Laurie B. Jester

From: Donald Mcpherson <dmcphersonla@gmail.com>
Sent: Friday, March 17, 2017 7:56 PM
To: 'Eileen & John Neill'
Cc: List - City Council; List - Planning Commission; Quinn Barrow; Mark Danaj; Anne McIntosh; Liza Tamura; Laurie B. Jester; Eric Haaland; 'Eileen & John Neill'; 'Mark Shoemaker'; 'Gerry OConnor'; vic.law1@gmail.com; Pat Su; Lou Baher; Diana Driscoll; Kathy Fisher; Carrie Cook; Karla Mendelson; Allyn D Rifkin; Barbera Smith; 'Tracey DiLeva'
Subject: Mobilize the Gelson's Neighbors Against Brown Act violations

Per my email below to the city, the Gelson's neighborhood must muster for the March 22 hearing, to prevent being steamrollered by the planning staff over municipal code violations in the Paragon project.

My email distribution includes residents gleaned from the March 22 staff report, so to those, before rejecting me, please peruse one more paragraph, or maybe two or three. If you want off distribution, I will delete immediately.

I have no problems with Gleason's, but adamantly oppose staff's total disregard for compliance with the municipal code, regarding traffic, parking and impacts on the adjoining residential neighborhood. I live within a block of Sepulveda, and for 50 years, have fought hard to make the city toe the line on code compliance, with only modest success. I never ask for discretionary favors from those on high who govern us, but merely request code compliance, which the current Paragon project violates in spades.

If you read this far, some background on me regarding the Gelson's property. In 2002, the city council appointed me to serve on the General Plan Advisory Committee [GPAC], chaired by then and now newly-reelected Councilmember Steve Napolitano and also included Richard Montgomery as a member, now reelected councilmember. At the time, the current Planning Division promoted extending commercial zoning along north 8th St to Larsson. I led the opposition in the GPAC, which prevailed, because 30-foot buildings would encroach deeply into the residential neighborhood, with ensuing intensity impacts. New houses now occupy those lots on the north side of 8th. Every time seeing them, I take great pleasure in having a hand in those beautiful homes.

Fast forward to December 2003, when the city council approved the General Plan proposed by the GPAC. In that council meeting, the current Planning Division testified that the GPAC opposed commercializing the north side of 8th St to Larsson, because we wanted no more commercial development in the city. I testified otherwise, citing the residential impacts created by expanded commercialization into the 8th St and Larsson intersection. As result, the council denied the Planning Division proposal. After approving the General Plan, all five councilmembers thanked me for explaining the truth, of why the GPAC opposed commercializing the north side of 8th St.

Does the then and now Planning Division promote their uber code-violating development on the Paragon property to avenge their humiliating defeat fifteen years ago before the city council? When I appeal the Paragon project to the new city council, will Messrs. Napolitano and Montgomery remember the sane policies that have guided this city, based on the Number 1 Policy of low-profile development in the General Plan, which they, I and others formulated so long ago?

I have bcc'd them to their private addresses on this email, having more than an academic interest in what they will do at the appeal.

To date, the Planning Division has challenged us with a code-violating project on the Paragon property. With the March 22 staff report, they sharply escalated the stakes, by depriving us of our constitutional rights for an open discourse, as guaranteed by the Brown Act and the California Public Records Act.

The Gelson's neighborhood must not let them get away with it. Stand up for your rights. Email the planning commission and testify at the March 22 hearing. As evidenced by their March 22 report, however, the Planning Division will do everything in their power to stop you.

Thanks,

Don McPherson
1014 1st St, Manhattan Beach CA 90266
Cell: 310 487 0383
dmcphersonla@gmaol.com

From: Donald Mcpherson [mailto:dmcphersonla@gmail.com]
Sent: Friday, 17 March, 2017 12:53
To: 'Anne McIntosh' <amcintosh@citymb.info>
Cc: CityCouncil@citymb.info; PlanningCommission@citymb.info; qbarrow@citymb.info; Mark Danaj <mdanaj@citymb.info>; Liza Tamura <LTamura@citymb.info>; Laurie Jester <ljester@citymb.info>; Eric Haaland <ehaaland@citymb.info>; Eileen & John Neill <jejneill@earthlink.net>; Mark Shoemaker <markshoemaker@msn.com>; Gerry OConnor <gfoconnor@aol.com>; vic.law1@gmail.com
Subject: Demand for Gelson's Staff Report; Inclusion, My Code Violations Evidence

Anne McIntosh
Interim Director, Community Development
City of Manhattan Beach

Via Email

Subject: Demand for Gelson's Staff Report Inclusion, My Filed Evidence of Code Violations.

Director McIntosh,

The City has deliberately excluded from the subject March 22 staff report, my evidence submitted on 14 February 2017 to the planning commission, of municipal code violations regarding parking, noise disturbances, light trespass and prohibited signs.

I demand that the planning staff immediately revise the Gelson's staff report online, by including the attached public-records document, which I emailed to the planning commission last month, including your office.

This blatant violation of the Brown Act did not happen by chance. At pg. 338 in their staff report, the Planning Division included my email cover letter, but purposely withheld from the public, the factual evidence of municipal code violations in the attachment to that email.

The Brown Act requires that the City shall make available to the public, all writings submitted to the planning commission regarding Gelson's. [Gov. Code 54957.5 (a) & (b)(2)] The Planning Division has intentionally violated this requirement for openness. So much for their cynical pious compliance with the city "Sunshine Policy", as touted on pg. 14 of the February 8 staff report.

Second Brown Act Violation.

At the forthcoming March 22 continued public hearing on Gelson's, the City will prohibit residents from testifying on new material in the staff report, if they spoke at the February 8 meeting. For the Continued

Public Testimony item, the City will permit only those residents who did not speak at the previous hearing, snidely commenting "if any." [Staff Report Item 2, Pg. 2]

Pursuant to Gov. Code 54954.3 (a), the public may address the planning commission on anything in the staff report, before the commissioners consider the Gelson's project.

By gagging residents who spoke on February 8, the planning staff hopes to block legal challenges in the administrative record, regarding their pathetic efforts in the March 22 staff report, to resolve the issues previously raised by commissioners and the public.

Conclusion.

I insist that these Brown Act violations be corrected today, immediately.

Thanks,

Don McPherson
1014 1st St, Manhattan Beach CA 90266
Cell: 310 487 0383
dmcphersonla@gmail.com

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Angela Soo

Subject: FW: City of Manhattan Beach Brown Act Violations - Demand for Public Review - MIG Report.

From: Mark Shoemaker <MarkShoemaker@msn.com>
Date: March 18, 2017 at 5:07:47 AM PDT
To: 'Anne McIntosh' <amcintosh@citymb.info>, "PlanningCommission@citymb.info" <PlanningCommission@citymb.info>, "CityCouncil@citymb.info" <CityCouncil@citymb.info>, 'Mark Danaj' <mdanaj@citymb.info>
Cc: "qbarrow@citymb.info" <qbarrow@citymb.info>, 'Liza Tamura ' <LTamura@citymb.info>, 'Gerry OConnor' <gfoconnor@aol.com>, "vic.law1@gmail.com" <vic.law1@gmail.com>, Pat Su <Patsu449@gmail.com>, "Lou Baher" <bahar.louise@gmail.com>, Diana Driscoll <didnsc@gmail.com>, "Kathy Fisher" <kathy@growdelivers.com>, Carrie Cook <boyoboys@verizon.net>, "Karla Mendelson" <pmkg@verizon.com>, Allyn D Rifkin <allynrifken@gmail.com>, Barbera Smith <barbarasmith.mb@gmail.com>, 'Tracey DiLeva' <tracy.dileva@cbs.com>, 'Eileen & John Neill' <jejneill@earthlink.net>, Donald Mcpherson <dmcphersonla@gmail.com>
Subject: City of Manhattan Beach Brown Act Violations - Demand for Public Review - MIG Report.

Anne McIntosh
Interim Director, Community Development
City of Manhattan Beach

Dear Interim Director McIntosh,

Understandably you are new to your position and the subject situation, welcome. The City of Manhattan Beach has deliberately excluded from the Planning Staff report released March 16, 2017, as well as online Public records released by the City of Manhattan Beach on their website, the City's third party consultant, Moore, Iacafano, Goltsman (MIG) report that provided the City staff with an independent opinion of Public comments received by the City of MB in regards to the proposed Paragon development of Gelson's and a Bank. The City has only released to the Public, the report prepared by EcoTerra, which was paid for by Paragon the developer. Unsurprisingly, the EcoTerra report refuted and ignored virtually all Public comments in opposition to the Paragon Plan, and the City of MB Staff has mimicked their findings. The MIG report which has not been made Public, should also be used by the City of MB Staff, and the Public, to help determine whether the developer's MND's will be sufficient, or whether an EIR should be undertaken.

Several written requests have been made to the City of MB for the release of the MIG report, which have been ignored; nonresposiveness by the City of MB is a violation of the Brown Act. The City of MB Planning Staff should revise the Gelson's staff report, and City of MB online information, by including the MIG report as part of the Public-records documents. Withholding the MIG report for Public review is also a violation of the Brown Act which requires that the City shall make available to the Public, all writings submitted to the Planning Commission regarding the Gelson's project. The City of MB Planning Division has intentionally violated these basic Brown Act requirements; I request that these Brown Act violations be

corrected immediately, and that the MIG report, and all other related documents, be made openly available to the Public.

The release of Public-record documents yesterday by the City of MB Staff, less than a week before a Public hearing, where a vote by the Planning Commission is to be made, does not give adequate time for Public review of the City of MB findings, and Public response preparation. Several opposition comments made during the last Planning Commission meeting were ignored in the recent release. Blatantly omitted from the released documents were answers to fundamental questions asked by the Planning Commission at the last Planning Commission meeting, specifically pertaining to why a CEQA process was allowed for this project over an EIR, and why the CEQA process has not been followed. Several other Planning Commission questions were ignored, or again responses are not being made Public.

From the start, the City of MB Staff has violated the CEQA process, withheld information from the Public, made obtaining information difficult, charged for access to information, and ignored requests for onsite visits to see firsthand public safety concerns. Now it appears they are also ignoring, or withholding information, from the Planning Commission, or again not making information available to the Public. These are a few of of the many reasons, on record, that this project should be required to prepare an Environmental Impact Report, for more thorough studies, openness and public participation.

From the beginning, due to traffic on Sepulveda that will be impacted by Paragons' estimated 4000 daily entries and exits to the site, I have asked Paragon to make the project as safe as possible, and to provide adequate parking. By refuting and ignoring all the safety issues that have been presented, Paragon and the City of MB Staff is clearly not concerned with potential liability to the City of Manhattan Beach when accidents will happen.The acceptance by the City of MB planning Staff that there will be a less than 1% impact to surrounding traffic is ludicrous. If safety concerns are continued to be ignored, and improvements not made on this degraded road to handle the increased volume of traffic entering to, and exiting from, Sepulveda, when accidents happen, the City of MB (not Paragon) will likely be sued as being reckless and grossly negligent, sovereign immunity will not apply.

Do it safe, or don't do it all.

Mark Shoemaker
600 North Poinsettia Avenue

Manhattan Beach CA 90266

Cell: 310 466 4174
markshoemaker@msn.com

Eric Haaland

From: Donald Mcpherson <dmcphersonla@gmail.com>
Sent: Sunday, March 19, 2017 9:29 PM
To: List - Planning Commission
Cc: Mark Danaj; Anne McIntosh; Liza Tamura; Laurie B. Jester; Eric Haaland; Carrie Cook; Eileen & John Neill; Gerry OConnor; Karla Mendelson; Kathy Fisher; Lou Baher; Mark Shoemaker; Pat Su; Ralph Singer; Tracey DiLeva; vic.law1@gmail.com
Subject: Failure to Address Code Violations, Paragon Project
Attachments: 170319-McP-PC-ParagonCodeViolations-Compiled-ABY.pdf

Planning Commission
City of Manhattan Beach

Via Email

Subject: Planning Division Fails to Address Code Violations in Paragon Project

The Paragon project comprises a Gelson's market and a bank/office building, which violate in numerous ways, the municipal code, General Plan policies and even the draft use-permit resolution before the planning commission, Resolution PC 17-01.

These violations encompass the deceleration lane, the nonconforming pole sign, required parking, illumination trespass on residences, as well as noise from roof-top machinery.

On February 14, I submitted to the planning commission a preliminary summary of the violations. I assumed that the Planning Division would address these code violations in the March 22 staff report, which they did not.

The attachment provides the final version of the violations analysis and includes new evidence, such as CalTrans standards for the deceleration lane, which the City Traffic Engineer either has either ignored or has no knowledge of them.

I request that at the March 22 hearing, the planning commission sends Paragon and the Planning Division back, to prepare an application that complies with city and state regulations.

Regrettably, I cannot attend your hearing, because for an 86th birthday present, I will take Jeanne to Florida tomorrow, to visit a longtime close friend, who recently pulled up roots and relocated there, to live near her son. Old age forces painful decisions considered unthinkable when younger. You all have that to look forward to.

On that happy note, thanks for considering my comments,

Don McPherson
1014 1st St, Manhattan Beach
Cell: 310 487 0383
dmcphersonla@gmail.com

I request that at the March 22 hearing, the planning commission sends Paragon and the Planning Division back, to prepare an application that complies with city and state regulations.

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On that happy note, thanks for considering my comments,

Don McPherson
1014 1st St, Manhattan Beach
Cell: 310 487 0383
dmcphersonla@gmail.com

Don McPherson' 1014 1st St, Manhattan Beach CA 90266; Cell 310 487 0383; dmcphersonla@gmail.com

Planning Commission
City of Manhattan Beach
Via Email

Subject: Planning Division Fails to Address Code Violations in Paragon Project

The Paragon project comprises a Gelson's market and a bank/office building, which violate in numerous ways, the municipal code, General Plan policies and even the draft use-permit resolution, Reso PC 17-01, as follows:

1) Noncompliant deceleration lane [CalTrans compliance required, Reso 17-01 ¶26 (a)];
2) Retains existing pole sign, prohibited by municipal code MBMC 10.72.030 & .070;
3) Parking deficiency of 43 spaces, of 178 required by municipal code, MBMC 10.64.030;
4) No parking lot illumination design by electrical engineer, per MBMC 10.64.170(C)(2); and,
5) Residential noise disturbances from roof-top equipment, equal to Sepulveda traffic noise.

On February 14, I submitted to the planning commission these five violations of city and state law, substantiated by factual evidence. In their March 22 staff report, the Planning Division glosses over the violations, primarily parroting erroneous statements in Paragon's application, Mitigated Negative Declaration [MND] and traffic study.

The Planning Division and the City Traffic Engineer have approved the pitifully short and narrow deceleration lane that violates the CalTrans standard of 270-foot length for 35 mph speed, as required by the draft resolution. [PC Reso 17-01, ¶26 (a)] Presumably, they have taken this action to retain the prohibited pole sign and to relieve Paragon of costs for relocating the storm drain and fire hydrant.

The staff report does not address the prohibited pole sign at all. Apparently, not even the Planning Division can stomach trying to explain away the categorical prohibition on pole signs in the municipal code, if any other signage used. [MBMC 10.72.030 & .070]

The Paragon project description states that they will accept a CalTrans compliant deceleration lane, but only if the city and state pay for it and only if it does not impact parking. [Feb 8 staff report, p. 61 ¶3]

Exhibit 1 illustrates a deceleration lane compliant with CalTrans standards. This design provides 156 parking spaces, including 16 in the 8th St. lot. It complies with 155 spaces required by the parking ordinance, if the bank deleted. The Paragon design with the bank provides only 135 spaces, a 43-space deficit from the 178 spaces required by the parking ordinance.

In their March 22 staff report, at Item 20 Parking, the Planning Division directs that the planning commission must grant Paragon a waiver for the 43-space discrepancy, which results from the erroneous modeling of parking requirements by the Paragon consultant KOA.

The city has granted only two such waivers in its entire history, but the Planning Division insists that the Commission must approve this one, without providing the slightest justification. Fortunately, Commissioners have the discretion to ignore the Planning Division on this matter.

Bottom Line. The planning commission should send Paragon and the Planning Division back, to prepare an application that complies with city and state regulations.

VIOLATIONS OF CITY AND STATE REGULATIONS.

The following summarizes the factual evidence that substantiates the five violations of city and state regulations cited above.

1. Deceleration Lane Too Short and Narrow.

The draft resolution before the planning commission requires a deceleration lane that complies with CalTrans standards. [PC Reso 17-01, ¶26 (a)] In their project description, Paragon states they will agree with such a deceleration lane, but only if the city and state pay for it. [Feb 8 staff report, p. 61 ¶3]

The deceleration lane should have a minimum 270-foot length and 11-foot width, per the Exhibit 2 Chapters 300 & 400 in the CalTrans Highway Design Manual and a 35-mph speed limit on Sepulveda Blvd. Preferably, the deceleration lane should have 12-foot width.

When approving Paragon's design for the deceleration lane, the City Traffic Engineer has turned a blind eye to these CalTrans standards required by PC Reso 17-01, ¶26 (a). **Why?**

The Exhibit 1 design for the deceleration lane and parking lot fully complies with CalTrans standards, including the 12-foot preferred width.

In their February 22 staff report, however, the Planning Division proposes a too-short, too-narrow deceleration lane that violates CalTrans standards, and thereby Condition 26 (a) in Resolution PC 17-01. **Why?**

2. Municipal Code Prohibits Retaining the Abandoned Pole Sign.

The municipal code prohibits retention of the existing pole sign, although the Planning Division has approved it, per Paragon plans. [Feb. 8 Staff Report, pp. 101, 104]

The pole sign has not identified any land use for over 90 days, which renders it 'abandoned.' [MBMC 10.72.030] The municipal code categorically prohibits 'abandoned' signs. [MBMC 10.72.070(F)]

General Plan Policy LU-3,5 states, "2. *protect business sites from loss of prominence resulting from excessive signs, **particularly pole signs**, on nearby sites;*" [Emphasis added]

In Exhibit 3, check out Paragon's proposed sign for 'loss of prominence.'

If Paragon wants a pole sign, they must apply for it in their application. Pursuant to MBMC 10.72.050, however, with a pole sign, they must forego all the other wall, awning and monument signs identified in the Feb. 8 Staff Report, namely, the 16 pages starting at p. 99.

In the March 22 staff report, the Planning Division makes not the slightest mention of the pole-sign violations regarding General Plan policies and the municipal code sign ordinance. **Why?**

3a. Errors in Parking Demand Modeling Reduced Parking Requirements.

The parking analysis by consultant KOA contains blatant errors that disqualifies it from consideration, such as:

1) Used one-space per 75-sqft for seated eating & drinking, rather than one-space per 50-sqft;
2) Used net seated area of eating & drinking, rather than gross area required for takeout;
3) Excluded 100-sqft of seated eating & drinking area in NE corner of Gelson's; and,
4) Excluded 7-day, 24-hour ATM use by bank customers.

Per Exhibits 4 and 5, these modeling errors by KOA reduced eating & drinking parking requirements from 17 spaces to ten. Per Exhibit 6, excluding ATM use zeroed-out bank customers in evenings and weekends, not to mention intoxicated people getting cash in the wee hours.

Regarding seated food service versus takeout, the municipal code has two separate provisions. [MBMC 10.64.030] Seated-service requires one space per 50-sqft, based on the net customer service area. Takeout service requires one space per 75-sqft, but includes the total gross area, including food-preparation area and passageways.

To improperly reduce the parking spaces required for eating & drinking, KOA cherry-picked the parking-ordinance, using the one-space per 75-sqft area for takeout, but the smaller net area for seated service. Exhibit 4 properly shows the parking requirements: 17 for seated service, on the first page, but 19 for a takeout eating & drinking place, on the second page.

As another example of manipulating the parking analyses, in the March 22 Staff Report at pp. 195, the Paragon representative states the indoor dining area as 145-sqft, not the 206-sqft cited in Reso 17-01. Per Exhibit 4, the indoor seating area comprises 315-sqft, over twice that claimed by Paragon.

To reduce the parking required, KOA uses a standard based on number of seats, not area, as the municipal code requires. [Traffic Impact and Parking Demand, pp. 47] By manipulating the number of seats, they easily reduced the number of spaces required. Also, the use permit specifies area for eating and drinking, which makes enforcement of seat numbers impossible, not to mention that the use permit left out 100-sqft in the NE corner.

Additionally, to reach their 135-space goal, rather than the 178 required by the municipal code, KOA excluded ATM parking demand during evenings and weekends.

3b. Planning Division New Policy for Decreasing Parking Requirements.

It appears staff has joined with Paragon to formulate a city new policy for the two reduced-parking provisions in the municipal code, elevating them as a modeling alternative to the quantitative standards in effect since 1991, pursuant to MBMC 10.64.030.

A comprehensive review of the city record has disclosed only two previous parking reductions, based on the provisions MBMC 10.64.040 & 10.64.050:
1) 1829 N. Sepulveda Blvd, *Tikvat Jacob,* a religious facility [2012]; and,
2) 3601 Aviation Blvd., *Continental Rosecrans Aviation LP,* an office building [2013].

First, the planning commission should determine whether reduced parking even applies to the Paragon project. Except for the two projects listed above, the city has not considered any other applications for reduced parking. Some reason must exist why no other developments have applied for reduced parking, as the Planning Division promotes for Paragon, much less received approval.

In terms of residential environmental impact, the Paragon project directly corresponds to *Tikvat Jacob*, located in the D Design Overlay District D-6, Oak Ave. [MBMC Chapter 10.44]

In this modification of an existing use, the city approved reduced parking for an expansion of the religious assembly area and inclusion of a day-care center.

Larsson St. closely resembles the Oak Ave neighborhood, by comprising three blocks adjacent to commercial properties west of Sepulveda.

The D Design Overlay District includes a restriction on reduced parking in the North End, namely, *"j. The Planning Commission may allow reduced parking with a use permit for neighborhood-oriented uses such as small retail stores, personal services, and eating and drinking establishments open for breakfast and lunch, subject to the requirements of Section 10.64.050(B)."* [MBMC 10.44.040]

The above citation implies that as a matter of policy, the city applies the reduced- parking provisions to highly-restricted special situations, as evidenced by only two projects ever receiving approval. Therefore, existing policy does not permit reduced parking the Paragon project.

Bottom Line. In their March 22 staff report at Item 20 Parking, the Planning Division states the two reduced-parking provisions mandate that the planning commission must accept the erroneous and manipulated parking-demand analysis prepared by KOA. Nothing could be further from the truth. In its entire history, the city has approved only two such waivers. The Commissioners should exercise their discretional authority and overrule the Planning Division on this matter.

4. Environmental Impacts from Parking-Lot Lighting.

Paragon has not submitted a design for parking-lot illumination. With Larsson St. elevated nearly at project roof height, that exposes homes to parking-lot lights. [Exhibit 7]. Likewise, the three new houses on 8th St. have direct views of both proposed parking lots.

The existing light fixtures, although relocated, cannot comply with the requirement for a sharp cutoff at all property lines top prevent residential impacts. [MBMC 10.64.170(C)(2)]

For the March 22 hearing, Paragon should have provided a mitigated design by a registered electrical engineer, for parking-lot illumination at both proposed lots, to ensure no direct view of light sources from surrounding homes, at second-story elevation.

Anything less does not comply with the municipal code.

In their March 22 staff report, the Planning Division dismisses lighting trespass as an issue, providing no evidence to support their position.

3. Noise from Rooftop Equipment.

The Initial Study/MND erroneously dismisses the environmental impact of noise from rooftop equipment, because the loudness is 2.3 decibels [dB] less than ambient. [Initial Study/MND p. 119] The rooftop equipment and ambient noise effectively have the same loudness, at 55 dB and 57.2 dB respectively.

According to EcoTerra, if two noise sources exist, but one slightly less intense than the other, then we cannot hear both sources. In contrast, however, at a loud cocktail party, we discern individuals speaking, in a room-filled with babble talk.

Furthermore, residents will instinctively focus on the chugging compressors and whining fans, while tuning out the random ambient background. People easily distinguish periodic sounds, even if far quieter than the ambient level. Published literature cites this attribute as *'selective auditory attention'* or *'selective hearing.'*

The municipal code prohibits *"...any loud, unnecessary and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness."* [MBMC 5.48.140]

By addressing only quantitative decibel values, rather than the disturbance provision cited above, EcoTerra has displayed their ignorance of the city noise ordinance, which closely follows the standards adopted by most, if not all, local governments in California.

In their March 22 staff report, the Planning Division summarily dismisses roof top noise as an issue, without the slightest basis for their opinion.

Ironically, the analysis by EcoTerra proves that noise from rooftop equipment approximately equals that of Sepulveda traffic and the ambient, thereby guaranteeing to cause "d*iscomfort or annoyance*," and thereby, environmental impact.

CONCLUSIONS.

The Paragon project violates CalTrans standards for the deceleration lane, thereby violating the resolution before the planning commission. The City Traffic Engineer appears to have no knowledge of these CalTrans standards. The Planning Division approved the deceleration lane, apparently to retain the prohibited pole-sign and to relieve Paragon from paying for the construction. In their project description, Paragon requires the city and the state to pay for the deceleration lane.

In their March 22 staff report, the Planning Division has refused to address the code violation of retaining the abandoned pole sign.

The project has a parking deficit of 43 spaces, out of 178 required. The consultant KOA has reduced the parking required by: 1) Incorrectly using municipal code standards; 2) Ignoring eating & drinking space in the Gelson's NE corner; 3) Manipulating the requirements by using per seat standards rather than area; and, 4) Excluding ATM users at the so-called bank, cum office building. The Planning Division approves this charade and instructs the Commissioners that they must grant a parking waiver based on this highly flawed analysis, even though the city has done so only twice in its history.

Paragon has not provided an external illumination design prepared by an electrical engineer, as required by code.

The consultant EcoTerra has determined that equipment rooftop noise approximately equals that from Sepulveda traffic and the ambient. They steadfastly state that residents will not hear the equipment noise, because it slightly less intense than Sepulveda, a difference smaller than the margin of error in the analysis.

In their March 22 staff report, the Planning Division supports all the above, without providing a single valid fact to substantiate their claims.

Bottom Line. The planning commission should send Paragon and the Planning Division back, to prepare an application in compliance with city and state regulations, just as all applicants must and do.

Thanks for your consideration of my comments on the Paragon project, Don McPherson

EXHIBIT 1. PARKING LOT AND DECELERATION LANE COMPLIES WITH REGULATIONS

+156 PARKING SPACES, VERSUS 155 REQUIRED BY MUNICIPAL CODE
+158 SPACES WITH COMPACT PARKING IN EAST ROW
+270-FOOT LONG, 12-FOOT WIDE DECELERATION LANE, PER CALTRANS STANDARDS

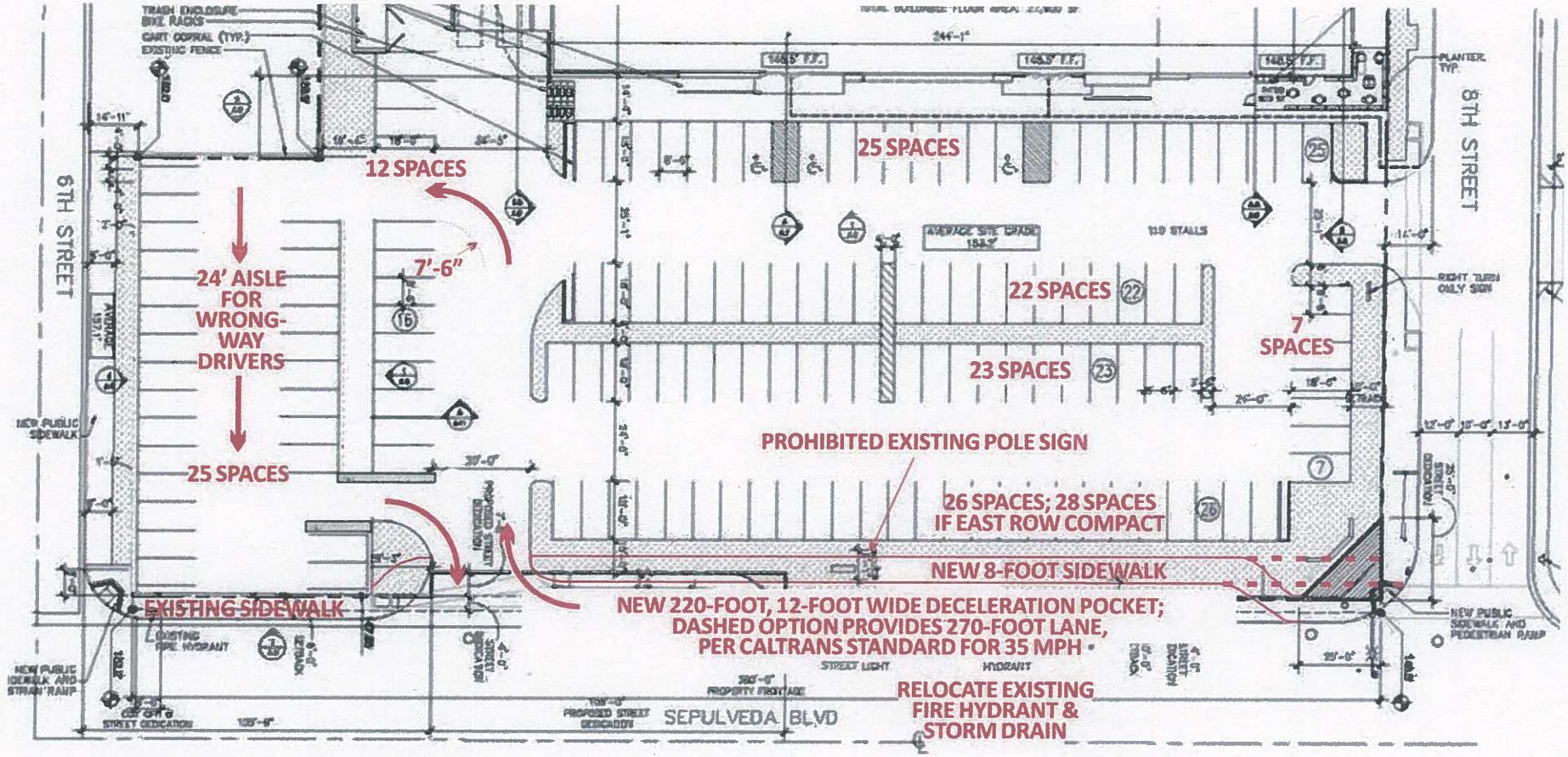


EXHIBIT 2. DECELERATION LANE STANDARDS; IGNORED BY CITY TRAFFIC ENGINEER

SEE INDEX 301.1 LANE WIDTH BELOW

CHAPTER 300
GEOMETRIC CROSS SECTION

The selection of a cross section is based upon the joint use of the transportation corridor by vehicles, including trucks, public transit, cyclists and pedestrians. Designers should recognize the implications of this sharing of the transportation corridor and are encouraged to consider not only vehicular movement, but also movement of people, distribution of goods, and provision of essential services. Designers need also to consider the plan for the future of the route, consult Transportation Concept Reports for state routes.

Topic 301 - Traveled Way Standards

The traveled way width is determined by the number of lanes required to accommodate operational needs, terrain, safety and other concerns. The traveled way width includes the width of all lanes, but does not include the width of shoulders, sidewalks, curbs, dikes, gutters, or gutter pans. See Topic 307 for State highway cross sections, and Topic 308 for road cross sections under other jurisdictions.

Index 301.1 – Lane Width

The minimum lane width on two-lane and multilane highways, ramps, collector-distributor roads, and other appurtenant roadways shall be 12 feet, except as follows:

- **For conventional State highways with posted speeds less than or equal to 40 miles per hour and AADTT (truck volume) less than 250 per lane that are in urban, city or town centers (rural main streets), the minimum lane width shall be 11 feet. The preferred lane width is 12 feet.** See Index 81.3 for place type definitions.

Where a 2-lane conventional State highway connects to a freeway within an interchange, the lane width shall be 12 feet.

Where a multilane State highway connects to a freeway within an interchange, the outer most lane of the highway in each direction of travel shall be 12 feet.

For Sepulveda Blvd, minimum width 11-ft; preferred width 12-ft

- For highways, ramps, and roads with curve radii of 300 feet or less, widening due to offtracking in order to minimize bicycle and vehicle conflicts must be considered. See Index 404.1 and Table 504.3A.
- For lane widths on roads under other jurisdictions, see Topic 308.

301.2 Class II Bikeway (Bike Lane) Lane Width

(1) *General.* **Class II bikeways (bike lanes), for the preferential use of bicycles, may be established within the roadbed and shall be located immediately adjacent to a traffic lane as allowed in this manual.** A buffered bike lane may also be established within the roadbed, separated by a marked buffer between the bike lane and the traffic lane or parking lane. See the California MUTCD for further buffered bike lane marking and signing guidance. Contraflow bike lanes are designed for bike travel in the opposite direction as adjacent vehicular traffic, and are only allowed on one-way streets. See the California MUTCD for contraflow bike lane marking and signing guidance. Typical Class II bikeway configurations are illustrated in Figure 301.2A. A bikeway located behind on-street parking, physical separation, or barrier within the roadway is a Class IV bikeway (separated bikeway). See DIB 89 for Class IV bikeway (separated bikeway) design guidance. **The minimum Class II bike lane width shall be 4 feet, except where:**

- Adjacent to on-street parking, the minimum bike lane should be 5 feet.
- Posted speeds are greater than 40 miles per hour, the minimum bike lane should be 6 feet, or
- **On highways with concrete curb and gutter, a minimum width of 3 feet measured from the bike lane stripe to the joint between the shoulder pavement and the gutter shall be provided.**

Class II bikeways may be included as part of the shoulder width See Topic 302.

EXHIBIT 2. DECELERATION LANE STANDARDS; IGNORED BY CITY TRAFFIC ENGINEER

SEE TABLE 405.2B BELOW FOR DECELERATION LANE LENGTHS

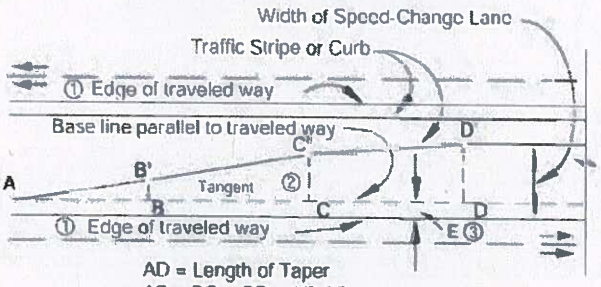
Deceleration lane lengths are given in Table 405.2B; the bay taper length is included. Where partial deceleration is permitted on the through lanes, as in Figures 405.2B and 405.2C, design speeds in Table 405.2B may be reduced 10 miles per hour to 20 miles per hour for a lower entry speed. In urban areas where cross streets are closely spaced and deceleration lengths cannot be achieved, the District Traffic branch should be consulted for guidance.

(e) Storage Length -- At unsignalized intersections, storage length may be based on the number of turning vehicles likely to arrive in an average 2-minute period during the peak hour. At a minimum, space for 2 vehicles should be provided at 25 feet per vehicle. If the peak hour truck traffic is 10 percent or more, space for at least one passenger car and one truck should be provided. Bus usage may require a longer storage length and should be evaluated if their use is anticipated.

At signalized intersections, the storage length may be based on one and one-half to two times the average number of vehicles that would store per signal cycle depending on cycle length, signal phasing, and arrival and departure rates. At a minimum, storage length should be calculated in the same manner as unsignalized intersection. The District Traffic Branch should be consulted for this information.

When determining storage length, the end of the left-turn lane is typically placed at least 3 feet, but not more than 30 feet, from the nearest edge of shoulder of the intersecting roadway. Although often set by the placement of a crosswalk line or limit line, the end of the storage lane should always be located so that the appropriate turning template can be accommodated.

Table 405.2A
Bay Taper for Median Speed-change Lanes



AD = Length of Taper
AB = BC = CD = 1/3 AD
AB' & C'D' are Parabolic Curves

	LENGTH OF TAPER - feet			OFFSET DISTANCE			
	60	90	120	DD' = 10'	DD' = 11'	DD' = 12'	
	Distance From Point "A"						
	5	7.5	10.0	0.00	0.00	0.00	
	10	15.0	20.0	0.16	0.17	0.19	
	15	22.5	30.0	0.62	0.69	0.75	
B'	20	30.0	40.0	1.41	1.55	1.69	
	30	45.0	60.0	2.50	2.75	3.00	B'
C'	40	60.0	80.0	5.00	5.50	6.00	
	45	67.5	90.0	7.50	8.25	9.00	C'
	50	75.0	100.0	8.59	9.45	10.31	
	55	82.5	110.0	9.38	10.31	11.25	
	60	90.0	120.0	9.84	10.83	11.81	
				10.00	11.00	12.00	

NOTES:

(1) The table gives offsets from a base line parallel to the edge of traveled way at intervals measured from point "A". Add "E" for measurements from edge of traveled way.

(2) Where edge of traveled way is a curve, neither base line nor taper between B & C will be a tangent. Use proportional offsets from B to C.

(3) The offset "E" is usually 2 ft along edge of traveled way for curbed medians; Use "E" = 0 ft. for striped medians.

Table 405.2B
Deceleration Lane Length

Design Speed (mph)	Length to Stop (ft)
30	235
40	315
50	435
60	530
35 mph	270 ft

EXHIBIT 3

GELSON'S POLE SIGN ABANDONED AND NOT PERMITTED

Municipal Code Prohibits Use of Abandoned Signs

MBMC 10.72.030 - Definitions.
"Abandoned sign" means any sign or structure which: identifies a use which has not occupied the site on which it is located for a period of ninety (90) days, **does not clearly identify any land use for a period of ninety (90) days**, or has been in a state of disrepair or poor condition for a period of thirty (30) days.
[Emphasis added]

MBMC 10.72.070 - Prohibited signs.
F. Abandoned signs;

EXHIBIT 4. PARKING REQUIREMENTS FOR SEATED VERSUS TAKEOUT EATING & DRINKING

+GELSON'S HAS SEATED EATING & DRINKING AT ONE SPACE PER 50-SQFT, BUT KOA USED ONE SPACE PER 75-SQFT, THE TAKEOUT STANDARD.
+KOA ALSO EXCLUDED THE 104-SQFT EATING & DRINKING AREA IN NE CORNER
+BY THIS MEANS, KOA IMPROPERLY REDUCED PARKING REQUIRED FROM 17 TO 10

NET INDOOR-OUTDOOR EATING & DRINKING AREA, 838.1 SF,
16.8 PARKING SPACES @ 1 PER 50 SF FOR SIT-DOWN
[Pg. 222, 8 Feb 2017 Staff Report and MBMC 10.64.030]

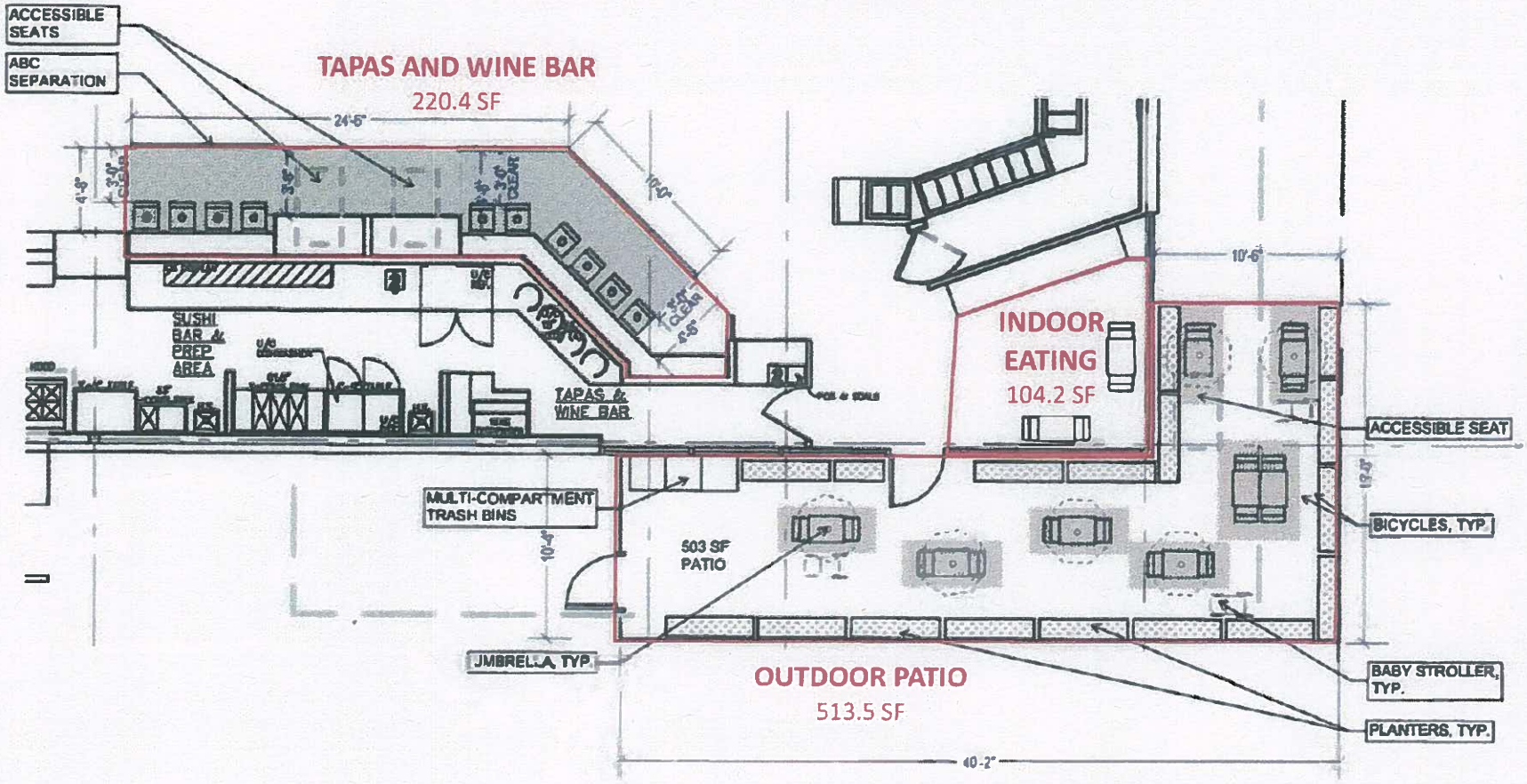


EXHIBIT 4. PARKING REQUIREMENTS FOR SEATED VERSUS TAKEOUT EATING & DRINKING

+IF KOA HAD USED THE TAKEOUT PARKING STANDARD PROPERLY, WITH GROSS AREA, THAT WOULD HAVE REQUIRED 19 PARKING SPACES

GROSS INDOOR-OUTDOOR EATING & DRINKING AREA: 1,446.3 SF

19.3 PARKING SPACES @ 1 PER 75 SF FOR TAKE-OUT

[Pg. 222, 8 Feb 2017 Staff Report and MBMC 10.64.030]

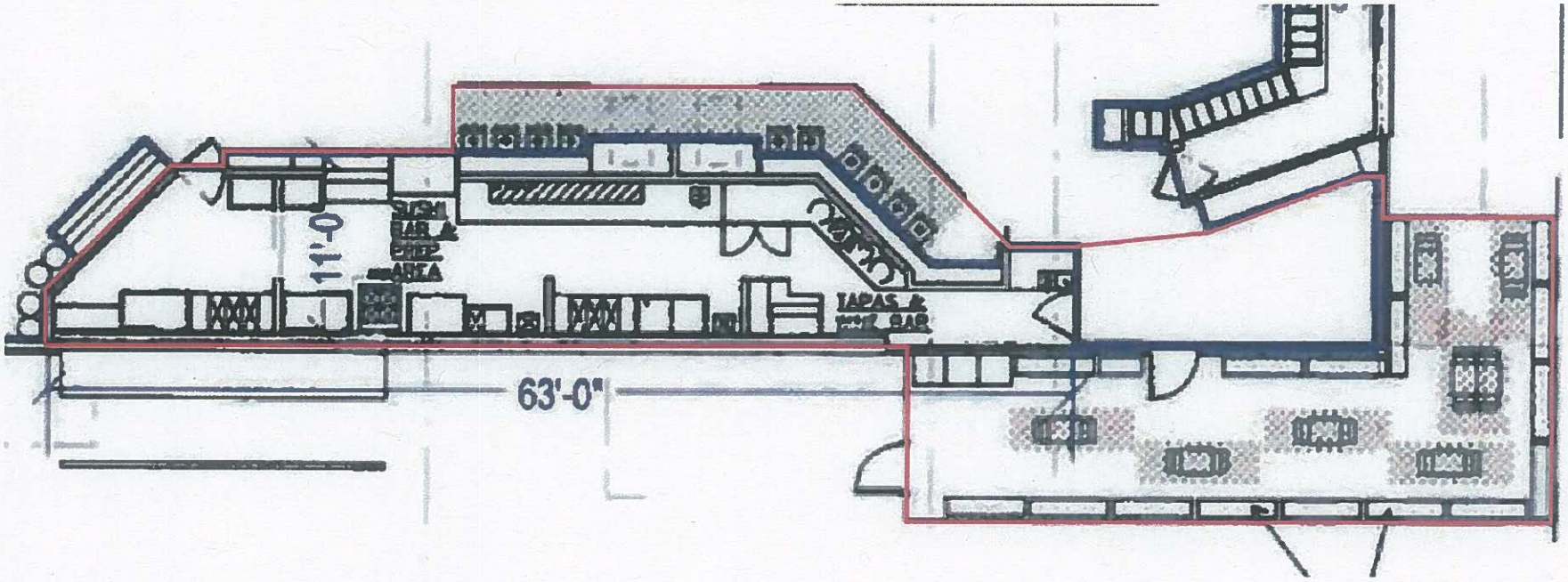


EXHIBIT 5. PARKING CALCULATIONS WITH AND WITHOUT BANK/OFFICE BUILDING

GELSON'S REQUIRES 155 SPACES WITHOUT NONCONFORMING BANK; EXHIBIT 1 PARKING PLAN PROVIDES 156 SPACES; 158 WITH COMPACT SPACES

EXCERPT FROM PARAGON TRAFFIC & PARKING STUDY

Table 11A – City Parking Code Requirements for – Project Uses on a Stand Alone Basis

DESCRIPTION	SIZE	PARKING RATE [1]	STAND-ALONE SPACES REQUIRED
Specialty Grocery Store	27,694 sq.ft.	1 space per 200 SF	138
Food Service Seating - Indoor [2]	206 sq.ft.	1 space per 75 SF	~~3~~
Food Service Seating - Outdoor	503 sq.ft.	1 space per 75 SF	17 ~~7~~
Bank [3]	6,800 sq.ft.	1 space per 300 SF	23
Total Code Parking Requirement			178~~171~~

Paragon/KOA used the wrong standard for eating places, 1 space per 75 SF. The correct standard of 1 space per 50 SF results in 17 spaces total

MUNICIPAL CODE MBMC 10.64.030 REQUIREMENT 178
PARAGON/KOA DESIGN 135
PARAGON/KOA PARKING-SPACE DEFICIENCY -43
REMOVE BANK/OFFICE BUILDING, 178-23 SPACES = 155 REQUIRED
EXHIBIT 1 PARKING DESIGN SPACES, WITHOUT BANK = 156
1 EXTRA

WITH COMPACT SPACES IN EAST ROW 3 EXTRA

EXHIBIT 6. KOA PARKING ANALYSIS EXCLUDES EVENING ATM USE

KOA CORPORATION
PLANNING & ENGINEERING

Table 11C – Shared Parking Analysis Results – Using ITE Rates

Not permitted

WEEKDAY SITE PARKING ACCUMULATION

Time of Day	Specialty Grocery Store	Prepared Food Seating Area	Bank	Total Shared Demand	Parking Surplus/ (Deficit) Site Supply = 135 spaces	Parking Surplus/ (Deficit) w/Added Supply = 155 spaces
7:00	5	0	0	5	130	150
8:00	16	0	14	30	105	125
9:00	37	0	24	61	74	94
10:00	68	2	27	97	38	58
11:00	89	4	14	107	28	48
Noon	100	8	14	122	13	33
1:00PM	105	8	14	127	8	28
2:00	100	7	19	126	9	29
3:00	95	4	14	113	22	42
4:00	95	5	22	122	13	33
5:00	100	8	27	135 *	0	20
6:00	100	10	0	110	25	45
7:00	100	10	0	110	25	45
8:00	84	10	0	94	41	61
9:00	53	10	0	63	72	92
10:00	32	10	0	42	93	113

WEEKDAY PARKING ACCUMULATION PERCENTAGES [1]

Time of Day	Market	Prep Food Seat Area	Bank
7:00	5%	0%	0%
8:00	15%	0%	50%
9:00	35%	0%	90%
10:00	65%	15%	100%
11:00	85%	40%	50%
Noon	95%	75%	50%
1:00PM	100%	75%	50%
2:00	95%	65%	70%
3:00	90%	40%	50%
4:00	90%	50%	80%
5:00	95%	75%	100%
6:00	95%	95%	0%
7:00	95%	100%	0%
8:00	80%	100%	0%
9:00	50%	100%	0%
10:00	30%	95%	0%

Ignores ATM banking use, evenings

WEEKEND SITE PARKING ACCUMULATION

Time of Day	Specialty Grocery Store	Prepared Food Seating Area	Bank	Total Shared Demand	Parking Surplus/ (Deficit) Site Supply = 135 spaces	Parking Surplus/ (Deficit) w/Added Supply = 160 spaces
7:00	5	0	0	5	130	155
8:00	11	0	6	17	118	143
9:00	33	0	10	43	92	117
10:00	55	0	18	73	62	87
11:00	71	2	24	97	38	63
Noon	87	5	22	114	21	46
1:00PM	98	6	19	123	12	37
2:00	109	5	17	131 *	4	29
3:00	109	5	0	114	21	46
4:00	104	5	0	109	26	51
5:00	98	6	0	104	31	56
6:00	87	9	0	96	39	64
7:00	82	10	0	92	43	68
8:00	71	10	0	81	54	79
9:00	55	9	0	64	71	96
10:00	38	9	0	47	88	113

WEEKEND PARKING ACCUMULATION PERCENTAGES [1]

Time of Day	Market	Prep Food Seat Area	Bank
7:00	5%	0%	0%
8:00	10%	0%	25%
9:00	30%	0%	40%
10:00	50%	0%	75%
11:00	65%	15%	100%
Noon	80%	50%	90%
1:00PM	90%	55%	80%
2:00	100%	45%	70%
3:00	100%	45%	0%
4:00	95%	45%	0%
5:00	90%	60%	0%
6:00	80%	90%	0%
7:00	75%	95%	0%
8:00	65%	100%	0%
9:00	50%	90%	0%
10:00	35%	90%	0%

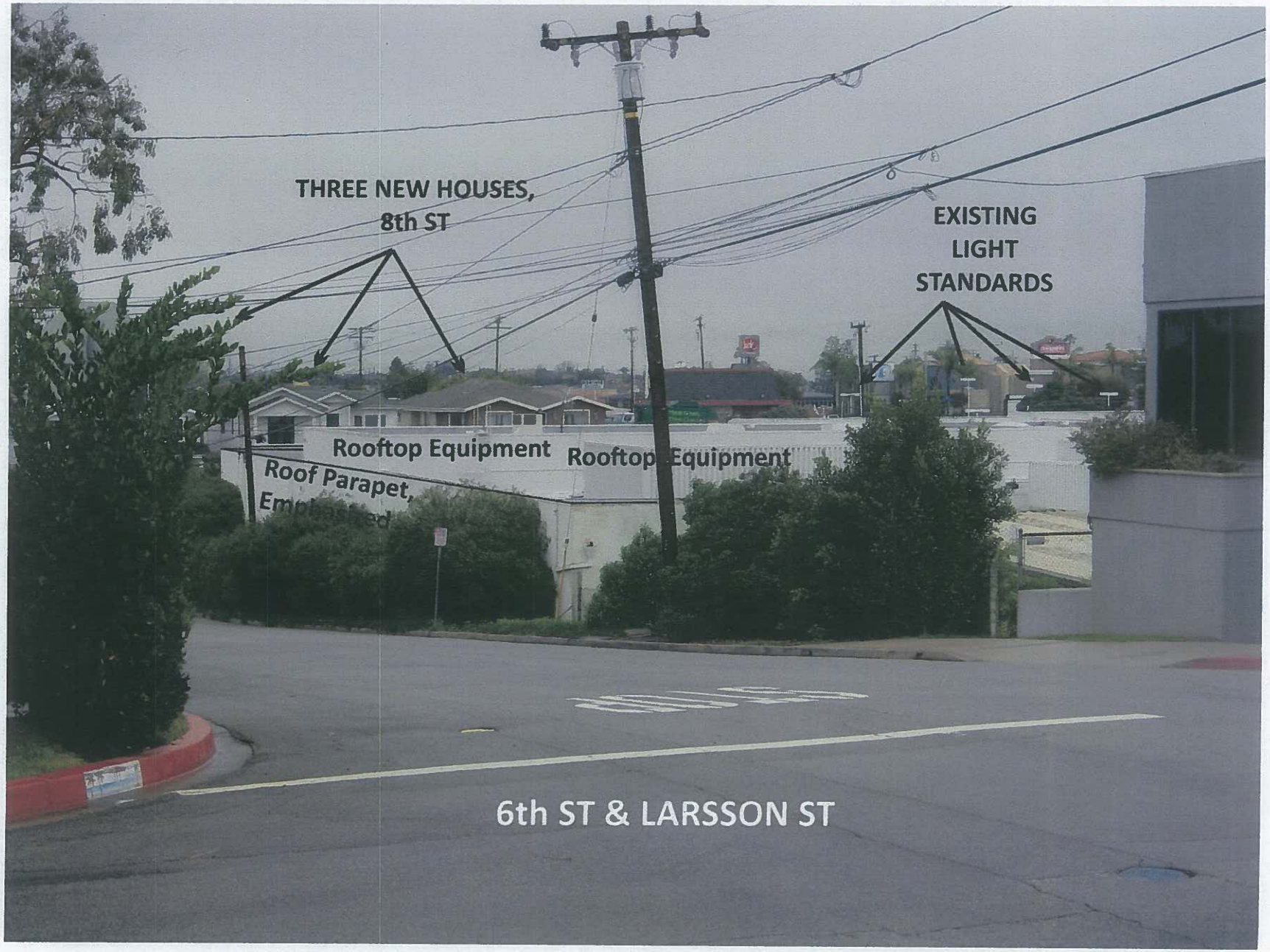
Ignores ATM banking use, evenings

[1] Source: Tables 2-5 and 2-6 from: Urban Land Institute Shared Parking, 2nd Edition

** Bank use percentage demand was extended past the noon hour, where ULI data ends, to the 2:00 p.m. hour based on the planned project bank hours. Demand is assumed to taper off each hour, from the 90 percent activity number defined by ITE for the noon hour.*

EXHIBIT 7. PARAGON/ECOTERRA PREDICT MACHINERY NOISE SIMILAR TO SEPULVEDA TRAFFIC NOISE

ALL NEIGHBORS HAVE LINE OF SIGHT TO PARKING LIGHTS AND ROOFTOP MACHINERY



Angela Soo

Subject: FW: Gelson's Neighborhood Market at 707 N. Sepulveda Boulevard
Attachments: Planning Commission Letter.pdf

From: roma.khan@akerman.com [mailto:roma.khan@akerman.com]
Sent: Monday, March 20, 2017 12:01 PM
Subject: Gelson's Neighborhood Market at 707 N. Sepulveda Boulevard

Dear Honorable Members of the City of Manhattan Beach Planning Commission:

Please find the attached letter from PCG's legal counsel in connection with the March 22, 2017 hearing.

Thank you,

Roma Khan
Legal Assistant to Ellen Berkowitz, Brady R. McShane and Lisa Kolieb
Akerman LLP | 38th Floor | 725 South Figueroa Street | Los Angeles, CA 90017-5438
Dir: 213.533.5948 | Main: 213.688.9500 | Fax: 213.627.6342
roma.khan@akerman.com

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Ellen Berkowitz

Akerman LLP
38th Floor
725 South Figueroa Street
Los Angeles, CA 90017-5438

March 20, 2017

VIA E-MAIL & U.S. MAIL

Honorable Members of the
City of Manhattan Beach Planning Commission
1400 Highland Avenue
Manhattan Beach, California 90266

Re: Gelson's Neighborhood Market at 707 N. Sepulveda Boulevard

Dear Honorable Members of the City of Manhattan Beach Planning Commission:

This law firm represents PCG MB LLC ("PCG") in connection with its application to redevelop a former auto dealership and collision repair facility located at 707 N. Sepulveda Boulevard with an approximately 27,900 square foot Gelson's Neighborhood Market, 6,684 square foot bank and associated parking ("Project").

On behalf of PCG, we would like to thank City of Manhattan Beach ("City") staff and the Planning Commission for their hard work on this Project and dedication to Manhattan Beach residents. We believe the Project offers significant benefits to the community. PCG has created a Project that will reuse and renovate a dilapidated automotive facility with a Code-compliant and energy efficient, neighborhood serving use that addresses significant grocery sales leakage in the area, while also providing a pedestrian friendly setting in which local residents can gather and enjoy high quality amenities. The Project is 15% smaller than the prior use and ***75% smaller than is allowed by the City's Municipal Code***.

We are writing to directly address certain misinformation that has been widely disseminated by Project opponents, primarily by members of the Manhattan Beach Residents for Responsible Development ("MBRRD") and its paid consultants, including its attorney and traffic consultant. Together, these individuals have made a number of false and misleading comments regarding the environmental analysis contained in the Mitigated Negative Declaration ("IS/MND"). This letter provides the Planning Commission with an accurate statement of the law and facts – as distinguished from hyperbole and conjecture – so that it has the necessary information on which to base its decision.

Section I of this letter contains an Executive Summary of the five (5) issues that will be discussed in further detail within the letter, primarily involving issues of law arising under the California Environmental Quality Act ("CEQA"). Sections II-V of this letter set forth the detailed case law, municipal ordinances, and state laws and regulations supporting the points discussed. Section VI contains the conclusions.

In sum, the City and its consultants have thoroughly analyzed and addressed all public comments, and the IS/MND fully complies with CEQA. Accordingly, the Planning Commission should adopt the IS/MND and approve the Project.

I. EXECUTIVE SUMMARY

A. The Public Comments Raised at the February 8, 2017 Planning Commission Hearing (the "Hearing") Have Been Fully Addressed in the IS/MND, the Responses to Comments on the IS/MND (the "Responses") and the City's Supplemental Memorandum.

- The vast majority of the oppositions' statements made at the Hearing were previously submitted to the City during the public circulation period for the IS/MND.
- While many of these comments appear to raise concerns that would certainly be of interest to the Commission, the fact is that all of the issues have been thoughtfully considered and meaningfully addressed within the Project's design and operational plans.
- The issues have also been thoroughly and completely addressed in the IS/MND, the detailed Responses that were prepared and made available to the public well in advance of the Planning Commission's hearing and in the City's Supplemental Memorandum.
- Thus, although the opponents' comments express their opinions, feelings or fears regarding the Project, they do not raise significant environmental issues or otherwise identify deficiencies in the IS/MND's detailed environmental analysis.
- Notwithstanding that these comments have been addressed multiple times in the public forum, City Staff has prepared a "Supplemental Memorandum" which again makes abundantly clear that such comments do not present substantial evidence of significant environmental impacts. We agree with the Supplemental Memorandum and support its conclusions.

B. CEQA Mandates that the City Prepare an MND for this Project Because There is No Substantial Evidence Indicating the Potential for Significant Environmental Impacts.

- CEQA is clear that a lead agency (such as the City here) ***must*** prepare an MND, and not an EIR, when (as here) there is no substantial evidence that the Project may cause a significant environmental impact.
- More specifically, the law provides that a lead agency may not require an EIR for curiosity's sake or to merely assuage public opinion, but "***shall***" issue a negative declaration instead when the legal standard for the preparation of an EIR has not been met.[1]

[1] Pub. Resources Code § 21080, subd. (c); CEQA Guidelines §§ 15064 and 15070 (directing that a public agency "*shall"* prepare an MND in the absence of substantial evidence of significant impacts).

- Importantly, the law also provides that argument, speculation, unsubstantiated opinions and generalized concerns about a project's environmental impact do not constitute "substantial evidence" requiring an EIR.[2]

- Notably, and contrary to the overruled case that was cited by MBRRD's attorney at the Hearing, ***public controversy is not a basis for requiring the preparation of an EIR***.[3]

C. <u>The IS/MND Provides the Same Level of Detailed Analysis of the Project's Potential for Traffic, Parking, Noise and Air Quality Impacts as Would an EIR</u>.

- Certain commenters at the Hearing claimed that the City should have prepared an EIR for the Project instead of an MND. This sentiment appears to arise from the mistaken belief that an MND does not analyze environmental impacts and/or that an EIR would have produced a more thorough analysis of the Project's potential to impact the environment. The commenters are incorrect.

- The IS/MND prepared for this Project is detailed and comprehensive, consisting of over 2,500 pages of expert analysis of the Project's potential impacts.

- Additionally, just like in an EIR, the IS/MND: (i) analyzed all 18 environmental impact areas set forth in CEQA Guidelines Appendix G, including traffic, noise, air quality, greenhouse gas and aesthetics; and (ii) included detailed traffic, parking, noise and air quality studies prepared by technical experts which decidedly demonstrate that the Project will not result in significant environmental impacts.

- Moreover, the IS/MND included detailed written Responses to over 94 public comments on the IS/MND, even though CEQA requires preparation of "responses to comments" only in connection with EIRs.

- Further, and contrary to certain assertions, the City has ***never*** required an EIR for a project that consists of a permitted use of such a modest size.

- Regardless, an EIR would not have been more detailed or otherwise resulted in additional analysis, different conclusions or the imposition of additional mitigation measures.

[2] CEQA Guidelines § 15064, subd. (f)(5).

[3] CEQA Guidelines § 15064, subd. (f)(4); see also *Citizens for Responsible Development v. City of West Hollywood* (1995) 39 Cal.App.4th 490, 498-499 (regardless of public controversy, EIR not required on any project unless substantial evidence in light of whole record supports fair argument that proposed project may have significant effect on environment).

- Thus, the suggestion from some opponents that an EIR is the only available mechanism to obtain an in-depth environmental analysis belies the fact that such an analysis ***already was*** prepared for this Project.

D. <u>The City and PCG Have Provided Ample Opportunity for Public Review and Comment on the Project Well in Excess of CEQA's Requirements</u>.

- Opponents, including MBRRD, repeatedly claim that neither the City nor PCG has provided the public with sufficient opportunity to review and comment on the Project.

- In fact, nothing could be further from the truth. The reality is that both the City and PCG have greatly exceeded CEQA's requirements for public notice, review and comment on the Project and the IS/MND.

- The City made multiple early drafts of the traffic study and the IS/MND available to the public on several occasions during the nearly two years leading up to the Planning Commission hearing. Indeed, based on comments from the public about those draft documents, PCG made numerous changes to the Project.

- The City also provided written Responses to every individual who submitted comments on the IS/MND during the public circulation period.

- Moreover, for the past two years, PCG has been – and continues to be – particularly engaged with the community including, presenting the Project at multiple community meetings, hosting open houses, conducting a social media outreach forum, individually meeting with City residents and community stakeholders, mailing information pieces to every City resident encouraging feedback, placing a full page newspaper ad setting forth facts about the Project, and creating a website where the community can learn more about the Project.

- The Planning Commission has had an additional six week period, between the February Hearing and the hearing scheduled for next week, to further review and study the public comments, the IS/MND, the technical studies, the Responses, the Staff Report and other information related to the Project.

E. <u>The Comments Provided at the Hearing by MBRRD's Attorney Misapply CEQA and are Wholly Inaccurate</u>.

- MBRRD retained an attorney who, for the first time at the Hearing, made spurious new allegations suggesting that the City did not comply with CEQA's procedural and substantive mandates.

- These comments evidence a lack of familiarity with CEQA and suggest that your City Attorneys – who collectively have decades of experience overseeing CEQA matters – violated the CEQA process in multiple respects. They did not.

- In reality, MBRRD's attorney misapplied CEQA and, as a result, misrepresented the City's exhaustive environmental analysis and detailed conclusions in the IS/MND. For example:

  - The publication of the "Notice of Intent," which the attorney claimed was improper, was in fact prepared exactly according to CEQA's specifications and requirements.

  - The combined use of an Initial Study and Mitigated Negative Declaration is not improper, as the attorney claimed. On the contrary, CEQA ***requires*** that the Initial Study and MND be circulated together; accordingly, such combined IS/MND documents are routinely and properly used by public agencies throughout the State.

  - Contrary to the attorney's claim, CEQA does not require the "environmental baseline" to be determined based on the time the IS/MND is made publicly available. Rather, the law states that the "environmental baseline" for IS/MNDs is determined at the time environmental analysis is "commenced," which was exactly what was done here.

  - Additionally, the traffic counts were correctly measured in March and December – not during the summer, as the attorney suggested. The City has adopted the Los Angeles County Metropolitan Transportation Authority Congestion Management Program thresholds, which expressly instruct that traffic counts be taken during peak-hour periods in non-summer months, when residents are in town and commuting to work and/or school.

  - Finally, as noted above, ***the attorney cited overruled legal authority*** for the proposition that an EIR is required for the Project because of the existence of public controversy, when CEQA says the exact opposite – that public controversy ***does not*** require preparation of an EIR absent substantial evidence that a project will result in significant environmental impacts.[4]

- Simply put, the attorney's allegations that the City conducted an improper CEQA process are just plain wrong. The City correctly and appropriately followed the mandates of the law in conducting the environmental review process for the Project**.**

[4] CEQA Guideline § 15064, subd. (f)(4) ("The existence of public controversy over the environment effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.").

II. CEQA AND SUBSTANTIAL EVIDENCE.

CEQA contains very clear direction as to when an EIR or MND is required for a project. Specifically, CEQA provides that a public agency need not prepare an EIR unless there is substantial evidence supporting a fair argument that a project may have a significant effect on the environment.[5] If there is no substantial evidence that a project may have a significant impact on the environment, the public agency ***must prepare a Negative Declaration or MND***.[6]

CEQA also contains very clear requirements as to what constitutes "substantial evidence" requiring an EIR, and what does not. Under CEQA, "substantial evidence" is "***fact***, a reasonable assumption ***predicated upon fact***, or expert opinion ***supported by fact***."[7] "Substantial evidence" is not:

(i) Argument;
(ii) Speculation;
(iii) Unsubstantiated opinion or narrative;
(iv) Evidence that is clearly inaccurate or erroneous; or
(v) Evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.[8]

Additionally, CEQA provides that generalized concerns and public controversy over a project's environmental impacts, however strident, ***do not*** constitute substantial evidence requiring preparation of an EIR in the absence of substantial evidence that the project may have a significant environmental effect.[9] Further, "expert" testimony on a subject does not automatically equate to "substantial evidence." Such testimony must be supported by actual facts, not just opinion.

Below is a further explanation of information that does not rise to the level of "substantial evidence." Again, understanding what does or does not constitute "substantial evidence" is critical to understanding whether an EIR or an MND is required for a particular project.

[5] Pub. Resources Code § 21080, subd. (d), CEQA Guidelines §15064, subd. (a).

[6] Pub. Resources Code § 21080, subd. (c); CEQA Guidelines § 15070.

[7] Emphasis added; Pub. Resources Code § 21080, subd. (e)(1); CEQA Guidelines § 15384, subd. (b).

[8] Pub. Resources Code §§ 20180, subd. (e)(2) & 21082.2(c); CEQA Guidelines § 15384, subd. (a); see also *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 756-757.

[9] Pub. Resources Code § 21082.2, subd. (b); *Lucas Valley Homeowners Ass'n v. County of Marin* (1991) 233 Cal.App.3d 130, 163-164; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1995) 172 Cal.App.3d 151, 173 (public controversy unsupported by substantial evidence of environmental effects does not require an EIR).

A. A Commenter's Personal Opinion is Not Substantial Evidence of a Significant Environmental Impact.

We understand that Project opponents may deeply and sincerely feel that any change in the local environment would be "significant." It is thus not uncommon for members of the public to offer testimony to the effect that virtually any new development in an area will impair the safety and/or drivability of local streets, generate unwanted noise, or otherwise expose residents to any number of other inconveniences or perceived hazards. Under CEQA, however, such "feelings are not facts to govern environmental decisions."[10] Beliefs or feelings of this nature are more properly characterized as "speculation," "unsubstantiated opinion," or "evidence of social impacts."

Here, the majority of public testimony submitted by Project opponents were either: (i) statements or expressions about existing conditions in the neighborhood (e.g., there is a lot of traffic on Sepulveda Boulevard, Sepulveda Boulevard is dangerous, neighborhood streets do not have sidewalks and are unsafe), or (ii) generalized concerns or speculation about changes that might be caused by the Project (e.g., the Project could be expected to generate additional traffic on Sepulveda Boulevard and in neighborhood streets, thereby making them more congested and dangerous). While such testimony in certain circumstances may be useful to the decision-makers in understanding existing conditions or highlighting issues that they should consider, it is not "substantial evidence" of the Project's potential future impacts. To constitute "substantial evidence," the statements would need to be supported by ***evidence*** that the Project will actually ***cause*** additional effects.[11] ***Similarly, the opinions of non-experts on technical subjects are not substantial evidence***, even where those opinions are purportedly based on scientific principles, reports or studies prepared by qualified experts.[12]

For example, public testimony and written comments stated that Sepulveda Boulevard is heavily congested and dangerous, generally cited to accidents in the area and summarily concluded that the Project will exacerbate these conditions. Commenters have also stated that

[10] *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337, 1359.

[11] See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1202-1205 (extensive testimony about past effects of off-leash dogs in city park not substantial evidence that revised policies will result in increased impacts); *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274-275 ("although testimony of the local residents arguably provides some evidence of the dangerous nature of the intersection, the record contains no factual foundation for the claim that the [p]roject would exacerbate that condition for pedestrians and drivers …[¶]…[i]t is based solely on unsubstantiated lay opinion."); *Watsonville Pilots Ass'n v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1094 ("The FEIR was not required to resolve the [existing] overdraft problem, a feat that was far beyond its scope.").

[12] *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2008) 157 Cal.App.4th 885, 908; *Bowman v City of Berkeley* (2004) 122 Cal.App.4th 572, 582-583 (project opponent's conclusions from toxic contaminant study not substantial evidence); *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677 (lay opinion regarding technical subject of economic impacts does not qualify as substantial evidence); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1410 ("[I]n the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence."); *Leonoff, supra*, 222 Cal.App.3d at 1352-1353 (tests performed by non-experts related to traffic safety did not constitute substantial evidence).

pedestrian sidewalks are lacking in the residential neighborhood where families walk and kids play, concluding that Project traffic would further deteriorate pedestrian safety. Although this information arguably provides context as to existing conditions in the area, the record contains ***no factual foundation*** to support the claims that the Project would significantly exacerbate these conditions for drivers and pedestrians. To the contrary, the IS/MND and Responses demonstrate with substantial evidence (e.g., with facts) that such impacts will not occur because, for example, the Project will improve existing conditions, the Project meets identified safety standards, and/or the Project will not exceed measurable significance thresholds.

Specifically, the IS/MND, Responses and City Supplemental Memorandum demonstrate that:

- **The Project will not cause significant traffic circulation impacts on Sepulveda or in the local neighborhood streets.** (See e.g., MR[13]-3.0, -3.9 [Comments consist of general claims that Project will increase traffic. However, the IS/MND demonstrates that Project traffic on Sepulveda Boulevard and residential streets will not exceed the City's adopted LOS significance thresholds]).

- **The Project will not cause significant traffic safety impacts in the study area.** (See e.g., MR-3.8 [Comments contain unsubstantiated conclusions about traffic being dangerous on Sepulveda Boulevard near the Project site without explaining cause of prior accidents or relationship to the proposed Project/Project circulation plan. Moreover, the IS/MND demonstrates that: (i) Sepulveda Boulevard meets Caltrans Highway Design Manual safe stopping distance/visibility criteria; (ii) the Project does not create significant traffic impacts, and (iii) the Project would install and/or cooperate with the City in the installation of a number of safety features that would improve traffic flow, visibility and general safety at the periphery of the Project]).

- **The Project will not cause significant pedestrian safety impacts on residential streets**. (See e.g., MR-3.10 [Comments consist of unsubstantiated conclusions regarding existing and future pedestrian safety on neighborhood streets. However, the IS/MND demonstrates that the Project would improve existing conditions by, among other improvements, installing continuous sidewalks, meeting ADA requirements around entirety of site and providing direct path of travel from store entrance to sidewalk and bus stop].)

Please refer to the IS/MND Responses and City Supplemental Memorandum for additional information controverting MBRRD's public comments and supporting the IS/MND's conclusion that the Project does not generate any significant impacts.

[13] "MR" refers to the Master Responses contained in the IS/MND Responses to Comments document.

B. <u>Expert Opinion That is Conjecture or Speculation, Lacks Credibility, or is Otherwise Erroneous is Not Substantial Evidence of a Significant Impact</u>.

Many believe that if an "expert" testifies on some subject, that "expert's" testimony must be substantial evidence. As noted above, that is not necessarily true. There are a number of circumstances where it is appropriate for the lead agency to reject seemingly contradictory evidence in the context of an MND. For example, a lead agency may reject expert opinion if it amounts to conjecture or speculation, or if the opinion "lacks credibility."[14] A lead agency may also disregard certain evidence if other evidence in the record explains why it may be erroneous:

> A lead agency's duty to base its decision on the entire record includes authority to consider evidence showing that other evidence does not constitute substantial evidence. Accordingly, ***erroneous information that is corrected by other evidence in the record may be disregarded***.[15]

MBRRD's traffic consultant has made a number of erroneous and unsupported claims with respect to the IS/MND's traffic and parking analysis. For example, the traffic consultant:

- **<u>Speculates without factual support</u>** that the Project's parking will spillover onto residential streets, when the IS/MND parking demand study clearly substantiates that the on-site parking supply will accommodate the total maximum parking demands for the Project, and therefore, off-site spill-over parking will not occur. (See MR-2; MBRRD RTC-30.)

- **<u>Erroneously claims</u>** that certain of the IS/MND's traffic counts were inadequate because they were significantly ***<u>lower</u>*** than traffic counts published by Caltrans, when in fact the IS/MND traffic counts are ***<u>higher</u>*** than the Caltrans counts and therefore more conservative. (See MBRRD RTC-29.)

- **<u>Erroneously claims</u>** that the protected left turn signal planned to be installed at the 8th Street/Sepulveda Boulevard intersection is uncertain due to lack of funding, when in fact this improvement is fully funded and certain to be constructed. (See MR-3.2; MBRRD RTC-31.)

- **<u>Speculates without factual support</u>** that the left turn pocket on northbound Sepulveda Boulevard onto 8th Street is too short to accommodate trucks from the south, when substantial evidence in the record clearly demonstrates that the Project turn-pocket length of 100 feet is adequate for expected traffic volumes, including semi-truck deliveries, to accommodate Project needs. (See MR-3.3; MBRRD RTC-31.)

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[14] *Bowman, supra*, 122 Cal.App.4th at 581-583 (City has discretion to discount credibility of expert opinion); *see also Thornley, supra*, 222 Cal.App.3rd at 757 (expert's speculation without "hard fact" is not evidence).

[15] Kostka & Zischke, Practice Under the California Environmental Quality Act (2d ed. 2010) § 6.38, pp. 342-343 (citing *Leonoff, supra*, 222 Cal.App.3d 1337); *Newberry Springs Water Ass'n v. County of San Bernardino* (1994) 150 Cal.App.3d 740, 750).

- **Erroneously claims** that the traffic study does not address residential traffic impacts when in fact the traffic study specifically analyzed neighborhood intersections and determined that: (i) impacts would be less than significant (would maintain "excellent" LOS A operations without and with Project traffic), and (ii) the Project would not create the need to implement neighborhood traffic calming elements. (See MR-3.9; MBRRD RTC-32.)

- **Erroneously claims** that semi-trucks delivering to the site will need to make ***south-bound right turns*** from Sepulveda Boulevard to 8th Street, which he further alleges cannot be accommodated without interfering with oncoming traffic. In fact, however, the record substantiates that: (i) there will be only two or three semi-truck deliveries per day, (ii) these trucks will only be making ***northbound left-turns*** from Sepulveda Boulevard to 8th Street and (iii) these trucks can safely turn onto 8th Street without crossing over onto oncoming traffic or driving over curbs as shown in the turning radius diagram. (See MR-3.4; MBRRD RTC-33.)

Accordingly, even though these comments have been made by an "expert" traffic consultant, the comments are not supported by facts, are speculative and erroneous, and therefore do not constitute substantial evidence of significant traffic impacts.

C. Expert Disagreement on Methodology is Not Substantial Evidence of a Significant Impact.

"Expert" testimony often criticizes the methodology used in a study or analysis to try to demonstrate that the study or analysis is somehow faulty. However, mere disagreement over methodologies or the adequacy of a lead agency's studies or analyses is not a substitute for substantial evidence affirmatively indicating that significant environmental effects may be caused by a project. Absent some factual basis in the record for concluding these impacts may be significant, a project opponent cannot fulfill its burden of introducing substantial evidence in the record of a potentially significant impact merely by criticizing the studies relied upon by the lead agency. As one court stated, "[c]onflicting assertions do not ipso facto give rise to substantial 'fair argument' evidence."[16]

In *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 786, the court concluded that "…a suggestion to investigate [air quality impacts] further is not evidence, much less substantial evidence of an adverse impact," ***even when that suggestion comes from an expert*** on air quality. As various courts have observed, "[w]e reject the inference that the existence of factual controversy, uncertainty, conflicting assertions, argument, or public controversy can themselves nullify the adoption of a negative declaration when there is no substantial evidence in the record that the project as designed and approved will fall within the

[16] *Thornley, supra*, 222 Cal.App.3d at 755 (expert opinion that 1% traffic increase at crowded intersection should be considered significant despite traffic study concluding it was not does not substantial evidence of a significant impact).

requirements of [CEQA]" for preparation of an EIR.[17] This is true, even if the assertions or arguments come from an "expert." To constitute substantial evidence requiring preparation of an EIR, qualified expert opinion must reach the ultimate question as to whether a potential impact rises to the level of significance.[18]

The traffic consultant's assertions and arguments do not reach the question of whether potential traffic impacts rise to the level of significance, and instead are critiques of methodology or simply unsubstantiated opinions that a different methodology might provide a better approach. Specifically, the consultant:

- **Interjects his opinion** that the City should use the City of Los Angeles' threshold to determine neighborhood traffic impacts instead of the LOS significance threshold adopted and used by the City. A disagreement as to the City's selected methodology, which is not based on any facts or requirements, does not provide any substantial evidence indicating the potential for an impact. Moreover, the City's adopted threshold is the appropriate threshold to use here. Further, substantial evidence supports the City's conclusions that there are no significant traffic impacts in the residential area (i.e., studied intersections would maintain "excellent" LOS A operations without and with Project traffic). (See MR-3.9; MBRRD RTC-32.)

- **Interjects his opinion** that the widened shoulder should be "longer" (although he does not opine as to how much longer). In the same statement, however, he acknowledges that his opinion is not based on any facts or industry standards, admitting "there are no apparent standards for commercial driveway turn-out lanes." Further, substantial evidence shows that the widened shoulder ***does*** comply with applicable Caltrans standards (which pertain to width and not length) and will allow traffic to safely and effectively move in and out of the site without creating significant impacts. (See MR-3.6; MBRRD RTC-34.)

Again, though comments on these topics have been provided by an "expert" consultant, the comments questioning the appropriateness of the City's methodology do not constitute substantial evidence of environmental impacts.

III. AN MND IS THE APPROPRIATE FORM OF ENVIRONMENTAL ANALYSIS FOR THE PROJECT.

Certain commenters at the public hearing claimed that the City should have prepared an EIR for the Project instead of an MND. This sentiment appears to arise from the mistaken belief

[17] *Friends of "B" Street* v. City of Hayward (1980) 106 Cal.App.3d 988, 1002 [quoting *Running Fence Corp. v. Superior Court* (1975) 51 Cal.App.3d 400, 424].

[18] See, e.g., *Citizens Committee to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1170-1170 (conclusions of landscape architect and historian not substantial evidence where unsupported by facts); *Cathay Mortuary v. San Francisco Planning Commission* (1989), 207 Cal.App.3d 275, 281 (opinions of experts on planning issues unrelated to environmental impacts or outside their area of expertise "fails to establish a disagreement among experts 'over the significance of an effect on the environment…'").

that an MND does not analyze environmental impacts and/or that an EIR would have produced a more thorough analysis of the Project's potential to impact the environment. These same comments were also raised during the IS/MND's public circulation period and were responded to in detail in IS/MND MR-1 on pages III-1 through III-3. In short, the commenters misunderstand the nature and contents of MNDs in general – and the MND prepared for this Project in particular. As such, their demands for an EIR are unfounded.

As explained in Response MR-1, as well as in this letter, CEQA is clear that the City must prepare an MND where, as here, there is no substantial evidence that the Project may cause a significant impact. Further, the IS/MND conducted an exhaustive environmental analysis of the Project's potential to result in significant impacts. An EIR would not have been more detailed, nor would it have resulted in the imposition of additional mitigation measures.

A. The City Must Prepare a MND When There are No Significant Impacts.

Where the lead agency determines that there is no substantial evidence that a project may have a significant environmental effect, ***the lead agency must prepare a negative declaration or MND instead of an EIR***.[19] The lead agency may not require an EIR solely for curiosity's sake or to merely assuage public opinion, but "shall" issue a negative declaration instead.[20]

Clearly stated, the abundance of substantial evidence contained in the IS/MND, the Responses, and as set forth by City Staff in the Supplemental Memorandum affirmatively confirms that the Project, as mitigated, will not result in significant environmental impacts. Therefore, an MND – and not an EIR – is required for the Project.

B. The IS/MND Provides the Same Level of Detailed Analysis of the Project's Potential for Traffic, Parking, Noise and Air Quality Impacts as Would an EIR.

The IS/MND prepared for this Project is detailed and comprehensive, consisting of over 2,500 pages of expert analysis of the Project's potential impacts. The substantial evidence in the IS/MND decidedly demonstrates that the Project will not result in significant impacts. Further, just like in an EIR, the IS/MND:

[19] Pub. Resources Code § 21080, subd. (c); see also CEQA Guidelines § 15070, subd. (b), which provides: "A public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when: (a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or (b) The initial study identifies potentially significant effects, but: (1) Revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and (2) 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."

[20] Pub. Resources Code § 21080, subd. (c); CEQA Guidelines § 15070; see also Pub. Resources Code § 21082.2, subd. (b) (mere opinions, generalized concerns, or public controversy over a project's environmental impacts is not a basis for requiring an EIR).

- Analyzed all 18 environmental impact areas set forth in CEQA Guidelines Appendix G, including traffic, noise, air quality, greenhouse gas and aesthetics;

- Included detailed traffic, parking, noise and air quality studies prepared by technical experts which decidedly demonstrate that the Project will not result in significant environmental impacts; and

- Included detailed written responses to over 94 public comments on the IS/MND.

An EIR would not have been more detailed or otherwise resulted in additional analysis, different conclusions or the imposition of additional mitigation measures. Again, an IS/MND, and not an EIR, is the appropriate vehicle with which to analyze the Project's potential impacts.

C. <u>An EIR is Not Required Solely Because the Project has Generated Public Controversy or Based on the Perceived Size of a Project</u>.

1. Public Controversy is Not Substantial Evidence of an Environmental Impact

As noted above, the existence of public controversy over the environmental effects of a project, however strident, does not require preparation of an EIR in the absence of substantial evidence that the project may have a significant environmental effect.[21] Commenters have cited to *No Oil v. City of Los Angeles* (1974) 13 Cal.3d 68 (a case more than 40 years old) and *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 (a case that relied on *No Oil*) for the proposition that "the existence of serious public controversy concerning the environmental effect of a project in itself indicates that preparation of an EIR is desirable." ***This is no longer good law***, and these cases have been effectively overruled by subsequent amendments to the CEQA Guidelines as well as by case law.

Specifically, the *No Oil* and *Sundstrom* cases rely on former CEQA Guidelines § 15064(h).[22] ***That section has since been deleted from CEQA.*** The current CEQA Guidelines, amended in 1997, now clearly provide that: "The existence of public controversy over the environmental effects of a project will ***<u>not</u>*** require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment."[23]

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[21] Pub. Resources Code § 21082.2, subd. (b); CEQA Guidelines § 15064, subd. (f)(4).

[22] This deleted CEQA Guideline previously provided: "In marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following factors: (1) If there is serious public controversy over the environmental effect of a project, the lead agency shall consider the effect or effects subject to the controversy to be significant and shall prepare an EIR."

[23] CEQA Guidelines § 15064, subd. (f)(4) (emphasis added); see *Citizens for Responsible Development, supra*, 39 Cal.App.4th at 498-499 (regardless of public controversy, EIR not required on any project unless substantial evidence in light of whole record supports fair argument that proposed project may have significant effect on environment); see also *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1026 (public controversy in itself does not require an EIR to be prepared when there is no substantial evidence in the record that the project as designed and approved will fall within the requirements of CEQA).

As explained in detail in the IS/MND, the Responses, City Supplemental Memorandum and this letter, the decision to prepare an IS/MND was made by the City in light of the fact that the Project either would not result in significant impacts, or potential significant impacts would be reduced to less than significant through the incorporation of mitigation measures. There is no substantial evidence that the Project may have a significant effect on the environment.

2. The City Has Never Required an EIR for a Modestly Sized Retail Store and Bank Like the Proposed Project.

Project opponents continue to claim that "it is almost unheard of for a city to not require an EIR for a project of this size." That comment demonstrates a lack of understanding about the law in general and the history of environmental review in the City in particular. First, cities do not require EIRs based on a project's size; as explained above, whether an EIR is required is based on whether substantial evidence supports a fair argument that a project may have a significant impact on the environment. In any event, the Project is relatively small –about 75% less than is allowed under the site's applicable zoning, and much, much smaller than projects for which the City has required EIRs in the past.

An extensive search of the State's database reveals the number of EIRs the City has required from 1986 to the present. The results of this thirty (30) year review are remarkable. As the chart below makes clear, the City has required EIRs only for massive development projects or for major revisions to the City's General Plan. Simply put, ***the City has never required an EIR for a modestly sized retail store and bank***.

Year	Project	Project Description
2013	Manhattan Village Shopping Center Enhancement Project	Redevelopment adding 194,644 gross leasable area of new retail and restaurant space to existing shopping center on a 18.4 acre site.
2003	Manhattan Beach General Plan	Comprehensive update to Land Use, Infrastructure, Community Resources, Community and Noise elements of City's existing General Plan.
2002	Civic Center/Metlox Development	Redevelopment of Civic Center including demolition and reconstruction of Fire and Police Facilities, Library and Cultural Arts Center, plus construction of retail, restaurant, office and hotel space.
1996	Manhattan Beach Middle School Replacement Project	Construction of a middle school to accommodate 1400 middle school students.
1986	Manhattan Beach General Plan Update	Comprehensive update of all elements of City's existing General Plan.

In the entire thirty (30) year history for which information is available, the City has never prepared an EIR for a project that complies with the City's Code and General Plan, and does not even total 35,000 square feet.

IV. THE CITY'S REVIEW PROCESS HAS BEEN OPEN AND TRANSPARENT AND THE PUBLIC HAS HAD NUMEROUS OPPORTUNITIES TO REVIEW AND COMMENT ON THE PROJECT.

MBRRD continues to erroneously suggest that neither the City nor PCG has provided the public with sufficient opportunity to review and comment on the Project. These same comments were also raised during the IS/MND's public circulation period and were responded to in detail in MR-1 on pages III-1 through III-3. In fact, nothing could be further from the truth. The reality is that the City has greatly exceeded CEQA's requirements for public notice, review and comment on the IS/MND. For example:

- Although CEQA does not require preliminary drafts of environmental documents to be made publicly available, the City did so on numerous occasions. Preliminary drafts of the IS/MND and other materials (including the traffic study) were made publicly available nearly two years prior to their official release; additional versions of both the traffic study and IS/MND drafts were subsequently released. Public comments were accepted and considered on each draft released. The environmental documents continued to go through numerous revisions for two years in direct response to the public's comments.

- The City noticed the availability of the IS/MND through the use of mailings to a radius list and to all parties that had asked to be notified of information about the Project.

- The City submitted the IS/MND to the State Clearinghouse and publicly circulated the MND for 30-days (CEQA does not require that this MND be submitted to Clearinghouse, and only requires a 20-day circulation period);

- The City posted the environmental document on the City's website and made copies available for public inspection at the City's Community Development Department. The City also provided contact information for parties to submit their comments during the public review period.

- The City provided public notice on January 24th of the Planning Commission hearing and availability of the final IS/MND, and provided the written responses to comments to every individual who had previously submitted written comments on the IS/MND as well as to all residents living within the radius list. (As noted, CEQA does not require the preparation of a final IS/MND, written or oral responses to comments, or public notice and circulation of responses to comments). The City also published notice in the Beach Reporter on January 26th.

- The City conducted the first Planning Commission hearing on February 8th and will hold a second hearing on March 22nd. [24] Thus, the Planning Commission and the public have had an additional six week period to further review and study the public comments, the IS/MND, the technical studies, the Responses, the Staff Report and other information related to the Project.

In addition, PCG's public outreach for the Project began over two years ago (early 2015) with a public meeting at the site comprised of the entire Project team including the architect, traffic engineer, and a representative from Gelson's. Since that time, PCG has conducted the following public outreach tasks:

- PCG attended a meeting coordinated by City residents, which was held on October 21, 2015. At the event, PCG presented details of the Project and responded to questions. PCG provided its contact information to meeting attendees in order to facilitate follow-up questions.

- PCG held numerous one-on-one and group meetings addressing neighbors, City residents, civic groups, the Chamber of Commerce and other stakeholders.

- PCG mailed two (2) information pieces to every residential property within the City. Each mail piece encouraged comments and questions submittal via a website created for that express purpose.

- PCG has conducted Project updates 3-5 times per week via social media providing information related to the Project. The public can submit questions and receive answers through the social media site.

- PCG has provided the public with its contact information so that they may contact PCG directly with questions or concerns.

- PCG held an open house on the property for neighbors on May 14, 2015.

- PCG held a second open house on June 6, 2016 where individuals were able to meet the CEO of Gelson's Market.

- PCG placed an ad in the local paper on September 1, 2016 to address misinformation about the Project.

- PCG has sent regular email communications and Project updates to the community.

[24] Commenters also allege that PCG had undue influence over this process because it paid for the IS/MND. As was explained in the responses to comments, of course PCG paid for the IS/MND. The applicant always pays for studies and reports in an environmental process, whether the reports are prepared in connection with an MND or EIR. If the applicant didn't pay for them, that would mean that the City would have to pay – which in turn would mean the public and the taxpayers pay. That would be certainly be an unacceptable practice.

V. MBRRD'S ATTORNEY HAS MISAPPLIED CEQA AND MISREPRESENTED THE PROJECT.

MBRRD's legal counsel presented comments for the first time at the Hearing in the form of testimony to City Staff and the Planning Commission. Unfortunately, it appears that he withheld his remarks during the IS/MND's 30-day public comment period in a deliberate attempt to frustrate and delay the City's consideration of the Project rather than to provide constructive feedback. To date, it does not appear he has produced his comments in written form, perhaps in an effort to thwart meaningful response by the City Attorney and PCG, or perhaps because committing the comments to writing would reveal the flaws in his reasoning and legal citations.

In any event, the attorney is entirely misinformed as to CEQA's fundamental requirements and his comments boil down to nothing more than red herrings without any substance or validity. If he were in fact a CEQA expert as he apparently holds himself out to be, he would have understood the basic concepts addressed below.

A. The City Complied with CEQA in Preparing the IS/MND.

The attorney observed that the Initial Study and MND were published as a combined document on the same date and claimed that this was a "statutory violation of CEQA." This is nonsensical, and evidences his complete lack of experience on CEQA matters. Initial Studies and MNDs are frequently combined together in one document known as an IS/MND – it is a commonly and properly used mechanism of providing information and is fully authorized under CEQA.

Importantly, the Initial Study provides the factual analysis and support for the MND.[25] The MND, on the other hand, is simply a declaration finding that the project will not have a significant impact on the environment and incorporating the mitigation measures included in the project to avoid potentially significant effects.[26]

An Initial Study is not required to be circulated as a stand-alone document. However, an MND is required to be publicly circulated and must include the Initial Study in order to document the reasons to support the MND's no significant effect finding.[27] As such, CEQA requires that: (i) the Initial Study support the MND with substantial evidence, and (ii) both the Initial Study and MND be circulated together. This is precisely what has occurred in this instance, as it has for countless IS/MNDs prepared by lead agencies across the State. There is simply no violation of any kind in combining the IS/MND as was done here.

[25] CEQA Guidelines § 15063, subds. (c), (d) (One of the purposes of an Initial Study is to "provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment").

[26] CEQA Guidelines § 15071, subd. (d).

[27] CEQA Guidelines §§ 15063, subd. (d) & 15071, subd. (d).

B. <u>The City Complied with CEQA by Releasing the Notice of Intent to Adopt an MND</u>.

The attorney appears to believe there was some nefarious problem in the fact that the "Notice of Intent to Adopt the MND" was released at the same time as the IS/MND. Again, this kind of statement evidences his lack of knowledge of CEQA. In fact, CEQA requires that the lead agency provide a Notice of Intent to Adopt an MND "within a reasonable time prior to . . . adoption of the negative declaration . . . ."[28]

As such, the Notice accompanied the public release of the IS/MND and provided notice to the public that the IS/MND is now available for public review and will be considered for adoption in the future. It did not adopt the IS/MND nor commit the City to doing so.

C. <u>The IS/MND Used the Appropriate Environmental Baseline Against Which to Analyze Project Impacts</u>.

The attorney claimed that the IS/MND used an improper environmental baseline against which to compare the Project's impacts. Specifically, he alleged that the IS/MND should have compared the proposed Project against the conditions which existed at the time the IS/MND was circulated (a vacant site) rather than the operating collision center. That is not the law and the baseline used in the IS/MND fully complies with CEQA.

CEQA Guidelines § 15125(a) provides:

> An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time **<u>environmental analysis is commenced</u>**, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.[29]

CEQA does not require issuance of a Notice of Preparation ("NOP") for MNDs; accordingly, the baseline for IS/MNDs is determined at the time environmental analysis is "commenced."[30]

In this case, the environmental review commenced at the time PCG began collecting existing traffic counts for the Initial Study in December, 2014. At this time, the site was fully operational and remained so up and until February 2015. As such, both the IS/MND and the Responses appropriately describe that the analysis assumes the existing Project site includes the operations of a 40,349 square foot automobile care center. (IS/MND, page 4.3-5; MBRRD RTC-6.)

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[28] Pub. Resources Code § 21092, subd. (a); see also CEQA Guidelines § 15072, subd. (a).

[29] CEQA Guidelines § 15125(a) (emphasis added).

[30] See e.g., *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270 (environmental baseline appropriately determined to be at time County commenced preparation of Initial Study).

As such, the Draft IS/MND adequately addressed the Project's traffic, air quality and other potential impacts against the appropriate environmental baseline.

D. The MND Traffic Study Was Correct in Taking Baseline Traffic Counts in March and December.

MBRRD's attorney asserts that the City should have taken traffic counts in the summer months instead of in March and December. This is incorrect. First, the City expressly instructs that traffic counts be taken during peak-hour periods in non-summer months, pursuant to the adopted City policy of applying the Metro Congestion Management Program ("CMP") thresholds.[31] This approach is based on the distinction between traffic patterns in non-summer and summer months.

Sepulveda Boulevard is used for many kinds of trips, including commute trips to and from regional job centers, access to the I-105 freeway to the north and other South Bay cities and the I-405 to the south, shopping trips to corridor retail and service commercial uses, and trips to and from local schools. During non-summer months, the weekday commute traffic is compressed within peak periods and peak hours within those periods. Summer-season traffic does not have this compression, and therefore does not have well-pronounced peak hours that cause severe spikes in traffic levels in the same manner as weekday non-summer traffic. Residents are out of town on summer holidays and weeks in between, and not commuting to work or school. As a result, daily and peak-hour traffic volumes in summer generally tend to be lower than traffic volumes outside of summer. Because there are less overall daily trips generated from area residential uses when this occurs, summer traffic can be less overall.

VI. CONCLUSION

In conclusion, we are confident that the IS/MND fully complies with CEQA, and that the City and its consultants have thoroughly analyzed and addressed all public comments. Moreover, as described in detail above:

1) The opposition comments raised at the prior Hearing are not new and have been fully addressed in the IS/MND, the Responses and in the City's Supplemental Memorandum;

2) CEQA directs that the City must prepare an MND for the Project because there is no substantial evidence indicating the potential for significant impacts;

3) The IS/MND provides the same level of detailed analysis of the Project's potential for traffic, parking, noise and air quality impacts as would an EIR. An EIR would not have been more detailed or otherwise resulted in additional analysis, different conclusions or the imposition of additional mitigation measures;

[31] Los Angeles County Metropolitan Transportation Authority Congestion Management Program, 2010.

4) The City and PCG have provided ample opportunity for public review and comment on the Project and the IS/MND well in excess of CEQA's requirements; and

5) MBRRD attorney's comments at the Hearing misapply CEQA and are wholly inaccurate.

As such, we respectfully request that the Planning Commission adopt the IS/MND and approve the Project.

Thank you for your careful consideration of these comments.

Sincerely,

Ellen Berkowitz
AKERMAN LLP

cc: Honorable Members of the City Council (via e-mail)
Mark Danaj, City Manager (via e-mail)
Anne McIntosh, Interim Community Development Director (via e-mail)
Quinn Barrow, Esq., City Attorney (via e-mail)
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