective CE 6.1: Promote the safety of bicyclists and pedestrians by adhering to Caltrans and City-wide standards.

As stated, the project would bring the subject segment of Atlanta Avenue into compliance with the City's circulation plan. MND No. 09-001 analyzes the potential environmental impacts associated with the project and concludes that, with mitigation, the project would not result in significant adverse environmental impacts. In addition, as analyzed in the MND, the proposed project improvements would reduce potential safety issues for bicyclists and pedestrians traveling on the subject segment of Atlanta Avenue by minimizing existing roadway conflicts and installing a dedicated bicycle lane and pedestrian sidewalks.

Environmental Resources/Conservation Element

Policy ERC 2.1.10: Conduct construction activities to minimize adverse impacts on existing wildlife resources.

MND No. 09-001 recommends a mitigation measure that would ensure that potential impacts to migratory bird species would be minimized by avoiding vegetation removal and construction activities during the breeding season when feasible, and requiring nesting surveys (if construction occurs during the breeding season) to ensure that active nests are not impacted.

Historic and Cultural Resources Element

Objective HCR 1.1: Ensure that all of the City's historically and archaeologically significant resources are identified and protected.

MND No. 09-001 recommends a mitigation measure that would ensure that impacts to archeological resources would be less than significant in the event resources are discovered during project construction activities. Because archeological resources have been discovered in the vicinity of the project area, a cultural resources survey was conducted for the project. Although it is not anticipated that archeological resources extend onto the project site, the proposed mitigation measure would ensure that resources, including human remains, discovered during construction would be properly assessed and recovered or protected in accordance with established protocols.

Noise Element

Objective N 1.6: Minimize the impacts of construction noise on adjacent uses.

Policy N 1.6.1: Ensure that construction activities be regulated to establish hours of operation, to prevent and/or mitigate the generation of excessive or adverse noise impacts through the implementation of the existing Noise Ordinance and/or any future revisions to the Noise Ordinance.

MND No. 09-001 analyzes potential noise impacts from the proposed project based on a technical study prepared by a qualified professional consultant. The MND concludes that construction noise impacts would be less than significant due to the temporary and intermittent nature of the noise and because the proposed construction hours would fall within the hours of construction that are exempt under the City's Municipal Code. However, recognizing that construction noise can be an annoyance to surrounding residents, a mitigation measure is recommended to reduce noise associated with construction of the project.

Zoning Compliance:

The project's compliance with applicable provisions of the City's Zoning and Subdivision Ordinance will be discussed during consideration of the conditional use permit and coastal development permit for the project. It should be noted that MND No. 09-001 analyzes the project's potential to conflict with applicable codes and plans adopted for the purpose of avoiding environmental effects. In this regard, the MND concluded that the project would not conflict with applicable codes and plans such that significant environmental impacts would occur.

Urban Design Guidelines Conformance:

The project's compliance with applicable provisions of the City's adopted Urban Design Guidelines will be discussed during consideration of the conditional use permit and coastal development permit for the project. It should be noted that MND No. 09-001 analyzes the project's potential to conflict with applicable codes and plans adopted for the purpose of avoiding environmental effects. In this regard, the MND concluded that the project would not conflict with applicable codes and plans such that significant environmental impacts would occur.

Environmental Status:

Mitigated Negative Declaration (MND) No. 09-001 was prepared by staff and relies, in part, on consultant prepared technical studies in the areas of air quality, traffic, cultural resources, hazards and noise. On July, 29, 2010, the Environmental Assessment Committee (EAC) approved the processing of a Mitigated Negative Declaration for the project. The draft MND concluded that the project, as proposed, would not result in significant adverse environmental impacts with the incorporation of mitigation measures. Mitigation measures were identified to reduce potentially significant impacts in the areas of air quality, cultural resources, biological resources, population and housing, and noise to a less than significant level.

A 30-day public review and comment period for draft MND No. 09-001 commenced on August 5, 2010 and concluded on September 3, 2010. During the comment period, the City received five comment letters, including a comment letter from the appellant. Prior to the Zoning Administrator public hearing on the draft MND, staff responded to each of the comments raised in the comment letters. A copy of the Response to Comments and all comment letters is provided as Attachment No. 4. The Zoning Administrator's approval of MND No. 09-001 was appealed on September 27, 2010.

Coastal Status:

The proposed project is located in the Coastal Zone. As such, a coastal development permit is required for project approval. Coastal Development Permit No. 09-001 was submitted for the project by the Public Works Department and will be scheduled for public hearing at a future Planning Commission meeting. All property owners and tenants within a 500-foot radius of the project site as well as interested parties will receive notice prior to action on the coastal development permit.

Redevelopment Status: Not applicable.

Design Review Board: Not applicable.

Subdivision Committee: Not applicable.

Other Departments Concerns and Requirements:

The Department of Public Works is the project applicant and has designed the project to meet City standards. The Fire and Police Departments and the Building Division have reviewed the project plans for compliance with applicable codes. The Department of Economic Development has provided comments on the relocation process and, with assistance from the City's real estate/relocation consultant, would ensure that the required relocation plan meets all applicable local, state and federal laws.

The City anticipates receiving funds for the project from FHWA and has been working with OCTA and Caltrans to obtain the necessary approvals in order to receive the funds.

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on October 14, 2010, and notices were sent to property owners of record and tenants within a 500-foot radius of the subject property, individuals/organizations requesting notification (Planning and Building Department's Notification Matrix), appellant, and interested parties. As of October 19, 2010, staff has not received any written comments/letters in response to the public notice for the Planning Commission hearing.

Application Processing Dates:

DATE OF COMPLETE APPLICATION:

July 29, 2010

MANDATORY PROCESSING DATE(S):

MND: January 27, 2011 (within 180 days of accepting application as complete)

CUP/CDP: March 28, 2011 or within 60 days of adoption of MND

An application for EA No. 09-001, Coastal Development Permit (CDP) No. 09-001 and Conditional Use Permit (CUP) No. 09-019 was filed on February 4, 2009 and deemed complete on July 29, 2010. The MND was adopted by the Zoning Administrator on September 15, 2010 and subsequently appealed on September 27, 2010. The appeal is scheduled for public hearing before the Planning Commission on October 26, 2010. The public hearing is for action on MND No. 09-001, which analyzes the potential environmental impacts from the project and would not include action on the project itself. As noted earlier, a public hearing on the CDP and CUP for the project will be scheduled for a future Planning Commission meeting.

ANALYSIS:

The primary issue to consider when analyzing this request is whether the issues raised in the appeal letter render the analysis of the environmental impacts in the MND inadequate with respect to compliance with CEQA. The appellant cited three reasons for appeal, which are discussed below.

1. *There is no substantial evidence of public necessity for the Project which involves the taking of private Park property on which resident mobile homes are located.*

The appellant states that the MND does not provide a public necessity for the project and purports that this is required for projects involving the taking of a private property. The draft MND discloses environmental impacts of the project to the public and decision-makers. The draft MND, in accordance with CEQA, is not required to provide substantial evidence of public necessity for the Project which involves the taking of private Park property on which resident mobile homes are located.

To support this issue, further in the appeal letter the appellant cites the California Code of Civil Procedures Section 1240.030 providing that public necessity be established for a project in order to exercise eminent domain to acquire property, which is not an aspect of the project, as proposed. The letter states that the MND “admits that there is no current funding source that would allow the Project to be built within the near future.” However, the MND states that the City anticipates receiving federal funds to construct the project, but cannot receive the funding until federal authorization to proceed is granted after environmental review is completed.

The letter states that the “MND alleges that the Project is made necessary by the previous approval of the mixed use Pacific City development....” The MND states that the project would bring the subject segment of Atlanta Avenue into compliance with the primary arterial designation specified in the General Plan. Atlanta Avenue has been designated as a primary arterial since 1978, long before consideration of the Pacific City project. The Pacific City project has already widened Atlanta Avenue from First Street to Huntington Street to its ultimate configuration, which leaves a “chokepoint” on the subject segment of Atlanta Avenue. While the project would alleviate the

“chokepoint” and improve traffic safety in the project area, this is not the primary purpose of the project.

The letter states that the traffic study fails to assess whether a signal light at the intersection of Atlanta Avenue and Huntington Street without the project would relieve any existing traffic obstruction and states that it is clear that the project, without a traffic signal light, will not relieve traffic congestion. As stated in the MND, the above-mentioned intersection is currently being signalized as part of the Pacific City project. The traffic study for the project compares existing and future traffic conditions with and without the project. Since the traffic signal is not part of the project and would be operating prior to implementation of the project, there is no requirement for the project traffic study to evaluate the project’s traffic conditions without the signalization of the Atlanta Avenue/Huntington Street intersection. Additionally, as the traffic signal is not part of the proposed project, there is no requirement to analyze the installation of the traffic signal with or without the project.

The letter further summarizes the traffic discussion in the MND and cites excerpts from the traffic analysis that states that there is a greater potential for accidents due to the “chokepoint” that occurs within the subject segment of Atlanta Avenue as well as the existing transit stop and lack of bicycle and pedestrian facilities. The letter states that the MND does not provide evidence of a greater number of accidents at the intersection of Atlanta Avenue and Huntington Street and therefore, the conclusions in the draft MND are not supported. The letter also states that some of the “most heavily traveled roads, highways and Interstates in Southern California have well marked lane reductions without any significant reductions in safety.” Finally, the letter states that the traffic study “provides substantial evidence to the contrary of the MND justification for the project.” The issues related to the traffic study and proposed improvements to traffic circulation and safety are, in the context of the appeal letter, made to point out that the MND does not provide a justification of public necessity for the project. As mentioned previously in this analysis, the role of the CEQA document is to assess and disclose the project’s potential impacts, including beneficial impacts, on the environment and not to provide a justification for the project. However, it should be noted that the MND states that the project would help to minimize accident potential and vehicular conflicts and provide for improved traffic safety and does not assert that the project will result in a decrease of accidents in the project area, although that could be the case. The information in the analysis comes from a Traffic Study prepared for the project by a qualified professional as well as from the City’s Transportation Division. In addition, the letter provides information regarding roads and highways in Southern California without any evidence to support the claim. Furthermore, although the letter does not state that the traffic analysis is inadequate in assessing the project’s impacts on traffic and transportation, the analysis and conclusions in the MND are supported by substantial evidence that the project will not result in significant traffic impacts.

2. *An Environmental Impact Report (“EIR”) should have been prepared because the MND wrongfully fails to consider that part of the Project which involves relocation of Park residents, which relocation, if considered, would require preparation of an EIR.*

The appeal letter asserts that the project involves the relocation of mobile home park residents and that an EIR is required to analyze the relocation. The MND identifies the displacement of people/housing as a potentially significant impact. The impact (i.e. – displacement of people/housing) can be mitigated by requiring relocation of those displaced in accordance with the

Federal Uniform Act. The proposed mitigation measure would ensure that all displaced people would be relocated pursuant to applicable laws, which would be defined and implemented through the required relocation plan. Additionally, the MND identifies several potential relocation alternatives, but since the City cannot negotiate with the mobile home park property owner and affected residents prior to receiving authorization for funding, the actual relocation site, if there is one, is purely speculative at this point. Consequently, the relocation site(s) is not reasonably foreseeable and would be analyzed for potential environmental impacts as a separate project pursuant to CEQA.

To support the issue stated in the appeal letter, the appellant states that the lack of funding “does not prevent the City from performing an analysis of whether there is sufficient room for relocation within the Park for those mobile homes” and that the project description is inadequate. It should be noted that the project description of the MND identifies potential alternatives for relocation of the residents, including on-site relocation, off-site relocation, monetary compensation for those displaced residents that no longer choose to reside in a manufactured home or within the City, and reconfiguration of the existing mobile home park. Because the nature of the relocation is speculative at this point, the actual relocation is not further described in the project description.

The letter states that the City is “deliberately trying to avoid preparing an EIR by segmenting the Project so that it does not include relocation of Park residents.” CEQA requires environmental review of all direct impacts and reasonably foreseeable indirect impacts of a project. The draft MND indicates that relocation of residents is necessary for the acquisition of right-of-way required to construct the project. As such, the draft MND identifies the displacement of the residents as a result of the right-of-way acquisition as a potentially significant impact and provides mitigation to ensure that the impact (displacement of the residents) would be reduced to a less than significant level. The nature of the relocation is speculative and therefore, not reasonably foreseeable. Thus, the impacts of a physical relocation would be analyzed as a separate project in accordance with CEQA. The letter further states that the project will “displace several families and result in the loss of the residential community characteristic of the area will clearly cause substantial adverse effects on human beings.” The letter cites the *Friends of “B” Street vs. City of Hayward* case law to illustrate the point. The MND acknowledges that the displacement of people/housing is a potentially significant impact and proposes mitigation to ensure that impacts would be reduced to a less than significant level. The residential community characteristic of the area will not be lost. Unlike the “B” Street Project cited in the CEQA case, no new uses are proposed and the project does not propose to convert any existing uses to another use nor does it propose a change in the zoning or land use designation of the area. Once the project is complete, the existing uses of the project area as a road and mobile home park would be the same.

3. *An EIR should have been prepared because there is a fair argument that the Project, as mitigated, may have significant impacts on the environment, particularly regarding land use, housing, growth, air quality, drainage, noise and biological resource impacts.*

Land Use

The appeal letter states that the MND incorrectly finds that the project will not conflict with any applicable land use regulation of an agency over the mobile home park. The letter states that the project requires a conditional use permit for the block wall, which is not currently permitted, and would “impose additional burdens and conditions on the Park owner.” This is incorrect. The

Huntington Beach Zoning and Subdivision Ordinance (HBZSO) permits the proposed block wall subject to a conditional use permit. Any conditions of approval adopted for the conditional use permit would be the responsibility of the City as the project applicant. The proposed block wall would not impact any scenic coastal views since it would be replacing an existing wood fence, and more importantly, there are no scenic coastal views in the project area.

The letter states that the MND fails to discuss whether the project complies with the requirements for a coastal development permit. The project's potential impacts on coastal resources and access are analyzed in the Land Use and Planning section of the MND. The MND concludes that the project will not have adverse impacts on coastal resources and does not conflict with the California Coastal Act. The letter also states that the MND fails to analyze potential impacts of the project's displacement under the Ellis Act. However, the City Attorney's office has reviewed the Ellis Act and indicated that it would not apply to the project as proposed. If there are aspects of the project that are determined to be subject to the provisions of the Ellis Act as the project progresses, the project would be required to comply with any applicable requirements of the statute. The letter states that an EIR is required to analyze the scope of the conditional use permit and coastal development permit and impacts from any conditions associated with the permits. A conditional use permit and coastal development permit are required based on aspects of the proposed project (the proposed block wall and development in the coastal zone, respectively), the scope of which has been adequately described in the project description and analyzed, in whole, throughout the draft MND. Project approval would be subject to standard conditions and code requirements. No conditions with the potential to cause significant environmental impacts are recommended or foreseeable at this time. Any conditions of approval with the potential to have significant adverse environmental impacts that are recommended or adopted during consideration of the project's discretionary permits, would need to be analyzed in accordance with CEQA.

The letter states that the MND "wrongfully claims that the Project will not divide an established community" and states that an EIR is required to analyze the impacts to the mobile home park. As stated in the letter, the project would remove eight mobile homes, reconstruct an existing access road/Fire lane and construct a block retaining wall along the project's property line. However, in relation to the existing configuration of the mobile home park, the access road/Fire lane will be reconstructed so that the park configuration will be the same as it currently exists. The block wall will result in a grade separation similar to the grade separation that currently exists. In addition, the letter states that the proposed block wall will impede open access to the street. However, no access points to the mobile home park property will be permanently removed and the block wall will replace an existing wood fence. The project does not propose to physically divide the mobile home park from any current access, infrastructure or services that are currently provided.

Housing

The letter states that the "MND erroneously claims that it cannot make decisions about replacement housing until it receives Federal highway funds, and thus wrongfully puts off for later mitigation in the form of a relocation plan." The letter also asserts that the use of a future study cannot substitute as mitigation for a significant environmental effect in the MND and concludes that an EIR is required. The MND identifies the displacement of people/housing as a potentially significant impact. The impact (i.e. – displacement of people/housing) can be mitigated by requiring relocation of those displaced in accordance with the Federal Uniform Act. The proposed mitigation measure would ensure that all displaced people would be relocated pursuant to applicable laws, which would be

defined and implemented through the required relocation plan. The relocation plan would not defer mitigation rather it would ensure that mitigation of the potentially significant impacts is implemented, thus reducing the impact to a less than significant level.

The MND provides several relocation alternatives, but since the City cannot negotiate with the mobile home park property owner and affected residents prior to receiving authorization for funding, the actual nature of the relocation is purely speculative at this point. Consequently, a relocation site(s) is not reasonably foreseeable and would be analyzed for potential environmental impacts as a separate project pursuant to CEQA.

Growth

The letter states that the project would result in significant growth inducing impacts and that preparation of an EIR is required. The letter also states, and cites CEQA case law (*City of Antioch vs. City Council of the City of Pittsburg*), that a project's conformity with the General Plan "does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects." The MND analyzes the project's potential impacts regarding population growth both directly and indirectly. The project does not propose new uses or development (i.e. – a new residential subdivision or a new commercial shopping center) that would result in direct growth-inducing impacts nor does it result in significant indirect growth-inducing impacts (i.e. – a new road, improvements to or installation of new utilities). Although the project provides for increased capacity on the subject segment of Atlanta Avenue, it would not induce substantial population growth in the area; particularly since the area surrounding the project site is largely built out or entitled for development. In addition, the project would bring the subject segment into compliance with its General Plan classification, which would accommodate population growth already assumed by the General Plan and improve the level of service on Atlanta Avenue compared to existing conditions. The applicability of the cited case law to the proposed project is inconsequential. The project cited involved construction of sewer lines and a new road in an undeveloped area, which would be a catalyst for development in the area. The court determined that the impacts of development that would likely occur as a result of the project were potentially significant and needed to be evaluated in an EIR. The proposed widening of Atlanta Avenue between Huntington Street and Delaware Street would not spur development in the area that would result in substantial population growth. In addition, the case law is cited to point out that a project's conformity with the General Plan does not exempt it from having to prepare an EIR when there is a fair argument that the project would result in significant impacts. In the context of impacts on population growth, for which the case is cited, evidence has not been presented that the project would result in significant growth-inducing impacts such that a fair argument exists to require an EIR.

Air Quality

The letter states that an EIR is required "to study whether the mitigation measures will reduce particulate matter to a less than significant level." The letter misinterprets the MND in the percent reduction attainable for PM₁₀ emissions from construction mitigation. The comment states that the "MND leaps to an unsupported conclusion that a 50% reduction will somehow get rid of all of the 40% excess of particulate matter, not just 50% thereof." The MND concludes that the localized significance threshold (LST) will be exceeded for PM₁₀. The LST for PM₁₀ in Huntington Beach is 14 pounds per day. The project, without mitigation, would result in emissions of 21.8 pounds per day. Although the model cannot quantify the amount of PM₁₀ emissions with mitigation, it is reasonable to assume that a reduction of 50 percent of the total emissions can be achieved with

mitigation. The conclusions regarding air quality impacts in the MND are based on an air quality report prepared for the project by a qualified professional. A 50 percent reduction is documented in air quality data for other projects in the City and in some instances, reductions of greater than 50 percent have been achieved with similar mitigation and compliance with SCAQMD Rule 403. A 50 percent reduction in emissions from implementation of mitigation measure AQ-1 would result in 10.9 pounds per day. This would result in emissions below the established threshold and therefore, the impact would be mitigated to a less than significant level.

The appeal letter states that the MND “erroneously fails to consider the cumulative impact of potential increased traffic on long term emissions resulting from the project.” The letter also asserts that an EIR is required to study the project’s impacts of increased emissions from “additional traffic enabled by the Project.” While the project would provide for additional capacity on the subject segment of Atlanta Avenue, it would not generate additional traffic volumes such that “long term emissions” would be cumulatively significant. Compared to existing conditions, the project may reduce vehicle emissions that would result from traffic congestion and vehicle idling. This reduction may be even greater in the long-term since congestion in the project area would likely worsen as the City approaches buildout. The letter asserts that widening the road will lead to increased traffic on the subject segment of Atlanta Avenue and that the increase in traffic will result in a cumulatively significant impact on air quality. However, no data are provided to support this claim. It is important to clarify that the proposed road widening project would not result in direct increases in traffic that are typically associated with new uses or development that would generate vehicle trips. In addition, the project does not indirectly result in significant traffic impacts since it would not induce growth. After project completion, there may be more vehicles utilizing the subject segment of Atlanta Avenue; however, this would represent a shift in vehicles that are likely already driving in the area and not an increase in new vehicle trips. Therefore, an increase in cumulatively considerable vehicle emissions is not anticipated and impacts, as concluded in the MND, would be less than significant.

Drainage

As discussed in the Hydrology and Water Quality section of the MND, the project would not alter the existing drainage pattern such that significant impacts would result from an increased rate or volume of runoff causing erosion and/or flooding. Although the project does include grading and relocation of an existing fire access lane and drainage catch basin, the mobile home park site would maintain the same drainage pattern that presently exists. In addition, the project will require an erosion control plan and Storm Water Pollution Prevention Plan (SWPPP) to ensure that the project will not cause significant impacts to water quality from runoff during construction. Since the project is not proposing new uses or development that would increase impervious area within the project area or result in additional runoff volumes, post construction drainage would not impair the capability of the existing drainage system of the mobile home park to “adequately contain drainage flows.”

Noise

The appeal letter states that the MND “wrongfully fails to admit that construction noise is a significant impact of the Project, despite its acknowledgement that construction noise levels will increase the ambient noise levels for residents located within 50 feet more than 25 dBA up to 98 dBA....” The letter states that since the impact is concluded to be less than significant, the proposed mitigation measure is not evaluated as to whether it will reduce noise levels to a less than significant level and asserts that an EIR is required to make the determination. Although the project will result in construction noise levels exceeding daytime noise levels established in the City’s Noise Ordinance,

the Noise Ordinance exempts construction noise and therefore, the impact as to whether the project will result in noise levels exceeding established standards is correctly identified as less than significant. In addition, due to the short duration of project construction, the proposed daily construction hours (limited to 7:00 AM to 4:00 PM Monday through Friday) and the intermittent nature of construction noise during various stages of project construction, the project's temporary increase in noise beyond existing levels would be considered less than significant. It should be noted that the conclusions in the draft MND are based on a technical study, prepared by a qualified professional, of the project's noise impacts. Therefore, the MND sufficiently and accurately assesses the project's potential noise impacts pursuant to CEQA. Even though no mitigation is required to reduce impacts to a less than significant level, a mitigation measure is proposed to reduce the annoyance of construction noise on residents within the project area.

Biological Resources

The letter states that the MND "fails to contain a tree replacement plan that would allow for replacement of the mature trees in the Park that will be eliminated." The MND discloses that the project includes the removal of 25 trees within the existing mobile home park property and identifies the City's standard policy to replace the trees at a two to one ratio. The MND also includes a mitigation measure that would protect nesting bird species and ensure compliance with the Migratory Bird Treaty Act (MBTA) during project construction. A plan for replacement of the trees would be included as part of the project's landscaping plan that would be required for the project subject to review and approval by the City. The MND correctly identifies the removal of trees as a potential impact and includes the City's standard condition for tree replacement, which would sufficiently mitigate the impact. Because the replacement of trees is a standard City policy, it does not need to be identified as a mitigation measure. Additionally, specific details of the replacement trees in the draft MND are not necessary to provide an adequate analysis of the project's impacts.

Summary

The letter states that the MND "insists, without any substantive discussion, that the minor mitigation measures proposed will suffice." The analysis in the MND is substantially supported by factual evidence and expert opinion documented in technical reports, existing regulations and applicable codes and weighed against established thresholds of significance. Mitigation measures are recommended for those impacts that were determined to be potentially significant based on the substantive analysis. The recommended mitigation measures are both feasible and adequate to reduce potential impacts to a less than significant level. The letter states that the MND also fails to "admit" significant effects in the areas of land use, housing, population, traffic, drainage and noise impacts. Each of the areas cited have been adequately analyzed and determined to be less than significant or less than significant with mitigation. The comment then cites CEQA case law (*Friends of "B" Street vs. City of Hayward*) to provide an example of a project that adopted a negative declaration wherein the court found that there was substantial evidence that the project would result in significant environmental effects. However, there is no substantial evidence, in light of the whole record (including the comment letter) that the project would result in significant environmental impacts. In addition, the draft MND includes analysis that provides substantial evidence that the project, with mitigation, would result in less than significant environmental impacts. None of the comments in the letter presents substantial evidence such that a fair argument can be made to require an EIR for the project.

ATTACHMENTS:

1. Suggested Findings and Mitigation Measures – MND No. 09-001
2. Appeal letter, received September 27, 2010
3. Mitigated Negative Declaration No. 09-001
4. Response to Comments for Mitigated Negative Declaration No. 09-001 (includes all comments, responses and errata to MND No. 09-001)
5. Zoning Administrator Notice of Action dated September 16, 2010 – MND No. 09-001

SH:HF:MBB:JV:kd

ATTACHMENT NO. 1

SUGGESTED FINDINGS AND MITIGATION MEASURES

MITIGATED NEGATIVE DECLARATION NO. 09-001

SUGGESTED FINDINGS FOR APPROVAL – MITIGATED NEGATIVE DECLARATION NO. 09-001:

1. Mitigated Negative Declaration No. 2009-001 has been prepared in compliance with Article 6 of the California Environmental Quality Act (CEQA) Guidelines. It was advertised and available for a public comment period of 30 days. Comments received during the comment period were considered by the Planning Commission prior to action on the Mitigated Negative Declaration.
2. Mitigation measures avoid or reduce the project's effects to a point where clearly no significant effect on the environment will occur. Mitigation measures address construction noise and pollutant emissions and potential impacts to biological resources, cultural resources and population and housing. Mitigation measures were generally designed to minimize construction related impacts within and surrounding the project area as well as ensure that relocation of the impacted residents complies with the provisions of existing federal laws enacted to ensure that people whose real property is acquired, or who move as a result of projects receiving federal funds, will be treated fairly and equitably.
3. There is no substantial evidence in light of the whole record before the Planning Commission that the project, as mitigated through the attached mitigation measures, will have a significant effect on the environment. The proposed project will widen Atlanta Avenue between Huntington Street and Delaware Street to comply with the primary arterial street classification in the General Plan Circulation Element. As defined in the General Plan, the primary arterial street classification provides sidewalk, curb, gutter, a bike lane, and two through lanes in each direction of travel, separated by a striped median. Currently, the subject segment of Atlanta Avenue provides one lane in each direction, a striped median, and on-street parking along a portion of the north side of the street. Additional beneficial impacts include construction of a new ADA accessible sidewalk and Class II bike lane along the south side of Atlanta Avenue. The subject segment of Atlanta Avenue does not currently have a sidewalk or designated bike lane. Because the current roadway narrows at the intersection of Huntington Street and Atlanta Avenue, traffic flow is often impeded when the bus makes stops at this location. In addition, bicyclists are currently forced into travel lanes due to the roadway narrowing and the existing transit stop configuration. The project would improve the current conditions with the installation of the proposed improvements and would improve traffic safety for pedestrians, bicyclists and transit users traveling within the project area. Finally, all potential adverse impacts resulting from construction of the project can be adequately mitigated to a less than significant level.

MITIGATION MEASURES FOR ENVIRONMENTAL CONCERNS:

1. Upon Federal authorization to proceed with right-of-way acquisition, the City shall commence with acquisition and relocation in accordance with the provisions of the Federal Uniform Act. Notification to and discussions with the impacted residents shall occur as soon as feasibly possible pursuant to the Federal Uniform Act. The City shall ensure that a relocation plan is prepared prior to final project plans and relocation is implemented in accordance with the Federal Uniform Act.
2. The City shall require, by contract specifications, implementation of the following measures:
 - a. All work shall be done in accordance with the "GREENBOOK" Standard Specifications for Public Works Construction, 2009 Edition, as written and promulgated by Public Works Standards, Inc.
 - b. The construction contractor shall not discharge smoke, dust, equipment exhaust, or any other air contaminants into the atmosphere in such quantity as will violate any federal, State or local regulations. (Greenbook Section 7-8.2)
 - c. The contractor shall comply with Caltrans' Standard Specification Section 7-1.01F and Section 10 of Caltrans' Standard Specifications (1999).
 - d. The contractor shall apply water or dust palliative to the site and equipment as frequently as necessary to control fugitive dust emissions.
 - e. The contractor shall spread soil binder on any unpaved roads used for construction purposes and all project construction parking areas.
 - f. The contractor shall wash trucks as they leave the right-of-way as necessary to control fugitive dust.
 - g. The contractor shall properly tune and maintain construction equipment and vehicles and use low-sulfur fuel in all construction equipment as provided in the California Code of Regulations Title 17, Section 93114.
 - h. The contractor shall develop a dust control plan documenting sprinkling, temporary paving, speed limits, and expedited re-vegetation of disturbed slopes as needed to minimize construction impacts to adjacent uses and residents.
 - i. The contractor shall locate equipment and materials storage as far away from residential as practical.
 - j. The contractor shall establish environmentally sensitive areas for receptors within which construction activities involving extended idling of diesel equipment would be prohibited to the extent feasible.
 - k. The contractor shall use track out reduction measures such as gravel pads at project access points to minimize dust and mud deposits on roads affected by construction traffic.

- l. The contractor shall require that all transported loads of soil and wet materials shall be covered prior to transport, or provide adequate freeboard to reduce PM₁₀ and deposition of particulate matter during transportation.
 - m. The contractor shall route and schedule construction traffic to avoid peak travel times as much as possible to reduce congestion and related air quality impacts caused by idling along local roads.
 - n. The contractor shall install landscaping as soon as practical after grading to reduce windblown particulate in the area.
 - o. The contractor shall implement a street sweeping program with Rule 1186-compliant PM₁₀-efficient vacuum units on at least a 14-day frequency.
 - p. The contractor shall abate dust nuisance by cleaning, sweeping and spraying with water, or other means as necessary. (Greenbook Section 7-8.1)
 - q. The contractor shall provide a self-loading motorized street sweeper equipped with a functional water spray system. The sweeper shall clean all paved areas within the work site and all pave haul routes at least once a day. (Greenbook Section 7-8.1)
3. Prior to the onset of ground disturbance activities, the project developer shall implement the following mitigation measure which entails nesting surveys and avoidance measures for sensitive nesting and MBTA species, and appropriate agency consultation:
 - a. Vegetation removal and construction shall occur between September 1 and January 31 whenever feasible.
 - b. Prior to any construction or vegetation removal between February 15 and August 31, a nesting survey shall be conducted by a qualified biologist of all habitats within 500 feet of the construction area. Surveys shall be conducted no less than 14 days and no more than 30 days prior to commencement of construction activities and surveys will be conducted in accordance with California Department of Fish and Game (CDFG) protocol as applicable. If no active nests are identified on or within 500 feet of the construction site, no further mitigation is necessary. A copy of the pre-construction survey shall be submitted to the City of Huntington Beach. If an active nest of a MBTA protected species is identified onsite (per established thresholds), a 250-foot no-work buffer shall be maintained between the nest and construction activity. This buffer can be reduced in consultation with CDFG and/or U.S. Fish and Wildlife Service.
 - c. Completion of the nesting cycle shall be determined by a qualified ornithologist or biologist.
4. The City shall require by contract specifications the following measures:
 - a. Ensure that all construction equipment has sound-control devices.
 - b. Prohibit equipment with un-muffled exhaust.
 - c. Site staging of equipment as far away from sensitive receptors as possible.

- d. Limit idling of equipment whenever possible.
 - e. Notify adjacent residents in advance of construction work.
 - f. Educate contractors and employees to be sensitive to noise impact issues and noise control methods.
 - g. Install temporary acoustic barriers between the mobile home removal and construction activities and the row of mobile homes to remain closest to Atlanta Avenue. Acoustical barriers should provide a Sound Transmission Class Rating of 25 and should be situated in a manner to provide an uninterrupted continuous barrier between all mobile home removal and road construction activities. During the mobile home removal activities, the barriers should stretch from the east edge of the property to the west and zig-zag between homes where necessary. After removal of the mobile homes and prior to construction of the drive aisle within the mobile home property, the barrier can be straightened to stretch more directly from the east property line to the west property line.
5. If cultural resources are encountered during construction-related ground-disturbing activities, all construction personnel shall be informed of the need to stop work on the project site in the event of a potential find, until a qualified archaeologist has been provided the opportunity to assess the significance of the find and implement appropriate measures to protect or scientifically remove the find. Construction personnel shall also be informed that unauthorized collection of cultural resources is prohibited. If archaeological resources are discovered during ground-disturbing activities, all construction activities within 50 feet of the find shall cease until the archaeologist evaluates the significance of the resource. In the absence of a determination, all archaeological resources shall be considered significant. If the resource is determined to be significant, the archaeologist shall prepare a research design and recovery plan for the resources.
6. If human remains are discovered during construction or any earth-moving activities, the County Coroner must be notified of the find immediately. No further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. If the human remains are determined to be prehistoric, the Coroner must notify the Native American Heritage Commission (NAHC), which will determine and notify a Most Likely Descendent (MLD). The designated MLD may make recommendations to the City for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

HK&C

HART, KING & COLDREN

Boyd L. Hill
bhill@hkclaw.com

September 27, 2010

Our File Number: 36608.005/4840-1342-0039v.1

VIA HAND DELIVERY

City of Huntington Beach Planning Commission
2000 Main Street
Huntington Beach, CA 92648
c/o Scott Hess, Director of Planning
Planning and Building Department

RECEIVED

SEP 27 2010

Dept. of Planning
& Building

Re: **Atlanta Avenue Widening Project ("Project")**
Appeal of Zoning Administrator Approval of
Mitigated Negative Declaration ("MND") No. 2009-001

Dear Commissioners:

We represent the owner of the Pacific Mobilehome Park, whose property would need to be taken for the proposed Project. This letter constitutes the Park Owner's appeal of the Zoning Administrator's approval of the City's MND for the Project. The appeal fee in the amount of \$2,002 is enclosed herewith. The grounds for appeal are as follows:

1. There is no substantial evidence of public necessity for the Project which involves the taking of private Park property on which resident mobile homes are located.
2. An Environmental Impact Report ("EIR") should have been prepared because the MND wrongfully fails to consider that part of the Project which involves relocation of Park residents, which relocation, if considered, would require preparation of an EIR.
3. An EIR should have been prepared because there is a fair argument that the Project, as mitigated, may have significant impacts on the environment, particularly regarding land use, housing, growth, air quality, drainage, noise and biological resources impacts.

THE MND CONTAINS NO SUBSTANTIAL EVIDENCE OF PROJECT PUBLIC NECESSITY

In order for the Project which encompasses the taking of private Park property to be lawful, the City must establish the public necessity for the Project. (See Code Civ. Proc., 1240.030) The MND does not point to any anticipated Park change in use that will justify building out the adjacent street to the maximum general plan width. In addition, the MND candidly admits that there is no current funding source that would allow the Project to be built within the near future.

A Professional Law Corporation
200 Sandpointe, Fourth Floor, Santa Ana, California 92707
Ph 714.432.8700 | www.hkclaw.com | Fx 714.546.7457

ATTACHMENT NO. 2.1



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The MND alleges that the Project is made necessary by the previous approval of the mixed use Pacific City Development just west of the Project, which Development widened Atlanta Avenue to its ultimate location, leaving an alleged "choke point" along Atlanta Avenue where the Park is located.

According to the MND, the existing 26 foot offset in the south curb alignment at the intersection of Atlanta Avenue and Huntington Street "requires additional motorist decisions" and creates "a greater potential for merging accidents and motorists inadvertently driving vehicles off of the street."

Neither the MND nor the traffic study attached thereto provide evidence to support this conclusion regarding the alleged safety issues pertaining to the existing south curb offset. The MND provides no evidence of a greater number of accidents at the intersection of Atlanta Avenue and Huntington Street, no evidence of a greater number of vehicles running off the street, and no evidence of traffic backups resulting from the south curb offset. Indeed, some of the most heavily traveled roads, highways and interstates in Southern California have well marked lane reductions without any significant reductions in safety.

The traffic study attached to the MND provides substantial evidence to the contrary of the MND justification for the Project. The traffic study demonstrates that regardless of the Project there will be significant traffic obstruction at the intersection of Atlanta Avenue and Huntington Street unless there is a traffic signal light placed at that intersection. With a traffic signal light, traffic obstruction at the intersection is avoided. The traffic study glaringly fails to study whether a signal light without the Project would relieve any existing traffic obstruction, although it is clear from the traffic study that the Project without a traffic signal light will not.

Therefore, the MND does not provide evidence of the public necessity for the proposed Project and its relocation of Park resident mobile homes. Instead it provides evidence that the Project is both not needed and not presently viable.

THE MND CONTAINS AN INADEQUATE PIECEMEAL PROJECT DESCRIPTION

The California Environmental Quality Act ("CEQA," Pub. Res. Code 21000 et seq.) is a comprehensive scheme designed to provide long-term protection to the environment. CEQA is to be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (See *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112)

An EIR is the heart of CEQA. Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment but also informed self-government. (See *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn 2)

A negative declaration is proper only if the public agency determines based on an initial study



HART, KING & COLDREN

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that there is no substantial evidence that the project may have a significant effect on the environment. (Pub. Res. Code, § 21080 (c) (1) & (d); 14 Cal. Code Regs., §§ 15063 (b) (2), 15070 (a)) An EIR must be prepared whenever there is a fair argument on the basis of substantial evidence that the project will have significant environmental impact. (See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75)

A proper initial study requires that "all phases of project planning, implementation and operation ... be considered." (14 Cal. Code Regs., § 15063 (a) (1)). Indeed, an accurate, stable and finite project description is the sine qua non of informative and legally adequate environmental review. (See *Burbank-Glendale-Pasadena Airport v. Hensler* (1991) 233 Cal.App.3d 577, 592)

An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity. A narrow view of a project could result in the fallacy of division, that is, overlooking its cumulative impact by separately focusing on isolated parts of the whole. (See *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143)

For these reasons, CEQA mandates that environmental considerations not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have a significant impact. (See *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452) CEQA defines the term "project" broadly to include the whole of an action, direct and indirect impacts on the environmental, and any subsequent discretionary actions of the government agencies. (See *McQueen v. Board of Directors, supra*, 202 Cal.App.3d at 1143)

The MND describes the Project as the widening of the south side of Atlanta Avenue between Huntington Street and Delaware Street to comply with the primary arterial street classification in the City's General Plan Element. Currently there is one lane of traffic on the south side. The Project will add an additional lane, a bike lane and a sidewalk along the south side of Atlanta Avenue.

The MND lists the scope of the Project to encompass condemnation of Park land, removal and relocation of eight mobile homes, clearing and grubbing of the land, construction of an asphalt concrete roadway, striping, curb, gutter, sidewalk, an 8-foot tall concrete block wall atop a retaining wall possibly 7-feet in height, landscaping that includes the removal of 25 mature trees, reconstruction of a circulation road within the Park, construction of two emergency access gates within the Park, utility and fire hydrant relocation, relocation of a drainage catch basin, relocation of utility poles and overhead lines.

The MND states that the Project will require approval of a conditional use permit for the block wall and a coastal development permit. However, the MND makes no attempt to describe any potential conditions for approval of a conditional use permit or coastal development permit.

Despite its acknowledgement that the Project will require relocation of eight mobile homes, the MND inappropriately claims that the City cannot conduct environmental review for the relocation

ATTACHMENT NO. 2.3



HART, KING & COLDREN

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impacts because the City cannot yet determine whether relocation from the Park will be required because the City has not yet obtained funding for the Project.

The City's reasoning here is faulty. The lack of current funding for the Project, while relevant to whether there is public necessity for the Project, does not prevent the City from performing an analysis of whether there is sufficient room for relocation within the Park for those mobile homes that will be moved. Therefore the MND description of the Project is inadequate and incomplete.

It appears that the City is deliberately trying to avoid preparing an EIR by segmenting the Project so that it does not include relocation of Park residents. Under CEQA, there is a mandatory finding of significance if the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly. (14 Cal. Code Regs., § 15065)

A road widening project that will displace several families and result in the loss of the residential community characteristic of the area will clearly cause substantial adverse effects on human beings. (See *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1003) Therefore, by improperly segmenting or piece-mealing the Project, the City violates CEQA. An EIR rather than the MND should have been prepared.

THERE IS FAIR ARGUMENT OF SIGNIFICANT PROJECT IMPACTS ON THE ENVIRONMENT

A mitigated negative declaration is appropriate only if project revisions avoid or mitigate the potentially significant effects that are identified or that should have been identified in the initial study to the point where no significant effect on the environment would occur. (See Pub. Res. Code § 21064)

Under CEQA a significant effect on the environment means a substantial or potentially substantial adverse change in the environment. (Pub. Res. Code, § 21068) Appendix G of the CEQA Guidelines provides a checklist of significant environmental impacts that an agency should evaluate for a project in its initial study. The initial study checklist is included in the MND. The MND initial study checklist contains several erroneous and/or factually unsupported findings regarding significant environmental impacts and/or mitigation thereof:

1. Land Use and Planning.

a. Conflict with Existing Land Use Regulation. The MND incorrectly finds that the Project will not conflict with any applicable land use regulation of an agency over the Park.

The MND expressly states that the City will need to issue a new conditional use permit for the large (possibly as high as 15 feet) block wall that will be part of the Project. Such a wall is not currently permitted under the Park conditional use permit and would impose additional burdens and conditions on the Park Owner. However, the MND fails to discuss what conditions

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might be involuntarily imposed on the Park Owner and the impacts of those conditions on the existing conditional use permit. The MND also fails to address any impacts of a 15 foot wall ore removal of existing mature trees on the scenic coastal views of nearby residents.

The MND also reveals that it will need an additional coastal development permit but fails to discuss whether the Project complies under the requirements for such a permit and fails to address the potential impact of Project's displacement of housing under the Ellis Act. Thus, an EIR is needed to analyze the scope of the new conditional use permit and coastal development permit required for the Project, including the impact of any conditions that would be associated with such permits.

c. Divide an Established Community. The MND also wrongfully claims that the Project will not divide an established community. The MND clearly will remove 8 mobile homes from the Park and thus divide them from the Park community, reconfigure an access road within the Park, and impose a block wall that will result in grade separation and impede open access to the street. These are definite physical changes to the environment that will divide and segment the established Park community. Therefore, an EIR is needed to analyze the Project impacts to the Park community.

2. Population and Housing.

a. Induce Substantial Population Growth. The MND erroneously claims that the City need not study the growth inducing impact of the street widening because it is within growth projected by the City's General Plan. The growth inducing impacts of a street widening project must be studied and discussed in an EIR regardless of whether they are anticipated by the City's General Plan. (See *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1332 ["conformity with the general plan for the area ... does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects"]) Therefore, an EIR is required to evaluate the Project's growth inducing impacts.

b/c. Need for Replacement Housing. The MND erroneously claims that it cannot make decisions about replacement housing until it receives Federal highway funds, and thus wrongfully puts off for later mitigation in the form of a relocation plan. There is nothing in the lack of present funding that prevents the City from determining the potential place and type of relocation housing at the current time. The use of a future study or plan cannot substitute as mitigation for a significant environmental effect in the MND. (See *Sunstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307) Thus, an EIR is required that includes a relocation plan.

4. Hydrology and Water Quality.

c. Alter Drainage Pattern. The MND erroneously claims that the Project will not substantially alter the existing drainage pattern of the area despite its admission in section

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4.a. that the existing storm drain at the south side of Atlanta Avenue will be relocated and that there will need to be reconstruction of the Park on-site drive aisle and a grade change. Grade and location changes can substantially alter the ability of the existing on-site drainage system to adequately contain drainage flows. Those impacts to the Park drainage system should be studied in an EIR.

5. Air Quality. The MND makes unsupported assumptions about mitigation of short term air quality impacts and erroneously fails to consider long term air quality impacts of the Project.

a/b. Violate Air Standards/Sensitive Receptors. With respect to the short term impacts, the MND acknowledges that construction of the Project will cause significant air quality impacts. The MND admits that the mitigation measures, if completely successful "can" at the maximum, only result in a 50 percent reduction in particulates matter. The MND then leaps to an unsupported conclusion that a 50 percent reduction will somehow get rid of all of the 40% excess of particulate matter, not just 50% thereof. An EIR is required to study whether the mitigation measures will reduce particulates matter to a less than significant level.

e. Cumulative Increase in Emissions. The MND erroneously fails to consider the cumulative impact of potential increased traffic on long term emissions resulting from the Project. An EIR is required to study the impact of increased future emissions from additional traffic enabled by the Project.

7. Biological Resources. The MND improperly fails to contain a tree replacement plan that would allow for replacement of the mature trees in the Park that will be eliminated.

10. Noise. The MND wrongfully fails to admit that construction noise is a significant impact of the Project, despite its acknowledgement that construction noise levels will increase the ambient noise levels for residents located within 50 feet more than 25 dBA up to 98 dBA, an intolerable amount despite what the City ordinance allows during daytime. The mitigation measures suggested thus are not evaluated as to whether they bring the noise levels to a less than significant level. An EIR is required to determine mitigation measures that will reduce Project noise for Park residents to a less than significant level.

18. Mandatory Findings of Significance. While the MND admits to all three mandatory findings of significance, the MND insists, without any substantive discussion, that the minor mitigation measures proposed will suffice. The MND also fails to admit to all of the significant effects, including land use, housing, population, traffic, drainage and noise impacts.

In essence, the Project is similar in many respects to the project in the *Friends of "B" Street* case where an EIR was required:

In the present case the adoption of a negative declaration was an abuse of discretion. The city's initial study revealed that the short



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term effects of the "B" Street Project include increased dust and auto exhaust, disruption of business during the construction of the project, and increased bank erosion and possible loss of wildlife habitat along San Lorenzo Creek during construction of a bridge. Among the long term effects of the project are increased traffic, increased noise, paving and removal of grass and garden areas, the removal of vegetation, landscaping, shrubs and hedgerows, the removal of 153 mature trees (some more than 80 years old) which presently line the street, and the elimination of on-street parking on "B" Street and Center Street, aggravating present parking problems that already exist in the area. Two neighborhood stores would be removed, and 12 families would be displaced due to the removal of residential structures. The project would result in the loss of the residential community characteristic of the area, and a decrease in residential property values. The residential desirability of adjacent properties would be adversely affected by the increased noise and exposure to traffic, reduced setbacks of the structures from the street, and the loss of on-street parking. The conversion of single-family dwellings to commercial or multi-family use would be accelerated. The project would also result in a decreased visual or aesthetic quality of the area due to the removal of the trees, grass and garden areas, and the decrease in the setback of the structures from the street. This evidence indicated that a finding of significant environmental effect was mandatory. (Cal. Admin. Code, tit. 14, § 15082.) The trial court correctly determined that there was substantial evidence that the "B" Street Project might have a significant environmental effect. (*Friends of "B" Street v. City of Hayward, supra*, 106 Cal.App.3d at 1003)

[continued on next page]



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In conclusion, the failure of the MND to recognize the numerous significant environmental impacts resulting from relocation of residents, road widening, alteration of drainage and noise and the failure of the MND to sufficiently mitigate impacts resulting from the Project require the preparation of an EIR. The MND fails to analyze the whole of the Project and demonstrates that the Project is not necessary or viable at this time. An EIR should be prepared to appropriately analyze the Project.

Sincerely,

HART, KING & COLDREN

Boyd L Hill

BLH/dr

Enclosure: \$2,002 appeal fee

cc: Mark Hodgson
Robert S. Coldren
Fred Wilson, City Administrator

ENVIRONMENTAL CHECKLIST FORM
CITY OF HUNTINGTON BEACH
PLANNING & BUILDING DEPARTMENT
ENVIRONMENTAL ASSESSMENT NO. 09-001

- 1. PROJECT TITLE:** Atlanta Avenue Widening Project
Concurrent Entitlements: Coastal Development Permit No. 2009-001; Conditional Use Permit No. 2009-019
- 2. LEAD AGENCY:** City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
- Contact:** Jennifer Villasenor, Acting Senior Planner
Phone: (714) 374-1661
- 3. PROJECT LOCATION:** 80 Huntington Street (south side of Atlanta Avenue, between Huntington Street and Delaware Street) (*Refer to Attachment No. 1*)
- 4. PROJECT PROPONENT:** City of Huntington Beach
Public Works Department
2000 Main Street
Huntington Beach, CA 92648
Contact: Jonathan Claudio, Senior Civil Engineer
(714) 374-5380
- 5. GENERAL PLAN DESIGNATION:** Atlanta Avenue: Right-of-Way
Manufactured Home Park: Residential – Medium High Density – 15 units/acre (RM-15)
- 6. ZONING:** Atlanta Avenue: Right-of-Way
Manufactured Home Park: Residential Manufactured Home Park – Coastal Zone overlay (RMP-CZ)
- 7. PROJECT DESCRIPTION** (Describe the whole action involved, including, but not limited to, later phases of the project, and secondary support, or off-site features necessary for implementation):

The City proposes to widen the south side of Atlanta Avenue, between Huntington Street and Delaware Street, to comply with the primary arterial street classification in the General Plan Circulation Element. The General Plan Circulation Element designates Atlanta Avenue as a primary arterial street, both in the current and in the 2010 Circulation Plan of Arterial Highways/County Master Plan of Arterial Streets and Highways (MPAH). As defined in the General Plan, the primary arterial street classification provides sidewalk, curb, gutter, a bike lane, and two through lanes in each direction of travel, separated by a striped

median. Currently, the subject segment of Atlanta Avenue provides one lane in each direction, a striped median, and on-street parking along a portion of the north side of the street.

The mixed-use Pacific City project located immediately west of the subject site has recently widened Atlanta Avenue between 1st Street and Huntington Street to its ultimate location. This has resulted in the segment of Atlanta Avenue between Huntington Street and Delaware Street as the lone remaining “choke point” on Atlanta Avenue between 1st Street and Beach Boulevard. The existing “choke point” creates a 26 ft. (approx.) offset in the south curb alignment at the intersection of Atlanta Avenue and Huntington Street. Since the narrowing roadway requires motorists traveling eastbound on Atlanta Avenue to make additional motorist decisions, there is a greater potential for merging accidents and motorists inadvertently driving vehicles off of the street. The proposed street widening would alleviate this “choke point” and help to minimize accident potential and provide for improved traffic safety.

Proposed Street Improvements

The proposed street improvements will provide an additional through lane and bike lane in each direction of travel. In addition, the project’s scope of work includes clearing and grubbing, the construction of asphalt concrete roadway, striping, curb, gutter, sidewalk, an 8-foot tall concrete block wall atop a variable height (7 ft. max.) retaining wall, landscaping (including the removal or relocation of 25 trees within the existing mobile home park), reconstruction of a 26 ft. wide drive aisle (circulation road) and two emergency access gates within the mobile home park, and utility and fire hydrant adjustment and relocation, including relocation of an existing drainage catch basin at the corner of Delaware Street and Atlanta Avenue. In addition, five utility poles and overhead lines currently located within the existing southerly parkway area will require relocation. In accordance with the City’s franchise agreements, the utility companies will be responsible for the relocation and/or adjustment of their facilities. It should be noted that the project requires approval of a coastal development permit for development in the coastal zone and a conditional use permit for the proposed retaining wall.

Acquisition of Right-of-Way

The existing public street right-of-way along the subject segment of Atlanta Avenue varies from 60 ft. wide (30 ft. north and 30 ft. south of street centerline) at Huntington Street to 85 ft. wide (55 ft. north and 30 ft. south of street centerline) at Delaware Street. Consequently, construction of the proposed street improvements will require the acquisition of an additional 25 feet of public street right-of-way south of the centerline of Atlanta Avenue (i.e., the public street right-of-way is proposed at 55 ft. south of street centerline). The additional 25 feet of right-of-way would come from a 25 feet wide by 630 feet long (approx.) strip of land from the Pacific Mobile Home Park located immediately south of Atlanta Avenue. The acquisition of the 25 feet would impact eight manufactured/mobile homes (Unit Nos. 101, 102, 201, 301, 302, 401, 501, and 502) within the park. The impacted residents would need to be relocated pursuant to the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“The Uniform Act”). However, the relocation site is not known at this time since many steps are required before the City can begin relocation. That is, because the City anticipates receiving and using federal funds to construct the project, the City first has to obtain Federal authorization to proceed with the right-of-way phase before it can begin negotiating with the mobile home park owner to acquire the necessary right-of-way. The federal authorization to proceed cannot be granted until environmental review for the project is completed pursuant to the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). After completion of environmental review and once the authorization to proceed with the right-of-way phase is granted, negotiations to acquire the right-of-way can begin. If the City successfully negotiates land acquisition with the park owner, relocation of the residents would occur at that time. Potential relocation alternatives include on-site relocation, off-site relocation to another park or conventional dwelling unit, or a monetary offer for residents who no longer choose to own a manufactured/mobile home. On-site relocation could occur by relocating the residents to an existing available space within the park or through reconfiguration of the park to include an adjacent

undeveloped area along Delaware Street. Since the City cannot negotiate the relocation alternatives with the impacted residents until the aforementioned steps (i.e. – environmental review, federal authorization, land acquisition) are completed, it is uncertain where the impacted residents would be relocated. Therefore, the physical relocation is not reasonably foreseeable. At such time that the relocation site(s) can be determined, the relocation would be subject to environmental review pursuant to CEQA.

Construction Scenario

It is estimated that project construction would take approximately six months. Once a contract is awarded, the contractor would provide a construction schedule to the City for review and approval. Although the entire project area has been previously graded, it is estimated that approximately 1,300 cubic yards of export soil and 1,800 cubic yards of import soil will be required to transition the existing grade of Atlanta Avenue, which slopes from west to east, to the “new” grades of the widened road and the reconstructed on-site improvements at the Pacific Mobile Home Park property.

- 8. SURROUNDING LAND USES AND SETTING:** The project site consists of the existing Atlanta Avenue right-of-way from Huntington Street to Delaware Street and the northern portion of the Pacific Mobile Home Park, a 256-space mobile home park developed in the late 1950s. The project site is approximately 2.6 acres in area. The existing Atlanta Avenue right-of-way consists of approximately 1.57 acres of the project area and the existing mobile home park property is the remaining 1.03 acres of the project area.

The project area is bounded by single- and multi-family residential uses to the north and east. Although the project site includes the northern portion of the Pacific Mobile Home Park, the majority of the approximately 18.24-acre park, is located immediately south of the street widening site and the Waterfront Hilton Hotel is further south beyond the mobile home park. The Pacific City mixed use project site is located west of the project area.

- 9. OTHER PREVIOUS RELATED ENVIRONMENTAL DOCUMENTATION:** Caltrans-approved Preliminary Environmental Assessment (PES) Form (January, 2009)

- 10. OTHER AGENCIES WHOSE APPROVAL IS REQUIRED (AND PERMITS NEEDED) (i.e. permits, financing approval, or participating agreement):**

- ◆ Caltrans
- ◆ Federal Highway Administration

The proposed project is anticipated to receive Federal Highway Administration (FHWA) funding to construct the project. The City has been working with Caltrans to obtain the funding and has already received authorization to proceed with the engineering phase.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" or is "Potentially Significant Unless Mitigated," as indicated by the checklist on the following pages.

- | | | |
|--|--|---|
| <input type="checkbox"/> Land Use / Planning | <input type="checkbox"/> Transportation / Traffic | <input type="checkbox"/> Public Services |
| <input checked="" type="checkbox"/> Population / Housing | <input checked="" type="checkbox"/> Biological Resources | <input type="checkbox"/> Utilities / Service Systems |
| <input type="checkbox"/> Geology / Soils | <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Aesthetics |
| <input type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Hazards and Hazardous Materials | <input checked="" type="checkbox"/> Cultural Resources |
| <input checked="" type="checkbox"/> Air Quality | <input type="checkbox"/> Noise | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Agriculture Resources | <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Mandatory Findings of Significance |

DETERMINATION

(To be completed by the Lead Agency)

On the basis of this initial evaluation:

I find that the proposed project **COULD NOT** have a significant effect on the environment, and a **NEGATIVE DECLARATION** will be prepared.

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project. **A MITIGATED NEGATIVE DECLARATION** will be prepared.

I find that the proposed project **MAY** have a significant effect on the environment, and an **ENVIRONMENTAL IMPACT REPORT** is required.

I find that the proposed project **MAY** have a "potentially significant impact" or a "potentially significant unless mitigated impact" on the environment, but at least one impact (1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and (2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An **ENVIRONMENTAL IMPACT REPORT** is required, but it must analyze only the effects that remain to be addressed.

I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or **NEGATIVE DECLARATION** pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or **NEGATIVE DECLARATION**, including revisions or mitigation measures that are imposed upon the proposed project, **nothing further is required.**

Signature *Jennifer Villaseña*

Printed Name Jennifer Villaseña

Date 8/5/10

Title Acting Senior Planner

EVALUATION OF ENVIRONMENTAL IMPACTS:

1. A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to the project. A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards.
2. All answers must take account of the whole action involved. Answers should address off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
3. "Potentially Significant Impact" is appropriate, if an effect is significant or potentially significant, or if the lead agency lacks information to make a finding of insignificance. If there are one or more "Potentially Significant Impact" entries when the determination is made, preparation of an Environmental Impact Report is warranted.
4. "Potentially Significant Impact Unless Mitigated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVIII, "Earlier Analyses," may be cross-referenced).
5. Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). Earlier analyses are discussed in Section XVIII at the end of the checklist.
6. References to information sources for potential impacts (e.g., general plans, zoning ordinances) have been incorporated into the checklist. A source list has been provided in Section XVIII. Other sources used or individuals contacted have been cited in the respective discussions.
7. The following checklist has been formatted after Appendix G of Chapter 3, Title 14, California Code of Regulations, but has been augmented to reflect the City of Huntington Beach's requirements.

SAMPLE QUESTION:

	<i>Potentially Significant Impact</i>	<i>Potentially Significant Unless Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
<p><i>ISSUES (and Supporting Information Sources):</i></p> <p><i>Would the proposal result in or expose people to potential impacts involving:</i></p> <p><i>Landslides? (Sources: 1, 6)</i></p> <p><i>Discussion: The attached source list explains that 1 is the Huntington Beach General Plan and 6 is a topographical map of the area which show that the area is located in a flat area. (Note: This response probably would not require further explanation).</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

ISSUES (and Supporting Information Sources):

Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
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I. LAND USE AND PLANNING. Would the project:

- a) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? (Sources:1,2,5)

Discussion: The proposed project involves the widening of Atlanta Avenue from Huntington Street to Delaware Street and associated improvements. The General Plan Circulation Element designates Atlanta Avenue as a primary arterial street, both in the current and in the 2010 Circulation Plan of Arterial Highways. As defined in the General Plan, the primary arterial street classification provides sidewalk, curb, gutter, a bike lane, and two through lanes in each direction of travel, separated by a striped median. Currently, the subject segment of Atlanta Avenue provides one lane in each direction, a striped median, and on-street parking along a portion of the north side of the street. The proposed project would bring the subject segment of Atlanta Avenue into compliance with its General Plan classification as well as the Orange County Master Plan of Arterial Highways (MPAH). The project is also consistent with the 2008 Regional Transportation Plan (RTP) of the Southern California Association of Governments (SCAG).

Other improvements of the project include a concrete block retaining wall, which would replace an existing wood fence separating Atlanta Avenue from the existing mobile home park south of Atlanta Avenue. The concrete block retaining wall requires a conditional use permit pursuant to the Huntington Beach Zoning and Subdivision Ordinance (HBZSO), which is part of the project’s entitlement request and analyzed as part of the scope of the project within this document. The project also requires acquisition of an additional 25 feet of right-of-way south of Atlanta Avenue. The right-of-way would be acquired from the existing mobile home park immediately south of Atlanta Avenue and would result in the removal of eight homes from their current location in the park. The residents of the eight homes would be required to be relocated pursuant to the Federal Uniform Act and is further discussed under the Population and Housing section of this document. Finally, as the project site is located in the coastal zone, a coastal development permit is required subject to the requirements of Chapter 245 of the HBZSO. The coastal development permit is required to ensure that the project conforms to the California Coastal Act and would not be detrimental to coastal resources and access. As discussed throughout the document, the project would not cause significant environmental impacts to coastal resources and would be improving coastal access by providing a sidewalk and Class-II bike lane and improving an existing Orange County Transit Authority (OCTA) bus stop.

After acquisition of 25 feet of the existing mobile home park for right-of-way, the resulting mobile home park would remain in compliance with the applicable development standards of the HBZSO such as lot size and setbacks. In addition, the resulting density of the mobile home park would be consistent with its General Plan land use designation of Residential Medium Density – 15 units per acre, even if all of the residents choose to relocate within the existing mobile home park.

Based on the analysis above, the project would not conflict with any land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental effect. Less than significant impacts would occur.

- b) Conflict with any applicable habitat conservation plan

ISSUES (and Supporting Information Sources):	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
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or natural community conservation plan? (Sources:1)

Discussion: The project would not conflict with any applicable habitat conservation plan or natural community conservation plan as no such plan is adopted for the City of Huntington Beach. No impacts would occur.

- | | | | | |
|---|--------------------------|--------------------------|-------------------------------------|--------------------------|
| c) Physically divide an established community?
(Sources:4) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|-------------------------------------|--------------------------|

Discussion: Although the project involves a street widening project, it would not result in the division of an established community. The project would widen Atlanta Avenue between Huntington Street and Delaware Street to its designated classification and improve circulation in the project area. In order to accomplish the proposed project, acquisition of 25 feet of additional right-of-way is required from the existing mobile home park immediately south of Atlanta Avenue. Upon completion of the construction, the mobile home park would have access and drive aisles in the same location as prior to construction and would not be physically divided. Less than significant impacts would occur.

II. POPULATION AND HOUSING. Would the project:

- | | | | | |
|--|--------------------------|--------------------------|-------------------------------------|--------------------------|
| a) Induce substantial population growth in an area, either directly (e.g., by proposing new homes and businesses) or indirectly (e.g., through extensions of roads or other infrastructure)? (Sources:4,5) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|--------------------------|-------------------------------------|--------------------------|

Discussion: The project does not include new residential units or commercial and industrial uses that would induce substantial population growth. The project proposes to widen Atlanta Avenue and therefore would be increasing capacity for the road and indirectly allow for population growth. However, the widening project would bring the subject segment of Atlanta Avenue into compliance with its General Plan Circulation Element designation and would not induce growth that was not previously accounted for in the General Plan. Impacts would be less than significant.

- | | | | | |
|---|--------------------------|-------------------------------------|--------------------------|--------------------------|
| b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? (Sources:4,5) | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|-------------------------------------|--------------------------|--------------------------|

Discussion: See discussion under c.

- | | | | | |
|---|--------------------------|-------------------------------------|--------------------------|--------------------------|
| c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? (Sources:4,5) | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|-------------------------------------|--------------------------|--------------------------|

Discussion b & c: The proposed project involves the widening of Atlanta Avenue from Huntington Street to Delaware Street and associated improvements. To accomplish the project, acquisition of 25 feet of additional right-of-way is required on the south side of Atlanta Avenue. Along with the acquisition of this 25 feet wide by 630 feet long (approx.) strip of land from the mobile home park immediately south of Atlanta Avenue, eight homes (Unit Nos. 101, 102, 201, 301, 302, 401, 501, and 502) consisting of 14 residents will also need to be removed in order to construct the proposed street widening project. The removal of the homes and displacement of the 14 impacted residents is subject to the relocation requirements under the Federal Uniform

ISSUES (and Supporting Information Sources):	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
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Act. The Federal Uniform Act, passed by Congress in 1970, is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property or displace persons from their homes, businesses, or farms. The Uniform Act's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects. Alternatives for the relocation of the units would include on-site relocation, off-site relocation to another park or conventional dwelling unit, or a monetary offer for residents who no longer choose to own a manufactured/mobile home.

Because the City anticipates receiving and using federal funds to construct the project, the City first has to obtain Federal authorization to proceed with the right-of-way phase before it can begin negotiating with the mobile home park owner to acquire the necessary right-of-way. The federal authorization to proceed cannot be granted until environmental review for the project is completed pursuant to the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). After completion of environmental review and once the authorization to proceed with the right-of-way phase is granted, negotiations to acquire the right-of-way can begin. If the City successfully negotiates land acquisition with the park owner, relocation of the residents would occur at that time. Therefore, the ultimate relocation of the impacted mobile homes/residents is not known at this point because real estate negotiations with the mobile home park owner and residents cannot commence until the City completes environmental review and receives authorization to proceed with the right-of-way phase. While eight homes with 14 residents would not necessarily be considered a substantial relocation, in order to ensure that impacts to the 14 residents that would require relocation is less than significant, the following mitigation measure is recommended:

POP-1: *Upon Federal authorization to proceed with right-of-way acquisition, the City shall commence with acquisition and relocation in accordance with the provisions of the Federal Uniform Act. Notification to and discussions with the impacted residents shall occur as soon as feasibly possible pursuant to the Federal Uniform Act. The City shall ensure that a relocation plan is prepared prior to final project plans and relocation is implemented in accordance with the Federal Uniform Act.*

Compliance with the Federal Uniform Act will ensure the proper and fair treatment of the mobile home park owner and displaced residents in an efficient manner during the acquisition and relocation process. With implementation of POP-1, less than significant impacts would occur.

III. GEOLOGY AND SOILS. Would the project:

- a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
 - i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? (Sources:1,6,13)

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Discussion: See discussion under b.

- ii) Strong seismic ground shaking? (Sources:1,6,13)

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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ISSUES (and Supporting Information Sources):	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
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Discussion: See discussion under b.

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|---|--------------------------|--------------------------|-------------------------------------|--------------------------|
| iii) Seismic-related ground failure, including liquefaction? (Sources:1,6,13) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|-------------------------------------|--------------------------|

Discussion: See discussion under b.

- | | | | | |
|----------------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|
| iv) Landslides? (Sources:1,6,13) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|----------------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|

Discussion: See discussion under b.

- | | | | | |
|--|--------------------------|--------------------------|-------------------------------------|--------------------------|
| b) Result in substantial soil erosion, loss of topsoil, or changes in topography or unstable soil conditions from excavation, grading, or fill? (Sources:1,6,13) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|--------------------------|-------------------------------------|--------------------------|

Discussion a, b & d: The project includes the widening of Atlanta Avenue from Huntington Street to Delaware Street and associated improvements. The project site is not identified as an area of potentially unstable slope areas in the General Plan Environmental Hazards Element and is not within the Alquist-Priolo Earthquake Fault Zone. The nearest active fault is the Newport-Inglewood fault located northeast of the project site. Based upon the City's General Plan (Figure EH-12) and Geotechnical Inputs Study, the project site is located within an area with moderate to high potential for expansive soil. In addition, the project site is in an area with a low potential for liquefaction (General Plan Figure EH-7).

The project site is located in the seismically active region of Southern California. Therefore, the site could be subjected to strong ground shaking in the event of an earthquake. The proposed development would be required to comply with the California Building Code (CBC), which includes regulations for projects to be designed to withstand seismic forces. In addition, the project is required to prepare a site specific geotechnical investigation, including subsurface exploration and laboratory testing, to further evaluate the nature and engineering characteristics of the underlying soils. The report will provide recommendations for the design and construction of the project, including recommendations to address liquefaction and expansive soil potential. Adherence to the seismic design and construction parameters of the CBC, the City's Municipal Code and recommendations outlined in a site specific geotechnical investigation, would ensure protection of of the project from impacts associated with seismic activity. Less than significant impacts would occur.

The project site has been previously graded and developed with roadway, drainage facilities, walkways and landscaped areas. Although the proposed project has the potential to result in erosion of soils during construction activities, erosion will be minimized by compliance with standard City requirements for submittal of an erosion control plan, for review and approval by the Department of Public Works. In the event that unstable soil conditions occur on the project site due to previous grading, excavation, or placement of fill materials, these conditions would be remedied pursuant to the recommendations in the required geotechnical study for the project site. Less than significant impacts would occur.

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| c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? (Sources:1,6,13) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|--------------------------|-------------------------------------|--------------------------|

ISSUES (and Supporting Information Sources):

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
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Discussion: Refer to response under item b. for discussion of liquefaction and landslides. Subsidence is large-scale settlement of the ground surface generally caused by withdrawal of groundwater or oil in sufficient quantities such that the surrounding ground surface sinks over a broad area. Withdrawal of groundwater, oil, or other mineral resources would not occur as part of the proposed project and, therefore, subsidence is not anticipated to occur. However, in the event of an earthquake in the Huntington Beach area, the site may be subject to ground shaking. The CBC and associated code requirements address lateral spreading and subsidence. Less than significant impacts are anticipated.

- d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? (Sources:1,6,13)

Discussion: See discussion under b.

- e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of wastewater (Sources:1,6,13)

Discussion: The project does not involve new uses or development that would increase wastewater necessitating alternative wastewater disposal systems or soils capable of supporting them. No impacts would occur.

IV. HYDROLOGY AND WATER QUALITY. Would the project:

- a) Violate any water quality standards or waste discharge requirements? (Sources:4,5,14)

Discussion: The project involves the widening of Atlanta Avenue from Huntington Street to Delaware Street and associated improvements. The project does not involve new residential, commercial or industrial uses that would generate a source of additional stormwater runoff that would exceed capacity of the existing storm drain system nor would it be a source of a substantial amount of additional polluted runoff. Surface runoff along the south side of Atlanta Avenue, along the mobile home park frontage, will continue to flow easterly towards the existing storm drain system at Delaware Street. Drainage in the mobile home park is conveyed via a network of concrete v-gutters and flows southerly to an existing sump system within the park and then out to the existing public storm drain system at Delaware Street. The street widening will require grading that may result in minor changes to the existing site elevation due to the relocation of the curb and gutter. Likewise, the reconstruction of the on-site drive aisle within the existing mobile home park will require grading work to transition from the "new" grades of the street widening to the existing elevations of the park. Ultimately, however, the storm water will continue to drain as it does today. Existing site conditions, including the amount of impervious area, site elevations, and drainage patterns would generally be the same upon completion of the project.

Since the project site is greater than one acre, the project is subject to the provision of the General Construction Activity Stormwater Permit of the State Water Resources Control Board (SWRCB). The City must submit a Notice of Intent (NOI) to the SWRCB for coverage under the Statewide General Construction Activity Stormwater Permit and must comply with all applicable requirements, including preparation of a