



# MASTER APPLICATION FORM

CITY OF MANHATTAN BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT

707 N. Sepulveda Blvd.  
Manhattan Beach, CA 90266

Project Address  
See attached

Legal Description  
Commercial

General Plan Designation

CG

Zoning Designation

Area District

## Office Use Only

Date Submitted:  
Received By:  
F&G Check Submitted:

For projects requiring a Coastal Development Permit, select one of the following determinations<sup>1</sup>:

Project located in Appeal Jurisdiction

☐ Major Development (Public Hearing required)

☐ Minor Development (Public Hearing, if requested)

Project not located in Appeal Jurisdiction

☐ 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	

\* 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: \$ 0 (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

<sup>1</sup> 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)

# 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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Los Angeles  
Napa Valley  
Orange County  
Sacramento  
San Francisco  
Scottsdale

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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 8<sup>th</sup> 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





# MASTER APPLICATION FORM

CITY OF MANHATTAN BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT

Office Use Only

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 determinations<sup>1</sup>:

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)**

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

**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.

<sup>1</sup> 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 <sup>2</sup> :	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

<sup>2</sup>Make 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

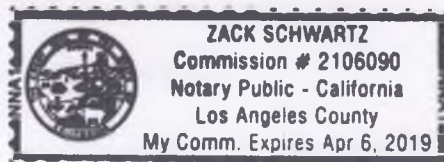
by Donald McPherson

*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*



*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 code<sup>1</sup>. 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%.

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<sup>1</sup> 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 1<sup>st</sup> St, Manhattan Beach CA 90266  
Cell: 310 487 0383  
[dmcphersonla@gmail.com](mailto: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

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*

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

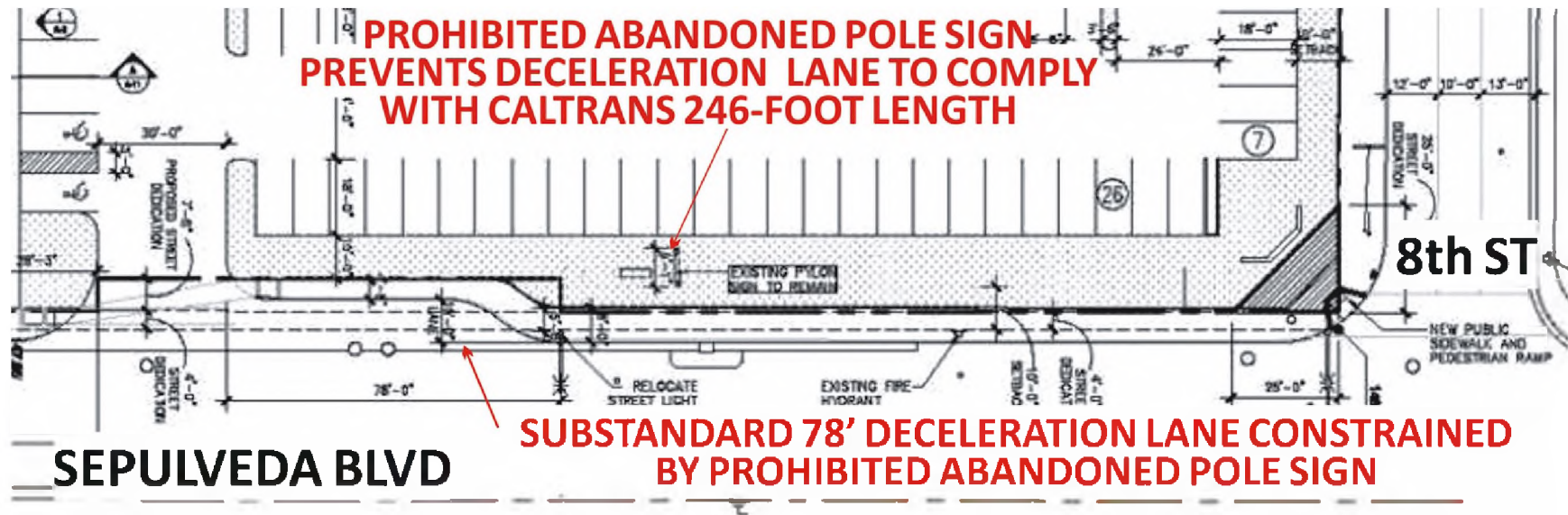
[Hearing video time: 03:24:10, Commissioners did not replace the "deceleration lane" with a "widened shoulder."]

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:
  - 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 8<sup>th</sup> 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)



### EXHIBIT 3.

## DECELERATION LANE NONCOMPLIANT WITH SEPULVEDA DEVELOPMENT GUIDE & CALTRANS



## PARAGON DECELERATION LANE VIOLATES SEPULVEDA DEVELOPMENT GUIDE & CALTRANS STANDARDS

Caltrans requires deceleration lane **246-FEET LONG** [Caltrans letter to E. Haaland, 24 Jan 2016]

### 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.”

[Emphasis added]

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

## 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.

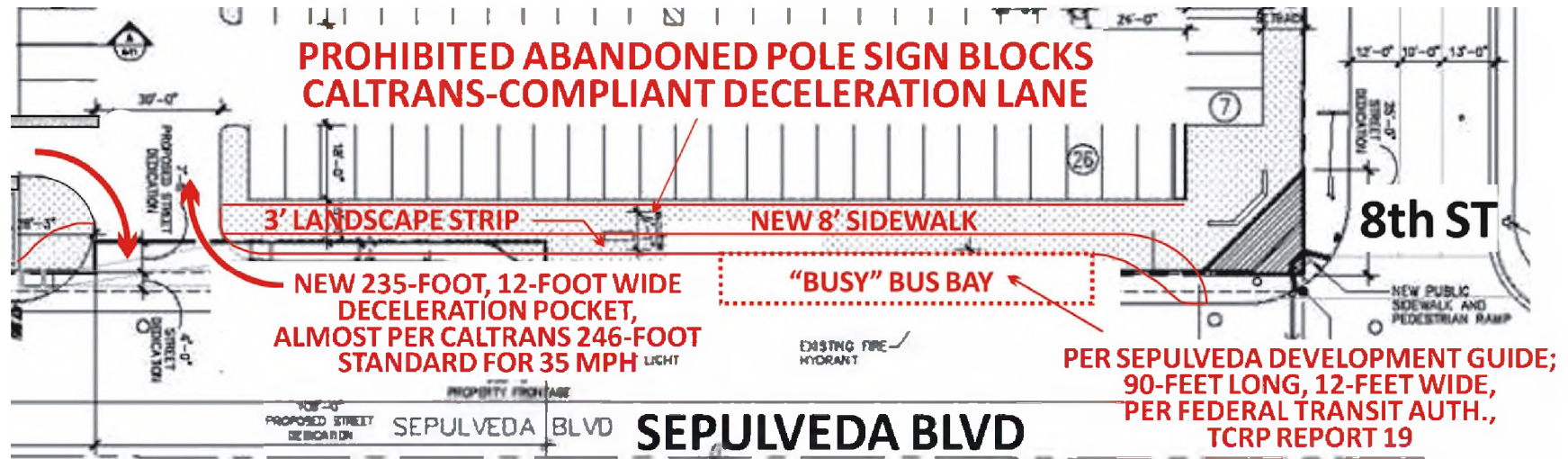
F. Abandoned signs;

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



## EXHIBIT 5.

### 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 <sup>3</sup>	17
Takeout Food Service	One Space per 75 <sup>1</sup> Sq-Ft	Total Area	1,446 <sup>4</sup>	19
Paragon False Concoction	One Space per 75 <sup>1</sup>	Seating Area <sup>2</sup>	709 <sup>5, 6</sup>	10 [Falsified] <sup>6</sup>

#### 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.

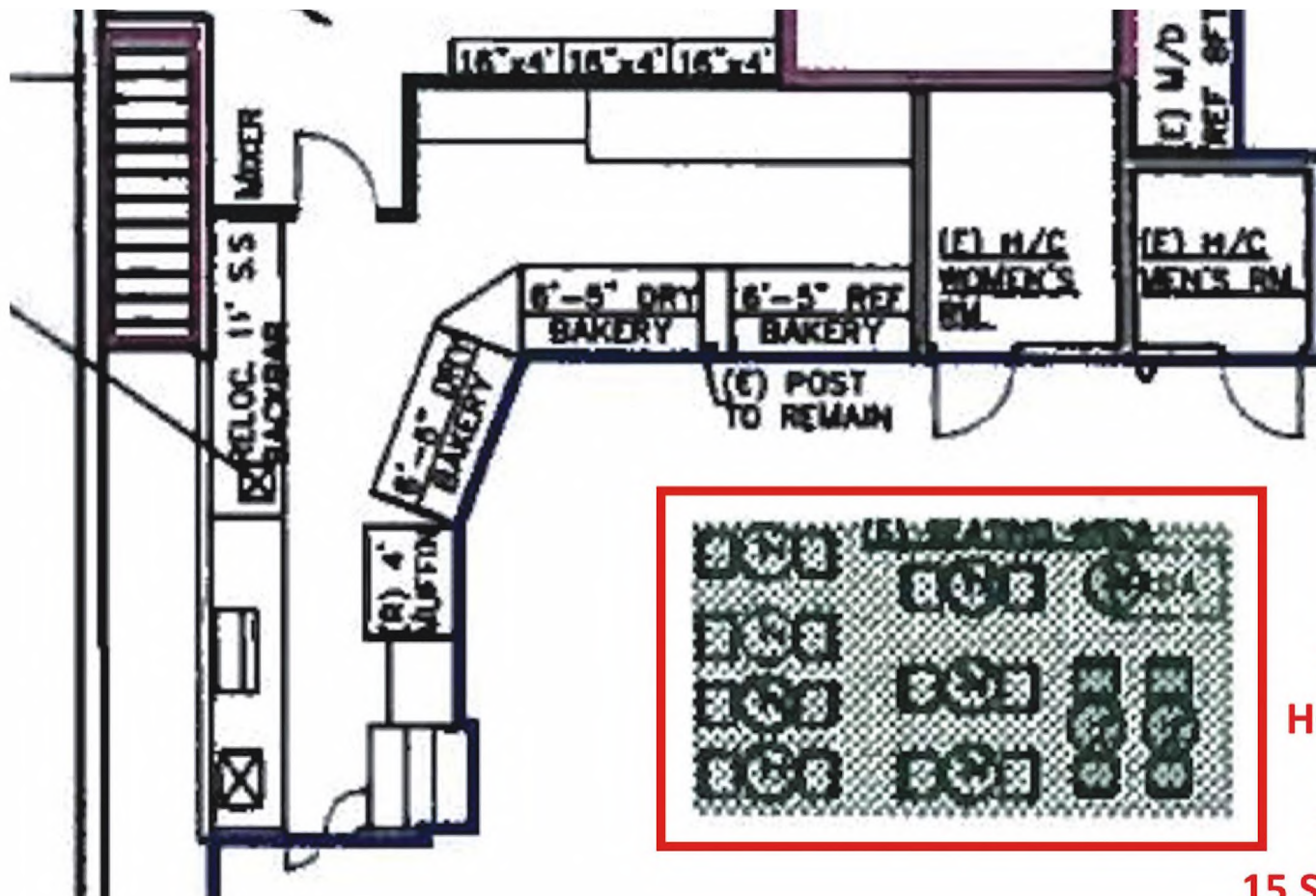
### PARAGON GAMED DINING PARKING BY REDUCING NUMBER OF SEATS

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.



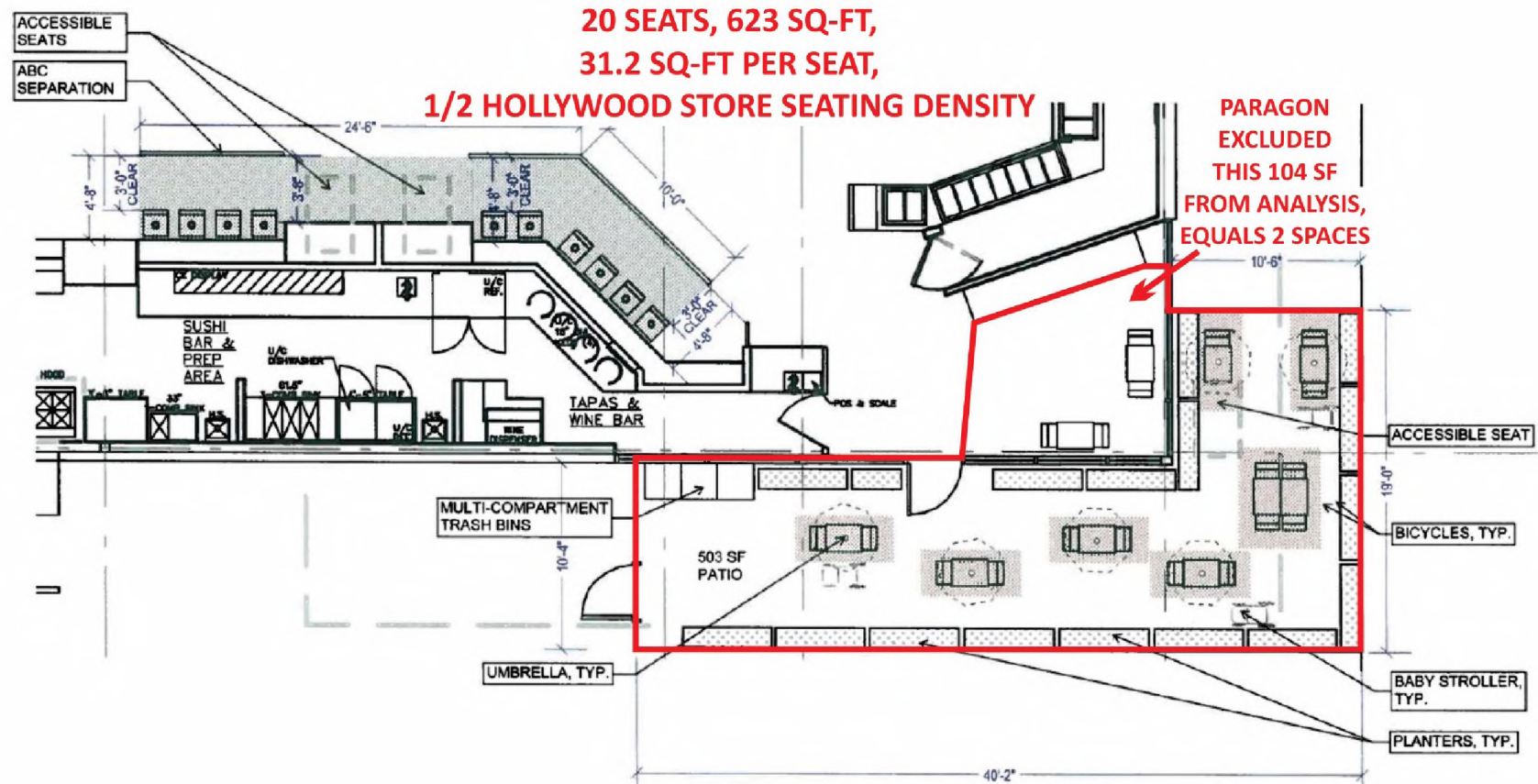


**PARAGON GAMED PARKING BY REDUCING SEATING  
ONE-HALF OF HOLLYWOOD STORE DENSITY,  
ALSO ONE-HALF OF DENSITY PERMITTED BY STATE CODE!!!!**

**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 8<sup>th</sup> 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.