



MASTER APPLICATION FORM

CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT

<u>Office Use Only</u>	
Date Submitted:	
Received By:	
F&G Check Submitted:	

801 North Sepulveda Blvd.

Project Address

Lots 1-3, 4-28, Block 19, Tract 142 and Lot 22, Block 14, Tract 142

Legal Description

General Commercial

CG, Commercial General 1

General Plan Designation

Zoning Designation Area District

For projects requiring a Coastal Development Permit, select one of the following determinations¹:

Project located in Appeal Jurisdiction

Project not located in Appeal Jurisdiction

- Major Development (Public Hearing required)
- Minor Development (Public Hearing, if requested)

- Public Hearing Required (due to UP, Var, ME, etc.)
- No Public Hearing Required

Submitted Application (check all that apply)

- | | | | |
|--|------------|--|------------|
| <input checked="" type="checkbox"/> Appeal to PC/PPIC/BBA/CC | 4225 _____ | <input type="checkbox"/> Use Permit (Residential) | 4330 _____ |
| <input type="checkbox"/> Coastal Development Permit | 4341 _____ | <input type="checkbox"/> Use Permit (Commercial) | 4330 _____ |
| <input type="checkbox"/> Continuance | 4343 _____ | <input type="checkbox"/> Use Permit Amendment | 4332 _____ |
| <input type="checkbox"/> Cultural Landmark | 4336 _____ | <input type="checkbox"/> Variance | 4331 _____ |
| <input type="checkbox"/> Environmental Assessment | 4225 _____ | <input type="checkbox"/> Park/Rec Quimby Fee | 4425 _____ |
| <input type="checkbox"/> Minor Exception | 4333 _____ | <input type="checkbox"/> Pre-application meeting | 4425 _____ |
| <input type="checkbox"/> Subdivision (Map Deposit) | 4300 _____ | <input type="checkbox"/> Public Hearing Notice | 4339 _____ |
| <input type="checkbox"/> Subdivision (Tentative Map) | 4334 _____ | <input type="checkbox"/> Lot Merger/Adjust./\$15 rec. fee-4225 | _____ |
| <input type="checkbox"/> Subdivision (Final) | 4334 _____ | <input type="checkbox"/> Zoning Business Review | 4337 _____ |
| <input type="checkbox"/> Subdivision (Lot Line Adjust.) | 4335 _____ | <input type="checkbox"/> Zoning Report | 4340 _____ |
| <input type="checkbox"/> Telecom (New or Renewed) | 4338 _____ | <input type="checkbox"/> Other _____ | _____ |

Fee Summary: (See fees on reverse side)

Total Amount: \$ _____ (less Pre-Application Fee if applied within past 3 months)

Receipt Number: _____ Date Paid: _____ Cashier: _____

Applicant(s)/Appellant(s) Information

Donald McPherson

Name

1014 1st St, Manhattan Beach, CA 90266

Mailing Address

Nearby resident

Applicant(s)/Appellant(s) Relationship to Property

Donald McPherson

Cell: 310 487 0383, dmcphersonla@gmail.com

Contact Person (include relation to applicant/appellant)

Phone number / email

1014 1st St, Manhattan Beach, CA 90266

Address

Cell: 310 487 0383, dmcphersonla@gmail.com

Applicant(s)/Appellant(s) Signature

Phone number./email

RECEIVED
 2017 APR 10 AM 9:38
 CITY CLERK'S OFFICE
 MANHATTAN BEACH, CA

Complete Project Description- including any demolition (attach additional pages as necessary)

- 1) I require that Councilmember Hersman recuse herself. Although Ms. Hersman will make every effort to remain objective, her participation in the appeal will violate the de nova hearing requirement, because she chaired the 8 February 2017 hearing of the planning commission on this project; and,
- 2) Please see the attached summary for a description of the appeal.

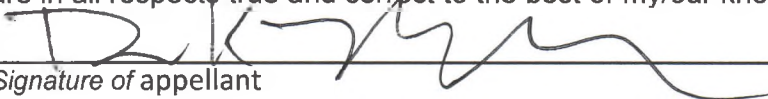
¹ An Application for a Coastal Development Permit shall be made prior to, or concurrent with, an application for any other permit or approvals required for the project by the City of Manhattan Beach Municipal Code. (Continued on reverse)

APPELLANT AFFIDAVIT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES

I, Donald McPherson being duly sworn, depose and say that I am _____ the appellant involved in this application and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of my/our knowledge and belief(s).


 Signature of appellant

Donald McPherson
 Print Name

1014 1st St, Manhattan Beach, CA 90266
 Mailing Address

Cell: 310 487 0383, dmcphersonla@gmail.com
 Telephone/email

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 20____ by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____
 Notary Public

SEE ATTACHED













SEAL

THIS STAMP THESE DOCUMENTS

Fee Schedule Summary

Below are the fees typically associated with the corresponding applications. Additional fees not shown on this sheet may apply – refer to current City Fee Resolution (contact the Planning Division for assistance.) Fees are subject to annual adjustment.

Submitted Application (circle applicable fees, apply total to Fee Summary on application)

Coastal Development Permit	
Public hearing – no other discretionary approval required:	\$ 4,727 
Public hearing – other discretionary approvals required:	2,083 
No public hearing required – administrative:	1,287 
Use Permit	
Use Permit:	\$ 6,207 
Master Use Permit:	9,578 
Master Use Permit Amendment:	4,972 
Master Use Permit Conversion:	4,564 
Variance	
Filing Fee:	\$ 6,001 
Minor Exception	
Without notice:	\$ 1,434
With notice:	1,929 
Subdivision	
Certificate of Compliance:	\$ 1,604
Final Parcel Map + mapping deposit:	520
Final Tract Map + mapping deposit:	720
Mapping Deposit (paid with Final Map application):	500
Merger of Parcels or Lot Line Adjustment:	1,119
Quimby (Parks & Recreation) fee (per unit/lot):	1,817
Tentative Parcel Map (4 or less lots / units) No Public Hearing:	1,291
Tentative Parcel Map (4 or less lots / units) Public Hearing:	3,511 
Tentative Tract Map (5 or more lots / units):	4,007 
Environmental Review (contact Planning Division for applicable fee)	
Environmental Assessment (no Initial Study prepared):	\$ 215
Environmental Assessment (if Initial Study is prepared):	3,040
Fish and Game/CEQA Exemption County Clerk Posting Fee ² :	75
 Public Hearing Notice applies to all projects with public hearings and covers the City's costs of envelopes, postage and handling the mailing of public notices. Add this to filing fees above, as applicable:	\$ 70

²Make a separate \$75 check payable to LA County Clerk, (DO NOT PUT DATE ON CHECK)

CALIFORNIA JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

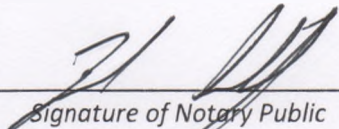
COUNTY OF Los Angeles

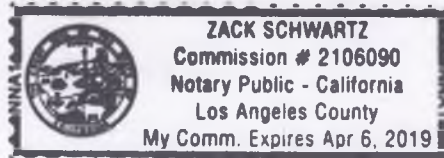
Subscribed and sworn to (or affirmed) before me on this 6 day of April, 2017
Date Month Year

by Donald McPherson

Name of Signers

proved to me on the basis of satisfactory evidence to be the person~~s~~ who appeared before me.

Signature: 
Signature of Notary Public



JOHS
VTS

Seal
Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent attachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

10 April 2017

Mayor David Lesser
City Council
City of Manhattan Beach

Subject: Appeal of Paragon Project Resolution No. PC 17-01, Summary

Mayor Lesser and Councilmembers,

My appeal addresses regulation violations in the subject resolution that will:

- 1) Endanger public safety; 2) Nonconform with Title 10 Planning and Zoning; and,
- 3) Impact nearby residents.

As result, the city council cannot make the required findings, pursuant to MBMC 10.84.060.

The most egregious violation? Per the record, staff surreptitiously altered the noticed resolution without planning commission approval, by unilaterally deleting the deceleration lane and bus turnout. This improvement required by the Sepulveda Development Guide has become a ubiquitous feature in all use permits for the Boulevard.

At both the February 8 and March 22 planning commission hearings, many residents criticized the noncompliant deceleration lane as a public-safety deficiency.

The attachment provides evidence of staff's unauthorized alteration cited above, as well as municipal code violations, such as Paragon's invalid parking analysis. This evidence proves that the council cannot make the required findings regarding public safety and welfare, compliance with Title 10 Planning and Zoning, and mitigation of residential impacts.

Required Deceleration Lane [Exhibits 1 & 2]

Exhibit 1 provides the **noticed** resolution language in Condition 26(a), that requires a deceleration lane compliant with CalTrans standards. As shown in Exhibit 2, **on the day of the March 22 hearing**, staff posted on the website a version that replaced "deceleration lane" with "widened shoulder." Per the record, the planning commission [PC] never considered such a profound change. This shell-game word-change by staff totally eviscerates the legal intent of Condition 26(a), namely, to comply with the Sepulveda Blvd. Development Guide.

Fortunately, at the March 22 hearing, City Traffic Engineer Zandvliet reiterated the deceleration lane condition in the resolution, by testifying, "We have a condition in the resolution that the **deceleration area** and the driveway will meet Caltrans standards."

Subsequently, Commissioner Conaway and Mr. Zandvliet conducted a five-minute exchange regarding the pros and cons of the deceleration lane. They made no mention of replacing "deceleration lane" with "widened shoulder." Nor did staff mention their surreptitious online switch from "deceleration lane" to "widened shoulder."

Unfortunately, however, Resolution No. PC 17-01 attached to Agenda Item M-4 contains staff's unapproved language, "widened shoulder." Staff altered Condition 26(a) without approval of the planning commission. That fact alone prevents making the required findings.

Deceleration Lane Violates Sepulveda Development Guide Requirements [Exhibits 3, 4 & 5]

Exhibit 3 shows the deceleration-lane detail, provided in the approved plans. Notice that Paragon ended the deceleration lane just short of the prohibited existing pole sign. The sign would otherwise encroach into the deceleration lane.

Exhibit 3 at the bottom quotes the Sepulveda Blvd. Development Guide, as requiring a deceleration lane in compliance with Caltrans standards, including a bus turnout if possible.

The Paragon lane has 10.5-foot width compared to the Caltrans 11-foot minimum requirement, as well as 110-foot length, compared to the 246-foot requirement.

Staff supports these violations to preserve the prohibited existing pole sign. Exhibit 4 shows that the municipal code categorically prohibits retention of an abandoned pole sign not used over 90 days for its intended purpose. By retaining the pole sign at all costs, staff turns a blind eye to public safety and compliance with regulations.

Exhibit 5 shows a deceleration lane design that complies with the Sepulveda Blvd. Development Guide and Caltrans standards. The design does not impact Paragon's parking lot, but it does require demolition of the prohibited pole sign and provides the required bus turnout. At the March 22 hearing, Mr. Zandvliet testified the site can accommodate such a 12-foot wide deceleration lane, extending almost to the 246 feet stipulated by Caltrans.

Parking Design Violations [Exhibits 6, 7, 8 & 9]

The Paragon project includes a 21% reduction in required parking, from 171 spaces to 135. Per a search of the Record, the council has approved only two such reduced-parking projects, and for much smaller decrease of spaces. These cases comprise the *Tikvat Jacob* temple on Sepulveda Blvd. and an office building at Rosecrans and Aviation. The Paragon project has no similarity to the above properties, being a typical multi-use retail development.

Paragon bases their reduced-parking design on an estimated demand. As Exhibit 6 shows, they improperly calculated parking for the eating & drinking [E&D] use. Per the Exhibit 6 table, the city has two E&D uses: 1) Seated Dining; and, 2) Takeout. Paragon cherry-picked the standards from these two uses to reduce their parking requirement from 17 to 10.

They use the one space per 75 sq-ft for takeout E&D and the smaller net seating area for seated service, to improperly calculate the fake 10-space requirement. I submitted this misrepresentation along with others to the planning commission on February 14. Staff ignored these facts, however, just as they have regarding violations by the deceleration lane.

Gaming the Parking Analysis [Exhibits 7 & 8]. The city parking ordinance establishes requirements based on use area. For Eating & Drinking, Paragon chose a model based instead on seating. To drive down the number of spaces required, they decreased the number of seats.

Exhibit 7 shows the seating density in Gelson's Hollywood store. It comes out 15 sq-ft per chair, as permitted by the state building code¹. Per Exhibit 8, in the approved plan for the Manhattan Gelson's, Paragon cut the number of chairs in half, by using 31 sq-ft per chair compared to 15 sq-ft in the Hollywood store and permitted by state code.

City use permits specify dining area, not number of chairs. The Manhattan Beach Fire Department will properly establish an occupancy twice of what Paragon shows on their plans. Thus, the actual parking demand will double from what Paragon predicts in their model.

Exhibit 9. Why Grant Paragon a Competitive Advantage??? Staff has never answered the question of why the Paragon project qualifies for reduced-parking, when the council has only granted two such reductions, out of the many applications for commercial developments.

The Rosecrans-Aviation office building, which has reduced-parking, illustrates the special situations that warrant such largess. To add an additional use, that existing property applied for a reduction of 8 spaces in 200-spaces required, 4% decrease, compared to Paragon's 21%.

¹ California Building Code Title 24, Chapter 10, Table 1004.1.1

The Rosecrans-Aviation applicant conducted an extensive study of availability in their existing parking lot. The results proved that the new use would not impact parking adequacy.

In contrast, Paragon estimates their parking demand with an analysis completely discredited by the improper calculation of Eating and Drinking use, as well as gaming the model by taking out chairs, until they reached the desired questionable requirement of 135 spaces. By stuffing the bank into their property, they can only squeeze in 135 spaces, not the 171 required.

Rooftop Machinery Noise Will Drive Residents Crazy [Exhibits 10 & 11]

The Mitigated Negative Declaration [MND] addresses the wrong requirement in the city noise ordinance. Consequently, the MND does not comply with the noise statute, and by association, does not comply with MBMC Title 10. Therefore, the council cannot make the required finding of no impact on nearby residential properties.

During five years of nearly 30 public hearings on Shade Hotel, the notorious Downtown 900 Club and Strand House, staff has lectured to the city council that only one section in the noise ordinance counts, namely MBMC 5.48.140 Noise Disturbances.

Notwithstanding their above dictum, staff supports the Paragon MND, which states that rooftop machinery noise amounts to only a numerical 60% of Sepulveda traffic noise. As result, they claim neighbors having line of sight to the rooftop machinery, some less than 100 feet away, will not hear and cannot hear, chugging compressors and whining fans. [Exhibit 10]

Paragon made their measurements on one weekday at noon, corresponding to the lunch rush. At night and other quiet times, with the rooftop machinery operating 24/7, the 55 dBA noise level predicted by Paragon will exceed the ambient noise from Sepulveda traffic.

Mitigating the noise with sound-absorbing materials in the visual shields around the machinery constitutes an easy slam dunk. Paragon claims such expense unnecessary.

Per Exhibit 11, the operable code provision, MBMC §5.48.140 Noise Disturbances, prohibits creating noise that causes “discomfort or annoyance to reasonable persons.”

The unmitigated Paragon project guarantees that rooftop machinery will make residents irrational, if not crazy, just as Shade Hotel did to its neighbors. Will Larsson St residents have to harangue the city council many times for the next five years to get relief? Why not solve the problem now and send Paragon back to prepare a valid Mitigated Negative Declaration?

Conclusion.

The city council should direct a resolution amendment that will ensure findings for:

- 1) Public safety and welfare; 2) Compliance with Title 10 Planning and Zoning; and,
- 3) Mitigation of impacts on nearby residents.

To that end, my appeal report will provide a revised Resolution No. PC 17-01.

Thanks for your consideration of my appeal,

Don McPherson,

1014 1st St, Manhattan Beach CA 90266

Cell: 310 487 0383

dmcphersonla@gmail.com

EXHIBIT 1.

Resolution No. PC 17-01

CUP REQUIRED DECELERATION LANE PER CALTRANS STANDARDS

and Public Works, prior to permit issuance. The Plan shall include, but not be limited to, provisions for the management of all construction related traffic, parking, staging, materials delivery, materials storage, and buffering of noise and other disruptions. The Plan shall minimize construction related impacts to the surrounding neighborhood, and shall be implemented in accordance with the requirements of the Plan.

24. Prior to the first building permit final and occupancy, an Employee Parking Management Plan shall be submitted to the Traffic Engineering and Planning Divisions for City review and approval to minimize the potential for overflow parking into the surrounding neighborhood. The Plan shall include the recommendations included in the Traffic Impact and Parking Demand Study, within the Initial Study. Penalties and corrective measures for non-compliance shall be identified in the Plan. The Plan shall be approved prior to building final and occupancy, and shall be implemented immediately.
25. Deliveries and loading shall be limited to the hours between 7:00 a.m. and 1:30 p.m. Monday-Saturday with the exception of 2-axle delivery vans, which may deliver during regular business hours of 7:00 AM to 10:00 PM. No delivery vehicles shall be allowed to remain in the loading dock or on the property outside of business hours. No deliveries are permitted on Sundays.
26. All on-site and off-site improvement plans, shall be submitted to plan check, at the same times as the building plans. The plans shall be reviewed and approved by the City Traffic Engineer, Planning, Public Works, Police, Fire and Caltrans, where applicable, prior to the issuance of permits. The project shall be fully constructed per the approved plans prior to issuance of a permit final and occupancy. The plans shall include, but not be limited to the following features: **Deceleration lane required in both Feb 8 and Mar 22 CUP's.**

Staff deleted the deceleration lane after approval of the CUP by the PC on March 22.

a. All two-way driveways and approaches shall be as wide as the aisle they serve, not including approach wings or radii. The Sepulveda Boulevard driveway and **deceleration lane shall be constructed per Caltrans standards.** [emphasis added]

b. All raised landscaping planters along the property frontages shall begin or end perpendicular to the lower portion of the driveway wings.

c. The driveway on Sepulveda Boulevard shall be restricted to Right Turn In/Right Turn Out and posted with signs and striping as directed by the City Traffic Engineer and Caltrans.

STAFF ALTERED APPROVED CUP TO DELETE DECELERATION LANE

24. Prior to the first building permit final and occupancy, an Employee Parking Management Plan shall be submitted to the Traffic Engineering and Planning Divisions for City review and approval to minimize the potential for overflow parking into the surrounding neighborhood. The Plan shall include the recommendations included in the Traffic Impact and Parking Demand Study, within the Initial Study. Penalties and corrective measures for non-compliance shall be identified in the Plan. The Plan shall be approved prior to building final and occupancy, and shall be implemented immediately.
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26. All on-site and off-site improvement plans, shall be submitted to plan check, at the same times as the building plans. The plans shall be reviewed and approved by the City Traffic Engineer, Planning, Public Works, Police, Fire and Caltrans, where applicable, prior to the issuance of permits. The Project shall be fully constructed per the approved plans prior to issuance of a permit final and occupancy. The plans shall include, but not be limited to the following features:

After CUP approval March 22, staff altered Condition 26 (a), replacing the "DECELERATION LANE" with a "WIDENED SHOULDER", a huge downgrade that substantially impacts public safety, per the *Sepulveda Blvd Development Guide*

- a. All two-way driveways and approaches shall be as wide as the aisle they serve, not including approach wings or radii. The Sepulveda Boulevard driveway and widened shoulder shall be constructed per Caltrans standards. [emphasis added]
- b. All raised landscaping planters along the property frontages shall begin or end perpendicular to the lower portion of the driveway wings.
- c. The driveway on Sepulveda Boulevard shall be restricted to Right Turn In/Right Turn Out and posted with signs and striping as directed by the City Traffic Engineer and Caltrans.
- d. Outbound traffic at the driveway on 8th Street shall be restricted to Right Turn Out only and posted with signs and other design criteria as directed by the City Traffic Engineer.
- e. All parking spaces in the main parking lot shall remain unrestricted for all users during business hours.
- f. Parking stall cross-slope shall not exceed 5%.
- g. Doors, gates, staircases, and similar improvements, shall not swing into a vehicle aisle or walkway.
- h. Provide unobstructed triangle of sight visibility (5' x 15') adjacent to each driveway and behind the ultimate property line, after dedications, when exiting the parking areas without walls, columns, landscaping, or similar obstructions over 36 inches high. (MBMC 10.64.150)
- i. All parking spaces adjacent to a vertical obstruction, except columns and obstructions adjacent to the front five feet (5') of a parking space, must be at least one foot wider than a standard space. (MBMC 10.64.100B)
- j. Wheel stops shall be provided for all parking spaces except parallel spaces or those spaces abutting a masonry wall or protected by a 6-inch high curb. (MBMC 10.64.100.D)

CITY TRAFFIC ENGINEER, MARCH 22 TESTIMONY "We have a condition in the resolution that the DECELERATION AREA and the driveway will meet Caltrans standards"

[Hearing video time: 03:24:10, Commissioners did not replace the "deceleration lane" with a "widened shoulder."]

PARAGON'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.

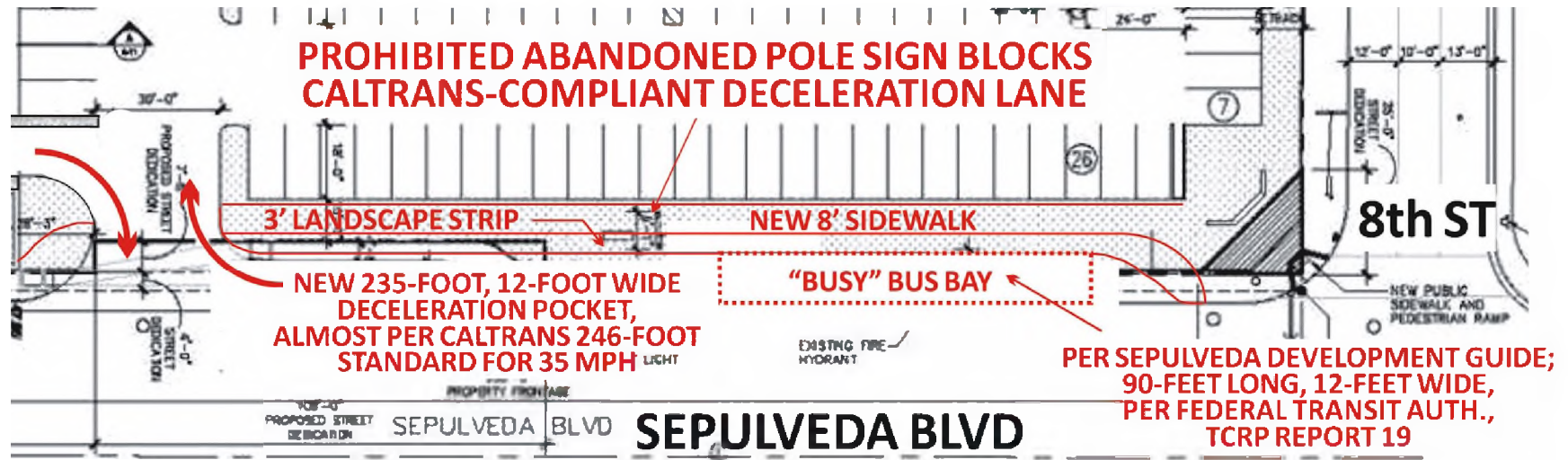
[Emphasis added]

MBMC 10.72.070 - Prohibited signs.

F. Abandoned signs;

**PARAGON'S POLE SIGN
ABANDONED AND
NOT PERMITTED**

**OUR DECELERATION LANE COMPLIES WITH SEPULVEDA DEVELOPMENT GUIDE & CALTRANS
STAFF APPROVED THE PARAGON NONCOMPLIANT LANE TO RETAIN THE PROHIBITED ABANDONED POLE SIGN**



**BUS STOP IN OUR DECELERATION LANE COMPLIES WITH SEPULVEDA DEVELOPMENT GUIDE
PARAGON DECELERATION LANE VIOLATES SEPULVEDA GUIDE & CALTRANS STANDARDS**

[At March 22 hearing, the Planning Division testified that bus stops not their responsibility]

SEPULVEDA BLVD DEVELOPMENT GUIDE

[Pp. 11, ¶ 1]

“A right-turn deceleration pocket **(and bus turnout when applicable)** should be provided at the primary vehicle access point for each block from Sepulveda Boulevard to improve safety and circulation.”

EXHIBIT 6.

**PARAGON CHERRY-PICKED STANDARDS FROM TWO USES
 TO FALSELY REDUCE PARKING BY 7 SPACES**

Municipal Code Use	Parking Space/Area Ratio	Use Area	Area, Sq-Ft	Parking Spaces
Seated Eating & Drinking	One Space per 50 Sq-Ft	Seating Area	838 ³	17
Takeout Food Service	One Space per 75 ¹ Sq-Ft	Total Area	1,446 ⁴	19
Paragon False Concoction	One Space per 75 ¹	Seating Area ²	709 ^{5, 6}	10 [Falsified]⁶

NOTES:

- 1) For parking space per area, Paragon used the Takeout Eating and Drinking standard of one space per 75 sq-ft total area;
- 2) For use area, Paragon used the smaller seating area, not the total area
- 3) Net seating area calculated from Paragon Gelson’s Eating & Drinking plan view, pp 223 in 8 Feb 2017 staff report;
- 4) Total Eating & Drinking area calculated from Paragon Gelson’s plan view, pp 222 in 8 Feb 2017 staff report;
- 5) Paragon excluded 104 sq-ft [2 spaces] of inside dining in Gelson’s NE corner, pp.223 in 8 Feb 2017 staff report;
- 6) Paragon combined smaller net Seated E&D area with larger 75 sq-ft Takeout parking standard, to reduce spaces required by 7; and,
- 7) All area calculations and Paragon falsifications will be verified by licensed architect.

EXHIBIT 7.

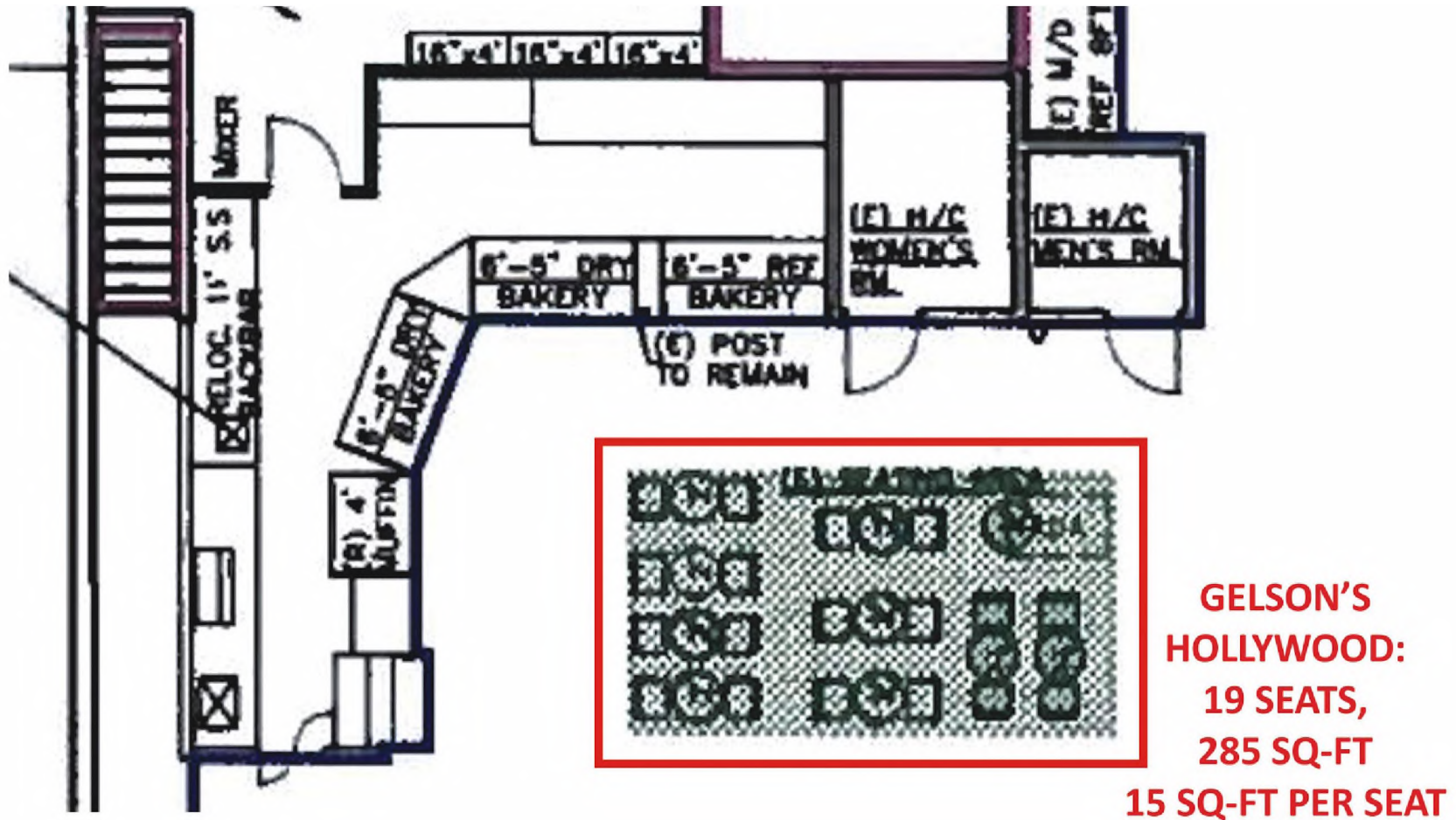
PARAGON GAMED DINING PARKING BY REDUCING NUMBER OF SEATS

GELSON'S HOLLYWOOD STORE SEATING DENSITY: 15 SQ-FT PER SEAT. [See below]

GELSON'S MANHATTAN STORE SEATING DENSITY: 31 SQ-FT PER SEAT. [See next slide]

NOTE: PARAGON CALCULATES PARKING PER SEAT. THE CITY USE PERMIT SPECIFIES PARKING BY AREA.

GELSON'S WILL DOUBLE MANHATTAN SEATING DENSITY AND THEREFORE DOUBLE PARKING DEMAND.



**PARAGON GAMED PARKING BY REDUCING SEATING
ONE-HALF OF HOLLYWOOD STORE DENSITY,
ALSO ONE-HALF OF DENSITY PERMITTED BY STATE CODE!!!!**

PARAGON FURTHER GAMED PARKING BY ANALYZING 28 SEATS VS 32 SEATS ON PLAN BELOW

NOTE: USE PERMIT SPECIFIES EATING AREA, NOT SEATS.

GELSON'S WILL DOUBLE SEATING AND THEREFORE DOUBLE REAL PARKING DEMAND.

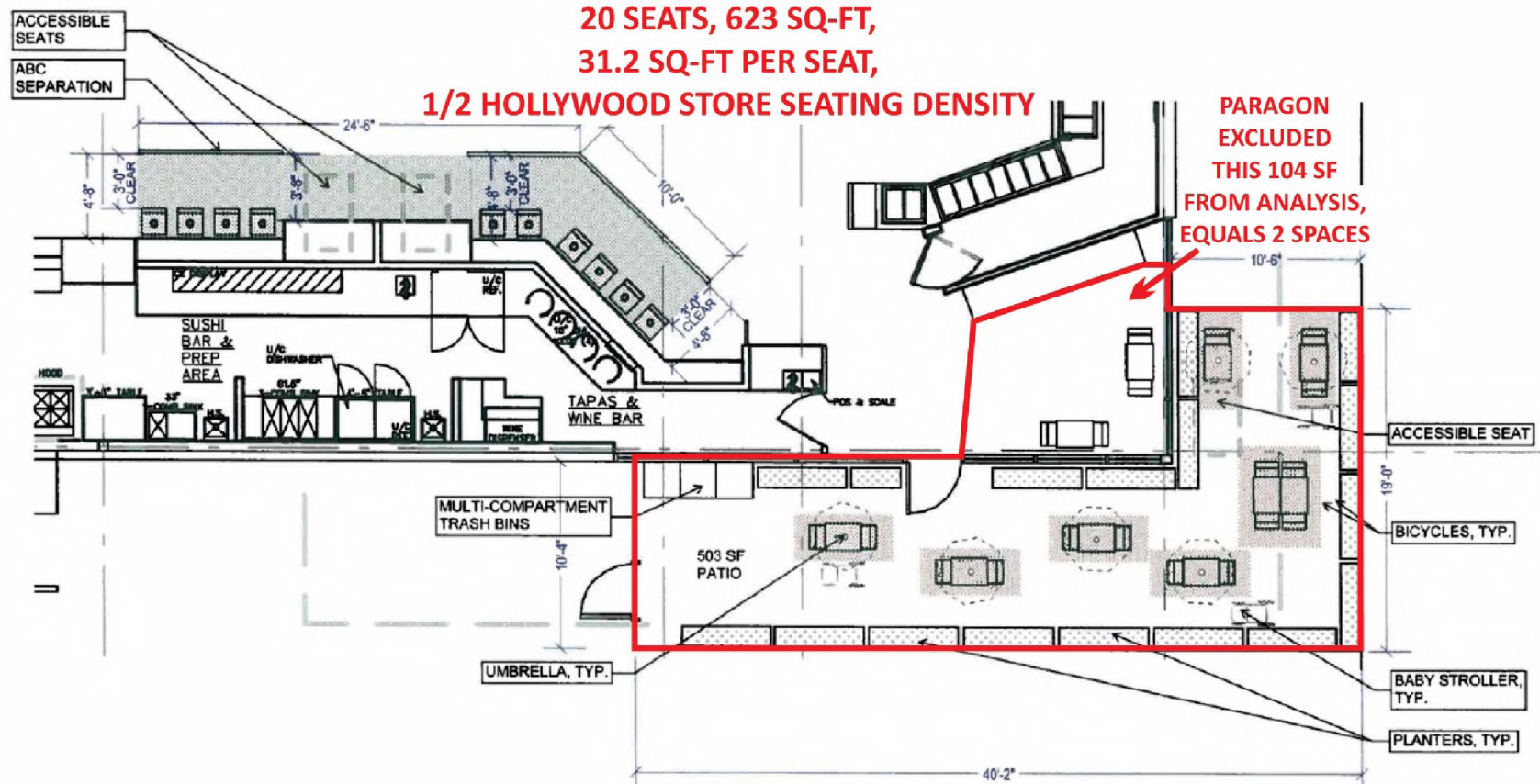


EXHIBIT 9.

REDUCED-PARKING CODE PROVISION NOT APPLICABLE TO PARAGON PROJECT

The Facts.

- 1) The project requires 171 spaces; actually 178 spaces, with correct eating & drinking analysis;
- 2) Paragon proposes only 135 spaces, including 16 in the lot across 8th St;
- 3) Without the bank, Paragon's two properties can provide parking for Gelson's; &
- 4) Per previous two slides, Paragon has misrepresented material facts in their parking analysis

Analysis.

- Only two projects have qualified for reduced parking in city history:
 - ◇ *Tikvat Jacob* on Sepulveda Blvd. for day care center and enlarged religious assembly area; &
 - ◇ Aviation offices: 8-space reduction of 200 spaces; exchanged for 2,663 SF free dedication to city
- Municipal Code implies reduced-parking restrictions for projects adjoining residential areas:
 - ◇ The D Design Overlay District restricts North End projects as follows [MBMC 10.44.040]; &
 - ◇ "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***"

Conclusions.

- Paragon has misrepresented material facts that invalidate their parking-demand model;
- Only two city councils have approved reduced-parking projects, in 2012 & 2013 respectively;
- The North End restriction on reduced-parking applies directly to the Larsson St neighborhood; &
- Required findings for the use permit cannot be made:
 - ◇ Paragon has violated Title 10 provisions, by misrepresenting facts in the parking analysis; &
 - ◇ As result, parking overflow will impact the residential neighborhood.

EXHIBIT 10. ALL NEIGHBORS HAVE LINE OF SIGHT TO NOISY ROOFTOP MACHINERY



EXHIBIT 11.

PARAGON HAS PROVED THAT RESIDENTS WILL HEAR LOUD ROOFTOP MACHINERY

The Facts.

- 1) Paragon predicts rooftop machinery noise 67% of daytime Sepulveda background;
- 2) Paragon did not measure night background, so machinery noise can exceed the ambient;
- 3) Staff and Paragon ignored the noise ordinance provision regarding disturbing rational people;
- 4) All adjoining residences have line of sight to the machinery, some less than 100 feet away.

Analysis.

- At Shade, 900 Club and Strand House hearings, staff has emphasized the noise ordinance enforceable only if causing discomfort or annoyance to reasonable persons. [MBMC 5.48.140];
- Paragon considered only numerical noise levels, not what neighbors will hear and experience;
- Paragon ignores the capability for 'selective hearing', by which people focus on periodic sound, even if less than the background noise

Conclusions.

- The rooftop machinery noise will cause discomfort and annoyance to the neighbors;
- Required findings for the use permit cannot be made:
 - ◇ Paragon did not evaluate the subjective noise provision MBMC 5.48.140;
 - ◇ Rooftop noise will impact nearby residential properties; &
 - ◇ Mitigation measure do exist, namely using noise suppressing materials in the visual barriers enclosing the rooftop equipment.

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PARAGON PROJECT VIOLATES MUNICIPAL CODE AND CEQA

EXECUTIVE SUMMARY.

The Paragon project violates the city municipal code and the California Environmental Quality Act [CEQA], in the following three categories:

1. Parking;
- 2 Noise from rooftop machinery 60 feet from residences; and,
- 3 A dangerous and substandard deceleration lane from Sepulveda Blvd.

Parking Violations.

The Paragon project requires a parking waiver for 36 of the 171 spaces required by the municipal code. To approve that waiver, the city council must make a finding that the combined financial services/investment company and Gelson's market will have a parking demand of 135 spaces, not the code-required 171.

A city-website search discloses that previous city councils apparently have approved such parking-reductions only twice.

To model the demand, Paragon purports to use industry-standard references prepared by the Urban Land Institute [ILI] and the Institute of Transportation Engineers [ITE]. To conduct my parking analysis, I obtained these references and have used them extensively.

Paragon egregiously corrupts the ULI/ITE methodology, by using average parking demand statistics, rather than the peak demand values specified in the industry-standard references. Paragon has designed their project parking to hold only the average of the maximum demand measurements compiled by ULI/ITE. By this means, Paragon substantially reduced the parking requirements for their project.

We all know that a parking lot designed to hold only the average of the peak demand will overflow half of the time. For the Paragon project, that overflow will go to the adjoining residential streets. The backups will also cause congestion on Sepulveda, a CEQA violation.

Paragon discovered that using the average-demand ploy fell short of predicting the demand of 135 spaces, the maximum they can stuff into their project. As result, they resorted to the following three misrepresentations, all involving Gelson's seated food service.

1. Of the **52** seats permitted by the approved plans, Paragon used only **28** to calculate the parking spaces required for food service.
2. For family-style food service, the ULI/ITE references specify hourly-use statistics that peak at lunchtime and again at 5-6 PM, when the bank open and using parking. Paragon instead used the 'fine' dining statistics that peak at 7-8 PM, when the bank closed, with zero parking.
3. To calculate municipal code-required parking, Paragon used the Take-Out requirement of one space per **75 sq-ft**, rather than the denser Seated requirement of one space per **50 sq-ft**.

If the city council approves Paragon's violation-riddled parking analysis, in the future, every developer will require a parking reduction based on designing to average demand.

Noise Violations from Rooftop Compressors and Fans, 60-Foot from Homes.

The Paragon *Initial Study/Mitigated Negative Declaration* [IS/MN]D predicts that the rooftop equipment will create noise on adjoining residential properties at a 55 dB level. The IS/MND Table 4.12-2 lists maximum levels permitted by the municipal code as 50 dB for daytime and 45 dB at night. Consequently, the noise from the rooftop equipment will be three times louder than the maximum permitted level in the daytime and ten times louder at night.

PARAGON PROJECT VIOLATES MUNICIPAL CODE AND CEQA

Amazingly, the Initial Study predicts the rooftop equipment will exceed the maximum permitted noise levels on residential properties 24/7, but Paragon dismisses that fact.

Violations by Dangerous and Substandard Deceleration Lane.

The approved deceleration lane violates requirements in the Caltrans *Highway Design Manual* and in the city-council approved *Sepulveda Boulevard Development Guide*.

In a January 14, 2016 letter to the city, Caltrans addressed the deceleration lane. They stated, "...all environmental concerns must be adequately addressed." For traffic environmental review, the CEQA Guidelines require inclusion of all documentation such as the above cited references. The Paragon IS/MND fails to comply with this CEQA direction.

Specifically, the 110-foot length of the deceleration falls far short of the Caltrans 246-foot requirement. What blocks extension of the deceleration lane to comply with the Caltrans standard? Of all things, the prohibited 29-foot high pole sign, left over from the auto dealer.

The municipal code categorically prohibits retention of this pole-sign fugitive, which precludes compliance by the deceleration lane with Caltrans and the city Sepulveda Guide.

EVIDENTIARY EVIDENCE SUBSTANTIATES VIOLATIONS BY PARAGON PROJECTS

SUMMARY: PARKING VIOLATIONS.

Paragon requests a parking reduction of 36 spaces, based on two municipal-code statutes, of which previous city councils have appeared to approve use permits only twice. To approve this waiver, the council must make two findings: 1) The demand less than required by the municipal code; and, 2) The parking provided adequate to meet the demand.

Paragon egregiously substitutes **average** demand for the **peak** demand required by the industry standards that they cite: 1) Urban Land Institute [ULI], *Shared Parking*; and, 2) Institute of Transportation Engineers [ITE], *Parking Generation*.

Clearly, parking designed to hold **average** demand will fill **half the time**, spilling out on to adjoining residential streets, a CEQA violation, as well as a municipal code violation. The faulty Paragon parking model understates real demand, thereby failing the "adequate" test.

Councilmembers cannot make the above required findings. If they overlook the facts and approve the Paragon project, then, every developer will demand that they too can reduce parking by using average demand. This contrasts with the industry-standard of peak demand, as well as comparable parking ordinances uniformly enforced by California local governments.

The facts below substantiate the above conclusions. The facts also show that Paragon improperly manipulated their parking model, to further reduce their fake parking demand, so that it exactly matches the 135 spaces that they can stuff into the parking area available.

THE FACTS: PARKING VIOLATIONS.

Paragon Uses a Generic Ploy to Reduce Parking Demand [1st Finding.]

The financial services investment company in the Paragon project increases parking required, but reduces the area necessary to provide it. The municipal code requires 177 spaces [171 according to Paragon's manipulated analysis.] The project can provide only 135 spaces.

To make up the 42-space shortfall, Paragon has invoked two rarely-approved provisions in the municipal code that enable reduced parking, MBMC §10.64.040 and .050. [Exhibit 1]

PARAGON PROJECT VIOLATES MUNICIPAL CODE AND CEQA

Apparently, previous city councils have approved only two cases of reduced-parking, both for adding a small use. Those two applicants provided studies of their existing parking lots. That data proved the parking capacity remained adequate to serve the additional uses.

In contrast, Paragon uses a generic ploy for reducing parking demand, by distorting the industry-standard methodology employed in the ULI and ITE references. Per Exhibit 2, they substituted average demands for peak demands, basically a shell game. If permitted, any developer could and would do it. Manhattan Mall would have loved to.

Exhibit 3 shows Table 11B in the *Traffic Impact and Demand Study*, with the correct peak demands specified by the ULI/ITE references.

Exhibit 3 quotes Paragon as using the ULI methodology, which they manipulated. The Urban Land Institute requires parking demand to equal the “85th percentile of peak hour observations,” not the average used by Paragon in their analysis.

Exhibit 4 shows that using the correct ULI/ITE peak demands versus Paragon’s average demands results in a total of 183 spaces required at peak time, versus Paragon’s 135.

Paragon Parking Will Overflow 50% of time At Peak Use [2nd Finding.]

Paragon provided no analysis of adequacy, such as parking availability during the day. No wonder! Their parking designed to hold only ‘average demand’ will fill and overflow into the residential neighborhood 50% of the time at peak use.

Exhibit 5 shows availability of the Paragon ‘average demand’ parking design, compared to designs based on the municipal code and on the ULI/ITE methodology. Bear in mind that parking demands resulting from the ULI/ITE methodology will differ somewhat from the municipal code requirements, although they are comparable.

Clearly, the Paragon parking design does not adequately serve the required parking demand, so the council cannot make the finding that it does.

Paragon Manipulated Parking Model to Match Their 135 spaces.

Paragon discovered that substituting average demand for peak demand did not suffice to bring their model down to the 135 spaces available. They then resorted to the following three misrepresentations to get a match between their ‘theory’ and the 135-space reality.

1. For food-service, Paragon shifted the hourly use from ‘family’ to ‘fine dining’, which peaks at 7 to 8 PM, when the banking investment center closed. The ‘family’ eating & drinking use peaks at noon, but requires a lower parking demand factor than does ‘fine dining.’ Guess which parking demand factor that Paragon used? [See Exhibit 6 for this and item 2) below]
2. Paragon cherry-picked the municipal code to determine parking required for eating & drinking. They used the Takeout food-service requirement of one space per 75 sq-ft, not the higher-space requirement of one per 50 sq-ft for seated dining. [MBMC 10.64.030]
3. For food service, Paragon switched to spaces per number of chairs, rather than spaces per area, the standard for the ULI/ITE methodology and the municipal code. For the parking analysis, they reduced the number of chairs to 28, compared to the 52 they used in the traffic analysis. [Traffic-Parking Study, Pg. 42, ¶12] Resolution No. PC 17-01 specifies eating & drinking area, not number of chairs, an unenforceable condition. Exhibits 7 & 8 respectively show the proposed MB store at 30 sq-ft per chair, versus the existing Hollywood store at 15 sq-ft per chair, the state fire code standard. [Title 24, Ch. 10, Table 1004.1.1]

PARAGON PROJECT VIOLATES MUNICIPAL CODE AND CEQA

Paragon False Parking Model Invalidates CEQA No Significant Impact Finding.

Per Exhibit 3, Paragon falsely stated they used the “total peak demand” specified by the ULI methodology for shared parking. **Instead, Paragon blatantly used the average demand.**

The above fabrication by Paragon in the IS/MND invalidates their claim that the overflowing parking lot will not significantly impact Transportation and Traffic, CEQA Guidelines Checklist Item 16 (a). [Exhibit 9]

Paragon parking constitutes a “component of the circulation system,” which when it overflows, will cause Sepulveda congestion and additional trips into the neighborhood.

CONCLUSIONS: PARKING VIOLATIONS.

Paragon’s shameless corruption of the ULI/ITE methodology invalidates their requirement of 135 spaces for the project, compared to the 177 required by the municipal code. Hence, the city council cannot make the finding that the demand for the financial investment company and the Gelson’s market will be less than required by the municipal code.

Paragon provided no analysis of adequacy to meet the demand. Exhibit 5 shows the parking lot will overflow considerably more often than will a design compliant with the code. No way can the city council make the finding of adequacy.

Considering the number of municipal code violations in the parking analysis, the city council also cannot make the findings of compliance with the zoning code or of no adverse impact on nearby properties, pursuant to MBMC 10.84.060 (A).

NOISE

SUMMARY: ROOFTOP EQUIPMENT NOISE VIOLATIONS.

Data in the Paragon *Initial Study/Mitigated Negative Declaration* prove that the project will exceed maximum permitted noise levels on adjoining residential properties 24/7, pursuant to Manhattan Beach Municipal Code Chapter 5.48 Noise Regulations, §5.48.160.

These facts invalidate the conclusions regarding no significant impacts from noise, CEQA Guidelines Checklist Items 4.12 (a), (c), & (d). [*ibid.* Pg. 4.12-1]

Before diving into the details, consider the Exhibit 10 view of the project from the Larsson and 6th St intersection. At ground level, the photograph discloses that Larsson St. and 8th St. residences will have direct line of sight to the rooftop compressors and fans. Only 60 feet separate these homes from the noise, which Paragon refuses to mitigate.

The city preferred noise expert, Behrens, could design mitigation, merely by constructing the visual shields required by the resolution from sound-absorbing materials.

THE FACTS: ROOFTOP EQUIPMENT NOISE VIOLATIONS.

Paragon predicts noise levels on adjacent residential properties as follows:

”Sensitive Receptor No. 1 (residences to the west of the project site) would be the closest receptor to the mechanical equipment and could experience noise levels of approximately **55 dBA** while the equipment is in use.” [Emphasis added]

PARAGON PROJECT VIOLATES MUNICIPAL CODE AND CEQA

In the Initial Study/MND, Paragon quotes the city noise ordinance, per Table 4.12-2.

**Table 4.12-2
City of Manhattan Beach Exterior Noise Standards**

Zone	Time of Day	Exterior A-Weighted Noise Levels, dBA ¹
Residential	7:00 AM – 10:00 PM	50
	10:00 PM – 7:00 AM	45

The 55-dBA noise from the rooftop will exceed the municipal code standards 24/7.

The neighbors will experience significant impacts throughout the night, when Sepulveda traffic dwindles to an occasional vehicle. Paragon monitored noise only once, at 1:26 PM on November 22, 2015, during the busy lunchtime. [*ibid.* Table 4.12-3] **Competent acoustic experts take measurements continuously for a couple days, typically including a weekend.**

Because Sepulveda traffic creates the ambient noise, lulls during the day provide some measure of the ambient at night. Indeed, Table 4.12-3 shows the minimum measurement as 43.2 dBA, typical for Manhattan Beach residential neighborhoods at night.

At night, the rooftop equipment at 55 dB will drown out other sound. As such, it will certainly cause “*discomfort or annoyance to any reasonable person of normal sensitiveness,*” thereby violating MBMC §5.48.140 Noise Disturbances.

CONCLUSIONS: ROOFTOP EQUIPMENT NOISE VIOLATIONS.

Per Exhibit 11, the Initial Study/MND **erroneously** states at Items 4.12 (a), (c) and (d), that rooftop equipment noise will not cause “Potentially Significant Impacts.” [*ibid.* Pg. 4.12-1]

DECELERATION LANE

SUMMARY: DECELERATION LANE VIOLATIONS.

The approved Paragon plans intrinsically link the inadequate and dangerous deceleration lane with the prohibited abandoned pole sign. The 29-foot high sign blocks extension of the deceleration lane, required for compliance with Caltrans standards and the *Sepulveda Blvd. Development Guide*. [Approved plan, Exhibit 12]

Commonsense demands that the city correct the absurdity of letting a categorically-prohibited pole sign dictate a deceleration lane length far too short for public safety.

Regarding the deceleration lane, the Caltrans letter dated January 14, 2016 states, “*...all environmental concerns must be adequately addressed.*”

The Paragon *Initial Study/Mitigated Negative Declaration [IS/MND]* fails to address the congestion and safety problems of the approved deceleration lane, as required by CEQA Guidelines Appendix G Checklist Items 4.16 (a) and (f). [Exhibit 9, *IS/MND* 4.16-1]

Item 4.16(a) requires compliance “*...with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of a circulation system...*” Thus, both the Caltrans *Highway Design Manual* and the city-council approved *Sepulveda Blvd. Development Guide* qualify as compliance standards, pursuant to CEQA Checklist Item 4.16(a).

Item 4.16(f) requires compliance with the above cited documents for public safety.

PARAGON PROJECT VIOLATES MUNICIPAL CODE AND CEQA

THE FACTS: DECELERATION LANE VIOLATIONS.

Caltrans Highway Design Manual.

The deceleration lane should have a minimum 270-foot length and 11-foot width, per the Exhibit 13 *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.

At the Planning Commission hearing March 22, citing the above Caltrans letter, the city traffic engineer testified as follows [22/03/2017 video minutes, 03:19:48 hh:mm:ss]:

- 1) The deceleration lane should have a 246-foot length [not 270 feet per Exhibit 13];
- 2) The Paragon project can accommodate a 12-foot wide deceleration lane;
- 3) Caltrans will tolerate some flexibility in lane length and width, if justified; and,
- 4) Resolution No. PC 17-01 includes a condition for a deceleration lane compliant with Caltrans.

[Staff reports Feb. 8 & Mar 22, Reso. No. PC 17-01, Condition 26a]

City Sepulveda Boulevard Development Guide [1999, Pg. 11].

The Sepulveda Guide states, “A right-turn deceleration pocket (*and bus turnout when applicable*) should be provided at the primary vehicle access point for each block from Sepulveda Boulevard to improve safety and circulation.” [Emphasis added]

Municipal Code Prohibits Abandoned Pole Signs Not Used for 90 Days.

Exhibit 14 illustrates the existing pole sign as not having been used for its intended purpose for years, much less than over 90 days, and therefore categorically prohibited. The approved plans include the prohibited pole sign as well as other signage, not permitted by municipal code Title 10 Chapter 72 Sign Code.

CONCLUSIONS: DECELERATION LANE VIOLATIONS.

Exhibit 15 illustrates a deceleration lane that complies with CEQA Guidelines, Caltrans standards and the city Sepulveda Guide. The design also incorporates conditions added by Commissioner Conaway, for an eight-foot sidewalk and a three-foot landscaped shoulder.

CONCLUSIONS: PARAGON PROJECT VIOLATIONS

To approve the parking waiver, the council must make two findings: 1) The demand less than required by the municipal code; and, 2) The parking provided adequate to meet the demand. Clearly the Paragon parking analysis does not satisfy these two criteria.

The Paragon project also does not satisfy the standard findings required for use permits:

1. Compliance with municipal code Title 10 Zoning and Planning; and,
2. No adverse impacts on nearby properties.

Exhibit 1. Reduced parking statutes
 Exhibit 3. Corrected parking demands
 Exhibit 5. Parking availability per hour
 Exhibit 7. MB one seat per 30 sq-ft
 Exhibit 9. Traffic impacts, CEQA Item 16
 Exhibit 11. Noise impacts, CEQA Item 12
 Exhibit 13. Caltrans standards
 Exhibit 15. Compliant deceleration lane

Exhibit 2. ITE parking demand per uses
 Exhibit 4. Paragon vs ULI parking spaces
 Exhibit 6. Parking misrepresentations
 Exhibit 8. Hollywood one seat per 15 sq-ft
 Exhibit 10. Home line of sight to rooftop
 Exhibit 12. Nonconforming deceleration lane
 Exhibit 14 Prohibited pole sign

Exhibit 1

MUNICIPAL-CODE FINDINGS REQUIRED FOR REDUCED PARKING

Next page for the two cases approved by city councils and CEQA considerations.

Manhattan Beach Municipal Code Title 10, Planning and Zoning.

Chapter 10.64 - OFF-STREET PARKING AND LOADING REGULATIONS

10.64.040 - Collective provision of parking.

Notwithstanding the provisions of Section 10.64.020(E), a use permit may be approved for collective provision of parking on a site of five thousand (5,000) square feet or more that serves more than one (1) use or site and is located in a district in which parking for the uses served is a permitted or conditional use. A use permit for collective off-street parking may reduce the total number of spaces required by this chapter if the **following findings are made:**

- A. The spaces to be provided will be available as long as the uses requiring the spaces are in operation; and
- B. **The adequacy of the quantity and efficiency of parking provided will equal or exceed the level that can be expected if collective parking is not provided.**

The maximum allowable reduction in the number of spaces to be provided shall not exceed fifteen percent (15%) of the sum of the number required for each use served.

An applicant for a use permit for collective parking may be required to submit survey data substantiating a request for reduced parking requirements. A use permit for collective parking shall describe the limits of any area subject to reduced parking requirements and the reduction applicable to each use.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91)

10.64.050 - Reduced parking for certain districts and uses.

- A. **CD District.** The following parking requirements shall apply to nonresidential uses:
 1. **Building Sites equal to or less than 10,000 Sq. Ft.** If the FAF is less than 1:1, no parking is required; if the FAF exceeds 1:1, only the excess floor area over the 1:1 ratio shall be considered in determining the required parking prescribed by Section 10.64.030.
 2. **Building Sites greater than 10,000 Sq. Ft.** The amount of required parking shall be determined by first excluding 5,000 square feet from the buildable floor area and then calculating the number of spaces prescribed by Section 10.64.030.
- B. A use permit may be approved reducing the number of spaces to less than the number specified in the schedules in Section 10.64.030, provided that the following findings are made:
 1. **The parking demand will be less than the requirement in Schedule A or B;** and
 2. The probable long-term occupancy of the building or structure, based on its design, will not generate additional parking demand.

In reaching a decision, the Planning Commission shall consider survey data submitted by an applicant or collected at the applicant's request and expense.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91)

Exhibit 1

MUNICIPAL-CODE FINDINGS REQUIRED FOR REDUCED PARKING

City Website Search Discloses Only Two Reduced-Parking Use Permits.

It appears that city councils have approved only two use permits with reduced-parking:

- 1) In 2012, the Tikvat Jacob temple at 1829 Sepulveda Blvd [Agenda Item 12-0340]; and,
- 2) In 2013, an office building at 3601 Aviation Blvd [Agenda Item 13-0471.]

Both of these cases involved small increases in use and minor reductions in parking, 4% for the Aviation Blvd. office building. They provided analyses of operating parking lots to demonstrate adequate “capacity and effectiveness.”

CEQA Considerations for Reduced Parking Statutes.

CEQA Guidelines rule that aspects of community plans or zoning, with which a project complies, shall not constitute factors in an initial study. [CCR §151803 Projects Consistent with a Community Plan or Zoning] Parking represents such a factor, having no mention in the Checklist.

If the parking ordinance not uniformly applied, however, then the initial study must consider it. **The Paragon project parking represents such a case in spades!**

Further down in the Guidelines, an exception states that if ordinances not uniformly applied, then the initial study must consider them. The Guidelines even call out ‘parking’ as the No. 1 exception! [CCR §151803 (f) & (g)]

Paragon has requested reduced parking totaling 20-25%, based on rarely used MBMC 10.64.040 & .050. According to research on the city website, only the two projects mentioned above have received such waivers, and that for negligible parking reductions. Furthermore, MBMC 10.64.040 (B) limits reductions to 15%, far below Paragon’s 20 to 25%. No similarity exists between the Paragon project and the two abovementioned cases.

Consequently, in the total universe of all use permits approved during the past two decades, all but three presumably complied with MBMC 10.64.030. The two exceptions above approved for reduced parking do not resemble the Paragon project. Considering the Paragon reduced-parking waiver constitutes non-uniform application of the parking ordinance and renders parking subject CEQA.

Actually, the Paragon initial study considered parking under CEQA Checklist Item 16, Transportation and Traffic.

Land Use: 850

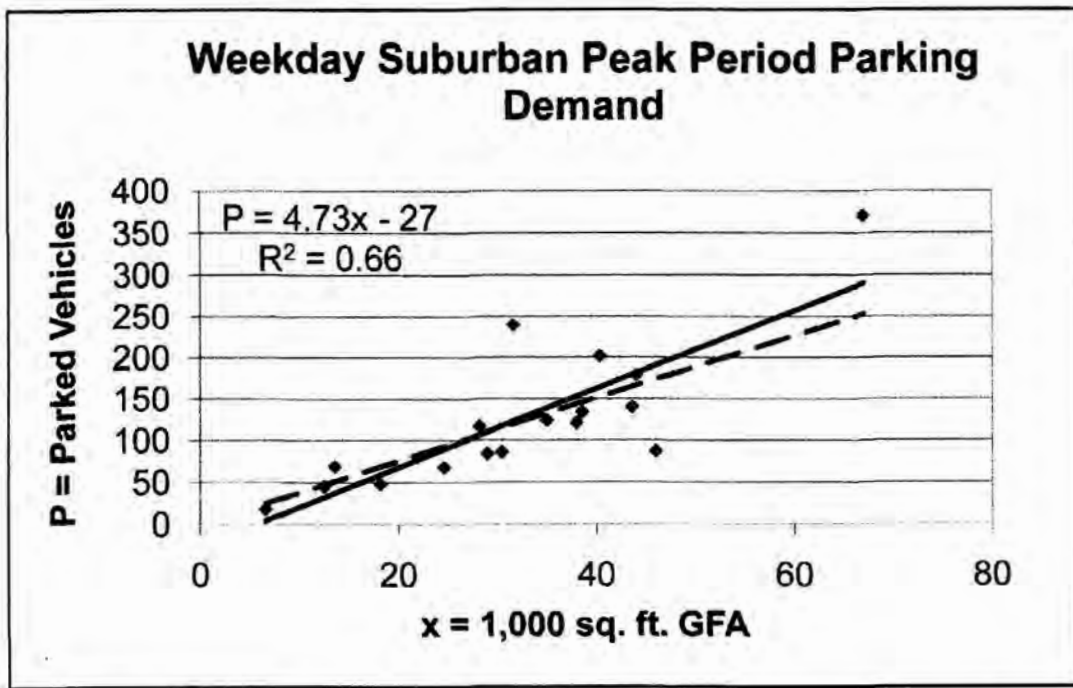
PARKING DEMANDS

Supermarket

PARAGON SUBSTITUTED 50% DEMAND FOR THE ULI 85% STANDARD TO REDUCE REQUIRED PARKING

**Average Peak Period Parking Demand vs. 1,000 sq. ft. GFA
On a: Weekday
Location: Suburban**

Statistic	Peak Period Demand
Peak Period	12:00–6:00 p.m.
Number of Study Sites	17
Average Size of Study Sites Paragon 50th Percentile	32,000 sq. ft. GFA
Average Peak Period Parking Demand	3.78 vehicles per 1,000 sq. ft. GFA
Standard Deviation	1.38
Coefficient of Variation	37%
Range	1.89–7.59 vehicles per 1,000 sq. ft. GFA
85th Percentile ULI 80th Percentile Standard	5.05 vehicles per 1,000 sq. ft. GFA
33rd Percentile	2.98 vehicles per 1,000 sq. ft. GFA



◆ Actual Data Points — Fitted Curve - - - Average Rate

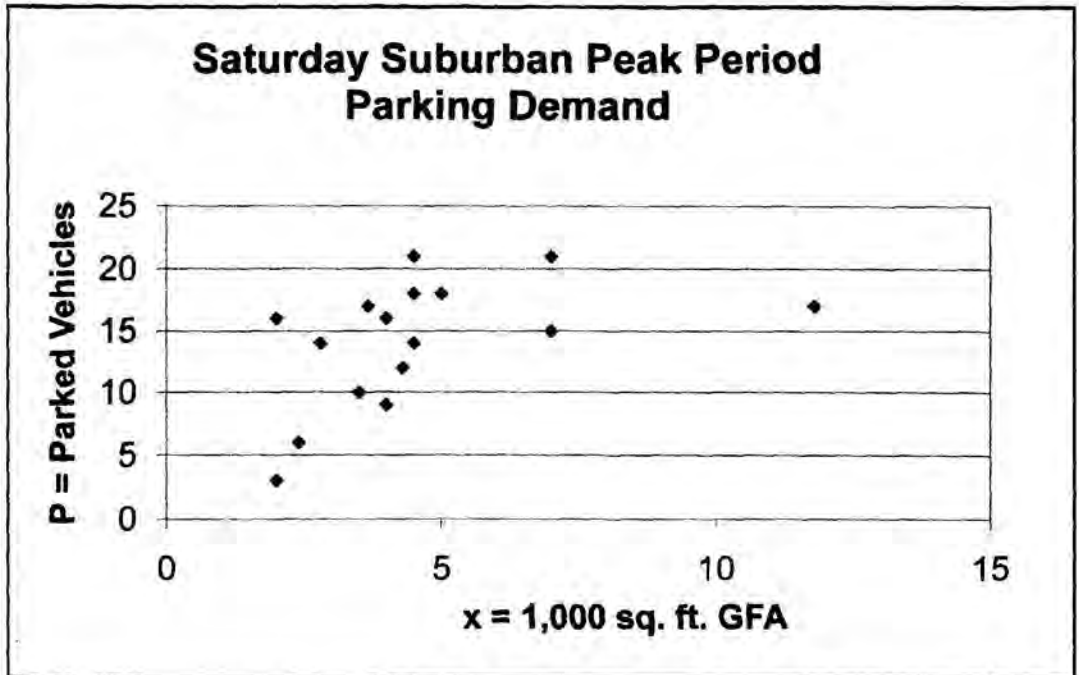
Land Use: 912 Drive-in Bank

PARKING DEMANDS

**PARAGON SUBSTITUTED 50% DEMAND FOR THE ULI 85% STANDARD
 TO REDUCE REQUIRED PARKING**

**Average Peak Period Parking Demand vs. 1,000 sq. ft. GFA
 On a: Saturday
 Location: Suburban**

Statistic	Peak Period Demand
Peak Period	12:00–2:00 p.m.
Number of Study Sites	16
Average Size of Study Sites Paragon 50th Percentile	5,000 sq. ft. GFA
Average Peak Period Parking Demand	3.47 vehicles per 1,000 sq. ft. GFA
Standard Deviation	1.62
Coefficient of Variation	47%
Range	1.44–8.00 vehicles per 1,000 sq. ft. GFA
85th Percentile ULI 80th Percentile Standard	4.66 vehicles per 1,000 sq. ft. GFA
33rd Percentile	2.78 vehicles per 1,000 sq. ft. GFA



◆ Actual Data Points

Land Use: 992

PARKING DEMANDS

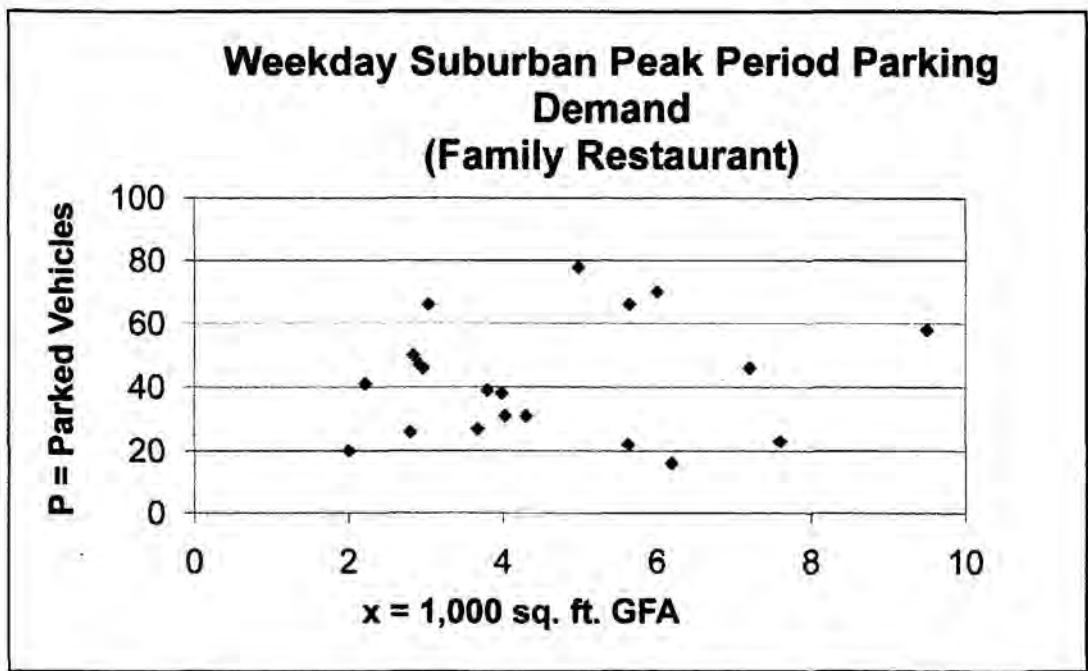
High-Turnover (Sit-Down) Restaurant

PARAGON SUBSTITUTED 50% DEMAND FOR THE ULI 85% STANDARD TO REDUCE REQUIRED PARKING

**Average Peak Period Parking Demand vs. 1,000 sq. ft. GFA
On a: Weekday**

**Land Use Code Subset: Family Restaurant (No Bar or Lounge)
Location: Suburban**

Statistic	Peak Period Demand
Peak Period	11:00 a.m.–2:00 p.m.
Number of Study Sites	20
Average Size of Study Sites Paragon 50th Percentile	4,750 sq. ft. GFA
Average Peak Period Parking Demand	10.60 vehicles per 1,000 sq. ft. GFA
Standard Deviation	5.42
Coefficient of Variation	51%
95% Confidence Interval	8.22–12.98 vehicles per 1,000 sq. ft. GFA
Range	2.59–21.78 vehicles per 1,000 sq. ft. GFA
85th Percentile ULI 80th Percentile Standard	16.30 vehicles per 1,000 sq. ft. GFA
33rd Percentile	7.40 vehicles per 1,000 sq. ft. GFA



◆ Actual Data Points

EXHIBIT 3.

PARAGON ALTERED ULI STANDARDS TO REDUCE REQUIRED PARKING

Paragon-KOA *Traffic Impact and Parking Demand Study* [Pg. 41, ¶ 3]

“KOA conducted a shared parking analysis based on the methodology in *Shared Parking [2nd Edition]*, published by the Urban Land Institute (ULI), which is the City’s recommended methodology.” [Emphasis added]

Urban Land Institute [ULI] *Shared Parking [2nd Edition]*

“This second edition of *Shared Parking* uses the 85th percentile of peak-hour observations for recommended parking ratios, unless otherwise noted.”¹ [Emphasis added]

Paragon-KOA *Initial Study/Mitigated Negative Declaration* [Pg. 4.16-17, ¶ 5]

“Use of **total peak demand factors** defined by the Institute of Transportation Engineers (ITE) source Parking Generation. This is an industry-accepted reference, and approved methodology of the City.” [Emphasis added]

ACTUALLY!

Paragon used the 50th percentile of parking demand, not the ULI standard

- Paragon’s **50% percentile, or average**, will fill 50% of the time at peak hour
- The ULI 85% demand standard will fill 15% of the time at peak hour



10. Parking Analysis

Table 11B – Parking Analysis Inputs for Standalone Uses – Using ITE Rates

DESCRIPTION	SIZE	PARKING DEMAND RATE [1]		STAND-ALONE SPACES REQUIRED, WEEKDAY	STAND-ALONE SPACES REQUIRED, WEEKEND
		Weekday	Weekend		
Specialty Grocery Store [2]	27,694 sq.ft.	3.78 5.05	3.92 4.94	105 139.9	09 136.8
Food Service Seats, Indoor/Outdoor	28 seats	0.35 0.54	0.35 0.48	10 15.1	0 13.4
Bank [3]	6,800 sq.ft.	4.00 5.67	3.47 4.66	27 38.6	21 31.7
Total Standalone Use Parking Requirement [4]				142 194	143 182

KOA used average maximums, not 85th percentile of peak demands, per the ULI and ITE standard

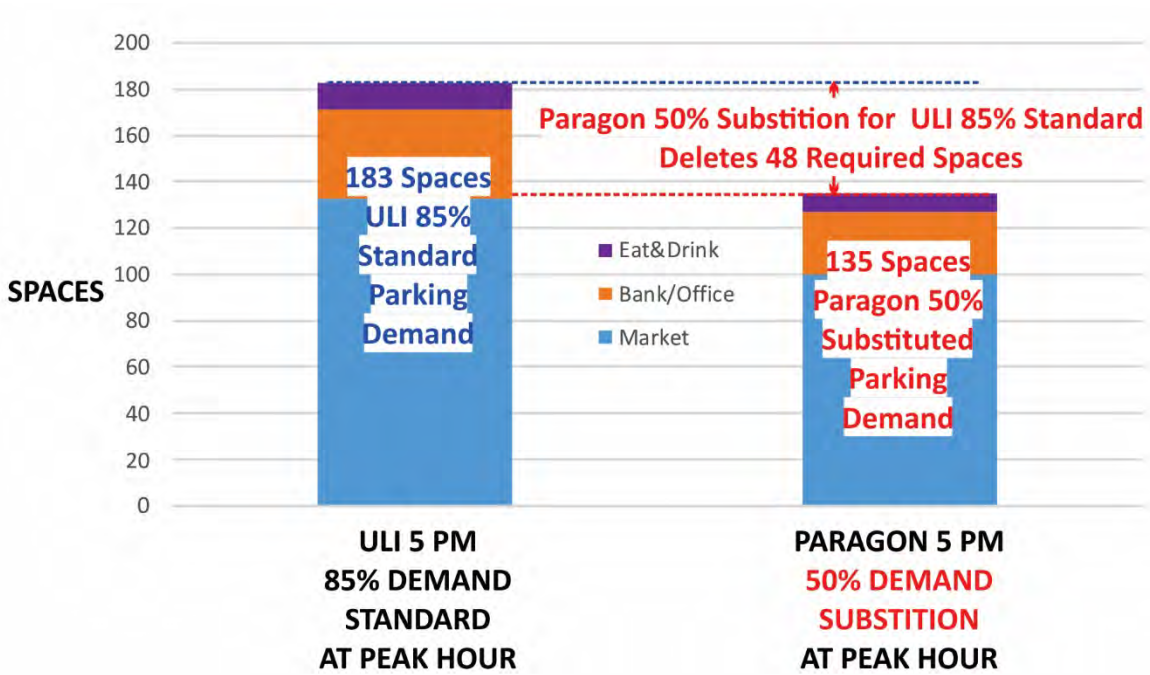
THE 50% SUBSTITUTION NOT SPECIFIC TO THE PARAGON PROJECT

ALL DEVELOPERS CAN AND WILL INSIST ON THE SAME REDUCED PARKING!

1. Smith, Mary S.. *Shared Parking* (Kindle Locations 190-191). Independent Publishers Group. Kindle Edition.

EXHIBIT 4.

PARAGON AVERAGE-DEMAND SUBSTITUTION DELETES 48 SPACES



**THE 50% SUBSTITUTION NOT SPECIFIC TO THE PARAGON PROJECT
ALL DEVELOPERS CAN AND WILL INSIST ON THE SAME REDUCED PARKING!**

EXHIBIT 5.

PARAGON PARKING AND TRAFFIC WILL GO TO RESIDENTIAL STREETS 25% TO 50% OF THE TIME

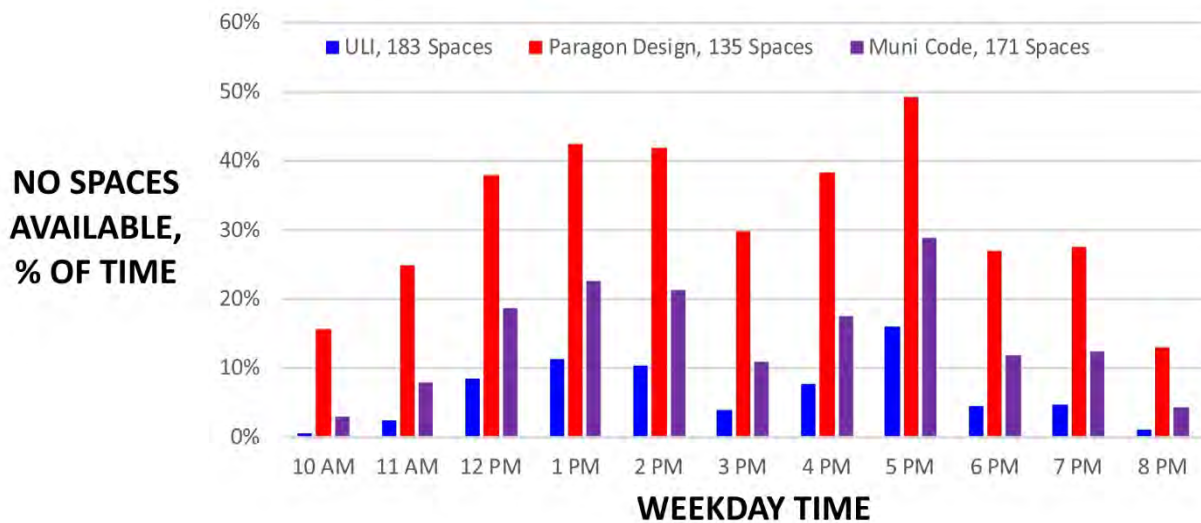
REQUIRED FINDING: MBMC 10.64.040 (B), Collective Provision of Parking [Cited by Paragon]

“The adequacy of the quantity and efficiency of parking provided will equal or exceed the level that can be expected if collective parking is not provided.”

FINDING NOT POSSIBLE:

Paragon withheld the data below regarding “adequacy” of their parking design.

Paragon availability utterly fails to “equal or exceed” municipal code levels



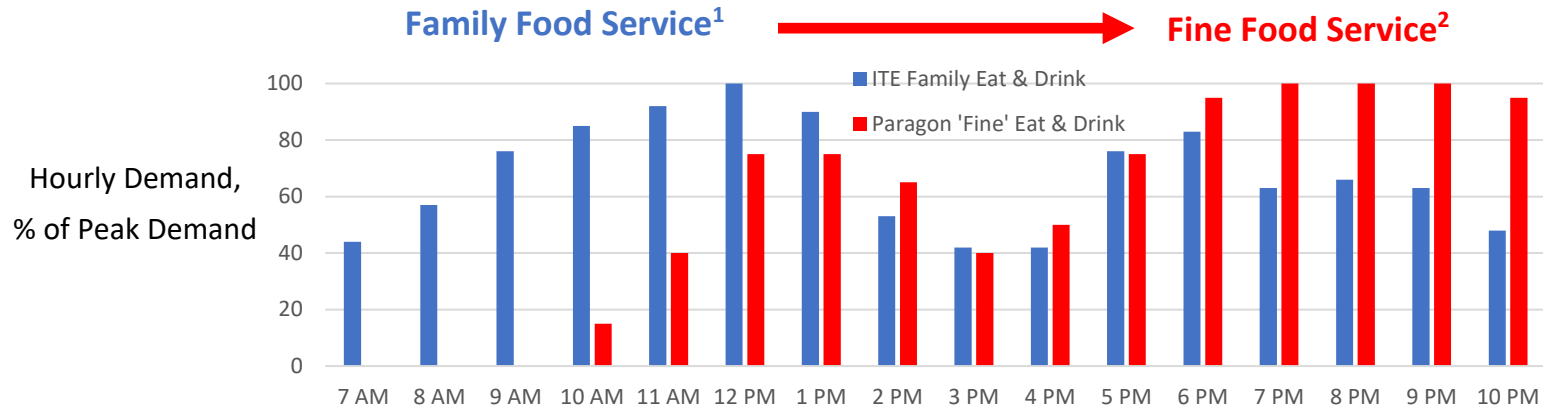
Paragon Substituted 50% Peak Parking Percentile for the ULI Standard, 85% Percentile

Requirements	Spaces	Market, Spaces/200 Sq-Ft	Bank & Office, Spaces/300 Sq-Ft	Eat & Drink, Spaces/Chair
Paragon 50% Percentile ¹	135	0.76	1.20	0.35
ULI 85% Percentile ²	183	1.01 ³	1.70 ⁴	0.54 ⁵
City Muni-Code ⁶	171	1	1	0.30 ⁷

1. KOA Corp. *Traffic Impact and Parking Demand Study*; Table IIB “Parking Analysis Inputs for Standalone Use - Using ITE Rates”
2. Urban Land Institute [ULI]. *Shared Parking (2nd Edition)*; Kindle Locations 190-191
3. Institute of Transportation Engineers [ITE]. *Parking Generation (4th Edition)*, Land Use 850, Supermarket
4. *Ibid.* Land Use 912, Drive-In Bank
5. *Ibid.* Land Use 932, High-Turnover (Sit-Down) Restaurant
6. Manhattan Beach Municipal Code [MBMC] §10.64.030
7. *Ibid.* The MBMC specifies parking for seated eating and drinking as one (1) space per 50 sq-ft. The state requires a minimum of 15 sq-ft per chair [Calif. Building Code, Title 24, Part 2, Chapter 10, Table 1004.1.1] Consequently, one (1) space per 50 sq-ft, per MBMC §10.64.030, translates into 0.30 spaces per chair.

EXHIBIT 6.

PARAGON USED 'FINE' DINING TIMELINE TO SHIFT PARKING AFTER BANK 6 PM CLOSE



1) Family Timeline, ITE *Parking Generation (4th Ed.)* Land Use: 932

2) Fine Dining Timeline, Paragon-KOA, *Traffic Impact and Parking Demand Study*, Table 11C

MUNI-CODE TAKEOUT PARKING DEMAND FOR SEATED USE REDUCED REQUIRED SPACES BY SIX

Table I I A – 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]	277 ¹ 206 sq.ft.	1 space per 75 SF ⁵⁰ ²	5.5 ³
Food Service Seating - Outdoor	503 sq.ft.	1 space per 75 SF ⁵⁰ ²	10.0 ⁷
Bank ^[3]	6,800 sq.ft.	1 space per 300 SF	23
Total Code Parking Requirement			177 ¹⁷¹

1) Paragon-KOA, *Traffic Impact and Parking Demand Study* Pg. 42: 52 seats x 15 SF per = 780 sq-ft total [State fire code Area/Seat]

2) Manhattan Beach Municipal Code §10.64.030 requires one space per 50 sq-ft of seated dining.

EXHIBIT 7.

PARAGON GAMED PARKING BY REDUCING SEATING ONE-HALF OF HOLLYWOOD STORE DENSITY

PARAGON FURTHER GAMED PARKING BY ANALYZING 28 SEATS VS 32 SEATS ON PLAN BELOW

TABLE-CHAIR SEATING AREA 31 SF PER SEAT, TWICE THE HOLLYWOOD STORE 15 SF!

**NET INDOOR-OUTDOOR EATING & DRINKING AREA, 785 SF,
16 PARKING SPACES @ 1 PER 50 SF FOR SIT-DOWN VS PARAGON'S 10 SPACES**

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

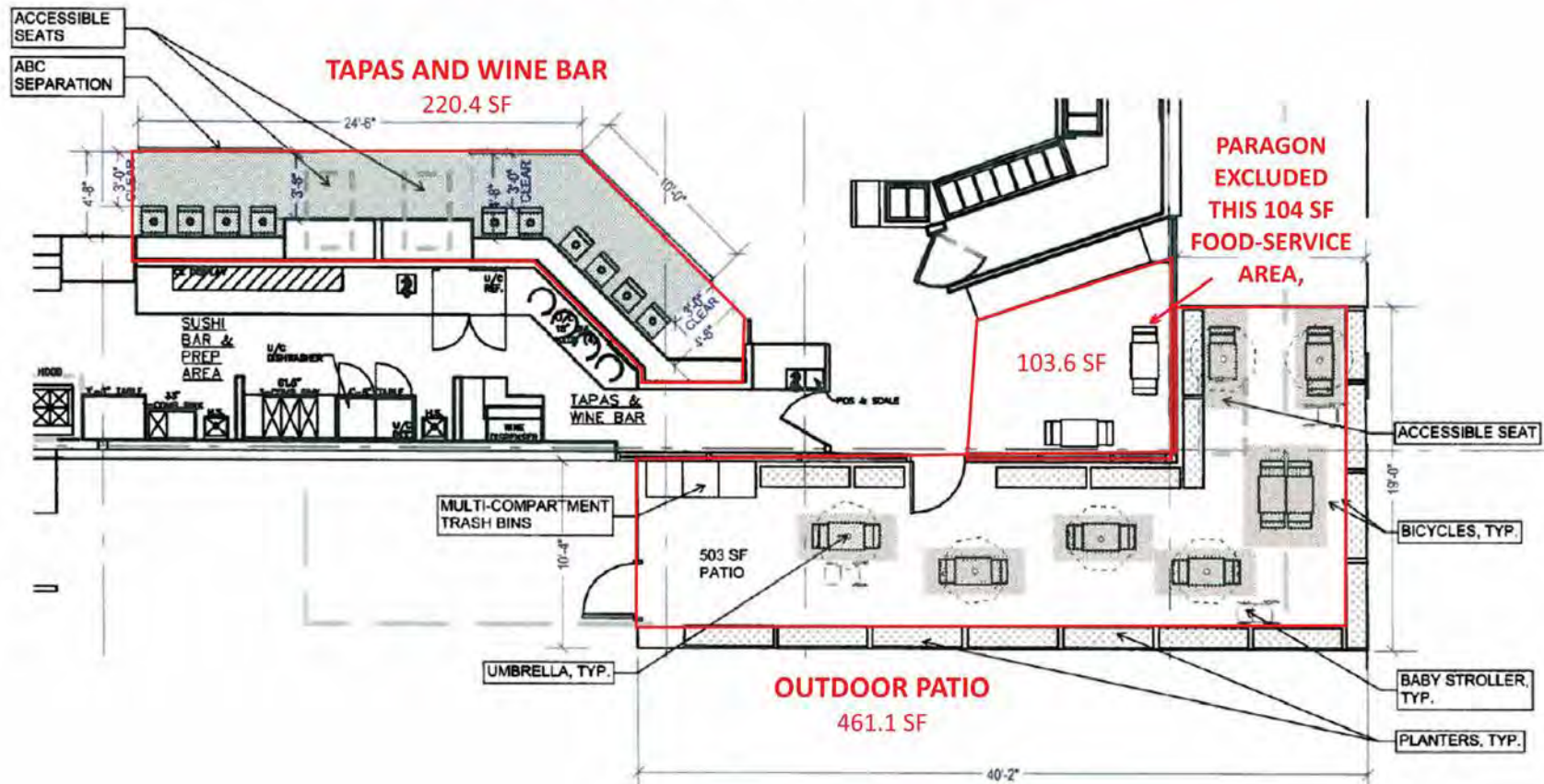


EXHIBIT 8.

PARAGON GAMED FOOD-SERVICE PARKING BY REDUCING NUMBER OF SEATS

- GELSON'S HOLLYWOOD STORE SEATING DENSITY: 15 SQ-FT PER SEAT. [See below]
- GELSON'S MANHATTAN STORE SEATING DENSITY: **31 SQ-FT PER SEAT**. [See next slide]
- STATE BUILDING CODE REQUIRES 15 SQ-FT MINIMUMS PER SEAT [Title 24, Part 2, Chapter 10, Table 1004.1.1]

NOTE: PARAGON CALCULATES PARKING **PER SEAT**. THE APPROVED USE PERMIT SPECIFIES PARKING BY AREA. GELSON'S WILL PACK THE FOOD AREA WITH CHAIRS, ADDING 8 MORE SPACES TO PARKING DEMAND.

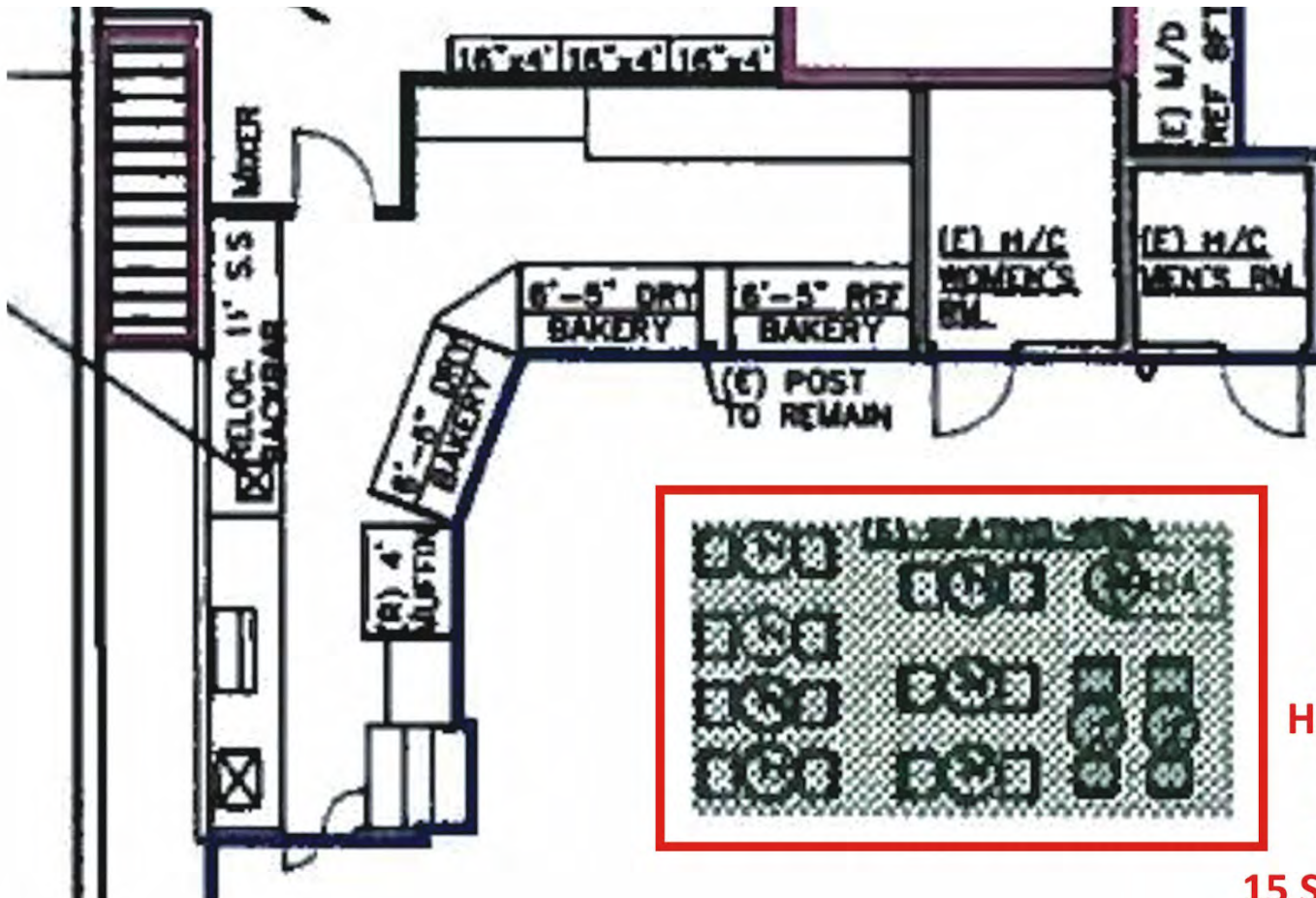


EXHIBIT 9.

CEQA REQUIRES CALTRANS-COMPLIANT DECELERATION LANE

SECTION FOUR

Environmental Checklist Discussion

4.16 TRANSPORTATION AND TRAFFIC

Would the project: **parking and deceleration lane**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less-Than-Significant Impact	No Impact
a) <u>Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit? Includes parking component</u>	✓		✗	
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?			✓	
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				✓
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?			✓	
e) Result in inadequate emergency access?			✓	
f) <u>Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?</u>	✓		✗	

The following section summarizes and incorporates by reference the information provided in the Traffic Impact Study for the *Traffic Impact Study for Proposed Commercial Project at 707 and 801 N. Sepulveda Boulevard* prepared by KOA Corporation in March 2016 (Traffic Report). The Traffic Report is provided as Appendix H to this Initial Study.

EXHIBIT 10

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



EXHIBIT 11.

NOISE FROM ROOFTOP MACHINERY WILL EXCEED MUNICIPAL CODE LIMITS 24/7

SECTION FOUR

Environmental Checklist Discussion

4.12 NOISE

Would the project: **noise from rooftop machinery**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less-Than-Significant Impact	No Impact
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	✓	✓ X		
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?			✓ X	
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	✓		✓ X	
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	✓		✓ X	
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				✓
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				✓

EXHIBIT 12.

PROHIBITED POLE SIGN BLOCKS DECELERATION LANE COMPLIANCE WITH CALTRANS STANDARDS

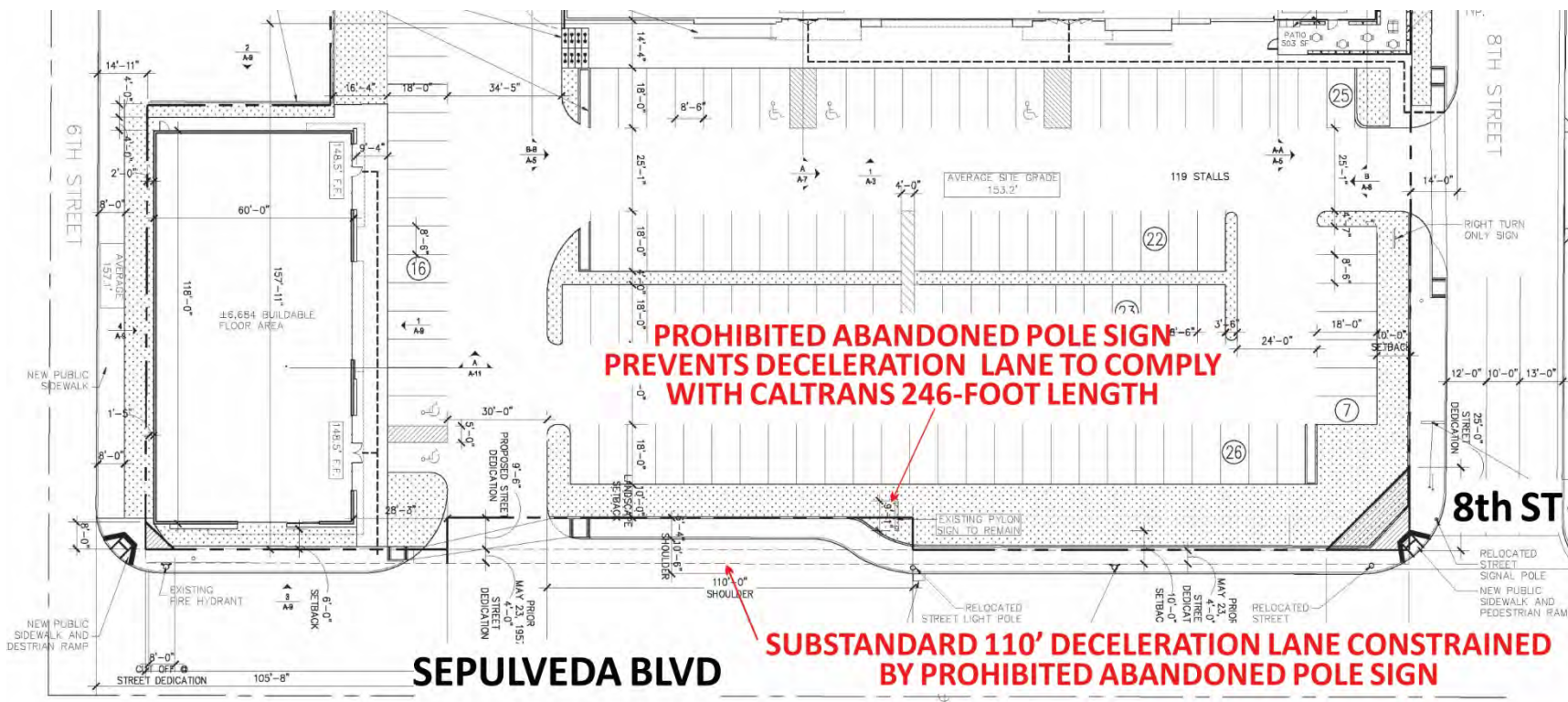


EXHIBIT 13.

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 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.

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

EXHIBIT 13.

SEE TABLE 405.2B BELOW FOR DECELERATION LANE LENGTHS

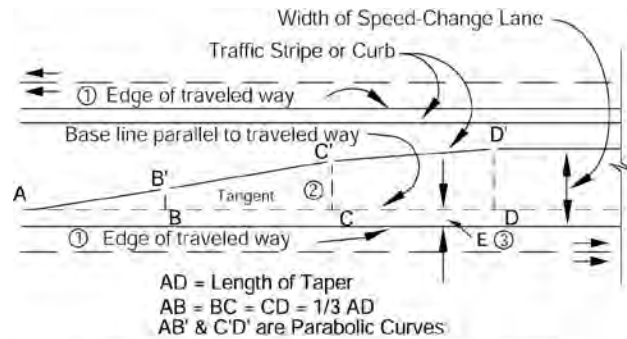
Deceleration lane lengths are given in Table 405.2B; the bay taper length is included. Where partial deceleration is permitted on the through lanes, as in Figures 405.2B and 405.2C, design speeds in Table 405.2B may be reduced 10 miles per hour to 20 miles per hour for a lower entry speed. In urban areas 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**



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	
			1.41	1.55	1.69	
B'	20	30.0	40.0	2.50	2.75	3.00
	30	45.0	60.0	5.00	5.50	6.00
C'	40	60.0	80.0	7.50	8.25	9.00
	45	67.5	90.0	8.59	9.45	10.31
	50	75.0	100.0	9.38	10.31	11.25
	55	82.5	110.0	9.84	10.83	11.81
	60	90.0	120.0	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 14.

PARAGON'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]

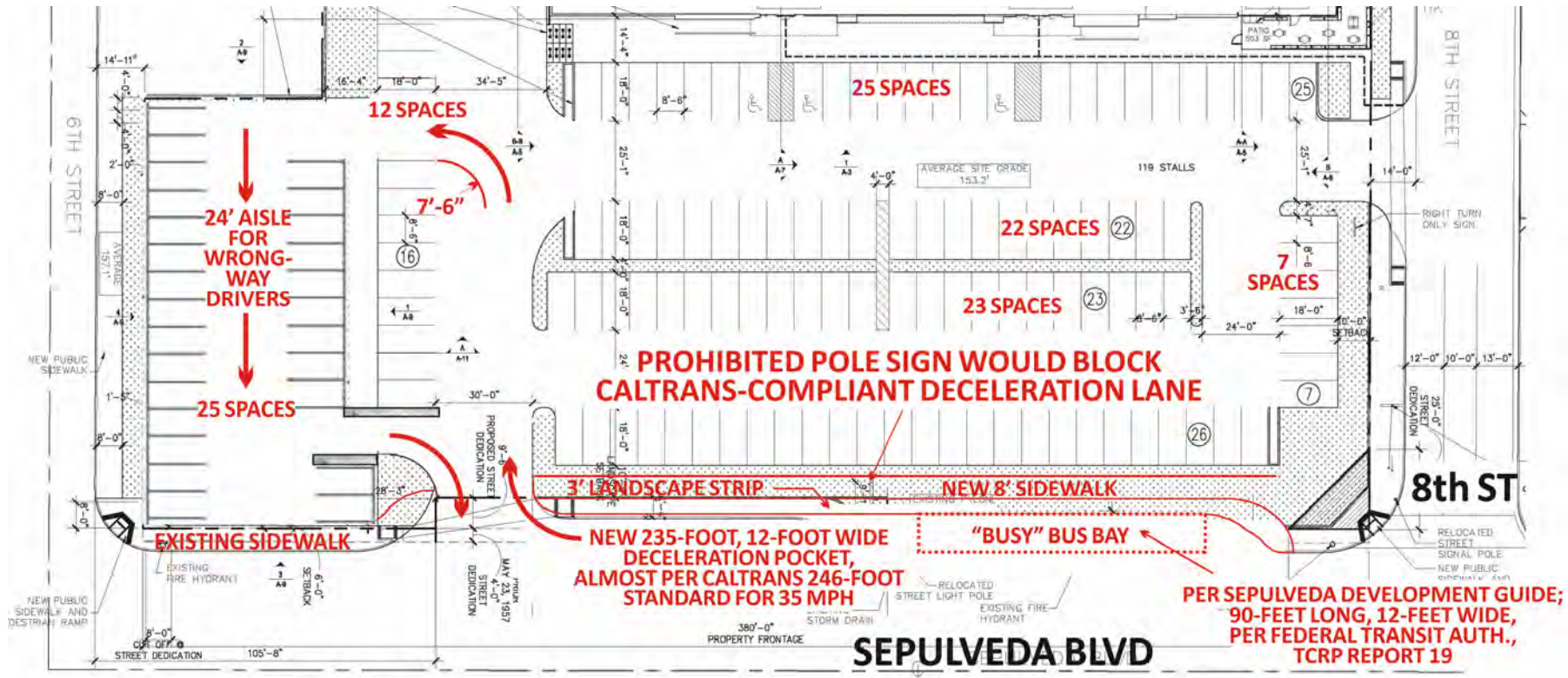
MBMC 10.72.070 - Prohibited signs.

F. Abandoned signs;

**PARAGON'S POLE SIGN
ABANDONED AND
NOT PERMITTED**

EXHIBIT 15.

DELETE BANKING INVESTMENT CENTER FOR COMPLIANT PARKING AND DECELERATION LANE



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MASTER APPLICATION FORM

CITY OF MANHATTAN BEACH
 COMMUNITY DEVELOPMENT DEPARTMENT

707 N. Sepulveda Blvd.
 Manhattan Beach, CA 90266

<i>Office Use Only</i>	
Date Submitted:	
Received By:	
F&G Check Submitted:	

Project Address
 See attached

Legal Description
 Commercial

CG

General Plan Designation

Zoning Designation

Area District

For projects requiring a Coastal Development Permit, select one of the following determinations¹:

Project located in Appeal Jurisdiction

Project not located in Appeal Jurisdiction

Major Development (Public Hearing required)

Public Hearing Required (due to UP, Var, ME, etc.)

Minor Development (Public Hearing, if requested)

No Public Hearing Required

Submitted Application (check all that apply)

<input checked="" type="checkbox"/> Appeal to PC/PIC/BA/CC	4225	<input type="checkbox"/> Use Permit (Residential)	4330
<input type="checkbox"/> Coastal Development Permit	4341	<input type="checkbox"/> Use Permit (Commercial)	4330
<input type="checkbox"/> Continuance	4343	<input type="checkbox"/> Use Permit Amendment	4332
<input type="checkbox"/> Cultural Landmark	4336	<input type="checkbox"/> Variance	4331
<input type="checkbox"/> Environmental Assessment	4225	<input type="checkbox"/> Park/Rec Quimby Fee	4425
<input type="checkbox"/> Minor Exception	4333	<input type="checkbox"/> Pre-application meeting	4425
<input type="checkbox"/> Subdivision (Map Deposit)	4300	<input type="checkbox"/> Public Hearing Notice	4330
<input type="checkbox"/> Subdivision (Tentative Map)	4334	<input type="checkbox"/> Lot Merger/Adjust. \$15 rec. fee	4225
<input type="checkbox"/> Subdivision (Final)	4334	<input type="checkbox"/> Zoning Business Review	4337
<input type="checkbox"/> Subdivision (Lot Line Adjust.)	4335	<input type="checkbox"/> Zoning Report	4340
<input type="checkbox"/> Telecom (New or Renewed)	4338	<input type="checkbox"/> Other	

* Councilmember Steve Napolitano has already pulled the Gelson's

Fee Summary: (See fees on reverse side) project for review and indicated that MBRRD

Total Amount: \$ 8500 (less Pre-Application Fee if applied within past 3 months) did not need to pay

Receipt Number: _____ Date Paid: _____ Cashier: _____ an appellate fee.

Applicant(s)/Appellant(s) Information

Manhattan Beach Residents for Responsible Development

Name

c/o Buchalter, A Professional Corporation (see address below)

Mailing Address

A group of concerned Manhattan Beach residents.

Applicant(s)/Appellant(s) Relationship to Property

Buchalter, A Professional Corporation, Attn: Shawn Cowles, Esq.

Contact Person (include relation to applicant/appellant)

Phone number / email

18400 Von Karman Avenue, Suite 800, Irvine, CA 92612

Address

Shawn Cowles (949)224-6252; scowles@buchalter.com

Applicant(s)/Appellant(s) Signature

Phone number / email

Complete Project Description- including any demolition (attach additional pages as necessary)

See Attached

¹ An Application for a Coastal Development Permit shall be made prior to, or concurrent with, an application for any other permit or approvals required for the project by the City of Manhattan Beach Municipal Code. (Continued on reverse)

RECEIVED
 2017 APR 10 PM 5: 26
 CITY CLERK'S OFFICE
 MANHATTAN BEACH, CA

Buchalter

18400 Von Karman Avenue
Suite 800
Irvine, CA 92612
949.760.1121 Phone
949.720.0182 Fax

April 10, 2017

949.224.6252 Direct
scowles@buchalter.com

City Clerk
Office of the City Clerk
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

Re: Appeal of Planning Commission's Decision Re: Gelson's Supermarket Project by
Manhattan Beach Residents for Responsible Development ("MBRRD")

Dear City Clerk:

We represent the Manhattan Beach Residents for Responsible Development, Inc. ("MBRRD"). On behalf of MBRRD, I am writing this correspondence to appeal the decision of the Manhattan Beach Planning Commission that was reached on March 22, 2017 to approve the proposed Gelson's project.

At the outset, we wish to thank Council Member Steve Napolitano who pulled Gelson's project for review, and thus, initiated the appeal process. I am informed that Mr. Napolitano stated that "he didn't want the resident's to have to pay for the appeal." MBRRD is very grateful for Mr. Napolitano and his kind gesture.

Because an appeal has already been initiated, MBRRD understands that we are not required to file this correspondence and the accompanying "Master Application Form" which the City of Manhattan Beach has informed us is the "Notice of Appeal" that is referenced in Manhattan Beach Code of Ordinances section 10.100.010 and is entitled "Appeals". However, MBRRD nonetheless wants to provide the information in this letter and the "Master Application Form" to the City Council so its members can be informed about the basis for which the decision of the Planning Commission ("PC Decision") to approve the Gelson's project on March 22, 2017 should be overturned. Thus, MBRRD is providing this information to assist the City Council in understanding why the PC Decision should be reversed. To the extent that Mr. Napolitano's act of pulling the Gelson's project for review is subsequently deemed not to have initiated the appeal process of the PC Decision, MBRRD hereby reserves its right to file an appeal of the PC

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April 10, 2017
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Decision since MBRRD is relying upon Mr. Napolitano's act of pulling the Gelson's project for review as the start of this appellate process.

I. BASIS FOR APPEAL OF THE PC DECISION

A. The MND used an Improper "Baseline"

Pursuant to Public Resources Code § 21065, an element of a "project" is activity directly undertaken by a public agency. Here, the "Applicant", PCG MB LLC (hereinafter "Paragon") did not submit its "Master Application Form" until February 20, 2015. Indeed, Paragon's "Master Application Form" included its "Project Narrative" and "Environmental Information Form" both of which are dated February 20, 2015.

Since it is impossible to have an environmental review for a CEQA "project" until there is a CEQA "project", the earliest date of this "project" is February 20, 2015. As we all know, the Automobile Care Center that had been operating at this subject property was no longer operating its business as of February 20, 2015. Therefore, the correct "baseline" for the environmental review of this Gelson's "project" is a vacant commercial property without an operating business.

The MND relied upon an improper "baseline" since it *assumes the existing project site* includes the operations of a 40,349 square foot *automobile care center which operated until February, 2015,*" (p.4.3-5 of IS/MND; emphasis added.) Thus, the Automobile Care Center had been closed for a total of 17 months before the publication of the IS/MND in July 2016, and it was not in operation when the Gelson's "project" first came into existence. As a result, the MND analysis of the project's traffic, noise and emissions impacts is not benchmarked against the empty site in existence when the environmental analysis appears to have been commenced, the proper baseline, but against the impacts of a project that had ceased operation 17 months before the IS/MND was published.

Consequently, and obviously, the environmental impacts of the project were artificially diminished by comparison with an emissions, traffic and noise producing Automobile Care Center that no longer existed at the time the environmental analysis was carried out and had not existed for almost two years and was not in existence when the environmental analysis for this CEQA "project" commenced on February 20, 2015. The Initial Study/MND admits that the proposed Gelson's project is subject to CEQA; however, the City did not follow CEQA's requirements. Therefore both the Draft IS/MND and Final IS/MND are fatally defective and will not withstand the scrutiny of a court of law.

How does the use of an erroneous baseline potentially impact the environmental analyses? It dramatically impacts the Traffic Study. The Traffic Study claims to study traffic with and without project and on this basis concludes the proposed project will result in only a *1.1% increase in traffic* at the study intersections which is *below the 2% significance level*. But

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if the traffic study had properly compared the project's impacts against those of an empty site, the resulting increase certainly have been much higher, and, thus, reached the 2% significance level. At present, neither the public nor the City knows for sure.

Additionally, but not less important, the conclusion that weekend traffic is less than weekday traffic is based on studies performed in October, 2016, and thus, the studies ignore the impact of beach traffic, an impact the Hollywood Gelson's, to which this project is compared, does not experience. In fact, all discussions of peak hour traffic impacts on Sepulveda are tainted by the study's stubborn refusal to recognize that this is a beach community subject to traffic expansion during summer months which will change the traffic environment from that used in the MND. With the hot summer months and high school students, college students and others out of school, the beach traffic may swell to twice as many cars – or more – as compared to the Fall months. The point is that we do not know from the current inadequate traffic studies performed in the non-summer months.

With regard to noise impacts, the improper "baseline" undermines the reliability of the IS/MND. The Federal Highway Road Model, assuming that is the correct model, concluded there would be only a 2.2 dB CNEL increase in noise from the project at 8th and Sepulveda – i.e., below the 3 dB CNEL significance level. But that assumes the operation of the Automobile Care Center. If the correct baseline were utilized, it is more than merely possible that the calculated noise level would increase significantly to above the 3 dB CNEL significance threshold.

Moreover, neither the MND nor the Responses report the standard deviation under that model which might cause the noise level to rise to the significance level even without the use of a correct baseline. In addition, CNEL is a cumulative measure that averages noise over 24 hours, thus diminishing its shorter term impacts. Thus, the IS/MND does not contain any study of the Single Event Noise associated with operation of the project, including traffic, and/or LMAX, the measure of the highest noise event – without such analysis, the impact of each individual noise event is obscured. For example, someone shooting off a cannon one time a day on the proposed Gelson site would not have a significant impact per CNEL; however, it would have a substantial impact under LMAX. Too farfetched of an example? How about a car backfiring or a delivery truck laying on its horn? The point is that LMAX is omitted from the MND analysis when it should have been included.

There is a lack of required mitigation for truck traffic in the IS/MND. For example, the MND says there will only be 2-3 semi-trailers per day and also that they will be overseen by the Applicant's logistics team. Will this number of semi-trailers be a condition of approval? In what other way will the City limit the number of semi-trailers, if any?

In addition, the Response to Comments alludes to numbers of smaller trucks. What type of smaller truck? How many? Are they included in the noise analysis? Based upon all of the

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above examples, the IS/MND is legally and fatally defective based upon its improper use of the wrong "baseline".

B. The City should have Prepared an EIR instead of an IS/MND

A lead agency is required to prepare an Environmental Impact Report ("EIR") "whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact." *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75. Thus, CEQA employs a "fair argument" test for determining whether an EIR should be prepared. *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.

The Public Comments from MBRRD, its attorney and traffic engineer as well as other Manhattan Beach residents all provided substantial evidence in support of a "fair argument" that an EIR should have been prepared. As a result, there is no question that an EIR should have been prepared for this busy intersection rather than an IS/MND for the reasons identified in the record of this matter.

C. The MND is legally defective since it is Not CEQA Compliant

At a threshold level, the MND is legally defective since it is not CEQA compliant. The City should have issued an Initial Study *before* deciding to use a MND. Instead, the City combined the Initial Study with its MND as evidenced by the title of this document: "IS/MND".

CEQA Guidelines § 15063 states that an Initial Study is conducted for the purpose of deciding whether a Negative Declaration or EIR should be prepared; so should logically precede that determination. Therefore, the City of Manhattan Beach violated the due process rights of MBRRD.

D. Other CEQA Violations

The IS/MND is legally deficient according to CEQA on numerous additional grounds, including but not limited to: (1) the omission of a neighborhood study; (2) the failure to implement a deceleration lane in accordance with the suggestion from CalTrans; and (3) the failure to analyze new information on neighborhood traffic impacts.

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II. CONCLUSION

Because of the patent analytic deficiencies and omissions in the IS/MND, and the strong potential for significant impacts, the IS/MND is legally deficient according to CEQA. As a result, a new environmental review in the form of an EIR is required and requested by MBRRD in order to ensure the appropriate level of analysis for neighborhood impact is undertaken by the City.

Very truly yours,

BUCHALTER
A Professional Corporation

By


Shawn E. Cowles