From: Enoch Wun
To: CDD Planning and Zoning
Subject: My Comment of Project at 1031 Magnolia Ave
Date: Saturday, April 17, 2021 2:36:26 PM

Caution! This message was sent from outside your organization.

HI Amanda Acuna,
My name is Enoch Wun, the owner of apartment located at
1035 Magnolia Ave.
Unfortunately, I can not attend virtual public hearing on Tuesday, April 20.
I did attended last public hearing and shown my support of the project.
Since I write to you in email. I am detailing the reasons for the support.

1. My apartment is right next to 1031 with the longest brick fence between 1031 and mine. Rodents, rats, and mice going into my building from the vacation lot 1031, and I had birds coming over to build nests on my garage ceiling.
2. My apartment is facing east, every morning the bright sun light beam shining into my tenant's bedrooms and wake up my tenants. All my tenants are putting up thick curtains, otherwise they will be wakened up too early in the morning.
3. This new building is at least two-story height; therefore, my problem will be solved. and the new building will really add to the beauty of my street.
4. I am happy that the new project is not apartment, instead it is detached single family resident (SFR); therefore, it will not create more street parking congestions.
5.
6. I would like to see the approval of the project ASAP. Please confirm that you had received this email.
7. Regards,
8. Enoch Wun, 310-529-0689 cell

April 20, 2021

From:
Neal Natsumeda
15517 S. New Hampshire, Gardena, CA 90247

To:
City of Gardena
Attention: Planning Commission
1700 W. 162nd St., Room 101, Gardena, CA 90247

Subject:
Proposed Development of Property at 1031 Magnolia

Dear Chair and Members of the Planning Commission,

I am one of the homeowners who reside next to the proposed development at 15517 S. New Hampshire and could be considered one of the most affected neighbors regarding this development.

The developer of the project has made some last minute changes to the building plans that include the following measures:

1. Lowering the maximum height of "Building C" to maximum 27.5-feet in elevation while keeping "Building D" at 25.0-feet maximum height. The plans submitted still show a 30-ft. maximum ridgeline height, so this needs to be added to the conditional approval.

2. Agreeing to add two (2) feet of matching brick to the existing six foot brick wall that separates the length of our properties bringing the final wall height to eight (8) feet tall.

3. Agreeing to provide a property restriction prohibiting planting foliage/trees/other plants alongside the common wall between our properties extending across the 10 feet of the driveway that will not grow above the 8-ft. wall height (minor planning to soften the interior of the wall is acceptable).

If the above three changes are included into the conditioned approval of the submitted plans building plans, I find that, as a neighbor, the project is an acceptable development.

Sincerely,

Neal Natsumeda

Amanda Acuna

From: Jamie Hall <jamie.hall@channellawgroup.com>
Sent: Tuesday, April 20, 2021 1:32 PM
To: CDD Planning and Zoning
Subject: Environmental Assessment #9-20, Site Plan Review #4-20, Zone Change #4-20, General Plan Amendment #5-20, Tentative Tract Map #3-20, Variance #2-20, for 1031 Magnolia Ave
Attachments: magnolia comment letter 042021.pdf

Warning! This message was sent from outside your organization and we are unable to verify the sender.

Dear Members of the Planning and Environmental Quality Commission

This firm represents Michael Lee, owner of property adjacent to the proposed project. The City is improperly processing the proposed project using a Categorical Exemption from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15303(b) (Class 3 Multi Family Structure). The attached letter demonstrates that the proposed project is not eligible for a Categorical Exemption under CEQA Guidelines Section 15303(b). This letter also demonstrates that the City, in its consideration of the proposed project's eligibility for a Categorical Exemption, has failed to consider the whole of the action, in violation of CEQA Guidelines Section 15003(h). When the whole of the action is considered it is clear that the project as proposed is not eligible for any Categorical Exemption under CEQA. As detailed in the attached letter, an Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND) must be prepared for the project, in conformance with the requirements of the CEQA. Finally, the required findings for a variance cannot be made.

Jamie T. Hall
Channel Law Group, LLP
8383 Wilshire Blvd., Suite 750
Beverly Hills, CA 90211
Main Number: (310) 347-0050
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Fax: (323) 723-3960
Email:jamie.hall@channellawgroup.com
Website: www.channellawgroup.com

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Please consider the environment before printing this email

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JULIAN K. QUATTLEBAUM, III
JAMIE T. HALL *
CHARLES J. McLURKIN

Writer's Direct Line: (310) 982-1760
jamie.hall@channellawgroup.com

*ALSO Admitted in Texas

April 20, 2021

VIA ELECTRONIC MAIL

Members of Planning & Environmental Quality Commission
City of Gardena
1700 W. 162nd Street
Gardena, CA 90247
CDDPlanningandZoning@cityofgardena.org

RE: Environmental Assessment #9-20, Site Plan Review #4-20, Zone Change #4-20, General Plan Amendment #5-20, Tentative Tract Map #3-20, Variance #2-20, for 1031 Magnolia Ave

Dear Members of the Planning and Environmental Quality Commission

This firm represents Michael Lee, owner of property adjacent to the proposed project. The City is improperly processing the proposed project using a Categorical Exemption from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15303(b) (Class 3 Multi Family Structure). This letter demonstrates that the proposed project is not eligible for a Categorical Exemption under CEQA Guidelines Section 15303(b). This letter also demonstrates that the City, in its consideration of the proposed project's eligibility for a Categorical Exemption, has failed to consider the whole of the action, in violation of CEQA Guidelines Section 15003(h). When the whole of the action is considered it is clear that the project as proposed is not eligible for any Categorical Exemption under CEQA. As detailed herein, an Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND) must be prepared for the project, in conformance with the requirements of the CEQA.

I. THE PROPOSED PROJECT

As detailed in the Agenda Packet the Planning and Environmental Quality Commission's (Commission's) April 20, 2021 meeting,[1] the proposed project involves the construction of a six-

[1] The agenda packet is available at: https://www.cityofgardena.org/wp-content/uploads/2021/04/2021_04_20-PC-PACKET.pdf
See PDF pages 17-113. The Agenda Packet is incorporated herein by reference.

unit townhome development consisting of four buildings on a 0.34 gross acre property which currently is occupied by one residential duplex building which would be demolished. The existing building was built in 1955.[2] The project parcel is unusual in that the property consists of one legal non-conforming parcel that measures 48.92 feet in width and 300 feet in depth, with a total lot size of 14,676 square feet, which is split-zoned. As shown in **Figure 1** and noted on page 18 of the Agenda Packet PDF:

> The property has two different General Plan land use and zoning designations on a single parcel. The front of the property is designated and zoned for Medium Density Multiple- Family Residential (R-3) and the rear of the property is designated and zoned for Single-Family Residential (R-1). There is no indication as to where the actual change in land use designation and zoning takes place other than a line on the maps.

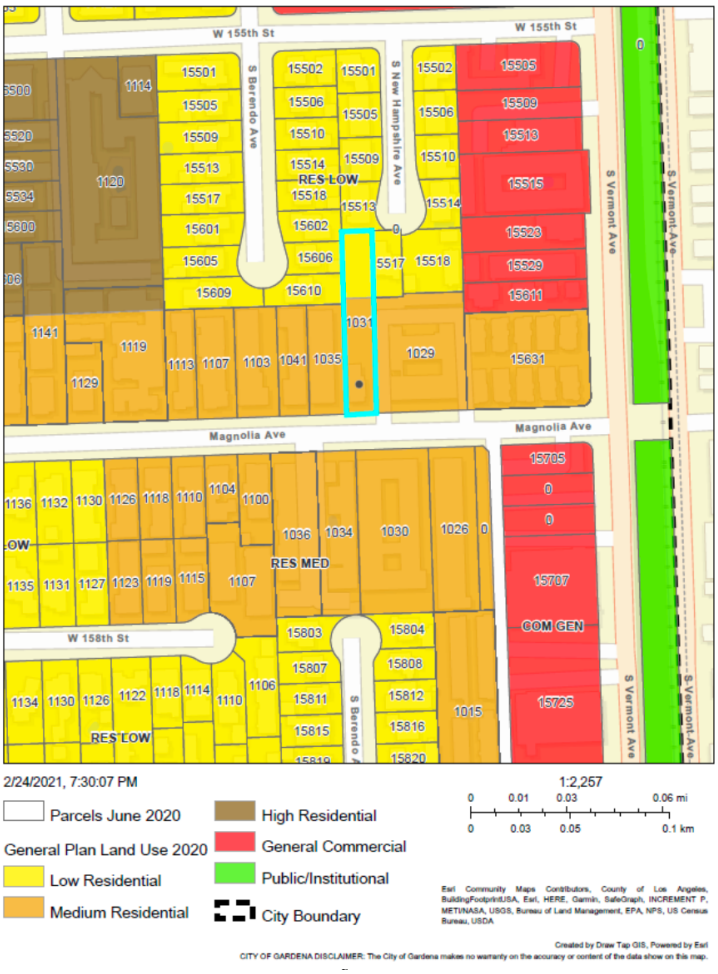

Figure 1 – Land Use Designation Map Showing Split-Zone of Project Parcel
Source: Exhibit A in Agenda Packet PDF page 46

[2] Per the Los Angeles County Assessor: https://portal.assessor.lacounty.gov/parceldetail/6113035015

As a result, the proposed project includes the following components, and requires the following discretionary approvals, which are not typically required for a six-unit townhouse development. The whole of the action includes:

1) Approval of a General Plan Amendment (GPA #5-20) to change the land use designation of the property from Low/Medium Density Residential to Medium Density Residential;

2) Approval of a Zone Change (ZC #4-20) changing the zoning from R-1/R-3 (Single- Family and Medium Multi-Family Residential Zone) to R-3 (Medium Multi-Family Residential Zone);

3) Approval of Tentative Tract Map (TM #3-20) subdividing the property for six condominium units via Tentative Tract Map No. 83100, as shown on Attachment D of the Agenda Packet, to create six condominium lots;[3]

4) Site Plan Review (SPR #4-20) allowing the development of the six townhomes in four buildings;

5) Approval of a Variance (VAR #2-19) for a reduced side yard setbacks. Buildings A and B require a variance because the west setback is proposed at 7 feet instead of the required 7.5 feet; Building C, which would be adjacent to R-1 uses proposes an 8-foot west setback instead of the required 10-foot setback; and, Building D which would also be adjacent to R-1 uses, is proposed to have a 5-foot setback on both the western and eastern sides rather than the required 10-foot setback.

6) Demolition of the existing 1,000 square foot two-unit residential building on the portion of the project site designated Medium Residential.

7) Construction of six condominium units totaling 10,048 square feet, including:[4]

[3] Per Agenda Packet PDF page 33.
[4] Per the Site Plan project data, Agenda Packet PDF page 54.

PROJECT DATA

ADDRESS: 1031 MAGNOLIA AVE
GARDENA, CA 90247

OCCUPANCY: R1/U
TYPE VN
ZONING: R-3
APN: 6113-035-115

PROJECT DESCRIPTION:

6 3-STORY ATTACHED AND DETACHED CONDO UNITS WITH ATTACHED TWO CAR GARAGES, 4 BEDROOMS, 4.5 BATHS, KITCHEN, GREAT ROOM. TWO SINGLE DETACHED UNITS AND TWO DUPLEXES.

FLOOR AREAS

	1st FLOOR	2nd FLOOR	3rd FLOOR	TOTAL	GARAGE	DECKS
UNIT 1	273 S.F.	717 S.F.	782 S.F.	1772 S.F.	425 S.F.	95 S.F.
UNIT 2	262 S.F.	649 S.F.	738 S.F.	1649 S.F.	426 S.F.	95 S.F.
UNIT 3	262 S.F.	649 S.F.	738 S.F.	1649 S.F.	426 S.F.	95 S.F.
UNIT 4	324 S.F.	967 S.F.	312 S.F.	1603 S.F.	420 S.F.	165 S.F.
UNIT 5	324 S.F.	967 S.F.	312 S.F.	1603 S.F.	420 S.F.	165 S.F.
UNIT 6	492 S.F.	1250 S.F.	-	1742 S.F.	420 S.F.	189 S.F.

PARKING TABULATION

PARKING REQUIRED: 2/UNIT COVERED + 0.5 PER UNIT GUEST = 15 SPACES TOTAL
PARKING PROVIDED: 15 SPACES TOTAL (INLC. 1 HC VAN SPACE)

SITE COVERAGE:

LOT AREA: 14,700 S.F.
TOTAL BLDG. FOOTPRINTS: 4,370 S.F.
TOTAL SITE COVERAGE: 4,370/14,700 = 29.7%

OPEN SPACE:

TOTAL OPEN SPACE REQUIRED: 300 SF PER UNIT X 6 = 3600 SF
TOTAL OPEN SPACE PROVIDED: 977 + 1846 + 808 = 3631 SF > 3600 SF

The proposed buildings would range in height from 25-35 feet. Buildings A and B remain as proposed and would be approximately 35 feet in height. In response to community concerns the height of buildings proposed adjacent to R-1 uses have been revised to be lower. According to PDF page 27 of the Agenda Packet: "In order to develop a project that is more compatible with the adjacent R-1 properties, the height of Building C has been reduced to 30 feet and 2 stories with a loft and the height of Building D has been reduced to approximately 25 feet and 2 stories, which is consistent with the R-1 standards." Both Buildings C and D are located adjacent to existing R-1 properties. The maximum height in an R-1 zone is 25 feet.[5]

In addition to the demolition of the existing building and construction of the six residential units, the proposed project, project construction would involve 200 cubic yards of cut and 200 cubic yards of fill.

[5] See Section 18.12.050 Property development standards of the Gardena Municipal Code.

II. CEQA STANDARD FOR USE OF A CLASS 3 CATEGORICAL EXEMPTION

The City is processing the proposed project using a Class 3 CEQA Categorical Exemption under CEQA Guidelines Section 15303(b). Projects eligible for a Class 3 Exemption include only the construction or conversion of a small number of structures on a parcel:

> **15303. NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES**
>
> Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:
>
> (a) One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.
>
> (b) A duplex or similar multi-family residential structure, totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes and similar structures designed for not more than six dwelling units.
>
> (c) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.
>
> (d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction.
>
> (e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.
>
> (f) An accessory steam sterilization unit for the treatment of medical waste at a facility occupied by a medical waste generator, provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21084, Public Resources Code.

It should be noted that the proposed project includes the following components that are not included on the list of things eligible for a Class 3 Exemption, but which are key required components of the proposed project:

- Approval of a General Plan Amendment (GPA #5-20) to change the land use designation of the property from Low/Medium Density Residential to Medium Density Residential;

- Approval of a Zone Change (ZC #4-20) changing the zoning from R-1/R-3 (Single- Family and Medium Multi-Family Residential Zone) to R-3 (Medium Multi-Family Residential Zone);

- Subdivision of the property for six condominium units via Tentative Tract Map No. 83100, as shown on Attachment D of the Agenda Packet, to create six condominium lots;[6]

- Approval of a Variance (VAR #2-19) for a reduced side yard setbacks. Buildings A and B require a variance because the west setback is proposed at 7 feet instead of the required 7.5 feet; Building C, which would be adjacent to R-1 uses proposes an 8-foot west setback instead of the required 10-foot setback; and, Building D which would also be adjacent to R-1 uses is proposed to have a 5-foot setback on both the western and eastern sides rather than the required 10-foot setback.

As detailed in CEQA Guidelines Section 15300.2, there are exceptions to when a Categorical Exemption may be used:

15300.2. EXCEPTIONS

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

[6] Per Agenda Packet PDF page 33.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

As detailed in this **Section VI** of this letter, the proposed project is not eligible for a Categorical Exemption pursuant to CEQA Guidelines Sections 15303(b) due to impacts associated with unusual circumstances and, as detailed in **Section III**, because the proposed project includes components not covered by a Class 3 Exemption. The City cannot act on the project until the appropriate environmental documentation has been prepared for the project.

III. FAILURE TO ADDRESS THE WHOLE OF THE ACTION RESULTING IN AN INCORRECT CONCLUSION THAT THE PROJECT IS EXEMPT

In determining the proposed project's eligibility for a Class 3 exemption, the City failed to consider the whole of the action, as required by CEQA. Section 15003(h) of the CEQA Guidelines explains that:

> **15003. POLICIES**
>
> In addition to the policies declared by the Legislature concerning environmental protection and administration of CEQA in Sections 21000, 21001, 21002, and 21002.1 of the Public Resources Code, the courts of this state have declared the following policies to be implicit in CEQA:
>
> (h) The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect. (Citizens Assoc. For Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal.App.3d 151)

In deeming the proposed project eligible for a Class 3 Exemption the City considered only the construction of 6 dwelling units, and ignored the following components of the project which make it ineligible for a Categorical Exemption:

- Approval of a General Plan Amendment (GPA #5-20) to change the land use designation of the property from Low/Medium Density Residential to Medium Density Residential;

- Approval of a Zone Change (ZC #4-20) changing the zoning from R-1/R-3 (Single- Family and Medium Multi-Family Residential Zone) to R-3 (Medium Multi-Family Residential Zone);

- Subdivision of the the property for six condominium units via Tentative Tract Map No. 83100, as shown on Attachment D of the Agenda Packet, to create six condominium lots;[7]

- Approval of a Variance (VAR #2-19) for a reduced side yard setbacks. Buildings A and B require a variance because the west setback is proposed at 7 feet instead of the required 7.5 feet; Building C, which would be adjacent to R-1 uses proposes an 8-foot west setback instead of the required 10-foot setback; and, Building D which would also be adjacent to R-1 uses is proposed to have a 5-foot setback on both the western and eastern sides rather than the required 10-foot setback.

These required components of the project render the project ineligible for a Class 3 exemption. In fact, they render the project ineligible for any Categorical Exemption.

Typically projects that require a Zone Change or General Plan Amendment are not categorically exempt under CEQA. This is evidenced by the fact that in-fill development projects, such as the proposed project, are explicitly not Categorically Exempt if they are inconsistent with the existing General Plan or zoning designation for their site (see Class 32 Exemption – CEQA Guidelines Section 15332).

The proposed project requires approval of a Tentative Tract Map (TM #3-20) subdividing the property for six condominium units. CEQA Guidelines Section 15315 provides a Class 15 Categorical Exemption for minor divisions land, as follows:

> **15315. MINOR LAND DIVISIONS**
>
> Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent.

[7] Per Agenda Packet PDF page 33.

Note: Authority cited: Sections Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

As can been seen from the language of CEQA Guidelines Section 15315, minor land divisions which are not in conformance with the existing zoning or General Plan and thus require a Zone Change or General Plan Amendment are not eligible for a Class 15 exemption. Similarly, projects involving a minor land division which also require a variance are also not eligible for a Class 15 exemption. In addition, land divisions which involve division into more than four parcels are not eligible for a Categorical Exemption; the proposed project would subdivide the property into six lots.[8] When the whole of the action is considered, it is clear that the proposed project is not eligible for any Categorical Exemption because it requires a General Plan Amendment, Zone Change and Variance, and results in the subdivision of the project parcel into more than four parcels. A Mitigated Negative Declaration or Environmental Impact Report is required for the proposed project.

IV. CITY'S IMPROPER DEFERRAL OF IMPACT ANALYSIS

The City has included as Conditions of Approval requirements for conducting environmental impact analyses to determine the potential for impacts and to identify mitigation measures or demonstrate ability to comply with regulatory standards. These studies would not take place until after project approval in violation of CEQA, thus robbing the public with the opportunity to review and comment on the adequacy of such studies. In the absence of the completion of these studies, which the City has clearly mandated based on a belief in the potential for impacts, use of a Categorical Exemption cannot be justified. Only those projects having no significant effect on the environment are categorically exempt from CEQA review.[9] Mandated studies include:[10]

Geology

BS23. The applicant shall submit a Final Geotechnical Investigation for City review/approval and comply with its recommendations and any revisions deemed necessary by the City's Building Official. The Gardena Building Services Division will review construction plans to verify compliance with standard engineering practices, the GMC/CBSC, and the Geotechnical Investigation's recommendations.

Hazardous Materials

BS24. Prior to demolition activities, an asbestos survey shall be conducted by an Asbestos Hazard Emergency Response Act (AHERA) and California Division of Occupational Safety and Health (Cal/OSHA) certified building inspector to determine the presence or absence of asbestos containing-materials (ACMs). The sampling method to be used shall be based on the statistical probability that construction materials similar in color and

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[8] Per Agenda Packet PDF page 33, Resolution No. PC 3-21

[9] "[A]n activity that may have a significant effect on the environment cannot be categorically exempt." (*Mountain Lion Foundation v. Fish Game Com.,* 16 Cal.4th at p. 124.)

[10] See Conditions of Approval included in the City's Agenda Packet for the April 20, 2021 Commission meeting, PDF pages 85-98.

texture contain similar amounts of asbestos. In areas where the material appears to be homogeneous in color and texture over a wide area, bulk samples shall be collected at discrete locations from within these areas. In unique or nonhomogeneous areas, discrete samples of potential ACMs shall be collected. The survey shall identify the likelihood that asbestos is present in concentrations greater than 1 percent in construction materials. If ACMs are located, abatement of asbestos shall be completed prior to any activities that would disturb ACMs or create an airborne asbestos hazard.

Asbestos removal shall be performed by a State certified asbestos containment contractor in accordance with the South Coast Air Quality Management District (SCAQMD) Rule 1403. Common asbestos abatement techniques involve removal, encapsulation, or enclosure. The removal of asbestos is preferred when the material is in poor physical condition and there is sufficient space for the removal technique. The encapsulation of asbestos is preferred when the material has sufficient resistance to ripping, has a hard or sealed surface, or is difficult to reach. The enclosure of asbestos is to be applied when the material is in perfect physical condition, or if the material cannot be removed from the site for reasons of protection against fire, heat, or noise.

Hydrology

BS9. The applicant/developer shall provide a complete hydrology and hydraulic study prepared by a qualified engineer, and comply with the recommendations of the engineer, to the satisfaction of the Building Official.

Noise

BS28. An acoustical analysis is required prior to the issuance of building permits for the Project to demonstrate compliance with City's Noise Ordinance (Gardena Municipal Code Chapter 8.36 and specifically Section 8.36.050, Interior noise standards). The interior noise study is required to be submitted to the City of Gardena Building Division for review and approval in conjunction with building permit application review; building permit issuance is contingent upon satisfactory demonstration that interior noise levels will comply with the City's noise ordinance.

V. PROJECT IS NOT EXEMPT FROM CEQA BECAUSE THE CITY HAS PROPOSED MITIGATION MEASURES IN THE FORM OF SPECIALIZED CONDITIONS OF APPROVAL OR PROJECT DESIGN FEATURES FOR THE PROJECT

The City has included mitigation measures as Conditions of Approval. However, in evaluating whether a categorical exemption may apply, the City **may not rely on mitigation measures** as a basis for concluding that a project is categorically exempt, or as a basis for determining that one of the significant effects exceptions does not apply. *Salmon Protection &*

Watershed Network v. County of Marin (2004) 125 Cal.App.4th 1098. As the appellate court explained in this case, which dealt with a Class 3 Exemption:

> [T]he County erred in relying upon mitigation measures to grant a categorical exemption from CEQA. Only those projects having no significant effect on the environment are categorically exempt from CEQA review. (Pub. Resources Code, §§ 21080, subd. (b)(9), 21084, subd. (a).) "[A]n activity that may have a significant effect on the environment cannot be categorically exempt." (*Mountain Lion Foundation v. Fish Game Com., supra,* 16 Cal.4th at p. 124.) If a project may have a significant effect on the environment, CEQA review must occur, and only then are mitigation measures relevant. (*Azusa, supra,* 52 Cal.App.4th at pp. 1199-1200.)

The City has included as Conditions of Approval a number of measures that are clearly intended to mitigate potential project impacts. It should be noted that several of these mitigation measures include "if feasible" language, which potentially renders the measures in question ineffective in ensuring that impacts will be reduced to a level which is less than significant through implementation of what are essentially mitigation measures. These defacto mitigation measures include but are not limited to the following:[11]

Aesthetics, Light and Glare

BS11. The Applicant/developer shall submit a site lighting plan, with photometrics, for review and approval by the Building Official and the Director of Community Development or designee prior to the issuance of building permits. The plan shall ensure that all exterior lighting (i.e., parking areas, building areas, and entries) shall employ illumination in a manner that meets the approval of the Building Official and the Director of Community Development or designee before building permits are issued. All light fixtures shall be designed and located in a manner that does not allow spillover onto adjacent properties. Additionally, the exterior lighting fixtures shall be architecturally consistent with the design of the building, as reviewed and approved by the Director of Community Development.

Cultural Resources

PL11. Prior to commencement of ground-disturbing activities a qualified vertebrate paleontologist (as defined by the Society for Vertebrate Paleontology) shall develop Worker Awareness and Environmental Program (WEAP) Training for construction personnel. This training shall be presented to construction personnel and include what fossil remains may be found within the Project area and policies and procedures that must be followed in case of a discovery. Verification of the WEAP Training shall be provided to the Gardena Community Development Department.

[11] See Conditions of Approval included in the City's Agenda Packet for the April 20, 2021 Commission meeting, PDF pages 85-98.

PL12. If fossils or fossil bearing deposits are encountered during ground-disturbing activities, work within a 25-foot radius of the find shall halt and a professional vertebrate paleontologist (as defined by the Society for Vertebrate Paleontology) 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.

Hazardous Materials

BS24. Prior to demolition activities, an asbestos survey shall be conducted by an Asbestos Hazard Emergency Response Act (AHERA) and California Division of Occupational Safety and Health (Cal/OSHA) certified building inspector to determine the presence or absence of asbestos containing-materials (ACMs). The sampling method to be used shall be based on the statistical probability that construction materials similar in color and texture contain similar amounts of asbestos. In areas where the material appears to be homogeneous in color and texture over a wide area, bulk samples shall be collected at discrete locations from within these areas. In unique or nonhomogeneous areas, discrete samples of potential ACMs shall be collected. The survey shall identify the likelihood that asbestos is present in concentrations greater than 1 percent in construction materials. If ACMs are located, abatement of asbestos shall be completed prior to any activities that would disturb ACMs or create an airborne asbestos hazard.

Asbestos removal shall be performed by a State certified asbestos containment contractor in accordance with the South Coast Air Quality Management District (SCAQMD) Rule 1403. Common asbestos abatement techniques involve removal, encapsulation, or enclosure. The removal of asbestos is preferred when the material is in poor physical condition and there is sufficient space for the removal technique. The encapsulation of asbestos is preferred when the material has sufficient resistance to ripping, has a hard or sealed surface, or is difficult to reach. The enclosure of asbestos is to be applied when the material is in perfect physical condition, or if the material cannot be removed from the site for reasons of protection against fire, heat, or noise.

BS25. If paint is separated from building materials (chemically or physically) during demolition of the structures, the paint waste shall be evaluated independently from the building material by a qualified Environmental Professional. A portable, field X-ray fluorescence (XRF) analyzer shall be used to identify the locations of potential lead paint, and test accessible painted surfaces. The qualified Environmental Professional shall identify the likelihood that lead is present in concentrations greater than 1.0 milligrams per square centimeter (mg/cm2) in/on readily accessible painted surfaces of the buildings.

If lead-based paint is found, abatement shall be completed by a qualified Lead Specialist prior to any activities that would create lead dust or fume hazard. Potential methods to reduce lead dust and waste during removal include wet scraping, wet planning, use of

electric heat guns, chemical stripping, and use of local High Efficiency Particulate Air (HEPA) exhaust systems. Lead-based paint removal and disposal shall be performed in accordance with California Code of Regulation Title 8, Section 1532.1, which specifies exposure limits, exposure monitoring and respiratory protection, and mandates good worker practices by workers exposed to lead. Contractors performing lead-based paint removal shall provide evidence of abatement activities to the City Engineer.

Hydrology

BS5. The applicant/developer shall provide storm water management plan prepared by a qualified engineer acceptable to the Building Official and the Engineering Division. Drainage from parking lots to the public rights-of-way shall be filtered through a City approved filter system. The filter shall be located on the development property and maintained by the property owner.

BS6. The applicant shall be responsible for the construction of all on-site drainage facilities and provide a master plan for drainage. This will include Low Impact Development (LID) referring to systems and practices that use or mimic natural processes that result in the infiltration, evapotranspiration or use of Stormwater in order to protect water quality and local aquatic habitat.

BS9. The applicant/developer shall provide a complete hydrology and hydraulic study prepared by a qualified engineer, and comply with the recommendations of the engineer, to the satisfaction of the Building Official.

Noise

GC 5. Prior to commencement of work, the contractor/developer shall schedule a pre-job meeting with the City's engineering and building inspectors to minimize construction noise levels, including sound-reduction equipment as deemed necessary by the City. Prior to the issuance of demolition or construction permits, the contractor/developer shall prepare and implement a construction management plan, approved by the City, which includes procedures to minimize off-site transportation of heavy construction equipment.

BS26. Prior to approval of grading plans and/or prior to issuance of demolition, grading, and building permits, the following noise reduction techniques shall be included in the construction plans or specifications:

- Construction contracts specify that all construction equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers and other state required noise attenuation devices.

- The Project Applicant shall demonstrate to the satisfaction of the City's Building Official that construction noise reduction methods shall be used **where feasible**, including shutting off idling equipment. (Emphasis added)

- During construction, equipment staging areas shall be located such that the greatest distance is between the staging area noise sources and noise-sensitive receptors.

- Per Gardena Municipal Code Section 8.36.080, construction activities shall not occur during the hours of 6:00 p.m. and 7:00 a.m. on weekdays; between the hours of 6:00 p.m. and 9:00 a.m. on Saturday; or any time on Sunday or a Federal holiday.

BS28. An acoustical analysis is required prior to the issuance of building permits for the Project to demonstrate compliance with City's Noise Ordinance (Gardena Municipal Code Chapter 8.36 and specifically Section 8.36.050, Interior noise standards). The interior noise study is required to be submitted to the City of Gardena Building Division for review and approval in conjunction with building permit application review; building permit issuance is contingent upon satisfactory demonstration that interior noise levels will comply with the City's noise ordinance.

Traffic and Circulation

PW6. The applicant shall provide traffic control plans per W.A.T.C.H. (Work Area Traffic Control Handbook) or California M.U.T.C.D

Tribal / Cultural Resources

As noted on PDF page 29 of the Agenda Packet: **"**As the project involves a General Plan Amendment and corresponding Zone Change, the City received a request for consultation from the Gabrieleno Band of Mission Indians-Kizh Nation under Senate Bill (SB) 18. As a result of the consultation, conditions have been added regarding retaining a Native American monitor/consultant and procedures regarding unanticipated discovery of tribal cultural and archaeological resources." These "Environmental Conditions"[12], i.e. mitigations include:

EN1 Prior to the commencement of any ground disturbing activity at the project site, the project applicant shall retain a Native American Monitor approved by the Gabrieleno Band of Mission Indians-Kizh Nation – the tribe that consulted on this project pursuant to Assembly Bill A52 - SB18 (the "Tribe" or the "Consulting Tribe"). A copy of the executed contract shall be submitted to the Lead Agency prior to the issuance of any permit necessary to commence a ground-disturbing activity. The Tribal monitor will only be present on-site during the construction phases that involve ground-disturbing activities. Ground disturbing activities are defined by the Tribe as activities that may include, but are not limited to, pavement removal, potholing or auguring, grubbing, tree removals, boring, grading, excavation, drilling, and trenching, within the project area. The Tribal Monitor will complete daily monitoring logs that will provide descriptions of the day's activities, including construction activities, locations, soil, and any cultural materials identified. The on-site monitoring shall end when all ground-disturbing activities on the Project Site are completed, or when the Tribal Representatives and Tribal Monitor have indicated that all upcoming ground-disturbing activities at the Project Site have little to no potential for impacting Tribal Cultural Resources. Upon discovery of any

[12] Agenda Packet PDF starting at page 89.

Tribal Cultural Resources, construction activities shall cease in the immediate vicinity of the find (not less than the surrounding 50 feet) until the find can be assessed. All Tribal Cultural Resources unearthed by project activities shall be evaluated by the Tribal monitor approved by the Consulting Tribe and a qualified archaeologist if one is present. If the resources are Native American in origin, the Consulting Tribe will retain it/them in the form and/or manner the Tribe deems appropriate, for educational, cultural and/or historic purposes. If human remains and/or grave goods are discovered or recognized at the Project Site, all ground disturbance shall immediately cease, and the county coroner shall be notified per Public Resources Code Section 5097.98, and Health & Safety Code Section 7050.5. Human remains and grave/burial goods shall be treated alike per California Public Resources Code section 5097.98(d)(1) and (2). Work may continue in other parts of the Project site while evaluation and, if necessary, mitigation takes place (CEQA Guidelines Section 15064.5[f]). Preservation in place (i.e., avoidance) is the preferred manner of treatment. If preservation in place is not feasible, treatment may include implementation of archaeological data recovery excavations to remove the resource along with subsequent laboratory processing and analysis. Any historic archaeological material that is not Native American in origin (non-TCR) shall be curated at a public, non-profit institution with a research interest in the materials, such as the Natural History Museum of Los Angeles County or the Fowler Museum, if such an institution agrees to accept the material. If no institution accepts the archaeological material, it shall be offered to a local school or historical society in the area for educational purposes.

EN2. Native American human remains are defined in PRC 5097.98 (d)(1) as an inhumation or cremation, and in any state of decomposition or skeletal completeness. Funerary objects, called associated grave goods in PRC 5097.98, are also to be treated according to this statute. Health and Safety Code 7050.5 dictates that any discoveries of human skeletal material shall be immediately reported to the County Coroner and excavation halted until the coroner has determined the nature of the remains. If the coroner recognizes the human remains to be those of a Native American or has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the NAHC and PRC 5097.98 shall be followed.

EN3. Upon discovery of human remains, the tribal and/or archaeological monitor/consultant/consultant will immediately divert work at minimum of 100 feet and place an exclusion zone around the discovery location. The monitor/consultant(s) will then notify the Tribe, the qualified lead archaeologist, and the construction manager who will call the coroner. Work will continue to be diverted while the coroner determines whether the remains are human and subsequently Native American. The discovery is to be kept confidential and secure to prevent any further disturbance. If the finds are determined to be Native American, the coroner will notify the NAHC as mandated by state law who will then appoint a Most Likely Descendent (MLD). If the Gabrieleno Band of Mission Indians – Kizh Nation is designated MLD, the Koo-nas-gna Burial Policy shall be implemented. To the Tribe, the term “human remains” encompasses more than human bones. In ancient as well as historic times, Tribal Traditions included, but were not limited to, the preparation of the soil for burial, the burial of funerary objects with the deceased, and the ceremonial burning of human remains. The prepared soil and

cremation soils are to be treated in the same manner as bone fragments that remain intact. Associated funerary objects are objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later; other items made exclusively for burial purposes or to contain human remains can also be considered as associated funerary objects.

EN4. Prior to the continuation of ground disturbing activities, the landowner shall arrange a designated site location within the footprint of the project for the respectful reburial of the human remains and/or ceremonial objects. In the case where discovered human remains cannot be fully documented and recovered on the same day, the remains will be covered with muslin cloth and a steel plate that can be moved by heavy equipment placed over the excavation opening to protect the remains. If this type of steel plate is not available, a 24-hour guard should be posted outside of working hours. The Tribe will make every effort to recommend diverting the project and keeping the remains in situ and protected. If the project cannot be diverted, it may be determined that burials will be removed. The Tribe will work closely with the qualified archaeologist to ensure that the excavation is treated carefully, ethically and respectfully. If data recovery is approved by the Tribe, documentation shall be taken which includes at a minimum detailed descriptive notes and sketches. Additional types of documentation shall be approved by the Tribe for data recovery purposes. Cremations will either be removed in bulk or by means as necessary to ensure completely recovery of all material. If the discovery of human remains includes four or more burials, the location is considered a cemetery and a separate treatment plan shall be created. Once complete, a final report of all activities is to be submitted to the Tribe and the NAHC. The Tribe does NOT authorize any scientific study or the utilization of any invasive and/or destructive diagnostics on human remains.

Each occurrence of human remains and associated funerary objects will be stored using opaque cloth bags. All human remains, funerary objects, sacred objects and objects of cultural patrimony will be removed to a secure container on site if possible. These items should be retained and reburied within six months of recovery. The site of reburial/repatriation shall be on the project site but at a location agreed upon between the Tribe and the landowner at a site to be protected in perpetuity. There shall be no publicity regarding any cultural materials recovered.

EN5. Native American and Archaeological monitoring during construction projects will be consistent with current professional standards. All feasible care to avoid any unnecessary disturbance, physical modification, or separation of TCR's shall be taken. The Native American monitor must be approved by the Gabrieleno Band of Mission Indians-Kizh Nation. Principal personnel for Archaeology must meet the Secretary of Interior standards for archaeology and have a minimum of 10 years of experience as a principal investigator working with Native American archaeological sites in southern California.

The City has required Conditions of Approval which are defacto mitigation measures intended to address potential project impacts. In so doing the City has implicitly found that the proposed project has the potential to result in:

- Light and Glare Impacts

- Cultural Resources Impacts
- Hazardous Materials Impacts
- Hydrology Impacts
- Noise Impacts
- Traffic and Circulation Impacts
- Tribal / Cultural Resources Impacts

The proposed project does not qualify for a Categorical Exemption because it has the potential to result in impacts requiring mitigation. A Mitigated Negative Declaration or Environment Impact Report is required for the project.

VI. FAILURE TO MEET CEQA GUIDELINES SECTION 153002(C) REQUIREMENTS - POTENTIAL FOR SIGNIFICANT EFFECTS DUE TO UNUSUAL CIRCUMSTANCES

As detailed in **Sections III, IV and V**, the proposed project is not eligible for any Categorical Exemptions. However, this section of our letter lays to rest the project's eligibility for a Class 3 Exemption. Even if the proposed project were eligible for a Class 3 Exemption, there are a number of unusual circumstances associated with the proposed six-unit development which alone and in combination have the potential to result in significant impacts due to the proposed project. The combination of unusual circumstances associated with the proposed project is also an unusual circumstance. Unusual circumstances include but are not limited to:

- Location on a lot with Split-Zoning
- Need for a Zone Change and General Plan Amendment
- Need for a Subdivision
- Location on a substandard lot with of width of less than 50 feet
- Need for a Variance

A. UNUSUAL CIRCUMSTANCES

Location on a Lot with Split-Zoning

As shown in **Figure 1** and noted on PDF page 18 of the Agenda Packet: "The property has two different General Plan land use and zoning designations on a single parcel. The front of the property is designated and zoned for Medium Density Multiple- Family Residential (R-3) and the rear of the property is designated and zoned for Single-Family Residential (R-1). There is no indication as to where the actual change in land use designation and zoning takes place other

than a line on the maps." **Figure 2** shows the existing land use designation in relation to existing uses. **Figure 3** shows the existing land use designation in relation to the proposed project.

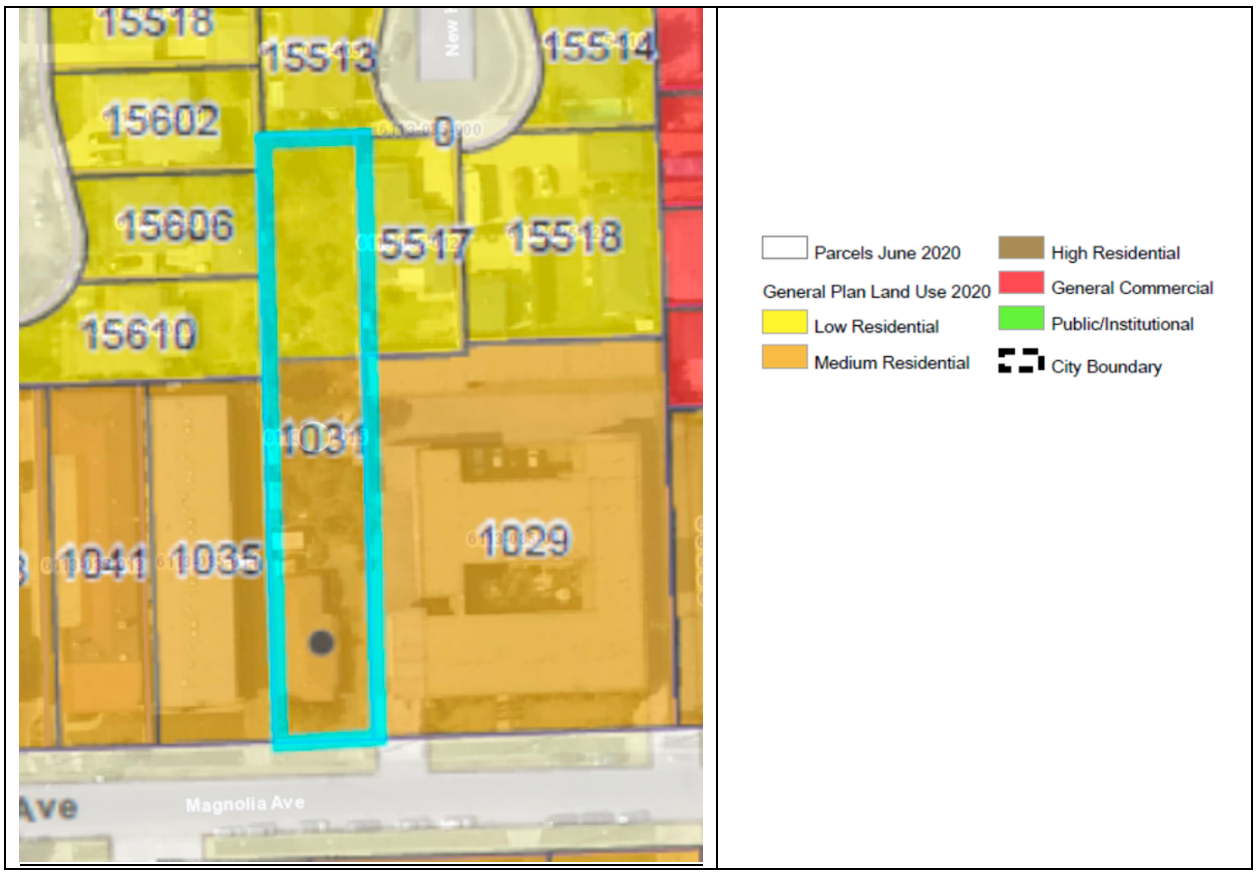


Figure 2 – Existing Land Use Designations Overlayed to Aerial of Project Area

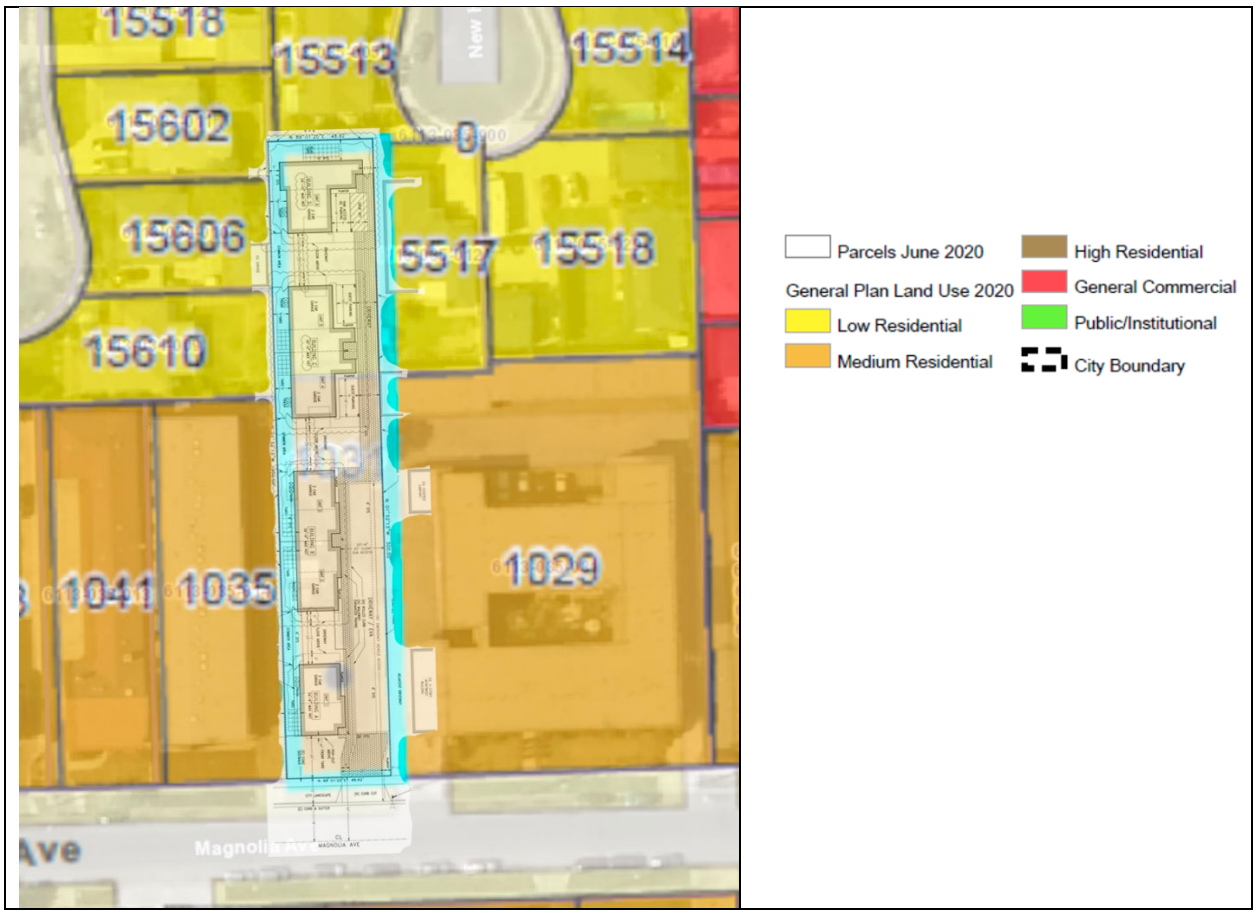


Figure 3 – Proposed Project Overlays on Existing Land Use Designations Overlayed to Aerial of Project Area

As shown on **Figure 3**, Building D and the majority of Building C are located adjacent to R-1 zoned properties.

<u>Need for a Zone Change and General Plan Amendment</u>

As can be seen from **Figure 3**, the proposed project would result in the construction of multifamily uses in both the portion of the project site currently designated Medium Residential (R-3) and the portion designated Low Residential (R-1). This is the reason why the project requires a:

1) General Plan Amendment (GPA #5-20) to change the land use designation of the property from Low/Medium Density Residential to Medium Density Residential; and,

2) Zone Change (ZC #4-20) changing the zoning from R-1/R-3 (Single-Family and Medium Multi-Family Residential Zone) to R-3 (Medium Multi-Family Residential Zone);

As shown in **Figure 3**, the rezoning and General Plan Amendment would result in the intrusion of multi-family uses into the middle of an area zoned for single-family uses.

<u>Location on a Substandard Lot with a Width of Less than 50 feet</u>

The proposed project is located on a substandard lot which is only 48.92 feet wide. After the zone change, the proposed project still requires a Variance (VAR #2-19) for a reduced side yard setbacks:

- Buildings A and B require a variance because the west setback is proposed at 7 feet instead of the required 7.5 feet;

- Building C, which would be adjacent to R-1 uses proposes an 8-foot west setback instead of the required 10-foot setback; and,

- Building D which would also be adjacent to R-1 uses is proposed to have a 5-foot setback on both the western and eastern sides rather than the required 10-foot setback.

Figure 4 shows the approximate location of proposed project structures in relation to existing uses.

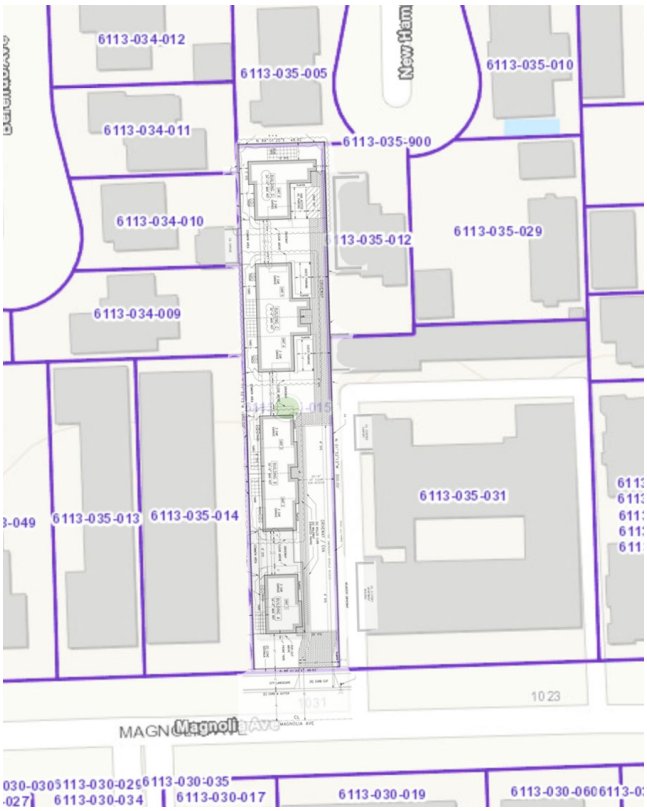


Figure 4 – Proposed Project Uses in Relation to Existing Uses – Overlay of Project Site Plan on Assessors Map

Buildings C containing Units 4 and 5 and Building D, containing Unit 6, are adjacent to R-1 uses and are largely on the portion of the project site previously zoned R-1.

The Proposed Project Requires a Variance

The City acknowledges that the need for a variance is the result of a combination of special circumstances, as explained on Agenda Packet PDF page 27, as follows:

> Buildings C and D abut the R-1 zone and therefore require a 10 foot setback on each side. Building C requires a 2 foot variance on the west side and Building D requires a 5 foot variance on both sides. A height of 35 feet and 3 stories is allowed for projects in the R-3 zone. In order to develop a project that is more compatible with the adjacent R-1 properties, the height of Building C has been reduced to 30 feet and 2 stories with a loft and the height of Building D has been reduced to approximately 25 feet and 2 stories, which is consistent with the R-1 standards. In order to reduce the height to be compatible with the adjoining R-1 zoned properties, it was necessary to increase the footprint of the ground floor on these units to make up for the lost square footage on a third-floor. This change would not be required except for the fact that the special circumstances of this property being substandard in width and being surrounded by R-1 properties on the northern portion of the property. (sic)

Subdivision of the Existing Lot

According to draft Resolution No. PC-3-21 on page 33 of the Agenda Packet PDF, the proposed project includes approval of "Tentative Tract Map No. 83100, as shown on Attachment D, creating six condominium lots." However, the six condominium lots are not clearly shown on the Tentative Tract Map included in Attachment D. Given the substandard width of the existing lot and the project description, it would appear that the proposed project may include the creation of substandard lots of some unknown dimensions.

POTENTIAL FOR IMPACTS DUE TO UNUSUAL CIRCUMSTANCES

A. Aesthetics

As noted in **Section V** the City has included a mitigation measure as a Condition of Approval in order to address potential light impacts of the proposed project. Those impacts would occur as a result of the reduced setbacks adjacent to residential uses that would be allowed under the request Variance, and the more than 25-foot height of Building C resulting from the requested General Plan Amendment and zone change for the portion of the project adjacent to R-1 uses.

B. **Noise Impacts**

As noted in **Section V** the City has included mitigation measures as a Conditions of Approval in order to address potential noise impacts of the proposed project. Those impacts

would occur or be exacerbated as a result of the reduced setbacks adjacent to residential uses that would be allowed under the request Variance and the increased density and thus size of construction resulting for the General Plan Amendment and zone change.

Figure N-1: Noise and Land Use Compatibility from the City's Noise Plan included as part of the Community Safety Element of the City's 2006 General Plan is reproduced below.[13] For residential uses, noise levels between 60-65 CNEL are considered conditionally acceptable by the City. Proposed projects within this noise contour require preparation of a noise analysis.

Land Use Category	CNEL, dB 55	60	65	70	75	80
Residential - Single family, multifamily, duplex	A	A	B	C	C	
Residential - Mobile homes	A	A	B	C	C	
Transient Lodging - Motels, hotels	A	A	B	B	C	C
Schools, Libraries, Churches, Hospitals, Nursing Homes	A	A	B	C	C	
Auditoriums, Concert Halls, Amphitheaters, Meeting Halls	B	B	C	C		
Sports Arenas, Outdoor Spectator Sports, Amusement Parks	A	A	A	B	B	
Playgrounds, Neighborhood Parks	A	A	A	B	C	
Golf Courses, Riding Stables, Cemeteries	A	A	A	A	B	C C
Office and Professional Buildings	A	A	A	B	B	C
Commercial Retail, Banks, Restaurants, Theaters	A	A	A	A	B	B C
Industrial, Manufacturing, Utilities, Wholesale, Service Stations	A	A	A	A	B	B B
Agriculture	A	A	A	A	A	A A

Legend

A — NORMALLY ACCEPTABLE
Specified land use is satisfactory based on the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.

B — CONDITIONALLY ACCEPTABLE
New construction or development should be undertaken only after a detailed analysis of the noise requirements is made and needed noise insulation features included in the design. Conventional construction, but with closed windows and fresh air supply systems or air conditioning will normally suffice.

C — NORMALLY UNACCEPTABLE
New construction or development should generally be discouraged. If it does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design.

CLEARLY UNACCEPTABLE
New construction or development should generally not be undertaken.

Source: Taken in part from "Aircraft Noise Impact Planning Guidelines for Local Agencies," U.S. Dept. of Housing and Urban Development, TE/NA-472, November 1972.

Figure N-1
Noise and Land Use Compatibility

As shown on **Figure N-3** from the Noise Plan, the proposed project is located within the 60-65 CNEL noise contour, based on the year 2025 forecast included in the Noise Plan. (See also Figure N-2 in the Noise Plan which shows the project was in this noise contour as of 2006).

[13] The City's General Plan is available at: https://www.cityofgardena.org/general-plan/
The Noise Plan is available at: https://www.cityofgardena.org/wp-content/uploads/2016/04/generalplan9.pdf

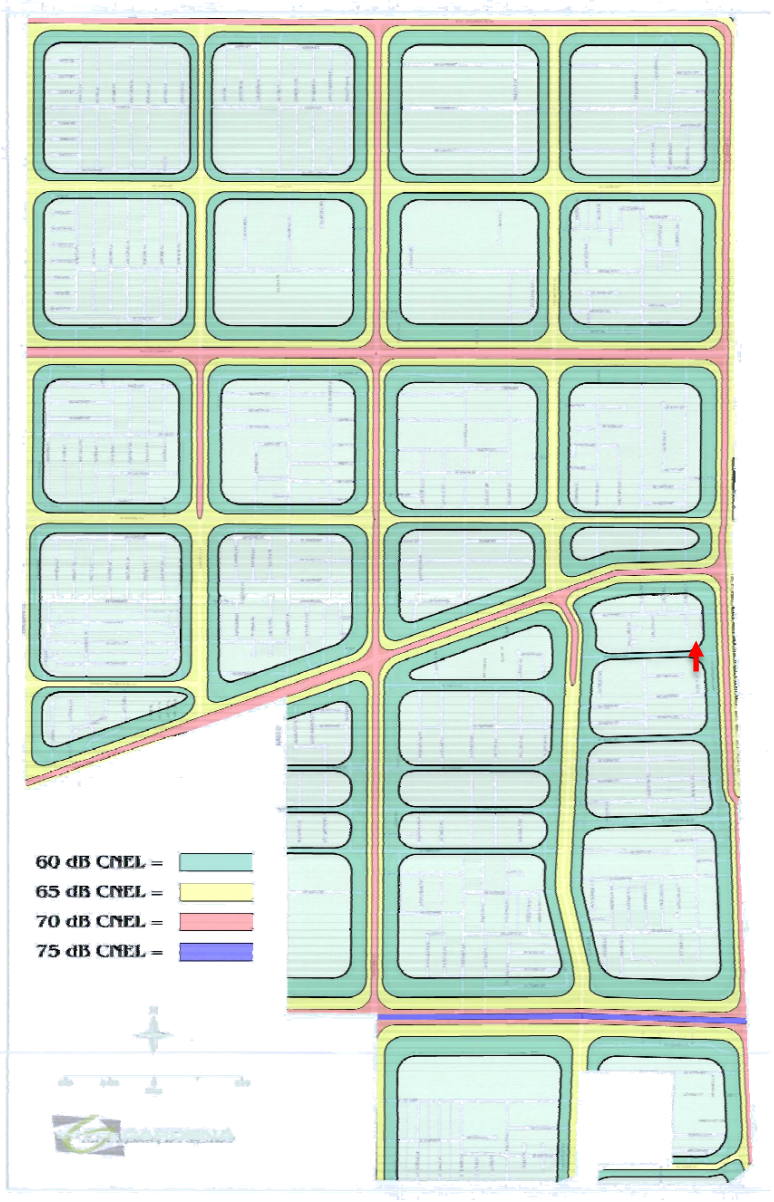


Figure N-3
Future CNEL Contour

<u>Project's Location In Noise Contour (red arrow)</u>

In addition, The Noise Plan includes the following policies which apply to the proposed project and which would further dictate the need for a noise analysis for the proposed project:

- *N 2.4: Require mitigation of all significant noise impacts as a condition of project approval.*
- *N2.5: Require proposed projects to be reviewed for compatibility with nearby noise- sensitive land uses with the intent of reducing noise impacts.*

- *N 2.9: Encourage the creative use of site and building design techniques as a means to minimize noise impacts.*
- *N 3.1: Require compliance with a quantitative noise ordinance based on the Model Noise Ordinance developed by the (now-defunct) State of California Office of Noise Control.*
- *N 3.2: Require compliance with noise regulations. Review and update Gardena's policies and regulations affecting noise.*
- *N 3.3: Require compliance with construction hours to minimize the impacts of construction noise on adjacent land.*

When it comes to determining whether a proposed project would result in a significant noise impact, the City has typically used the questions presented in the State CEQA Guidelines Appendix G Environmental Checklist as threshold of significance in its environmental documents.[14] Accordingly, the Project may create a significant environmental impact and it would:

- Result in the generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.
- Result in the generation of excessive groundborne vibration or groundborne noise levels (see Impact 4.10-2);

The City's Noise Ordinance is included in Chapter 8.36 of the City's Municipal Code.[15] Allowable exterior noise levels in residential areas are 55 db(A) between 7 a.m. to 10 p.m. and 45 dB(A) interior noise during this time period. As noted in a recent City EIR:

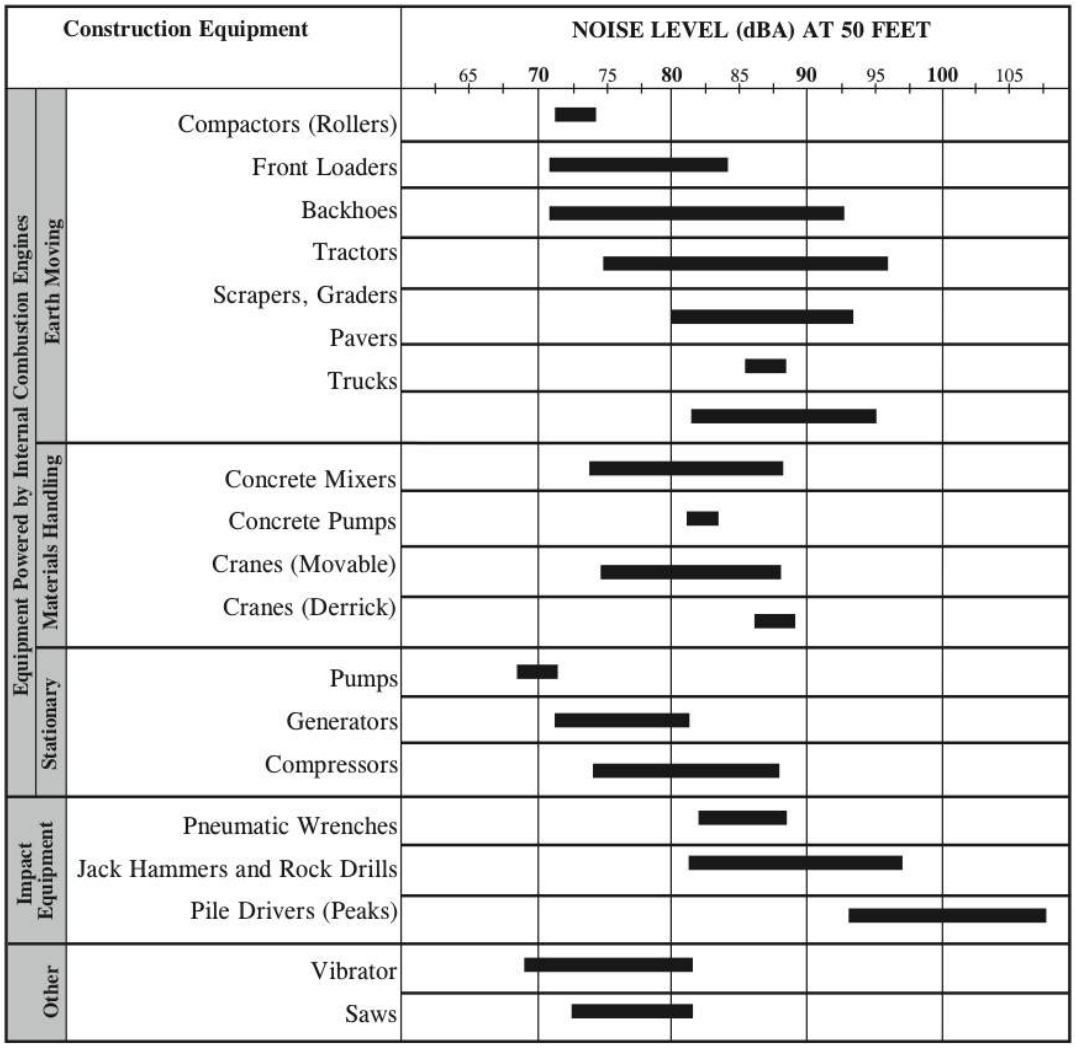
> Noise impacts from Project construction activities would be a function of the noise generated by construction equipment, the location of the equipment, the timing and duration of the noise-generating construction activities, and the relative distance to noise-sensitive receptors. Construction activities for the Project would generally include demolition, site grading, building construction, and landscaping. Each stage of construction would involve the use of various types of construction equipment and would, therefore, have its own distinct noise characteristics. Demolition generally involves the use of backhoes, front-end loaders, and heavy-duty trucks. Grading and excavation typically require the use of earth- moving equipment, such as excavators, front-end loaders, and heavy-duty trucks. Building construction typically involves the use of forklifts, concrete trucks, concrete pumps, and delivery trucks.

[14] See for example page 4.10-10 of the Gardena Transit-Oriented Development Specific Plan Project EIR: https://files.ceqanet.opr.ca.gov/264020-7/attachment/H8htlvndPjramT5NbWNrk3gk7pA33GrO9xjjHcepOD4Q2wDJI4pFgYsHvJkphqW5LHyca0NtuENen57g0

[15] Available at: https://www.codepublishing.com/CA/Gardena/html/Gardena08/Gardena0836.html

Noise from construction equipment would generate both steady-state and episodic noise that could be heard within and adjacent to the Project site.[16]

The project site is less than 50 feet in width. Typical noise levels for construction equipment at a distance of 50 feet are contained in the following table.



Source: EPA PB 206717, Environmental Protection Agency, Dec. 31, 1971,"Noise from Construction Equipment & Operations".

As specified in Gardena Municipal Code (GMA) §8.36.080, construction activities are exempt from the noise ordinance protections, provided that construction activities do not take place between the hours of 6:00 p.m. and 7:00 a.m. on weekdays, between 6:00 p.m. and 9:00 a.m. on Saturday or any time on Sunday and Federal holiday. Project construction would most

[16] Page 4.10-12 of the Gardena Transit-Oriented Development Specific Plan Project EIR: https://files.ceqanet.opr.ca.gov/264020-7/attachment/H8htlvndPjramT5NbWNrk3gk7pA33GrO9xjjHcepOD4Q2wDJI4pFgYsHvJkphqW5LHyca0NtuENen57g0

likely comply with the City allowable construction hours of 7:00 a.m. to 6:00 p.m. on Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturday.

The City's Municipal Code does not have a quantitative construction noise limit (i.e., increase over ambient level). However, recent City EIRs have included an assessment of a project's potential to result in construction noise levels in excess of the ambient noise standards. Based on the type of equipment that would be used for the proposed project and the proximity of proposed project construction activities to residential uses, construction noise levels at the nearest noise-sensitive receptors would likely exceed the City's exterior noise standard (presumed daytime ambient noise level) of 55 dBA and as well as the forecast ambient level in the City's General Plan for the project area (60-65 dBA). Given the CEQA Checklist questions, and the fact that the City has used these as thresholds in EIRs, it can be reasonably concluded that the project's temporary construction-related noise impacts would be significant in the absence of mitigation. An EIR or Mitigated Negative Declaration is therefore required for the project.

VII. USE OF A CATEGORICAL EXEMPTION IS NOT APPROPRIATE FOR THE PROPOSED PROJECT; ADDITIONAL CEQA REVIEW IS REQUIRED

The proposed project does not qualify for a Categorical Exemption. As detailed in **Section III**, the City, in its consideration of the proposed project's eligibility for a Categorical Exemption, has failed to consider the whole of the action, in violation of CEQA Guidelines Section 15003(h). When the whole of the action is considered it is clear that the project as proposed is not eligible for any Categorical Exemption under CEQA. As detailed in **Sections IV and V**, the City has improperly deferred needed impact analysis and has relied on mitigations when finding that the proposed project will not result in significant impacts and is exempt. Furthermore, even if the project was potentially eligible for a Class 3 Exemption, as detailed in Section **VI**, the proposed project is not eligible for a Categorical Exemption under CEQA Guidelines Section 15303(b) due to the fact that there is a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances. As detailed herein, an Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND) must be prepared for the project, in conformance with the requirements of the CEQA.

VIII. THE REQUIRED FINDINGS FOR A VARIANCE CANNOT BE MADE

Government Code section 65906 establishes criteria for the granting of variances: "Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated."

This statute features three elements: "(1) there must be special circumstances applicable to the property; (2) by reason of which the strict application of the zoning ordinance would deprive such property of privileges enjoyed by other property in the vicinity under identical zoning classification; and (3) any variance granted shall be subject to such conditions as will assure that the adjustment is not a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located." (*Miller v. Board of Supervisors* (1981) 122 Cal.App.3d 539, 544.) The "special circumstances" contemplated in the first element "must be such that the property is distinct in character from comparable nearby properties." (*Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles (*2008) 161 Cal.App.4th 1168, 1183.) "In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506…, the landowner obtained a zoning variance to build a 93-space mobile home park on 28 acres in Topanga Canyon on property zoned for light agricultural and single-family residences. [Citation.] Applying Government Code section 65906, Topanga found insufficient evidence supported the grant of the variance because there was there was no evidence concerning comparable neighborhood properties, and therefore concerning whether the variance was necessary to bring the landowner into parity with other parties holding property in the same area." (Id. at 1183-84.) The California Supreme Court noted that the statutory language of section 65906 "emphasize[s] disparities between properties, not treatment of the subject property's characteristics in the abstract. [Citations.] It also contemplates that at best, only a small fraction of any one zone can qualify for a variance." (*Topanga*, supra, 11.Cal.3d at 520.)

The second element has been framed in terms of "unnecessary hardship." (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1007 (noting that " '[t]he essential requirement of a variance is a showing that a strict enforcement of the zoning limitation would cause unnecessary hardship' ").) Unnecessary hardship occurs "where the natural condition or topography of the land places the landowner at a disadvantage vis-à-vis other landowners in the area, such as peculiarities of the size, shape or grade of the parcel." (*Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1183.)

The City's proposed variance findings in the Staff Report are sparse and not supported by substantial evidence. First, the City failed to make any non-conclusory factual findings about undue hardship, that is, whether strictly applying the zoning code to the Project would deprive the applicant of privileges enjoyed by other properties in the vicinity under identical zoning classification. The City's failure to make such findings violates Government Code section 65906. (See *Orinda Assn v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1165 ("[U]nder Topanga, the Board's findings must include facts sufficient to show that these three [variance] conditions have been met.").)

Second, the City's undue hardship finding does not correspond with its special circumstances findings. "Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification." (Gov. Code, § 65906 (emphasis added).) The City has failed to adequately explain how the attributes of the Project Site deprive the property of privileges enjoyed by other

property in the vicinity. Third, the City has failed to explain what sort of hardship the applicant might suffer by denying the variance and why that hardship is undue.

I may be contacted at 310-982-1760 or at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Sincerely,

Jamie T. Hall