

lateral spreading, subsidence, liquefaction, or collapse. In response, it finds that the implementation of Mitigation Measure GEO-1 would reduce impacts to a less than significant level.

But Mitigation Measure GEO-1 is nothing more than structural *recommendation*. A “recommendation” is not a “mitigation measure.” CEQA requires that mitigation measures be both feasible and “fully enforceable.” *Lincoln Place Tenants Ass’n v. City of Los Angeles* (2007) 155 Cal.App.4th 425 (the purpose of monitoring and reporting requirements for enforcement of mitigation measures is to ensure that a feasible mitigation measure will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded); *CEQA Guidelines*, § 15126.4 (a)(2) (mitigation measures must be “fully enforceable”).

In order to adequately mitigate for the potential seismic-related ground failure, including liquefaction, the MND must provide fully enforceable mitigation measure.

Similarly, the MND analyzes excavation up to twenty feet, the exact same number as what would be required for the proposed two-levels of underground parking. This amount of grading is impossible because it does not consider the structural elements that will need to support the two levels of underground parking. The true grading amounts must be set forth so that their environmental impacts could be evaluated as required by CEQA.

h. Greenhouse Gas Emissions

The MND does not adequately identify or discuss 2030 and 2050 GHG targets, codified by SB 32 and fails to provide substantial, if any, evidence that the Project will further the state’s GHG reduction targets.

What’s more, while the MND mentions the SCAQMD CEQA Threshold Working Group’s GHG threshold, it fails to note that the Project exceeds this threshold.

i. Hazards and Hazardous Materials

In evaluating the impacts of the Project with regard to hazards and hazardous materials, the MND completely fails to identify, analyze or evaluate

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the fact that the Project is located in both a Methane Hazard Zone and an Airport Hazard Zone.

According to the City Ordinance regulating methane, methane mitigation is required for all sites located in a Methane Zone or a Methane Buffer Zone, regardless of results obtained in a methane investigation.

Relying narrowly on the thresholds, the MND also finds that there are no impacts at all with respect to airport or methane related impacts. However, whether or not a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant, and the use of the Guidelines' thresholds does not necessarily equate to compliance with CEQA. *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-09. Once identified, all environmental impacts must be evaluated and mitigated; they cannot be ignored. *Woodward Park Homeowners' Association v. City of Fresno* (2007) 150 Cal.App.4th 683, 728 (an agency cannot acknowledge an impact and approve the project after imposing a mitigation measure not shown to be adequate by substantial evidence). Here, in order to adequately analyze hazards and hazardous material impacts, the MND must address impacts associated with the Project's location in an Airport Hazard and Methane Hazard Zone, as designated by the City itself.

j. Land Use and Planning

The MND's land use and planning section is woefully deficient. First and foremost, it only evaluates the Project's consistency with the Palms – Mar Vista – Del Rey Community Plan. But that is not all that CEQA requires. CEQA requires an analysis of whether the Project conflicts with *any* applicable land use plan, policy or regulation. This includes the applicable Do Real Planning Guidelines, Citywide Design Guidelines, the Southern California Association of Governments ("SCAG") Regional Plan (including SCAG's Regional Transportation Plan and Compass Growth Visioning effort), the South Coast Air Quality Management District Air Quality Management Plan, the Los Angeles County Metropolitan Transportation Authority Congestion Management Program ("CMP"), and the Los Angeles Municipal Code. Consistently with all of these land use plans must be adequately reviewed and evaluated in order to comply with CEQA. [See also, Exhibit 3].

Furthermore, the Project is inconsistent with the City's Design Guidelines and the Palms – Mar Vista – Del Rey Community Plan for all of the reasons

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discussed hereinabove. In order to be legally adequate under CEQA, an MND cannot selectively pick and choose policies with which it deems a project to be consistent, but must identify and discuss all noted **inconsistencies**. *CEQA Guidelines* §15125(d); *L.A. CEQA Thresholds Guide*¹⁰.

An MND also cannot, as it purports to do here, simply list land use policies, and then without any substantial evidence to support, summarily find “consistency.” Consistency requires more than incantation. The City cannot simply articulate a policy in its land use plan and then approve a conflicting project. *Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 181 (setting aside EIR based upon findings that no reasonable person could have made the consistency finding on the record before it). The City must support its findings of consistency with substantial evidence of consistent Floor Area Ratio’s, density, parking requirements, open space, etc. Otherwise, the consistency findings are not supported by substantial evidence.

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k. Noise

The MND utterly fails to address the fact that there are sensitive receptors that will be significantly impacted from construction noise including the underestimated volume of excavation and the operation of a large parking facility, the loading area and mobile noise from all of the likely vehicles that will have to turn around at the end of the cul-de-sac.

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Moreover, the MND, while referencing the thresholds for noise impacts (a 5 dBA increase above existing ambient noise levels), fails to apply this threshold for construction noise. To analyze construction noise, the MND instead looks at the LAMC noise standards for construction equipment. When the correct standard is used (see table 3-8 in the MND), it is clear that construction noise far exceeds the allowable 5 dBA threshold, resulting in a 27 dBA increase over

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¹⁰ The L.A. CEQA Threshold Guide with respect to “land use consistency” states: The determination of significance shall be made on a case-by-case basis, considering:

- Whether the proposal is **inconsistent** with the adopted land use/density designation in the Community Plan, redevelopment plan or specific plan for the site; and
- Whether the proposal is **inconsistent** with the General Plan or adopted environmental goals or policies contained in other applicable plans.

existing ambient noise conditions, causing a significant impact that must be mitigated. [See Exhibits 3, 4]

9-7 cont.

To make matters worse, the MND proposes an utterly deficient mitigation measure to address construction noise – Noise XII-27. But a “complaint line” mitigates absolutely no impact, it simply provides for a way to complain about an impact after it occurs. As such it is inadequate under CEQA, which requires that mitigation measures be feasible, enforceable and capable of mitigating the impact for which they are imposed. *Lincoln Place Tenants Ass’n v. City of Los Angeles* (2007) 155 Cal.App.4th 425; *CEQA Guidelines*, § 15126.4 (a)(2); *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70; *CEQA Guidelines*, §15126.4(a)(4)(A); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

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A comprehensive analysis of errors in the Project’s MND with regard to its noise analysis, including its failure to (1) analyze noise impacts to two studio receptors; (2) analyze noise impacts from concrete mixing and pumping activities and off-site improvements in adjacent rights-of-way; (3) show that analyzed impacts are less than significant; (4) disclose potential significant health impacts; (5) use correct modeling and baselines; (6) analyze vibration impacts; and (7) provide adequate mitigation measures is attached hereto as Exhibit 4.

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1. Transportation/Traffic

The MND finds that there is less than significant impact based on possible 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. This conclusion is completely devoid of supporting substantial evidence. Indeed, the MND fails, at all, to review and analyze consistency with all applicable traffic/transportation plans, including SCAG’s Regional Transportation Plan. Accordingly, it is in error.

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Furthermore, the MND finds that the Project does not substantially increase hazards due to a design feature or incompatible uses. This is blatant error. Indeed, although it has numerous options along Beatrice Street and Grosvenor Boulevard, the Project is designed to provide 50% of its traffic on Jandy Place, an approximately 400-foot in length cul-de-sac street, which

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provides ingress/egress to the many properties, including many owned by Karney Management Company. The intersection of Jandy and Beatrice is already hazardous due to existing traffic, lack of visibility, speed limit and the fact that it connects two cul-de-sac streets. The increase in traffic proposed by the Project, especially when considered in connection with the cumulative of effects of all other traffic along Jandy and Beatrice, and these other existing conditions, creates a substantially increased hazard at that intersection. [See also, Exhibits 5, 6]. The MND completely ignores these conditions.

9-9 (cont.)

The MND also fails to analyze, *almost at all*, but certainly in sufficient detail as required by CEQA, construction traffic impacts as well as parking impacts. [Exhibit 6]. It is incomprehensible that an adequate transportation/traffic analysis can be deemed “adequate” without a review of construction traffic and parking. Again, where an agency fails to abide the informational requirements of CEQA by omitting material necessary to informed decisionmaking and informed public participation, as it has here, harmless error analysis is inapplicable and the agency is deemed to have erred and abused its discretion. *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645.

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Finally, the MND fails to adequately analyze impacts on transportation/traffic for all of the reasons set forth in the review completed by Kimley-Horn and Associates, Inc. and Coco Traffic Planners, Inc. [Exhibits 5, 6], including lack of adequate supporting evidence and conclusions based upon unsubstantiated and exaggerated assumptions, such as assuming that 10-15% of the Project’s traffic will be generated from the west, *i.e.* the Pacific Ocean, a condition that cannot possibly exist, and estimating no northbound movements at the intersection of Westlawn and Jefferson based upon traffic counts being conducted on January 28, 2016 when that leg of the intersection was blocked to northbound traffic, possibly for construction south of Jefferson Boulevard.

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m. Cumulative Impacts

The MND’s “analysis” of cumulative impacts is indefensible. The MND admits that significant impacts may occur if the proposed Project, in conjunction with the related projects, would result in impacts that are less than significant when viewed separately but significant when viewed together, but concludes that it does not need to do any analysis of such impacts because each additional project will be evaluated and mitigated on a case by case basis (*i.e.*, *separately* without regard for cumulative impacts); therefore, the cumulative impacts to which the proposed Project would contribute would be less than significant.

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Such “analysis” completely misses the mark for what is required as a cumulative impact analysis required under CEQA. One of the basic and vital informational functions required by CEQA is a thorough analysis of whether the impacts of the Project, in connection with other related projects, are cumulatively considerable. *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal App.4th 1209. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.¹¹ *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184; *CEQA Guidelines* §15355. Proper cumulative impact analysis is vital under CEQA because the full environmental impact of a proposed project cannot be gauged in a vacuum. Indeed, one of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact. Therefore, cumulative effects analysis requires consideration of “reasonably foreseeable probable future projects, if any.” *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184; *Gentry v City of Murrieta* (1995) 36 Cal.App.4th 1359, 1414.

In fact, the CEQA Guidelines mandate the preparation of an EIR where cumulative impacts are cumulatively considerable:

An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. “Cumulatively considerable” means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. 14 CCR §15064(h)(1).

Here, there is no scintilla of evidence, much less substantial evidence, to support the conclusion that the “cumulative impact” of the Project will not result in any potentially significant impacts. There are no other “reasonably foreseeable

¹¹ “Cumulative impacts” refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.

probably future projects" listed and none analyzed. Indeed, there is not even evidence that the MND *considered* whether there are cumulative impacts, since all it summarily states is that it did not need to do any such analysis because any additional project will be evaluated and mitigated separately on a case by case basis.

Ironically, the Project's traffic analysis actually identifies 29 *other* projects in the vicinity of the within Project, and evaluates the cumulative traffic impacts of those projects. The MND cannot ignore that existence of these identified *other* projects, which their traffic expert apparently had no problem finding or analyzing. It must evaluate the cumulative impacts of all of these projects with regard to all of the protected categories of environmental impacts under CEQA.

Finally, the MND conclusively states that cumulative impacts of the Project will not result in any potentially significant impacts because any cumulative impacts (which, again, the MND fails to identify) will be mitigated to a less than significant level through compliance with the mitigation measures provided in the "previous sections" of the MND. But there is no evidence whatsoever that the cumulative impacts of the other reasonably foreseeable probable future projects, if any, including the 29 other projects identified by the Project's traffic analysis, were considered in formulating the mitigation measures of the MND and none of them refer, at all, to the other reasonably foreseeable probable future projects. The lack of evidence in the record to support a conclusion that the Project would have *no* cumulative impacts thus tends to support a fair argument that the Project *will* have such impacts.

The failure of this MND to provide for a cumulative impact analysis as required under CEQA is fatal. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118 (CEQA requires strict compliance with the procedures and mandates of the statute).

Each public agency is required to comply with CEQA and meet its responsibilities, including evaluating mitigation measures and project alternatives. *CEQA Guidelines* §15020. For all of the reasons set forth herein, the City has failed to do so here.

For all of these reasons, we ask that the City Council deny this Project, as proposed, and require the Applicant to revise the Project in compliance with the compatibility requirements of the LAMC and applicable land use plans governing the Project site.

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Only with such revisions, as well as full environmental review in an EIR,
should the City re-consider the Applicant's requests.

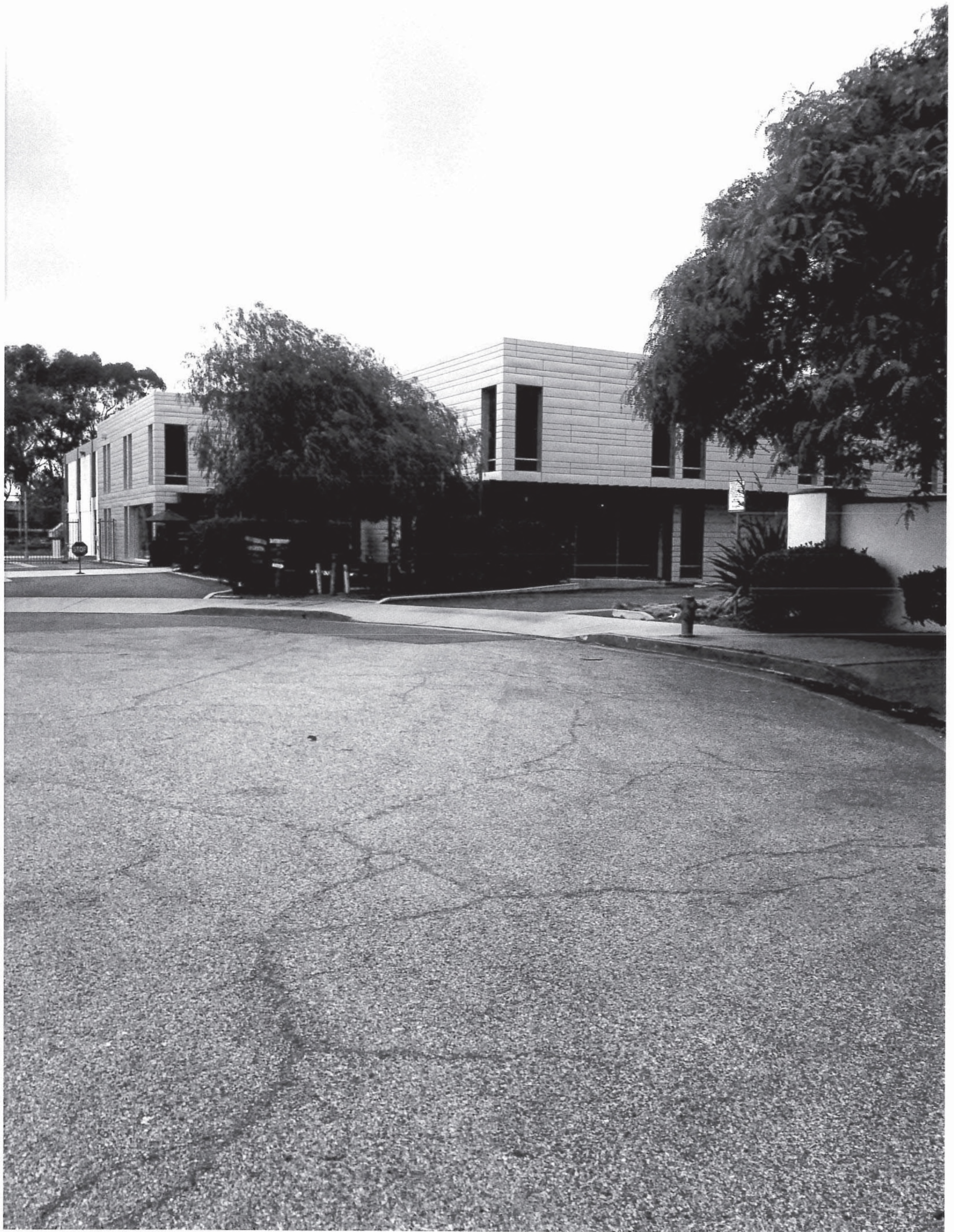
Very truly yours,

LUNA & GLUSHON
A Professional Corporation

A handwritten signature in black ink, appearing to read "Rob Glushon", written in a cursive style.

ROBERT L. GLUSHON

EXHIBIT 1

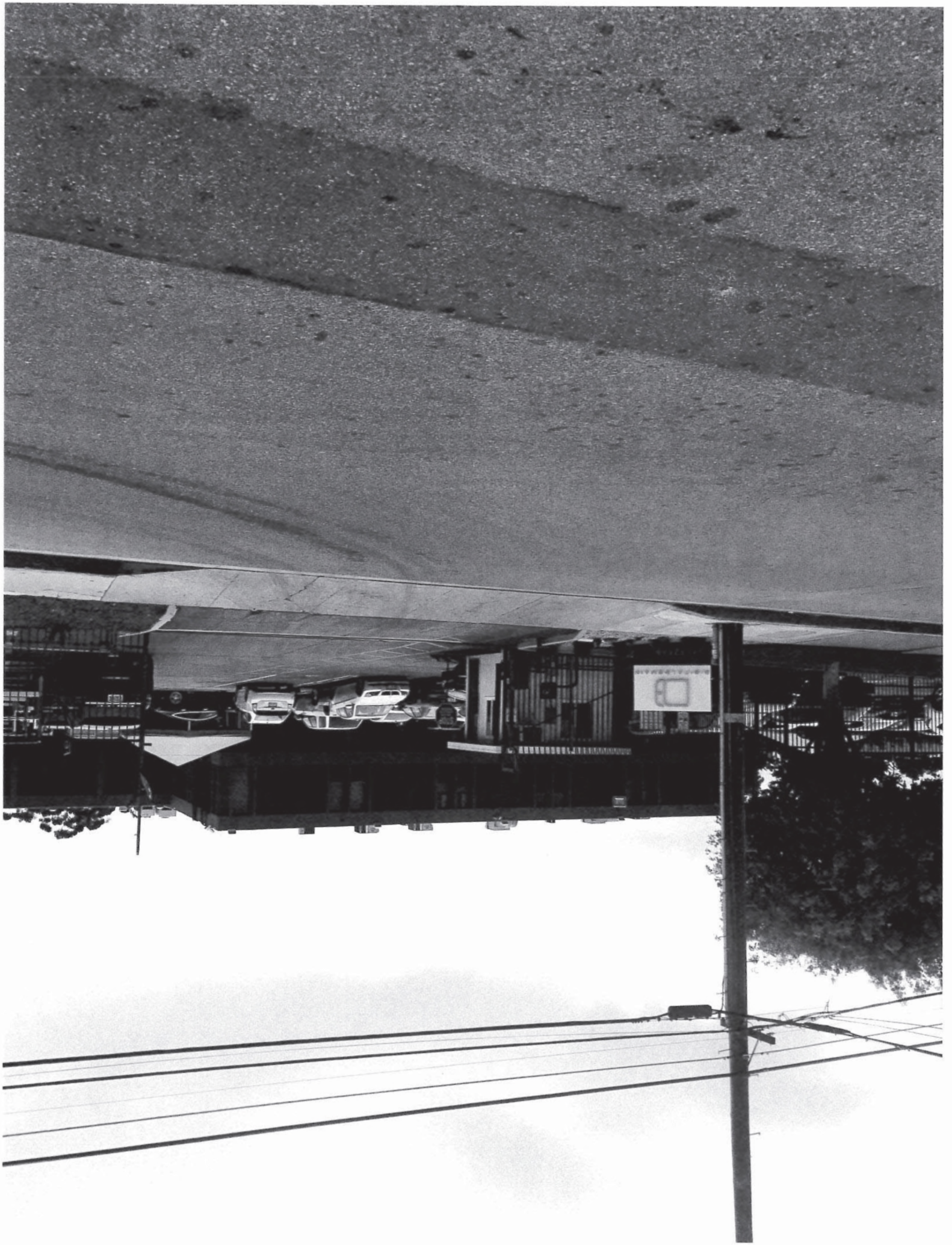










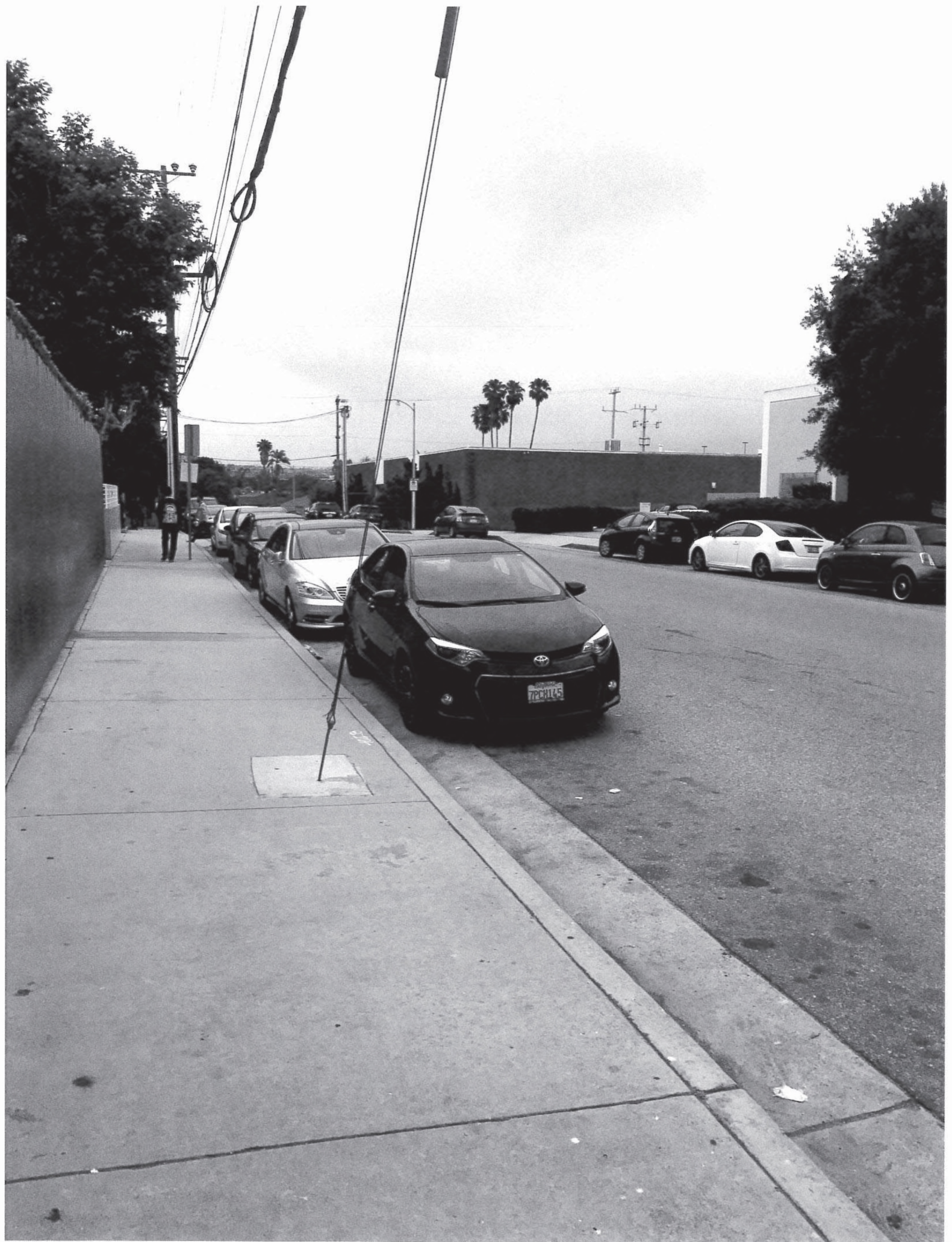












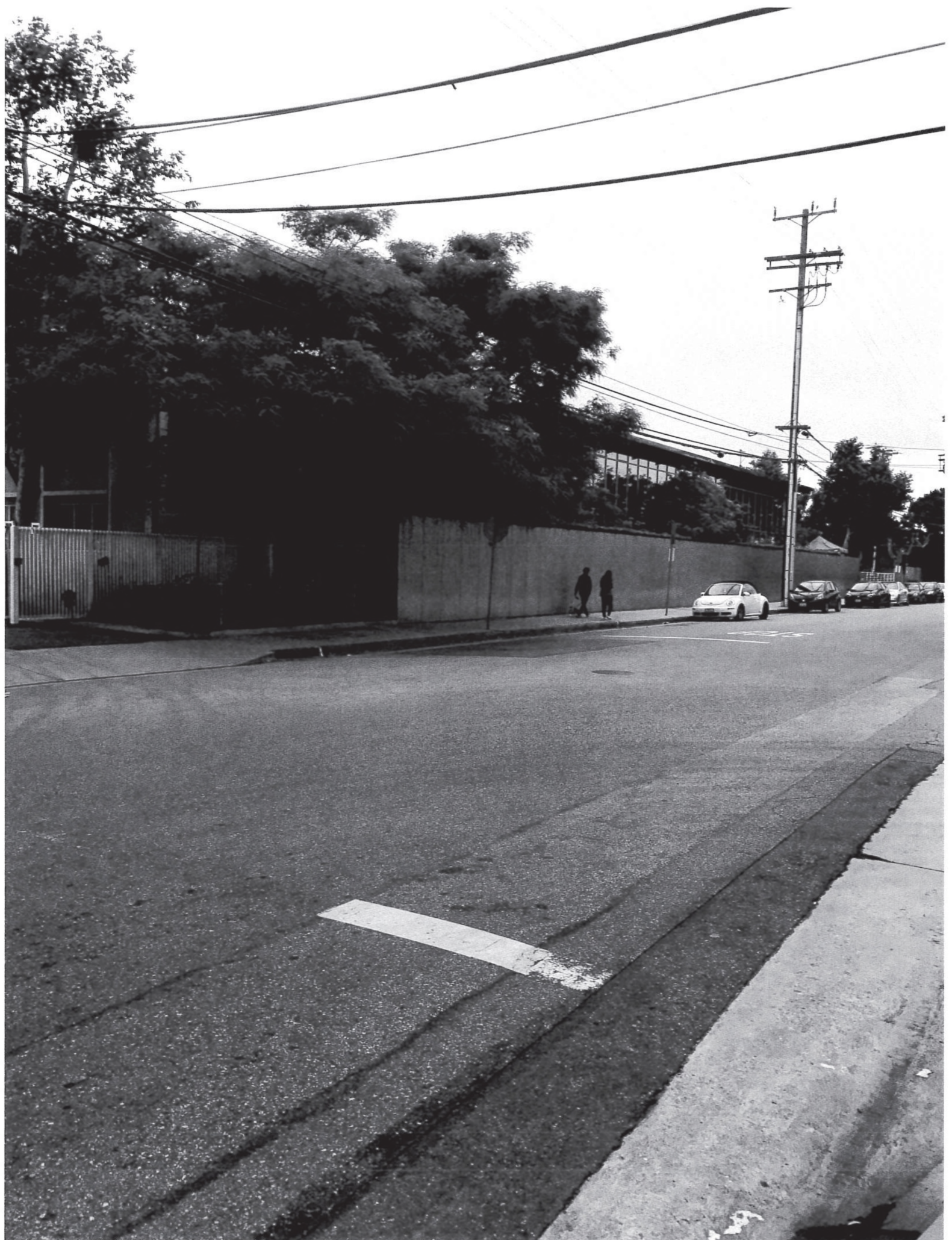




EXHIBIT 2

Building Heights: Playa Jefferson

North of Jefferson, South of Ballona Creek,
West of Grosvenor, East of McConnell

Aerial Map of Playa Jefferson Neighborhood



Building Heights: Playa Jefferson

North of Jefferson, West of Grosvenor, East of McConnell, South of Ballona Creek

Key Observations

- The proposed building is 4.6 times the average height of other buildings in the neighborhood
- 18 of the 24 commercial & industrial buildings in the neighborhood are less than 32' high

