Fwd: Council File 18-1156-S1 (3627 W. Landa St / 1888 N. Lucile Ave) PLUM hearing date April 16, 2019

Gloria Pinon <gloria.pinon@lacity.org> Mon, Apr 1, 2019 at 3:01 PM
To: Clerk - Public Use - Clerk Council and Public Services <Clerk.CPS@lacity.org>

---------- Forwarded message ---------
From: **John A. Henning, Jr.** <jhenning@planninglawgroup.com>
Date: Mon, Apr 1, 2019 at 3:02 PM
Subject: Council File 18-1156-S1 (3627 W. Landa St / 1888 N. Lucile Ave) PLUM hearing date April 16, 2019
To: <CityClerk@lacity.org>
Cc: <councilmember.cedillo@lacity.org>, <councilmember.krekorian@lacity.org>, <councilmember.blumenfield@lacity.org>, <councilmember.ryu@lacity.org>, <councilmember.koretz@lacity.org>, <councilmember.martinez@lacity.org>, <councilmember.rodriguez@lacity.org>, <councilmember.harris-dawson@lacity.org>, <councilmember.price@lacity.org>, <councilmember.wesson@lacity.org>, <councilmember.bonin@lacity.org>, <councilmember.englander@lacity.org>, <councilmember.ofarrell@lacity.org>, <councilmember.huizar@lacity.org>, <councilmember.buscaino@lacity.org>

WHEN POSTING TO THE COUNCIL FILE, PLEASE BE SURE TO POST THE SEPARATE PDF FILE ATTACHED TO THIS EMAIL.

To the City Clerk:

Please post the attached letter to the Council File website as soon as possible. The public hearing at the Planning and Land Use Committee is presently scheduled for April 16, 2019.

The attached letter, dated November 16, 2018, is from the appellant's attorney, John Henning, and is addressed to the City Council. The letter is identical to the letter submitted concurrently with the appeal. Due to a clerical error, the exhibits to the letter (Exhibits A through I) were omitted from the appeal package. These exhibits are included with the attached version of the letter. The exhibits are already in the record as exhibits to a previous letter dated October 1, 2018, from John Henning to the East Los Angeles Area Planning Commission.

Thank you for your attention to this.

Best Regards,

John Henning

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Letter Henning to City Council 11-16-18 - Council File 18-1156-S1.pdf
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November 16, 2018

APPELLANT NEIGHBOR'S GROUNDS FOR APPEAL
Re: 1888 Lucile Ave.

VIA HAND DELIVERY

City Council
City of Los Angeles
c/o Department of City Planning
201 N. Figueroa Street
Los Angeles, CA 90012

Re: Appeal to City Council from Case No. ZA-2015-1567-ZAD-ZAA-1A; ENV-2015-1568-MND (1888 N Lucile Ave.)

Honorable Councilmembers:

This appeal and the appeal of the companion project at 3627 W. Landa Street (Case No. ZA-2015-1569-ZV-ZAD-1A) together concern two proposed single-family homes on adjacent parcels in the Silverlake neighborhood. My client is Barry Greenfield, Trustee of the Landa Street Trust, which owns the home at 3623 W. Landa Street. My client's property is immediately adjacent to the Landa Street site to the east, and is diagonally adjacent to the Lucile Avenue site. We offer the following comments:

1. Mr. Porter Designed a Project That Maximizes Harm to the Neighborhood.

The first public hearing on this project was held on April 19, 2016. The applicant, Tom Porter, completely redesigned the project in October 2016. This triggered a second public hearing, which was held before Associate Zoning Administrator Jack Chiang on February 28, 2017. The new project was much worse for the neighborhood. As reflected on the before-and-after photo simulation below, the Landa Street house in particular would **tower 36 feet above the Landa Street stairs, including a second-story deck facing the stairs and between 8 and 24 feet above the stairs**.


Before


After

As such, the Landa project in particular would singlehandedly destroy the pristine and natural environment on what the Zoning Administrator described in his determination letter for the Landa Street project as "one of the City's rare stair streets," which has "historical significance" and "must be maintained." For numerous stair-street neighbors, as well as the general public who use the stairs for recreation, their peace, privacy and views would be continually assaulted by the massive structure, its raised deck, and the people who eventually use the raised deck.

In addition to harming the environment on the stair street, the Landa Street project would maximize blockage of views from my client's home, in terms of both height and width, and the Lucile project would loom over the backyard of the neighboring home at 1892 Lucile Ave.

At the February 2017 public hearing, my client strenuously opposed the redesign, as did the adjoining neighbors at 1892 Lucile, Linda Kleine and Morri Spang (who have since moved). Ms. Kleine, who happens to be a licensed architect, and Michael Mekeel, a licensed architect retained by my office, each raised numerous deficiencies in the plans. At the close of the hearing, the AZA, Mr. Chiang, urged the applicant to address the concerns raised at the hearing, and to meet with the neighbors in an attempt to address all of their concerns, including view and privacy impacts.

Unfortunately, rather than take this advice to heart, Mr. Porter decided to defend the buildings he had already designed.

After the public hearing, Julia Duncan of the Council Office (who has since left that position) offered to set up a meeting between the neighbors and Mr. Porter. Unfortunately, by this point Ms. Duncan was already an advocate of the project. She had met repeatedly with Mr. Porter and his expediter but never with any of the neighbors, and she had made a detailed presentation to the Zoning Administrator in support of the project. Mr. Porter knew that he had Ms. Duncan's support, so his task was to have the meeting Ms. Duncan requested, and then to make a few cosmetic changes to the project that would create the impression of making concessions to the neighbors' concerns.

Several months after the second public hearing, on June 23, 2017, Mr. Porter and his "development team" (consisting of a lawyer, a designer and an expediter) met at the Council Office with me, my client's architect, Ms. Kleine and Ms. Spang. Mr. Porter's team started off by proposing extremely minor changes to the buildings. I and the Lucile neighbors reiterated what we had all said at the public hearing: The project was unnecessarily tall and wide, was out of scale with the neighborhood (and especially the Landa Street stairway), and would destroy the neighbors' views and privacy. We all once again beseeched Mr. Porter to make substantial changes to the building. Mr. Porter did not say a single word at the meeting, choosing instead to speak through his lawyer. This was an ominous sign.

On July 19, 2017, at Mr. Porter's request the Council office arranged a second meeting. There, Mr. Porter's team presented a slightly revised project. The only concession to my client

was a 2-foot reduction in the height of a portion of the Landa house roof (over the living room), which was accomplished by reducing the ceiling height of that room from 12 feet to 10 feet. This change opened up a sliver of view for my client, but only from one perspective in his house. Because the rest of the roof (over the kitchen) remained at the original height, the vast majority of my client's view to the west was still completely blocked. Meanwhile, Mr. Porter made no substantial change that would benefit Ms. Kleine and Ms. Spang, the neighbors on Lucile Avenue, such as to pull the house back from the rear yard. The house continued to loom menacingly over the Kleine/Spang back yard, in exactly the same position as before. Nor did Mr. Porter make any change that would benefit the people who use the Landa stair street, such as by reducing the height of the structure from that perspective.

At the July 19, 2017 meeting at the Council Office, Mr. Porter's designer said that he would make a few non-substantive changes to the plans and then submit them to the City. A month later, on August 18, 2017, Mr. Porter submitted essentially the same plans to the City, along with a binder containing more than 200 pages of revised applications, findings and such.

We commented on these "revised" plans by our letter to Mr. Chiang dated September 14, 2017. Mr. Porter then submitted further revisions to the Lucile project only on April 4, 2018, mainly to reflect a revision to the retaining walls for that project. On July 19, 2018, Mr. Chiang issued his determination letters in both cases.

My client appealed the determination to the East Los Angeles Area Planning Commission (ELAAPC), and on October 10, 2018, the ELAAPC denied the appeal and adopted the findings of the Zoning Administrator as its own.

This final August 2017 version of the project is just as bad for the neighbors and the neighborhood – if not worse – than the project proposed in October 2016:

- **East Elevation is Still Twice as Large**. The building's eastern elevation, which is only 14 feet from my client's house, is still more than twice the size of the original eastern elevation of the project proposed in April 2016. (***See Tab A.***) The very minor changes to this elevation from the October 2016 plans are noted in red.

- **Roofline is Still 4 to 8 Feet Higher.** The roof is still between 4 feet and 8 feet higher than the original roof of the project in April 2016, thereby completely blocking most of my client's views toward the west from both the first and second stories of his residence. (***See Tab B.***)

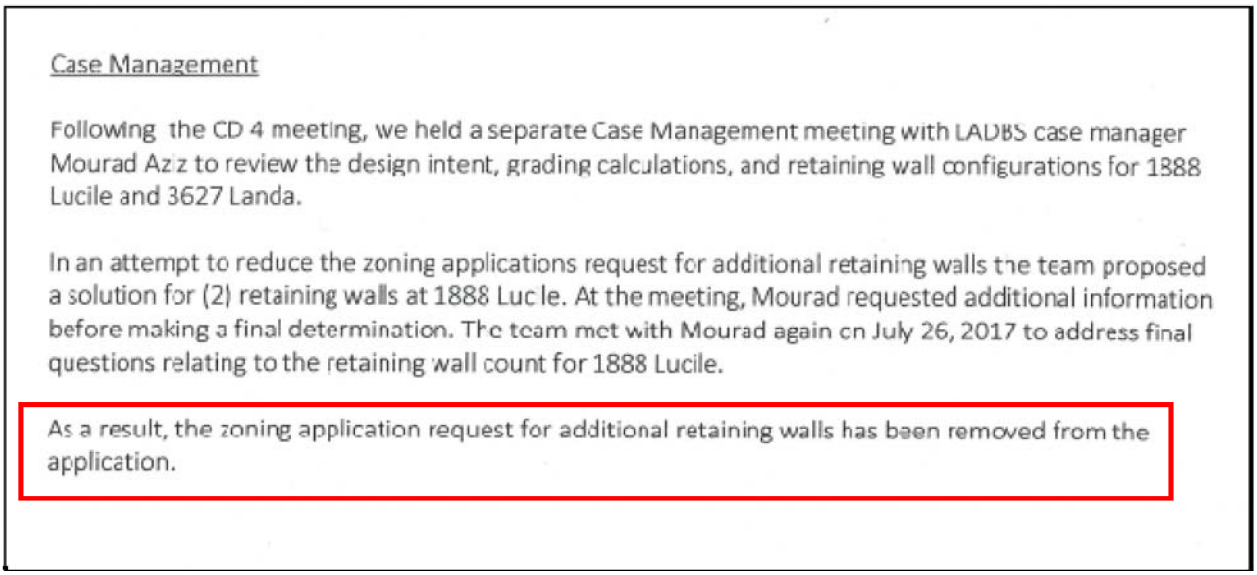
- **Building is Still 50% Wider**. The building is still more than 50% wider than the original April 2016 project as viewed from my client's property, so the view blockage is still extended into new areas that were not obstructed by the design presented at the first public hearing. (***See Tabs A and B.***) In fact, the building is now even wider than before, i.e., 76 feet rather than 72 feet.

- **Side of Building is Still a Flat, Featureless Wall**. On the eastern elevation the structure is still essentially devoid of any articulation or even windows. Thus, as viewed from my client's property the structure still looks like the back side of a parking garage.

2. Mr. Porter Has Withdrawn His Request for Relief From the Retaining Wall Ordinance.

Mr. Porter initially applied for relief from the retaining wall ordinance for the Lucile project, requesting four walls instead of the maximum of two walls. However, **Mr. Porter formally withdrew this request by way of his August 2017 submittal of revised plans, and it cannot be reinstated without a new application.**

In his project binder filed with on August 18, 2017, Mr. Porter states, at approximately page 11 that the "request for additional retaining walls has been removed from the application." That passage is repeated below:



Case Management

Following the CD 4 meeting, we held a separate Case Management meeting with LADBS case manager Mourad Azz to review the design intent, grading calculations, and retaining wall configurations for 1888 Lucile and 3627 Landa.

In an attempt to reduce the zoning applications request for additional retaining walls the team proposed a solution for (2) retaining walls at 1888 Lucile. At the meeting, Mourad requested additional information before making a final determination. The team met with Mourad again on July 26, 2017 to address final questions relating to the retaining wall count for 1888 Lucile.

As a result, the zoning application request for additional retaining walls has been removed from the application.

Portion of Applicant's Binder re Withdrawal of Retaining Wall Request (pg. 11)

Mr. Porter's August 2017 binder reflects the withdrawal of the retaining wall request in several other places, such as the section on proposed findings.

The August 2017 binder was submitted almost 6 months after the last public hearing on this project. I and the neighbors reviewed that binder and provided written correspondence in response. We all assumed that Mr. Porter's decision to remove the request for additional retaining walls was final, and that the Zoning Administrator would proceed to decision in the case without further considering that request.

It was not until March 23, 2018 – seven months later – that Mr. Porter's expediter informed Association Zoning Administrator Jack Chiang that Mr. Porter would, in fact, be pursuing relief from the retaining wall ordinance to allow three walls. Unfortunately, Mr. Chiang entertained this last-minute revision and ultimately granted the request.

It is unfair that my client and other neighbors were forced to respond to written materials like Mr. Porter's August 2017 binder, which were filed long after the public hearing and in which Mr. Porter made changes to plans and new arguments and rationales that were never mentioned at the public hearing. However, the Zoning Administrator's consideration of a request for relief that had been **formally withdrawn** is even worse, because my client and the other neighbors had considered the matter of retaining walls to be closed once and for all, and had geared our comments accordingly. We had no idea that there would be any attempt to reinstate the request, and we assumed that the Zoning Administrator would not allow the applicant to change his mind after the fact.

Requests for relief are routinely withdrawn in correspondence and by statements made in public hearings. **Once an applicant withdraws a request, the request is withdrawn, and it cannot be reinstated by the applicant**. The Zoning Administrator also does not have the right to reinstate the request, for a very simple reason: The public has relied upon the applicant's withdrawal of the request. **This is a simple matter of due process and notice**.

Therefore, if Mr. Porter has changed his mind and wants three retaining walls for the Lucile project, he must file a new application and the Zoning Administrator must conduct a new public hearing, so that the neighbors can be heard on this request.

Moreover, even if the request for three retaining walls could be entertained, it would not be sufficient relief to allow the Lucile project to proceed. As shown by the attached diagram, the Lucile project requires not 3 retaining walls, but rather, 7 retaining walls. **(*See Tab C.*)** Even assuming that the Zoning Administrator would consider reinstating the original request for relief from the retaining wall ordinance, that request only seeks 4 walls (or, in its most recent iteration, 3 walls). The public has not had notice of a request for 7 walls, and has had no opportunity to provide their comments to the Zoning Administrator at a noticed public hearing.

3. Mr. Porter's Support Letters Are Misleading.

In his findings regarding detriment to neighboring properties, the Zoning Administrator stated that Mr. Porter "obtained the support of four neighbors for the proposed project." (Determination at 18.) In fact, Mr. Porter's August 2017 project binder indicates that Mr. Porter showed his plans to two of the neighbors – one at 1880 N. Lucile Ave., which is next door to the Lucile site, and one at 1881 N. Lucile Ave., which is across the street from the Lucile site – and obtained their signatures in support. However, on closer examination it is apparent that both of these neighbors' signatures were obtained before April 2015, long before the project was completely redesigned in October 2016.

In the initial project binder that Mr. Porter submitted in October 2016, the index for the Lucile project and the Landa project each refer to "Neighbor's Signatures" as Tab 3, and attach a "Signature Sheet" (page 3 of the former Master Land Use Permit Application form). This sheet contains two signatures – one from a neighbor at 1881 Lucile and the other from a neighbor at 1880 Lucile. The signed sheets in the October 2016 binder were literally identical in every respect to the signature sheets previously submitted by Mr. Porter along with the original project application more than 18 months ago, in April 2015. Now, the August 2017 binder repeats the same identical signature sheet. ***(See Tab D.)***

In other words, these two neighbors signed Mr. Porter's application prior to April 2015 to support the original project (or perhaps something else entirely). Yet Mr. Porter has repeatedly -- and misleadingly – submitted these same signatures as evidence of neighbor support for the revised project.

In fact, one of these two neighbors -- the one who lived next door at 1880 N. Lucile Ave. – moved away in January 2016, months before the first public hearing, so his support, even of the original project design, is now completely irrelevant.[1] Of course, Mr. Porter was presumably well aware that this neighbor had moved, since Mr. Porter resides at the property. Yet, he submitted the neighbor's signature as evidence of support for the project in his revised project submittal in October 2016, and he submitted the signature again with his August 2017 binder.

The August 2017 binder does include a letter from the new owner of the property at 1880 Lucile Ave., dated November 29, 2016, so the record has finally been corrected as to that neighbor. (Binder at approx. pg. 37.) However, in the letter the new owners merely state that they "As next door neighbors of Thomas A. Porter, we are writing to support his plans to build two houses at 1888 Lucile Avenue." The new owners say nothing about having reviewed the actual plans submitted by Mr. Porter in October 2016. Moreover, one thing is certain: They could not possibly have reviewed the plans which Mr. Porter submitted in August 2017, as the letter is dated 9 months earlier than that.

Meanwhile, despite submitting a more than two-year-old signature from his neighbor across the street, at 1881 N. Lucile Ave., Mr. Porter has never submitted any new letter or other evidence that this neighbor still supports the project given the dramatic revisions since the first public hearing.

The August 2017 binder also contains a misleading letter from Scott Plante, a member of the Silverlake Neighborhood Council (SNC) dated November 16, 2016.[2] (Binder at approx. pg. 43.) The letter states that "We have reviewed the changes made by Mr. Porter regarding the above property and find no issues with the attached ZAA requests. We continue to recommend

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[1] James Butkevich, who owned an adjoining property to the west at 1880 N. Lucile Avenue – sold his house in January 2016, even before the first public hearing in April 2016. (***See Tab E.***)

[2] In the determination letter, the Zoning Administator erroneously refers to the Silverlake Neighborhood Council letter as being dated "November 16, 2017," or one year later.

approval of the applicant's requests." However, there is no evidence that the SNC itself has had any opportunity to weigh in on the revised project, either as it stood in October 2016 or as it stands now.

In fact, as reflected in the letter to Lynda Smith of Office of Zoning Administration dated August 25, 2015, which is in the case file, the SNC held a hearing on August 4, 2015, just a few months after the application was filed, and approved the much smaller project that was originally filed with the application in April 2015.

In the November 2016 letter from Mr. Plante, there is no statement that the SNC itself ever reviewed the drastically larger and more imposing project as reflected in the October 2016 plans. Nor is there even the allegation that any committee of the SNC reviewed those plans. Mr. Plante does not say that the SNC or any of its committees conducted any hearings on the revised plans, as it would be required to do before approving anything.

In fact, based upon my discussions with Mr. Plante in January 2017, there were no hearings at the SNC about the revised project. Therefore, to the extent that Mr. Plante used the term "we," or used SNC letterhead, he was not speaking for the SNC or even for his own committee. At most, he was speaking for himself.

Finally, it is apparent from the face of the letter that Mr. Plante himself could not have reviewed the most recent set of plans submitted in August 2017, as his letter predates that submittal by 9 months.

On day of the ELAAPC hearing, Mr. Porter tried to rehabilitate his argument that the SNC supported his project by submitting yet another letter from Mr. Plante, dated October 9, 2018. However, in that letter Mr. Plante confirmed that the SNC had never approved the revised project. Instead, he conceded that the entire SNC had approved the project just once (in August 2015); that the SNC "does not have a mechanism" to consider revised plans, no matter how dramatic the revisions; and that only Mr. Plante and his co-chair had reviewed the revised plans. Mr. Plante insists that given the lack of any process to review revised plans, "our original recommendation stands," but that recommendation concerns a project that no longer exists.

Mr. Plante claims in his most recent letter that Mr. Porter did ask the SNC to review the revised plans, and it declined to do so because there was no procedure for such review. However, what Mr. Porter apparently did not do was to ask the Zoning Administrator to request that SNC reconsider the plans in light of the radical redesign of the project, something which, as Mr. Plante concedes, would have been possible. Presumably Mr. Porter was content with Mr. Plante's letters implying the SNC's approval of the revised project, much as he was content with ambiguous and outdated letters from his neighbors purportedly supporting the project.

4. The Findings Necessary for a ZAD Reducing Required Parking for the Lucile Project From 3 Spaces to 2 Spaces Cannot be Made.

The Lucile project requires 3 parking spaces because it consists of 2,471 square feet of floor area, which exceeds the 2,400 square foot threshold for provision of a third parking space. The Zoning Administrator Determination (ZAD) allows Mr. Porter to escape this requirement. However, the need for the ZAD could have been easily avoided by simply reducing the total floor area just below the 2,400 square foot threshold, or by 71 square feet.

Mr. Porter argues in his application that a ZAD is warranted because the only reason the 2,400 square foot threshold is exceeded is because he has elected to construct an extra 400 square foot garage on the Lucile property in order to provide two extra parking spaces to serve the Landa project. His theory is essentially that the owner of the Lucile property should not have to provide extra parking simply because he has voluntarily constructed more parking than required, i.e. he should not have to provide "parking for parking."

The ELAAPC followed Mr. Porter's rationale and granted the request for a parking reduction, noting: "The parking garage area provided for the adjacent Landa Street development is not a habitable space thus it does not trigger a parking demand, therefore, makes the parking exemption request reasonable." (Determination at 14.) Elsewhere the ELAAPC notes: "The proposed project, without the extra square footage of the garage with two parking spaces meant to serve the adjacent dwelling, would not need the addition of a third parking space. In addition, a garage is not a habitable space and no person will live in it, thus the excess garage square footage does not create additional parking space demand or increase the intensity inside of the subject new single family home on Lucile Avenue that would require a third parking space." (Determination at 20.)

However, the ELAAPC's theory is really an argument for the City Council to change the zoning code; it is not an argument for granting relief from the code. The circumstance Mr. Porter finds himself in is actually quite common. In most residential zones throughout the City, required covered parking spaces up to 200 square feet in size are exempt from being treated as "residential floor area" (RFA). (See LAMC section 12.03.) Yet many projects include more than the required number of covered parking spaces, simply because the owner chooses to have extra spaces. When these extra non-required spaces are provided, they are routinely treated as RFA. Since more RFA can mean more required parking, these additional voluntary spaces can, and frequently do, trigger the requirement of yet more parking spaces, i.e., "parking for parking."

Mr. Porter's situation is slightly different from the typical case in that Mr. Porter is providing the extra two non-required parking spaces to serve the parking needs of a separate property on Landa Street, rather than to serve the property where they are to be constructed. However, that distinction is irrelevant here. Mr. Porter is not obligated to provide parking on the Lucile property for his separate development on the Landa property. He only chooses to do so because it suits his purposes and maximizes his profit on the combined development. There is no more reason for relieve Mr. Porter from providing "parking for parking" when the extra

parking is provided voluntarily in order to serve an off-site property, than there is to grant relief in the more typical case, where extra parking is provided voluntarily to serve the same property. In either case, the argument that "parking for parking" should not be required is the same: Extra parking spaces do not generate the need for more parking spaces.

The zoning code could certainly be amended to state that parking requirements for hillside projects are to be calculated based only on floor area excluding covered parking, regardless of whether such parking is required or voluntarily provided. However, that is not what the zoning code says presently, and that is not the rule that is followed by developments throughout the City. The City Council is not obligated to – and in fact should not – provide a de facto waiver from the clear language of the zoning code simply because one applicant would like the code to be written differently. Indeed, the grant of relief in this circumstance would merely invite demands for relief from any property owner who faces the prospect of providing "parking for parking" anywhere in the City, and would thereby eviscerate the effect of the code.

As an alternative to simply reducing the RFA of the Lucile house by 71 square feet, Mr. Porter can also avoid the need for a ZAD to reduce required parking in two other ways. One option is to forego the Lucile project entirely and simply maintain and repair the existing 1925 structure, and its legal nonconforming parking garage, thus requiring no additional parking at all. Another option is to develop the new Lucile house and provide the third required space in one of the four spaces to be constructed. The fourth space could then be used as parking for the Landa house, perhaps pursuant to a zone variance like the one granted for the neighboring properties at 3617 and 3623 Landa Street, in which the size of the structure was strictly limited to 1,300 square feet to minimize the demand for off-site parking. Or, Mr. Porter could simply forego the Landa project entirely.

Section 12.24.E requires three general findings for all Zoning Administrator Determinations made under section 12.24.X. These are the "General Findings" necessary for all Hillside projects, which are commonly known as "Hillside Project Findings." They include:

> 1. that the project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city, or region;
>
> 2. that the project's location, size, height, operations and other significant features will be compatible with and **will not adversely affect or further degrade adjacent properties, the surrounding neighborhood**, or the public health, welfare, and safety; and
>
> 3. that the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan.

These findings concern impacts of the project generally on the neighbors and the General Plan. A ZAD cannot be approved for the Lucile project because the project is simply massive in

its scale and relation to the street. The house itself is unusually large for the neighborhood, both in square footage and in sheer mass and height. It looms over its neighbor on Lucile Avenue. It also creates, among other things, a solid wall of parking garages directly at N. Lucile Avenue, and subjecting this narrow hillside street to unnecessary traffic burdens and traffic conflicts. Many of these issues are described in great detail in a separate letter submitted by Linda Kleine dated September 12, 2017, which we hereby incorporate by this reference.

In addition to the Hillside Project Findings, there is another specific finding necessary to support a ZAD for reduced off-street parking: That the reduction of the parking requirements will not create an adverse impact on Street access or circulation in the surrounding neighborhood; and that the reduction will not be materially detrimental or injurious to the property or improvements in the vicinity in which the Lot is located." (LAMC section 12.24.X.28.(b).6.) Such a finding cannot be made here.

As acknowledged by the Zoning Administrator in a previous case (Case No. ZA 2004-421 9(ZV)(ZAD)), and as discussed in great detail in Linda Kleine's September 12, 2017, letter to the Zoning Administrator – this is a crowded hillside neighborhood with narrow streets and scarce on-street parking spaces. Lucile Avenue in particular is a substandard hillside street and is already short on parking. There is street parking on one side of the street only, and private curb cuts on the narrow lots further limit the number of on-street spaces. The street parking that does exist is inefficient and limited by the curving roadway and steep grade. Finally, visibility is poor, so drivers searching for parking spaces create traffic congestion and traffic hazards. The Landa Street project would worsen these conditions by pushing all of its traffic and parking impacts onto Lucile Avenue.

Despite these existing conditions, the ELAAPC identifies no special circumstances that have any prospect of reducing, much less eliminating, the parking and traffic impacts that would necessarily flow from a reduced parking requirement. Nor has the ELAAPC considered the possibility of simply reducing the structure size well below the maximum allowed, so as to reduce the likely number of occupants of the house and thus its parking demand, as the recent project on Landa Street did.

Accordingly, any reduction of code parking requirements would, by definition, create an adverse impact on street access and circulation and would be detrimental to other property in the vicinity. Since there is no substantial evidence to support the ELAAPC's findings concerning compatibility with the neighbors and the neighborhood, a ZAD for reduced parking should not have been granted.

5. The Findings Necessary for a ZAA to Reduce the Width of the Required Passageway for the Lucile Project Cannot be Made.

The zoning code requires a 10-foot passageway leading from Lucile Avenue to the front door of the residence. Mr. Porter requested, and the Zoning Administrator granted, a Zoning Administrator Adjustment (ZAA) for a passageway that is narrower than the minimum 10 feet

required, and specifically 8 feet wide. The need for the request is dictated by Mr. Porter's desire to construct two parking garages with a total of four parking spaces facing Lucile Avenue, on a lot that is only about 50 feet wide at that frontage.

The required for a Zoning Administrator Adjustment (ZAA) include finding (a), i.e, "(a) *that while site characteristics or existing improvements make strict adherence to the zoning regulations impractical or infeasible, the project nonetheless conforms with the intent of those regulations.*" (LAMC section 12.28.C.4.(a).) Subsumed under this required ZAA finding is a finding that "*site characteristics or existing improvements make strict adherence to the zoning regulations impractical or infeasible.*"

In this regard, the ELAAPC found that "Because of this unique arrangement and special circumstance, the required garage on the property is larger than a normal garage for a single-family dwelling, both in width and in square footage. Due to the wider garage, passageways from the street to the dwelling entrance of both single family homes must be slightly narrowed by two-feet in lieu of the required ten-feet so as to accommodate the necessary offstreet parking." (Determination at 21.)

However, this is a self-imposed hardship. Mr. Porter only "needs" the reduced passageway width because he wants to do these three things:

(1) Demolish the existing house on the Lucile property, which already has a legal nonconforming parking garage, and replace it with a large new house which requires two larger code-conforming parking spaces;

(2) Build a 1,931 square foot, 3-bedroom house on the Landa property which requires two parking spaces, rather than leaving the property undeveloped or developing it with a smaller house that might qualify for a zone variance for reduced parking to serve that parcel, similar to the one granted to the neighboring properties at 3617 and 3623 Landa Street; and

(3) Design the two new garages 20 feet wide rather than the minimum 17 foot, 8 inch width necessary for one full-size and one compact parking space.

Mr. Porter wants to do these three things, but he doesn't need to do any of them. He could easily avoid the need for a ZAA for a reduced passageway by simply not doing any one of these three things.

For example, Mr. Porter could repair and maintain the existing house on the Lucile property, and then construct two new individual garages on the property, for use by the Lucile property and/or to serve the Landa property, without requiring any reduction in the passageway width. A site plan depicting a possible design for this is attached to this letter. (***See Tab F.***) The plan calls for only a single retaining wall less than 12 feet tall, which is in conformance with the retaining wall ordinance.

Indeed, while Mr. Porter has contended that the existing house dating from 1925 is in poor condition and cannot feasibly be saved, the documents in the file do not support this contention. As reflected in the binder that Mr. Porter submitted with the revised plans, the Landa property is subject to a Substandard Order and Notice of Fee from the Department of Building and Safety which identifies three primary code violations: (1) "missing, broken and rotted structural roof and wall systems" in the garage building, including "significant structural damage on the retaining wall and wood framing," which Mr. Porter is required to either "repair or replace"; (2) damaged and unsafe retaining walls in the garage and at the front property line, which require repairs and maintenance; and (3) illegal conversion of the underfloor area of the house into a "habitable basement with a bathroom," which can be resolved by simply removing the unpermitted improvements.

The DBS Substandard Order only says that Mr. Porter has work to do. It does not support his self-serving contention that the house must be torn down and replaced. Indeed, while Mr. Porter states in the Project Description attached to the original application that "the extent of the work needed to bring the house into Compliance is impractical from both a cost and an engineering perspective," Mr. Porter has presented no evidence that the problems identified in the Order to Comply cannot be resolved, or even that they cannot be resolved economically. Nor has Mr. Porter identified any other specific problems with the structure that are not referenced in the Substandard Order.

It appears that Mr. Porter's intention to demolish the existing 1925 structure is motivated more by a desire to maximize profit than by an actual need to replace the structure. The City Council is not obligated to – and should not – grant relief from the zoning ordinance merely so that Mr. Porter can make extra money on his speculative development project.

Moreover, even if it could be established that the Lucile house is beyond repair and must be demolished and replaced, Mr. Porter has other avenues available to him to avoid the need for a ZAA for a reduced passageway width. As one example, Mr. Porter could forego the Landa development entirely, thus necessitating no extra parking spaces on the Lucile property. Or, he could revise the Landa project to be a house less than 1300 square feet in size and then apply for a zone variance to allow reduced off-site parking of just one space on the Lucile property, similar to the variance granted by the Zoning Administrator for the houses at 3617 and 3623 Landa St.

Mr. Porter can also avoid the need for a ZAA for a reduced passageway even if he insists upon building large new houses on both the Lucile and Landa properties – by simply reducing the width of the two parking garages from 20 feet to 18 feet, which is sufficient under the zoning code to accommodate one full-size and one compact parking space. A site plan depicting this configuration is attached to this letter. (***See Tab G.***)

Given the numerous alternatives available to Mr. Porter to ensure a code-conforming passageway width, strict adherence to the zoning regulations is both practical and feasible. Accordingly, there was no substantial evidence supporting finding (a) required for a ZAA, which

subsumes the finding that "*site characteristics or existing improvements make strict adherence to the zoning regulations impractical or infeasible*." (See LAMC section 12.28.C.4.(a).) Accordingly, the ZAA for a reduced passageway width should not be granted.

Moreover, as with the various ZADs that Mr. Porter requests, the ZAA that he requests for a reduced passageway requires certain findings that the project as a whole will not have negative impacts on the neighbors and the neighborhood. Specifically, the City Council must find:

> (b) that in light of the project as a whole, including any mitigation measures imposed, the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety; and
>
> (c) that the project is in substantial conformance with the purpose, intent and provisions of the General Plan, the applicable community plan and any applicable specific plan.

For the reasons discussed elsewhere in this letter, these findings simply cannot be made here.

6. Even if the City Council Were to Consider the Withdrawn ZAD to Increase the Number of Retaining Walls in the Lucile Project Beyond the Limit of 2 Walls, the Necessary Findings Cannot Be Made.

The zoning code allows only two new retaining walls on the Lucile property. In his plans filed in October 2016, Mr. Porter requested a Zoning Administrator Determination (ZAD) to allow 4 walls. Then, in August 2017, Mr. Porter filed revised plans purporting to show just 2 walls, and he accordingly withdrew his request for relief from the retaining wall ordinance. Finally, in March 2018, with no notice to neighbors or public hearing, Mr. Porter asked the Zoning Administrator to reinstate his original request and asked for permission to build 3 walls. The Zoning Administrator granted this request, and the ELAAPC upheld that decision. As discussed in section 2 of this letter, this was in violation of the law and my client's rights to due process and notice.

Moreover, even if the ELAAPC had the authority to reinstate Mr. Porter's request for extra retaining walls, there is no justification for it to do so. **A 2,471 square foot house, with all four of the parking spaces Mr. Porter proposes, can feasibly be built on the property with no more than a single retaining wall less than 12 feet high located along the east property line**. A site plan for just such a house is attached to this letter. (***See Tab H.***) Mr. Porter may want more walls, but he doesn't need more walls to develop the property.

A request for relief from the maximum number of retaining walls is treated as a Zoning Administrator Determination (ZAD), but the findings necessary for such relief are specified in

the code section concerning Zoning Administrator Adjustments. (See LAMC section 12.21.C.8.(c); section 12.24.X.26.(b); section 12.28.C.4.) These findings include finding (a), i.e, "(a) *that while site characteristics or existing improvements make strict adherence to the zoning regulations impractical or infeasible, the project nonetheless conforms with the intent of those regulations*." (LAMC section 12.28.C.4.(a).)

Subsumed under this required ZAA finding is a finding that "site characteristics or existing improvements make strict adherence to the zoning regulations impractical or infeasible." The ELAAPC in this regard made various ambiguous findings. As to Retaining Wall No. 1, he found that this 122-foot wall "is necessary to provide an accessing stairway to the companion Landa dwelling." As to Retaining Wall No.2, he found that this 49-foot long wall "is necessary to allow a usable open space at the rear yard." As to Retaining Wall No.3, he found that this 7-foot wall "is necessary to retain soil stability at the property line location for the project property and the easterly adjacent property." (Determination at 22.) Speaking generally, the ELAAPC found that "The retaining wall request is necessary due to the physical characteristics of the subject site and to provide additional garage area for two more parking spaces with an access stairway serving the companion single family dwelling at 3627 Landa Street." (Determination at 22.)

However, these findings that three walls are "necessary" are not supported by substantial evidence. Because Mr. Porter can build a 2,471 square foot house on the Lucile property with a single retaining wall less than 12 feet tall, strict adherence to the zoning regulations is both practical and feasible. Thus, mandatory finding (a) simply cannot be made, and a ZAD for additional retaining walls should not be granted.

Further, for the reasons discussed in sections 4 and 5 of this letter, ZAA finding (b) (concerning compatibility of the project generally with the neighborhood) and (c) (concerning conformance of the project generally with the General Plan), simply cannot be made here.

7. Because There is a Fair Argument That the Project May Result in Significant Levels of Construction-Related Noise, an Environmental Impact Report Should Have Been Prepared Pursuant to CEQA.

As the environmental review for the project, the ELAAPC certified the adequacy of a Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA). This document was prepared for the two projects on Landa and Lucile as a combined project. However, this two-house development project is immediately adjacent to a densely populated single family residential neighborhood. The noise impacts on sensitive residential receptors – otherwise known as people in their homes – would extend over the entire construction phase of the Project, which is estimated to be 16 months including grading, foundation and construction. Therefore, an Environmental Impact Report (EIR) should have been prepared to evaluate construction noise, at a minimum.

The MND is quite scant in its evaluation of construction noise. It includes an Initial Study Checklist that categorizes various impacts in terms of their potential significance, with or without migitation. (MND at 12-14.) Among these impacts are Noise (category XII), and specifically "temporary" noise, i.e., construction noise, which is described by way of the following question (XII.d): "A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?" The checklist indicates that this particular noise impact is "potentially significant unless mitigation incorporated." (MND at 12.)

Elsewhere the MND states that as to this category, "The project is the construction of a new, single-family dwelling, and may result in a temporary or periodic noise increase during construction activities." (MND at 22.) It then defines "Mitigation Measures" with reference to category "XII-20", which corresponds to three measures described elsewhere (MND at 3.) These three measures include: (a) "Construction and demolition shall be restricted to the hours of 7:00 am to 6:00 pm Monday through Friday, and 8:00 am to 6:00 pm on Saturday"; (b) "Demolition and construction activities shall be scheduled so as to avoid operating several pieces of equipment simultaneously, which causes high noise levels; and (c) "The project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices."

However, there is simply no determination in the MND – much less a determination supported by substantial evidence – that these three modest noise control measures would mitigate construction noise below the level of significance. Nor is there any finding by the ELAAPC to this effect. In fact, even if the three conditions might reduce noise impacts somewhat, they are not sufficient to mitigate the impact below the level of significance, especially when residences are only a few feet away from the project. At a minimum, site grading and drilling for foundations such as caissons – which are inevitably necessary for hillside projects and which are specifically called for by the geotechnical reports for this project – will make substantial noise that will disturb residential neighbors.

The City's noise ordinance (LAMC section 122.05) states that an absolute noise level of 75 dBA at 50 feet from the noise source is a violation of the ordinance, which indicates that this level at a minimum would be a significant noise impact. Although the ordinance makes an exception for construction noise, that is irrelevant for purposes of determining whether the impact is significant. (See Rominger v. County of Colusa (2014) 229 Cal.App.4th 690, 717 ("A lead agency cannot avoid finding a potentially significant effect on the environment by rotely applying standards of significance that do not address that potential effect"); Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners (2001) 91 Cal.App.4th 1344, 1380 (court noting that CEQA does not define significant noise impacts "simply in terms of whether a project would violate applicable local, state, or federal noise standards," but instead adopt a "site-sensitive threshold of significance for noise.").

In addition to the absolute 75 dBA level prohibited by the City's ordinance, a mere increase of 5 dBA resulting from construction would be a significant impact. (See Los Angeles

Unified School District v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1024-26 (court rejecting EIR's conclusion that increase of less than 5 decibels in ambient noise level has only "a marginal impact" on the hearer.)

The City's own "CEQA Thresholds Guide" (2006) describes typical noise levels for construction machinery and activity at 50 feet from the noise source. They include: Trucks – 82-95 dB; Concrete Mixers (75-88 dB); Paver (85-88 dB); Pile Driving (95-107 dB).) (***See Tab I.***)

Turning to the mitigation conditions in the MND, it is quite apparent that they will not convert an otherwise noisy construction site into a quiet one. The first condition, which merely limits hours of construction, will not eliminate (or even reduce) noise during the hours allowed, which are 13 hours per day on weekdays and 10 hours a day on Saturdays. The second condition merely requires scheduling to "avoid" operating several pieces of equipment simultaneously. This does not *prohibit* the operation of multiple pieces of equipment simultaneously, and even if it did, it does not change the noise made by any given piece of equipment used by itself. The third condition requires the contractor to use "state-of-the-art noise shielding and muffling devices," but there is no description of what these devices even are, much less is there any reason to assume that they will be sufficient to bring construction noise below the level of significance.

In sum, the construction noise impacts of the project are potentially significant, and there is no finding based upon substantial evidence that they are mitigated below the level of significance by the few mitigation conditions imposed on this project. Thus, there is a fair argument that the Project, even after mitigation, may have a significant construction noise impact. An EIR should be prepared to analyze this potential impact.

8. Conclusion.

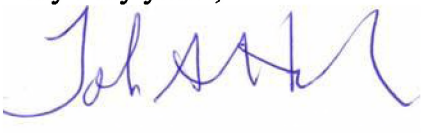
The applicant here, Tom Porter, spent $45,000 just a few years ago for a vacant lot fronting on a stair street, which was evidently considered "unbuildable" due to the lack of vehicular access. He then devised a speculative development project by which he would demolish a perfectly adequate existing home, inject numerous unsightly retaining walls into a serene hillside, and then build two unusually large houses that would block his neighbors' views and loom over the historic stair street enjoyed by members of the public. When the neighbors objected at the public hearing, Mr. Porter responded by devising an even more harmful design, which would absolutely maximize the blockage of one neighbor's views, while also looming even more menacingly over the other neighbors and the stair street.

In a textbook example of "bait-and-switch," Mr. Porter presented this revised project to the Zoning Administrator, but he carefully avoided any review of the design by his other neighbors, the neighborhood council, or the public generally. He even told the Zoning Administrator that two neighbors supported this revised project, when in fact both of them had seen only the more modest original design, and one of them had long since moved away.

Another public hearing was held, and afterward the Zoning Administrator urged Mr. Porter to consider making meaningful changes to the project. However, Mr. Porter had no intention to comply with this request. He met with the neighbors, made a few minor changes to the design, and pretended that they were real concessions. Then, the Zoning Administrator gave Mr. Porter everything he asked for, and the ELAAPC upheld that determination.

This Commission should grant the appeal and reverse the decision of the ELAAPC.

Very truly yours,

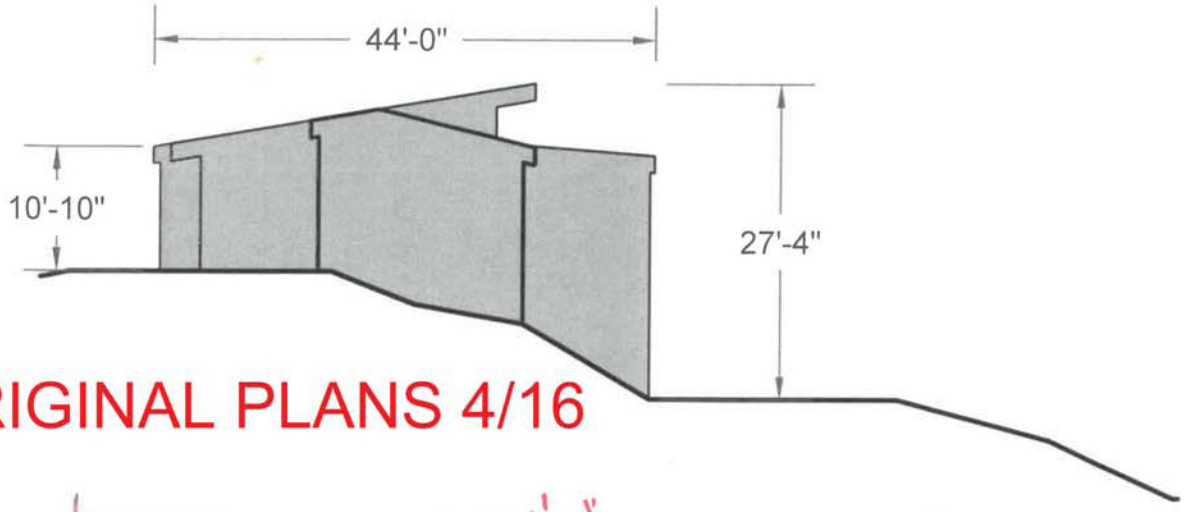


John A. Henning, Jr.

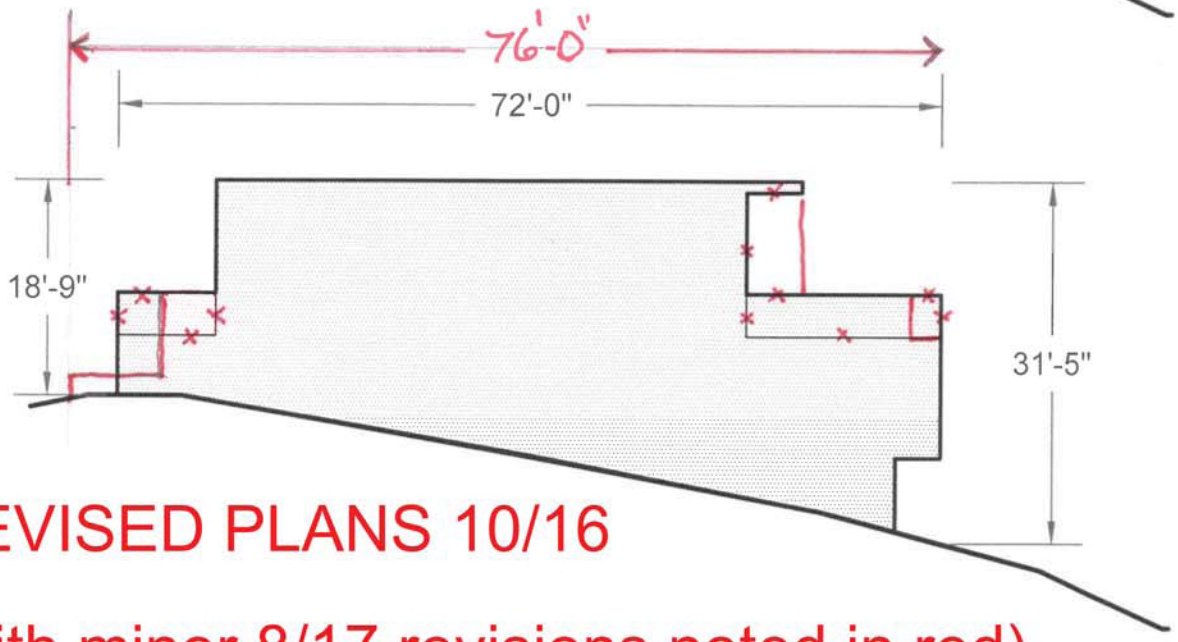
Enclosures (Tabs A through I)

TAB A

TAB A

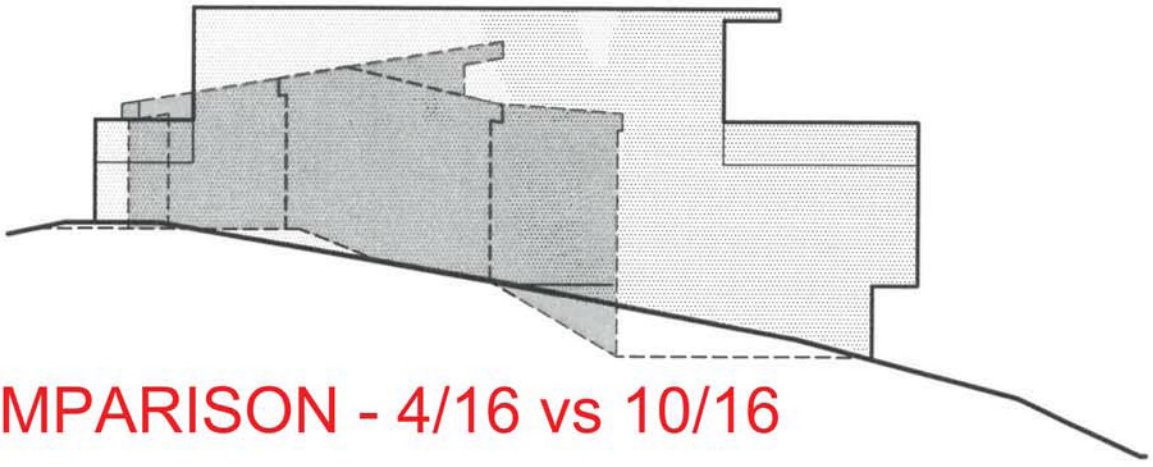


ORIGINAL PLANS 4/16



REVISED PLANS 10/16

(with minor 8/17 revisions noted in red)



COMPARISON - 4/16 vs 10/16

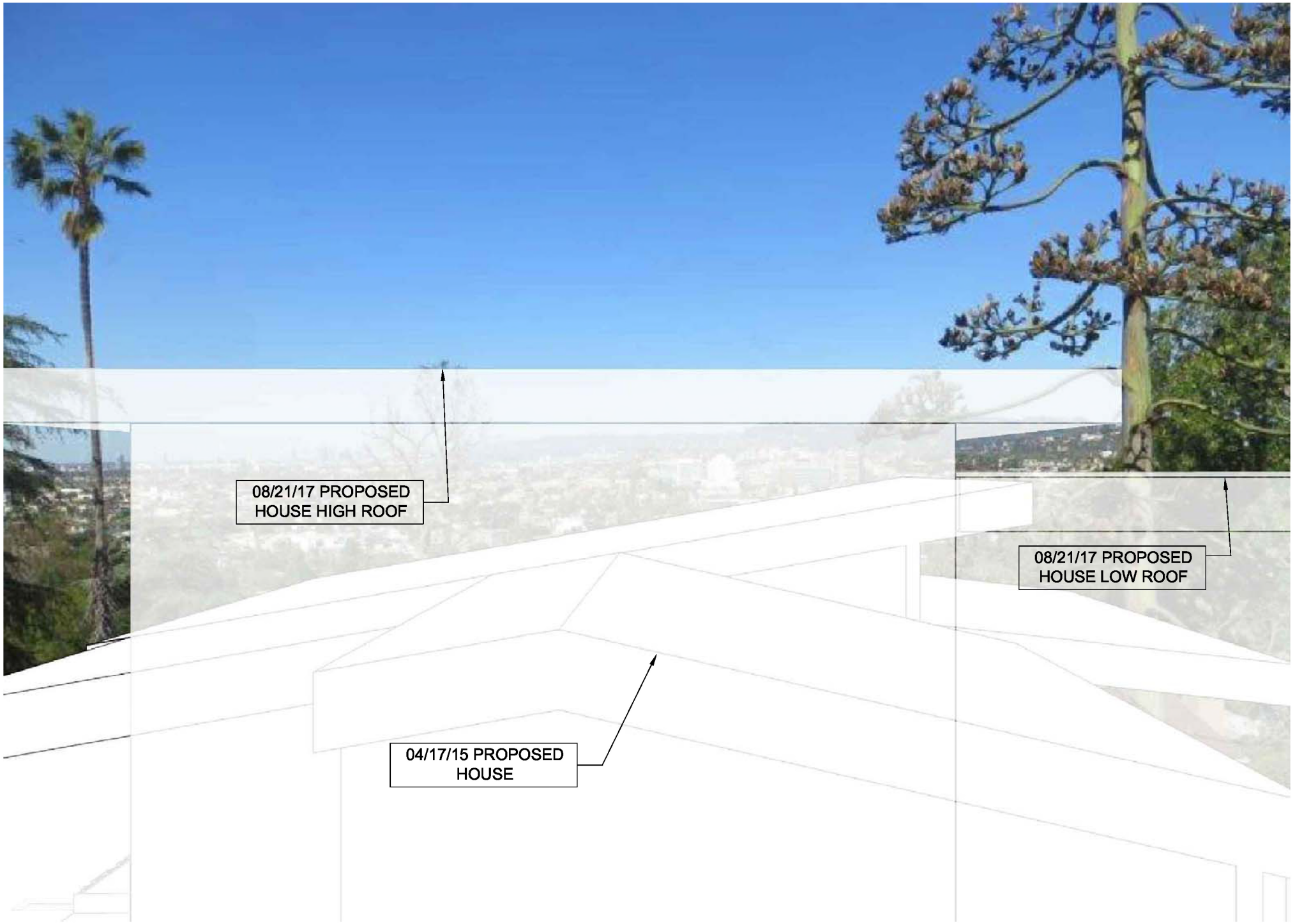
TAB B

TAB B


VIEW FROM 3623 LANDA BALCONY WITHOUT PROPOSED HOUSE

09 / 14 / 2017

③ BALCONY VIEW



09 / 14 / 2017

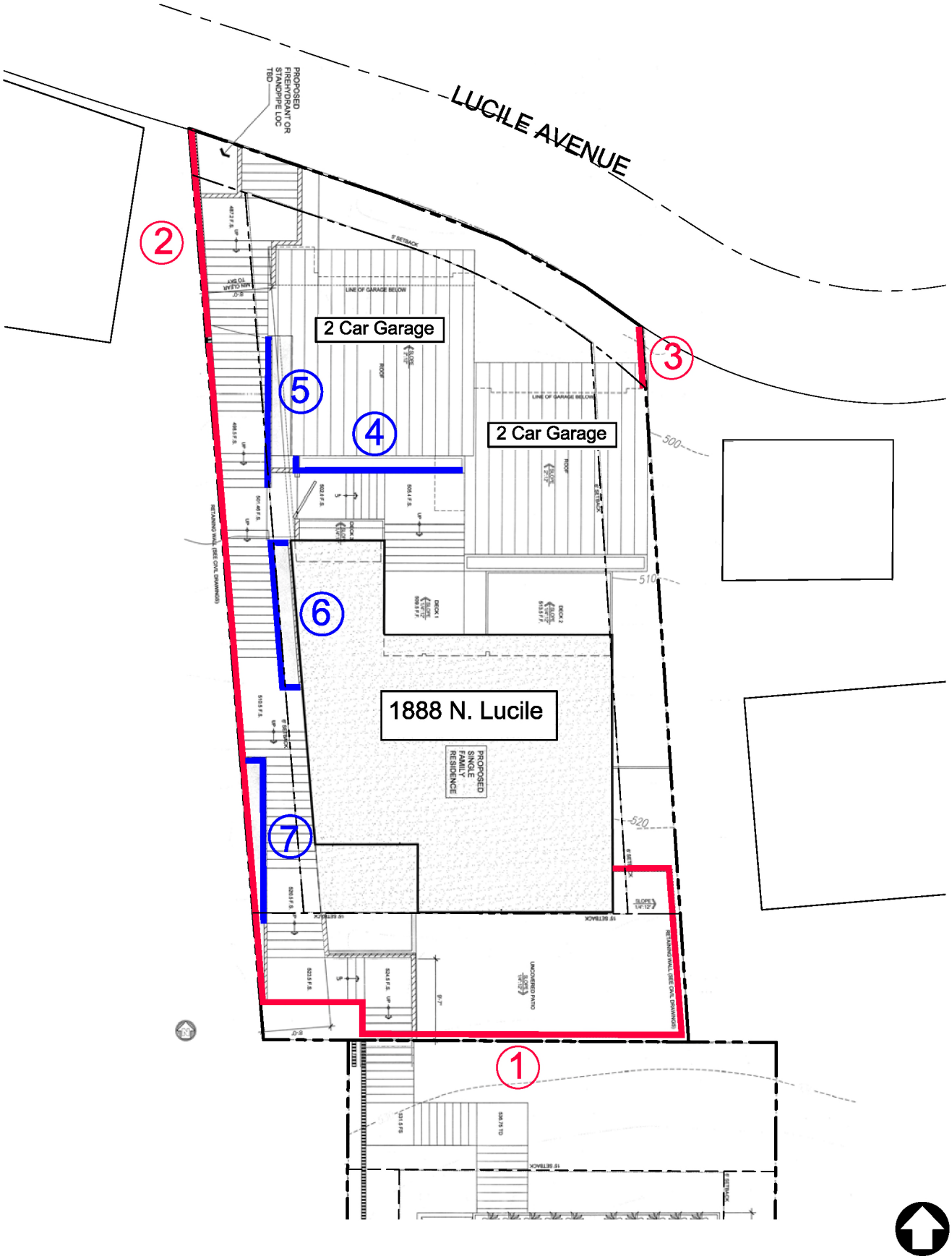
② LIVING ROOM VIEW

9 / 14 / 2017

① DECK VIEW

TAB C

TAB C



August 21th, 2017 Application	1888 N. Lucile Ave.	1/ 16"=1'	Retaining Wall

TAB D

TAB D

Signature Sheet attached to original applications in April 2015

SIGNATURE SHEET

SIGNATURES of adjoining or neighboring property owners in support of the request; not required but helpful, especially for projects in single-family residential areas. (Attach additional sheet, if necessary)

NAME (PRINT)	SIGNATURE	ADDRESS	KEY # ON MAP
MICHAEL MANZONI		1881 LUCILE.	213
JAMES BUTKEWICH		1850 W	229

Signature sheet submitted with revised applications in October 2016

SIGNATURE SHEET

SIGNATURES of adjoining or neighboring property owners in support of the request; not required but helpful, especially for projects in single-family residential areas. (Attach additional sheet, if necessary)

NAME (PRINT)	SIGNATURE	ADDRESS	KEY # ON MAP
MICHAEL MANZONI		1881 LUCILE.	213
JAMES BUTCHER		1850 W	229

Signature sheet submitted with revised applications August 2017

SIGNATURE SHEET

SIGNATURES of adjoining or neighboring property owners in support of the request; not required but helpful, especially for projects in single-family residential areas. (Attach additional sheet, if necessary)

NAME (PRINT)	SIGNATURE	ADDRESS	KEY # ON MAP
MICHAEL MANZONI		1881 LUCILE.	213
JAMES BUTKEWICH		1850 W	229

TAB E

TAB E

This page is part of your document - DO NOT DISCARD

20160281647

Recorded/Filed in Official Records
Recorder's Office, Los Angeles County,
California

03/15/16 AT 08:00AM

Pages:
0002

FEES:	22.00
TAXES:	5,628.00
OTHER:	0.00
PAID:	5,650.00

LEADSHEET

201603150120013

00011828064

007433892

SEQ:
07

DAR - Title Company (Hard Copy)

THIS FORM IS NOT TO BE DUPLICATED

E404772

T15

Equity Title

RECORDING REQUESTED BY:
EQUITY TITLE-LOS ANGELES

AND WHEN RECORDED MAIL TO:

David Moreau and Jessica Zuchowski
1880 Lucile Avenue
Los Angeles, CA 90026

Order No.: LA1670179
Escrow No.: LF-05615-DP
A.P.N.: 5431-012-016

2

03/15/2016
20160281647

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

GRANT DEED

(80) (44)

THE UNDERSIGNED GRANTOR(S) DECLARE(S)
DOCUMENTARY TRANSFER TAX IS $ **1,105.50** CITY TRANSFER TAX IS $**4,522.50**

[X] computed on full value of property conveyed, or
[ ] computed on full value less value of liens or encumbrances remaining at time of sale.
[ ] unincorporated area [X] City of **Los Angeles** AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

James Butkevich, an unmarried man

hereby GRANT(S) to **David Moreau,** a single man

and Jessica Zuchowski , an unmarried woman, as joint tenants

the following described real property in the County of **Los Angeles**, State of California:

Lot 18 of Tract No. 5720, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 98, Page(s) 19 to 29 of Maps, in the office of the County Recorder of said County.

AKA: 1880 Lucile Avenue, Los Angeles, CA 90026
Dated: **January 29, 2016**

James Butkevich

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)SS.

On 2.8.2016 before me G. Portillo Notary Public, personally appeared

James Butkevich

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary

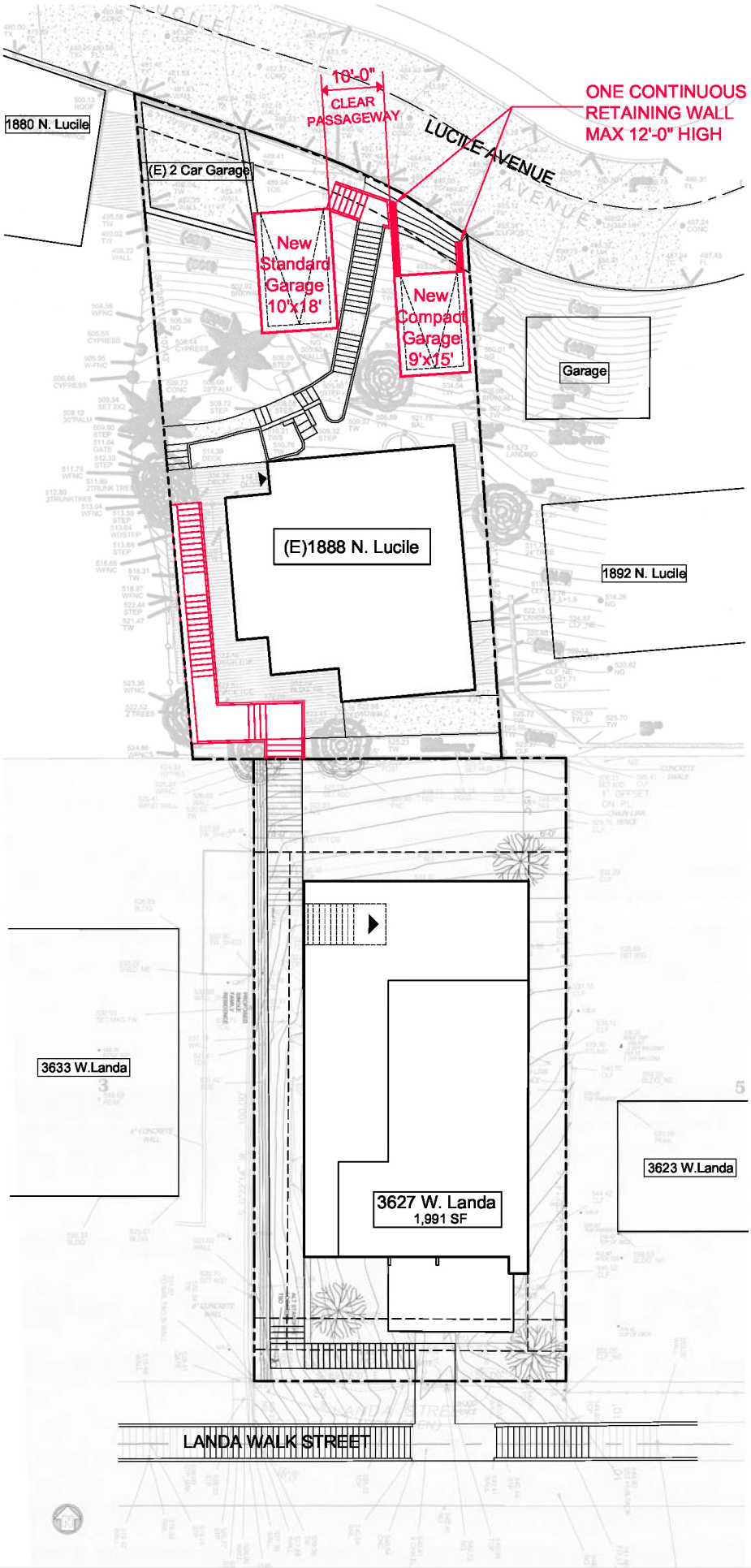
Commission Expiration Date: _____

G. PORTILLO
COMM. # 2101659
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
MY COMM. EXP. MAR. 27, 2019

MAIL TAX STATEMENTS TO: David Moreau and Jessica Zuchowski, 1880 Lucile Avenue , Los Angeles, CA 90026

TAB F

TAB F

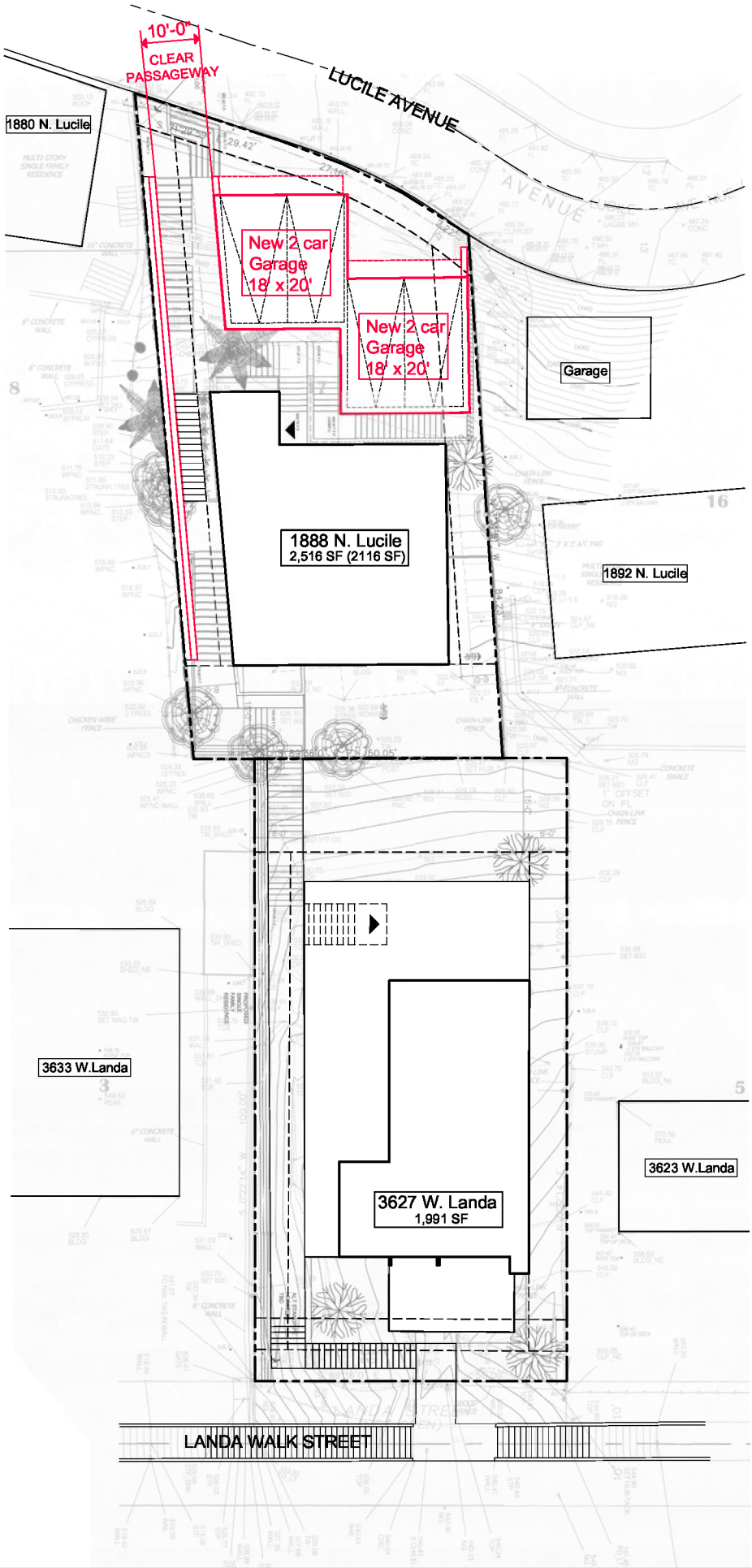


Site Plan

Scale 1/16"=1'

TAB G

TAB G



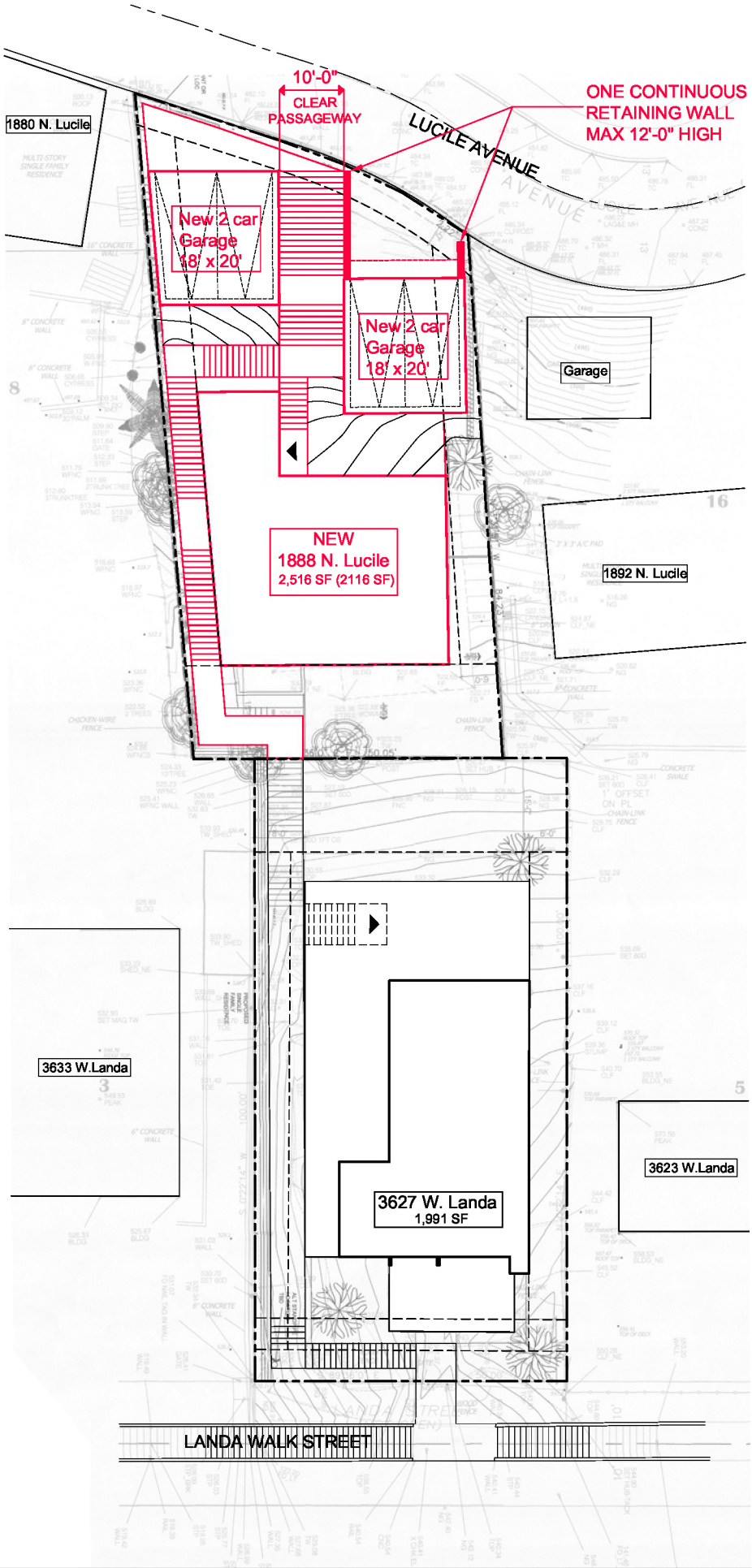
PARKING
@ CUL-DE-SAC

Site Plan

Scale 1/16"=1'

TAB H

TAB H



Site Plan

Scale 1/16"=1'

TAB I

TAB I

L.A. CEQA THRESHOLDS GUIDE

Your Resource for Preparing
CEQA Analyses in Los Angeles

City of Los Angeles
2006

CITY OF LOS ANGELES

MAYOR
Antonio R. Villaraigosa

CONTROLLER
Laura N. Chick

CITY ATTORNEY
Rocky Delgadillo

CITY COUNCIL

Ed Reyes First District	Tony Cardenas Sixth District	Bill Rosendahl Eleventh District
Wendy Greuel Second District	Alex Padilla, President Seventh District	Greig Smith Twelfth District
Dennis P. Zine Third District	Bernard Parks Eighth District	Eric Garcetti Thirteenth District
Tom LaBonge Fourth District	Jan Perry Ninth District	José Huizar Fourteenth District
Jack Weiss Fifth District	Herb J. Wesson, Jr. Tenth District	Janice Hahn Fifteenth District

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ENVIRONMENTAL AFFAIRS DEPARTMENT

Detrich B. Allen, General Manager
Gretchen Hardison, Director of Air Quality Division
José Gutiérrez, Environmental Supervisor
Wayne King, Environmental Specialist

Renée Brandt, Eagle Environmental

L.A. CEQA THRESHOLDS GUIDE:

Your Resource for Preparing CEQA Analyses in Los Angeles

2006

As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability and, upon request, will provide reasonable accommodation to ensure equal access to its programs, services and activities.

This Thresholds Guide is intended to provide general information about CEQA. It should not be used as a substitute for professional or legal advice. The reader should refer to the CEQA Statutes and Guidelines and consult with the appropriate City departments, as necessary.

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TABLE OF CONTENTS, continued

LIST OF EXHIBITS

LIST OF EXHIBITS, continued

LIST OF EXHIBITS, continued

L. Transportation

Introduction

LIST OF EXHIBITS, continued

EXECUTIVE SUMMARY

Purpose

The *L.A. CEQA Thresholds Guide: Your Resource for Preparing CEQA Analyses in Los Angeles* (*Thresholds Guide*) is a guidance document that draws together practical information useful to City staff, project proponents, and the public involved in the environmental review of projects in the City of Los Angeles subject to the California Environmental Quality Act (CEQA). The CEQA process, established by state law, requires the review of proposed projects in order to identify and address potential environmental effects.

This is the City's initial effort to develop citywide guidance for CEQA impact analyses. The applicability and use of the *Thresholds Guide* may be re-evaluated after a period of use. The *Thresholds Guide* is intended to be available as a voluntary tool. It supports the City's development reform efforts to streamline and enhance the City's permit and development processes. The *Thresholds Guide* is a consensus document that represents the technical input from a citywide working group, comprised of representatives from 18 City departments and bureaus, including the Environmental Affairs Department (EAD).

Content

The *Thresholds Guide* includes two sets of criteria to evaluate project impacts: screening and significance criteria. The **screening criteria** provide assistance in responding to the questions in the State's Initial Study Checklist and, thus, determining the appropriate environmental document to prepare (e.g., negative declaration, mitigated negative declaration, or environmental impact report). The **significance thresholds** assist in determining whether a project's impacts would be presumed significant under normal circumstances and, therefore, require mitigation to be identified.

The *Thresholds Guide* contains three types of significance thresholds - **quantitative, qualitative, and case-by-case**. Quantitative thresholds provide a measurable criterion with which to compare one or more characteristics of the proposed project, such as "the vehicle-to-capacity ratio increase at a study intersection is greater than 0.020." A qualitative threshold requires comparison to non-numerical criteria, such as "interference with a wildlife movement corridor." The case-by-case thresholds were developed for issue areas where a definitive threshold could not be established, either because impacts are site- or project-specific or because there is no consistent technical guidance available. The existence of screening criteria and significance thresholds may also encourage project proponents to incorporate impact-reducing measures into project designs, prior to submitting project applications to the City, to reduce potential impacts below the significance level.

The screening criteria and significance thresholds are based on a variety of factors, including existing local, state, and federal regulations, administrative practices of other public agencies, and commonly accepted professional standards. Each threshold has been reviewed with respect to meeting the following goals: objectivity and applicability, defensibility, practicality, nexus between impacts and mitigation, and legal liability.

The *Thresholds Guide* provides assistance in evaluating 46 of the most common environmental issues in the City of Los Angeles, grouped into the following categories:

- Air Quality
- Population and Housing

- Biological Resources
- Cultural Resources
- Geology
- Hazards
- Land Use
- Noise
- Public Services
- Public Utilities
- Transportation
- Visual Resources
- Water Resources

The information is organized generally in the same order in which the issues appear in the State's Initial Study Checklist, although the *Thresholds Guide* does not identify thresholds for all issues found in the Checklist.

Within each issue area, the *Thresholds Guide* includes three parts: **1. Initial Study Screening Process** (Initial Study Checklist Question, Introduction, Screening Criteria, and Evaluation of Screening Criteria); **2. Determination of Significance** (Significance Threshold, Environmental Setting, Project Impacts, Cumulative Impacts, and Sample Mitigation Measures); and **3. Data, Resources, and References** (Resources, Background Information, Selected Legislation, and Exhibits).

How the *Thresholds Guide* works

The *Thresholds Guide* provides technical assistance in evaluating the potential significance of a project's environmental impacts by putting in one place existing information and practices from a variety of sources which are useful for impact analyses. The *Thresholds Guide* applies to non-exempt, discretionary projects (including public and private projects and plans) in the City of Los Angeles under "normal" conditions. It recognizes that the impacts resulting from a particular action depend on the project setting, design, and operational components and that the determination of significance and the appropriate criteria for evaluation are the responsibility of the lead agency.

The *Thresholds Guide* does not change the authority of decision-makers or the lead agency or affect the City's CEQA Guidelines (including the list of categorical exemptions). The *Thresholds Guide* does not change existing department procedures for processing CEQA documents or introduce new evaluation methods.

The purpose and applicability of the *Thresholds Guide* are fully described in the Preface and Content and Use Sections of the Introduction. The *Thresholds Guide* provides some general information about CEQA requirements, but should not be used as a substitute for professional or legal advice. For more information, the reader should refer to the CEQA Statutes and State and City Guidelines; current case law, regulations, and scientific methods; and consult with the appropriate City departments, as necessary.

Background and Process

Numerous public and private projects and plans are undertaken each year within the City of Los Angeles. Each of these must comply with all applicable laws, regulations, and policies, including CEQA. For those projects needing discretionary approval from the City of Los Angeles, the department granting the approval generally acts as the lead agency on behalf of the City and ensures that all CEQA requirements are fulfilled. The *Thresholds Guide* can simplify the CEQA process by offering a consistent set of evaluation criteria applicable to most discretionary projects in the City.

The *Thresholds Guide* was presented and discussed at a public workshop hosted by the Environmental Affairs Commission (EAC). The EAC sent recommendations on the *Thresholds Guide* to the Environmental Quality and Waste Management Committee of the City Council, and the full Council authorized departments to use the *Thresholds Guide* in CEQA analyses in August 2001 (see Council File 98-2064).

For information, and to view or download a copy of the *Thresholds Guide*, please point your browser to EAD's Home Page at http://www.lacity.org/EAD, and click on CEQA/.

I.1. CONSTRUCTION NOISE

1. INITIAL STUDY SCREENING PROCESS

A. Initial Study Checklist Questions

XI.a): Would the project result in 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?

XI.b): Would the project result in exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?

XI.d): Would the project result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?

XI.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?

XI.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?

B. Introduction

Construction of facilities and structures requires the use of equipment, which may generate high noise levels and adversely affect noise sensitive uses.[1] In assessing the impact of construction noise upon the environment, the nature and level of activities that generate the noise, the pathway through which the noise travels, the sensitivity of the receptor, and the period of exposure are all considered.

Environmental noise is measured in decibels (dB). To better approximate the range of sensitivity of the human ear to sounds of different frequencies, the A-weighted decibel scale (dBA) was devised. Because the human ear is less sensitive to low frequency sounds, the A-scale de-emphasizes these frequencies by incorporating frequency weighting of the sound signal. When the A-scale is used, the decibel levels are represented by dBA. On this scale, the range of human

[1] *For impacts during operation, see I.2 OPERATIONAL NOISE, I.3. RAILROAD NOISE, and I.4. AIRPORT NOISE, as appropriate.*

hearing extends from about 3 dBA to about 140 dBA. A 10-dBA increase is judged by most people as a doubling of the sound level.

To account for the fluctuation in noise levels over time, noise impacts are commonly evaluated using time-averaged noise levels. The Community Noise Equivalent Level (CNEL) represents an energy average of the A-weighted noise levels over a 24-hour period with 5 dBA and 10 dBA increases added for nighttime noise between the hours of 7:00 p.m. and 10:00 p.m. and 10:00 p.m. to 7:00 a.m., respectively. The increases were selected to account for reduced ambient noise levels during these time periods and increased human sensitivity to noise during the quieter periods of the day.

Typical construction equipment types are presented in Exhibit I.1-1. Noise levels from these equipment types ranges from 76 to 91 dBA for equipment powered by internal combustion engines, saws, and vibrators and from the mid-80s to more than 100 dBA for impact equipment. Exhibit I.1-2 provides typical noise levels for each construction phase. The excavation and finishing phases include the noisiest construction activities.

The Environmental Protection Agency (EPA), establishes emission standards for construction equipment according to the provisions of the Noise Control Act of 1972, set forth in 40 CFR, Part 204. In addition, the City of Los Angeles Noise Ordinance addresses noise generated at construction sites, including permissible hours of construction, increases in ambient noise levels, and the technical feasibility of reducing noise from certain construction equipment. The Los Angeles Police Department (LAPD) enforces the provisions of the Noise Ordinance.[2]

C. Screening Criteria

- Would construction activities occur within 500 feet of a noise sensitive use?

- For projects located within the City of Los Angeles, would construction occur between the hours of 9:00 p.m. and 7:00 a.m. Monday through Friday, before 8:00 a.m. or after 6:00 p.m. on Saturday, or at anytime on Sunday?

A "yes" response to any of the preceding questions indicates further study in an expanded Initial Study, Negative Declaration, Mitigated Negative Declaration, or EIR may be required. Refer

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2 *Refer to Sections 41.40, 112.02, and 112.05 of the Los Angeles Municipal Code (LAMC). Technical infeasibility means that specified noise limitations cannot be achieved despite the use of mufflers, shields, sound barriers and/or any other noise reduction devices or techniques during operation of the equipment.*

to the Significance Threshold for Construction Noise and review the associated Methodology to Determine Significance, as appropriate.

A "no" response to all of the preceding questions indicates that there would normally be no significant impact from the proposed project.

D. Evaluation of Screening Criteria

Review the description of the proposed project, including information on construction activities. Consult a map showing the location of noise sensitive uses within 500 feet of the project site. Noise sensitive uses include residences, transient lodgings, schools, libraries, churches, hospitals, nursing homes, auditoriums, concert halls, amphitheaters, playgrounds, and parks. Determine whether construction activities would occur within 500 feet of a noise sensitive use or during the hours specified in the Screening Criteria.

2. DETERMINATION OF SIGNIFICANCE

A. Significance Threshold

A project would normally have a significant impact on noise levels from construction if:

- Construction activities lasting more than one day would exceed existing ambient exterior noise levels by 10 dBA or more at a noise sensitive use;

- Construction activities lasting more than 10 days in a three month period would exceed existing ambient exterior noise levels by 5 dBA or more at a noise sensitive use; or

- Construction activities would exceed the ambient noise level by 5 dBA at a noise sensitive use between the hours of 9:00 p.m. and 7:00 a.m. Monday through Friday, before 8:00 a.m. or after 6:00 p.m. on Saturday, or at anytime on Sunday.

B. Methodology to Determine Significance

Environmental Setting

In a description of the environmental setting, include the following information:

- Identification of noise sensitive land uses within 500 feet of the project site, including description, location, and distance from the project; and

- Quantification of ambient noise levels (existing and projected at the time of construction) measured in CNEL.

One of the following methodologies can be used to determine ambient noise levels:

- Field measurements involving the use of a noise meter at and surrounding the project site;

- "Presumed Ambient Noise Levels," as set forth in the LAMC, Section 111.03 (see Exhibit I.1-3); or

- A noise monitoring program performed according to the procedures set forth in the LAMC, Sections 111.02 and 112.05. This involves taking measurements at selected locations to establish ambient background noise levels.

Project Impacts

Review the description of the proposed project, including the duration of construction activities. Identify the type, amount, and scheduling of construction equipment to be used during each construction phase, and the distance from construction activities to noise sensitive uses.

Calculate the noise emissions from individual equipment by using the noise levels shown in Exhibits I.1-1 and I.1-2, or other applicable references, the distance to the noise sensitive uses, and noise attenuation standards. Noise models may be used, as appropriate. Noise levels 50 feet from a source decrease by approximately 3 dBA over a hard, unobstructed surface, such as asphalt, and by approximately 4.5 dBA over a soft surface, such as vegetation. For every doubling of distance thereafter, noise levels drop another 3 dBA over a hard surface and 4.5 dBA over a soft surface. Machinery equipped with noise control devices or other noise-reducing design features does not generate the same level of emissions as that shown in Exhibit I.1-1.

Determine the combined noise levels from equipment that will be operated simultaneously. Noise levels measured in decibels increase logarithmically and cannot be added arithmetically. When transmission path topography between the construction noise source and the receptor location is complex, consult an experienced noise specialist, as necessary.

Establish the change in noise level from construction activities at the location of sensitive receptors. Subtract the projected noise level without construction equipment from the projected noise level during construction activities. Considering the number of days various noise levels are projected, determine whether construction activities would exceed both the number of days, times of day, and dBA increases in the Significance Threshold.

Cumulative Impacts

As feasible, identify construction activities for related projects that would coincide with the project's construction operations. Calculate noise levels using the methodology in Project Impacts and logarithmically add the noise from these construction activities to the project-related construction noise to determine the cumulative effect of the construction activities. Consult a noise specialist, or use a noise model, as needed.

Sample Mitigation Measures

Potential mitigation measures include the following:

- Use noise control devices, such as equipment mufflers, enclosures, and barriers. Natural and artificial barriers such as ground elevation changes and existing buildings can shield construction noise. Stage construction operations as far from noise sensitive uses as possible;

- Avoid residential areas when planning haul truck routes;

- Maintain all sound-reducing devices and restrictions throughout the construction period;

- Replace noisy equipment with quieter equipment (for example, a vibratory pile driver instead of a conventional pile driver and rubber-tired equipment rather than track equipment); and

- Change the timing and/or sequence of the noisiest construction operations to avoid sensitive times of the day.

3. DATA, RESOURCES, AND REFERENCES

Noise Ordinance No. 161,574, LAMC Section 112.05 and No. 166,170, LAMC Section 41.40 provide construction hours and construction equipment noise thresholds.

Noise Ordinance No. 156,363, LAMC Section 111.02 provides sound level measurement procedures.

Noise Ordinance No. 156,363, LAMC Section 111.03 provides ambient noise levels.

Los Angeles Association of Environmental Professionals (AEP), Thresholds of Significance, Construction noise threshold used by Port of Long Beach, 1992.

EPA, Noise from Construction Equipment and Operations, Building Equipment and Home Appliances, Prepared by Bolt, Beranek and Newman, 1971.

Categories of Construction Equipment

1. Impact equipment and tools: This group includes pile drivers, pavement breakers, tampers, rock drills, and small; hand-held pneumatically, hydraulically, or electrically powered tools. In the case of conventional pile drivers, whether steam-powered or diesel-powered, the impact of the hammer dropping onto the pile is the dominant noise-generating component. However, sonic or vibratory pile drivers do not produce impact noise as it vibrates the pile at resonance, rather than using a drop hammer.

2. Equipment powered by internal combustion engines: The internal combustion engine, usually of the diesel type, is used to provide motive and/or operating power. Engine powered equipment can be divided into categories according to its mobility and operating characteristics as earthmoving equipment (highly mobile), materials handling equipment (semi-mobile), and stationary equipment.

3. Other equipment: Certain types of construction equipment, such as power saws or concrete vibrators do not fall under either of the two categories above.

Selected Legislation

Federal

Federal Noise Control Act of 1972 (40 CFR Sec. 204)

Public Law 92-574. Regulates noise emissions from operation of all construction equipment and facilities; establishes noise emission standards for construction equipment and other categories of equipment; and provides standards for the testing, inspection, and monitoring of such equipment. Gives states and municipalities primary responsibility for noise control.

State

California Noise Control Act of 1973 (Health and Safety Code, Division 28)

Declares that excessive noise is a serious hazard to the public health and welfare; establishes the Office of Noise Control with the responsibility to set standards for noise exposure in cooperation with local governments or the state legislature.

Exhibit I.1-1
NOISE LEVEL RANGES OF TYPICAL CONSTRUCTION EQUIPMENT

Equipment	Levels in dBA at 50 feet[a]
Front Loader	73-86
Trucks	82-95
Cranes (moveable)	75-88
Cranes (derrick)	86-89
Vibrator	68-82
Saws	72-82
Pneumatic Impact Equipment	83-88
Jackhammers	81-98
Pumps	68-72
Generators	71-83
Compressors	75-87
Concrete Mixers	75-88
Concrete Pumps	81-85
Back Hoe	73-95
Pile Driving (peaks)	95-107
Tractor	77-98
Scraper/Grader	80-93
Paver	85-88

[a] Machinery equipped with noise control devices or other noise-reducing design features does not generate the same level of emissions as that shown in this table.

Source: EPA, Noise from Construction Equipment and Operations, Building Equipment and Home Appliances, PB 206717, 1971.

Exhibit I.1-2
OUTDOOR CONSTRUCTION NOISE LEVELS

Construction Phase	Noise Level (dBA Leq)	
	50 feet	Noise Levels at 50 feet with Mufflers (dBA)
Ground Clearing	84	82
Excavation, Grading	89	86
Foundations	78	77
Structural	85	83
Finishing	89	86

Source: EPA, Noise from Construction Equipment and Operations, Building Equipment and Home Appliances, PB 206717, 1971.

Exhibit I.1-3
PRESUMED AMBIENT NOISE LEVELS (dBA)

Zone		Day	Night
Residential:	A1, A2, RA, RE, RS, RD, RW1, RW2, R1, R2, R3, R4, R5	50	40
Commercial:	P, PB, CR, C1, C1.5, C2, C4, C5, CM	60	55
Manufacturing:	M1, MR1, MR2	60	55
Heavy Manufacturing:	M2, M3	65	65

Source: LAMC, Section 111.03.