



Development Services Department
 Planning Division
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CITY of CHINO

Appeal Application

Appeal Process

The applicant or any interested aggrieved person may appeal the determination of the Development Services Director or Planning Commission within ten (10) calendar days from the date of such determination. The appeal must be in writing in accordance with Section 20.23.150 of the City of Chino Zoning Ordinance. The required appeal fee as adopted by the City Council must accompany an appeal to the Planning Commission of a decision of the Development Services Director or an appeal to the City Council of a decision of the Planning Commission or it will be considered incomplete and the appeal will not be considered. A building permit will not be issued until after the 10-day appeal period is complete. If an action of the Commission is appealed, the City Council will hear the appeal and render a final decision.

General Information (Print of Type)

Appellant's Name: ROBERT NISS Phone Number: _____
 Mailing Address: _____ Chino CA 91710
 Email Address: _____ Fax Number: _____
 Contact Name: _____ Phone Number: _____

Type of Appeal Requested

- An appeal to the Planning Commission of an administrative action or determination
- An appeal to the City Council of a Planning Commission action or determination
- An appeal to the City Council of an environmental action or determination

Project number(s): PL22-0074; PL22-0075; PL24-0080; PL24-0081

Project address or location: North side of Schaffer between Euclid Ave & Fern Ave.

Specific action or decision which is being appealed: RECOMMENDATION TO APPROVE

SPECIAL CONDITIONAL USE PERMITS AND TENTATIVE TRACT MAP

Specific grounds for the appeal, and the relief requested is as follows:

SEE ATTACHMENTS Appeal UNDER 20.23.150.A

Staff Use Only

File No.	Date Received	<input type="checkbox"/> Resident <input type="checkbox"/> Non-Resident	Filing Fee	Received By
Related Files	Time Received		Receipt No.	Supervisor Authorization

Appellant's Affidavit

I hereby certify that the statements and information contained herein are in all respects true and correct to the best of my knowledge and belief.

Appellant's Signature: Robert Nigg Date: 5/20/2025

Print Name: Robert Nigg

Relationship to Subject Appeal:

- Property Owner
- Business Owner
- Resident
- Other: _____

Subject: Appeal No. 1 - Objection to and Appeal of the Mixed-Use Development by Applicant Orbis Schaefer LLC. Special Condition Use Permit for Storage Facility Should be Denied.

To: All Members of the City Council

Warren Morelion, Director of Development Services

The following objections and appeal of Planning Commission's decision to approve the Permit Applications under PL22-074; PL22-0075; PL24-0080, and PL22-0081 is being submitted to the City Council in opposition to the building of a storage facility in the proposed Orbis Development on the 10.52 acre parcel having APN 1052-581-03 (Eden Development). The appeal is being submitted under the provisions of Chino Code of Ordinances, including Title 20, Zoning, Section 20.23.150.

OBJECTIONS TO THE STORAGE FACILITY – ORBIS/SCHAEFER DEVELOPMENT

The issuance of a special use conditional permit is **discretionary** and not required. It should be determined on a case-by-case basis. The Planning Commission's approval of the special conditional use permit for the proposed Orbis development **should be overturned and denied** and application to build a storage facility **should not be permitted**.

Zoning laws regulate land uses in two basic ways. Some uses are permitted as a matter of right if the uses conform to the zoning ordinance. Other sensitive land uses require discretionary administrative approval pursuant to criteria in the zoning ordinance. (§ 65901.) They require a conditional use permit. (See Cal. Zoning Practice, supra, § 7.55 et seq.) The reason for discretionary treatment is that these are uses which "cannot be said to be always compatible in some zones while always incompatible in others uses that should not be allowed as of course, but could be allowed subject to conditions" (Gaylord, Zoning: Variances, Exceptions and Conditional User Permits in California (1958) 5 UCLA L.Rev. 179, 193.) [1] "[T]he traditional purpose of the conditional use permit is to enable a municipality to exercise some measure of control over the extent of certain [156 Cal. App. 3d 1184] uses, such as service stations, which, although desirable in limited numbers, could have a detrimental effect on the community in large numbers." (Van Sicklen v. Browne (1971) 15 Cal. App. 3d 122, 126 [92 Cal. Rptr. 786].) (See Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176.)

The inclusion of the storage facility will be in conflict with, including but not limited to, the following sections of the City of Chino Zoning Code:

Section 20.01.020(B)(1)(2)(4)(5) & (6); and

Section 20.23.080(F)(2)(a)(b)(c)(d) & (e); and

Section 20.23.080(G)(1)(2)(4)(5) & (6).

The city has also failed to ensure that it adequately promotes citizen participation and assistance in the zoning code per Section 20.01.020(B)(11) and that our city leaders promote a responsive and accountable city government under Section 20.01.020(B)(10).

OBJECTIONS

Wherein the city updated the zoning code at § 20.09.090.E.4, which requires a special conditional use permit for a storage facility within a mixed-use overlay district, neither the planning commission or the city council has heard or approved for a storage facility to be built in the Eden Development. There was and is no lawful agreement in place or made with the developer (Orbis) that a predetermined approval for this particular storage facility to be built on the property was ever made. It would be a violation of state law (including Gov Code § 65905) and our local zoning code (including Section 20.23.080) for the city to prejudge the storage facility permissibility. The fact that storage facility are subject to conditional approval, does not equate to Orbis having a predetermined and an absolute right to construct a storage facility at the Eden development location.

Mass and Scope: The mass and scope of the Orbis development is too concentrated for the surrounding neighborhood. The proposed 264 (264 units divided by 9.82 acres = 26.88 units rounded up to density of 27 units per acre). These 264 apartment units are planned to be concentrated and squeezed into only an approximate 5.02 acre subdivided lot. The 264 units should be spread out on the 9.82 acre site and the limited acreage not be used for a storage facility. Building all 264 units on a 5.02 acre lots equates to 52.6 units per acre. This jam-packed density is objectionable and is incompatible with the character of the neighborhood. **The inclusion of the storage facility only adds to the high density of box-like buildings of excessive height in the development.** At a minimum, having a density of 52.5 units per adjusted gross acre on a 5.02 acre lot, with an enormous storage facility taking up other valuable available land space, will be detrimental to the public welfare or injurious to property or improvements in the neighborhood. The property should not be used for the storage facility, but should be used to spread out and to lower the height of the apartment building. The property, in lieu of the storage facility, could also be used to create greater space for parking or open outdoor space. The project as proposed is environmentally ill-disposed as it will create excessive traffic during prime time driving periods, crowd too many people into a small area of the city, and destroy the scenic, rural small-town nature of east Chino. The proposed storage facility is not essential or desirable to the

public convenience or welfare of the citizens who reside in the area and is in conflict with the general plan and specific plans for the area.

In issuing its findings of fact, the City Council should explain how and why the inclusion of the storage facility is, or is not, compatible and beneficial to the neighborhood and why it is necessary under the reasons promoted by the city leaders for the passage of Measure Y.

Fails to Protect and Promote, Health, Safety, Welfare, and Enhance the Value of Surrounding Residential Property: The project is in conflict with the general plan, including - The Vision of Chino is to be vibrant, safe city with a **small-town** feel and character. The Community Character Element is to preserve and enhance the character of the existing residential neighborhoods. Land use standards include that neighborhood commercial designation is intended to accommodate such uses as drug stores and a variety of smaller shops.

The storage facility should be removed from the development as it fails to protect and promote the health, safety and welfare of Chino residents. It will not protect or enhance the value of surrounding residential property. By having nearly 8% of the 3,662 housing units from the RHNA allocation (planned MUO affordable housing units of 1,284 low income units plus the RHNA required above moderate income of 2,378 units for the entire city) built on only a 5.02 acre lot will not promote an environmentally sustainable pattern of development in east Chino. There are approximately 18,938 acres in Chino, putting nearly 8% of its proposed RHNA Mixed-Use Overlay Affordable Housing in a such a miniscule area (5.02 acres) is not conducive to the health, safety and welfare of Chino residents. A conditional permit can be denied if it is argued to be detrimental to the public welfare or injurious to property or improvements in the neighborhood. (See *Hawkins v. County of Marin* (1976) 54 Cal.App.3d 586).

In issuing its findings of fact, the City Council should explain how and why the inclusion of the storage facility is, or is not, compatible and beneficial to the neighborhood and why it is necessary under the reasons promoted by the city leaders for the passage of Measure Y. The quality of life and character of the existing residential neighborhood will be ruined by the inclusion of an atrocious box-like four story storage facility. The scenic views and aesthetics of the surrounding neighborhood and the main focal point and gateway to East Chino will be damaged.

Incompatible with Government Code § 65583.2(c)(2)(B): The parcel at Fern/Schaefer/Euclid has a gross acreage of 10.52 acres. HCD uses gross acreage for SDBL standards. The city has failed to comprehend that the State of California has explicitly declared that parcels over ten acres **should not** be used for affordable housing under RHNA standards. Government Code, Section 65583.2(c)(2)(B) reads: “A site **larger than 10 acres shall not be deemed adequate to accommodate lower**

income housing need unless the locality can demonstrate that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site or unless the locality provides other evidence to the department that the site can be developed as lower income housing.”

The city has never provided adequate evidence to the public as to how 264 units can be built on 5.02 acres, or even evidence on how the 264 units on a 9.82 acre site is deemed adequate to accommodate such high density housing in such a miniscule area of the city. Furthermore, when the 3 plus acre site just north and adjacent to the Orbis project is developed, it will add approximately 80 more units to this tiny area of the city. It was ill-advised that the city choose to place such high density housing in a site that cannot accommodate such negative impact on the surrounding neighborhood, particularly when there is no available on-street parking in the development area. On-street parking is prohibited on the surrounding streets of Fern, Schaefer and Euclid. The proposed storage facility should be denied as it just adds to the negative impact of the development. Also, there is inadequate public transportation in the area. There is only one scheduled bus (OmniTrans Route 83) every 30 to 60 minutes on Euclid. The need for parking and public transportation for the residential and commercial uses during primetime commuting hours will have a negative impact on traffic and parking in the immediate area. The inclusion of an approximate 50 foot tall monstrous four story storage facility will not resolve, but will aggravate the excess and high density development that is inadequate to accommodate lower income housing needs for the city. The storage facility will further exacerbate the ill-advised and reckless decision to use this site to satisfy HCD default density option. There is sufficient sites to satisfy the RHMA default density option as documented in the 6th Cycle Update (an average density of only 25 units per acre within the Mixed-Use Overlay which have been adjusted by a factor of 0.8 (80%). (see 6th Cycle Update, pages B-30-31 and Table B-6).

In issuing its findings of fact, the City Council should explain how and why the inclusion of the storage facility is, or is not, compatible and beneficial to the neighborhood and why it is necessary under the reasons promoted by the city leaders for the passage of Measure Y.

Storage Facility Will Not Create a Desirable High Quality Neighborhood: The enormous storage facility building will not create a desirable high quality development surrounding a residential neighborhood. Chino’s vision in its Housing Element is for the city to maintain the feel of a rural small-town community will be devastated. The quality of life and character of the existing residential neighborhood will be ruined by the inclusion of an atrocious box-like four story storage facility. Additionally, prior to the hastily and ill-advised changes to the zoning code (during only a two week period between March 6 and March 20, 2023), storage facilities were not permitted to be built

within the East Chino Specific Plan (see pages 94 and 97 of East Chino Specific Plan, City of Chino, 9/02). Such public storage facilities were deemed to be incompatible and conflicting with the character of the residential neighborhood. Between March 6 and 20, 2023, the revision to the zoning code under subsection 20.09.090.E.4.d, allowed for the maximum floor area for public storage facilities on a site shall not exceed twenty-five percent of the gross floor area for all residential and non-residential uses. The Planning Commission should clarify how this 25% figure was obtained and how it is compatible with having such a large amount of space to be used for purposes other than affordable housing. Since December 5, 2024, a Public Records Act request concerning the basis of the floor area ratio for the determination of floor space usage has not adequately provided for inspection on how such methodology was determined.

In issuing its findings of fact, the City Council should explain how and why the 25% gross floor area for a storage facility was determined. The Commission should also explain how the inclusion will create a desirable high quality neighborhood.

Project Building Heights are in Conflict with Prior City Workshops: On January 17, 2023, the city held a workshop to review and provide feedback on several key policy questions related to the AHO and MUO and associated development standards. The city council, led by the mayor, held that an additional building height (up to additional one story) should be permitted where necessary to achieve greater density while also providing adequate open space and recreational amenities. It should also be noted that the base density discussed in the workshop held that the overlays should have a base density starting at 20 du/ac and be eligible for increases in allowable density up to 30 du/ac in exchange for a greater share of affordable units. It was not discussed during the workshop that the minimum density was to be increased to 26 du/ac and that a lower percentage of affordable housing would be permitted. The inclusion of storage facilities, taller building heights and increased minimum density levels were not discussed when the city was advocating for the passage of Measure Y. During this workshop, the mayor and the council choose to allow a four story apartment building to allow for more open space (see January 17, 2023 workshop video between 1 hour 11 minutes and 1 hour and 22 minutes). However, the mayor when suggesting an increase to 4 stories, cautioned that the four story buildings **should not** be next to residential areas as not to impose on the neighborhood. The Orbis development is in conflict with the vision of the city council as expressed during the January 17 workshop.

In its March 6, 2023 letter, Orbis requested the city to implement a 55 foot restriction on building heights to allow in part for an increased opportunity on ground floor retail usage. However, the development as proposed has not used that requested ability to construct any vertical built usage on the property. Should the city allow the storage facility, it should be vertical built above the 13,800 square foot retail building. The city has the ability to approve, deny or alter the plan for the conditional option. The three

story vertical building with the storage units on top would allow 1.5 acres of open space to be used for other purposes, such as lowering the mass and scope of the apartment complex, or create more parking spaces. A storage facility built vertically above the retail building would be more than sufficient to accommodate the expected use by renters in the apartment complex.

The additional higher density caused by the inclusion of the storage facility is not compatible to information made public prior to March 20, 2023. **No where was it discussed during the workshop or prior to March 20 that storage facilities would be allowed in overlay districts that were being created to allow for affordable housing. It is hypocritical and disingenuous for the city to now allow a monstrous storage facility on the property that is not providing open space or recreational amenities and is squeezing RHNA allocations into a small 5.02 acre lot having an actual density of 52 units per acre. Measure Y was passed to allow affordable housing to meet RHNA default density standards, not to allow storage facilities surrounded by residential neighborhoods.**

It was not until the planning commission meeting of March 20, 2023, when the Orbis requested inclusion of the storage facility was made public and that a revised recommendation by city staff had been made. The amended revisions to Section 20.09.090 of the zoning code allowed for the inclusion of storage facilities. Also added to the zoning code not previously made public was a change in the normal maximum building height from 45 to 50 feet within a MUO district. Again the public was not provided acceptable advance tangible notice of an increase in the allowable building heights to be as high as 55 feet under note 2 of Exhibit 20.09-7 were to be allowed. There was also a dramatic change in the density level from 20 to 30 units per acre to a minimum of 26 units per acre with a sizable reduction in affordable housing percentages. The storage conditional use permit should be denied as it would allow the heights of other buildings in the project to be lowered.

In issuing its findings of fact, the City Council should explain how and why the inclusion of the storage facility is, or is not, compatible and beneficial to the neighborhood and why it is necessary under the reasons promoted by the city leaders for the passage of Measure Y.

Questionable and Suspicious Financial Feasibility Report: There is also a dubious financially feasibility of mixed-use overlay districts that was revised with last minutes changes between March 6 and March 20, 2023. This questionable report allowed for a higher density (26 du/ac) then what is cited in the general plan under the 6th Cycle Housing Element Update (20 to 30 du/ac). The public was provided only minimum notice of these changes without an effective opportunity to have appropriate input or objection. It is argued that the city failed to abide by the standards of Section

20.01.020(B)(11) as it did not promote citizen participation and assistance in issues that the public was never informed of before voting for Measure Y or communicated during previous public workshops. The changes were the result of private communications between the developers and planning division staff prior to the planning staff making a recommendation to the planning commission without the community having an effective voice in the outcome. Not only were density restrictions altered; higher building heights and the inclusion of the storage facility was allowed to be amended based upon a letter from Orbis that was not disclosed to the public until a few days before the March 20, 2023 planning commission hearing.

How is now adding the storage facility to an already highly dense residential complex making it compatible and harmonious with the neighborhood? How is adding the storage facility adding open space? The city has a responsibility to be responsive and accountable to its citizens in formulating and explaining the effects of the zoning code.

In issuing its findings of fact, the City Council should explain how and why the inclusion of the storage facility is, or is not, compatible and beneficial to the neighborhood and why it is necessary under the reasons promoted by the city leaders for the passage of Measure Y.

Loss of Sales Tax Revenue: The **storage facility will also not generate sales tax revenue**. The storage facility will negatively affect the general welfare of all citizens of Chino. Prior to the inept inclusion of the storage facility on March 20, 2023 by the planning commission which came before the city council for adoption two weeks later, the property was zoned as Commercial/General (C/G). The C/G designation was intended to meet the daily and occasional shopping needs of Chino residents. The Orbis acreage was not zoned to allow for a storage facility to be built on the property. Also of critical importance was the C/G zoning was purposely intended to generate sales tax revenue that would go into city's coffers to be used for the general welfare of the citizens of Chino.. The inclusion of the storage facility **will not generate sales tax revenue**. **This will negatively impact the general welfare of the city's residents.**

It is not compulsory; **it is discretionary** for the storage facility to be allowed to be built in the Orbis project. The city needs to listen to the objections of its citizens. The citizens were not adequately informed of the back-door communications between the developers and the city's development and planning staff in making the misguided and foolish changes to the zoning code that occurred within a two week period in March of 2023. The city planning staff had already made the recommendation to adopt the ill-advised zoning changes allowing for the inclusion of storage facilities prior to the public hearing held before the planning commission on March 20, 2023. There had been numerous workshops held over an 18 month period, wherein the inclusion of the storage facility was never discussed in public meetings or postings for the proposed

Mixed-Use Overlay districts. It is time for our city leaders to listen to its citizens and not the developers who are only out to enrich their profits. The City of Chino should be supporting its citizens participation and assistance, rather than ignoring their objections to the storage facility. The citizens of Chino depends upon its city government to represent the community and not the profit driven developers.

Should the Orbis development special conditional permit go before the planning commission for approval under its quasi-judicial capacity, it is requested that the planning commission issue findings of fact, citing the legal and factual foundation on which the planning commission made its particular decisions. It is also requested and expected that the findings of facts should deliberate on the following standards of the zoning code:

Section 20.01.020(B)(1)(2)(4)(5) & (6); Section 20.23.080(F)(2)(a)(b)(c)(d) & (e); and Section 20.23.080(G)(1)(2)(4)(5) & (6).

The denial of the conditional use permit in this case would not prohibit the proposed business within the City of Chino, but only denied the use of the land in question for the storage facility. (See *Snow v. City of Garden Grove* (1961) 188 Cal.App.2d 496.)

It is requested and compulsory that City Council's zoning decisions include findings of fact based on substantial evidence, meaning the findings must be supported by relevant and competent evidence in the record bridging the gap between raw evidence and the final decision. The Council should clearly explain how their actions align with the local general plan, zoning ordinances, and state statutes.

The inclusion of the storage facility in the Orbis project should be denied or significantly altered to a much smaller, vertically built building over the commercial retail/dining building.

Sincerely,

Robert Nigg

Date: May 20, 2025

Subject: Appeal No. 2 - Objection to and Appeal of Zoning Code for the Mixed Use Development; Tentative Tract Map under PL24-0080

To: All Members of the City Council

Warren Morelion, Director of Development Services

The following objections and appeal of Planning Commission approval of the Tentative Tract Map No 20634, under PL24-0080; and in conjunction with Special Conditional Use Permit PL22-074; Site Approval PL22-0075; and Special Conditional Use Permit PL22-0081 is being submitted to the City Council in opposition to the proposed Orbis Development subdividing the 10.52 acre parcel having APN 1052-581-03 (Eden Development).

This appeal is being submitted under the provisions of Section 19.01.110.B of the Chino Zoning Code. The following objections and appeal of Planning Commission's decision to approve the Tentative Tract Map is being submitted to the City Council in opposition to the proposed Orbis Development subdividing the 10.52 acre parcel into 5 separate lots. Objections are made based upon the following standards of law under Government Code Section 66474 and Chino Zoning Code Section, 19.02, including Subsection 19.02.080.

A full hearing required under Subsection 20.23.150.A.2 was requested. The recommendations in the May 21, 2025 memorandum, approved by the Director of Development Services, scheduled to be heard under Agenda Item No.3 before the Planning Commission, failed to acknowledge or address the objections raised by the citizens of this project, including those of this applicant.

Numerous citizens of Chino, after the neighborhood meetings, requested thru the city website for this project, to be notified of all updates on the project. The Memorandum dated May 21, 2025 heard before the planning commission was deficient as it contained no proposed tract maps drawings. The agenda packet which was to satisfy the 72 advance notice requirements of the Brown Act, did not contain the diagrams of the subdivision of the 10.52 acres lot into five separate lots. Since citizens did not have a opportunity for public inspection of the maps, a violation of Government Code § 54954.1 was alleged to have occurred. Therefore, the May 21, 2025 Planning Commission decision was improperly decided. The public hearing on the tentative tract map was not continued until after lawful public notice has been made.

Additionally, the subdividing of the property was never discussed at the prior public or community meetings. Applicant had numerous verbal discussions with the Planning Division, including with the Director, and no mention of these objections to the

subdividing of the property was included Memorandum before the Planning Commission. The Commission should have been informed of the concerns raised during the review process to make an informed decision on whether to approve the tentative tract map. The legal requirements under Subsection A.2 required that the Director shall prepare the record before the planning commission on the subject matter of the appeal, including reports, memos and meeting notes, and transmit same to the planning commission. The director of community development shall also prepare a written response to the appeal statement. The May 21, 2025 memorandum in the agenda packet was deficient as it contained no proposed tract maps, no acknowledgement or responses to the project objections as raised by the applicant, Robert Nigg, and the other citizens of Chino. Therefore a full hearing was required after the Director prepared the necessary record.

The Tentative Tract Map should be denied or the project be revised to satisfy the standards of the state density bonus law.

(a) The proposed Tentative Tract Map is Not Consistent with Applicable General and Specific Plans as Specified in Section 65451 of the Government Code

It is argued that the tentative tract map is deficient and does not satisfy the requirements of Section 65451. There is insufficient evidence the subdivision will provide implementation of measures to ensure the development will be consistent with the general and specific plans, including regulations, programs, public works projects, and financing measures necessary to carry out the requirements of paragraphs (1), (2), and (3) of Subsection (a) of Section 65451 including:

(1) The extent of the uses of land, including open space, within the area covered by the plan. Insufficient open space, setbacks, and extreme density are not compatible with the general and specific plans for the Orbis development.

(2) The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan. The proportion and extreme density of over 50 units per acre on a lot will create additional needed infrastructure, including sewer hookups, public transportation, water pressure, and parking. There is also insufficient information the developer will ensure a development agreement to pay for the financing measure to upgrade the infrastructure in the area will be completed and the citizens of Chino will not be paying for the necessary improvements.

(3) Standards and criteria by which development will proceed has not been adequately established by the planning staff to ensure for each of the 5 subdivided lots to include if

there is suitable open space, adequate parking, necessary building setbacks, compliance to all zoning standards, and adequate local public transportation.

There is insufficient evidence and lack of a statement as to how the relationship of the development with implement the measures of the East Chino Specific Plan and to relationship to the of the specific plan to the general plan.

In issuing its findings of fact, the City Council should explain how and why the subdividing the property into 5 lots and the inclusion of the storage facility is, or is not, compatible with the city's general plan, the zoning code, and state standards for affordable housing.

(b) The Subdivided Site Density Is Inconsistent with General Plan

The subdividing the acreage into five lots is not consistent with applicable general and specific plans. The general plan of Chino per the 6th Cycle Housing Element Update (6th Cycle Update) allows up to 30 dwelling units per acre (30 du/ac), see Table 3-7 on page 3-12. (All page references are from the 6th Cycle unless otherwise noted.) Also see Table 20.09.5 of the Zoning Code. A density of over 30 units per acre should be denied by the planning commission unless the developer chooses to invoke the State Bonus Law (SDBL) under Government Code Section 65915.

The subdivision of 10.52 acre parcel into 5 lots with an approximate 264 units on an approximate 5.02 acre lot will equate to over 52 du/ac. This is not consistent with the general plan as the plan only allows up to 30 units per acre. The City also currently defers to California Government Code Sections 65915-65918 which establish the potential density bonuses for the development of affordable units. See pages 3-10 and 4-21 of the 6th Cycle Update. Under California Government Code Section 65915, SDBL, the density bonus is based on the units per acre allowed by local zoning standards, not the total site acreage.

Table 20.09-7 from the zoning code sets-forth the standards site requirements within the mixed-use overlay (MUO) for the density per lot. Zoning Code Table 20.09-5, also provides for the maximum allowable density (Units per Adjusted Gross Acre). Again, per the requirements of the zoning code, the maximum density per acre is 30 units unless the SDBL under Government Code Section 65915 is used by the developer.

In order to build over 30 dwelling units per acre on the subdivided property, Orbis could build 30 units with 13% allocated for low income housing at below market rate (BMR), then an additional 15 units (50%) under California state law AB 2345, adopted in 2020. Under Table 3-4 of the 6th Cycle Update, an increase of only a 37% density bonus increase would require a 20% density bonus of 15 units. Gov. Code 95915 currently sets the limits for additional SDBL units at 50%. For a five acre parcel/lot, this would equate to approximately 225 units (45 x 5 = 225) with a required low income affordable

housing of BMR of 19.5 units (30 x 13% x 5); and a density bonus of 15 units (15 x 20% x 5) for a combined total of 34.5 units rounded to 35 total affordable housing units for a 5 acre lot. The proposed Tentative Tract Map should be denied unless Orbis develops approximately 225 units with 35 low income units on the subdivided lot of about 5.02 acres.

In issuing its findings of fact, the City Council should explain how and why the subdividing the property into 5 lots and the inclusion of the storage facility is, or is not, compatible with the city's general plan, the updated housing element, the zoning code, and state standards for affordable housing.

(c) The Subdivided Sites Are Not Physically Suitable for the Type of Development.

Notwithstanding the additional density of 52 units per acre as discussed in subsection (a) above, the area is not suitable to handle the approximate 264 units on such a small acreage of property. Sufficient information has not been presented that the existing sewer, water, and dry utilities on Schaefer and Fern will be able to handle the connections of 264 units from such a small lot area and then also account for the further increased MUO uses on the approximate vacant 3 acre parcel just north of the proposed Orbis development (which could add another 80 or so units in this small geographic portion of the city).

Additionally, by subdividing the apartment complex into only a 5 acre lot, will limit the available on-site parking. There is no known shared parking agreement between the 5 acre apartment complex lot and the other 4 lots being proposed for only commercial use by the developer.

This incompatibility is exacerbated by the fact that there is also no nearby on-street parking for the high density of 264 units. Also, there is inadequate public transportation other than one OmniTrans Route 83 bus every 30 to 60 minutes on Euclid. The need for parking and public transportation for the residential and commercial uses during primetime commuting hours will have a negative impact on traffic and parking in the immediate area.

Additionally, under Zoning Code Section 20.09.090.G, Non-residential development (in a MUO district) shall comply with the standards of the base zoning district with which the MUO district is combined. The proposed storage facility of 132,438 square feet proposed to be built on an approximate 1.5 acre lot, results in a Floor Area Ratio of appropriately 2.02, which exceeds the maximum limits in the zoning code. Additionally, since the proposed subdivided lot for storage facility use will not include any residential units, the base zoning district for the Orbis project is the East Chino Specific Plan. The East Chino Specific Plan restricts the building of storage facilities within the plan area.

In issuing its findings of fact, the City Council should explain how and why the subdividing the property into 5 lots and the inclusion of the storage facility is, or is not, compatible with the development standards of Section 20.09.090 of the zoning code, including lot development standards, and how it satisfy the State Density Bonus Law requirements.

(d) The Subdivided Sites are Not Physically Suitable for the Proposed Density of Development.

The State of California, under Government Code Section 65583.2(c)(2)(b): *“A site larger than 10 acres **shall not be deemed adequate** to accommodate lower income housing need unless the locality can demonstrate that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site or unless the locality provides other evidence to the department that the site can be developed as lower income housing.”*

If the state deemed site larger than 10 acres was not adequate to accommodate the density of lower income housing needs, then squeezing in the density allotted for a 10 acre site into a 5 acre site only exacerbates the problem. HCD uses gross acreage for SDBL standards.

A city cannot claim a site over 10 acres only represents a minimal percentage of the city's total regional housing needs allocation (RHNA) to validate the site without providing further evidence that the site is suitable for such a high density low-income housing development. Sites larger than 10 acres are subject to more scrutiny and require specific justification to demonstrate their suitability for accommodating lower-income housing needs. The city has not provided any other evidence how the site is suitable for such a large number of low-income housing units. Just an unsupported statement that 264 units only represents a minimum percentage of RHNA allocation is not supported by the verifiable evidence.

The RHNA allocations set by HCD require 1,284 low income units and 2,378 above moderate income units for a total of 3,662 units. The proposed required 264 units for the Orbis project is 7.2% off all the city RHNA allocation for the entire city, including all of the above moderate income units for the city. That is not a minimal or insignificant percentage. Furthermore, the current land area of Chino is calculated to be 18,938 acres. The approximate 10.52 gross acres of the Orbis project represents only .055% of all land in Chino. When placing 7.2% of RHNA required allocations on 0.055% of all acreage in the city, the Orbis project acreage is accounting for over 13,295% of the city's RHNA allocation for the entire city. When squeezing in the 264 units on only about 5.1 acres, the city is placing over 27,000% of its RHNA allocation on one small lot of all acreage in the city. There is no reasonable justification for the 10.52 gross acreage

ever to have been chosen by our city government to have such unproportionate affordable housing to be built on the Orbis site.

The City Council must rectify why this 10.52 acre site was included in the mixed-use overlay districts and then allow an enormous storage facility to be included in the project. The 10.52 acre parcel only represents one half of one percent (.0055%) of all acres in the city. There were numerous other parcels of land in the city that could have been selected to fulfill the states RHNA. State law at Gov. Code 65583.2(c)(3)(B)(iv) that sites allowing at least 30 units per acre are required, not that a minimum of 30 units per acre are required. The state allows a default density option allowing city to choose and designate sufficient sites that would satisfy the RHNA 3,662 units under the low income category. The state did not select the 10.52 acre parcel, nor did the state disallow other sites/parcels from being selected to satisfy the RHNA quota. This error should not be further worsened by allowing a such an enormous storage facility that will have a negative impact on the community.

By subdividing the 10.52 acres into 5 smaller lots, and placing all the affordable housing units onto only 5.02 acres is inconsistent and inadequate under state law at Gov. Code Section 65583.2(c)(2)(b).

As per public information contained on the County of San Bernardino, the property parcel (APN 1052-581-03) is recorded as being purchased in September of 2022 by Orbis Schaefer LC (30% ownership) and Clark Schaefer Partners LLC (70% ownership), hereafter referred to as "Orbis" or "Orbis Real Estate Partners". The property was acquired from the previous owner, Zivelonghi Investment CO LLC. Under state law, the property is held in tenancy in common. Neither of the tenants in common Orbis Schaefer LC (30% ownership) and Clark Schaefer Partners LLC (70% ownership) have legal single ownership or single control of such property.

THE CITY COUNCIL SHOULD REJECT THE TENTATIVE TRACT MAP AND SUBDIVISION OF THE PROPERTY FOR THE ORBIS PROJECT TO BE CONSTRUCTED ON THE SCHAEFER/EUCLID AFFORDABLE HOUSING DEVELOPMENT HAVING APN 1052-581-03.

By law, the city is required to make the negative findings before it can approve the tentative tract map. Thus, for the city to approve a tentative tract map, it must make the general plan consistency finding in Government Code section 66473.5 and must also find the inverse of the seven "negative" findings in section 66474. It is officially requested that the City Council also perform their due diligence and carefully consider the particulars of these objections. Upon reaching its decisions, the City Council should issue written findings of facts to support their decisions as required under Section 19.01.110.B.5. The findings of fact must be based on substantial evidence, meaning the findings must be supported by relevant and competent evidence in the record bridging

the gap between raw evidence and the final decision. The commission should clearly explain how their actions align with the local general plan, zoning ordinance, and state statutes.

Sincerely,

Robert Nigg, citizen of Chino

APPEAL NO. 3

The following is being appealed to the City Council under Zoning Code 20.23.150.B. The appeal concerns the decision of the Planning Commission on May 21, 2025. The below matters as decided by the Planning Commission are disputed and is therefore be appealed for a hearing required under California law.

See below for matters in dispute.

Subject: Appeal No. 3 - Objection to and Appeal of the Mixed-Use Development by Applicant Orbis Schaefer LLC. Violations and Inconsistencies in Zoning Code Standards

The following objections and appeal of Director of Development Service's recommendation to approve the Permit Applications under PL22-074; PL22-0075; PL24-0080, and PL22-0081 is being submitted to the Planning Commission in opposition to the proposed Orbis Development. It is argued that the development includes violations of zoning standards in violation of the Chino Zoning Code. The development is located on a 10.52 acres parcel having APN 1052-581-03. The appeal is being submitted under the provisions of Chino Code of Ordinances, including Title 20, Zoning, Section 20.23.150.

The asserted violations are:

1. Zoning Code, Section 20.18.030 -Number of Parking Spaces Required

Under Table 20.18-1, off-street parking for commercial/shopping center uses requires 4 spaces for each 1,000 sq. ft. of gross leasable floor area (1 for every 250 sq. ft.). For restaurant uses, zoning standards requires 1 parking space for each 100 sq. ft. of public seating area. There are two separate uses (dining and retail) identified as being proposed in the development.

The Planning Division has deficiently accepted the declared usage of all the proposed uses of commercial retail, drive-thru restaurants, and outside dining areas totaling 25,285 sq. ft. as being only commercial/shopping center activity requiring only 102 parking spaces (25,285 divided by 250 ft. = 101.24 rounded up to 102 spaces). This interpretation is in direct conflict with and is inconsistent with the zoning code at Subsection 20.18.030.C which states: "*Multiple uses. Whenever more than one land use is conducted on a lot or parcel, the required number of parking spaces shall be the sum of the requirements for each individual use.*"

The developer, during public neighborhood meetings promoted the usage in the commercial/retail area as being planned for eating establishments. Reference is made

to the PowerPoint presentation, page 32, from the January 23, 2025 Neighborhood Meeting by Orbis.

On March 5, 2025 an email was sent to the Planning Division citing the possible deficiency in that the restaurant/outdoor dining was not being properly calculated for the number of parking spaces required. On May 8th, the city planner was again verbally advised of the restaurant dining seating area was not being properly calculated. The City Planner stated it was the city's interpretation that the shopping center designation was the correct method to be used to calculate for all of the required number of parking spaces.

This interpretation is in direct conflict with the zoning code which states the required number of parking spaces shall be the sum of the requirements **for each individual use**. Without the developer providing specific details of the intended use for the entire 25,285 sq. ft. retail/dining areas, only rational projections can be made. It would not be equitable to consider all 25,285 sq. ft. as being devoted only to dining area usage, which would require 253 parking spaces. However, even if the 20,800 commercial/retail usage were split equally 50/50 between the retail and restaurant usage (a conservative method in favor of the developer), and all outdoor dining areas were to be totaled for each individual use as required in 20.18.030.C, the project would require 191 parking spaces for the retail/ dining uses. In the current plans submitted by Orbis, the developer is claiming only 143 stalls for the commercial part of the project, resulting in a projected shortage of almost 50 parking spaces. As example, per the application for a special conditional use permit under PL-24-0081 for two fast drive-thru restaurants should unquestionably be considered as designated as restaurant use. The Planning Division's classification for this drive-thru restaurant use as being retail/shopping center cannot be supported by any rational or logically conclusion of facts.

There is already the valid argument that since there is no nearby on-street parking surrounding the project, and there will be a shortage of available parking in the proposed development. This apprehension will only be compounded by even less parking spaces being provided than required by the zoning code standards.

The Planning Commission should deny the application until such time as adequate clarification and details are provided to determine the correct number of parking spaces required in the development. The Planning Commission should require further information from the developer and that the city planning staff utilizes the required standards of applying the sum for each individual use. If additional parking spaces are required to be provided, such an increase would likely cause significant changes to the site plan and building configurations. It would be inappropriate for the Planning Commission to approve

the project without having a full understanding of the actual number of parking spaces required under the zoning code standards.

In issuing its findings of fact, the Planning Commission should explain how and why the calculation of required parking spaces should not be determined by each individual use.

2. Zoning Code, Section 20.09.090 for Building Separation and Setbacks

Building Separation: Under Table 20.09-7, zoning standards require a minimum of 15 feet of building separation. The site plans for the development disclose that there is only an approximate 7' 2" separation between the 13,800 retail/dining building and the 132,438 sq. ft. storage facility between building.

Inquiry with the city planner on May 9, determined that the city reads the standards to allow the two buildings to be considered as one building and no separation is needed, making reference to the building codes.

This interpretation is considered inconsistent with the requirements of the zoning code. While the building codes and zoning codes may have similar terms, they are not the same.

While the building codes might combine the structures for other regulations such as type of construction and for fire protection standards, zoning regulations are specific to land use and separation requirements, and should not be directly overridden by building code interpretations. As example, a 20-story skyscraper could be built within the building code, but it would be in violation of our zoning code.

Zoning regulations control land use and the density of development within a specific area, including setback requirements. Building codes, on the other hand, focus on the structural safety and performance of individual structures.

There is a great amount of controversy in the Orbis proposed development. The height, density and inclusion of the storage facility are opposed by the local community. For the Planning Division to interpret the zoning code that the minimum building separations of 15 feet is not necessary is without any common sense and lacks a basic understanding that the appearance and density of the project will be adversely affected.

The Planning Commission should deny the application until such time as adequate clarification and details are provided to determine the appropriate determination of the zoning code for the minimum standards for building separations. The Planning Commission should seek further clarification from the Planning Division as to why they are using building code standards rather than zoning code standards, particularly when land use and density issues are in question. Should the minimum 15 foot building

separation be deemed the appropriate standards, it could require sufficient changes to the site plan and building configurations. It would be inappropriate for the Planning Commission to approve the project at this time without having a full understanding of why the Planning Division is overriding zoning standards.

In issuing its findings of fact, the Planning Commission should explain how and why the use of building codes supersedes the zoning code, since the zoning code standards control the density and building separations, which are critical to developments be compatible to the area.

Setbacks: Under Section 20.09.090.G and Table 20.09-7, Note 2, the zoning code standards require that *“The upper story above 40 feet shall be setback back an additional seven feet from the interior property line if the project is adjacent to a Residential zoning district.”*

Inquiry with the city planner on May 8, determined that the city did not believe any further setback were needed for the apartment complex facing the north private road in the proposed development. It was stated that the road abutted another mixed-use overlay site which was not considered to be a residential zoning district.

An objection is made to this interpretation, as the language in Note 2 does not use the term “abut” or “abutting”, rather the language of the note specifically used the term “adjacent”. There is clearly a Residential zoning district that is adjacent to the project on the west side of Fern. Therefore, it is argued that the setback should be additional seven feet from the interior property line. Within the zoning code, the term “abut” was used at least 32 times, but the city did not use this term in Note 2, it used the term “adjacent”. Therefore, the plain and ordinary meaning of adjacent should be used resulting in the proposed project is adjacent to a Residential zoning district.

There is also the issue of safety. The apartments on the north side of the complex have private outdoor patios. These patios will be located very close to the curb area of the private road. It is estimated that this private road will generate several hundred uses during the normal daily use. Having a patio, where children would be anticipated to be playing very close to the road, without an adequate setback should not be allowed by the city.

The Planning Commission should deny the application until such time as adequate clarification and details are known of the actual setbacks between the private road and the building entrance/exit area and the patio and the curb. A review of the site and architecture plans could not determine the actual setbacks and how such setbacks were being measured. Should additional setbacks be required, it could require sufficient changes to the site plan and building configurations. It would be inappropriate for the

Planning Commission to approve the project at this time without having a full understanding of why the Planning Division is overriding zoning standards.

In issuing its findings of fact, the Planning Commission should explain how and why the setback was determined and if it strictly complies with the requirements of Section 20.09.090.G and Table 20.09-7, Note 2 of the zoning code.

Conclusion: Until such time as the parking space, building separations, and setbacks are determined to be in compliance with the zoning code, the Planning Commission should delay any decision to approve the project.

Sincerely,

Robert Nigg

Fw: [EXT EMAIL] Re: Appeal of Planning Commission Decision

From Development Services <DevelopmentServices@cityofchino.org>
Date Thu 5/29/2025 11:12 AM
To Le, Kim <KLe@cityofchino.org>; Gilbert, Andrea <AGilbert@cityofchino.org>
Cc Morelion, Warren <wmorelion@cityofchino.org>

Another email.

Get [Outlook for iOS](#)

From: Robert Nigg [REDACTED]
Sent: Thursday, May 29, 2025 10:56:33 AM
To: Gonzaga, Natalie <ngonzaga@cityofchino.org>; Development Services <DevelopmentServices@cityofchino.org>
Cc: Morelion, Warren <wmorelion@cityofchino.org>; Reich, Linda <LReich@cityofchino.org>
Subject: [EXT EMAIL] Re: Appeal of Planning Commission Decision

In addition to the appeal and objections cited in my email today, I wish to object and comment on the written notice submitted by the applicant on May 21, 2025 asserting the Housing Accountability Act. Upon having the opportunity to inspect the notice made by the applicant, I will submit my objections and comments. It is requested that the city comply with all the procedures and requirements under Gov. Code, Section 65589.5 as the project moves forward.

Sincerely,

Robert Nigg

[Sent from the all new AOL app for iOS](#)

On Thursday, May 29, 2025, 7:33 AM, Robert Nigg <[REDACTED]> wrote:

Date: May 29, 2025

Subject: Appeal of Planning Commission Decisions under Zoning Code, Section 20.23.150.B and 19.01.110.B.

Attached to this email are my written appeals and objections to the Planning Commission's decision to approve Permit Applications under PL22-074; PL22-0075; PL24-0080, and PL22-0081, heard before the Planning Commission on May 21, 2025.

Since I was and remain out of town and could not attend the May 21, 2025 Planning Commission meeting, this submission is being made to ensure the 10 day period to

appeal to the City Council the decisions made by the Planning Commission is satisfied. I have included my arguments on matters submitted in objection to the Planning Commission's decisions approving Agenda Item No. 3 during the May 21, 2025 meeting agenda per the attachments listed below, I also wish to include in the record all oral and written objections concerning the May 21, 2025 Planning Commission hearing on these matters.

Alc

Should revisions need to be made to this appeal or updated after I have had an opportunity to fully review the findings of fact of the Planning Commission, an amended submission will be made to be included in the record.

The attachments are:

Appeal Application

Appeal No. 1 Special Condition Use Permit - PL22-0074

Appeal No. 2 Tentative Tract Map No. 20634 – PL22-0080

Appeal No. 3 Zoning Code Standards

Attachment – Appeal Supplemental Submission

Sincerely,

Robert Nigg

EXTERNAL EMAIL: Please verify sender email. If unknown, **DO NOT** open links/attachments. **NEVER** give out your user ID or password for any reason!