

- (16) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (17) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all reasonable costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.

SECTION 3. ELIGIBLE FACILITIES REQUESTS

SECTION 3.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- (a) **Applicability.** Notwithstanding any provision in this policy to the contrary, all requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 will be reviewed and approved or denied without prejudice in accordance with the standards and procedures in this Section 3.
- (b) **Section 6409 Approval.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for approval under Section 6409 shall require an approval in such form determined by the Approval Authority consistent with all valid and enforceable terms and conditions of the underlying permit or other prior regulatory authorization for the tower or base station (each amendment a "**Section 6409 approval**").
- (c) **Option to Seek a Discretionary Permit.** A discretionary permit under Section 2 or Section 4 is not required for any request that qualifies for approval pursuant to Section 6409. For any application for a Section 6409 approval properly denied, the

applicant may submit the same or a substantially similar application for a discretionary permit under Section 2 or Section 4.

- (d) **Other Permits and Regulatory Approvals.** No collocation or modification approved pursuant to this Section 3 may occur unless the applicant also obtains all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any other permits and/or regulatory approvals issued by other departments or divisions within the City. Furthermore, any Section 6409 approval granted under this Section 3 shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or regulatory approvals.

SECTION 3.2. SPECIAL DEFINITIONS FOR ELIGIBLE FACILITIES REQUESTS

- (a) **"Base Station"** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(1), as may be amended or superseded, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.6100(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.6100(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.6100(b)(1)(i)-(ii).
- (b) **"Collocation"** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended or superseded, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless facility installed at a single site.
- (c) **"Eligible Support Structure"** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as may be amended or superseded, which defines that term as

any tower or base station as defined in 47 C.F.R. § 1.6100(b), provided that it is existing at the time the relevant application is filed with the State or local government under 47 C.F.R. § 1.6100.

- (d) **“Existing”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as may be amended or superseded, which provides that a constructed tower or base station is existing for purposes of the FCC’s Section 6409 regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
- (e) **“Site”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(6), as may be amended or superseded, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.
- (f) **“Substantial Change”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(7), as may be amended or superseded, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC’s criteria and thresholds for a substantial change according to the wireless facility type and location.
 - (1) For towers outside the public rights-of-way, a substantial change occurs when:
 - (A) the proposed collocation or modification increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet (whichever is greater); or
 - (B) the proposed collocation or modification involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower by more than 20 feet or more than the width of the tower structure at the level of the appurtenance (whichever is greater); or
 - (C) the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - (D) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the

wireless tower, including any access or utility easements currently related to the site.

(2) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:

- (A) the proposed collocation or modification increases the height of the structure by more than 10% or more than 10 feet (whichever is greater); or
- (B) the proposed collocation or modification involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 feet; or
- (C) the proposed collocation or modification involves the installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure; or
- (D) the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are more than ten percent (10%) larger in height or volume than any other ground cabinets associated with the structure; or
- (E) the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.

(3) In addition, for all towers and base stations wherever located, a substantial change occurs when:

- (A) the proposed collocation or modification would defeat the existing concealment elements of the support structure; or
- (B) the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in 47 C.F.R. § 1.6100(b)(7)(i)-(iv).

(g) **"Transmission Equipment"** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

SECTION 3.3. SPECIAL APPLICATION REQUIREMENTS AND PROCEDURES

- (a) **Special Application Contents.** In addition to the requirements in Section 1.4, all applications for a Section 6409 approval must include all the information and materials required in this subsection (a).
- (1) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer and/or architect, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation all transmission equipment, support structures and the legal boundaries of the leased or owned area surrounding the proposed wireless facility and any associated access or utility easements. The construction drawings must specifically depict and call out the original overall height of the structure and, if the structure was constructed prior to February 22, 2012, the overall height that existed on February 22, 2012. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iii) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
- (2) **Project Narrative and Justification.** A written statement that explains in plain factual detail whether and why Section 6409 and the related FCC regulations at 47 C.F.R. §§ 1.6100 *et seq.* require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.
- (b) **Application Completeness Review.** Within 30 calendar days after the Director receives a duly filed permit application, the Director shall review the application for completeness and, if the application does not contain all the required publicly stated materials, may send a written notice to the applicant that identifies the missing or incomplete requirements. Within 10 calendar days after the Director receives any permit application resubmittal, the Director shall review the

application for completeness and, if the resubmittal does not contain all the materials identified in the initial written notice, may send a subsequent written notice to the applicant that identifies the remaining missing or incomplete requirements.

SECTION 3.4. DECISIONS AND APPEALS

- (a) **Administrative Review.** The Director shall review a complete and duly filed application for a Section 6409 approval, and may act on such application without a public hearing or notice.
- (b) **Decision Notice.** Within five calendar days after the Director acts on an application for a Section 6409 approval or before the FCC Shot Clock expires (whichever occurs first), the Director or his designee shall send a written notice to the applicant. The notice may be sent as an attachment to an email to the email address provided on the application and a copy of the notice and email shall be placed in the file. The written notice must contain (1) the reasons for the decision; (2) a statement that denial will be without prejudice; and (3) instructions for how and when to file an appeal.
- (c) **Required Findings for Approval.** The Director may approve or conditionally approve an application for a Section 6409 approval when the Director finds that the proposed project:
 - (1) involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
 - (2) does not substantially change the physical dimensions of the existing wireless tower or base station.
- (d) **Criteria for Denial without Prejudice.** Notwithstanding any other provision in this policy, and consistent with all applicable federal laws and regulations, the Director may deny without prejudice any application for a Section 6409 approval when the Director finds that the proposed project:
 - (1) does not meet the findings required in subsection (c);
 - (2) involves the replacement of the entire support structure; or
 - (3) violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.
- (e) **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this Section 3 is intended to limit the Director's authority to conditionally approve an application for a Section 6409 approval to protect and promote the public health and safety.

- (f) **Appeals.** Subject to the applicable FCC Shot Clock, any applicant may appeal the Director's written decision. The written appeal together with any applicable appeal fee must be tendered to the City Clerk within seven calendar days from the Director's written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager or the City Manager's designee (either party, the "**City Manager**") shall be the appellate authority for all appeals from the Director's written decision to deny an application for Section 6409 approval. The City Manager shall review the application *de novo* without public notice or a public hearing; provided, however, that at least five calendar days' notice shall be provided to the applicant. The City Manager's decision shall be limited to only whether the application should be approved or denied in accordance with the provisions in this Section 3 and any other applicable laws. Within the applicable FCC shot clock, the City Manager shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further administrative appeals.

SECTION 3.5. STANDARD CONDITIONS OF APPROVAL

In addition to all other conditions adopted by the Approval Authority, all Section 6409 approvals, whether approved by the Approval Authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this Section 3.5. The Approval Authority shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this Section 3.

- (a) **Permit Term.** The City's grant or grant by operation of law of a Section 6409 approval constitutes a federally-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station, and will be regarded as a modification to the underlying approval for the subject tower or base station. The City's grant or grant by operation of law of this Section 6409 approval will not extend the permit term, if any, for any underlying permit or other underlying prior regulatory authorization. Accordingly, the term for this Section 6409 approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station, and any renewals thereof. This condition shall not be applied or interpreted in any way that would cause the term of the underlying permit for the modified facility to be less than 10 years in total length.
- (b) **Compliance Obligations Due to Invalidation.** In the event that any court of competent jurisdiction invalidates all or any portion of Section 6409 or any FCC rule that interprets Section 6409 such that federal law would not mandate approval for any eligible facilities request(s), such approval(s) shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved eligible facilities requests or the Director grants an extension upon written request from the permittee that

shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the Director may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated eligible facilities request when it has obtained the applicable permit(s) or submitted an application for such permit(s) before the one-year period ends.

- (c) **City's Standing Reserved.** The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409, any FCC rules that interpret Section 6409 or any eligible facilities request.
- (d) **Compliance with Approved Plans.** Before the permittee submits any applications to the Building Division required to commence construction in connection with this Section 6409 approval, the permittee must incorporate this Section 6409 approval, all conditions associated with Section 6409 approval and any approved photo simulations into the project plans (the "**Approved Plans**"). The permittee must construct, install and operate the wireless facility in substantial compliance, as determined by the Director, with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director's prior review and approval. The Director may refer the request to the Approval Authority, if other than the Director, who may revoke the Section 6409 approval if the Approval Authority finds that the requested alteration, modification or other change may cause a substantial change as that term is defined by the FCC in 47 C.F.R. § 1.6100(b)(7), as may be amended.
- (e) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the Approval Authority with documentation reasonably acceptable to the Approval Authority that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- (f) **Build-Out Period.** This Section 6409 approval will automatically expire one (1) year from the approval or deemed-granted date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The Director may grant one written extension to a date certain, but not to exceed one (1) additional year, when the permittee shows good cause to extend the limitations

period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.

- (g) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the Approved Plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (h) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this Section 6409 approval, which includes without limitation any Laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws. In the event that the City fails to timely notice, prompt or enforce compliance with any applicable provision in the Gardena Municipal Code, any permit, any permit condition or any applicable law or regulation, the applicant or permittee will not be relieved from its obligation to comply in all respects with all applicable provisions in the Gardena Municipal Code, any permit, any permit condition or any applicable law or regulation.
- (i) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Gardena Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The Director or the Director's designee may issue a stop work order for any activities that violates this condition in whole or in part.
- (j) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff or other designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the

permittee. Notwithstanding the prior sentence, the City's officers, officials, staff or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designee while any such inspection or emergency access occurs.

- (k) **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the Director with accurate and up-to-date contact information for a person responsible for the wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and immediately provide the Director with updated contact information in the event that either the responsible person or such person's contact information changes.
- (l) **Indemnification.** The permittee and, if applicable, the property owner upon which the wireless facility is installed, shall defend, indemnify and hold harmless the City, City Council and City boards, commissions, agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("**Claims**") brought against the City or its agents, officers, officials, employees or volunteers to challenge, attack, seek to modify, set aside, void or annul the City's approval of this Section 6409 approval, and (2) other Claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this Section 6409 approval or the wireless facility. In the event the City becomes aware of any Claims, the City will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this Section 6409 approval, and that such indemnification obligations will survive the expiration or revocation of this Section 6409 approval.
- (m) **Performance Bond.** Before the Building Division issues any permits required to commence construction in connection with this Section 6409 approval, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the

improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.

- (n) **Permit Revocation.** The Director may recall this Section 6409 approval for review at any time due to complaints about noncompliance with applicable laws or any approval conditions attached to this Section 6409 approval after notice and an opportunity to cure the violation is provided to the permittee. If the noncompliance continues after notice and reasonable opportunity to cure the noncompliance, the Approval Authority may revoke this Section 6409 approval or amend these conditions as the Approval Authority deems necessary or appropriate to correct any such noncompliance.
- (o) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the Section 6409 approval application, Section 6409 approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the Section 6409 approval (collectively, "**records**"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (p) **Abandoned Wireless Facilities.** The wireless facility authorized under this Section 6409 approval shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Gardena Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- (q) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (r) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all reasonable costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.

SECTION 4. SMALL WIRELESS FACILITIES

SECTION 4.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- (a) **Applicability.** Except as expressly provided otherwise in this policy, the provisions in this Section 4 shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy small wireless facilities within the City's public rights-of-way or on private property.
- (b) **Small Cell Permit.** A small cell permit to be issued by the Director of Public Works is required for any small wireless facility proposed on an existing, new or replacement support structure.
- (c) **Small Cells in the Public Right-of-Way.** For small cell facilities in the public right-of-way, the zoning of the location shall be considered that of the abutting property and the abutting property shall be considered the "subject property" for purposes of determining the radius map.
- (d) **Other Permits and Regulatory Approvals.** In addition to a small cell permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid small cell permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such small cell permit may be denied without prejudice. Furthermore, any permit or approval granted under this Section 4 shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.
- (e) **Other Infrastructure Deployments.** To the extent that other infrastructure deployments, including without limitation any deployments that require approval pursuant to Gardena Municipal Code Chapter 13.56, involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements, the department or official responsible to review and approve or deny requests for authorization in connection with such other infrastructure deployment shall apply the provisions in this Section 4 unless specifically prohibited by applicable law.

SECTION 4.2. SPECIAL DEFINITIONS FOR SMALL WIRELESS FACILITIES

- (a) **"Antenna"** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded, which defines that term as an apparatus designed for the purpose of emitting RF radiation, to be operated or operating from

a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services.

- (b) **"Arterial Roadway"** means the same as defined by the Gardena General Plan Circulation Plan, as may be amended or superseded.
- (c) **"Collector Roadway"** means the same as defined by the Gardena General Plan Circulation Plan, as may be amended or superseded.
- (d) **"Local Street"** means the same as defined by the Gardena General Plan Circulation Plan, as may be amended or superseded.
- (e) **"Major Collector Roadway"** means the same as defined by the Gardena General Plan Circulation Plan, as may be amended or superseded.

SECTION 4.3. SPECIAL APPLICATION REQUIREMENTS AND PROCEDURES

- (a) **Special Application Contents.** In addition to the requirements in Section 1.4, all applications for a small cell permit must include all the information and materials required in this subsection (a).
 - (1) **Application Fee.** For batched applications, the applicant must include the applicable small cell permit application fee for each small wireless facility in the batch.
 - (2) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all structures within 300 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

- (3) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a “small wireless facility” as defined by the FCC in 47 C.F.R. § 1.6002(f). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a small cell permit as provided in Section 4.4(c).
- (4) **Site Agreement.** For any small wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit a partially-executed site agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City’s form site agreement except as may be indicated on the form itself. Any unpermitted changes to the City’s form site agreement shall be deemed a basis to deem the application incomplete.
- (b) **Batched Applications.** Applicants may submit up to five individual applications for a small cell permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch.
- (c) **Small Cell Permit Application Completeness Review.** Within 10 calendar days after the Director receives a duly filed permit application, the Director shall review the application for completeness and, if the application is materially incomplete, may send a written notice to the applicant that identifies all the missing or incomplete requirements to reset the FCC Shot Clock to day 0. Within 10 calendar days after the Director receives any permit application resubmittal, the Director shall review the application for completeness and, if the resubmittal does not contain all the materials identified in the initial written notice, may send a subsequent written notice to the applicant that identifies the remaining missing or incomplete requirements. Any such subsequent notice does not reset the FCC Shot Clock.

SECTION 4.4. APPROVALS AND DENIALS; NOTICES

- (a) **Public Notice.** Prior to any approval, conditional approval or denial, public notice shall be mailed to all properties and record owners of properties within 100 feet from the subject property. The notice must contain: (1) a general project description; (2) the applicant’s identification and contact information as provided

on the application submitted to the City; (3) contact information for the Approval Authority; (4) a statement that the Director will act on the application without a public hearing by a date certain, which date shall be at least seven calendar days from the date of the notice, and will evaluate the application and comments received during that period for compliance with the standards in Section 4.6 and Section 4.7; and (5) a statement that the FCC requires the City to act on small cell permit applications, which includes any administrative appeals, in 60 days for attachments to existing structures and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review.

- (b) **Administrative Review.** Not less than 15 calendar days after the public notice required in subsection (a), unless the applicable FCC shot clock will expire before such time, the Director shall approve, conditionally approve or deny a complete and duly filed small cell permit application without a public hearing.
- (c) **Required Findings.** The Director may approve or conditionally approve a complete and duly filed application for a small cell permit when the Director finds:
 - (1) the proposed project meets the definition for a "small wireless facility" as defined by the FCC;
 - (2) the proposed project would be in the most preferred location as specified in Section 4.6 within 300 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 300 feet would be technically infeasible;
 - (3) the proposed project would not be located on a prohibited support structure identified in this Section 4.6;
 - (4) the proposed project would be on the most preferred support structure within 300 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 300 feet would be technically infeasible;
 - (5) the proposed project complies with all applicable design standards in this Section 4.7;
 - (6) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
 - (7) all public notices required for the application have been given.

- (d) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or California laws, nothing in this policy is intended to limit the Director's ability to conditionally approve or deny without prejudice any small cell permit application as may be necessary or appropriate to ensure compliance with this Section 4.
- (e) **Decision Notices.** Within five calendar days after the Director acts on a small cell permit application or before the FCC Shot Clock expires (whichever occurs first), the Director or his designee shall send a written notice to the applicant. The notice may be sent as an attachment to an email to the email address provided on the application and a copy of the notice and the email shall be placed in the file. The written notice to the applicant must contain: (1) the reasons for the decision; and (2) instructions for how and when to file an appeal. Notice shall also be sent to any person who filed a written comment.
- (g) **Appeals.** Subject to the applicable FCC Shot Clock, any applicant or an interested party may appeal the Director's written decision; provided, however, that appeals from an approval shall not be permitted when based solely on the environmental effects from radio frequency emissions that are compliant with applicable FCC regulations and guidelines. The written appeal together with any applicable appeal fee must be tendered to the City Clerk within seven calendar days from the Director's written decision, and must state in plain terms the grounds for reversal and the facts that support those grounds. The City Manager or the City Manager's designee shall be the appellate authority for all appeals from the Director's written decision. The City Manager shall review the application *de novo* without public notice or a public hearing; provided, however, that at least five calendar days' notice shall be provided to the applicant and any person who filed a written comment. Within the applicable FCC shot clock, the City Manager shall issue a written decision that contains the reasons for the decision, and such decision shall be final and not subject to any further administrative appeals.

SECTION 4.5. STANDARD CONDITIONS OF APPROVAL

- (a) **General Conditions.** In addition to all other conditions adopted by the Approval Authority for a small cell permit, all small cell permits issued under this Section 4 shall be automatically subject to the conditions in this subsection (a). The Director shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this Section 4. To the extent required by applicable FCC regulations, the Director shall take care to ensure that any different conditions applied to small wireless facilities are no more burdensome than those applied to other infrastructure deployments.
- (1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance, except when California Government Code § 65964(b), as may be

amended or superseded in the future, authorizes the City to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation; modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

- (2) **Permit Renewal.** Within one (1) year before the expiration date of this permit, the permittee may submit an application for permit renewal. To be eligible for administrative review and renewal, the permittee must demonstrate that the subject wireless facility is in compliance with all the conditions of approval associated with this permit and all applicable provisions in the Gardena Municipal Code and this policy that exist at the time the decision to renew the permit is rendered. The Approval Authority shall have discretion to modify or amend the conditions of approval for permit renewal on a case-by-case basis as may be necessary or appropriate to ensure compliance with this policy. Upon renewal, this permit will automatically expire 10 years and one day from its issuance, except when California Government Code § 65964(b), as may be amended or superseded in the future, authorizes the City to establish a shorter term for public safety reasons or substantial land use reasons.
- (3) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the Approval Authority with documentation reasonably acceptable to the Approval Authority that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- (4) **Build-Out Period.** This small cell permit will automatically expire one (1) year from the approval date (the “**build-out period**”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the small wireless facility or its use. If this build-out period expires, the City will not extend the build-out period but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- (5) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this small cell permit. The permittee shall keep the site area free from all litter and

debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

- (6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this small cell permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Gardena Municipal Code, this policy any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the Gardena Municipal Code, this policy, any permit, any permit condition or any applicable law or regulation.
- (7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Gardena Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part.
- (8) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to

property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

- (9) **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the small wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.
- (10) **Indemnification.** The permittee and, if applicable, the property owner upon which the small wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this small cell permit, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this small cell permit or the small wireless facility. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this small cell permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this small cell permit.
- (11) **Performance Bond.** Before the Building Division issues any permits required to commence construction in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other

improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.

- (12) **Permit Revocation.** Any permit granted under this policy may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before the Director may conduct a public hearing to revoke any permit granted under this policy, the Director must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this policy may be revoked only by the City Council after a duly notice public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- (13) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the small cell permit application, small cell permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the small cell permit (collectively, "**records**"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will

be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (14) **Abandoned Wireless Facilities.** The small wireless facility authorized under this small cell permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Gardena Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- (15) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (16) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all reasonable costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the

permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.

- (b) **Conditions for Small Wireless Facilities in the Public Rights-of-Way.** In addition to all conditions in subsection (a), all small cell permits for small wireless facilities in the public rights-of-way issued under this Section 4 shall be automatically subject to the conditions in this subsection (b).

- (1) **Future Undergrounding Programs.** Notwithstanding any term remaining on any small cell permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must also underground its equipment, except the antennas and any approved electric meter, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- (2) **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (3) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "**City work**"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this small cell permit. If the Public Works Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be

rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

SECTION 4.6. LOCATION REQUIREMENTS

- (a) **Preface to Location Requirements.** This subsection (a) provides guidance as to how to interpret and apply the location requirements in this Section 4.6. To better assist applicants and decisionmakers understand and respond to the community's aesthetic preferences and values, subsections (b), (c), (d), (e) and (f) set out listed preferences for locations and support structures to be used in connection with small wireless facilities in ordered hierarchies. Applications that involve lesser-preferred locations or structures may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 300 feet from the proposed site; or (2) any more preferred locations or structures within 300 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Subsection (g) identifies "prohibited" support structures on which the Approval Authority shall not approve any small cell permit application for any competitor or potential competitor.
- (b) **Locations in the Public Rights-of-Way.** The City prefers small wireless facilities in the public rights-of-way to be installed in locations based on zoning districts as the first priority, and roadway classifications as the second. As an illustration, a location within a residential zone on or along an arterial roadway is less preferred than a location in a non-residential zone on or along a local street.
- (c) **Zoning Preference.** Whether in the public right-of-way or on private property, the following is the order of preferred zoning, ordered from most-preferred to least preferred:
- (1) parcels within industrial (M-1/M-2) zones or approved for an industrial use;
 - (2) parcels within commercial (C-2/C-3/C-4) zones or approved for a commercial use;
 - (3) parcels within the parking (P) zone;

- (4) parcels within the official (O) zone or approved for an official use;
 - (5) parcels within a mixed-use overlay (MU), home business (H-B), or business and professional (C-P) zone or approved for such uses with a residential component;
 - (6) parcels in residential zones other than R-1 or R-2 district, including Specific Plan zones;
 - (7) parcels within a commercial-residential (C-R) zone;
 - (8) parcels within a single-family (R-1) or low-density multiple-family (R-2) residential zone.
- (d) **Roadway Classifications.** The City prefers small wireless facilities in the public right-of-way to be installed on or along roadway classifications, ordered from most-preferred to least preferred, as follows:
- (1) arterial roadways;
 - (2) major collector roadways;
 - (3) collector roadways;
 - (4) local streets.
- (e) **Support Structures in the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:
- (1) existing or replacement streetlight poles;
 - (2) existing or replacement wood utility poles;
 - (3) new, non-replacement streetlight poles;
 - (4) new, non-replacement poles for small wireless facilities.
- (f) **Support Structures Outside the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures outside the public rights-of-way, ordered from most preferred to least preferred, as follows:
- (1) existing buildings or other non-tower structures previously approved for use as a support structure for personal wireless service facilities;

- (2) other existing buildings or non-tower structures;
 - (3) existing or replacement poles or towers;
 - (4) new, non-replacement towers for small wireless facilities.
- (g) **Prohibited Support Structures.** The City prohibits small wireless facilities to be installed on the following support structures, whether located in the public rights-of-way or not:
- (1) decorative poles;
 - (2) traffic signals, signs, poles, cabinets and related devices;
 - (3) any utility pole scheduled for removal or relocation within 12 months from the time the Approval Authority acts on the small cell permit application;
 - (4) new, non-replacement wood poles.

SECTION 4.7. DESIGN STANDARDS

(a) General Design Standards.

- (1) **Noise.** Small wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in the Gardena General Plan and Gardena Municipal Code Chapter 8.36, as may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district. In the event a duly authorized federal, state, county or City official declares an emergency within a region that includes the City in whole or in part, backup power generators may exceed the applicable noise control standards and regulations to the extent reasonably necessary to operate the facility until the declared emergency is lifted or power is restored to the affected facility.
- (2) **Lights.** Small wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Section.
- (3) **Landscape Features.** Small wireless facilities shall not displace any existing landscape features unless: (A) such displaced landscaping is replaced with

native and/or drought-resistant plants, trees or other landscape features approved by the Approval Authority and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance must be performed in order to avoid the landscaping becoming a nuisance as specified in accordance with Gardena Municipal Code Section 8.64.020, as may be amended.

- (4) **Site Security Measures.** Small wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Approval Authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.
 - (5) **Signage; Advertisements.** All small wireless facilities must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, OSHA or other United States governmental agencies for compliance with RF emissions regulations.
 - (6) **Compliance with Health and Safety Regulations.** All small wireless facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions.
- (b) **Small Wireless Facilities in the Public Right-of-Way.**
- (1) **Overall Height.** Small wireless facilities may not exceed either: (A) the minimum separation from electrical lines required by applicable safety regulations, plus six feet; or (B) six feet above the existing support structure.
 - (2) **Antennas.**
 - (A) **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure.
 - (B) **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume and all antennas may not exceed six cubic feet in volume.

(3) **Accessory Equipment.**

- (A) **Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing utilities are primarily located underground; (ii) on the pole or support structure; or (iii) integrated into the base of the pole or support structure. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.
- (B) **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.
- (C) **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure.
- (D) **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.

- (E) **Ground-Mounted Accessory Equipment.** On collector roads and local roads, the City prefers ground-mounted accessory equipment to be concealed as follows: (A) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; and (B) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks. On arterial roads outside underground districts, proposed ground-mounted accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets. All ground-mounted accessory equipment cabinets must comply with the City's public safety visibility requirements.
- (F) **Accessory Equipment Volume.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed within 300 feet from a residential district; or (ii) seventeen (17) cubic feet in volume if installed in all other locations. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.
- (4) **Streetlights.** Applicants that propose to install small wireless facilities on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. To the extent feasible, antennas must be installed above the pole within a single, canister-style shroud or radome that tapers to the pole.
- (5) **Wood Utility Poles.** Applicants that propose to install small wireless facilities on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.
- (6) **New, Non-Replacement Poles.** Applicants that propose to install small wireless facilities on a new, non-replacement pole must install a new streetlight

substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome.

- (7) **Strand-Mounted Wireless Facilities.** No more than one strand-mounted wireless facility may be installed (A) on any single span between two poles or (B) adjacent to any single pole. The Approval Authority shall not approve any ground-mounted equipment in connection with any strand-mounted wireless facility, except for a remote power source that delivers power to a cluster of strand-mounted wireless facilities. All equipment and other improvements associated with a strand-mounted wireless facility must comply with all applicable health and safety regulations. Strand-mounted wireless facilities shall not exceed one cubic foot in total volume. Any accessory equipment mounted on the pole shall be finished to match the underlying pole. "Snow shoes" and other spooled fiber or cables are prohibited.
- (8) **Encroachments over Private Property.** Small wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
- (9) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.
- (10) **Obstructions; Public Safety.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; (F) access to any fire escape; or (G) any public access way subject to the Americans with Disabilities Act.

- (11) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through or concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. All external cable shrouds or conduit must match the color of the support structure. The Approval Authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
 - (12) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
 - (13) **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. The Approval Authority shall not approve a separate ground-mounted electric meter pedestal unless all more-preferred options are technically infeasible.
 - (14) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.
- (c) **Small Wireless Facilities Outside the Public Right-of-Way.**
- (1) **Overall Height.** Small wireless facilities on private property may not exceed the applicable height limit for structures in the applicable zoning district or overlay zone.
 - (2) **Setbacks.** Small wireless facilities on private property may not encroach into any applicable setback for structures in the subject zoning district.
 - (3) **Backup Power Sources.** The Approval Authority shall not approve any diesel generators or other similarly noisy or noxious generators in or within 300 feet from any residence; provided, however, the Approval Authority may approve sockets or other connections used for temporary backup generators.

- (4) **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must be the minimum size necessary to reasonably accommodate the proposed use.
- (5) **Towers, Poles and Other Freestanding Small Wireless Facilities.** All new towers, poles or other freestanding structures that support small wireless facilities must be made from a metal or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole height shall not exceed thirty-five (35) feet or the height limit for the applicable zoning district or overlay zone, whichever is less. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches.
- (6) **Building-Mounted Small Wireless Facilities.**
- (A) **Preferred Concealment Techniques.** All applicants must propose new non-tower small wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the applicant may propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).
- (B) **Facade-Mounted Equipment.** When small wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, facade-mounted equipment must be concealed behind screen walls and mounted flush to the facade. The Approval Authority may not approve "pop-out" screen boxes. Except in industrial zones, the Approval Authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade.

SECTION 5 TEMPORARY WIRELESS FACILITIES

SECTION 5.1. REQUIRED PERMITS

- (a) **Temporary Use Permit.** A temporary use permit, subject to the Director's prior review and approval in accordance with the procedures and standards in this Section 5, is required for any temporary wireless facility, unless deployed in connection with an emergency pursuant to Section 5.4.
- (b) **Other Permits and Regulatory Approvals.** In addition to any permit required under this Section 5, the applicant must show that the temporary wireless facility will comply with FCC maximum exposure limits for human exposure to radio frequency and also obtain all other permits and approvals as may be required by any other federal, state or local government agencies, which includes, without limitation, any other permits and/or approvals issued by other City departments or divisions. Furthermore, any permit or approval granted under this Section 5 (or deemed granted or deemed approved by law) shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or approvals.

SECTION 5.2. APPLICATIONS AND SUBMITTAL PROCEDURES

- (a) **Application Required.** The Director shall not approve any temporary wireless facility subject to a temporary use permit except upon a duly filed application and any other written application requirements or procedures the Director may publish in any publicly-stated format.
- (b) **Minimum Application Requirements.** Applicants for a temporary wireless facility shall submit at a minimum: (1) a temporary use permit application on the most current form prepared by the Community Development Department; (2) the applicable fee for the application; (3) a site plan that shows the proposed temporary wireless facility and its equipment, physical dimensions and placement on the proposed site relative to property lines and existing structures; (4) an RF compliance report in accordance with the City's requirements; and (5) an insurance certificate for general commercial liability that names the City as an additional insured, includes coverage for the time period in which the temporary wireless facility will be placed and carries at least \$1,000,000 in coverage per occurrence.
- (c) **Procedures for a Duly Filed Application.** Applications must be submitted in person to the City unless the Director grants written consent to receive an application by mail or electronic means. No pre-application conference or appointment is required for a temporary use permit application.

SECTION 5.3. DECISIONS AND APPEALS

- (a) **Required Findings for Temporary Wireless Facilities.** The Director may approve or conditionally approve a temporary use permit for a temporary wireless facility only when the Director finds:
- (1) the proposed temporary wireless facility will not exceed the overall zone height limit of the zoning district in which it is located; and
 - (2) the proposed temporary wireless facility complies with all setback requirements applicable to the proposed location; and
 - (3) the proposed temporary wireless facility will not involve any excavation or ground disturbance; and
 - (4) the proposed temporary wireless facility will be compliant with all generally applicable public health and safety laws and regulations, which include without limitation maximum permissible exposure limits for human exposure to RF emissions established by the FCC; and
 - (5) the proposed temporary wireless facility will not create any nuisance or violate any noise limits applicable to the proposed location; and
 - (6) the proposed temporary wireless facility will be identified with a sign that clearly identifies the (i) site operator, (ii) the operator's site identification name or number and (iii) a working telephone number answered 24 hours per day, seven days per week by a live person who can exert power-down control over the antennas; and
 - (7) the proposed temporary wireless facility will be removed within 30 days after the Director grants the administrative use permit, or such longer time as the Director finds reasonably related to the applicant's need or purpose for the temporary wireless facility (but in no case longer than one year); and
 - (8) the applicant has not been denied an approval for any permanent wireless facility in substantially the same location within the previous 365 days.
- (b) **Appeals.** Any applicant may appeal the Director's written decision to deny a temporary use permit for a temporary wireless facility in accordance with Gardena Municipal Code § 18.60.090.

SECTION 5.4. EMERGENCY TEMPORARY WIRELESS FACILITIES

- (a) **Authorization.** Temporary wireless facilities may be placed and operated within the City without a temporary use permit only when a duly authorized federal, state,

county or City agency or official declares an emergency within a region that includes the City in whole or in part.

- (b) **Notice.** All temporary wireless facilities deployed in an emergency shall bear a sign that clearly identifies the site operator and the contact information for the person responsible for such temporary wireless facility. Any person or entity that places temporary wireless facilities pursuant to this Section 5.4 must send a written notice that identifies the approximate site location and person responsible for its operation to the Director as soon as reasonably practicable. One notice may cover multiple temporary wireless facilities.
- (c) **Removal.** Any temporary wireless facilities placed pursuant to this Section 5.4 must be removed within 15 days after the date the emergency is lifted. The Director may authorize a longer timeframe for emergency temporary wireless facilities when the Director finds that (1) the temporary wireless facilities were deployed to temporarily replace permanent wireless facilities destroyed or otherwise rendered inoperable in connection with the emergency or (2) removal within the default timeframe would threaten public health, safety or welfare.

RESOLUTION NO. PC 10-19

A RESOLUTION OF THE PLANNING AND ENVIRONMENTAL QUALITY COMMISSION OF THE CITY OF GARDENA, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL ADOPT A NEW ORDINANCE AND POLICIES RELATING TO WIRELESS FACILITIES

WHEREAS, pursuant to Article XI, section 7 of the California Constitution and sections 36931 *et seq.* of the California Government Code, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws;

WHEREAS, the City of Gardena (the "City") has not previously adopted detailed design regulations applicable to wireless telecommunications facilities, but has generally required site plan review in accordance with the provisions in Gardena Municipal Code Chapter 18.44 for wireless facilities on public and private property within the City's territorial and jurisdictional boundaries; and

WHEREAS, significant changes in federal and State law that affect local authority over wireless facilities have occurred which require the changes in the manner in which the City processes applications for wireless facilities as further detailed in the Ordinance attached hereto as Exhibit A; and

WHEREAS, given the rapid and significant changes in federal and State law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with federal and State law, the Planning Commission feels that the Gardena Municipal Code should be amended to allow greater flexibility and responsiveness to new federal and State laws in order to preserve the City's traditional authority to the maximum extent practicable as set forth in the Resolution and Policy attached hereto as Exhibit B;

WHEREAS, on June 18, 2019, the Planning Commission held a duly noticed public hearing on the Amendments, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record; and

WHEREAS, on June 6, 2019, the public notice required by California state law and the Gardena Municipal Code Chapter 18.52 was given;

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF GARDENA DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. RECOMMENDATION

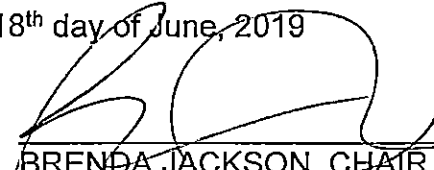
For the reasons set forth in the attached Ordinance and Resolution, the Planning Commission believes that the changes proposed by the Ordinance and Policy are

required for the public necessity, convenience, general welfare and good land use and zoning practices. The Planning Commission recommends that the City Council adopt Ordinance No. 1805, attached hereto as Exhibit A and the Policy attached to Resolution No. 6391, attached hereto as Exhibit B.

SECTION 2. ENVIRONMENTAL REVIEW.

Pursuant to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, the Planning Commission recommends that the City Council find that the Ordinance and Policy are not "projects" because their adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, these actions are not subject to CEQA. Even if the Ordinance and Resolution did qualify as "projects," there is no possibility that they would have a significant impact on the physical environment. This Ordinance merely amends the Gardena Municipal Code to authorize the adoption of regulations related to wireless facilities. This Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. The policy also does not authorize or approve any actual changes in the physical environment. Furthermore, without the policy, the City would not be able to control wireless facilities in any manner and would not be able to impose any aesthetic standards or locational requirements. Accordingly, the Planning Commission recommends that the City Council find these actions are exempt from CEQA under the general rule of CEQA Guidelines 15061(b)(3).

PASSED, APPROVED, AND ADOPTED this 18th day of June, 2019


BRENDA JACKSON, CHAIR
PLANNING AND ENVIRONMENTAL
QUALITY COMMISSION

ATTEST:


RAYMOND BARRAGAN, SECRETARY
PLANNING AND ENVIRONMENTAL QUALITY COMMISSION

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF GARDENA

I, Raymond Barragan, Planning and Environmental Quality Commission Secretary of the City of Gardena, do hereby certify the following: that the foregoing Resolution was duly adopted by the Planning and Environmental Quality Commission of the City of Gardena at a regular meeting thereof, held the 18th day of June, 2019, by the following vote of the Planning and Environmental Quality Commission:

AYES: Langley, Henderson,, Pierce, Sherman, Jackson

NOES:

ABSENT:

Attachment: Exhibit A: Ordinance No. 1805

Exhibit B: Resolution No. 6391 and Wireless Policy

Exhibit C: Summary Chart

CITY COUNCIL MEETING AGENDA STAFF REPORT

Agenda Item No. 8.B.(1) (a) & (b)
Department: Community Development
Meeting Date: 07/23/2019
Urgency Ordinance No. 1805
Resolution No. 6391

AGENDA TITLE:

PUBLIC HEARING: Adoption of Wireless Facilities Urgency Zoning Code Ordinance Amendment and Adoption of Wireless Policy

- (a) Urgency Ordinance No. 1805, Adopting Chapter 18.70 to Regulate Wireless Facilities Deployments on Private and Public Property, and in Public Rights-of Way, and Amending Gardena Municipal Code Chapters as Related to Wireless Facilities
- (b) Resolution No. 6391, Adoption of a Policy Regarding Wireless Facilities, as Set Forth in Gardena Municipal Code Section 18.70.010

APPLICANT: City of Gardena

RECOMMENDATION:

Staff respectfully recommends that the City Council:

Conduct a Public Hearing:

Adopt Urgency Ordinance No. 1805,

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDENA, CALIFORNIA, ADOPTING CHAPTER 18.70 TO REGULATE WIRELESS FACILITIES DEPLOYMENTS ON PRIVATE PROPERTY, PUBLIC PROPERTY, AND IN THE PUBLIC RIGHTS-OF-WAY, AND AMENDING CHAPTER 18.04, CHAPTER 18.22, CHAPTER 18.24, CHAPTER 18.26, CHAPTER 18.30, CHAPTER 18.32, CHAPTER 18.34, CHAPTER 18.36 and CHAPTER 18.44, ALL AS RELATED TO WIRELESS FACILITIES.

Adopt Resolution No. 6391,

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDENA, CALIFORNIA, ADOPTING A POLICY REGARDING WIRELESS FACILITIES AS SET FORTH IN GARDENA MUNICIPAL CODE SECTION 18.70.010

BACKGROUND:

Wireless facilities are currently regulated in the Gardena Municipal Code pursuant to the site plan review procedure. However, as the wireless industry has changed, federal regulations have been developed which prevent the City from utilizing this procedure to approve wireless facilities for several reasons. Federal regulations have limited the City's ability to approve location and impose aesthetic considerations and for the most part, have imposed very short time frames (shot clocks) to act upon wireless facility applications.

In order to meet federal regulations and to have the ability to keep up with changes, staff is proposing that the wireless ordinance be revised to basically provide that wireless facilities will be regulated by resolution of the City Council. In this way, changes can be quickly made when needed. If the City does not have policies in place which meet federal requirements, then it will not be able to impose any standards and conditions on the wireless facilities.

Because the City does not have procedures in place, it is recommended that the Ordinance be adopted as an Urgency Ordinance to take effect immediately, which then allows the policy to be immediately adopted. Both the Urgency Ordinance and Resolution with the draft policy attached are provided. Once

adopted, the matter will go through the normal procedures with a public hearing before the Planning Commission and return to the City Council to adopt the Ordinance as a regular Ordinance.

ANALYSIS:

Various federal and state laws affect traditionally local land-use discretion over wireless facilities. The following discussion provides a summarized explanation for the key regulations applicable to wireless deployments.

The Telecommunications Act of 1996

In 1996, Congress adopted the Telecommunications Act to, among many other things, preserve state and local land-use authority and at the same time encourage and facilitate the deployment of wireless service facilities. Local governments retain all their traditional authority except that local regulations cannot (1) prohibit or effectively prohibit personal wireless services; (2) unreasonably discriminate among functionally equivalent services; or (3) regulate based on environmental impacts from radiofrequency (RF) emissions.

In addition, local decisions must be made within a reasonable time and any denial requires a written decision based on substantial evidence in the written record. The Federal Communications Commission (FCC) defines a "presumptively reasonable" time for application review as 90 days for "collocations" and 150 days for non-collocations, after which time the applicant may seek expedited judicial review. As described below, California law provides an additional remedy to applicants if the local reviewing agency fails to act within the designated shot clock. Moreover, the FCC recently adopted new rules with respect to "small wireless facilities" that dramatically shorten the applicable shot clocks and impose new limitations on local regulations (60 days for attachments to existing structures and 90 days for attachments to new structures).

Section 6409(a)

In 2012, Congress enacted Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act that requires state and local governments to approve collocations and modifications to existing wireless towers and base stations that do not substantially change in the site's physical dimensions. In 2014, the FCC defined key terms in this provision, including (1) a definition for "substantial change" that preempts all state and local regulations except those related to public health and safety; (2) new limitations on materials and disclosures that municipalities can require for their review; and (3) a deemed-granted remedy for a failure to approve or deny the application within 60 days.

The FCC Small Cell Order

On September 26, 2018, the FCC adopted new rules that further limit local authority to regulate "small wireless facilities" as that term is defined by the FCC. The rules, which became fully effective on April 15, 2019, require the City to review applications for small wireless facilities (or small cells) faster and consistent with the FCC's national standard for an effective prohibition of personal wireless services. These rules are part of a larger rulemaking that aims to reinterpret the Telecommunications Act of 1996 and prohibit local moratoria on infrastructure deployments.

In addition, the FCC provides that a local small cell regulation causes an effective prohibition in violation of federal law unless the regulation is (1) reasonable; (2) no more burdensome than regulations imposed on similar infrastructure deployments; (3) objective; and (4) published in advance. Reasonable

regulations are those that are technically feasible and reasonably directed to avoiding or remedying the “intangible public harm” (as described by the FCC) of unsightly or out-of-character deployments. Although the FCC declared that minimum spacing or undergrounding requirements would potentially violate the new test, the FCC provided little guidance as to the scope of specific local regulations that would likely be considered to be preempted. The regulations mean that the City may not prohibit placement of small cells within the public right-of-way or on publicly owned and operated utility poles but can prescribe reasonable standards for their placement and design.

Applicable California Law

State law further limits local authority over all wireless facilities regardless of the proposed location and grants special rights to applicants that propose facilities in the public rights-of-way. In 2015, the California Legislature adopted AB 57 (Quirk), which automatically deems any non-small wireless facility permit application approved if (1) the local government failed to approve or deny the request within the applicable FCC timeframe and (2) the public notices for the application were satisfied.

With respect to the public rights-of-way, California law grants telephone corporations registered with the Public Utilities Commission a limited right to use public roads in a manner that does not “incommode” the public use of the rights-of-way. This right to use the public rights-of-way is subject to local governments’ reasonable time, place and manner regulations. Both federal and state courts hold that California preserves local authority to regulate against both physical obstructions and aesthetic impacts. Although state law generally preserves local aesthetic authority, municipalities must reconcile their authority with the FCC rules.

The Proposed Policy

The policy is lengthy as it deals with the three major type of wireless facilities listed below as well as with temporary and emergency facilities. The length and detail are required to address each federal regulatory classification of wireless facilities, provide clear standards for applicants and planners to apply, and deal with the FCC’s recent rulings that aesthetic standards and application requirements must be published in advance to be enforceable. The policy was developed by the Telecom Law Firm which represents over 700 government cities in conjunction with city staff. The Telecom Law Firm has also been the City’s consultant on many wireless facilities over the past decade or so.

As stated above, the wireless facility industry and the ability to regulate such facilities has been undergoing constant change over the past years. Wireless facilities now encompass 3 basic categories without any distinction between private property, public property and right-of-way. These categories have been defined in the policy as follows:

- Small wireless facilities – these are facilities which are no more than 3 cubic feet and a base station of nor more than 28 cubic feet. A small wireless facility can be either a new structure or attached to an existing structure.
- Eligible facilities (§ 6409 Collocation facilities) – these are facilities that collocate with or modify an existing wireless facility and do not create a “substantial change” in the facility as defined by the FCC.
- Macro facilities – these are facilities that do not qualify as either an eligible facility or a small wireless facility. These are primarily located outside the public right-of-way because of their size.

The FCC's definition of a small wireless facility is so large that the policy addresses all facilities within the public right-of-way in the small wireless facility section.

The time frames (or "shot clocks") to approve/deny these facilities are incredibly short. All time frames commence the day the application is submitted – even if the application is incomplete – and run until the day the permit is issued or denied. Moreover, the City gets only one bite to tell an applicant what is missing or incomplete in a written notice. This means that resubmitted information may be deemed inadequate, but nothing new can be identified as missing or incomplete on a resubmission if staff did not identify such material in the original incomplete notice. Additionally, the shot clock can only be paused if the City issues a timely incomplete notice or by mutual agreement. Eligible facilities and macro facilities can be deemed approved/granted if the City does not act in the required time.

For each of the different types of applications, the policy includes application procedures, design standards, and standard conditions of approval, as well as notice and appeal procedures. A summary of the basic provisions is included in Exhibit C.

Applications for facilities in the public right of way will be filed with the Department of Public Works. Applications for facilities on private property, or City-owned public property will be filed with the Department of Community Development. Small wireless facilities and eligible facilities will be decided administratively by the appropriate director with appeal rights to the City Manager. Mailed notice will be given to neighbors for small wireless facilities allowing them a seven-day period to file an objection or raise a concern.

Macro Facilities that are attached to an existing structure in a preferred location will be handled in the same manner. The application will be decided by the Director with a right of appeal to the City Manager. Mailed notice will be given to neighbors. Macro facilities that are either in a discouraged location or that will be part of a new structure will go to the Planning Commission for consideration. Notice will be mailed to neighbors informing them of when the Planning Commission will hear the item, but there will not be a newspaper noticed public hearing.

The proposed policy guides infrastructure deployments to the City's more preferred locations based on the following hierarchies.

Macro Facilities –

(a) Preferred Locations. Preferred facilities in most to least favored:

- (1) parcels within industrial (M-1/M-2) zones or approved for an industrial use;
- (2) parcels within commercial (C-2/C-3/C-4) zones or approved for a commercial use;
- (3) parcels within parking (P) zones;
- (4) parcels with official (O) zones or approved for an official use;
- (5) parcels within a mixed-use overlay (MU), home business (H-B), or business and professional (C-P) zone or approved for such uses with a residential component;
- (6) parcels in residential zones other than R-1 or R-2 district, including Specific Plan zones.

(b) Discouraged Locations. For a discouraged location, the applicant must show that a technically feasible and potentially available alternative in a "preferred" location does not exist. The Planning Commission will hear all applications for a macro facility in a discouraged location. From most to least discouraged:

- (1) parcels within a single-family (R-1) or low-density multiple-family (R-2) residential zone;
- (2) parcels within a commercial-residential (C-R) zone.

Small Wireless Facilities – rather than have a preferred and discouraged location, small wireless facilities are a preferred zoning from most to least preferred as follows:

- (1) parcels within industrial (M-1/M-2) zones or approved for an industrial use;
- (2) parcels within commercial (C-2/C-3/C-4) zones or approved for a commercial use;
- (3) parcels within parking (P) zones;
- (4) parcels with official (O) zones or approved for an official use;
- (5) parcels within a mixed-use overlay (MU), home business (H-B), or business and professional (C-P) zone or approved for such uses with a residential component;
- (6) parcels in residential zones other than R-1 or R-2 district, including Specific Plan zones;
- (7) Parcels within a commercial-residential (C-R) zone;
- (8) parcels within a single-family (R-1) or low-density multiple-family (R-2) residential zone.

Additionally, as most of these facilities will be in the public right-of-way, there is a preference of roadway classifications as shown below. Zoning preference takes priority over street classification. The preferences are:

- (1) arterial roadways;
- (2) major collector roadways;
- (3) collector roadways;
- (4) local streets

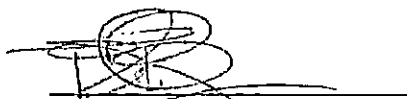
CEQA:

Pursuant to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, this Ordinance is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, this Ordinance is not subject to CEQA. Even if this Ordinance qualified as a "project" subject to CEQA, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. The Ordinance merely amends the Gardena Municipal Code to authorize the adoption of regulations related to wireless facilities. The Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment.

Similarly, adoption of the policy would also not have a significant effect on the environment under CEQA Guidelines § 15061(b)(3) under the same rationale as the proposed ordinance. The policy would not directly or indirectly authorize any actual changes in the physical environment. Should the policy not be adopted there could be harm to the environment as there would be no regulations relating to the aesthetics or placement of wireless facilities.

IN CONCLUSION, Staff respectfully recommends that Council adopt Urgency Ordinance 1805, which requires a 4/5 vote and adopt Resolution No. 6391 establishing a policy for wireless facilities in the City.

Submitted by:


Raymond Barragan

Date:

18 July 2019

URGENCY ORDINANCE NO. 1805

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDENA, CALIFORNIA, ADOPTING CHAPTER 18.70 TO REGULATE WIRELESS FACILITIES DEPLOYMENTS ON PRIVATE PROPERTY, PUBLIC PROPERTY, AND IN THE PUBLIC RIGHTS-OF-WAY, AND AMENDING CHAPTER 18.04, CHAPTER 18.22, CHAPTER 18.24, CHAPTER 18.26, CHAPTER 18.30, CHAPTER 18.32, CHAPTER 18.34, CHAPTER 18.36, and CHAPTER 18.44, ALL AS RELATED TO WIRELESS FACILITIES

WHEREAS, pursuant to Article XI, section 7 of the California Constitution and sections 36931 *et seq.* of the California Government Code, the City Council may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the City of Gardena (the "City") has not previously adopted detailed design regulations applicable to wireless telecommunications facilities, but has generally required site plan review in accordance with the provisions in Gardena Municipal Code Chapter 18.44 for wireless facilities on public and private property within the City's territorial and jurisdictional boundaries; and

WHEREAS, significant changes in federal and State law that affect local authority over wireless facilities have occurred, including but not limited to the following:

1. On November 18, 2009, the Federal Communications Commission ("FCC") adopted a Declaratory Ruling on the proceeding titled *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, 24 FCC Rcd. 13994 (rel. Nov. 18, 2009) (the "2009 Declaratory Ruling"), which imposed procedural restrictions on state and local permit application reviews such as presumptively reasonable times for action. After a petition for judicial review, the U.S. Supreme Court in *City of Arlington v. FCC*, 569 U.S. 290 (2013), upheld the FCC's authority to issue these rules; and

2. On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act ("Section 6409"), which mandated that State and local governments approve certain modifications and collocations to existing wireless facilities; and

3. On October 17, 2014, the FCC adopted a Report and Order in the rulemaking proceeding titled *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 29 FCC Rcd. 12865 (rel. Oct. 21, 2014) (the "2014 Infrastructure Order"), which implemented regulations for "eligible facilities requests" and imposed new procedural restrictions on application reviews. The U.S. Court of Appeals for the Fourth Circuit in *Montgomery Cnty. V. FCC*, 811 F.3d 121 (4th Cir. 2015), denied petitions for review; and

4. On October 9, 2015, Governor Edmund Brown signed Assembly Bill No. 57 (Quirk) into law, which creates a "deemed-approved" remedy for when a local government fails to act on applications for certain wireless facilities within the presumptively-reasonable times established in the 2009 Declaratory Ruling and 2014 Infrastructure Order; and

5. On August 2, 2018, the FCC adopted a Third Report and Order and Declaratory Ruling in the rulemaking proceeding titled *Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 7705 (rel. Aug. 3, 2018) (the "August Order") that formally prohibited express and *de facto* moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a) and directed the Wireline Competition Bureau and the Wireless Telecommunications Bureau to hear and resolve all complaints on an expedited basis; and

6. On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, --- FCC Rcd. ---, FCC 18-133 (rel. Sep. 27, 2018) (the "September Order"), which, among many other things, creates a new regulatory classification for small wireless facilities, alters existing "shot clock" regulations to require local public agencies to do more in less time, establishes a national standard for an effective prohibition that replaces the existing "significant gap" test adopted by the United States Court of Appeals for the Ninth Circuit and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition; and

WHEREAS, in addition to the changes described above, local authority may be further impacted by other pending legislative, judicial and regulatory proceedings, including but not limited to:

1. The "STREAMLINE Small Cell Deployment Act" (S. 3157) proposed by Senator John Thune that, among other things, would apply specifically to "small" wireless facilities and require local governments to review applications based on objective standards, shorten the shot clock timeframes, require all local undertakings to occur within the shot clock timeframes and provide a "deemed granted" remedy for failure to act within the applicable shot clock; and

2. Further orders and/or declaratory rulings by the FCC from the same rulemaking proceeding as the August Order and September Order; and

3. Multiple petitions for reconsideration and judicial review filed by state and local governments against the August Order and September Order, which could cause the rules in either order to change or be invalidated; and

WHEREAS, given the rapid and significant changes in federal and State law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with federal and State law, the City Council desires to amend and add provisions to the Gardena Municipal

Code to allow greater flexibility and responsiveness to new federal and State laws in order to preserve the City's traditional authority to the maximum extent practicable (collectively, the "Amendments"); and

WHEREAS, pursuant to Government Code section 36937, an Ordinance may take effect immediately if it is needed for the immediate preservation of the public peace, health or safety, containing a declaration of facts constituting an emergency, and passed by a four-fifths vote; and

WHEREAS, on July 23, 2019, the City Council took public testimony, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDENA, CALIFORNIA, DOES HEREBY ORDAIN, AS FOLLOWS:

SECTION 1. FINDINGS.

The City Council finds as follows:

A. The facts set forth the recitals in this Ordinance are true and correct and incorporated into these findings by this reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Ordinance.

B. The Amendments are consistent with the General Plan, Gardena Municipal Code and applicable federal and California law.

C. The Amendments will not be detrimental to the public interest, health, safety, convenience or welfare.

SECTION 2. URGENCY FINDINGS.

A. State and federal law have changed substantially since the City last adopted regulations for wireless facilities in the City.

B. State and federal law requires local governments to act on permit applications for wireless facilities within a prescribed time period. Failure to act within the prescribed shot clock timeframes may result in either an automatic approval or significant legal presumptions against the City that render legal defenses significantly more difficult and costly.

C. Federal law requires state and local agencies to cite their own local authority and substantial evidence for any denial. Failure to provide such authority or evidence may result in a reversal and/or mandates to approve applications by a federal court. On

April 15, 2019, further restrictions on local authority and regulations for "small wireless facilities" became effective.

D. The City lacks adequate regulations to process wireless facilities and the management of applicable "shot clocks" that govern the time in which the City must approve or deny a wireless facility application.

E. The expeditious adoption of wireless facilities regulations is necessary to protect the City's visual character from potential adverse impacts or visual blight created or exacerbated by telecommunications infrastructure and promote access to high-quality, advanced telecommunication services for the City's residents, businesses and visitors.

F. The adoption of this Ordinance is necessary to preserve the public health, safety, and welfare as, without such adoption, wireless facilities approved without updated regulations could create: (1) land use conflicts and incompatibilities between comparable facilities; (2) visual and aesthetic blight and public safety concerns arising from the excessive size, noise or lack of camouflaging of wireless facilities; and (3) traffic and pedestrian safety hazards due to the potentially unsafe nature of unregulated siting of wireless facilities in the public rights-of-way.

SECTION 3. ENVIRONMENTAL REVIEW.

Pursuant to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that this Ordinance is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, this Ordinance is not subject to CEQA. Even if this Ordinance qualified as a "project" subject to CEQA, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Ordinance merely amends the Gardena Municipal Code to authorize the adoption of regulations related to wireless facilities. This Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Accordingly, the City Council finds that this Ordinance would be exempt from CEQA under the general rule.

SECTION 4. ADOPTING CHAPTER 18.70.

Chapter 18.70, titled "WIRELESS FACILITIES," is added to the Gardena Municipal Code and provides, as follows:

18.70 WIRELESS FACILITIES

18.70.010 Regulation of Wireless Facilities

All new wireless facilities, and any modifications, collocations, expansions or other changes to existing wireless facilities, whether located on private property, public

property, or within the public rights-of-way, shall be subject to the applicable permits, standards, procedures and other requirements as specified in the policy adopted by resolution of the City Council. Wireless facilities shall not be subject to the site plan review procedure of Chapter 18.44 of this Code.

18.70.020 Payment of Consultant Fees

All applicants for wireless facilities shall be required to reimburse the City for all reasonable consultant costs related to the processing of applications pursuant to this Chapter in addition to the application fee.

SECTION 5. AMENDMENTS TO CHAPTER 18.22.

Gardena Municipal Code section 18.22.020B which allowed wireless telecommunications facilities in the Parking zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 6. AMENDMENTS TO CHAPTER 18.24.

Gardena Municipal Code section 18.24.020F which allowed wireless telecommunications facilities in the Official zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 7. AMENDMENTS TO CHAPTER 18.26.

Gardena Municipal Code section 18.26.020C which allowed wireless telecommunications facilities in the Business and Professional Office zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 8. AMENDMENTS TO CHAPTER 18.30.

Gardena Municipal Code section 18.30.020I which allowed wireless telecommunications facilities in the Commercial zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 9. AMENDMENTS TO CHAPTER 18.32.

Gardena Municipal Code section 18.32.020H which allowed wireless telecommunications facilities in the General Commercial zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 10. AMENDMENTS TO CHAPTER 18.34.

Gardena Municipal Code section 18.34.020D which allowed wireless telecommunications facilities in the Heavy Commercial zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 11. AMENDMENTS TO CHAPTER 18.36.

Gardena Municipal Code section 18.36.020N which allowed wireless telecommunications facilities in the Industrial zone subject to site plan approval is deleted in its entirety and not replaced.

SECTION 12. AMENDMENTS TO CHAPTER 18.44.

Gardena Municipal Code section 18.44.010 is amended as follows:

Site plans are required to be submitted for:

- A. Any development project for which a general plan amendment, zone change, conditional use permit, variance, tract map, or other discretionary permit is being sought in which case the site plan shall be processed concurrently with the other discretionary approvals;
- B. Any development project, ~~including a wireless telecommunications facility,~~ on property, public or private, fronting on the westerly or easterly side of Western Avenue from 182nd Street on the south to El Segundo Boulevard on the north;
- C. Any development project, ~~including a wireless telecommunications facility,~~ on property, public or private, fronting on the northerly or southerly side of Redondo Beach Boulevard from Crenshaw Boulevard on the west to Vermont Avenue on the east;
- D. Any development project, ~~including a wireless telecommunications facility,~~ on property, public or private, fronting on the northerly or southerly side of Rosecrans Avenue from Crenshaw Boulevard on the west to Vermont Avenue on the east;
- E. All new multifamily development of four units or more;
- F. Those uses identified in the C-R zone as needing site plan review approval;
- G. Any use allowed by right or by conditional use permit pursuant to the mixed-use overlay zone, but not including any use allowed by itself in the underlying zone;
- H. Any development in the R-1 or R-2 zone where the proposed development is out of character with the surrounding residential properties as determined by the community development director, based on floor area ratio ("FAR");
- I. Accessory uses in commercial parking lots; and
- J. ~~Wireless telecommunications facilities for any location other than those specified in subsections B through D of this section; and~~

~~K.J.~~ Any other development for which a site plan review is required by this code.

In addition, Gardena Municipal Code section 18.44.020B is amended as follows:

B. The planning commission shall hold a noticed, public hearing and approve, conditionally approve, or deny site plans required by Section 18.44.010A through G or pursuant to any other provision of the Gardena Municipal Code.

~~1. Notwithstanding the above, the planning commission shall only review site plans for wireless facilities when they are located within the R-1 or R-2 zone or within three hundred feet of any such zone.~~

21. Notice of hearings shall be given in accordance with Government Code Section 65091.

SECTION 13. CONFLICTS WITH PRIOR ORDINANCES.

If the provisions in this Ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this section, the provisions in this Ordinance will control.

SECTION 14. SEVERABILITY.

The City Council declares that (1) the sections, paragraphs, sentences, clauses and phrases in this Ordinance are severable; and (2) if any sections, paragraphs, sentences, clauses and phrases in this Ordinance, or its application to any person, entity or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other sections, paragraphs, sentences, clauses and phrases in this Ordinance or the application of this Ordinance to any other person, entity or circumstance.

SECTION 15. EFFECTIVENESS.

This Ordinance shall take effect immediately. This Ordinance will remain effective until any repealing or superseding ordinance becomes effective.

SECTION 16. PUBLICATION.

The City Council directs the City Clerk to cause this Ordinance to be published in the manner required by law.

PASSED, APPROVED and ADOPTED on July 23, 2019, at a regular meeting of the City Council of the City of Gardena.

Tasha Cerda, Mayor
City of Gardena, California

ATTEST:

Mina Semenza, City Clerk

APPROVED AS TO FORM:



Peter L. Wallin, City Attorney

RESOLUTION NO. 6391

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
GARDENA, CALIFORNIA, ADOPTING A POLICY REGARDING
WIRELESS FACILITIES AS SET FORTH IN GARDENA
MUNICIPAL CODE SECTION 18.70.010**

WHEREAS, pursuant to Article XI, section 7 of the California Constitution and sections 36931 *et seq.* of the California Government Code, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the City of Gardena (the "City") has not previously adopted detailed design regulations applicable to wireless telecommunications facilities, but has generally required site plan review in accordance with the provisions in Gardena Municipal Code Chapter 18.44 for wireless facilities on public and private property within the City's territorial and jurisdictional boundaries; and

WHEREAS, significant changes in federal and State law that affect local authority over wireless facilities have occurred which caused the current regulatory scheme to be out of compliance; and

WHEREAS, on July 23, 2019, the City Council adopted Urgency Ordinance No. 1805, relating to wireless facilities; and

WHEREAS, newly enacted Section 18.70.010 provides that wireless facilities will be regulated by a policy adopted by resolution of the City Council; and

WHEREAS, the regulations, procedures, design standards, standard conditions, and other provisions set forth in the Wireless Policy attached hereto as Exhibit A are necessary to protect the public health, safety, welfare, and aesthetic interests, and the enforcement thereof will not result in the imposition of excessive costs on operators and users of wireless telecommunications services, nor does the policy materially limit a person's ability to receive wireless telecommunications services or create unfair competition among wireless telecommunications service providers;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDENA, CALIFORNIA, DOES HEREBY RESOLVE, AS FOLLOWS:

SECTION 1. FINDINGS. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. ADOPTION. The City Council hereby adopts the Wireless Facility Policy attached hereto as Exhibit A. This policy may be amended as deemed necessary from time-to-time by Resolution of the City Council.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect immediately. A full copy of the Resolution shall be made available in the Department of General Services, the Department of Community Development, and the City Clerk's office.

SECTION 4. CEQA. Pursuant to California Environmental Quality Act ("CEQA") Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that the adoption of this Policy is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, the Resolution adopting this policy is not subject to CEQA. Even if this Policy qualified as a "project" subject to CEQA, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. Without this Policy there would be no protection for the public health, safety and welfare as there would be no regulations relating to aesthetics or location. Accordingly, the City Council finds that adoption of this policy is exempt from CEQA under the general rule.

BE IT FURTHER RESOLVED that the City Clerk shall certify to the passage and adoption of this Resolution; shall cause the same to be entered among the original Resolutions of said City; and shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council of said City in the minutes of the meeting at which the same is passed and adopted.

PASSED, APPROVED and ADOPTED on July 23, 2019, at a regular meeting of the City Council of the City of Gardena.

Tasha Cerda, Mayor
City of Gardena, California

ATTEST:

Mina Semenza, City Clerk

APPROVED AS TO FORM:



Peter L. Wallin, City Attorney

Attachment – Exhibit A

WIRELESS FACILITY POLICY SUMMARY CHART

Type	Location	FCC Time Frame	Approval Authority	Notice	Incomplete Application	Resubmission	Deemed Approve/Granted Possible
Small Wireless Facility – Any Location	Attached to anything that is existing	60 days	Director; Appeal to City Manager	Notice to Neighbors within 100 feet	Notify within 10 days – reset shot clock back to 0 for 1 time only.	Notify within 10 days; pauses shot clock on subsequent incomplete notice	No – Operator must sue within 30 days after shot clock runs out
Small Wireless Facility – Any Location	New Structure	90 days	Director; Appeal to City Manager	Notice to Neighbors within 100 feet	Notify within 10 days – reset shot clock back to 0 for 1 time only.	Notify within 10 days; pauses shot clock on subsequent incomplete notice	No – Operator must sue within 30 days after shot clock runs out
Eligible Facility (§ 6409)	Will always be attached to an existing structure with a permitted wireless use	60 days	Director; Appeal to City Manager – applicant only	No notice	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide notice to city application deemed granted
Macro Facility – Preferred Location	Attached to anything that is existing	90 days	Director; Appeal to City Council	Notice to Neighbors within 300 feet	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide all public notices required by law and provide notice to City deemed granted
Macro Facility – Discouraged Location	Attached to anything that is existing	90 days	Planning Commission; Appeal to City Council	Notice to Neighbors within 300 feet; Planning Commission Meeting	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide all public notices required by law and provide notice to City deemed granted
Macro Facility – Preferred Location	New structure	150 days	Director; Appeal to Planning Commission and then City Council	Notice to Neighbors within 300 feet	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide all public notices required by law and provide notice to City deemed granted
Macro Facility – Discouraged Location	New structure	150 days	Planning Commission; Appeal to City Council	Notice to Neighbors within 300 feet; Planning Commission Meeting	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide all public notices required by law and provide notice to City deemed granted



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July 15, 2019

VIA E-MAIL

City of Gardena City Council
1700 West 162nd Street
Gardena, CA 90247

Re: AT&T's Comments on the City of Gardena's Urgency Ordinance Related to
Wireless Facilities and Wireless Facilities Policy

Dear Mayor Cerda, Mayor Pro Tem Kaskanian and Councilmembers Henderson, Medina and Tanaka,

I write on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) to provide comments on the City of Gardena's urgency ordinance related to wireless facilities ("Proposed Urgency Ordinance") and wireless facilities policy ("Proposed Policy"). AT&T appreciates that the City recognizes the need to address changes in applicable state and federal laws, including the Federal Communications Commission's *Infrastructure Order*.¹ With more than 72% of Americans relying exclusively or primarily on wireless telecommunications, it is especially important to encourage responsible deployments consistent with applicable law.

Unfortunately, the Proposed Urgency Ordinance and Proposed Policy would establish new rules at odds with state and federal laws. AT&T respectfully asks that the City consider these and other comments from the wireless industry to help make needed changes. AT&T offers the following summary of applicable laws along with specific comments on these proposed regulations.

Key Legal Concepts

The Federal Telecommunications Act of 1996 ("Act") establishes key limitations on local regulations. The Act defines the scope and parameters of the City's review of AT&T's applications. Under the Act, the City must take action on AT&T's applications "within a reasonable period of time."² The FCC has established and codified application "shot clocks" to implement this timing requirement.³ And the FCC has made clear that the City must grant all necessary approvals and authorizations within the applicable shot clock.⁴ The Act also requires

¹ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) ("*Infrastructure Order*").

² 47 U.S.C. § 332(c)(7)(B)(ii).

³ See 47 C.F.R. §§ 1.6001, *et seq.*

⁴ See *Infrastructure Order* at ¶¶ 132-137 (FCC concluded that shot clocks "apply to all authorizations a locality may require, and to all aspects and steps in the siting process, including license or franchise agreements to



that the City's review of AT&T's applications must be based on substantial evidence.⁵ Under the Act, state and local governments may not unreasonably discriminate among providers of functionally equivalent services.⁶

The Act also prohibits a local government from denying an application for a wireless telecommunications facility where doing so would "prohibit or have the effect of prohibiting" AT&T from providing wireless telecommunications services.⁷ The FCC has ruled that an effective prohibition occurs when the decision of a local government materially inhibits wireless services.⁸ The FCC explained that a local government "could materially inhibit service in numerous ways – not only by rendering a service provider unable to provide existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services."⁹

Under the *Infrastructure Order*, the FCC established a standard for lawful fees, which requires that: "(1) the fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations."¹⁰ And the FCC provides a safe harbor for presumptively reasonable fees: (a) \$500 for non-recurring fees for an application including up to five small cells, plus \$100 for each small cell beyond five, or \$1,000 for non-recurring fees for a new pole to support small cells; and (b) \$270 per small cell per year for all recurring fees.¹¹ Higher fees are presumed to violate the Act.¹²

The FCC also established a standard for local aesthetic regulations that they must be (1) reasonable (i.e., has to be technically feasible), (2) no more burdensome than those applied to other infrastructure deployments, and (3) objective and published in advance.¹³ Regulations that do not meet these criteria are preempted as they are presumed to effectively prohibit wireless service in violation of the Act.¹⁴

AT&T has a statewide franchise right to access and construct telecommunications facilities in the public rights-of-way. Under Public Utilities Code Section 7901, AT&T has the right to access and construct facilities in public rights-of-way to furnish wireless services, so long as it does not "incommode" the public use of the public right-of-way. And under Section 7901.1, AT&T's right is subject only to the City's reasonable and equivalent time, place, and manner regulations.

access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment").

⁵ 47 U.S.C. § 332(c)(7)(B)(iii).

⁶ 47 U.S.C. § 332(c)(7)(B)(i)(I).

⁷ 47 U.S.C. § 332(c)(7)(B)(i)(II).

⁸ See *Infrastructure Order* at ¶¶ 35-42; see also, *In the Matter of California Payphone Assoc. Petition for Preemption, Etc.*, Opinion and Order, FCC 97-251, 12 FCC Rcd 14191 (July 17, 1997).

⁹ *Infrastructure Order* at ¶ 37.

¹⁰ *Id.* at ¶ 50.

¹¹ *Id.* at ¶ 79.

¹² *Id.*

¹³ See *id.* at ¶ 86.

¹⁴ See *id.*



AT&T's Comment on the Proposed Urgency Ordinance

1. Consultants. Section 18.70.020 of the Proposed Urgency Ordinance requires providers to reimburse the City for the costs of consultants related to processing applications. While AT&T appreciates the City's desire to thoroughly review applications, consultants can unnecessarily increase the cost of deployment and slow down the permitting process. Use of consultants should limit review to appropriate and objective criteria, such as a structural safety assessment or compliance with FCC regulations of radio frequency emissions. And the City should be mindful that the cost of a consultant may not pass through to an applicant as only objectively reasonable costs can be passed on through application fees.¹⁵

AT&T's Comments on the Proposed Policy

1. Site Survey. With respect to small wireless facilities, AT&T objects to Section 1.4(a)(3) of the Proposed Policy, which requires applicants to submit a survey identifying and depicting all existing boundaries, encroachments and other structures within 300 feet from the proposed project site. Small wireless facilities are small and do not have a wide impact on nearby structures. For small wireless facilities and eligible facilities requests, a site survey should be limited to the immediate area surrounding the facility to be reasonable.

2. Submittal Appointment. Section 1.4(b)(1) requires providers to submit applications to the City at a pre-scheduled appointment, and provides that applications received without an appointment "will not be considered duly filed." While AT&T will certainly work to coordinate its submittals, the City cannot refuse to accept applications – or refuse to consider them "duly filed" – if appointments are unavailable as needed. The FCC flatly prohibits any express or de facto moratoria on filing applications as an unlawful prohibition on wireless facilities.¹⁶

3. Applications Deemed Withdrawn. Section 1.4(c) provides that an application is deemed withdrawn if an applicant does not respond to an incomplete notice within 60 calendar days. The City needs to eliminate this procedure. This is inconsistent with the mechanics of the FCC shot clocks. And responses are commonly delayed because the applicant and City staff are working together to resolve issues, which should be encouraged.

4. Other Permits Required. The Proposed Policy requires an applicant to apply for additional permits and approvals. The FCC has made clear that all associated permits and approvals are subject to the applicable shot clock.¹⁷

5. Undergrounding. Several provisions in the Proposed Policy mandate undergrounding of equipment. These requirements must be revised to the extent necessary to avoid unlawful

¹⁵ See *id.* at ¶ 70 (FCC warned that "any unreasonably high costs, such as excessive charges by third party contractors or consultants, may not be passed on through fees even though they are an actual 'cost' to the government").

¹⁶ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-111 (August 3, 2018), at ¶¶ 147, 149 (local actions that "effectively halt or suspend the acceptance, processing, or approval of applications or permits for telecommunications services or facilities ... prohibit or have the effect of prohibiting deployment of telecommunications services" in violation of the Telecommunications Act of 1996).

¹⁷ See *Infrastructure Order* at ¶¶ 132-137, 144.



discrimination or effectively prohibiting wireless services in violation of the Act. Wireless facilities cannot operate with all equipment underground. Antennas must be above ground to broadcast and receive and radio units must be placed above ground near antennas to function properly.

6. Appeals. Sections 2.5(b)(4), 3.4(f), 4.4(g) and 5.3(b) authorize appeals by interested persons. The City must take final action, inclusive of appeals, within the applicable shot clocks. The City should consider eliminating appeals for small cells and Section 6409(a) modifications that may otherwise add unnecessary pressure on the City to meet the FCC's shot clocks.

7. Indemnification and Abandoned Wireless Facilities. The City should not seek indemnity from an underlying property owner, as it does under Sections 2.6(a)(11), 3.5(l) and 4.5(a)(10) of the Proposed Policy. The City also should not seek to impose joint and several liability between the permittee and property owner for all costs and expenses incurred by the City in connection with removal of abandoned facilities in Sections 2.6(a)(15), 3.5(p) and 4.5(a)(14). Not only do these requirements risk interfering with existing leases, they also have the effect of interfering with prospective economic relations between AT&T and property owners. The indemnification provisions in the Proposed Policy need to carve out exceptions to indemnity in instances of the City's own negligence, and AT&T must retain the right to select its own counsel.

8. Cost Reimbursement. Sections 2.6(a)(17), 3.4(r) and 4.5(a)(16) state that applicants must "reimburse the City for all costs incurred in connection with the permit." It also states that the City has the right to withhold any permits or other approvals unless any outstanding costs have been reimbursed to the City by the permittee. This provision must be revised because only objectively reasonable costs that are recovered on a nondiscriminatory basis can be included in fees. To the extent the City's costs exceed the FCC's safe harbor for presumptively reasonable fees, the costs are preempted and unlawful. AT&T looks forward to working with the City to ensure its proposed fees comport with state and federal laws. And again, the City cannot refuse to accept and process applications, which would amount to an unlawful moratorium.

Specific Comments on the Provisions for Macro Wireless Facilities

1. Site Justification Analysis. The City must eliminate its requirement, in Section 2.2(a)(2), for propagation maps, as the FCC has emphatically rejected all coverage gap tests.¹⁸

2. Discouraged Locations. Under Section 2.3(b), the City strongly discourages new macro wireless facilities in locations within a commercial-residential zone. To the extent the concern about macro facilities in this area is based on aesthetics, the concern is fully addressed by the City's concealment requirements for macro facilities.

Specific Comment on the Special Provisions for Eligible Facilities Requests

1. Permit Term. AT&T objects to Section 3.5(a)'s requirement that permits for eligible facilities requests expire on the date the underlying permit expires, which conflicts with state law requiring a minimum duration of ten years for a wireless permit.¹⁹

¹⁸ See *Infrastructure Order* at ¶ 40, n. 94 (the FCC rejected all "coverage gap" tests, including "the version endorsed by the Second, Third, and Ninth Circuits (requiring applicants to show that the proposed facilities are the 'least intrusive means' for filling a coverage gap)").

¹⁹ See California Govt. Code Section 65964(b).



Specific Comments on the Special Provisions for Small Wireless Facilities

1. Construction Drawings. In Section 4.3(a)(2), the City requires wireless providers to provide construction drawings that identify all structures within 300 feet from the proposed project site. AT&T suggests that the City revise this requirement so that providers identify all structures within 25 feet from the proposed project site as construction of a small cell does not impact a very large area.
2. Site Agreement. Section 4.3(a)(4) states that applicants are not permitted to make any changes to the City's form site agreement to attach facilities to structures owned or controlled by the City in the public right-of-way. If applicants make any unpermitted changes, the City can deem the application incomplete. The City should remove this requirement. An application should not be considered incomplete if an applicant and the City are negotiating terms under the site agreement.
3. Batched Applications. AT&T objects to Section 4.3(b), which limits batched applications to five small wireless facilities and would deem an entire batch incomplete/withdrawn/or denied if any application in the batch is incomplete/withdrawn/or denied. This is inconsistent with the *Infrastructure Order* and the corresponding rule, which do not authorize batching limitations.²⁰ Moreover, federal law does not authorize denials based on denials of companion sites, or treating an application as withdrawn based on withdrawal of a companion site. Under the Act, the City can only deny an application based on substantial evidence. Further, such a process would be unreasonable and inefficient for both providers and jurisdictions.
4. Electric Meters. AT&T objects to Section 4.5(b)(2) requiring providers to remove a ground-mounted electric meter if a change in the electric provider's rules take away the need for a separate meter. Once AT&T installs a ground-mounted electric meter, the meter is permitted to remain for the permit term. AT&T will discuss removal of a ground-mounted electric meter in the context of a permit renewal. In addition, Section 4.7(b)(14) states that the City will not approve a separate ground-mounted electric meter pedestal, which contradicts Section 4.5(b)(2). Moreover, the City should delete this requirement as sometimes ground-mounted electric meter pedestals are the only feasible option for providers based on the electric provider's requirements.
5. Reimbursement for Rearrangement and Relocation Costs. Providers have ten days after a written demand to reimburse the City for all costs and expense related to rearranging or relocating the provider's small wireless facility in Section 4.5(b)(3). AT&T respectfully requests at least 60 calendar days to reimburse the City for such costs and expenses.
6. Location Requirements for Small Wireless Facilities. The Proposed Policy, in Sections 4.4(c)(2)&(4) and Section 4.6(a), requires the applicant to demonstrate that a proposed project would be in the most preferred location and on the most preferred support structure that are technically feasible within 300 feet of the proposed location under Sections 4.6's location requirements. The City can articulate appropriate location preferences, but AT&T has a legal right to place its facilities in the public rights-of-way. Further, the FCC's aesthetic standard for small cells precludes the City from requiring this type of analysis for wireless applications when the City does not require it from other infrastructure deployments.

²⁰ See 47 C.F.R. § 1.6003(c)(2) and *Infrastructure Order* at ¶114.



As a practical matter, the City should reconsider naming residential zones as the City's least preferred location for siting wireless facilities. Small cells are low-profile, low-power facilities that need to be placed near customers to provide and improve service. Thus, they need to be placed near where residents rely on wireless connectivity the most: in their homes. To the extent application of this preference materially inhibits AT&T from serving customers, it will violate the Act as an effective prohibition.

7. Prohibited Support Structures. The City should strike the proposed ban on the installation of enumerated support structures in Section 4.6(g) of the Proposed Policy, including decorative poles, traffic signals and new, non-replacement wood poles. First, the FCC made clear that its interpretations apply to all government owned or controlled structures within the right-of-way.²¹ These categorical bans on attaching facilities to certain structures will effectively prohibit wireless services in certain parts of the City in violation of the Act. And AT&T has the right to place wood poles, and this prohibition is discriminatory.

Moreover, many jurisdictions favor decorative pole designs for small cells, subject to a requirement that new or replacement decorative poles housing small cells are designed to look similar to nearby decorative poles. Further, it makes sense to allow traffic light installations, for instance, because it permits the wireless provider to cover multiple directions from one location, which a mid-block location may not support.

8. Overall Height. Section 4.7(b)(1) limits the overall height of small wireless facilities to four feet above the existing support structure. This limit may actually harm aesthetics by preventing AT&T's ability to deploy its most stealthy facilities. For example, AT&T's typical streetlight-top design extends up to six feet above the pole top.

9. Concealment. Many of the City's design standards in the Proposed Policy for small wireless facilities require concealment. But under the FCC's aesthetic standard for small cells, concealment cannot be required to a greater extent than imposed on other infrastructure deployments in the rights-of-way, and there are non-concealed electric distribution facilities throughout the City's rights-of-way. Further, some wireless components cannot be concealed.

10. Antenna Volume. Section 4.7(b)(2)(B) says "all antennas may not exceed six cubic feet in volume," which is inconsistent with the *Infrastructure Order* and 47 C.F.R. § 1.6002(l)(2) (capping individual antenna volume at three cubic feet but not placing a limit on total antenna volume). This Section should be revised to be consistent with the *Infrastructure Order*.

11. Accessory Equipment Installation Preferences. AT&T objects to Section 4.7(b)(3)(A) of the Proposed Policy, which provides installation preferences for all non-antenna accessory equipment, including undergrounding as a top priority. And in Section 4.7(b)(3)(E), the City states that if ground-mounted equipment cannot be concealed using landscaping, AT&T's facilities must be "disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks." These preferences are more burdensome than restrictions imposed on other infrastructure deployments, such as electrical distribution facilities. Thus, they are unlawful under the FCC's aesthetic standard.

²¹ *Infrastructure Order* at ¶ 69.



12. Accessory Equipment Volume. Section 4.7(b)(3)(F) limits the volume of accessory equipment. This section must be revised to allow up to 28 cubic feet of equipment to be consistent with 47 C.F.R. §1.6002(l)(3).

13. Pole Top Requirement. Sections 4.7(b)(4)-(6) and Section 4.7(c)(5) require antennas on streetlights, wood utility poles, new, non-replacement poles and other freestanding structures to be installed above the pole. There may, however, be several reasons that inhibit installations on the top of the pole. For instance, top-mounted antennas may not be technically feasible or network parameters may prevent pole-top installation. Also, AT&T may only have rights to certain space on the pole, or the pole owner may impose restrictions on AT&T that prevent extending the height of the pole. This requirement should, therefore, be limited to the extent practical and feasible.

14. New, Non-Replacement Poles. Section 4.7(b)(6) allows the City to require that a new, non-replacement pole be a streetlight, and if there are no existing streetlights nearby, applicants may only install a metal or composite pole. The City cannot force AT&T to install streetlights and cannot ban use of other pole materials. AT&T has a state law right to set poles in the right-of-way under Section 7901. In addition, these requirements steer wireless installations onto City-owned structures in violation of state law, which prohibits the City from requiring "that all wireless telecommunications facilities be limited to sites owned by particular parties."²² And these restrictions are preempted by the FCC's aesthetic standard for small wireless facilities to the extent they are more burdensome than rules applied to other infrastructure deployments.

15. Pole Diameter. Section 4.7(b)(6) and Section 4.7(c)(5) state that the pole diameter shall not exceed 12 inches and any base enclosure diameter shall not exceed 16 inches. This requirement is too narrow and, thus, will lead to an effective prohibition.

Conclusion

AT&T appreciates the City's initial efforts to develop wireless facility siting regulations to accommodate new and emerging technologies and changes in law. By addressing the items we raise here, the City will go a long way toward encouraging deployments consistent with state and federal policies and to the great benefit of the City's residents and businesses.

Sincerely,

/s/ Gregory B. Mouroux

Gregory B. Mouroux

cc: Peter L. Wallin, City Attorney

²² California Govt. Code Section 65964(c).



TO: Mayor and City Council
FROM: Telecom Law Firm
DATE: July 18, 2019

RE: Gardena Small Cell Ordinance and Policy
Analysis of AT&T Comments

AT&T's Comment on the Proposed Urgency Ordinance

1. Consultants – No Change Required

The FCC expressly declined to preempt a state's or local government's ability to hire consultants or other independent contractors to assist with application review and to pass the objectively reasonable costs to the applicant. See *Small Cell Order* at ¶ 70. The proposed ordinance requires applicants to "reimburse the City for all reasonable consultant costs related to the processing of applications". Proposed Ordinance § 18.70.020 (emphasis added). Thus, the Proposed Ordinance is consistent with the *Small Cell Order*.

AT&T's Comment on the Proposed Policy

1. Site Survey – Change Made

AT&T objects to a 300-foot survey radius. The survey serves an important purpose in that it identifies any potential conflicts between uses and/or improvements in the public ROW. However, the policy has been revised to narrow this requirement to require a survey for all existing improvements within 75 feet from any proposed improvements. This will reduce the burden on the applicant and ensure the City receives information necessary to effectively manage the public ROW.

2. Submittal Appointment – No Change Required

AT&T objects to submittal appointments as *de facto* moratorium prohibited by the FCC. A *de facto* moratorium refers to an informal or unstated practice that results in "delay continu[ing] for an unreasonably long or indefinite amount of time such that providers are discouraged from filing applications, or the action or inaction has the effect of preventing carriers from deploying certain types of facilities or technologies." *Moratorium Order* at ¶ 150. The Policy requires staff to "use reasonable efforts to provide the applicant with an

appointment within five working days" from a request and makes no distinction based the type of facility or technology involved. On its face, the submittal appointment procedure is not a *de facto* moratorium.

3. Applications Deemed Withdrawn – Change Made

AT&T objects to the deemed-withdrawn procedure on the basis that it conflicts with the FCC's regulations and may be triggered even though the applicant is cooperating with staff. Nothing in the FCC's regulations prohibit this procedure, which is common in development codes and intended to expedite the review process. However, the City may wish to consider an extension to address situations in which the applicant cannot provide the incomplete materials for good-faith reasons outside the applicant's control. To implement this extension, the following text has be added after the last sentence in Section 1.4(c):

The Department may grant a one-time, 60-day extension if the applicant submits a written request that explains a good-faith reason outside the applicant's control for why the applicant cannot provide the complete materials.

Longer or additional extensions are not recommended. All application materials are published in advance and applicants can confer with staff prior to submittal. If the applicant cannot complete its application within 180 days, the applicant is not ready to file in the first place.

Additionally, if an applicant and City are truly trying to resolve issues, a tolling agreement can be used.

4. Other Permits – No Change Required

Staff is aware of this requirement.

5. Undergrounding – No Change Required

The undergrounding requirements in the Policy are consistent with applicable laws. In areas where undergrounding is required, the Policy does not require applicants to install equipment underground that must be above-ground, such as antennas, or above-ground for health and safety reasons, like electric meters.

6. Appeals – No Change Required

AT&T suggests that the City eliminate appeal procedures to ensure compliance with the FCC shot clock. Staff is aware that the shot clock includes appeals and has devised procedures to fit within these periods. Whether and how to balance the need for staff review time with the public's interest in an appeal is a policy question for the City Council.

The Council should note that an appeal process is recommended for macro facilities as existing case law suggests that these projects may implicate due process considerations under the California Constitution.

7. Indemnification – No Change Required

AT&T seeks various changes to the indemnification requirements. Broad indemnification for the local government is typical in development approvals. Moreover, as federal and state law continue to erode local discretion and force cities to review more applications in less time and with fewer resources, indemnifications that shift the risk to the applicant are a prudent requirement.

8. Cost Reimbursement – Minor Change Made

The FCC allows local governments to recover fees so long as:

(1) the fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.¹

The FCC also established so-called "safe harbor" fees that are presumptively compliant with this standard. But these are not fee caps and costs above these safe harbor levels may be recovered. As AT&T has acknowledged, the City may recover reasonable costs and this requirement is included in the Ordinance. Nevertheless, sections 2.6(a)(17), 3.5(r), and 4.5(a)(16) have been amended to include the word "reasonable."

AT&T also suggests that the City may not withhold permits for AT&T's failure to reimburse the City for its costs. The City is entitled to recover its costs and delay in reimbursement imposes additional costs while the City carries the out-of-pocket expense for staff time and materials to process applications. Withheld permits based on unreimbursed costs is not a *de facto* moratorium because a delay in deployment is caused by the applicant and not the City.

Specific Comments on Macro Facilities

1. Site Justification Analysis – No Change Required

AT&T contends that the City cannot require propagation maps under the FCC's rules. The FCC prohibits denials based on "significant gap" considerations like coverage and capacity.² However, the FCC does not prohibit decisions based on technically feasible

¹ *Small Cell Order* at ¶ 50.

² See *Small Cell Order* at ¶ 40 n.94.

alternatives and technical data – such as a propagation map – are a useful tool to evaluate whether potential alternatives would be technically feasible. Moreover, the City could not use the propagation maps for an improper purpose because Policy does not include coverage, capacity or other “significant gap” considerations as a basis for denial.

2. Discouraged Locations – No Change Required

AT&T contends that the City should not discourage macro facilities in commercial-residential zones because they can be adequately concealed. However, the City’s preference list merely requires the applicant to reasonably pursue more preferred locations that would be technically feasible before proposing a location in a discouraged zone.

Specific Comment on the Special Provisions for Eligible Facilities Requests

1. Permit Term – No Change Required

AT&T contends the permit term on a modification to an existing site must be at least 10 years under state law. The Government Code statute referenced by AT&T applies only to discretionary projects. Eligible facilities requests are not discretionary and therefore the City is not obligated to grant a 10-year extension for every non-discretionary change to an existing facility.

Specific Comments on the Special Provisions for Small Wireless Facilities

1. Construction Drawings – No Change Required

AT&T requests to reduce the area shown in construction drawings from 300 feet to 25 feet. Unlike the survey, a cut sheet in a construction drawing showing the relative location of other structures is not a potentially burdensome requirement. This requirement also enables staff to more efficiently evaluate potential alternative sites in proximity to the proposed location.

2. Site Agreement – No Change Required

AT&T objects to the site agreement as a requirement for a complete application. However, the FCC includes time spent on agreements for access to municipal property within the shot clock. Thus, failure to provide all the elements necessary for an approval, including a site agreement, is a proper basis for an incomplete notice to toll the shot clock.

In addition, the City may not currently own any poles in the right-of-way, in such case this application requirement would not be applicable.

3. Batched Applications – Change Made

AT&T objects to the limits on batched applications and to the procedure by which one application's incompleteness or failure to meet the findings for approval affects the others in its batch. The policy has been amended to provide staff greater flexibility when dealing with individual applications in a batch that are defective.

4. Electric Meters – Change Made

AT&T points out a contradiction between the condition that requires AT&T to upgrade a ground-mounted electric meter and a prohibition on ground-mounted electric meters.

The policy has been amended to allow for ground-mounted electric meters, but only when all other options are infeasible.

5. Reimbursement for Rearrangement and Relocation Costs – No Change Required

The Policy requires applicants to "reimburse the City for all costs incurred in connection with the permit" within 10 days from a written demand that documents such costs. AT&T suggests that the City should extend the reimbursement period to 60 days. The requirement for reimbursement for rearrangement and relocation costs only occurs if a permittee "fails or refuses to either permanently or temporarily rearrange and/or relocate" the facility after the City's notice.

6. Location Requirements – No Change Required

AT&T contends that its rights under state and federal law prohibit the City from considering alternative sites. This contention is false. The California Supreme Court recently affirmed that the so-called state-wide franchise for telephone companies to use the public ROW does not displace local aesthetic authority. The FCC's regulations require aesthetic criteria to be reasonable, nondiscriminatory, objective and published in advance. The location requirements meet all these criteria: it merely requires that applicants use the most preferred location that is technically feasible, within a short distance from the proposed site.

7. Prohibited Support Structures – No Change Required

A prohibition on specific support structures does not effectively prohibit deployment so long as the applicants have other options available to them, such as existing streetlights, joint utility poles or new poles.

8. Overall Height – Minor Change Made

AT&T suggests that a six-foot increase in the overall height limit would better facilitate stealth designs. A change has been made from four feet to six feet to provide some additional flexibility in order to better conceal facilities.

9. Concealment – No Change Required

AT&T suggests that the aesthetic requirements are invalid because the City doesn't require concealment for all infrastructure in the public ROW. The FCC rules require aesthetic regulations to be no more burdensome than those applied to other types of infrastructure deployments. This rule applies to competitors and potential competitors; not all infrastructure in the public ROW is deployed by competitors or potential competitors with communications providers. The Policy makes no distinction about the types of infrastructure or technology that the applicants may propose and applies the same rules to all competitors and potential competitors who propose similarly situated projects.

10. Antenna Volume – No Change Required

The limitation on cumulative antenna and/or accessory equipment volume is not inconsistent with the FCC's regulations. The FCC defines a small wireless facility based on volumetric standards but does not require the City to approve any facility that meets those standards. To the extent that the City adopts smaller volume limits, those limits constitute aesthetic regulations subject to the FCC's criteria – that such regulations are reasonable, nondiscriminatory, objective and published in advance. The proposed volume limits meet all these criteria because the equipment for a typical small cell can fit within the proposed limits, they apply equally to similarly situated competitors, and they draw a bright line standard in a publicly available format.

11. Accessory Equipment Installation Preferences – No Change Required

See response 9 (Concealment) above.

12. Accessory Equipment Volume – No Change Required

See response 10 (Antenna Volume) above.

13. Pole Top Requirement – Minor Change Made

AT&T contends that the City impermissibly requires all antennas to be mounted to the top of the pole. The Policy allows side-mounted antennas on wood utility poles if needed for technical feasibility and the same exception has been added for streetlight poles.

14. New, Non-Replacement Poles – No Change Required

This requirement is consistent with the City's aesthetic authority under both state and federal law. The requirement leaves open alternative options when the City's preferred streetlight design would be out of place, including dedicated poles with only wireless facilities installed.

15. Pole Diameter – No Change Required

AT&T suggests that the limit on pole diameter will lead to an effective prohibition but fails to offer an alternative. This limit only applies to new poles in the right-of-way as a last resort if no other existing structure in the right-of-way would be technically feasible, or a new streetlight pole would be viewed as inconsistent with the surrounding built environment. Moreover, the pole diameter specifications in this section were based on the measurements provided in product catalogs for various pole concealment manufacturers.

WIRELESS FACILITY POLICY SUMMARY CHART

Type	Location	FCC Time Frame	Approval Authority	Notice	Incomplete Application	Resubmission	Deemed Approve/Granted Possible
Small Wireless Facility – Any Location	Attached to anything that is existing	60 days	Director; Appeal to City Manager	Notice to Neighbors within 100 feet	Notify within 10 days – reset shot clock back to 0 for 1 time only.	Notify within 10 days; pauses shot clock on subsequent incomplete notice	No – Operator must sue within 30 days after shot clock runs out
Small Wireless Facility – Any Location	New Structure	90 days	Director; Appeal to City Manager	Notice to Neighbors within 100 feet	Notify within 10 days – reset shot clock back to 0 for 1 time only.	Notify within 10 days; pauses shot clock on subsequent incomplete notice	No – Operator must sue within 30 days after shot clock runs out
Eligible Facility (§ 6409)	Will always be attached to an existing structure with a permitted wireless use	60 days	Director; Appeal to City Manager – applicant only	No notice	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide notice to city application deemed granted
Macro Facility – Preferred Location	Attached to anything that is existing	90 days	Director; Appeal to City Council	Notice to Neighbors within 300 feet	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide all public notices required by law and provide notice to City deemed granted
Macro Facility – Discouraged Location	Attached to anything that is existing	90 days	Planning Commission; Appeal to City Council	Notice to Neighbors within 300 feet; Planning Commission Meeting	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide all public notices required by law and provide notice to City deemed granted
Macro Facility – Preferred Location	New structure	150 days	Director; Appeal to Planning Commission and then City Council	Notice to Neighbors within 300 feet	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide all public notices required by law and provide notice to City deemed granted
Macro Facility – Discouraged Location	New structure	150 days	Planning Commission; Appeal to City Council	Notice to Neighbors within 300 feet; Planning Commission Meeting	Notify within 30 days, but resubmission does not reset the shot clock, only pauses shot clock	Notify within 10 days; pauses shot clock on subsequent incomplete notice	Yes but applicant must provide all public notices required by law and provide notice to City deemed granted



City of Gardena
City Council Meeting
AGENDA REPORT SUMMARY

Agenda Item No. 8. B. (2)
Department: COMMUNITY DEVELOPMENT
Meeting Date: 10/22/2019
Resolutions No: 6405; 6406; 6412
Ordinance No. 1808

TO: THE HONORABLE MAYOR AND CITY COUNCIL MEMBERS

AGENDA TITLE: PUBLIC HEARING: Adoption of General Plan Amendment and Zone Change, and Call For Review of Planning Commission Action Approving Site Plan Review (SPR #11-18) and Tentative Tract Map (TTM #6-18), All Relating to a 114-Unit Townhome Community located At 1515 W. 178th Street and Adoption of a Mitigated Negative Declaration for All Actions and Adoption of a Mitigation Monitoring Program for the Tentative Tract Map and Site Plan Review (APNs: 6106-013-040 and 6106-013-041)(EA #20-18)

(a) RESOLUTION NO. 6405, Adopting a Mitigated Negative Declaration for a General Plan Amendment (GPA #2-18), Zone Change (ZC #3-18), tentative tract map (TTM #6-18), and site plan review (SPR #11-18) relating to the property located at 1515 W. 178th Street and Mitigation Monitoring Program for the Tentative Tract Map and Site Plan Review

(b) RESOLUTION NO. 6406, Approving a General Plan Amendment (GPA #2-18) from Industrial with a Mixed-Use Overlay to High Density Residential, relating to the 5.63-Acre Property Located at 1515 W. 178th Street

(c) ORDINANCE NO. 1808, Approving a Zone Change from General Industrial (M-2) with a Mixed-Use Overlay (MUO) to High Density Multiple-Family Residential (R-4) for the Property Located at 1515 W. 178th Street

(d) RESOLUTION NO. 6412, Acting upon the Call for Review and Approving a Tentative Tract Map (TTM #6-18, TTM #82390) and Site Plan Review (SPR #11-18) All relating to the Property Located at 1515 W. 178th Street

<u>COUNCIL ACTION REQUIRED:</u>	<u>Action Taken</u>
<ul style="list-style-type: none">▪ Conduct a Public Hearing▪ Adopt Resolution Nos. 6405, 6406, and 6412▪ Introduce Ordinance No. 1808	
<u>RECOMMENDATION AND STAFF SUMMARY:</u> Staff respectfully recommends that the City Council conduct a Public Hearing, adopt Resolution Nos. 6405, 6406, and 6412, and introduce Ordinance No. 1808. On December 5, 2018, the applicant, Melia Homes, filed an application to develop a 114-unit residential project consisting of attached townhomes in 22 buildings on two parcels located at 1515 West 178th Street (the "Property"). An Initial Study and Mitigated Negative Declaration (IS/MND) and Mitigated Monitoring Program (MMP) were prepared by the City's Consultant, and the documents were circulated for a 30-day review period.	

At the September 17, 2019, Planning Commission hearing, the Commission recommended that the City Council approve the General Plan Amendment and Zone Change, approve the MND and adopt the MMP for these actions. The Planning Commission also approved the MND and adopted the MMP and approved entitlements for a Vesting Tentative Tract Map and Site Plan for the 114-unit residential project.

On September 24, 2019, an email was received from a neighborhood resident indicating the desire to appeal the project. The Haase Appeal raised issues of General Plan consistency, traffic in the residential neighborhood, and parking issues.


Before the resident appeal could be perfected by filing the proper form with an appeal fee, on September 24, 2019, Council Member Henderson called for review so that the City Council could see the entire project.

FINANCIAL IMPACT/COST:

None

ATTACHMENTS:

- Agenda Staff Report
- Resolution No. 6405 – Approving Initial Study/Mitigated Negative Declaration and Mitigation Monitoring Prog
- Resolution No. 6406 – Approving General Plan Land Use Change
- Ordinance No. 1808 – Approving Zoning Change
- Resolution No. 6412 – Approving Tract Map and Site Plan
- Planning Commission Staff Report (September 17, 2019)
- Planning Commission Resolution No. 16-19 (without attachments)
- Planning Commission Resolution No. 17-19 (without attachments)
- Letters received after the Planning Commission meeting
- Haase email to City Council re: Appeal
- Revised Open Space Enlargement Plan dated October 2, 2019
- Nuisance Issues (Case Details)

Submitted by:  Raymond Barragan, Community Development Manager

Date: 10/17/2019

Submitted by:  Clint Osorio, Interim City Manager

Date: 10/17/2019

CITY COUNCIL MEETING AGENDA STAFF REPORT

Agenda Item No. 8. B. (2)

Department: Community Development

Meeting Date: 10/22/2019

Ordinance No. 1808

Resolution Nos. 6405, 6406, and 6412

AGENDA TITLE: PUBLIC HEARING: ADOPTION OF GENERAL PLAN AMENDMENT AND ZONE CHANGE, AND CALL FOR REVIEW OF PLANNING COMMISSION ACTION APPROVING SITE PLAN REVIEW (SPR #11-18) AND TENTATIVE TRACT MAP (TTM #6-18), ALL RELATING TO A 114-UNIT TOWNHOME COMMUNITY LOCATED AT 1515 W. 178TH STREET AND ADOPTION OF A MITIGATED NEGATIVE DECLARATION FOR ALL ACTIONS AND ADOPTION OF A MITIGATION MONITORING PROGRAM FOR THE TENTATIVE TRACT MAP AND SITE PLAN REVIEW (APNs: 6106-013-040 and 6106-013-041)(EA #20-18)

- a) RESOLUTION NO. 6405, Adopting a Mitigated Negative Declaration for a General Plan Amendment (GPA #2-18), Zone Change (ZC #3-18), tentative tract map (TTM #6-18), and site plan review (SPR #11-18) relating to the property located at 1515 W. 178th Street and Mitigation Monitoring Program for the Tentative Tract Map and Site Plan Review
- b) RESOLUTION NO. 6406, Approving a General Plan Amendment (GPA #2-18) from Industrial with a Mixed Use Overlay to High Density Residential, relating to the 5.63 acre property located at 1515 W. 178th Street
- c) ORDINANCE NO. 1808, Approving a Zone Change from General Industrial (M-2) with a Mixed Use Overlay (MUO) to High Density Multiple-Family Residential (R-4) for the property located at 1515 W. 178th Street
- d) RESOLUTION NO. 6412, Acting upon the call for review and approving a Tentative Tract Map (TTM #6-18, TTM #82390) and Site Plan Review (SPR #11-18) all relating to the property located at 1515 W. 178th Street

RECOMMENDATION:

Staff respectfully recommends that Council:

- 1. Open the Public Hearing;
- 2. Adopt Resolution Nos. 6405, 6406, and 6412; and
- 3. Introduce Ordinance No. 1808.

PROJECT DESCRIPTION:

On December 5, 2018, the applicant, Melia Homes, filed an application to develop a 114-unit residential project consisting of attached townhomes in 22 buildings on two parcels located at 1515 West 178th Street (the "Property"). The Project site is 5.6 gross acres consisting of two

properties located on the north side of 178th Street between Western Avenue to the west and Normandie Avenue to the east. The project site's topography is relatively flat and the dimensions of the subject property are approximately 447 feet deep by 551 feet wide. The site is fully improved and developed with a 105,036-square-foot industrial building and surface parking lot. The site is currently used as an industrial trucking and distribution facility, including maintenance and storage of trucking vehicles and trailers. The applicant *originally* proposed the following (see Attachment 4, Exhibits B and C):

- 287 parking spaces (228 parking spaces in garages and 59 guest parking spaces);
- A total of 15,937 square feet of private open space via ground level patios and 7,220 square feet of private balconies;
- A total of 48,579 square feet of common and general open space via courtyards, paseos, a swimming pool area, pocket park, and other recreational and open space areas; and
- Landscaping throughout the development.

Vehicular and pedestrian access is proposed from 178th Street via a two-way driveway and pedestrian walkway and main gate. A secondary driveway is proposed in the western portion of the project site for emergency purposes only. All garages are located away from public view. Eight buildings will be located along 178th Street with the remaining buildings located behind the frontage buildings. The interior units will front a courtyard area and pedestrian walkways creating a village-like feel. The entire development will be surrounded by perimeter walls.

As modified in accordance with Planning Commission direction (Attachment 10) the project now provides:

- 294 parking spaces (228 parking space in garages and 66 guest parking spaces); and
- A total of 48,868 square feet of common and general open space.

The project site is bounded to the north by commercial (C-3 zone), to the east by general industrial (M-2 zone), to the south by industrial (M-1 zone), and to the west by medium-density residential within a mixed use overlay (R-3, MUO).

BACKGROUND:

An Initial Study and Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring Program (MMP) were prepared by the City's Consultant, and the documents were circulated for a 20-day review period. A public hearing was noticed for the September 17, 2019 Planning Commission meeting.

During the public hearing the Planning Commission raised issues relating to the deficiency of park land in that portion of the City. Additionally, public comments were raised regarding General Plan consistency, traffic, and parking (Attachment 8). Letters addressed to the Planning Commission were received after the fact complaining about these and other issues (Attachment 9).

At the close of the hearing, the Planning Commission adopted PC Resolution No. 16-19 (Attachment 6), which approved the MND and adopted the Mitigation Monitoring Reporting Program for the Tract Map and Site Plan Review and recommended that the City Council approve the MND for the General Plan Amendment and Zone Change; and adopted PC Resolution No.

17-19 (Attachment 7) which approved the Tract Map and Site Plan Review with direction to the applicant to work with the City to create more usable open space on the project site, and recommended that the City Council approve the General Plan Amendment and Zone Change.

On September 24, 2019, an email was received from a neighborhood resident indicating the desire to appeal the project (the "Haase Appeal"; Attachment 10). The Haase Appeal again raised the issues of General Plan consistency, traffic in the residential neighborhood, and parking issues. Before the Haase Appeal could be perfected by filing the proper form with an appeal fee, on September 24, 2019, Council Member Henderson called for review so that the City Council could see the entire Project.

After the Planning Commission meeting, the applicant submitted a revised sheet showing the reconfigured open space areas to make the portion along the north side more usable (Attachment 11). The change resulted in an increase of an additional 289 square feet of open space as well as the addition of seven more parking spaces as discussed in more detail below.

	Reviewed by Planning Commission	"Reprogrammed" Plan	Difference
Total Parking	287 sps.	294 sps.	+7 sps.
Garage Parking	228 sps.	228 sps.	No change
Guest Parking	59 sps.	66 sps.	+7 sps.
Total Common OS	48,579 SF	48,868 SF	+289 SF
Rear Portion OS	11,792 SF	12,081 SF	+289 SF
TOTAL OS	71,736 SF	72,025 SF	+289 SF
OS/Unit (600 SF/Unit req'd)	629 SF/Unit	632 SF/Unit	+3 SF/Unit

The Planning Commission's staff report supporting approval for the Project and resolutions of approval are attached hereto to provide further detail on the Project (Attachments 5-7). This staff report concentrates on the issues raised since the time of the Planning Commission report's preparation as well as nuisance issues in the neighborhood.

NUISANCE ISSUES

The Project site is immediately adjacent to a mobile home park consisting of 202 units. The project site is fully improved and developed with a 105,036-square-foot industrial building and surface parking lot. The site is currently used as an industrial trucking and distribution facility for RoadEx and includes the maintenance and storage of trucking vehicles and trailers.

Throughout the years the City has received numerous complaints from the mobile home park residents regarding noise, late night operations, odors, fumes, truck idling, trucks parking on the street blocking traffic, and trash. The majority of the complaints are related to trucking activity, particularly loud noise often occurring late at night or early morning. A common complaint involves the beeping noise when trucks back up, and trucks idling or parking in the middle of the street, including the "no parking" zone, obstructing traffic. (See Attachment 12.) As such, staff finds that

the trucking use is not compatible with the adjacent residential neighborhood and the property would be better suited for pure residential development.

GENERAL PLAN/ZONING CONSISTENCY ISSUES

The current General Plan land use designation is Industrial with a Mixed-Use Overlay. The zoning is General Industrial (M-2) with a Mixed-Use Overlay (MUO). Under both the General Plan and zoning, residential development of up to 30 units per acre is allowed on this property and the minimum density is required to be 20 units per acre in compliance with the State Department of Housing and Community Development's directive on a past Housing Element.

The Project could have been developed under the existing General Plan and zoning except for the fact that the Mixed-Use Overlay requires a live-work or commercial component. As the Project site lies mid-block with residential uses to the west and south and industrial to the east, the site is not conducive to commercial uses.

In 2006 a previous residential project had been proposed for the site and the General Plan Amendment and zone change had been denied. Based on such denial, the property owner sought other industrial users for the property. The current trucking use came into existence in 2011 and the nuisance complaints started in 2014 (see Attachment 12), showing the industrial use is not compatible with the adjoining properties.

In the intervening years the housing crisis in California has worsened and housing has become a top priority for the State. This development offers a range of two, three, and optional four bedroom units. The development also provides amenities that are not available at other residential developments within the City. Additionally, with the change to a vehicles miles travelled analysis (VMT) the State is now pushing infill type of developments in order to reduce greenhouse gas impacts. With the passing time and the change in circumstances, the project is now considered to be consistent with the General Plan.

The Proposed project is consistent with the housing that was contemplated for the area and will implement a number of General Plan Goals and Policies as follows:

- LU 1.1: Promote sound housing and attractive and safe residential neighborhoods.
 - The proposed project will provide 114 attached condominium units in a well-designed, gated townhome community.
- LU 1.2: Protect existing sound residential neighborhoods from incompatible uses and development.
 - The proposed project will be compatible with the mobilehome park to the west and residential neighborhood further south.
- LU 1.4: Locate new medium- and high-density residential developments near neighborhood and community shopping centers with commensurate high levels of community services and facilities.
 - The proposed project will be in close proximity to commercial shopping centers to the north and the Harbor Gateway Transit Center to the east.
- LU 1.5: Provide adequate residential amenities such as open space, recreation, off-street parking and pedestrian features in multifamily residential developments.

- The proposed project will include a swimming pool, tot lot, recreational open space area, off-street parking, and pedestrian walkways in a multifamily condominium community.
- LU 1.6: Ensure residential densities are compatible with available public service and infrastructure systems.
 - The project site is located in a developed area where there is adequate public service from police and fire and adequate water, sewer, electrical, and gas systems.
- LU 1.8: Minimize through-traffic on residential streets.
 - The proposed project will provide a main driveway and a secondary driveway for emergency purposes only. All traffic will take ingress and egress from 178th Street, and the majority of vehicles will be from Normandie Avenue to the east and Western Avenue to the west. Traffic onto the residential streets to the south is expected to be minimal.
- LU 1.11: Design infill development to be compatible and consistent with the existing low-density character of residential neighborhoods.
 - The proposed project is for an infill development that includes the demolition of an industrial building and construction of a condominium townhome community. The proposed project is consistent with the mobilehome park to the west and the residential neighborhood further south. Furthermore, the proposed project helps satisfy a continued need for housing within the City.
- LU 1.12: Require infill development to provide adequate amenities to minimize the impact of such development on the immediate neighborhood and on City services generally, including off-street parking to meet the additional demand placed on street parking.
 - The proposed project will provide 228 garage parking spaces and 66 guest parking spaces for a total of 294 spaces. The guest parking is nine spaces in excess of the required guest spaces. The proposed project will include a swimming pool, tot lot, and recreational open space areas.
- DS 2.2: Ensure that new and remodeled dwelling units are designed with architectural styles, which are varied and are compatible in scale and character with existing buildings and the natural surroundings.
 - The proposed buildings will have a contemporary design that includes a variety of materials and colors. The scale and character of the buildings are consistent with a three-story townhome development. Units will be accessed via a courtyard and parking will be accessed via a rear driveway.
- DS 2.3: Encourage a variety of architectural styles, massing, floor plans, color schemes, building materials, façade treatments, elevation and wall articulations.
 - The proposed project will have three types of building designs and four floor plans. The buildings will be articulated using a variety of colors and materials.
- DS 2.10: Provide landscape treatments (trees, shrubs, groundcover, and grass areas) within multi-family development projects in order to create a "greener" environment for residents and those viewing from public areas.
 - Landscaping includes a variety of trees, shrubs, and groundcover. Interior buildings will be separated by landscaped courtyards. Recreational and passive open space areas will be provided in the northern portion of the lot.

- DS 2.11: Incorporate quality residential amenities such as private and communal open spaces into multi-unit development projects in order to improve the quality of the project and to create more attractive and livable spaces for residents to enjoy.
 - The proposed project includes 15,937 square feet of private patios, 7,220 square feet of balconies, and 48,868 square feet of common open space. In total, the project provides 72,025 square feet of common and private open space or approximately 632 square feet of open space per unit, which is more than the 600 square feet of open space required.
- DS 2.12: Provide well-designed and safe parking areas that maximize security, surveillance, and efficient access to building entrances.
 - The proposed project will be gated with a single entry from 178th Street. Two garage spaces are provided for each unit and all guest parking will be behind the gate. Additionally, a homeowners association will be established that will handle the maintenance and security of the community in the future.
- DS 2.14: Require design standards be established to provide for attractive building design features, safe egress and ingress, sufficient parking, adequate pedestrian amenities, landscaping, and proper signage.
 - The proposed project has been attractively designed with various architectural features. The project provides safe egress and ingress onto 178th Street to the south. There is sufficient resident and guest parking onsite. Pedestrian amenities include walkways, a swimming pool area, and recreational open space areas. The project will be landscaped throughout and adequate directional signage will be provided.
- PS Goal 3 – Protect public health, safety and the environment from exposure to hazardous materials and other dangers.
 - The proposed residential use is more compatible with the existing residential neighborhood than the existing trucking facility. Hence, the proposed project will further protect the public health, safety and the environment from exposure to hazardous materials and other dangers that are associated with industrial uses. Additionally, as documented in the Initial Study/Mitigated Negative Declaration, the soil on a portion of the property is contaminated. Prior to being allowed to build any residential units, the Property will be remediated to the satisfaction of the responsible County agency.

OPEN SPACE CONCERNS

The Planning Commission raised concerns regarding the lack of open space in the general area for future residents.

Under the Zoning Code, the Project must provide 600 square feet of open space per unit, divided between private and common. Had a project been developed under the Mixed Use Overlay, the open space requirement would only have been 150 square feet per unit. In total, this Project is now providing 632 square feet per unit resulting in just over 3,300 square feet of open space above the minimum requirement. Part of the proposed open space includes a pool area, an amenity which has not been provided in recent developments. The pool area will include showers and restrooms, as well as a built-in BBQ entertainment counter and shade structure.

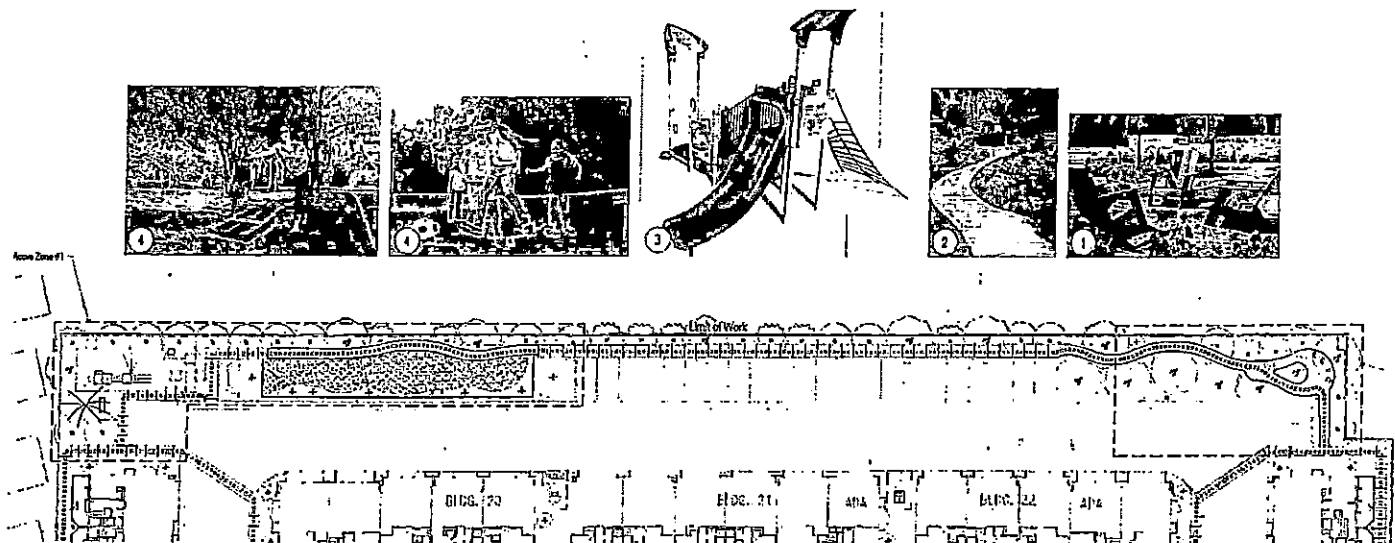
In addition to the pool area, the Project originally included a parkway along the northern side of the Project site with a meandering path; there were 15 parallel parking spaces along the back path. (See Attachment 4, Exhibit C, page L-1.)

The Developer has been responsive to the Planning Commission's concerns. The Project has been redesigned so that the areas at the east and west ends of the northern boundary are wider and can be used for more active uses. This "reprogrammed" area still includes the pathway, but the area has been redesigned to include more usable recreational open space and includes a tot lot, picnic tables, and seating. As an added bonus, redesigning the area provided an additional seven parking spaces. (See Attachment 11.)

Comparison Between Original and Reprogrammed Open Space Areas

	West Side	Center	East Side	Parking
Original Project Design	27' x 65'	18'7" x 409'	27' x 57'	15 parallel spaces
Revised Project Design	27' x 210'	18'7" x 201'	27' x 120'	22 head-in spaces
Difference	Larger active recreational open space area	Area redesigned to accommodate head-in spaces	Larger active recreational open space area	7 additional guest parking spaces

Amenities of "Reprogrammed" Northern Portion of Project Site



In addition to redesigning the open space, the Project will also be required to satisfy Chapter 17.20 of the Gardena Municipal Code which requires the developer to either dedicate parkland or pay in-lieu fees to the City as a tract map requirement. The dedication for this Project amounts

to .99 acres, or almost 20% of the entire site. The City has consistently required an in-lieu park fee instead of dedication. This Project will provide \$979,884.35 in park fees.

PARKING

While acknowledging that the parking meets the City's Code requirements, the Haase Appeal nevertheless raises a concern about Project parking spilling over into the residential neighborhood. The Haase Appeal surmises that people will fill their garages with stuff rather than cars and/or have more than two vehicles per unit. However, this supposition is both unfounded regarding the number of vehicles and incorrect regarding the garages. Unlike in the H-B and R-1 zones which surround the project site, this Project has specifically been conditioned to require that garages be kept available for parking two vehicles. The Homeowner's Association, as well as the City, may enforce this requirement. Census data indicates that the average number of cars per household in Gardena is two cars.

Parking is no longer a CEQA issue unless there will be environmental impacts associated with inadequate parking. As stated above, the parking meets the City's requirements and actually exceeds guest parking by nine spaces. As evidenced by the Trip Generation memo prepared for this Project, during the day there were at least 78 people who were observed parking on 178th Street or Denker Avenue and walking into the site; therefore, this Property is already generating neighborhood parking. In addition to Project parking on-site, there is unrestricted street parking for much of 178th Street. The frontage of the Project provides space for 18 parking spaces.

The street parking is currently being used by trucks associated with the current industrial use. Over the Labor Day weekend, the Assistant City Attorney observed trucks parked on both sides of 178th Street. Trucks were also observed parked on 178th Street during the daytime hours as reported in the Trip Generation Memo and again by staff on September 30, 2019. By approximately 6 p.m. during the week 178th Street approximately 50% of the spaces were available, again showing that parking should be available during nights and weekends, which are expected to be the time when parking spaces are most needed.

Should parking become a problem at some future point, the City could look at solutions such as creating a parking district. But no parking impacts are expected from this Project.

178th Street Looking Westbound in Front of Project Site (9/30/19)



TRAFFIC CUT-THROUGH

The Haase Appeal raises the concern that traffic will cut-through the residential neighborhood to the south. Project trips are estimated based on the Institute of Traffic Engineer's ("ITE") manual which are based on actual studies, not on the unsupported suppositions set forth in the Haase Appeal. According to the ITE manual, the Project will create a total of 620 daily trips: 41 will be during the AM peak hour period (6 a.m. to 9 a.m.) and 51 will be during the PM peak hour period (3 p.m. to 7 p.m.). The north-south streets in the area are considered local streets and designed to carry low volumes of traffic to individual parcels throughout the City.

In order to confirm that the Project would not create any significant environmental impacts, Kimley-Horn, the City's environmental consultant, prepared a Traffic Distribution Analysis. (Exhibit D to Attachment 1.) This Analysis shows that the two north-south streets that would likely be used would be Denker and Evelyn Avenues, which are the two streets closest to the project site. The Traffic Engineer's calculations, summarized below, show that there will be no impacts on the north-south local streets.

AM PEAK HOUR TRIPS

<u>AM PEAK Traffic - Outbound</u>	<u>AM PEAK Traffic - Inbound</u>	<u>Total AM PEAK Trips</u>
<ul style="list-style-type: none">• 178th – 14 westbound to Western• 178th - 13 eastbound to Normandie• Denker – 1 southbound to 182nd• <u>Evelyn – 2 southbound to 182nd</u> Total – 30 outbound trips	<ul style="list-style-type: none">• 178th – 4 eastbound from Western• 178th – 5 westbound from Normandie• Denker – 1 northbound to Project• <u>Evelyn – 1 northbound to Project</u> Total – 11 inbound trips	<ul style="list-style-type: none">• 178th – 18 to Western• 178th – 18 to Normandie• Denker – 2• <u>Evelyn - 3</u> Total – 41 trips

PM PEAK HOUR TRIPS

<u>PM PEAK Traffic - Outbound</u>	<u>PM PEAK Traffic - Inbound</u>	<u>Total PM PEAK Trips</u>
<ul style="list-style-type: none">• 178th – 9 westbound to Western• 178th - 9 eastbound to Normandie• Denker – 1 southbound to 182nd• <u>Evelyn – 1 southbound to 182nd</u> Total – 20 outbound trips	<ul style="list-style-type: none">• 178th – 15 eastbound from Western• 178th – 13 westbound from Normandie• Denker – 1 northbound to Project• <u>Evelyn – 2 northbound to Project</u> Total – 31 inbound trips	<ul style="list-style-type: none">• 178th – 24 to Western• 178th – 22 to Normandie• Denker – 2• <u>Evelyn - 3</u> Total – 51 trips

OTHER ISSUES

The letters raised after the Planning Commission hearing raised issues relating to egress in case of emergency, sewage, and Edison lines. None of these issues have merit. With regard to egress, there is a second emergency entrance/exit on the west side of the project along 178th. The Public Works Department has reviewed the project and the conditions have been imposed relating to paying sewer fees and installing new lift station pumps. The plans were also reviewed by Southern California Edison which did not have a problem with the project.

RECOMMENDATION

Staff recommends the City Council take the following actions:

- 1) Approve Resolution No. 6405 (Attachment 1) which approves the Mitigated Negative Declaration for the General Plan Amendment, Zone Change, Tentative Tract Map, and Site Plan Review and approves the Mitigation Monitoring Program for the Tentative Tract Map and Site Plan Review;
- 2) Approve Resolution No. 6406 (Attachment 2) which approves the General Plan Amendment changing the land use designation for the property from Industrial with a Mixed Use Overlay to High Density Residential;
- 3) Introduce Ordinance No. 1808 (Attachment 3) which approves the Zone Change changing the zoning of the property from General Industrial (M-2) with a Mixed-Use Overlay (MU) to High Density residential (R-4);
- 4) Approve Resolution No. 6412 (Attachment 4) which approves the Tentative Tract Map and Site Plan Review on the call for review from Council Member Henderson, including conditions that the Tract Map and Site Plan shall be revised to conform to the Revised Open Space Enlargement.


Raymond Barragan, Community Development Manager

Date: 10/17/2019

ATTACHMENTS

1. Resolution No. 6405 – Approving Initial Study/Mitigated Negative Declaration and Mitigation Monitoring Program
 - Exhibit A – Draft IS/MND dated August 2019 (Appendices included on CD)
 - Exhibit B – Mitigation Monitoring and Reporting Program
 - Exhibit C – Comment Memo
 - Exhibit D – Traffic Distribution Analysis
2. Resolution No. 6406 – Approving General Plan Land Use Change
 - Exhibit A – General Plan Land Use Map Change
3. Ordinance No. 1808 – Approving Zoning Change
 - Exhibit A – Zoning Map Change
4. Resolution No. 6412 – Approving Tract Map and Site Plan
 - Exhibit A - Tract Map dated 3/4/19 (full set on file)
 - Exhibit B - Site Plan dated Aug. 29, 2019 (full set on file)
 - Exhibit C – Landscape Plans dated May 17, 2019
 - Exhibit D – Conditions of Approval
5. Planning Commission staff report
6. Planning Commission Resolution No. 16-19 (without attachments)
7. Planning Commission Resolution No. 17-19 (without attachments)
8. Haase email to Planning Commission

9. Letters received after the Planning Commission meeting
10. Haase email to City Council re: appeal
11. Revised Open Space Enlargement Plan dated October 2, 2019
12. Nuisance Issues (Case Details)

ATTACHMENT 1

RESOLUTION NO. 6405

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDENA, CALIFORNIA, APPROVING A MITIGATED NEGATIVE DECLARATION FOR GENERAL PLAN AMENDMENT #2-18 AND ZONE CHANGE #3-18 CHANGING THE LAND USE DESIGNATION AND ZONING OF PROPERTY LOCATED AT 1515 WEST 178TH STREET FROM INDUSTRIAL WITH A MIXED USE OVERLAY TO HIGH DENSITY RESIDENTIAL AND APPROVING A MITIGATED NEGATIVE DECLARATION ON MITIGATION MONITORING PROGRAM FOR A TRACT MAP AND SITE PLAN FOR 114 UNITS

(GPA #2-18; ZC #3-18; APNS: 6106-013-040 and 6106-013-041)

WHEREAS, on December 5, 2018, the applicant, Melia Homes, filed an application to develop a 114-unit residential condominium project consisting of attached three-story townhome style condominiums in 22 buildings on the 5.63 acre property located at 1515 West 178th Street (the "Property"); and

WHEREAS, in order to develop the residential project, the following entitlements (collectively, the "Project") are required: General Plan amendment changing the land use designation from Industrial with a Mixed Use Overlay to High Density Residential (GPA #2-18); Zone Change to change the zoning from General Industrial (M-2) with a Mixed-Use Overlay (MU) to High Density Residential (R-4); Tract Map to create 114 lots (VTM 82390); and Site Plan Review for the proposed Project (SPR #11-18); and

WHEREAS, a Mitigated Negative Declaration ("MND") was prepared for the Project and the draft MND was circulated for a 20-day public review period between August 15, 2019, and September 3, 2019; and

WHEREAS, on September 17, 2019, the Planning and Environmental Quality Commission ("Planning Commission") of the City of Gardena held a duly noticed public hearing on the draft IS/MND and the approvals required for the Project at which time it considered all evidence, both written and oral; and

WHEREAS, at the close of the public hearing, the Planning Commission adopted PC Resolution No. 16-19, which approved the MND and adopted the Mitigation Monitoring Reporting Program ("MMRP") for the Tentative Tract Map and Site Plan Review and recommended that the City Council approve the MND and adopt the MMRP for the General Plan Amendment and Zone Change; and adopted PC Resolution No. 17-19 which approved the Tentative Tract Map and Site Plan Review with direction to the applicant to work with the City to create more usable open space on the project site, and recommended that the City Council approve the General Plan Amendment and Zone Change; and

WHEREAS, on September 24, 2019 the City received an email from a resident indicating that they wanted to appeal the Planning Commission's decision primarily based on traffic and parking impacts ("Haase Appeal"); and

WHEREAS, during the September 24, 2019, City Council Meeting, prior to the resident being able to perfect the appeal, Council Member Henderson called the Planning Commission's item for review; and

WHEREAS, after the Planning Commission's September 17, 2019, hearing, the applicant submitted a revised Open Space Enlargement Plan dated October 2, 2019, modifying the open space to be more usable; and

WHEREAS, on October 22, 2019, the City Council held a duly noticed public hearing on all portions of the Project at which time it considered all evidence, both written and oral;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDENA, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. CEQA FINDINGS.

A. The City retained Kimley-Horn, an environmental consultant, to prepare the IS/MND, a copy of which is attached hereto as Exhibit A.

B. The IS/MND was prepared and noticed in accordance with all requirements of the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*) and the CEQA Guidelines (14 Cal. Code of Regs. § 15000 *et seq.*) (collectively, "CEQA").

C. The IS/MND adequately assesses the impacts of the Project.

D. The IS/MND determined that there were potentially significant impacts with regard to the following topics: Biological Resources (Nesting Migratory Birds); Cultural Resources (Archaeological Resource); Hazards and Hazardous Materials (Release of Hazardous Materials); and Tribal Cultural Resources.

1. Following compliance with the conditions of approval that will be imposed on the project for Geology and Soils (Paleontological Resources), Hydrology and Water Quality (Water Standards or Waste Discharge Requirements), and Recreation, potential impacts will be reduced to less than significant and no mitigation is required.

2. The Mitigation Measures listed in the Mitigation Monitoring and Reporting Program ("MMRP"), attached hereto as Exhibit B, relating to Biological Resources, Cultural Resources, Hazards and Hazardous Materials, and Tribal Cultural Resources, will mitigate those impacts below a level of significance.

E. The City sent notices to the Native American tribes provided by the National American Heritage Commission. The City received one request for consultation from the Gabrielino Band of Mission Indians – Kizh Nation. After consultation, the City imposed Mitigation Measures TCR-1 regarding retaining a Native American monitor/consultant and TCR-2 regarding unanticipated discovery of tribal cultural and archaeological resources.

F. In addition to the letter received from the Kizh Nation, additional comment letters on the IS/MND were received from the Los Angeles Unified School District, and the Sanitation District of Los Angeles County. Kimley-Horn prepared a response to comments, which is attached hereto as Exhibit C, and none of the comments require recirculation of the MND.

G. The Haase Appeal raised the issues of cut-through traffic in the residential neighborhoods as well as parking impacts and General Plan consistency. As a result of this Appeal, Kimley-Horn prepared an additional Traffic Distribution Analysis ("Analysis") to confirm that there were no traffic impacts. The Analysis confirms that there will not be a traffic impact on local streets from the Project. The Analysis is attached hereto as Exhibit D.

H. Parking impacts are not a topic for CEQA analysis unless there are environmental impacts from deficient parking. The Project complies with the City's parking standards and provides more guest parking than is required by statute. The conditions of approval require that the CC&Rs for the Project include provisions that parking garages must be kept available for parking. Additionally, there is parking on 178th Street which is currently being utilized by both trucks and passenger vehicles related to the trucking use which will become available.

I. The Haase Appeal arguments do not create a fair argument that there may be a significant impact as they are based on sheer speculation and are not supported by the studies and technical data.

J. With regard to General Plan consistency, the current General Plan designation and the zoning are Industrial with a Mixed-Use Overlay allows for up to 30 units per acre on this site. The Mixed-Use Overlay requires a component of a project to be commercial. Because commercial use is not a viable use in this location, the developer requested a General Plan Amendment and zone change to high-density residential, which also allows a maximum of 30 units per acre. In order to comply with a previous Housing Element requirement and the applicable zoning, the minimum required density is 20 units per acre. This Project is 20.36 units per acre. As this density was contemplated by the General Plan and zoning, the Project is consistent with both.

K. The Initial Study, Mitigated Negative Declaration, Comment Memo, Analysis, and Mitigation Monitoring Program were all independently reviewed by City staff and the Planning Commission, as well as by the City Council. In making all of the findings herein, the City Council has exercised its independent judgment.

L. The Custodian of Record for the proceedings relating to the Project, including the MND and MMRP, is Raymond Barragan, Community Development Manager, City of Gardena, 1700 W. 162nd Street, Gardena, California 90247. Mr. Barragan's email is rbarragan@cityofgardena.org and his phone number is 310/217-9546.

SECTION 2. APPROVAL.

Based on the findings set forth above as well as the record of proceedings, the City Council hereby approves the Mitigated Negative Declaration for General Plan Amendment #2-18 and Zone Change #3-18 and approves the Mitigated Negative Declaration and Mitigation Monitoring Program for Tract Map # 82390 and Site Plan Review #11-18. The City Council directs that the Comment Memo and Analysis be filed with the MND. As adopted, the MND consists of the draft IS/MND dated August 2019 as revised by the Comment Memo dated September 9, 2019 and the Analysis dated October 14, 2019. Staff is directed to file a Notice of Determination.

SECTION 3. RECORD.

Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the Project. All summaries of information in the findings which precede this section are based on the entire record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 4. EFFECTIVE DATE. This Resolution shall take effect immediately.

BE IT FURTHER RESOLVED that the City Clerk shall certify to the passage and adoption of this Resolution; shall cause the same to be entered among the original Resolutions of said City; and shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council of said City in the minutes of the meeting at which the same is passed and adopted.

PASSED, APPROVED, AND ADOPTED this 22nd day of October, 2019.

TASHA CERDA, Mayor

ATTEST:

MINA SEMENZA, City Clerk

APPROVED AS TO FORM:



PETER L. WALLIN, City Attorney

Attachments:

Exhibit A – IS/MND

Exhibit B – Mitigation Monitoring Program

Exhibit C – Comment Memo

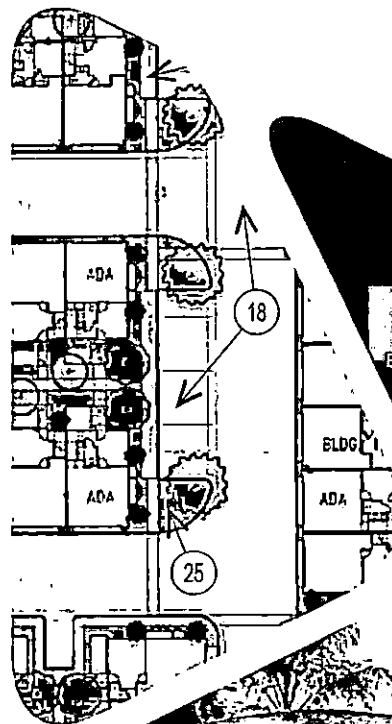
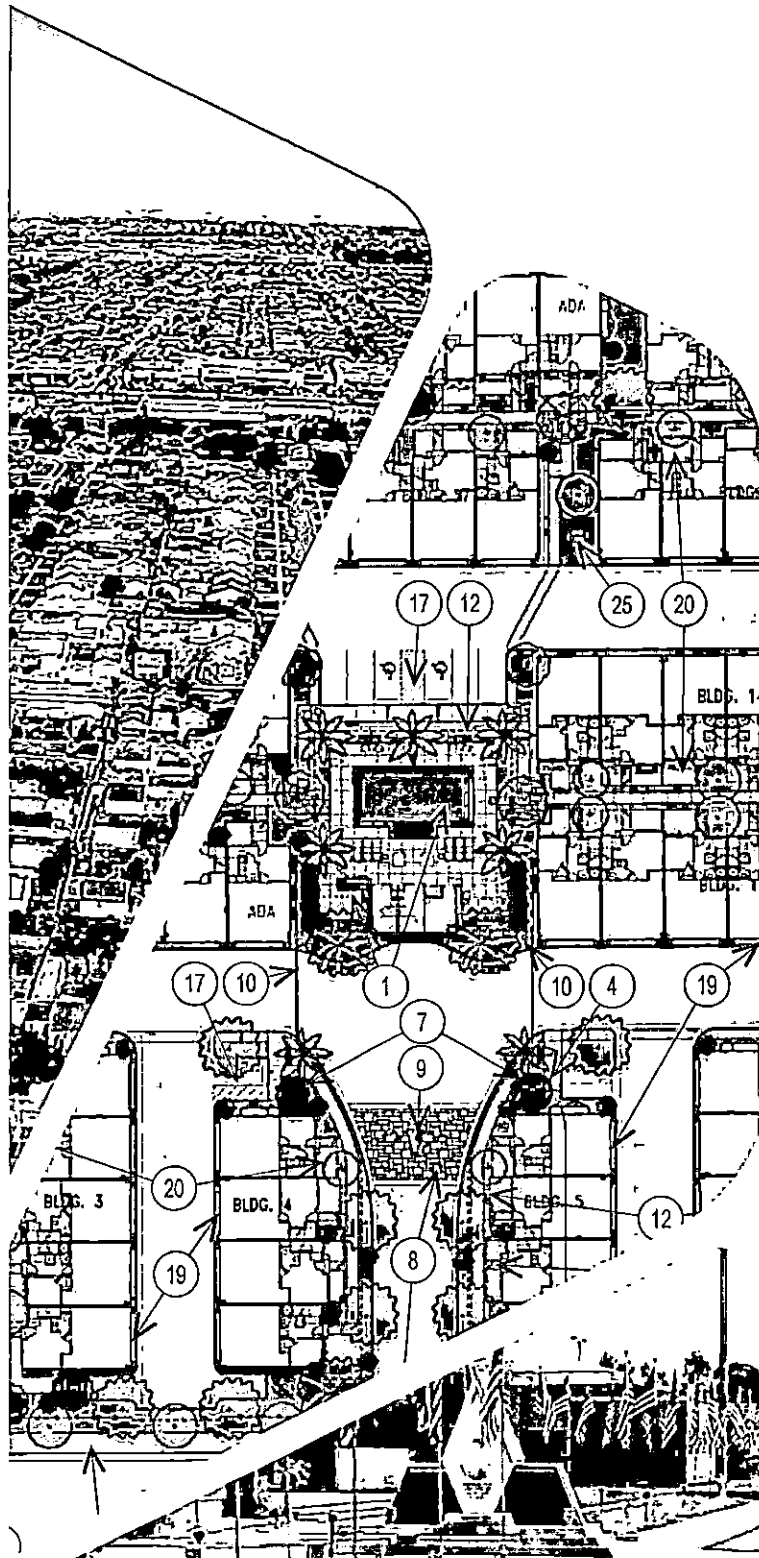
Exhibit D – Traffic Distribution Analysis

**Exhibit A – Draft IS/MND dated August 2019
(Appendices included on CD)**

Melia 178th Street Townhomes Project

Public Review Draft Initial Study/Mitigated Negative Declaration

August 2019



Prepared by
Kinley»Horn
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Melia 178th Street Townhomes Project

Public Review Draft Initial Study/ Mitigated Negative Declaration

August 2019

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City of Gardena

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1.0 INTRODUCTION

1.1 Statutory Authority and Requirements

This Initial Study has been conducted in accordance with the California Environmental Quality Act (CEQA) (California Public Resources Code [PRC] §21000 et seq.) and the State CEQA Guidelines (California Code of Regulations [CCR], Title 14, §15000 et seq.). Pursuant to State CEQA Guidelines §15063, this Initial Study has been conducted to determine if the proposed Melia 178th Street Townhomes Project (“Project”) would have a significant effect on the environment. The approximately 5.63 gross-acre Project site is located at 1515 West 178th Street, Gardena, CA. The Project would remove all existing on-site structures and develop a residential community consisting of 114 three-story attached townhomes, at a density of 20.36 dwelling units per gross acre (DU/GAC). The requested entitlements also include a Tentative Tract Map, General Plan Amendment, Zone Change, and Site Plan Review.

State CEQA Guidelines §15063(b) states that if the Lead Agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, the Lead Agency shall prepare an Environmental Impact Report (EIR), use a previously prepared EIR, or determine, which of a project’s effects were adequately examined by an earlier EIR or Negative Declaration (ND). Conversely, the Lead Agency shall prepare a ND if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

Pursuant to State CEQA Guidelines §15063(c), the purposes of an Initial Study are to:

- 1) Provide the Lead Agency with information to use as the basis for deciding whether to prepare an EIR or a ND;
- 2) Enable an applicant or Lead Agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a ND;
- 3) Assist in the preparation of an EIR, if one is required;
- 4) Facilitate environmental assessment early in the design of a project;
- 5) Provide documentation of the factual basis for the finding in a ND that a project will not have a significant effect on the environment;
- 6) Eliminate unnecessary EIRs; and
- 7) Determine whether a previously prepared EIR could be used with the project.

This Initial Study is intended to be used as a decision-making tool for the Lead Agency and responsible agencies in considering and acting on the proposed Project. Responsible agencies would comply with CEQA by considering this environmental analysis for discretionary actions associated with Project implementation, if any.

State CEQA Guidelines §15063(g) specifies that as soon as a Lead Agency has determined that an Initial Study will be required for a project, the Lead Agency shall consult informally with all Responsible Agencies and all Trustee Agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR, Mitigated Negative Declaration (MND), or a ND should be prepared.

1.2 Summary of Findings

Pursuant to State CEQA Guidelines §15367, the City of Gardena ("City"), as the Lead Agency, has the authority for environmental review and adoption of the environmental documentation, in accordance with CEQA. This Initial Study has evaluated the environmental issues outlined in **Section 3.2: Environmental Factors Potentially Affected**. It provides decision-makers and the public with information concerning the Project's potential environmental effects and recommended mitigation measures.

Based on the Environmental Checklist Form and supporting environmental analysis, the Project would have no impact or a less than significant impact concerning all environmental issue areas, except the following, for which the Project would have a less than significant impact with mitigation incorporated:

- Biological Resources,
- Hazards and Hazardous Materials,
- Cultural Resources, and
- Tribal Cultural Resources.

As set forth in State CEQA Guidelines §15070, an Initial Study leading to a Mitigated Negative Declaration (IS/MND) can be prepared when the Initial Study identifies potentially significant effects, but: Project revisions would avoid or mitigate the effects to a point where clearly no significant effects would occur, and there is no substantial evidence, in light of the whole record before the agency, that the Project as revised may have a significant effect on the environment.

1.3 Initial Study Public Review Process

The Notice of Intent (NOI) to Adopt a Mitigated Negative Declaration has been provided to the Clerk of the County of Los Angeles and mailed to responsible agencies and trustee agencies concerned with the Project and other public agencies with jurisdiction by law over resources affected by the Project. A 20-day public review period has been established for the IS/MND in accordance with State CEQA Guidelines §15073. During the public review period, the IS/MND, including the technical appendices, was made available for review at the following locations:

- City of Gardena Community Development Department, 1700 West 162nd Street, Gardena
- City of Gardena Website: <http://www.cityofgardena.org/>
- Gardena Mayme Dear Library, 1731 West Gardena Boulevard, Gardena

In reviewing the IS/MND, affected public agencies and interested members of the public should focus on the document's adequacy in identifying and analyzing the potential environmental impacts and the ways in which the Project's potentially significant effects can be avoided or mitigated. Written comments on this IS/MND may be sent to:

John Signo
Senior Planner
City of Gardena, Community Development Department
1700 West 162nd Street
Gardena, CA 90247-3732
Email: jsigno@cityofgardena.org

Following receipt and evaluation of comments from agencies, organizations, and/or individuals, the City will determine whether any substantial new environmental issues have been raised. If so, further documentation may be required. If not or if the issues raised do not provide substantial evidence that the Project would have a significant effect on the environment, the IS/MND will be considered for adoption and the Project for approval.

1.4 Incorporation by Reference

Pursuant to State CEQA Guidelines §15150, an MND may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the ND's text.

The references outlined below were utilized during preparation of this Initial Study. Copies of these documents are available for review at the City of Gardena Community Development Department (1700 West 162nd Street, Gardena, CA) and on the City's website (<http://www.cityofgardena.org/>) unless otherwise noted.

Gardena General Plan 2006. The City adopted the comprehensive Gardena General Plan 2006 (GGP) in 2006 and the Community Development Element's Land Use Plan was updated in June 2012 and March 2013. Additionally, the City's 2014-2021 Housing Element was adopted in November 2013 and found to be in compliance by the Department of Housing and Community Development in December 2013. The GGP constitutes the City's overall plans, goals, and objectives for land use within the City's jurisdiction. The GGP is based upon the following core visions for the City: City of Opportunity; Safe and attractive place to live, work and play; Community that values ethnic and cultural diversity; Strong and diverse economic base. It evaluates the existing conditions and provides long-term goals and policies necessary to guide growth and development in the direction that the community desires. Through its Goals, Objectives, Policies, and Programs, the GGP serves as a decision-making tool to guide future growth and development decisions.

The GGP consists of the following elements and the issues interrelated in each other and are summarized below:

- Community Development Element
 - Land Use Plan
 - Economic Development Plan
 - Community Design Plan
 - Circulation Plan
- Community Resources Element
 - Open Space Plan
 - Conservation Plan
- Community Safety Element
 - Public Safety Plan
 - Noise Plan
- Implementation
 - Implementation Program
- Housing Element

The GGP was used throughout this IS/MND as a source of baseline data.

City of Gardena General Plan 2006 Final Environmental Impact Report (GRC Associates, Inc., April 2006) (SCH #2005021125). The GGP Final Environmental Impact Report (GGP FEIR) analyzed the potential environmental impacts that would result from GGP implementation. At the time of the GGP FEIR's writing, the City was 98.5 percent developed. Approximately 45 acres of vacant land existed at the GGP FEIR's writing. GGP FEIR Tables 2 and 3 present the forecast capacity at the City's buildout as 22,329 DU, a population of 63,799 persons, and approximately 18.9 million square feet (SF) of nonresidential land uses. Buildout was estimated to occur over 20 years. The GGP FEIR concluded significant and unavoidable impacts concerning Transportation and Traffic (GGP FEIR page 138). This document is available for review only at City Hall.

Since GGP FEIR preparation, the SCAG RHNA Allocation Plan fifth cycle, which was adopted in 2012, indicates that between 2014 and 2021, the City will need to accommodate development of 397 DU. The 2014-2021 Housing Element concluded adequate development capacity remained for the City to meet the RHNA allocation for the 2014-2021 planning period. On November 12, 2013, the City Council adopted Resolution No. 6106 approving the 2014-2021 Housing Element and the supporting IS/ND.

Gardena Municipal Code. The Gardena Municipal Code (GMC) regulates municipal affairs within the City's jurisdiction including, without limitation, zoning regulations (codified in GMC Title 18). GMC Title 18 is the primary tool for implementing the GGP's Goals, Objectives, and Policies.

The GMC is referenced throughout this IS/MND to establish the Project's baseline requirements according to the City's regulatory framework.

1.5 Report Organization

This document is organized into the following sections:

Section 1.0: Introduction provides a Project introduction and overview, cites the CEQA Statute and Guidelines provisions to which the proposed Project is subject, and summarizes the IS' conclusions.

Section 2.0: Project Description details the Project's location, environmental setting, background and history, characteristics, discretionary actions, construction program, phasing, agreements, and required permits and approvals. This Section also identifies the IS' intended uses, including a list of anticipated permits and other approvals.

Section 3.0: Environmental Checklist Form provides the Project background and an overview of potential impacts that may or may not result from Project implementation.

Section 4.0: Evaluation of Environmental Impacts provides an analysis of environmental impacts identified in the environmental checklist.

Section 5.0: References identifies resources used to prepare the IS.

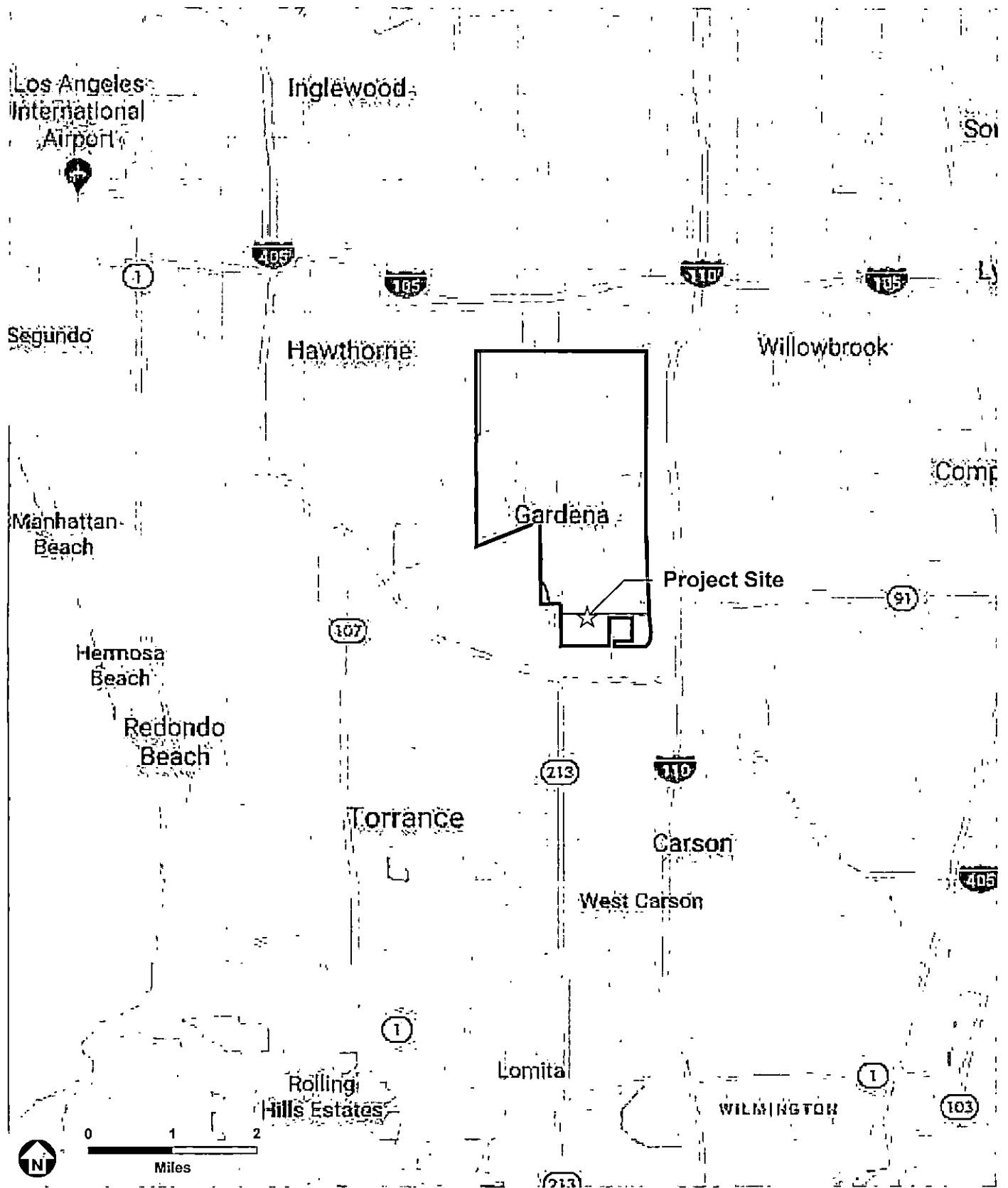
2.0 PROJECT DESCRIPTION

2.1 Location

The Melia 178th Street Townhomes (Project) site is in the County of Los Angeles (County), in the City of Gardena (City), approximately 12.5 miles south of downtown Los Angeles; see **Exhibit 2-1: Regional Vicinity Map**. The Project site is at the City's southern extent, near the City's jurisdictional limits with the City of Los Angeles to the east and the City of Torrance to the west. The Project site involves approximately 5.63 gross acres comprised of two parcels (APN 6106-013-040 and 6106-013-041) located at 1515 West 178th Street; see **Exhibit 2-2: Site Vicinity Map**.

Regional access to the Project site is provided via the Artesia Freeway (State Route 91 [SR-91]), the San Diego Freeway (Interstate 405 [I-405]) and the Harbor Freeway (State Route 110 [SR-110]) located to the northeast, south, and east, respectively. Local access to the Project site is provided via West 178th Street to the south, which is accessed from Normandie Avenue to the east, and South Western Avenue to the west. Two access driveways are located at 178th Street, at the site's eastern and western portions.

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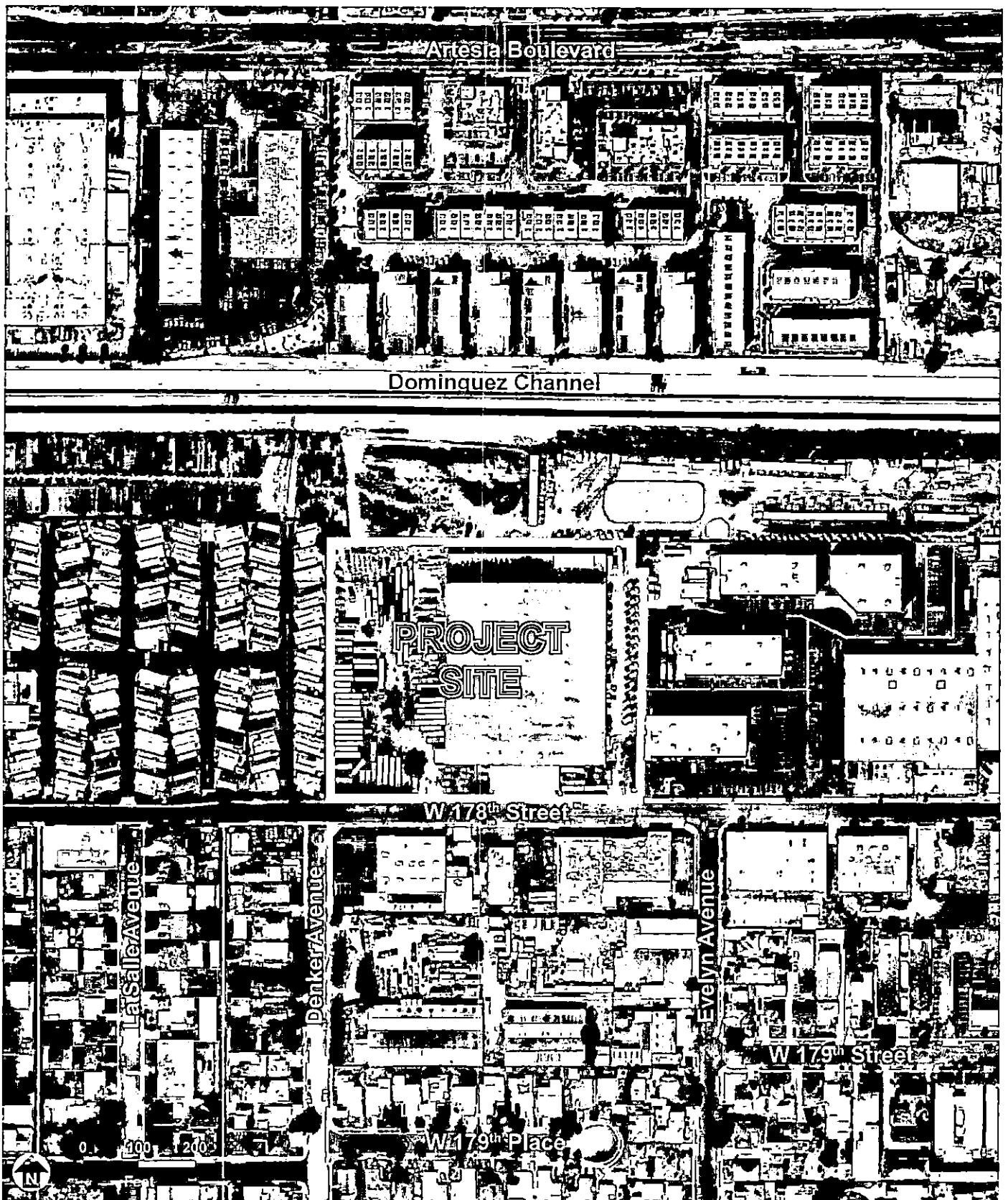
Source: Google Maps



Melia 178th Street Townhomes Project
Initial Study/Mitigated Negative Declaration

Exhibit 2-1
Regional Vicinity Map

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Source: Near Maps



*Mella 178th Street Townhomes Project
Initial Study/Mitigated Negative Declaration*

**Exhibit 2-2
Site Vicinity Map**

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2.2 Environmental Setting

The City of Gardena encompasses approximately 6.0 square miles in Los Angeles County's South Bay region. Gardena is a fully urbanized city with a mix of residential densities, although low-density residential uses predominate. The City also contains a mix of retail commercial, office, and industrial uses.

The Project site is at the City's southern extent, in a predominantly industrial area, although residential uses exist to the west and southwest. The site is bounded by a vacant lot and an equestrian use (i.e., horse stables) to the north, West 178th Street to the south, office commercial and industrial uses to the east, and a mobile home park to the west. Normandie Avenue forms an eastern City boundary with the City of Los Angeles approximately 0.24 mile to the east of the site, and South Western Avenue forms a western City boundary with the City of Torrance approximately 0.28 mile to the west.

2.2.1 ON-SITE LAND USES

The generally rectangular-shaped property is relatively flat and at an elevation of approximately 35 feet above mean sea level (amsl).¹ As depicted on **Exhibit 2-2**, the site is fully developed with an industrial building totaling approximately 105,036 SF² used as a trucking warehouse with associated surface parking lot and outdoor trailer storage. The warehouse, drive aisle, and parking lot are located on the site's eastern portion and an outdoor trailer storage area is located on the western portion. The warehouse is used for maintenance and storage of trucks and trailers.

2.2.2 GENERAL PLAN AND ZONING

GGP Figure LU-2, *Land Use Policy Map*, depicts the City's land use designations and indicates the Project site is designated Industrial with a Mixed-Use Overlay.³ The Industrial designation provides for a wide variety of clean and environmentally friendly industries, technology-related uses and supporting facilities, and business parks.⁴ The Mixed-Use Overlay permits residential development on selected areas designated for commercial and industrial land uses.⁵ The Mixed-Use Overlay (MUO) designation's purpose is to allow greater flexibility of development alternatives, especially attractive higher density residential development in appropriate areas that are experiencing both physical and economic blight. The maximum allowed intensity and density (stepped density) within the MUO designation are a floor-area ratio (FAR) of 0.5 and 30 DU/AC for lots greater than 1.0 AC.

¹ Melia Homes. (2018). Preliminary Grading Plan, 1515 West 178th Street, Gardena, California. Lake Forest, CA: C&V Consulting, Inc.

² Melia Homes. (2019). AQ/GHG Project Data Needs Construction Information Request Form, February 4, 2019.

³ City of Gardena. (2006, Updated February 2013). *Gardena General Plan 2006*. Figure LU-2: 2013 General Plan Land Use Policy Map. Gardena, CA: City of Gardena.

⁴ City of Gardena. (2006, Updated February 2013). *Gardena General Plan 2006*. Page LU-12. Gardena, CA: City of Gardena.

⁵ Ibid., page 13.

The City of Gardena Zoning Map depicts the City's zones and indicates the Project site is zoned General Industrial (M-2) Zone with a Mixed-Use Overlay (MU) Zone.⁶ Regulations governing the M-2 Zone are identical to those governing the Industrial (M-1) Zone; see GMC Chapters 18.36 and 18.38. Commercial, manufacturing, and industrial uses are permitted in the M-1/M-2 Zones, provided all activities are conducted within an enclosed building. The MU Zone is intended to allow greater flexibility of development alternatives, especially attractive higher density residential development and live-work buildings, in appropriate areas of the city; see GMC Chapter 18.19.

2.2.3 SURROUNDING LAND USES

Land uses surrounding the Project site are as follows (see **Exhibit 2-2**):

- North: Land uses north of the Project site include an equestrian use (i.e., horse stables) and a vacant lot within a power line easement. The Los Angeles County Flood Control District's (LACFCD) Dominguez Channel is further north, beyond the stables. Areas to the north are zoned General Commercial (C-3) Zone and Artesia Corridor Specific Plan (ACSP).
- South: Land uses immediately south of the Project site beyond West 178th Street between Denker Avenue and Evelyn Avenue include industrial uses. Directly south of those uses are primarily single-family homes with some low-density multiple-family homes. South of 178th Street to the east of the Project site, generally between Normandie Avenue and Evelyn Avenue, are industrial uses and south of those, multiple-family housing. South of 178th Street to the west of the Project site between Denker Avenue and Western Avenue is more industrial and single-family residential. Areas to the south are zoned M-1 Zone, Home Business (H-B) Zone, Low-Density Multiple Family Residential (R-2), and Medium Density Multiple-Family Residential (R-3) Zone.
- East: Land uses east of the Project site are predominantly industrial. Areas to the east are zoned M-2 Zone.
- West: Garden West Estates, a mobile home park, is located immediately west of the Project site. Areas to the west are zoned R-3 Zone and MU Zone.

2.3 Background and History

As previously noted, the site is occupied by a trucking warehouse.

On December 5, 2018, the Project Applicant (Melia Homes) submitted their development applications to the City for the proposed Project.

⁶ City of Gardena. (January 2018). *Zoning Map*. Gardena, CA: City of Gardena Planning Division.

2.4 Project Characteristics

2.4.1 Project Overview

The Project Applicant seeks approval of the proposed Melia 178th Street Townhomes Project. The Project proposes a residential community consisting of 114 three-story attached townhomes, at a density of 20.36 DU/GAC; see **Exhibit 2-3: Conceptual Site Plan**. The Project proposes to remove all existing on-site improvements, including the warehouse, associated surface parking lot, and storage (approximately 105,036 SF) and construct 114 attached townhomes in 22 buildings (approximately 191,348 SF), with between four and six DU per building. The proposed buildings would be wood-frame construction, with all major building elements providing at least a 1-hour fire-resistance rating. The maximum proposed building height would be 40 feet (to roof ridge).

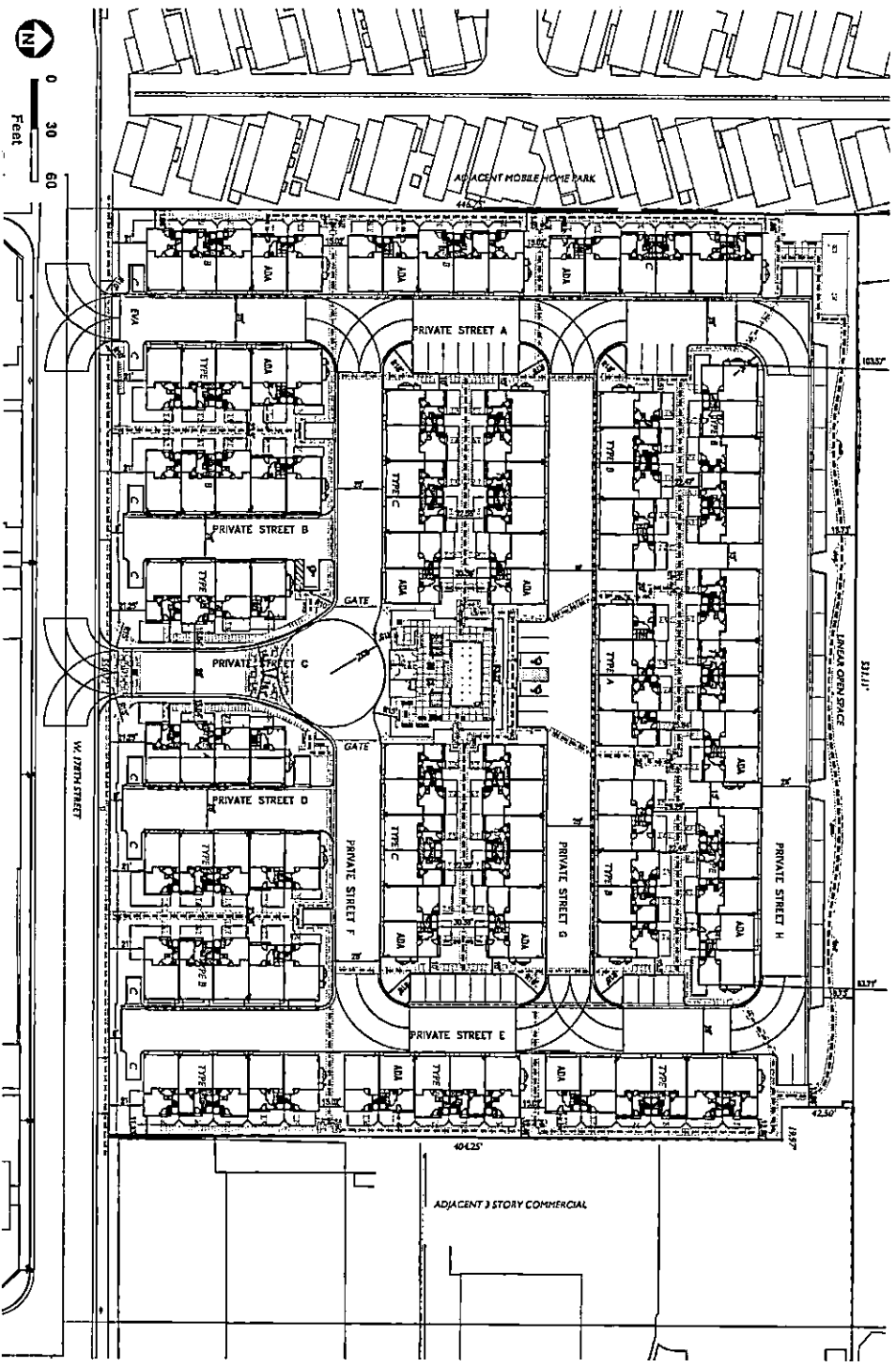
As depicted in **Exhibit 2-3**, the proposed site plan involves five building clusters, including three in the central portion and one each along the eastern and western site boundaries. Eight private streets are proposed throughout to provide access to each of the buildings. Additionally, the Project proposes both private and common open space areas. Approximately 48,727 SF of common open space is proposed, including a central recreational area with a swimming pool, paseos, a pocket park, and trail). Approximately 21,279 SF of private open space is proposed, including approximately 14,059 SF within private patios and approximately 7,220 SF within private balconies. A total of 287 parking spaces are proposed, including 228 within two-car garages with direct access to each DU, and 59 guest parking spaces throughout.

2.4.2 Recreational/Other Amenities

The Project proposes a central community recreation club with swimming pool, shade structure, built-in BBQ entertainment counter, and various site furnishings, and the following additional recreational/other amenities:

- A community pocket park with benches and lawn area for smaller group gatherings, passive play, etc.
- A natural area with decomposed granite (DG) trail along the northern property boundary for pedestrian use.
- Visitor bicycle rack (for two bicycle parking stalls).
- Bench seating, style to complement architecture.
- Dog-bag station (black color).
- 3.0-, 4.0-, and 6.0-foot wide walkways throughout.

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2.4.3 Landscaping

The proposed Conceptual Landscape Plan⁷ would provide a total approximately 48,727 SF of landscaping along the site perimeters and dispersed throughout. The proposed plantings would include various types trees of including Date/Queen Palm trees, Field Grove Olive trees, Gem Magnolia trees, and California Sycamores, among others.

2.4.4 Parking and Access

GMC §18.40.040: *Number of Parking Spaces Required*, specifies multiple-family DU require two spaces in a garage or enclosed parking facility per DU, resulting in a total resident parking demand of 228 spaces. The Project proposes two garage spaces per DU, or a total of 228 resident parking spaces, thus, meeting the City's resident parking standard. GMC §18.40.070: *Additional Standards for Residential Parking Areas*, requires that guest parking be provided for residential developments of more than one unit at 0.5 spaces per DU, resulting in a total guest parking demand of 57 spaces. The Project proposes a total of 59 guest parking spaces, thus, exceeding the City's guest parking standard.

Primary vehicular access to the Project site is proposed via a two-way driveway at the southern boundary at West 178th Street. Vehicular metal sliding gates designed to meet Fire Department standards and a visitor kiosk/pilaster (with telephone keypad) are proposed at the main entry. A secondary/emergency vehicle access equipped with a Fire Department Knox Box is proposed at the Project site's southwestern corner at 178th Street. Pedestrian access is proposed via the primary entrance on West 178th Street.

2.4.5 Utilities and Infrastructure

Golden State Water Company (GSWC) would purvey water to the proposed Project, with one connection proposed (at the site's primary entrance) to an existing 12-inch water main within West 178th Street.

The Project site is within the jurisdictional boundaries of Sanitation Districts of Los Angeles County Sanitation District No. 5 (LACSD). The Project's wastewater would discharge to the local sewer line for conveyance to a LACSD's trunk sewer. Access to the City's sanitary sewer system would be provided with connection to an existing 8-inch line within West 178th Street, at the site's southwest corner.

Proposed drainage improvements include five stormwater catch basins and five biofiltration vaults located throughout the site. In the proposed condition, the site's stormwater would be conveyed from the five catch basins through a storm drain to a proposed 24-inch storm drain located in West 178th Street.⁸ The Project's proposed hydrology and drainage is further discussed in Response 4.10 below.

⁷ Available for review at the City of Gardena Community Development Department, 1700 West 162nd Street, Gardena.

⁸ C&V Consulting, Inc. (December 2018). Preliminary Utility Plan. Lake Forest, CA: C&V Consulting, Inc.

2.4.6 Requested Entitlements

The Project requests approval of the following entitlements:

- General Plan Amendment (GPA) #2-18 to change the site's GGP land use designation from Industrial with a Mixed-Use Overlay to High-Density Residential;
- Zone Change (ZC) #3-18 to change the site's zoning from General Industrial (M-2) with a Mixed-Use Overlay Zone (MU) to High-Density Multiple-Family Residential Zone (R-4);
- Tentative Tract Map (TTM) #82390⁹ to create a single-lot subdivision for Condominium Purposes; and
- Site Plan Review (SPR) #11-18 to approve the proposed Site Plan.

2.5 Project Construction Activities and Phasing

Project construction would occur beginning Spring 2020 and ending Fall 2022, in the following sequence:

- Demolition,
- Site preparation,
- Grading,
- Building construction, and
- Paving, architectural coating, and landscaping.

⁹ Available for review at the City's Community Development Department, at 1700 West 162nd Street, Gardena.

Grading for the proposed improvements would require cut and fill to create building pads. Grading is estimated to require approximately 7,600 cubic yards (CY) of soil import. The City would review and approve the final grading plans prior to Grading Permit issuance. All infrastructure (i.e., storm drain, water, wastewater, dry utilities, and street improvements) would be installed during grading.

Home construction would occur over approximately five to seven phases, the timing of which would be dependent upon market conditions. For purposes of this environmental analysis, opening year is assumed to be 2021.¹⁰

2.6 Agreements, Permits, and Approvals

The City, as Lead Agency, has discretionary authority over the proposed Project. Other agencies in addition to the City of Gardena are expected to use this IS/MND in their decision-making process.

To implement this Project, at a minimum, the following discretionary permits/approvals must be granted by the City and others:

- Environmental Assessment EA #20-18,
- General Plan Amendment GPA #2-18,
- Zone Change ZC #3-18,
- Tentative Tract Map #82390,
- Site Plan Review SPR #11-18, and
- Los Angeles Regional Water Quality Control Board (National Pollutant Discharge Elimination System (NPDES) Compliance/Low Impact Development (LID)) approvals.

¹⁰ Studies and modeling were based on dates initially provided, which were beginning Fall 2019 and ending January 2021. The change in dates does not impact the analyses because modeling based on earlier construction dates is more conservative.

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3.0 ENVIRONMENTAL CHECKLIST FORM

3.1 Background

1. Project Title:	Melia 178 th Street Townhomes Project
2. Lead Agency Name and Address:	City of Gardena Community Development Department 1700 West 162nd Street Gardena, California 90247
3. Contact Person and Phone Number:	John Signo Senior Planner City of Gardena, Community Development Department 1700 West 162 nd Street Gardena, CA 90247-3732 Email: jsigno@cityofgardena.org
4. Project Location:	County of Los Angeles, City of Gardena, 1515 West 178 th Street
5. Project Sponsor's Name and Address:	Mr. Chad Brown, Vice President of Planning and Development Melia Homes 8951 Research Drive Irvine, California 92618
6. General Plan Designation:	Industrial & Mixed-Use Overlay
7. Zoning:	General Industrial (M-2) Zone & Mixed-Use (MU) Overlay Zone
8. Description of Project:	See Section 2.4: Project Characteristics.
9. Surrounding Land Uses and Setting:	See Section 2.2: Environmental Setting and Section 2.2.3: Surrounding Land Uses
10. Other public agencies whose approval is required (e.g., permits).	Los Angeles County Sanitation Department Los Angeles Regional Water Quality Control Board Los Angeles County Fire Department
11. Have California Native American tribes traditionally and culturally affiliated with the Project area requested consultation pursuant to Public Resources Code §21080.3.1? If so, has consultation begun?	One California Native American tribe (i.e., Gabrieleno Band of Mission Indians-Kizh Nation) has requested consultation, which began on May 22, 2019; see Response 4.18.

3.2 Environmental Factors Potentially Affected

The environmental factors checked below would be potentially affected by the proposed Project, involving at least one impact that is a "Potentially Significant Impact" or "Less Than Significant With Mitigation Incorporated," as indicated by the checklist on the following pages.

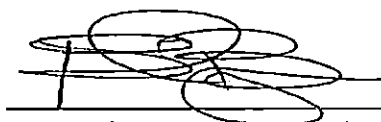
	Aesthetics		Agriculture & Forestry		Air Quality
X	Biological Resources	X	Cultural Resources		Energy
	Geology & Soils		Greenhouse Gas Emissions	X	Hazards & Hazardous Materials
	Hydrology & Water Quality		Land Use & Planning		Mineral Resources
	Noise		Population & Housing		Public Services
	Recreation		Transportation	X	Tribal Cultural Resources
	Utilities & Service Systems		Wildfire		Mandatory Findings of Significance

3.3 Lead Agency Determination

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 revisions in the Project have been made by or agreed to by the Project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.	X
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 or a potentially significant unless mitigated impact on the environment, but at least one effect (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.	

CITY OF GARDENA



Raymond Barragan, Community Development Manager

August 14, 2019

Date

4.0 EVALUATION OF ENVIRONMENTAL IMPACTS

The following environmental analysis is patterned after State CEQA Guidelines Appendix G. An explanation is provided for all responses except “No Impact” responses, which are supported by the cited information sources. The responses consider the whole action involved with the proposed Project: on- and off-site, Project- and cumulative-level, direct and indirect, and short-term construction and long-term operational. The explanation of each issue also identifies the significance criteria or threshold, if any, used to evaluate each question, and the mitigation identified, if any, to avoid or reduce the impact to less than significant. To each question, there are four possible responses:

- No Impact. The Project would not have any measurable environmental impact.
- Less Than Significant Impact. The Project would have the potential to impact the environment, although this impact would be below established thresholds that are considered to be significant.
- Less Than Significant With Mitigation Incorporated. The Project would have the potential to generate impacts, which may be considered as a significant effect on the environment, although mitigation measures or changes to the Project’s physical or operational characteristics could reduce these impacts to a less than significant level.
- Potentially Significant Impact. The Project could have impacts, which may be considered significant, and therefore additional analysis is required to identify mitigation. A determination that there is a potential for significant effects indicates the need to more fully analyze the Project’s impacts and identify mitigation.

4.1 Aesthetics

Environmental Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
Except as provided in Public Resources Code §21099, would the project:				
a) Have a substantial adverse effect on a scenic vista?				X
b) Substantially damage scenic resources, including, but not limited to trees, rock outcroppings, and historic buildings within a State Scenic Highway?				X
c) If in a non-urbanized area, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?				X
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?			X	

Impact Analysis

4.1a Would the project have a substantial adverse effect on a scenic vista?

No Impact. Under CEQA, a scenic vista is defined as a viewpoint that provides expansive views of a highly-valued landscape for the public's benefit. No such conditions exist on or near the Project site. Additionally, the GGP does not specifically address scenic vistas. Therefore, the Project would not have an adverse effect on a scenic vista, and no mitigation is required.

4.1b Would the project substantially damage scenic resources, including but not limited to trees, rock outcroppings, and historic buildings within a State Scenic Highway?

No Impact. The area surrounding the Project site is predominately developed with no natural landforms or scenic features present. There are no State- or County-designated scenic highways

in the Project site vicinity.¹¹ Therefore, the Project would not damage scenic resources within a state scenic highway, and no mitigation is required.

4.1c *If in a non-urbanized area, would the project substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?*

No Impact. The Project site is in an urbanized area. The Project site is fully improved and developed as an industrial use including a trucking warehouse with associated surface parking lot and outdoor trailer storage. The Project site and its surroundings to the east and south (beyond West 178th Street generally between Normandie and Denker Avenues) are characterized by industrial uses, which predominate in the area. The Project proposes to remove all existing on-site improvements, and construct 114 attached townhomes in 22 buildings, with between four and six DU per building. The maximum proposed building height would be 40 feet (to roof ridge).

The on-site and surrounding zoning and the GMC regulations pertaining to each zone are as follows:

- Project Site (Existing): M-2 Zone (GMC Chapters 18.36 and 18.38) with a MU Overlay (GMC Chapter 18.19).
- Project Site (Proposed): The Project proposes a Zone Change to R-4 (GMC Chapter 18.18).
- North: C-3 Zone (GMC Chapter 18.32) and Artesia Corridor Specific Plan (ACSP) (GMC Chapter 18.39).
- South: M-1 Zone (GMC Chapter 18.38), H-B Zone (GMC Chapter 18.28), and R-3 Zone (GMC Chapter 18.16).
- East: M-2 Zone (GMC Chapters 18.36 and 18.38).
- West: R-3 Zone (GMC Chapter 18.16) and MU Zone (GMC Chapter 18.19).

The regulations specified above do not include standards governing scenic quality. Additionally, the GMC does not include other regulations governing scenic quality. Therefore, the Project would not conflict with applicable zoning or other regulations governing scenic quality. No impact would occur concerning scenic quality, and no mitigation is required.

¹¹ California Department of Transportation. (2011). *California Scenic Highway Mapping System*. Retrieved from http://www.dot.ca.gov/hq/LandArch/16_livability/scenic_highways/index.htm.

4.1d Would the project create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

Less Than Significant Impact. Existing outdoor lighting at and near the Project site is associated with industrial, residential, and street lighting along West 178th Street typical of urbanized areas. The proposed Project would generate lighting from two primary sources: lighting from building interiors that would pass through windows, and lighting from exterior sources (e.g., street lighting, parking lot lighting, building illumination, security lighting, and landscape lighting). The Project's outdoor lighting would be subject to compliance with GMC §18.42.150: Security and Lighting Plan, which the City requires to ensure that safety and security issues are addressed in the development's design, and that an average of 2.0-foot candle with no single point less than 1.0-foot candle for all public/common areas. A Photometric Plan would be required prior to Building Permit issuance to verify compliance with GMC §18.42.150.

As part of the Project's Site Plan Review process concerning the Project's potential to adversely affect the surrounding area, the City's Community Development Department would review the Photometric Plan concerning the proposed light standards' placement, height, and direction of illumination; see GMC §18.44.030: Factors for Approval. Further, the City would also review new lighting for conformance with the 2016 California Green Building Standards Code (CALGreen) (CCR Title 24 Part 11) such that only the minimum amount of lighting is used, and no light spillage occurs.¹² Consistent with City requirements, required landscaping may also help buffer and minimize light effects on adjacent land uses. Buildings with large facades constructed of reflective surfaces (e.g., brightly colored building façades, metal surfaces, and reflective glass) could increase existing levels of daytime glare. The Project's proposed design does not include such surfaces or components. Therefore, the Project would result in a less than significant impact concerning a new source of light or glare, and no mitigation is required.

¹² California Building Standards Commission. (2016). 2016 California Green Building Standards Code: California Code of Regulations Title 24, Part 11. International Code Council.

4.2 Agricultural and Forestry Resources

Environmental Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code §12220(g)), timberland (as defined by Public Resources Code §4526), or timberland zoned Timberland Production (as defined by Government Code §51104(g))?				X
d) Result in the loss of forest land or conversion of forest land to non-forest use?				X
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?				X

Impact Analysis

4.2a *Would the project convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?*

4.2b *Would the project conflict with existing zoning for agricultural use, or a Williamson Act contract?*

4.2c *Would the project conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code §12220(g)), timberland (as defined by Public Resources*

Code §4526), or timberland zoned Timberland Production (as defined by Government Code §51104(g))?

4.2d *Would the project result in the loss of forest land or conversion of forest land to non-forest use?*

4.2e *Would the project involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?*

No Impact. No Prime Farmland, Unique Farmland, or Farmland of Statewide or Local Importance is mapped in the City.¹³ Further, the Project site is not the subject of a Williamson Act Contract.¹⁴ The Project site is zoned M-2 with a MU Overlay and proposed to change to R-4. No agricultural, forest land, or timberland zoning exists in the City. Therefore, the Project would result in no impact concerning mapped farmlands, Williamson Act contracts, or agricultural, forest, or timberland zoning, and no mitigation is required.

The Project site is fully improved with industrial uses and located within an urbanized area, along 178th Street. No farmland, forest land, or timberland exist in the City. Therefore, the Project would not result in the conversion or loss of Farmland, forest land or timberland, and no mitigation is required.

¹³ California Department of Conservation. (2016). *California Important Farmland Finder*. Retrieved from <https://maps.conservation.ca.gov/dlrp/ciff/>.

¹⁴ California Department of Conservation. (2016). *Williamson Act/Land Conservation Act*. <http://www.conservation.ca.gov/dlrp/lca>.

4.3 Air Quality

This Section is based on the *Air Quality Assessment* (Kimley-Horn, May 2019), which is included in its entirety in **Appendix A: Air Quality Assessment**.

Environmental Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?			X	
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the Project region is non-attainment under an applicable federal or state ambient air quality standard?			X	
c) Expose sensitive receptors to substantial pollutant concentrations?			X	
d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?			X	

South Coast Air Quality Management District (SCAQMD) Thresholds

Mass Emissions Thresholds

The SCAQMD significance criteria may be relied upon to make the above determinations. According to the SCAQMD, an air quality impact is considered significant if a proposed project would violate any ambient air quality standard, contribute substantially to an existing or projected air quality violation, or expose sensitive receptors to substantial pollutant concentrations. The SCAQMD has established thresholds of significance for air quality during project construction and operations, as shown in **Table 4.3-1: South Coast Air Quality Management District Emissions Thresholds**.

TABLE 4.3-1: SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT EMISSIONS THRESHOLDS

Criteria Air Pollutants and Precursors (Regional)	Construction-Related	Operational-Related
	Average Daily Emissions (pounds/day)	Average Daily Emission (pounds/day)
Reactive Organic Gases (ROG)	75	55
Carbon Monoxide (CO)	550	550
Nitrogen Oxides (NO _x)	100	55
Sulfur Oxides (SO _x)	150	150
Coarse Particulates (PM ₁₀)	150	150
Fine Particulates (PM _{2.5})	55	55
Source: South Coast Air Quality Management District, <i>CEQA Air Quality Handbook</i> , 1993 (PM _{2.5} threshold adopted June 1, 2007).		

Localized Carbon Monoxide

In addition to the daily thresholds listed above, the proposed Project would be subject to the ambient air quality standards. These are addressed through an analysis of localized CO impacts. The California 1-hour and 8-hour CO standards are:

- 1-hour = 20 ppm
- 8-hour = 9 ppm

The significance of localized impacts depends on whether ambient CO levels near the Project site exceed state and federal CO standards. The South Coast Air Basin (SCAB) has been designated as attainment under the 1-hour and 8-hour standards.

Localized Significance Thresholds

In addition to the CO hotspot analysis, the SCAQMD developed Local Significance Thresholds ("LSTs") for emissions of NO₂, CO, PM₁₀, and PM_{2.5} generated at new development sites (off-site mobile source emissions are not included in the LST analysis). LSTs represent the maximum emissions that can be generated at a project site without expecting to cause or substantially contribute to an exceedance of the most stringent national or state ambient air quality standards. LSTs are based on the ambient concentrations of that pollutant within the project source receptor area (SRA), as demarcated by the SCAQMD, and the distance to the nearest sensitive receptor. LST analysis for construction is applicable for all projects that disturb 5.0 acres or less on a single day. The City of Gardena is located within SCAQMD SRA 3 (Southwest Coastal LA County). **Table 4.3-2: Local Significance Thresholds (Construction/Operations)** shows the LSTs for a 1.0-acre, 2.0-acre, and 5.0-acre project site in SRA 3 with sensitive receptors located within 25 meters of the Project site.

TABLE 4.3-2: LOCAL SIGNIFICANCE THRESHOLDS (CONSTRUCTION/OPERATIONS)				
Project Size	Nitrogen Oxide (NO _x) – lbs/day	Carbon Monoxide (CO) – lbs/day	Coarse Particulates (PM ₁₀) – lbs/day	Fine Particulates (PM _{2.5}) – lbs/day
1.0 Acre	91/91	674/674	5/1	3/1
2.0 Acres	131/131	982/982	8/2	5/1
5.0 Acres	197/197	1,823/1,823	15/4	8/2
Source: South Coast Air Quality Management District. (July 2008). <i>Localized Significance Threshold Methodology</i> .				

Impact Analysis

4.3a Would the project conflict with or obstruct implementation of the applicable air quality plan?

Less Than Significant Impact. As part of its enforcement responsibilities, the United States Environmental Protection Agency (USEPA) requires that each state with nonattainment areas prepare and submit a State Implementation Plan (SIP) that demonstrates the means to attain the federal standards. The SIP must integrate federal, state, and local plan components and regulations to identify specific measures to reduce pollution in nonattainment areas, using a combination of performance standards and market-based programs. Similarly, under state law, the California Clean Air Act (CCAA) requires an air quality attainment plan to be prepared for areas designated as nonattainment regarding the federal and state ambient air quality standards. Air quality attainment plans outline emissions limits and control measures to achieve and maintain these standards by the earliest practical date.

The Project site is located within SCAB, which is under SCAQMD's jurisdiction. The SCAQMD is required, pursuant to the Federal Clean Air Act (FCAA), to reduce emissions of criteria pollutants for which SCAB is in non-attainment. To reduce such emissions, the SCAQMD drafted the 2016 Air Quality Management Plan (AQMP). The 2016 AQMP establishes a program of rules and regulations directed at reducing air pollutant emissions and achieving state (California) and national air quality standards. The 2016 AQMP is a regional and multi-agency effort including the SCAQMD, the California Air Resources Board (CARB), the SCAG, and the USEPA. The AQMP's pollutant control strategies are based on the latest scientific and technical information and planning assumptions, including SCAG's 2016 RTP/SCS, updated emission inventory methodologies for various source categories, and SCAG's latest growth forecasts. SCAG's latest growth forecasts were defined in consultation with local governments and with reference to local general plans. The Project is subject to the SCAQMD's AQMP.

Criteria for determining consistency with the AQMP are defined by the following indicators:

- **Consistency Criterion No. 1:** A proposed project would not result in an increase in the frequency or severity of existing air quality violations, or cause or contribute to new violations, or delay the timely attainment of the AQMP's air quality standards or the interim emissions reductions.

- **Consistency Criterion No. 2:** A proposed project would not exceed the AQMP's assumptions or increments based on the years of the project build-out phase.

Consistency Criterion No. 1 refers to the California Ambient Air Quality Standards (CAAQS) and National Ambient Air Quality Standards (NAAQS). As shown in **Table 4.3-3: Construction-Related Emissions** and **Table 4.3-4: Operational Emissions**, the Project construction and operational emissions would be below SCAQMD's thresholds. As the Project would not generate localized construction or regional construction or operational emissions that would exceed SCAQMD thresholds of significance, the Project would not violate any air quality standards. Thus, no impact is expected, and the Project would be consistent with the first criterion.

Consistency Criterion No. 2 refers to SCAG's growth forecasts and associated assumptions included in the AQMP. The future air quality levels projected in the AQMP are based on SCAG's growth projections, which are based, in part, on the general plans of cities located within the SCAG region. Therefore, projects that are consistent with the applicable assumptions used in the development of the AQMP would not jeopardize attainment of the air quality levels identified in the AQMP, even if they exceed the SCAQMD's recommended daily emissions thresholds.

Concerning Consistency Criterion No. 2, the AQMP contains air pollutant reduction strategies based on SCAG's latest growth forecasts, and SCAG's growth forecasts were defined in consultation with local governments and with reference to local general plans. Therefore, it is reasonable to conclude that if a project is consistent with the applicable general plan land use designation, and if the general plan was adopted prior to the applicable AQMP, then the increase in vehicle miles traveled (VMT) and/or population generated by said project would be consistent with the AQMP's assumed VMT and population growth.

The 5.63-acre Project site is designated Industrial with a Mixed-Use Overlay. This existing designation was considered in SCAG's latest growth forecasts. The Mixed-Use Overlay permits residential development on selected areas designated for commercial and industrial land uses. For lots greater than 1.0 AC, the maximum allowed intensity and density (stepped density) within the Mixed-Use Overlay designation are a floor-area ratio (FAR) of 0.5 and 30 DU/AC. The minimum permitted residential density would be 20 DU/AC. Thus, based on the current Mixed-Use Overlay designation, a 5.63-acre site, 30 DU/AC, and 0.5 FAR, the Project site's maximum residential development capacity is 170 DU and maximum non-residential capacity is approximately 122,621 SF. The Project proposes 114 DU at a density of 20.36 DU/GAC, which would not exceed the site's maximum allowable density of 30 DU/AC and maximum residential development capacity of 170 DU under the current Industrial with Mixed-Use Overlay designation. Thus, the Project would not increase growth beyond the AQMP's projections.

It is also noted, the Project proposes a General Plan Amendment to change the site's land use designation to High-Density Residential, which allows 30 DU/AC for lots greater than 1.0 acre. The Project proposes 114 DU at a density of 20.36 DU/GAC, which would not exceed the site's maximum allowable density of 30 DU/AC and maximum residential development capacity of

170 DU under the proposed High-Density Residential designation. Therefore, the Project would be consistent with this criterion and impacts would be less than significant.

4.3b *Would the project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?*

Less Than Significant Impact.

Construction Emissions

Project construction activities would generate short-term emissions of criteria air pollutants. The criteria pollutants of primary concern within the Project area include ozone-precursor pollutants (i.e., ROG and NO_x) and PM₁₀ and PM_{2.5}. Construction-generated emissions are short term and temporary, lasting only while construction activities occur, but would be considered a significant air quality impact if the volume of pollutants generated exceeds the SCAQMD's thresholds of significance.

Construction results in the temporary generation of emissions resulting from site grading, road paving, motor vehicle exhaust associated with construction equipment and worker trips, and the movement of construction equipment, especially on unpaved surfaces. Emissions of airborne particulate matter are largely dependent on the amount of ground disturbance associated with site preparation activities, as well as weather conditions and the appropriate application of water.

For purposes of this analysis, the duration of the proposed Project's construction activities was estimated to last approximately 16 months. The Project's construction-related emissions were calculated using the CARB-approved CalEEMod computer program, which is designed to model emissions for land use development projects, based on typical construction requirements. Project demolition, site preparation, and grading were anticipated to begin in the Fall of 2019. Building construction was estimated to begin the end of 2019 and last almost a full year to the end of 2020. The fall 2019 construction start data used in the modeling results in a conservative analysis because CalEEMod uses cleaner emissions factors in future years due to improved emissions controls and fleet turnover. Paving and Architectural Coating were modeled to be completed by January 2021. The exact construction timeline is unknown, however to be conservative, earlier dates were utilized in the modeling. This approach is conservative given that emissions factors decrease in future years due to regulatory and technological improvements and fleet turnover. See **Appendix A** for additional information regarding the construction assumptions used in this analysis.

The Project's predicted maximum daily construction-related emissions are summarized in **Table 4.3-3: Construction-Related Emissions (Maximum Pounds Per Day)**. As shown in **Table 4.3-3**, all criteria pollutant emissions would remain below their respective thresholds. While impacts would be considered less than significant, the proposed Project would be subject to compliance with SCAQMD Rules 402, 403, and 1113, described in the *Regulatory Setting* –

Regional Section above, to further reduce specific construction-related emissions. The proposed Project emissions would not worsen ambient air quality, create additional violations of federal and state standards, or delay SCAB's goal for meeting attainment standards.

TABLE 4.3-3: CONSTRUCTION-RELATED EMISSIONS (MAXIMUM POUNDS PER DAY)

Construction Year	Reactive Organic Gases (ROG)	Nitrogen Oxide (NOx)	Carbon Monoxide (CO)	Sulfur Dioxide (SO ₂)	Coarse Particulate Matter (PM ₁₀)	Fine Particulate Matter (PM _{2.5})
2019	4.43	45.65	24.39	0.06	10.46	4.66
2020	5.09	34.09	24.79	0.05	11.43	4.35
2021	4.79	21.72	24.00	0.05	2.64	1.43
SCAQMD Threshold	75	100	550	150	55	150
Exceed SCAQMD Threshold?	No	No	No	No	No	No
Notes: SCAQMD Rule 403 Fugitive Dust applied. The Rule 403 reduction/credits include the following: properly maintain mobile and other construction equipment; replace ground cover in disturbed areas quickly; water exposed surfaces three times daily; cover stockpiles with tarps; water all haul roads twice daily; and limit speeds on unpaved roads to 15 miles per hour. Reductions percentages from the SCAQMD CEQA Handbook (Tables XI-A through XI-E) were applied. No mitigation was applied to construction equipment; see Appendix A for model outputs. Additionally, the 2019 construction timing results in a conservative analysis because CalEEMod uses cleaner emissions factors in future years due to improved emissions controls and fleet turnover. Therefore, if the opening year is delayed, emissions would be lower than what is analyzed.						
Source: CalEEMod version 2016.3.2; see Appendix A for model outputs.						

Operational Emissions

The Project's operational emissions would be associated with motor vehicle use and area sources. Area sources include natural gas for space and water heating, gasoline-powered landscaping and maintenance equipment, consumer products (such as household cleaners). Mobile sources emissions are generated from vehicle operations associated with Project operations. Typically, area sources are small sources that contribute very little emissions individually, but when combined may generate substantial amounts of pollutants. Area specific defaults in CalEEMod were used to calculate area source emissions.

CalEEMod was also used to calculate pollutants emissions from vehicular trips generated from the proposed Project. CalEEMod default inputs, vehicle mix, and trip distances, were unaltered for this analysis. CalEEMod estimated emissions from Project operations are summarized in **Table 4.3-4: Operational Emissions (Maximum Pounds Per Day)**. Note that emissions rates differ from summer to winter because weather factors are dependent on the season and these factors affect pollutant mixing, dispersion, ozone formation, and other factors.

As shown in **Table 4.3-4**, emission calculations generated from CalEEMod demonstrate that Project operations would not exceed the SCAQMD thresholds for any criteria air pollutants. Therefore, Project operational impacts would be less than significant. Additionally, the Project is a higher density residential infill development with various features that create a walkable space with 48,727 SF of common open space and 21,279 SF of private open space (patios and balconies).

TABLE 4.3-4: OPERATIONAL EMISSIONS (MAXIMUM POUNDS PER DAY)						
Source	Reactive Organic Gases (ROG)	Nitrogen Oxide (NO _x)	Carbon Monoxide (CO)	Sulfur Dioxide (SO ₂)	Coarse Particulate Matter (PM ₁₀)	Fine Particulate Matter (PM _{2.5})
Summer Emissions						
Area Source Emissions	2.75	0.11	9.43	0.001	0.05	0.05
Energy Emissions	0.03	0.28	0.12	0.002	0.02	0.02
Mobile Emissions	1.24	5.80	16.80	0.06	0.05	1.27
Total Emissions	4.02	6.19	26.35	0.06	0.12	1.34
SCAQMD Threshold	55	55	550	150	150	55
Exceeds Threshold?	No	No	No	No	No	No
Winter Emissions						
Area Source Emissions	2.75	0.11	9.43	0.001	0.05	0.05
Energy Emissions	0.03	0.28	0.12	0.002	0.02	0.02
Mobile Emissions	1.20	5.95	15.96	0.06	4.61	1.27
Total Emissions	3.99	6.34	25.51	0.06	4.69	1.34
SCAQMD Threshold	55	55	550	150	150	55
Exceeds Threshold?	No	No	No	No	No	No
Source: CalEEMod version 2016.3.2; see Appendix A for model outputs.						

Area Source Emissions

Area source emissions would be generated due to consumer products, architectural coating, hearths, and landscaping that were previously not present on the site. As shown in Table 4.3-4, the Project's unmitigated area source emissions would not exceed SCAQMD thresholds for either the winter or summer seasons. Therefore, mitigation measures are not required, and a less than significant impact is anticipated.

Energy Source Emissions

Energy source emissions would be generated due to the Project's electricity and natural gas usage. The Project's primary uses of electricity and natural gas would be for space heating and cooling, water heating, ventilation, lighting, appliances, and electronics. As shown in Table 4.3-4, the Project's unmitigated energy source emissions would not exceed SCAQMD thresholds for criteria pollutants. As such, the Project would not violate any air quality standards or contribute substantially to an existing or projected air quality violation. Therefore, the Project's operational air quality impacts would be less than significant.

Mobile Source

Mobile sources are emissions from motor vehicles, including tailpipe and evaporative emissions. Depending upon the pollutant being discussed, the potential air quality impact may be of either regional or local concern. For example, ROG, NO_x, PM₁₀, and PM_{2.5} are all pollutants of regional concern. NO_x and ROG react with sunlight to form O₃, known as photochemical smog.

Additionally, wind currents readily transport PM₁₀ and PM_{2.5}. However, CO tends to be a localized pollutant, dispersing rapidly at the source.

Project-generated vehicle emissions have been estimated using CalEEMod, as recommended by the SCAQMD. The Project's trip generation estimates were based on the standard Institute of Transportation Engineers (ITE) trip generation rates. Based on the ITE trip generation rates, the proposed Project would generate 620 average daily trips (ADT).¹⁵ This trip generation estimate is conservative given trip credits for the existing land uses that would be displaced have not been applied. When trip credits for the existing trucking warehouse are applied to the Project's trip generation estimates, the Project's net new trips would be offset, with proportionate offsets in mobile source emissions. Notwithstanding, for a conservative approach, this analysis assumes a traffic increase of 620 ADT, excluding trip credits. As shown in Table 4.3-4, mobile source emissions would not exceed SCAQMD thresholds for criteria pollutants. Therefore, the Project's air quality impacts associated with mobile source emissions would be less than significant.

Cumulative Short-Term Emissions

SCAB is designated nonattainment for O₃, PM₁₀, and PM_{2.5} for State standards and nonattainment for O₃ and PM_{2.5} for Federal standards. As discussed above, the Project's construction-related emissions by themselves would not exceed the SCAQMD significance thresholds for criteria pollutants.

Since these thresholds indicate whether individual Project emissions have the potential to affect cumulative regional air quality, it can be expected that the Project-related construction emissions would not be cumulatively considerable. The SCAQMD has developed strategies to reduce criteria pollutant emissions outlined in the AQMP pursuant to the federal Clean Air Act mandates. The analysis assumed fugitive dust controls would be utilized during construction, including frequent water applications. SCAQMD rules, mandates, and compliance with adopted AQMP emissions control measures would also be imposed on construction projects throughout SCAB, which would include related cumulative projects. As concluded above, the Project's construction-related impacts would be less than significant. Compliance with SCAQMD rules and regulations would further minimize the proposed Project's construction-related emissions. Therefore, Project-related construction emissions, in combination with those from other projects in the area, would not substantially deteriorate the local air quality. The Project's construction-related emissions would not result in a cumulatively considerable contribution to significant cumulative air quality impacts.

Cumulative Long-Term Impacts

The SCAQMD has not established separate significance thresholds for cumulative operational emissions. The nature of air emissions is largely a cumulative impact. As a result, no single project is sufficient in size to, by itself, result in nonattainment of ambient air quality standards. Instead,

¹⁵ Appendix H: Trip Generation Analysis

individual project emissions contribute to existing cumulatively significant adverse air quality impacts. The SCAQMD developed the operational thresholds of significance based on the level above which individual project emissions would result in a cumulatively considerable contribution to SCAB's existing air quality conditions. Therefore, a project that exceeds the SCAQMD operational thresholds would also be a cumulatively considerable contribution to a significant cumulative impact.

As shown in **Table 4.3-4**, the Project's operational emissions would not exceed SCAQMD thresholds. As a result, the Project's operational emissions would not result in a cumulatively considerable contribution to significant cumulative air quality impacts. Additionally, adherence to SCAQMD rules and regulations would alleviate potential impacts related to cumulative conditions on a project-by-project basis. Project operations would not contribute a cumulatively considerable net increase of any nonattainment criteria pollutant.

4.3c Would the Project expose sensitive receptors to substantial pollutant concentrations?

Less Than Significant Impact.

Localized Construction Significance Analysis

The nearest sensitive receptors to the Project site are the mobile home residences adjacent to the Project property line, located approximately 10 feet (3 meters) to the west. To identify impacts to sensitive receptors, the SCAQMD recommends addressing LSTs for construction. LSTs were developed in response to SCAQMD Governing Boards' Environmental Justice Enhancement Initiative (I-4). The SCAQMD provided the *Final Localized Significance Threshold Methodology* (dated June 2003 [revised 2008]) for guidance. The LST methodology assists lead agencies in analyzing localized impacts associated with Project-specific emissions.

Since CalEEMod calculates construction emissions based on the number of equipment hours and the maximum daily soil disturbance activity possible for each piece of equipment, **Table 4.3-5: Equipment-Specific Grading Rates**, is used to determine the maximum daily disturbed acreage for comparison to LSTs. The appropriate SRA for the LSTs is the Southwest Coastal LA County area (SRA 3), since this area includes the Project site. LSTs apply to CO, NO₂, PM₁₀, and PM_{2.5}. The SCAQMD produced look-up tables for projects that disturb areas less than or equal to 5.0 acres. Project construction is anticipated to disturb a maximum of 3.5 acres in a single day.

TABLE 4.3-5: EQUIPMENT-SPECIFIC GRADING RATES					
Construction Phase	Equipment Type	Equipment Quantity	Acres Graded per 8-Hour Day	Operating Hours per Day	Acres Graded per Day
Site Preparation	Rubber Tired Dozers	3	0.5	8	1.5
	Tractors/Loaders/Backhoes	4	0.5	8	2.0
Total Acres Graded per Day					3.5
Source: CalEEMod version 2016.3.2; see Appendix A for model outputs.					

The SCAQMD's methodology states that "off-site mobile emissions from the project should not be included in the emissions compared to LSTs." Therefore, for purposes of the construction LST analysis, only emissions included in the CalEEMod "on-site" emissions outputs were considered. The nearest sensitive receptors to the Project site are the mobile home residences located approximately 10 feet (3 meters) to the west. LST thresholds are provided for distances to sensitive receptors of 25, 50, 100, 200, and 500 meters. Therefore, as recommended by the SCAQMD, LSTs for receptors located at 25 meters were utilized in this analysis for receptors closer than 25 meters. **Table 4.3-6: Localized Significance of Construction Emissions (Maximum Pounds per Day)**, presents the results of localized emissions during Project construction.

TABLE 4.3-6: LOCALIZED SIGNIFICANCE OF CONSTRUCTION EMISSIONS (MAXIMUM POUNDS PER DAY)				
Construction Activity	Nitrogen Oxide (NO _x)	Carbon Monoxide (CO)	Coarse Particulate Matter (PM ₁₀)	Fine Particulate Matter (PM _{2.5})
Demolition (2019)	35.78	22.06	4.0	2.0
Site Preparation (2019)	45.57	22.06	6.19	4.61
Grading (2019)	28.35	16.29	9.87	3.93
Grading (2020)	26.39	16.05	9.74	3.82
Building Construction (2020)	19.19	16.85	1.12	1.05
Building Construction (2021)	17.43	16.58	0.96	0.90
Paving (2020)	11.80	12.28	0.65	0.60
Architectural Coating (2020)	1.68	1.83	0.11	0.11
SCAQMD Localized Screening Threshold (adjusted for 3.5 acre at 25 meters)	130	984.7	10.4	5
Exceed SCAQMD Threshold?	No	No	No	No
Source: CalEEMod version 2016.3.2; see Appendix A for model outputs.				

Table 4.3-6 shows that the emissions of these pollutants on the peak day of Project construction would not result in significant concentrations of pollutants at nearby sensitive receptors. Further, the Project would implement a SWPPP and monitoring plan, which would include BMPs (i.e., watering, screening, covering, etc.) that would control fugitive dust. Therefore, the Project would result in a less than significant impact concerning LSTs during construction activities.

Localized Operational Significance Analysis

LSTs for receptors located at 25 meters for SRA 3 were utilized in this analysis. The Project site is 5.63-acres, the 5-acre threshold was conservatively used for the Project. The on-site operational emissions are compared to the LST thresholds in **Table 4.3-7: Localized Significance of Operational Emissions**. **Table 4.3-7** shows that the maximum daily emissions of these pollutants during Project operations would not result in significant concentrations of pollutants at nearby sensitive receptors. Therefore, the Project would result in a less than significant impact concerning LSTs during operational activities.

TABLE 4.3-7: LOCALIZED SIGNIFICANCE OF OPERATIONAL EMISSIONS (MAXIMUM POUNDS PER DAY)

Activity	Nitrogen Oxide (NO _x)	Carbon Monoxide (CO)	Coarse Particulate Matter (PM ₁₀)	Fine Particulate Matter (PM _{2.5})
On-Site Emissions (Area Sources)	0.11	9.43	0.05	0.05
SCAQMD Localized Screening Threshold (5 acres at 25 meters)	197	1,823	4	2
Exceed SCAQMD Threshold?	No	No	No	No
Source: CalEEMod version 2016.3.2; see Appendix A for model outputs.				

The proposed Project would not involve the use, storage, or processing of carcinogenic or non-carcinogenic toxic air contaminants, and no significant toxic airborne emissions would result from operation of the proposed Project. Construction activities are subject to the regulations and laws relating to toxic air pollutants at the regional, state, and federal level that would protect sensitive receptors from substantial concentrations of these emissions. Therefore, impacts associated with the release of toxic air contaminants would be less than significant.

Criteria Pollutant Health Impacts

On December 24, 2018, the California Supreme Court issued an opinion identifying the need to provide sufficient information connecting a project's air emissions to health impacts or explain why such information could not be ascertained (*Sierra Club v. County of Fresno* [Friant Ranch, L.P.] [2018] 6 Cal.5th 502). The SCAQMD has set its CEQA significance thresholds based on the FCAA, which defines a major stationary source (in extreme ozone nonattainment areas such as the South Coast Air Basin) as emitting 10 tons per year. The thresholds correlate with the trigger levels for the federal New Source Review (NSR) Program and SCAQMD Rule 1303 for new or modified sources. The NSR Program was created by the FCAA to ensure that stationary sources of air pollution are constructed or modified in a manner that is consistent with attainment of health-based federal ambient air quality standards. The federal ambient air quality standards establish the levels of air quality necessary, with an adequate margin of safety, to protect the public health. Therefore, projects that do not exceed the SCAQMD's mass emissions thresholds would not violate any air quality standards or contribute substantially to an existing or projected air quality violation and no criteria pollutant health impacts would occur.

NO_x and ROG are precursor emissions that form ozone in the atmosphere in the presence of sunlight where the pollutants undergo complex chemical reactions. It takes time and the influence of meteorological conditions for these reactions to occur, so ozone may be formed at a distance downwind from the sources. Breathing ground-level ozone can result in health effects that include: reduced lung function, inflammation of airways, throat irritation, pain, burning, or discomfort in the chest when taking a deep breath, chest tightness, wheezing, or shortness of breath. In addition to these effects, evidence from observational studies strongly indicates that higher daily ozone concentrations are associated with increased asthma attacks, increased hospital admissions, increased daily mortality, and other markers of morbidity. The consistency

and coherence of the evidence for effects upon asthmatics suggests that ozone can make asthma symptoms worse and can increase sensitivity to asthma triggers.

According to the SCAQMD's 2016 AQMP, ozone, NO_x, and ROG have been decreasing in the Basin since 1975 and are projected to continue to decrease in the future. Although VMT in the Basin continue to increase, NO_x and ROG levels are decreasing because of the mandated controls on motor vehicles and the replacement of older polluting vehicles with lower-emitting vehicles. NO_x emissions from electric utilities have also decreased due to the use of cleaner fuels and renewable energy. The 2016 AQMP demonstrates how the SCAQMD's control strategy to meet the 8-hour ozone standard in 2023 would lead to sufficient NO_x emission reductions to attain the 1-hour ozone standard by 2022. In addition, since NO_x emissions also lead to the formation of PM_{2.5}, the NO_x reductions needed to meet the ozone standards will likewise lead to improvement of PM_{2.5} levels and attainment of PM_{2.5} standards.

The SCAQMD's air quality modeling demonstrates that NO_x reductions prove to be much more effective in reducing ozone levels and will also lead to a significant decrease in PM_{2.5} concentrations. NO_x-emitting stationary sources regulated by the SCAQMD include Regional Clean Air Incentives Market (RECLAIM) facilities (e.g., refineries, power plants, etc.), natural gas combustion equipment (e.g., boilers, heaters, engines, burners, flares) and other combustion sources that burn wood or propane. The 2016 AQMP identifies robust NO_x reductions from new regulations on RECLAIM facilities, non-refinery flares, commercial cooking, and residential and commercial appliances. Such combustion sources are already heavily regulated with the lowest NO_x emissions levels achievable but there are opportunities to require and accelerate replacement with cleaner zero-emission alternatives, such as residential and commercial furnaces, pool heaters, and backup power equipment. The AQMD plans to achieve such replacements through a combination of regulations and incentives. Technology-forcing regulations can drive development and commercialization of clean technologies, with future year requirements for new or existing equipment. Incentives can then accelerate deployment and enhance public acceptability of new technologies.

The 2016 AQMD also emphasized that beginning in 2012, continued implementation of previously adopted regulations will lead to NO_x emission reductions of 68 percent by 2023 and 80 percent by 2031. With the addition of 2016 AQMP proposed regulatory measures, a 30 percent reduction of NO_x from stationary sources is expected in the 15-year period between 2008 and 2023. This is in addition to significant NO_x reductions from stationary sources achieved in the decades prior to 2008.

As previously discussed, Project emissions would be less than significant and would not exceed SCAQMD thresholds; see **Table 4.3-3** and **Table 4.3-4**. Localized effects of on-site Project emissions on nearby receptors were also found to be less than significant; see **Table 4.3-6** and **Table 4.3-7**. The LSTs represent the maximum emissions from a project that are not expected to cause or contribute to an exceedance of the most stringent applicable NAAQS or CAAQS. The LSTs were developed by the SCAQMD based on the ambient concentrations of that pollutant for

each SRA and distance to the nearest sensitive receptor. The ambient air quality standards establish the levels of air quality necessary, with an adequate margin of safety, to protect public health, including protecting the health of sensitive populations such as asthmatics, children, and the elderly. As shown above, Project-related emissions would not exceed the regional thresholds or the LSTs, and therefore would not exceed the ambient air quality standards or cause an increase in the frequency or severity of existing violations of air quality standards. Therefore, sensitive receptors would not be exposed to criteria pollutant levels more than the health-based ambient air quality standards.

Carbon Monoxide Hotspots

An analysis of CO “hot spots” is needed to determine whether the change in the level of service of an intersection resulting from the proposed Project would have the potential to result in exceedances of the CAAQS or NAAQS. It has long been recognized that CO exceedances are caused by vehicular emissions, primarily when vehicles are idling at intersections. Vehicle emissions standards have become increasingly stringent in the last 20 years. Currently, the CO standard in California is a maximum of 3.4 grams per mile for passenger cars (requirements for certain vehicles are more stringent). With the turnover of older vehicles, introduction of cleaner fuels, and implementation of control technology on industrial facilities, CO concentrations have steadily declined.

Accordingly, with the steadily decreasing CO emissions from vehicles, even very busy intersections do not result in exceedances of the CO standard. The 2016 AQMP is the most recent version that addresses CO concentrations. As part of the SCAQMD *CO Hotspot Analysis*, the Wilshire Boulevard/Veteran Avenue intersection, one of the most congested intersections in Southern California with approximately 100,000 ADT, was modeled for CO concentrations. This modeling effort identified a CO concentration high of 4.6 ppm, which is well below the 35-ppm Federal standard. The proposed Project would not produce the volume of traffic required to generate a CO hot spot in the context of SCAQMD’s *CO Hotspot Analysis*. As the CO hotspots were not experienced at the Wilshire Boulevard/Veteran Avenue intersection even as it accommodates 100,000 ADT, it can be reasonably inferred that CO hotspots would not be experienced at any Project area intersections from the 620 ADT attributable to the Project. Therefore, impacts would be less than significant.

Construction-Related Diesel Particulate Matter

Project construction would generate DPM emissions from the use of off-road diesel equipment required. The amount to which the receptors are exposed (a function of concentration and duration of exposure) is the primary factor used to determine health risk (i.e., potential exposure to toxic air contaminants (TAC) emission levels that exceed applicable standards). Health-related risks associated with diesel-exhaust emissions are primarily linked to long-term exposure and the associated risk of contracting cancer.

The use of diesel-powered construction equipment would be temporary and episodic. The duration of exposure would be short and exhaust from construction equipment would dissipate rapidly. Current models and methodologies for conducting health risk assessments are associated with longer-term exposure periods of 9, 30, and 70 years, which do not correlate well with the temporary and highly variable nature of construction activities. The closest sensitive receptors to the Project site are located approximately 10 feet from the property boundary, and further from the major Project construction areas.

California Office of Environmental Health Hazard Assessment has not identified short-term health effects from diesel particulate matter (DPM). Construction is temporary and would be transient throughout the site (i.e., move from location to location) and would not generate emissions in a fixed location for extended periods of time. Construction activities would be subject to and would comply with California regulations limiting the idling of heavy-duty construction equipment to no more than five minutes to further reduce nearby sensitive receptors' exposure to temporary and variable DPM emissions. Additionally, it is noted that the proposed Project would replace an existing trucking warehouse, which uses diesel vehicles (TAC sources) that idle on- and off-site. With Project implementation TAC emissions from the existing trucking warehouse would no longer occur. For these reasons, DPM generated by Project construction activities, in and of itself, would not expose sensitive receptors to substantial amounts of air toxins and the Project would result in a less than significant impact.

4.3d Would the project result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

Less Than Significant Impact.

Construction

Odors that could be generated by construction activities are required to follow SCAQMD Rule 402 to prevent odor nuisances on sensitive land uses. SCAQMD Rule 402, Nuisance, states:

A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.

During construction, emissions from construction equipment, such as diesel exhaust, and volatile organic compounds from architectural coatings and paving activities may generate odors. However, these odors would be temporary, are not expected to affect a substantial number of people and would disperse rapidly. Therefore, impacts related to odors associated with the Project's construction-related activities would be less than significant.

Operational

The SCAQMD *CEQA Air Quality Handbook* identifies certain land uses as sources of odors. These land uses include agriculture (farming and livestock), wastewater treatment plants, food processing plants, chemical plants, composting facilities, refineries, landfills, dairies, and fiberglass molding. The Project proposes development of residential uses, which would not involve the types of uses that would emit objectionable odors affecting substantial numbers of people. The proposed Project would not include any of the land uses that have been identified by the SCAQMD as odor sources. Therefore, the proposed Project would not create objectionable odors.

CUMULATIVE ANALYSIS

Cumulative Setting

The cumulative setting for air quality includes the City of Gardena and SCAB. SCAB is designated as a nonattainment area for state standards of ozone, PM₁₀, and PM_{2.5}. SCAB is designated as a nonattainment area for federal standards of ozone and PM_{2.5}, attainment and serious maintenance for federal PM₁₀ standards, and is designated as unclassified or attainment for all other pollutants. Cumulative growth in population and vehicle use could inhibit efforts to improve regional air quality and attain the ambient air quality standards.

Cumulative Impacts and Mitigation Measures

The SCAQMD's approach to assessing cumulative impacts is based on the AQMP forecasts of attainment of ambient air quality standards in accordance with requirements of the FCAA and CCAA. As discussed above, the proposed Project would be consistent with the AQMP, which is intended to bring SCAB into attainment for all criteria pollutants. Since the Project's estimated construction and operational emissions would not exceed the applicable SCAQMD daily significance thresholds that are designed to assist the region in attaining both NAAQS and CAAQS, cumulative impacts would be less than significant.

4.4 Biological Resources

Environmental Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X
c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?		X		
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				X

Impact Analysis

4.4a *Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status*

species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

4.4b *Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?*

4.4c *Would the project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?*

No Impact. The Project site is fully improved and comprised of a trucking warehouse with associated surface parking lot and outdoor trailer storage. No natural habitat types are present on the property. The site is bounded by a vacant lot, an equestrian use (i.e., horse stables), and the Dominguez Channel to the north, West 178th Street to the south, office commercial and industrial uses to the east, and a mobile home park to the west. No natural habitat types are present on these surrounding areas, and only landscaping including ornamental vegetation is present. Based on review of the existing and surrounding site conditions, no candidate, sensitive, or special-status plant or wildlife species, riparian habitat or other sensitive natural community, or wetlands are present on or adjacent to the Project site. Therefore, the Project would not have an adverse effect on any candidate, sensitive, or special-status plant or wildlife species, riparian habitat or other sensitive natural community, or wetlands, and no mitigation is required.

4.4d *Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?*

Less Than Significant With Mitigation Incorporated. The Project site and surrounding areas are fully improved/ disturbed. Further, the Project site is not a recognized wildlife corridor, thus, site development would not impede fish or wildlife movement. Notwithstanding, the Project would result in removal of ornamental vegetation (i.e., trees and shrubs) on a portion of the Project site with the potential to support nesting migratory birds that are protected by the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (CFGC).

Under MBTA provisions, it is unlawful “by any means or manner to pursue, hunt, take, capture (or) kill” any migratory birds except as permitted by regulations issued by the USFWS. The term “take” is defined by USFWS regulation to mean to “pursue, hunt, shoot, wound, kill, trap, capture or collect” any migratory bird or any part, nest or egg of any migratory bird covered by the conventions, or to attempt those activities. In addition, the CFGC extends protection to non-migratory birds identified as resident game birds (CFGC §3500) and any birds in the orders Falconiformes or Strigiformes (birds-of-prey) (CFGC §3503). The on-site trees and vegetation could provide suitable nesting habitat for birds. To address potential impacts to migratory birds, the Project would be subject to compliance with Mitigation Measure (MM) BIO-1, which addresses construction activities within the nesting season. Following compliance with

MM BIO-1, the Project's potential impacts to nesting migratory birds would be less than significant.

MM BIO-1 Nesting Migratory Birds. During construction, grubbing, brushing, or tree removal shall be conducted outside of the state identified nesting season for migratory birds (i.e., typically March 15 through September 1), if possible. If construction activities cannot be conducted outside of nesting season, a Pre-Construction Nesting Bird Survey within and adjacent to the Project site shall be conducted by a qualified biologist within three days prior to initiating construction activities. If active nests are found during the Pre-Construction Nesting Bird Survey, a Nesting Bird Plan (NBP) shall be prepared by a qualified biologist and implemented during construction. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, monitoring, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, nesting sage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity.

4.4e *Would the project conflict with local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?*

No Impact. GMC §13.60.080 requires a Trimming Permit, Tree Removal Permit, and/or a Tree Planting Permit for cutting, trimming, pruning, planting, removing, injuring or interfering with any tree, shrub or plant upon any Street or Public Place of the City. As discussed above, the Project would involve removal of trees, however, this would occur entirely within the Project site. Therefore, the Project would not conflict with GMC §13.60.080, and no mitigation is required.

4.4f *Would the project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?*

No Impact. The Project site is not located within the boundaries of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan. Therefore, no impact would occur, and no mitigation is required.

4.5 Cultural Resources

This Section is based on the *Cultural Resources Report* (BCR Consulting LLC, April 2019), which is included in its entirety in **Appendix B1: Cultural Resources Assessment** and *Assembly Bill 52 and Senate Bill 18 Communications*, which is included in its entirety in **Appendix B2: Assembly Bill 52 and Senate Bill 18 Communications**.

Environmental Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5?				X
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?		X		
c) Disturb any human remains, including those interred outside of dedicated cemeteries?			X	

Impact Analysis

4.5a Would the project cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5?

No Impact. On March 27, 2019, a records search was conducted at the South-Central Coastal Information Center at California State University, Fullerton. This archival research reviewed the status of all recorded historic and prehistoric cultural resources, and survey and excavation reports completed within 1.0 mile of the Project site. Additional resources reviewed included the National Register, the California Register, and documents and inventories published by the California Office of Historic Preservation. Additional research was performed through records of the General Land Office Maintained by the Bureau of Land Management, the Los Angeles County Assessor, the Los Angeles County Archives, and various Internet resources. The records search revealed that 39 previous cultural resources studies have taken place, and seven cultural resources have been recorded within 1.0 mile of the Project site. None of the previous studies has assessed the Project site, and no cultural resources have been previously recorded within its boundaries.

An intensive-level cultural resources field survey of the Project site was conducted on March 19, 2019. Cultural resources were recorded on Department of Parks and Recreation (DPR) 523 forms; see **Appendix B1**. Digital photographs were taken at various points within the Project site. During the field survey, one historic-period industrial building was identified within the Project site boundaries. Properties eligible for listing in the California Register and subject to

review under CEQA are those meeting the criteria for listing in the California Register, or designation under a local ordinance. The on-site historic-period building is not recommended eligible for the California Register of Historical Resources (California Register), as it does not meet the criteria for listing. As such this building is not recommended a “historical resource” under CEQA. It does not warrant further consideration. Therefore, the Project would not cause a change in the significance of a historical resource. No impact would occur, and no mitigation is required.

4.5b Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?

Less Than Significant With Mitigation Incorporated. No cultural resources were identified within the Project site from the records search, Sacred Lands File (SLF) search, and pedestrian survey. Seven cultural resources have been recorded within one-mile of the Project site, but none have been previously recorded within its boundaries. The Project site has been previously disturbed by past development and no archaeological resources have been recorded in the site vicinity. Thus, the Project site is considered to have low archaeological sensitivity. Notwithstanding, the potential exists for accidental discovery of archaeological resources during ground-disturbing activities. As discussed in Section 4.18: Tribal Cultural Resources, the City received a request for consultation pursuant to AB52 from the Gabrieleno Band of Mission Indians-Kizh Nation. In response to this request, the City engaged with the Gabrieleno Band of Mission Indians-Kizh Nation in consultation on the Project. As a result of the consultation, mitigation measures have been imposed to mitigate potential impacts to tribal cultural resources. Thus, to address potential impacts to archaeological resources that may be discovered during ground-disturbing activities, MMs TCR-1 and TCR-2 are recommended (see Section 4.18), which detail the appropriate steps in the event of accidental discovery of cultural resources during ground-disturbing activities. Following implementation of MMs TCR-1 and TCR-2, the Project’s potential impacts concerning the significance of an archaeological resource would be less than significant.

4.5c Would the project disturb any human remains, including those interred outside of dedicated cemeteries?

Less Than Significant Impact. No dedicated cemeteries are on or near the Project site. Most Native American human remains are found in association with prehistoric archaeological sites. As discussed previously, the Project site is not proximate to identified archaeological resources. Given the extent of on-site disturbances from previous development, there is low potential for the Project’s ground-disturbing activities to encounter human remains. Notwithstanding, if previously unknown human remains are discovered during the Project’s ground-disturbing activities, a substantial adverse change in the significance of such a resource could occur. If human remains are found, those remains would require proper treatment in accordance with applicable laws, including State of California Health and Safety Code (HSC) §§7050.5-7055 and PRC §5097.98 and §5097.99. HSC §§7050.5-7055 describe the general provisions for treatment of human remains. Specifically, HSC §7050.5 prescribes the requirements for the treatment of any human remains that are accidentally discovered during excavation of a site. HSC §7050.5 also

requires that all activities cease immediately, and a qualified archaeologist and Native American monitor be contacted immediately. As required by State law, the procedures set forth in PRC §5087.98 would be implemented, including evaluation by the County Coroner and notification of the NAHC. The NAHC would designate the “Most Likely Descendent” of the unearthed human remains. If human remains are found during excavation, excavation would be halted near the find and any area that is reasonably suspected to overlay adjacent remains shall remain undisturbed until the County Coroner has investigated, and appropriate recommendations have been made for treatment and disposition of the remains. Following compliance with the established regulatory framework (i.e., HSC §§7050.5-7055 and PRC §5097.98 and §5097.99), the Project’s potential impacts concerning human remains would be less than significant, and no mitigation is required.

4.6 Energy

Environmental Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?			X	
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?				X

Impact Analysis

Background: Building Energy Conservation Standards

Energy conservation standards for new residential and nonresidential buildings were adopted by the California Energy Resources Conservation and Development Commission (now the California Energy Commission (CEC)) in June 1977 and are updated every three years (California Code of Regulations Title 24, Part 6). Title 24 requires the design of building shells and building components to conserve energy. The standards are updated periodically to allow for consideration and possible incorporation of new energy efficiency technologies and methods. On June 10, 2015, the CEC adopted the 2016 Building Energy Efficiency Standards, which went into effect on January 1, 2017.

The 2016 Standards improved upon the previous 2013 Standards for new construction of and additions and alterations to residential and nonresidential buildings. Under the 2016 Standards, residential buildings are 28 percent more energy-efficient and nonresidential buildings are 5 percent more energy efficient than under the 2013 Standards. Under the 2013 Standards, residential buildings are 25 percent more energy-efficient and nonresidential buildings are 30 percent more energy efficient than under the 2008, because of better windows, insulation, lighting, ventilation systems, and other features.

The California Green Building Standards Code (California Code of Regulations, Title 24, Part 11), commonly referred to as the CALGreen Code, is a statewide mandatory construction code that was developed and adopted by the California Building Standards Commission and the California Department of Housing and Community Development. CALGreen standards require new residential and commercial buildings to comply with mandatory measures under five topical areas: planning and design; energy efficiency; water efficiency and conservation; material conservation and resource efficiency; and environmental quality. CALGreen also provides voluntary measures (CALGreen Tier 1 and Tier 2) that local governments may adopt which encourage or require additional measures in the five topical areas.

Renewable Portfolio Standard

In 2002, California established its Renewable Portfolio Standard program¹⁶ with the goal of increasing the annual percentage of renewable energy in the state's electricity mix by the equivalent of at least 1 percent of sales, with an aggregate total of 20 percent by 2017. The California Public Utilities Commission subsequently accelerated that goal to 2010 for retail sellers of electricity (*Public Utilities Code* §399.15(b)(1)). Then-Governor Schwarzenegger signed Executive Order S-14-08 in 2008, increasing the target to 33 percent renewable energy by 2020. In September 2009, then-Governor Schwarzenegger continued California's commitment to the Renewable Portfolio Standard by signing Executive Order S-21-09, which directs the CARB under its AB 32 authority to enact regulations to help the State meet its Renewable Portfolio Standard goal of 33 percent renewable energy by 2020. In September 2010, the CARB adopted its Renewable Electricity Standard regulations, which require all the state's load-serving entities to meet this target. In October 2015, then-Governor Brown signed into legislation Senate Bill 350, which requires retail sellers and publicly owned utilities to procure 50 percent of their electricity from eligible renewable energy resources by 2030. Signed in 2018, SB 100 revised the program's goal to achieve the 50 percent renewable resources target by December 31, 2026 and a 60 percent renewable resources target by December 31, 2030. SB 100 also established a further goal to have an electric grid that is entirely powered by clean energy by 2045. Under the bill, the State cannot increase carbon emissions elsewhere in the western grid or allow resource shuffling to achieve the 100 percent carbon-free electricity target.

Impact Analysis

4.6a Would the project result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?

Less Than Significant Impact.

Electricity

Southern California Edison (SCE) provides electricity to the Project area. Electricity is currently used by the existing trucking warehouse on the Project site. The Project's electricity demand is expected to be served by existing SCE electrical facilities. Total electricity demand in SCE's service area is forecast to increase by approximately 12,000 GWh—or 12 billion kWh—between 2015 and 2026.¹⁷ The Project's anticipated electricity demand (approximately 491,045 kWh per year) would represent an insignificant percent increase compared to the SCE service area's overall demand. It is noted that the Project's energy consumption is conservative given credit for the

¹⁶ The Renewable Portfolio Standard is a flexible, market-driven policy to ensure that the public benefits of wind, solar, biomass, and geothermal energy continue to be realized as electricity markets become more competitive. The policy ensures that a minimum amount of renewable energy is included in the portfolio of electricity resources serving a state or country.

¹⁷ California Energy Commission, *California Energy Demand 2018-2030 Revised Forecast, Figure 49 Historical and Projected Baseline Consumption SCE Planning Area*, April 2018.

existing land use that would be displaced has not been applied. Therefore, the projected electrical demand would not significantly impact SCE's level of service.

It is also noted that the Project design and materials would be subject to compliance with the 2016 Building Energy Efficiency Standards, which took effect on January 1, 2017. Prior to Building Permit issuance, the City of Gardena Building Division would review and verify that the Project plans demonstrate compliance with the current Building Energy Efficiency Standards. The Project would also be required to comply with CALGreen, which establishes planning and design standards for sustainable site development, energy efficiency (more than California Energy Code requirements), water conservation, material conservation, and internal air contaminants.

Natural Gas

Southern California Gas Company (SoCalGas) provides natural gas service to the Project area. Natural gas is currently used by the existing trucking warehouse on the Project site. The Project's natural gas demand is expected to be adequately served by existing SoCalGas facilities. From 2018 to 2035, residential demand in the SoCalGas Service Area is expected to decline from 236 billion cubic feet (bcf) to 186 Bcf, while supplies remain constant at 3.775 billion cubic feet per day¹⁸ (bcfd) from 2015 through 2035.¹⁹ The Project's anticipated natural gas demand (approximately 1,078,980 cubic feet per year) would represent a nominal percentage of overall demand in SoCalGas' service area. It is noted that the Project's natural gas consumption is conservative given credit for the existing land use that would be displaced has not been applied. The proposed Project would not result in a significant impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during Project construction or operation.

Fuel

During construction, transportation energy use would depend on the type and number of trips, VMT, fuel efficiency of vehicles, and travel mode. Transportation energy use during construction would come from the transport and use of construction equipment, delivery vehicles and haul trucks, and construction employee vehicles that would use diesel fuel/gasoline. The use of energy resources by these vehicles would fluctuate according to the construction phase and would be temporary. Most construction equipment during demolition and grading would be gas- or diesel-powered, and the later construction phases would require electricity-powered equipment. Impacts related to transportation energy use during construction would be temporary and would not require expanded energy supplies or the construction of new infrastructure. Therefore, impacts would not be significant.

During operations, energy consumption would be associated with resident and visitor vehicle trips, delivery truck trips, and maintenance and repair crew trips. The Project is an infill residential development project near existing services, adjacent to existing residential development, near

¹⁸ 1 bcfd is equivalent to about 1.03 billion kBTU.

¹⁹ California Gas and Electric Utilities, *2018 California Gas Report, Southern California Gas Company Annual Gas Supply 2018-2035 page 66*, 2018.

public transportation access, and near the I-405, I-110, and SR-91, reducing the need to travel long distances to a major highway and services. Consequently, the proposed Project would not result in a substantial demand for energy that would require expanded supplies or the construction of other infrastructure or expansion of existing facilities.

The gasoline and diesel fuel associated with on-road vehicular trips is calculated based on total VMT calculated for the analyses within Sections 4.3 and 4.8. The total gasoline and diesel fuel associated with on-road trips would be approximately 82,023 gallons per year and 14,840 gallons per year, respectively. Los Angeles County annual gasoline fuel use in 2018 was 3,868,517,088 gallons and diesel fuel use was 519,517,409 gallons.²⁰ Expected Project operational use of gasoline and diesel would represent 0.002 percent of current gasoline use and 0.003 percent of current diesel use in the County. None of the projected energy uses exceed one percent of their corresponding County use. It is noted that the Project's fuel consumption is conservative given credit for the existing land use that would be displaced has not been applied. Project operations would not substantially affect existing energy or fuel supplies or resources. The Project would comply with applicable energy standards and new capacity would not be required. Fuel consumption associated with vehicle trips generated by the proposed Project would not be considered inefficient, wasteful, or unnecessary. Impacts would be less than significant, and no mitigation is required.

4.6b *Would the project conflict with or obstruct a state or local plan for renewable energy or energy efficiency?*

Less Than Significant Impact. Project design and operations would be subject to compliance with State Building Energy Efficiency Standards, appliance efficiency regulations, and green building standards. Project development would not cause inefficient, wasteful and unnecessary energy consumption, and no adverse impact would occur. The City of Gardena adopted an Energy Efficiency Climate Action Plan in 2015 to help reduce energy consumption and GHG emissions to become a more sustainable community and meet AB 32 goals. The Energy Efficiency Climate Action Plan outlines various municipal measures to achieve the City's long-term vision. The Project would not conflict with or obstruct implementation of the City's Energy Efficiency Climate Action Plan. Project impacts would be less than significant, and no mitigation is required.

SCAG's 2016–2040 *Regional Transportation Plan/Sustainable Communities Strategy* (RTP/SCS) establishes emissions goals for automobiles and light-duty trucks for 2020 and 2035, as well as an overall GHG target for the Project region consistent with both the AB 32 target date and EOs 5-03-05 and B-30-15 post-2020 GHG reduction goals. The Project is consistent with regional strategies to reduce passenger VMT (and thereby reduce transportation energy consumption). The proposed Project is within a major employment center and is proximate to several major employers. Transit stops along Artesia Boulevard connect the Project site to the remainder of the City and neighboring cities. Increasing residential land uses near major employment centers is a key strategy to reducing regional VMT. Therefore, in addition to being an efficient infill

²⁰ California Air Resources Board, EMFAC2017.

development, the Project would be consistent with regional goals to reduce trips and VMT by locating the Project adjacent to other uses, which reduces vehicle trip lengths. The Project would not conflict with RTP/SCS state goals. Therefore, the Project would not interfere with SCAG's ability to achieve the region's post-2020 mobile source GHG reduction targets outlined in the 2016 RTP/SCS. Project impacts would be less than significant, and no mitigation is required.

4.7 Geology and Soils

This Section is based on the *Updated Geotechnical and Infiltration Evaluation* (GeoTek, September 2018) (Geotechnical Evaluation), which is included in its entirety in **Appendix C1: Geotechnical and Infiltration Evaluation**. The Geotechnical Evaluation was reviewed the City of Gardena Building Official and deemed adequate; see **Appendix C2: Gardena Building Division Preliminary Review of Stormwater and Hydrology** (March 11, 2019).

Environmental Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Directly or indirectly cause 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? Refer to Division of Mines and Geology Special Publication 42.				X
ii) Strong seismic ground shaking?			X	
iii) Seismic-related ground failure, including liquefaction?			X	
iv) Landslides?				X
b) Result in substantial soil erosion or the loss of topsoil?			X	
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?			X	
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?			X	
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 waste water?				X

Environmental Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?			X	

Impact Analysis

4.7ai *Would the project directly or indirectly cause potential substantial adverse effects, including the risks of loss, or death involving the 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? Refer to Division of Mines and Geology Special Publication 42.*

No Impact. The Alquist-Priolo Earthquake Fault Zoning Act was passed in 1972 to mitigate the hazard of surface faulting to structures for human occupancy. The Act's main purpose is to prevent the construction of buildings used for human occupancy on the surface trace of active faults. The Act requires the State Geologist to establish regulatory zones, known as "Alquist-Priolo (AP) Earthquake Fault Zones," around the surface traces of active faults and to issue appropriate maps. If an active fault is found, a structure for human occupancy cannot be placed over the trace of the fault and must be set back from the fault (typically 50 feet). The proposed Project site is not located within an Alquist-Priolo Earthquake Fault Zone.²¹ Additionally, no evidence exists of a known fault. Therefore, the Project would not expose people or structures to adverse effects involving rupture of a known earthquake fault, and no mitigation is required.

4.7aii *Would the project directly or indirectly cause potential substantial adverse effects, including the risks of loss, or death involving strong seismic ground shaking?*

Less Than Significant Impact. The City is located between several active fault zones including the Compton Thrust Fault, Newport-Inglewood-Rose Canyon Fault Zone, Charnock Fault, and Los Alamitos Fault.²² The closest zoned faults are the Newport-Inglewood Fault zone, located approximately 3.0 miles northeast of the Project site. Thus, the Project site is in an area of high regional seismicity. Ground shaking originating from earthquakes along active faults in the region is expected to induce lower horizontal accelerations due to smaller anticipated earthquakes and/or greater distances to other faults. The region has experienced shaking from several earthquakes recorded back to 1812. The nearest large historic earthquake is the Long Beach Earthquake that

²¹ California Department of Conservation. (2015). Earthquake Zones Required Investigation Torrance Quadrangle. Retrieved from http://grnw.conserv.ca.gov/SHP/EZRIM/Maps/TORRANCE_EZRIM.pdf

²² California Department of Conservation. (2015). CGS Information Warehouse: Regulatory Maps. Retrieved from <http://maps.conservation.ca.gov/cgs/informationwarehouse/index.html?map=regulatorymaps>.

occurred in 1933, the epicenter of which is approximately 9.61 miles southeast of the Project site. Historic earthquakes with magnitudes of greater than or equal to 6.0 and have been epicentered within approximately 50 miles of the Project site.

The faults described above could cause moderate to intense ground shaking during the lifetime of the proposed Project. Additionally, the Project site has experienced earthquake-induced ground shaking in the past and can be expected to experience further shaking in the future. Therefore, Project implementation could expose people or structures to potential adverse effects involving strong seismic ground shaking. The intensity of ground shaking on the Project site would depend upon the earthquake's magnitude, distance to the epicenter, and geology of the area between the Project site and epicenter. Regulatory controls to address potential seismic hazards would be imposed on the Project through the permitting process. Pursuant to GMC Chapter 15.04, the City has adopted the 2016 California Building Standards Code (CBSC), subject to certain amendments and changes, including those that address seismic resistance. CBSC design standards correspond to the level of seismic risk in a given location and are intended primarily to protect public safety and secondly to minimize property damage. The Project would be subject to compliance with all applicable regulations in the most recently published CBSC (as amended by GMC Chapter 15.04), which specifies design requirements to mitigate the effects of potential earthquake hazards. Moreover, the Geotechnical Evaluation evaluated various geologic and seismic hazards (i.e., liquefaction, seismically-induced settlement, landslides, slope instabilities, seiche, and tsunami) based on site-specific parameters. Geotechnical Evaluation (**Appendix C1**) Chapter 6.00 makes preliminary recommendations concerning seismic design parameters, foundations, slabs, and general earthwork and grading, among other factors. The Geotechnical Investigation concludes that the Project appears feasible from a geotechnical standpoint. The Gardena Building Services Division would review construction plans for compliance with the GMC/CBSC and the Geotechnical Evaluation's recommendations. Following compliance with standard engineering practices and design criteria, and the established regulatory framework (i.e., GMC and CBSC), which would be verified through the City's construction plan review process, the Project's potential impacts concerning exposure of people or structures to potential adverse effects involving strong seismic ground shaking and secondary seismic hazards would be less than significant, and no mitigation is required.

4.7a.iii Would the project directly or indirectly cause potential substantial adverse effects, including the risks of loss, or death involving seismic-related ground failure, including liquefaction?

Less Than Significant Impact. Liquefaction is a phenomenon where earthquake-induced ground vibrations increase the pore pressure in saturated, granular soils until it is equal to the confining, overburden pressure. When this occurs, the soil can completely lose its shear strength and enter a liquefied state. For liquefaction to occur, three criteria must be met: underlying loose, coarse-grained (sandy) soils, a groundwater depth of less than approximately 50 feet, and a potential for seismic shaking from nearby large-magnitude earthquakes.

According to the California Geological Survey's Earthquake Zones of Required Investigation Torrance Quadrangle Map, liquefaction has the potential to occur north of the Project site, near Dominguez Channel, but is not shown to occur on the Project site.²³ This is further substantiated by GGP Safety Element Figure PS-2, *Public Safety Plan*. Additionally, depth to groundwater in the Project site area is approximately 30 feet. The logs of the deep borings indicate that mostly clayey soils, which are typically non-liquefiable, are presented below 30 feet. The cited logs also showed lesser layers with sandy soils at the referenced depths. High blow counts were recorded in these granular units;²⁴ thus, they are considered to not be prone to liquefaction. Based on these conditions, the liquefaction hazard potential at the Project site is negligible. Therefore, the Project's potential impacts concerning exposure of people or structures to potential adverse effects involving liquefaction would be less than significant, and no mitigation is required.

4.7aiv *Would the project directly or indirectly cause potential substantial adverse effects, including the risks of loss, or death involving landslides?*

No Impact. Landslides are mass movements of the ground that include rock falls, relatively shallow slumping and sliding of soil, and deeper rotational or transitional movement of soil or rock. According to the California Geological Survey's Earthquake Zones of Required Investigation Torrance Quadrangle Map, the site does not lie in a landslide hazard zone.²⁵ Since the site is relatively flat and not within a landslide hazard zone, earthquake-induced landsliding would not be a hazard to the proposed development. Therefore, the Project would not directly or indirectly cause potential adverse effects involving landslides, and no mitigation is required.

4.7b *Would the project result in substantial soil erosion or the loss of topsoil?*

Less Than Significant Impact. The Project site is relatively flat, and its geology is composed of artificial fills with thicknesses ranging between 2.0 and 4.0 feet. Given the site's topography, geology, and historic uses, the loss of topsoil is low. Grading and earthwork activities during construction would expose soils to potential short-term erosion by wind and water. During construction, the Project would be subject to compliance with erosion and siltation control measures and the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ, and all subsequent amendments) (Construction General Permit); see Response 4.9a. GMC §8.70.110.B.1 specifies that no Grading Permit shall be issued to construction projects that disturb 1.0 or more acres of soil without obtaining a *General Construction Activity Stormwater Permit* (GCASWP) from the State Water Resources Control Board. Further, although the site's effective imperviousness would slightly decrease from 90 to 86 percent, an infiltration system is proposed to collect stormwater runoff and conduct it into

²³ California Department of Conservation. (2015). Earthquake Zones Required Investigation Torrance Quadrangle. Retrieved from http://gmw.consrv.ca.gov/SHP/EZRIM/Maps/TORRANCE_EZRIM.pdf

²⁴ Soil consistency is determined by a "blow count" reading, which measures soil density as generally measured by a standard penetrometer test (SPT).

²⁵ Ibid.

permeable soils beneath the site, thus, minimizing soil erosion and loss of topsoil. Following compliance with the established regulatory framework (NPDES and GMC), the Project's potential impacts concerning soil erosion and loss of topsoil would be less than significant, and no mitigation is required.

4.7c *Would the project 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?*

4.7d *Would the project be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?*

Less Than Significant Impact. The Project site would not be subject to seismically-induced liquefaction (see Response 4.7aiii) or landslides (see Response 4.7aiv). The Geotechnical Evaluation did not identify a potential for lateral spreading or collapse. The Geotechnical Evaluation concluded that subsidence of up to 0.1-foot could occur. The Geotechnical Evaluation also concluded the near surface site soils tested were found to have a "low" expansion potential when tested and classified in accordance with ASTM D 4829. In addition, the surficial site soils tested were found to have a "medium" potential for expansion. The Gardena Building Services Division would review construction plans for compliance with the GMC/CBSC and the Geotechnical Evaluation's recommendations, including those concerning subsidence and expansive soils. Therefore, the potential impacts concerning subsidence and expansive soils would be less than significant, and no mitigation is required.

4.7e *Would the project 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 waste water?*

No Impact. Sewers would be available for disposal of Project generated wastewater; see Responses 4.19aii and 4.19aiii. The proposed Project would not utilize septic tanks or alternative wastewater disposal systems. Therefore, no impact would occur in this regard, and no mitigation is required.

4.7f *Would the project directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?*

Less Than Significant Impact. Paleontological resources are the fossilized remains of organisms from prehistoric environments found in geologic strata. These resources are valued for the information they yield about the earth's history and its past ecological settings. The potential for fossil occurrence depends on the rock type exposed at the surface in a given area. Previous construction-related excavation on the Project site has disturbed sediments beyond depths at which buried prehistoric cultural resources are likely. However, to address potential impacts to paleontological resources that may be discovered during ground-disturbing activities, the City imposes Condition of Approval (COA) GEO-1, which details the appropriate steps should

paleontological resources be encountered during ground-disturbing activities. Following compliance with COA GEO-1, the Project's potential impacts to a unique paleontological resource/site or geologic feature would be reduced to less than significant.

COA GEO-1 Paleontological Resources. For ground disturbances greater than 3.0 feet where sediments are known to produce significant fossil discoveries, prior to ground-disturbing activities, field personnel shall be alerted to the possibility of buried paleontological resources. If fossils or fossil bearing deposits are encountered during ground-disturbing activities, work within a 100-foot radius of the find shall halt and a professional vertebrate paleontologist shall be contacted immediately to evaluate the find. The paleontologist shall have the authority to stop or divert construction, as necessary. Documentation and treatment of the discovery shall occur in accordance with Society of Vertebrate Paleontology standards. The significance of the find shall be evaluated pursuant to the State CEQA Guidelines. If the discovery proves to be significant, before construction activities resume at the location of the find, additional work such as data recovery excavation may be warranted, as deemed necessary by the paleontologist.

4.8 Greenhouse Gas Emissions

This Section is based on the Greenhouse Gas Emissions Assessment (Kimley-Horn, May 2019), which is included in its entirety in **Appendix D: Greenhouse Gas Emissions Assessment**.

Environmental Issue	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?			X	
b) Conflict with applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?			X	

City of Gardena Energy Efficiency Climate Action Plan

The City and the South Bay Cities Council of Governments has also prepared a Climate Action Plan (CAP) (2017) to Guide the City of Gardena toward a more sustainable future. The goal of the CAP is to reduce GHG emissions within the City. The City's CAP serves as a guide for action by setting GHG emission reduction goals and establishing strategies and policy to achieve desired outcomes over the next 20 years. The CAP outlines various municipal measures that encourage reductions in the following categories: land use and transportation, energy efficiency, solid waste, urban greening, and energy generation and storage. The CAP maintains the reduction targets established in the Energy Efficiency Climate Action Plan (EECAP). **Table 4.8-1: Description of Greenhouse Gases** provides a description of terms used in the analysis.

TABLE 4.8-1: DESCRIPTION OF GREENHOUSE GASES	
Greenhouse Gas	Description
Carbon Dioxide (CO ₂)	CO ₂ is a colorless, odorless gas that is emitted naturally and through human activities. Natural sources include decomposition of dead organic matter; respiration of bacteria, plants, animals, and fungus; evaporation from oceans; and volcanic outgassing. Anthropogenic sources are from burning coal, oil, natural gas, and wood. The largest source of CO ₂ emissions globally is the combustion of fossil fuels such as coal, oil, and gas in power plants, automobiles, and industrial facilities. The atmospheric lifetime of CO ₂ is variable because it is readily exchanged in the atmosphere. CO ₂ is the most widely emitted GHG and is the reference gas (Global Warming Potential of 1) for determining Global Warming Potentials for other GHGs.
Nitrous Oxide (N ₂ O)	N ₂ O is largely attributable to agricultural practices and soil management. Primary human-related sources of N ₂ O include agricultural soil management, sewage treatment, combustion of fossil fuels, and adipic and nitric acid production. N ₂ O is produced from biological sources in soil and water,

TABLE 4.8-1: DESCRIPTION OF GREENHOUSE GASES

Greenhouse Gas	Description
	particularly microbial action in wet tropical forests. The atmospheric lifetime of N ₂ O is approximately 120 years. The Global Warming Potential of N ₂ O is 298.
Methane (CH ₄)	CH ₄ , a highly potent GHG, primarily results from off-gassing (the release of chemicals from nonmetallic substances under ambient or greater pressure conditions) and is largely associated with agricultural practices and landfills. Methane is the major component of natural gas, approximately 87 percent by volume. Human-related sources include fossil fuel production, animal husbandry, rice cultivation, biomass burning, and waste management. Natural sources of CH ₄ include wetlands, gas hydrates, termites, oceans, freshwater bodies, non-wetland soils, and wildfires. The atmospheric lifetime of CH ₄ is approximately 12 years and the Global Warming Potential is 25.
Hydrofluorocarbons (HFCs)	HFCs are typically used as refrigerants for both stationary refrigeration and mobile air conditioning. The use of HFCs for cooling and foam blowing is increasing, as the continued phase out of CFCs and HCFCs gains momentum. The 100-year Global Warming Potential of HFCs range from 124 for HFC-152 to 14,800 for HFC-23.
Perfluorocarbons (PFCs)	PFCs have stable molecular structures and only break down by ultraviolet rays approximately 60 kilometers above Earth's surface. Because of this, they have long lifetimes, between 10,000 and 50,000 years. Two main sources of PFCs are primary aluminum production and semiconductor manufacturing. Global Warming Potentials range from 6,500 to 9,200.
Chlorofluorocarbons (CFCs)	CFCs are gases formed synthetically by replacing all hydrogen atoms in methane or ethane with chlorine and/or fluorine atoms. They are nontoxic, nonflammable, insoluble, and chemically unreactive in the troposphere (the level of air at the earth's surface). CFCs were synthesized in 1928 for use as refrigerants, aerosol propellants, and cleaning solvents. The Montreal Protocol on Substances that Deplete the Ozone Layer prohibited their production in 1987. Global Warming Potentials for CFCs range from 3,800 to 14,400.
Sulfur Hexafluoride (SF ₆)	SF ₆ is an inorganic, odorless, colorless, and nontoxic, nonflammable gas. It has a lifetime of 3,200 years. This gas is manmade and used for insulation in electric power transmission equipment, in the magnesium industry, in semiconductor manufacturing, and as a tracer gas. The Global Warming Potential of SF ₆ is 23,900.
Hydrochlorofluorocarbons (HCFCs)	HCFCs are solvents, similar in use and chemical composition to CFCs. The main uses of HCFCs are for refrigerant products and air conditioning systems. As part of the Montreal Protocol, HCFCs are subject to a consumption cap and gradual phase out. The United States is scheduled to achieve a 100 percent reduction to the cap by 2030. The 100-year Global Warming Potentials of HCFCs range from 90 for HCFC-123 to 1,800 for HCFC-142b.
Nitrogen Trifluoride (NF ₃)	NF ₃ was added to Health and Safety Code §38505(g)(7) as a GHG of concern. This gas is used in electronics manufacture for semiconductors and liquid crystal displays. It has a high global warming potential of 17,200.
Source: Compiled from: USEPA, <i>Overview of Greenhouse Gases</i> , April 11, 2018 (https://www.epa.gov/ghgemissions/overview-greenhouse-gases); USEPA, <i>Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2016</i> , 2018; Intergovernmental Panel on Climate Change, <i>Climate Change 2007: The Physical Science Basis</i> , 2007; National Research Council, <i>Advancing the Science of Climate Change</i> , 2010; USEPA, <i>Methane and Nitrous Oxide Emission from Natural Sources</i> , April 2010.	

Impact Analysis

4.8a Would the project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

Less Than Significant Impact.

Short-Term Construction Greenhouse Gas Emissions

The proposed Project would result in direct GHG emissions from construction-related activities. The approximate daily GHG emissions generated by construction equipment utilized to build the proposed Project are included in **Table 4.8-2: Construction-Related Greenhouse Gas Emissions**.

TABLE 4.8-2: CONSTRUCTION-RELATED GREENHOUSE GAS EMISSIONS	
Category	MTCO ₂ e
Total Construction Emissions	889
30-Year Amortized Construction	30
Source: CalEEMod version 2016.3.2; see Appendix A for model outputs.	

As shown in **Table 4.8-2**, Project construction-related activities would generate approximately 889 MTCO₂e²⁶ of GHG emissions over the course of construction. Construction GHG emissions are typically summed and amortized over the Project's lifetime (assumed to be 30 years), then added to the operational emissions.²⁷ The amortized Project emissions would be 30 MTCO₂e per year. Once construction is complete, the generation of construction-related GHG emissions would cease.

Long-Term Operational Greenhouse Gas Emissions

Operational or long-term emissions would occur over the proposed Project's life. The Project's operational GHG emissions would result from direct emissions such as Project-generated vehicular traffic, on-site combustion of natural gas, and operation of any landscaping equipment. Operational GHG emissions would also result from indirect sources, such as off-site generation of electrical power, the energy required to convey water to the Project site and wastewater from the Project site, the emissions associated with solid waste generated from the Project site, and any fugitive refrigerants from air conditioning or refrigerators. The Project's total operational GHG emissions are summarized in **Table 4.8-3: Project Greenhouse Gas Emissions**. As shown in **Table 4.8-3**, Project operational GHG emissions would total approximately 1,122 MTCO₂e annually, and combined with construction-related GHG emissions, would total approximately 1,152 MTCO₂e annually.

²⁶ Metric tons of carbon dioxide equivalent or MTCO₂e is the unit of measurement used. The unit "CO₂e" represents an amount of a GHG whose atmospheric impact has been standardized to that of one-unit mass of carbon dioxide (CO₂), based on the gas' global warming potential (GWP). Tool formulas convert standard metrics for electricity, green energy, fuel use, chemical use, water use, and materials management into MTCO₂e.

²⁷ The Project lifetime is based on SCAQMD's standard 30-year assumption (South Coast Air Quality Management District, Minutes for the GHG CEQA Significance Threshold Stakeholder Working Group #13, August 26, 2009).