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Ref: 77894-0001

May 21, 2018

BY EMAIL

Chair Jose Huizar
Members of the Planning and
Land Use Management Committee
200 N. Spring Street, Rm. 375
Los Angeles, CA 90012
Attn: Sharon Dickinson

Re: Council File 18-0249
ENV-2017-2449-CE
3314 Lugano Place
Response to CEQA Appeal
Hearing Date: May 22, 2018
Agenda Item 2

Honorable Chair Huizar and Members of the PLUM Committee:

We represent Stephanie Savage and Michael Swischuk, the owners of the Property and Applicants for the approved and affirmed single-family residence. We respond to the appeal filed on behalf of Wrenn Chais (the "Appellant"). As described further below, the residence is fully zoning compliant and falls firmly within the four corners of the Categorical Exemption adopted and then affirmed, and the Appellant's attempts to exploit the narrow "unusual circumstances" exception in the service of preventing construction of a single-family home are unavailing. The PLUM Committee should affirm the decisions of the Director of Planning and the Area Planning Commission, and reject this appeal.

We also object to the wholly unauthorized issuance of a stop-work order—based solely on the existence of this CEQA appeal—by the Department of Building and Safety ("DBS"). The Municipal Code includes no provision authorizing this action, and the action is inconsistent both with prior City practice and with CEQA.

1. The Categorical Exemption Satisfies the Requirements of the California Environmental Quality Act.

The appeal expresses its objection to the Categorical Exemption in terms of the now-standard "unusual circumstances" that here are alleged to include cumulative impacts.

However, the appeal fails to support either claim with any evidence, let alone substantial evidence.[1]

Any claim of unusual circumstances or a significant impact requires the support of substantial evidence. The California Environmental Quality Act ("CEQA") defines substantial evidence as "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." Public Resources Code Section 21080(e)(1). The law is clear that "argument, speculation, unsubstantiated opinion or narrative" ***do not*** constitute substantial evidence. *Id.* at subdiv. (e)(2); CEQA Guidelines Section15384; *see also*, *Newberrry Springs Water Assn. v. County of San Bernardino*, 150 Cal. App. 3d 740 (1984). Further, courts have well established that testimony, even by an expert, is not substantial when the party proffering that evidence is not qualified to render an opinion on the subject. *Cathay Mortuary, Inc. v. San Francisco Planning Comm'n*, 207 Cal. App. 3d 275 (1989). This is particularly true where, as here, the argument that a significant impact could occur is not supported by any expert testimony and consists of nothing more than suppositions and assertions, not supported by facts, that certain things would occur. *See*, *e.g.*, *Apt. Assn. of Greater Los Angeles v. City of Los Angeles*, 90 Cal. App. 4th 1162, 1175-76 (2001).

Here, no evidence indicates any unique circumstances characterize the Property. Further, any assertion of a wildlife corridor that includes the Property is not only unsupported, but contradicted by evidence in the record.

(a) Substantial Evidence Does Not Support Any Claim of Cumulative Impacts on Wildlife Corridors.

Appellant asserts the existence of a wildlife corridor that includes the Project Site. However, while the appeal remains unsupported with any substantial evidence, including any expert testimony, the record contains substantial evidence that contradicts the appeal. Most significantly, a memorandum dated April 19, 2018 and prepared by Cooper Ecological Monitoring, Inc., a biological resources analysis firm (the "Cooper Memorandum," attached as Exhibit "A"), reached ***and substantiated*** the opposite conclusion. Such a corridor does not exist and, even if it did, the proposed residence would affect movement in such a corridor to a much lesser extent than existing development already does.

Significantly, the majority of homes around the Property include retaining walls and extensive fencing. As shown in Exhibit "B1" to this letter, almost every property surrounding this Property is enclosed by fencing, and many include retaining walls. As stated in the Cooper Memorandum, this combination of barriers effectively precludes movement across

[1] We also note the appeal mischaracterizes the holding of Berkeley Hillside Preservation v. City of Berkeley, 60 Cal. 4th 1086 (2015). Although the appeal asserts that evidence of a significant environmental impact could itself comprise an unusual circumstance, the California Supreme Court held the opposite: the appeal's reading "would give no meaning to the phrase 'due to unusual circumstances.'" 60 Cal. 4th at 1098. Rather, the Court held: "to establish the unusual circumstances exception, it is not enough for a challenger merely to provide substantial evidence that the project may have a significant effect on the environment" (emphasis in original).

the Property from natural area to natural area. Further, unlike the surrounding properties—including Appellant's—the Property will not construct fences. This would permit any foraging wildlife to pass through the Property.

Consequently, although many species known to occur in and around Griffith Park may sometimes forage on the Property and may be observed there, the Property cannot function as a "corridor." (Cooper Memorandum, p. 1.) Rather, it constitutes an estimated ten percent of a limited patch of area that is landlocked from Griffith Park in any case. Further, the residence would require development only of a portion of the Project—about 1/4 of the area. Based on the limited habitat value provided by the Property, the continuation of access to the Property by the lack of proposed fencing, and the separation of the Property from natural areas such as Griffith Park, the Cooper Memorandum concludes the Project would not have any significant effect on species present in the vicinity. (*Id.* at p. 2.)

Consistent with the Cooper Memorandum, the Santa Monica Mountains Conservancy also has not designated the Property as part of any wildlife corridor or significant habitat area. Exhibit "C" to this letter provides Habitat Linkage Planning Map plotted by the Conservancy, which shows the relationship between developed areas and habitat blocks. As shown in that map, the Conservancy has plotted habitat areas and linkages or corridors, including those within or surrounded by developed areas, in the Hollywoodland and Griffith Park area.[2] However, no significant habitat areas or wildlife corridors occur in any portion of the Project vicinity.

Thus, all of the evidence in the record demonstrates that any potential impacts to biological resources are less than significant, and contradicts the unsupported assertions in the appeal.

(b) Substantial Evidence Does Not Support Any Claim of Historical Significance of The Property or Vicinity.

The appeal misleadingly implies the Property is located within a historic district, and asserts the existence of unusual circumstances on that basis. As with biological resources, this assertion is entirely unsupported: substantial evidence in the record does not support—and in fact refutes—this claim.

The City has designated portions of Hollywoodland as historic, and has established Historic Preservation Overlay Zones ("HPOZs"), as well as the Hollywoodland Historic District. However, these areas are tightly defined, and no HPOZ or Historic District includes the Property. The actual Hollywoodland Historic District comprises the ***gateway*** to the Hollywoodland area, not its entirety, and is located nearly half a mile away. (*See* Exhibit "D" to this letter.)

To the extent the appeal asserts historical resources otherwise are located in the vicinity and that the proposed residence would significantly compromise such resources, the appeal also

[2] Note the habitat corridors, plotted as yellow lines, in the southwest portion of the map.

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fails to support that assertion with any evidence. In fact, the Project was designed for consistency and compatibility with other residences in the area, including scale, features, and materials. Exhibit "E" provides comparisons of the architectural form, features, and materials of the proposed residence with other residences in the vicinity. As shown therein, features such as simple window arrangements, light-colored stucco finish, tile roofing, and rusticated base materials are consistent with older structures and also with newer, more contemporary designs.

As the Property is not itself designated as historic, is not located within a historic district or overlay zone, and would not compromise any historic structure, no claim of any significant impact related to historic resources would occur or is supportable by substantial evidence.

2. The PLUM Committee Should Affirm The Decisions of The Director And The Area Planning Commission And Uphold The Categorical Exemption.

The Appellant bears the burden of proof to demonstrate the inapplicability of a Categorical Exemption, particularly with respect to unusual circumstances. (*Berkeley Hillside Preservation*, 60 Cal. 4th at 1105.) As stated by the California Supreme Court, "to establish the unusual circumstances exception, it is not enough for a challenger merely to provide substantial evidence that the project ***may*** have a significant effect on the environment." (*Id.*; emphasis in original). This is consistent with the State Legislature's determination that categorically exempt projects may have effects that are typical of such projects, but are not considered significant for the purposes of CEQA. *Id*. Here, the Appellant has failed to provide any evidence—let alone substantial evidence—of unusual circumstances or of a significant impact as a result of those unusual circumstances.

Further, as described above, not only has Appellant failed to provide evidence, but the evidence in the record concerning biological and historical resources contradicts Appellant's claims. Simply put, Appellant has failed to meet her burden, and the record for the proposed residence cannot support a rejection of the categorical exemption at issue here. Therefore, we urge the PLUM Committee to reject the unfounded claims of the Appellant, deny her appeal, and uphold the adoption and affirmation of the categorical exemption for the proposed residence.

Very truly yours,

KEVIN K. MCDONNELL and
NEILL E. BROWER of
Jeffer Mangels Butler & Mitchell LLP

KKM:neb

cc: Hon. Councilmember David Ryu, Council District 4 (via email)
Nicholas Greif, Council District 4 (via email)

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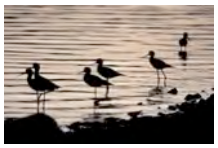
Exhibit A



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MEMO

To: Stephanie Savage

From: Daniel S. Cooper

Date: April 19, 2018

Re: 3314 Lugano Pl.

I have been asked to review the appeal (ENV-2017-2449-CE, Case No. DIR-2017-1001-DRB-SSP) for a proposed single-family home developed located at 3314 Lugano Place in the Beachwood Canyon neighborhood of Los Angeles. This property is being proposed for development under a "Class 32 Exemption" under CEQA [specifically CEQA Guideline Section 15300.2(c)], intended for "infill" development with non-significant impacts to the environment with no "unusual circumstances".

A neighbor (Wren Chaise) subsequently filed an appeal on the grounds that it would have a significant effect on the environment due to "unusual circumstances", those being that it is "**located in a unique ecological area where wildlife is frequently sighted on property (bobcat, deer, coyote, etc.) and wildlife corridors exist**." The appeal further states: "**The construction of the Project will likely significantly impact wildlife and wildlife access. In addition, the construction of new houses on undeveloped lots will have a cumulative impact on the erosion of wildlife corridors**."

I was present at the site between 2:20 PM and 3:20 PM on April 5, 2018, for purposes of investigating the flora and (potential) fauna using the site.

Summary of Findings

Based on my site visit, the property appears to be part of a partially-disturbed habitat fragment covering approximately 0.4 acres, of which the subject property is 0.15 acres. It is located within an area of homes c. 300' from intact habitat of Griffith Park. As essentially every residential property/lot in the neighborhood is surrounded by retaining walls or high fences, vacant lots in this area function more as "habitat patches" than "corridors" that would allow free movement of mule deer and other mammals through the landscape. While mule deer, bobcat and coyote undoubtedly visit the property for foraging, it is cut off from any other contiguous block of habitat, and so should not be said to function as a "corridor". The neighborhood has many vacant lots (most on very steep slopes that defy easy

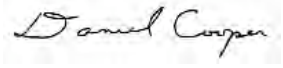
development), and while some of these connect larger expanses of habitat, 3314 Lugano Place, and the adjacent small vacant parcels around Lugano Place, are "landlocked" from Griffith Park by at least 100 meters (**Figure 1**).

Considering the owners are proposing to not fence 3314 Lugano Place, access to the 0.4 acres should be impeded only by the footprint of the structure (1,638.8 s.f.) and not by any physical barrier. While the existing habitat patch would be reduced by c. 10% (of its current 17,000 s.f. extent), this should not affect the physical movement of wildlife up onto the site, which include species that regularly wander into unfenced backyards (even in fairly urbanized areas). Given the presence of surrounding fences, and the small size of the fragment where it is located (0.4 acres), it cannot be said to function as its own wildlife movement corridor. And, I observed no evidence of permanent occupancy or regular use by mule deer (scat, wildlife trails) during my site visit.

Another concern of the filed appeal is the presence of "endangered, rare, or threatened species". These species have been analyzed in prior work in the area [e.g., Cooper and Mathewson 2009, Cooper 2011, Cooper 2017 (2015)] and their habitats and occurrence locations are reasonably well-known. During the April 5 site visit, I noted a single dried stalk of mariposa lily (*Calochortus*, likely *C. plummerae*, CNPS Rank 4) on the adjoining property to the north. No similar stalks were observed on the subject property (3314 Lugano Pl.), though several patches of the widespread blue dicks (*Dichelostemma pulchellum*) were present. *Calochortus plummerae* is fairly common throughout the western half of Griffith Park, including on ridges leading down into the Beachwood Canyon area. Thus, the presence of a single plant in a patch off the main blocks of open space is notable, but not particularly "unique".

Otherwise, a small number of California Species of Special Concern could be found at the site, such as coastal whiptail (*Aspidoscelis tigris stejnegeri*), which is also very widespread in Griffith Park. However, this lizard tends to be rare in small, isolated patches of habitat throughout the Los Angeles area like this one, and we did not observe it during the site visit (no lizards of any kind were seen, though western fence lizard *Sceloporus occidentalis* certainly occurs here). Otherwise, we observed California ground-squirrel (*Otospermophilus beecheyi*) and several chaparral/scrubland birds were heard calling form the surrounding neighborhood, including Wrentit (*Chamaea fasciata*), Bewick's Wren (*Thryomanes bewickii*), and Song Sparrow (*Melospiza melodia*). A nesting Red-shouldered Hawk was observed high in a pine near the base of Lugano Place. All of these species make use of hilly residential areas with fragments of native vegetation (like this one), and should not be permanently affected by the proposed project.

A small number of native plants (other than blue dicks) were present on the subject property: laurel sumac (*Malosma laurina*), deerweed (*Acmispon glaber*), coast morning-glory (*Calystegia macrostegia*), wild cucumber (*Marah macrocarpa*), and chaparral yucca (*Hesperoyucca whipplei*); square-leaf goldenbush (*Hazardia squarrosa*) was observed just off the northern boundary of the property, and a single coast live oak (*Quercus agrifolia*) was observed in the yard of the neighbor to the south. None of the species on the subject property is rare or protected in any way.



Daniel S. Cooper
President, Cooper Ecological Monitoring, Inc.

Sources

Cooper, D.S. and P. Mathewson. 2009. Griffith Park wildlife management plan (Final). Report submitted to the Los Angeles Dept. of Recreation and Parks by Cooper Ecological Monitoring, Inc., Contract No. 2930. Jan. 22, 2009. 94 Pp, incl. appendices.

Cooper, D.S. 2011. Rare plants of Griffith Park, Los Angeles, California. Fremontia 38(4)/39(1):18-24.

Cooper, D.S. 2017 (2015). A flora of Griffith Park, Los Angeles, California. Crossosoma 41(1&2):1-86.

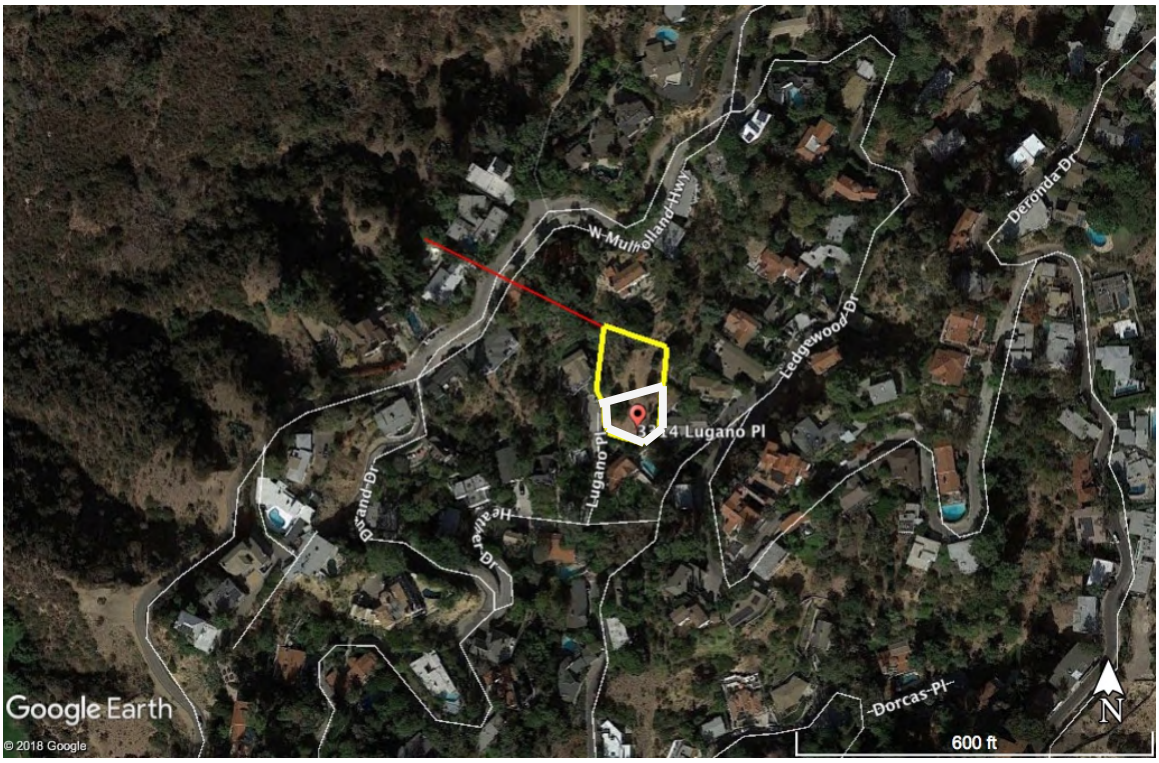
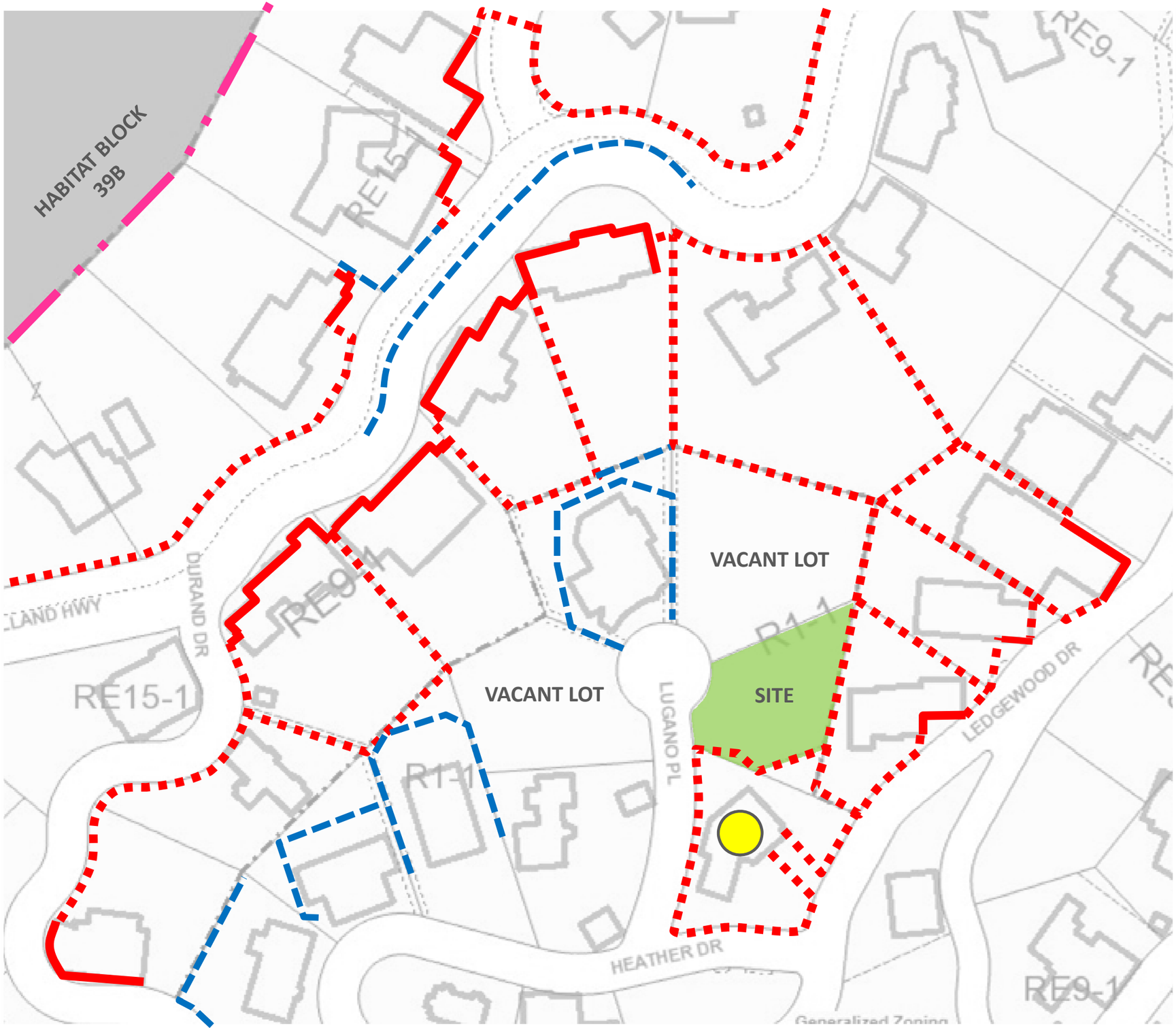


Figure 1. The subject property, 3314 Lugano Place (0.15 acres/6832 s.f.) outlined in white, with the remaining portion of the 0.4-acre habitat fragment outlined in yellow. Red line indicates the c. 300' distance to nearest block of intact habitat, Griffith Park. Fencing and residential development along W. Mulholland Hwy., Durand Dr., Heather Dr., and Ledgewood Dr. have blocked connectivity between the subject property and more extensive habitat (in Griffith Park).

Exhibit B



Project Site Description

- The site is located on a cul-de-sac at the end of Lugano Place with a vacant lot to the north that has 38’ of frontage and another vacant lot across the street.
- There are existing fences on neighboring properties surrounding the site with the only wildlife access to the site coming from the south on Lugano Place.
- In most instance there are at least 2 barriers that surrounding the properties at the end of Lugano Place
- A wildlife corridor is impossible base on the survey of the existing barriers.

PROJECT SITE

APPELLANTS HOUSE

HABITAT BOUNDRY

FENCE BARRIER

EXIST’G HOUSE BARRIER

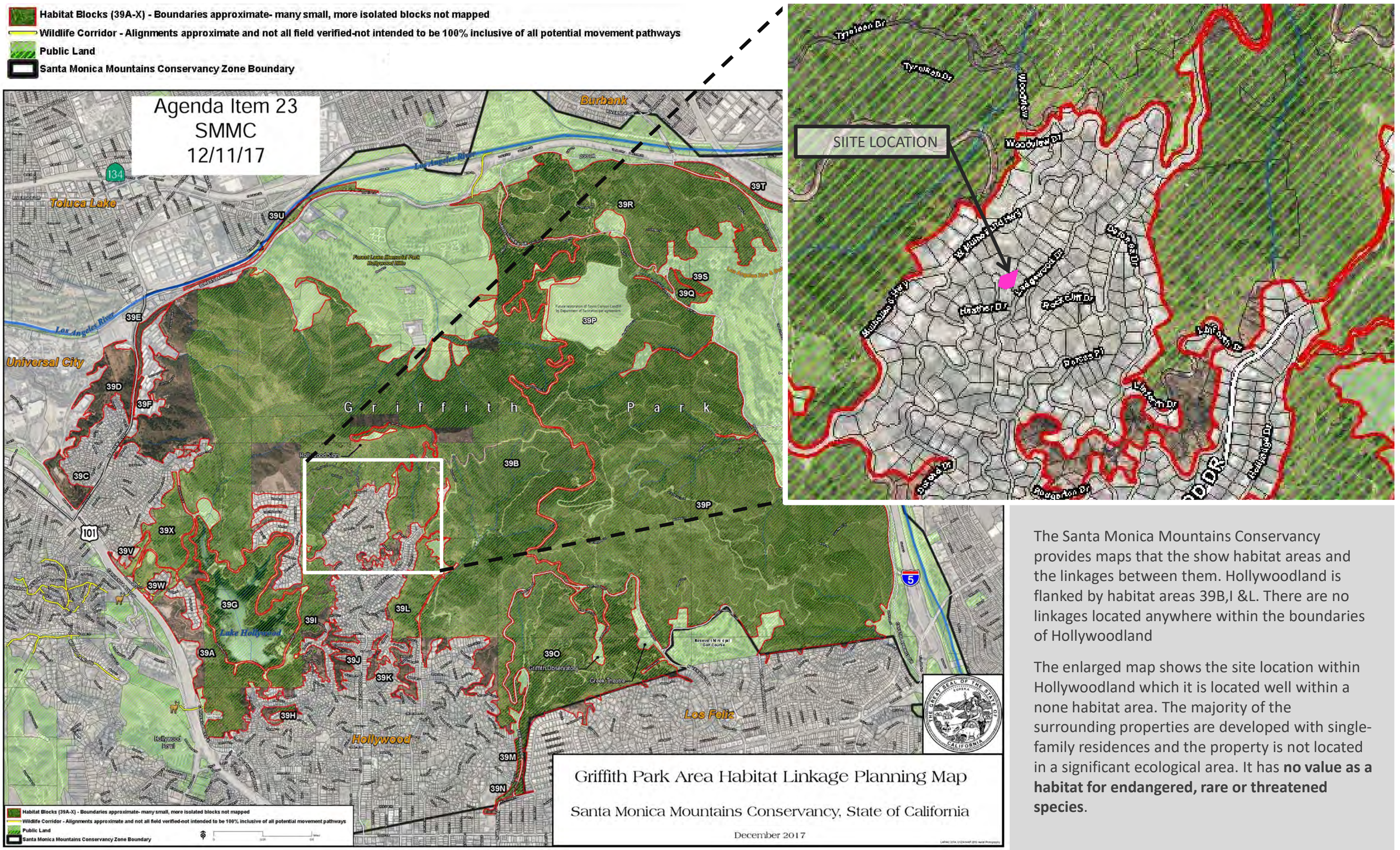
HOUSE OUTLINE

RETAINING WALLS

EXHIBIT B1 – Habitat Barriers Diagram : Fences, Retaining walls and Houses

3314 LUGANO PLACE

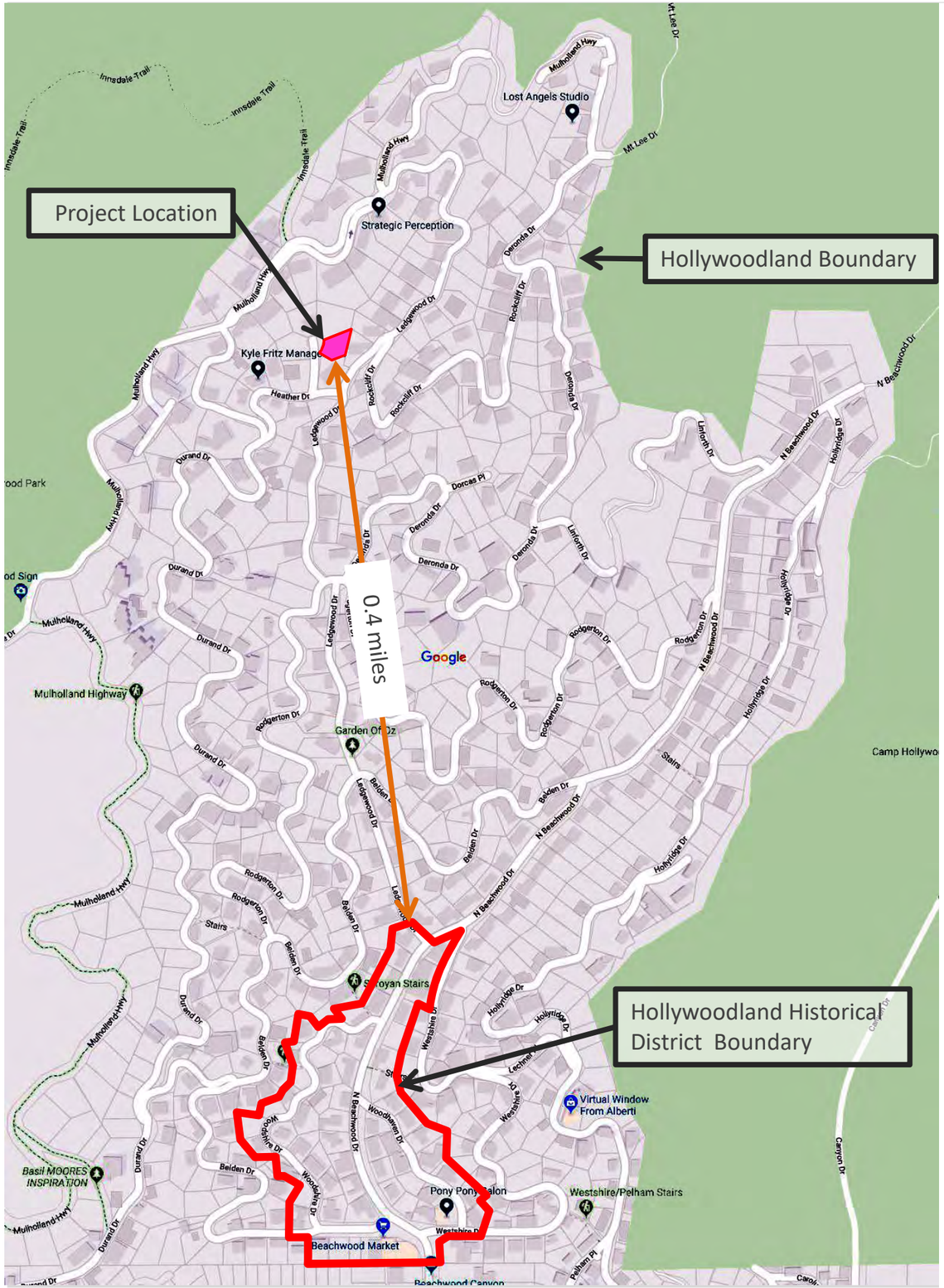
Exhibit C



The Santa Monica Mountains Conservancy provides maps that the show habitat areas and the linkages between them. Hollywoodland is flanked by habitat areas 39B,I &L. There are no linkages located anywhere within the boundaries of Hollywoodland

The enlarged map shows the site location within Hollywoodland which it is located well within a none habitat area. The majority of the surrounding properties are developed with single-family residences and the property is not located in a significant ecological area. It has **no value as a habitat for endangered, rare or threatened species**.

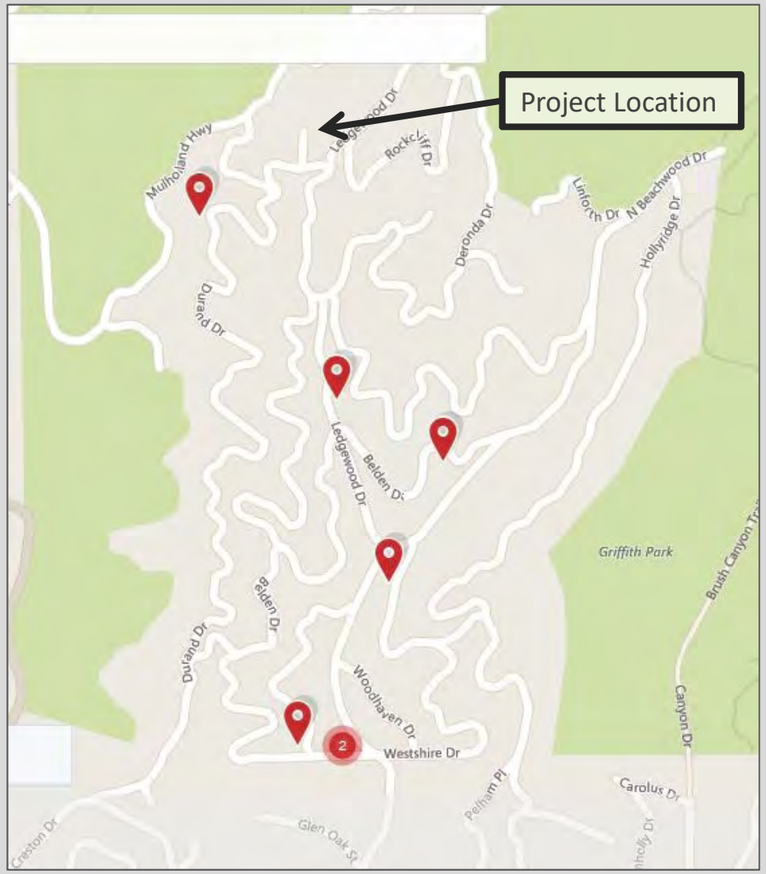
Exhibit D



CEQA has 5 requirements for Historical Resource Assessment

1. Listed with the National Register of Historic Places - The site/area is **NOT**
2. Listed with the California Register of Historic Places - The site/area is **NOT**
3. Listed with the Los Angeles Historical-Cultural Monuments Register - The site is **NOT**
4. Listed with Historic Places LA - The site/area is **NOT**
5. In a historical area recognized by Survey LA - The Site location is **NOT**

•Hollywoodland is **NOT** a historical resource.
•The project is **0.4 miles away** from Hollywoodland Historical District recognized by Survey LA
•Issues Relative to the Specific plan for the area are not a requirement of CEQA and were decided on by The Central Area Planning Commission in a previous appeal. The only thing unusual about the specific plan is that it's intention is not specific so it can not be applied objectively.



Historic Places LA – In Hollywoodland (7 places total)

Exhibit E

An Analysis of 27 house within a 300’ radius of the site documents the variety of styles that exist around the property

The following house styles were found:

- 10 Spanish (Stucco with Tile Roof)
- 8 Modern-Contemporary (various eras)
- 5 Ranch (Stucco with Hip Roof)
- 1 Style – Not Specific
- 2 Tudor Style
- 1 Colonial Style

Proposed Project

Appellants House

The design of the proposed house is intended to be compatible with the surrounding neighborhood by incorporating elements of like kind, scale, massing and materials