



City of Arts & Innovation

# City Council Memorandum

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**TO: HONORABLE MAYOR AND CITY COUNCIL                      DATE: DECEMBER 6, 2022**

**FROM: COMMUNITY & ECONOMIC DEVELOPMENT                      WARD: 1**  
**DEPARTMENT**

**SUBJECT: PLANNING CASE PR-2021-000932 MINOR CONDITIONAL USE PERMIT, DESIGN REVIEW, VARIANCE, GRADING EXCEPTION – A REFERRAL BY COUNCILMEMBER CERVANTES OF AN APPROVAL BY THE DEVELOPMENT REVIEW COMMITTEE FOR THE CONSTRUCTION OF TWO NON-REFRIGERATED WAREHOUSE BUILDINGS TOTALING 99,950 SQUARE FEET – LOCATED AT 900, 960, AND 980 MARLBOROUGH AVENUE, SITUATED ON THE SOUTH SIDE OF MARLBOROUGH AVENUE BETWEEN NORTHGATE STREET AND RUSTIN AVENUE**

**ISSUE:**

Referral by Councilmember Cervantes of an approval by the Development Review Committee (DRC) of a proposal by David Stapley and Deanna Magnon of Turn 9, LLC, for a Minor Conditional Use Permit, Design Review, Variance, and Grading Exception to permit the development of two non-refrigerated warehouse buildings totaling 99,950 square feet, located at 900, 960, and 980 Marlborough Avenue, situated on the south side of Marlborough Avenue between Northgate Street and Rustin Avenue.

**RECOMMENDATIONS:**

That the City Council:

1. Uphold the decision of the Development Review Committee and determine that the proposed project will not have a significant effect on the environment based on the findings set forth in the case record, and adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MMRP) pursuant to CEQA Section 15074 and 21081.6; and
2. Approve Planning Case PR-2021-000932 (Minor Conditional Use Permit, Design Review, Variance, and Grading Exception) based on the findings outlined in the staff report and subject to the conditions of approval.

**BACKGROUND:**

The project site is located in the Hunter Business Park Specific Plan - Industrial Park District with an underlying Zoning designation of BMP - Business and Manufacturing Park Zone. Warehouses

over 10,000 square feet, but less than 100,000 square feet, are permitted in the Industrial Park District of the Hunter Business Park Specific Plan and the BMP Zone subject to the approval of a Minor Conditional Use Permit.

The vacant 5.58-acre project site consists of three contiguous parcels situated on the south side of Marlborough Avenue, between Northgate Street and Rustin Avenue. The project site has an average natural slope of 9.3 percent and an approximate 35-foot elevation difference from the Marlborough Avenue right-of-way to the south property line, adjacent to the Gage Canal Multi-Purpose Trail and the Box Springs Mountain Reserve.

Surrounding land uses include industrial/warehouse uses to the north, east, and west; vacant land and the Gage Canal Multi-Purpose Trail to the south, and the Box Springs Mountain Reserve to the southeast.

For additional background, please refer to the September 21, 2022, Development Review Committee (DRC) staff report (Attachment 1).

## **DISCUSSION:**

### *Referral*

On October 3, 2022, staff received a request from Councilmember Cervantes to refer the project for consideration by City Council (Attachment 2). The referral was made at the request of a constituent, Friends of Riverside's Hills.

### *Project Description*

The proposed project consists of the following entitlements: 1) Minor Conditional Use Permit to permit two non-refrigerated warehouse buildings totaling 99,950 square feet; 2) Design Review of project plans and building elevations; 3) Variance to allow a reduced front yard setback; and 4) Grading Exception to allow retaining walls higher than permitted by the Grading Code.

The applicant proposes to consolidate the project sites three parcels into two parcels:

- The 2.41-acre parcel includes building A, a 39,000 square foot warehouse, consisting of 38,000 square feet of warehouse area and 1,000 square feet of office space, with 4 truck docks. Vehicle and truck access is taken from one driveway along Marlborough Avenue.
- The 3.16-acre parcel includes building B, a 60,950 square foot warehouse, consisting of 56,950 square feet of warehousing, 3,000 square feet of manufacturing, and 1,000 square feet of office space, with 6 truck docks. Vehicle and truck access is taken from one driveway along Marlborough Avenue. As a matter of information, approximately 200 square feet of building B's site will be dedicated to the City for improvements to the Gage Canal Multi-Purpose Trail.

A Variance has been requested by the applicant to allow a reduced front yard setback of 20 feet, where the Hunter Business Park Specific Plan requires an average front yard setback of 50 feet, but no less than 40 feet. Staff supports the variance as the reduced front yard setback allows for the development of the project site, while maintaining a balance between site conditions and allows for greater separation between the building and the Gage Canal Multi-Purpose Trail and the Box Springs Mountain Reserve. Except for the front yard setback requirement, the proposed

project complies with the development standards of the Hunter Business Park Specific Plan and the BMP – Business and Manufacturing Park Zone.

A Grading Exception has also been requested to allow retaining walls up to 9.7-feet in height, where the Grading Code allows a maximum height of 6 feet, when not visible from the public right-of-way. Staff supports the Grading Exception as the project site has an approximate 35-foot elevation difference between the north property line (adjacent to Marlborough Avenue) and the south property line (adjacent to the Gage Canal Multi-Purpose Trail). Additionally, significant grading efforts would be required in order to bring the proposed retaining walls into compliance with the allowable height of 6 feet.

### *Public Comments*

The following is a list of concerns about the project expressed by interested parties, received after the DRC staff report was published. A response by Staff is provided with each concern:

- a. **Concern:** The project was belatedly added to the Development Review Committee meeting agenda for September 21, 2022.

**Response:** On Friday, September 16, 2022, Staff distributed a corrected agenda when a clerical error was discovered, as the project had inadvertently not been included. Staff distributes the Development Review Committee (DRC) meeting agenda to interested parties, upon request, but the document is not required to be formally published or distributed within a certain amount of time prior to the scheduled meeting.

All other public noticing information indicated that the project would be heard as a final action item at the DRC meeting of September 21, 2022. A postcard was sent to property owners within 300 feet of the project site on August 26, 2022, for a 20-day period where the public was encouraged to provide comments. The postcard identified that the DRC determination was scheduled for September 21, 2022. Additionally, the Notice of Intent (NOI) to Adopt the Mitigated Negative Declaration was published in the Press Enterprise, posted on the Office of Planning and Research's (OPR) website, and sent to outside agencies and interested parties on August 26, 2022 for a 20-day period where the public was encouraged to provide comments. The NOI identified that the DRC determination was scheduled for September 21, 2022.

- b. **Concern:** There will be biological impacts to the Box Springs Mountains Reserve to the east and impacts to users of the Gage Canal Multi-Purpose Trail between Palmyrita Avenue and Blaine Street.

**Response:** The project site is located within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) but is not located within any MSHCP Criteria Areas, Cell Groups, or Subunits. Furthermore, the project site is not located in survey areas for amphibians, mammals, narrow endemic plants overlay, or special linkage areas. The project was determined to be consistent with all applicable requirements for the MSHCP as evaluated in the Mitigated Negative Declaration (MND) and the supporting Biological Resource Report.

The existing trail that has been informally forged by hikers over several years, encroaches into the project site by approximately 21 feet. The portion that encroaches into the site will be quitclaimed to the City of Riverside to benefit the future trail improvements by the Parks, Recreation, and Community Services Department.

The project will be no more impactful to trail users than the existing industrial uses in the section of trail between Palmyrita Avenue and Blaine Street. In addition, this is the first warehouse project proposed in the area that is subject to the new Chapter 19.435 - Warehousing and Distribution Facilities provisions that implemented the *Good Neighbor Guidelines for Siting New and/or Modified Industrial Facilities*, adopted by City Council on November 10, 2020. The warehouse operations will be substantially screened from view from the trail users by a combination of opaque fencing, masonry walls, and landscaping.

- c. **Concern:** The Trail is a park and a right-of-way and thus subject to the restrictions on warehouses, in particular adequate screening, of the City's Zoning Code's Good Neighbor Policy for warehouses.

**Response:** The Gage Canal Multi-Purpose Trail is not considered a park per the Parks Master Plan or Trail Master Plan. Title 19 – Zoning Code of the Riverside Municipal Code defines *Right-of Way, Public* as, “any place that is dedicated to use by the public for pedestrian and vehicular travel, and includes, but is not limited to, a street, sidewalk, curb, gutter, crossing, intersection, parkway, median, highway, alley, lane, mall, court, way, avenue, boulevard, road, roadway, viaduct, subway, tunnel, bridge, thoroughfare, park square and other similar public way.” The subject trail is not intended for vehicular travel; therefore, the trail is not considered right-of-way.

The *Good Neighbor Guidelines for Siting New and/ or Modified Industrial Facilities* were codified into Chapter 19.435 – Warehousing and Distribution Facilities, by the City Council on November 10, 2020. The project is subject to the provisions of the specified site, location, operation, and development standards for warehousing and distribution facilities larger than 10,000 square feet but less than 100,000 square feet. Staff determined the project is consistent with the subject provisions.

Although the Code does not require screening of loading and unloading areas adjacent to the Gage Canal Multi-Purpose Trail, several measures have been included to provide substantial screening: including a six-foot-high opaque metal screen fence; a masonry wall; and landscaping which includes fire resistant non-deciduous 36-inch box trees to screen above the sight line of the fence and wall.

- d. **Concern:** The applicant provided Biological Resources Report for the project identified three vertebrate species on the project site, however, a biological analyst retained by one of the interested parties, who provided comments in response to the Notice of Intent to adopt the Mitigated Negative Declaration identified 19 vertebrate species and proposed a comprehensive series of wildlife mitigation measures to minimize impacts on biological resources.

**Response:** The comments dispute that the applicant prepared Biological Resource Assessment (BRA) is inadequate since three species were identified during the field survey and the biologist retained by the interested party observed 19 species. The comments are unclear whether the species were observed on the project site or from the project site. The observation of additional species may also be possible because wildlife species are mobile, especially avian species. Wildlife species, including avian, are particularly mobile depending on weather and season. Many species have adapted to the urban setting; therefore, species will be observed in both urban areas and open space environments to forage and nest.

The project site consists primarily of disturbed habitat that lacks suitable nesting habitat for sensitive wildlife species. The project site provides foraging habitat and limited suitable

habitat for ground nesters and some common avian species. While none of the common species carry a Federal or State listing as threatened or endangered, they are all protected under the Migratory Bird Treaty Act. Because of this, a pre-construction survey as outlined within Mitigation Measure MM BIO-1 is to be implemented prior to the issuance of a grading permit to ensure no impacts to nesting avian species.

- e. **Concern:** The recommended mitigation measure modifications provided in response to the Notice of Intent to adopt the Mitigated Negative Declaration (MND) from the California Department of Fish and Wildlife (CDFW) were not implemented.

**Response:** The MND identified potential impacts to nesting birds, if the project construction were to start during the nesting season. Mitigation Measure MM BIO-1 is required to ensure nesting birds are not harmed or disturbed during the project construction. The Biological Resource Assessment concluded that the Project site is void of suitable habitat for the bird species identified by CDFW, known to nest year-round (i.e., barn owl, certain hummingbird species, and red-tailed hawk). Therefore, CDFW suggested changes to MM BIO-1 are unnecessary. Under the California Environmental Quality Act (CEQA), mitigation measures are not necessary to address less than significant impacts.

### **STRATEGIC PLAN ALIGNMENT:**

The proposed project contributes to **Strategic Priority 3 – Economic Opportunity** and **Goal 3.3 – Cultivate a business climate that welcomes innovation, entrepreneurship, and investment.**

1. **Community Trust** – The proposed project requires public notice to property owners within 300 feet of the project site and encourages public comment through the 15-day public comment period. Additionally, as part of the environmental process, outside agencies and interested parties were provided with a copy of the Notice of Intent to Adopt the Mitigated Negative Declaration and are encouraged to provide comments through the 20-day noticing period.
2. **Equity** – The proposed project provides employment opportunities available to all residents and a portion of site B will be dedicated to the City for improvements to the Gage Canal Multi-Purpose Trail.
3. **Fiscal Responsibility** – The proposed project applicant will be responsible for all fiscal aspects of the project.
4. **Innovation** – The proposed project has been designed to be sensitive to the adjacent Gage Canal Multi-Purpose Trail and Box Springs Mountain Reserve.
5. **Sustainability & Resiliency** – The proposed project will be required to follow all requirements related to water collection, recycling, and conservation.

### **FISCAL IMPACT:**

There is no fiscal impact associated with this action since all project costs are borne by the applicant.

Prepared by: Chris Christopoulos, Acting Director, Community & Economic Development Department

Certified as to

availability of funds: Edward Enriquez, Interim Assistant City Manager/Chief Financial Officer/City Treasurer

Approved by: Rafael Guzman, Assistant City Manager/City Manager Pro Tempore

Approved as to form: Phaedra A. Norton, City Attorney

Attachments:

1. Development Review Committee Report – September 21, 2022
2. Referral Request from Councilmember Cervantes – October 3, 2022
3. Location Map
4. General Plan Map
5. Specific Plan/ Zoning Map
6. Project Plans (Project Description, Site Plan, Floor Plans, Elevations, Roof Plans, Conceptual Landscape Plans, Site Line Sections, Conceptual Grading Plans, Fence and Wall Plan, Photometric Plan, Renderings)
7. Applicant Prepared Variance Justifications
8. Applicant Prepared Grading Exception Justifications
9. Final Mitigated Negative Declaration
10. Comment Letter
11. Presentation