

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

August 22, 2023

FROM

MARK WARDLAW, Director, Land Use Services Department

SUBJECT

Helendale Fuel and Convenience Center Appeal

RECOMMENDATION(S)

1. Conduct a public hearing to consider an appeal of a Planning Commission action approving a Conditional Use Permit for a fuel and convenience center on approximately 3.71 acres.
 - Appellant: Leibold McClendon & Mann P.C. on behalf of unidentified High Desert residents
 - Applicant: Abraham Maida & Salam Maida
 - Community: Helendale
 - Location: 15444 Vista Road, Helendale, CA 92342
 2. Deny the appeal and take the following actions for the approval of the Conditional Use Permit:
 - a. Adopt the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program.
 - b. Adopt the findings as contained in the Planning Commission staff report for the approval of the Conditional Use Permit.
 - c. Approve the Conditional Use Permit to establish a new convenience store that includes 3,705 square-foot of retail space and a 2,724 square-foot fuel canopy, and to bring into full compliance all existing retail structures and operations that include a 1,768 square-foot pub and an 804 square-foot salon.
 - d. Direct the Clerk of the Board of Supervisors to file and post the Notice of Determination.
- (Presenter: Mark Wardlaw, Director, 387-4431)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Create, Maintain and Grow Jobs and Economic Value in the County.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary Funding (Net County Cost). Sufficient appropriation and revenue to complete the Conditional Use Permit (CUP) have been included in the Land Use Services Department, Planning Division (LUS) 2023-2024 Budget. All costs of processing the appeal application are paid by Leibold McClendon & Mann P.C. (Appellant) and Abraham Maida & Salam Maida (collectively the Applicant).

BACKGROUND INFORMATION

This item includes an appeal of a Planning Commission action approving a CUP to establish a new convenience store that includes 3,705 square-foot of retail space and a 2,724 square-foot

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fuel canopy; and to bring into full compliance all existing structures and operations that include a 1,768 square-foot pub and an 804 square-foot salon (collectively the Project). The Project is located 15444 Vista Road, in the Helendale area.

A thorough discussion analyzing the CUP from the perspective of Countywide Plan/Policy Plan consistency, land use planning, code compliance, and environmental analysis are contained in the Staff Report to the Planning Commission, dated May 18, 2023, and included in the documents attached to this item.

In accordance with the California Environmental Quality Act (CEQA), an Initial Study (IS) was prepared to identify potential impacts the Project may have on the environment. The IS concludes that all potential significant impacts resulting from the construction and operation of the Project can be mitigated and reduced to a less than significant level. Therefore, the recommendation includes the adoption of a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program.

The Project was considered in a public hearing by the Planning Commission on May 18, 2023. There were no individuals in attendance at the hearing speaking in opposition to the Project. Written comments in response to the initial study were submitted by the Desert Tortoise Council and a comment letter submitted by the Appellant in opposition to the Project were provided to the Planning Commission. After the close of the public hearing and deliberation, the Planning Commission approved the Project by unanimous vote of 5-0.

Appeal of the Planning Commission Action

On May 26, 2023, the Appellant filed a timely appeal of the Planning Commission's approval of the Project. The reasons for the appeal are set forth in Appellant's appeal application and included in the documents attached to this item. A summary of the Appellant's arguments and LUS responses are as follows:

1. Appellant Argument: The Project should not be approved and needs to be continued on the grounds that approval of a liquor store with gas pumps in an area that already has enough liquor stores, and that the County has designated to accommodate a major portion of its Regional Housing Needs Allocation (RHNA) for very low-, low- and moderate-income housing. Also appealing the Planning Commission's approval of the IS/MND the contract planner prepared for the Project because it is woefully inadequate, and an environmental impact report should have been prepared. The Appellant seeks reversal of the Planning Commission's approval of the Project and the IS/MND. The Appellant will present corroborating documentation to the Board of Supervisors (Board) at its hearing on this appeal.

LUS Response: An Environmental Impact Report (EIR) would have been required upon determination by the IS that environmental impacts could not be mitigated to a level of insignificance. CASC Engineering and Consulting (CASC) were contracted to draft the IS; the firm specializes in preparing CEQA environmental documents, and has years of experience working in the County, as well as expertise in preparing environmental documents. If deemed required, CASC would have informed LUS staff that project environmental impacts could not be mitigated to a level of insignificance and would have recommended an EIR be prepared. Moreover, upon completion of the IS/ MND by CASC the IS/MND was thoroughly reviewed by LUS staff prior to circulating the IS/MND for the 30-day review and comment period. Upon review by staff, the IS/MND was determined to adequately address the site's environmental issues and was not found to be inadequate as

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claimed. The IS/MND was also circulated with the State Clearinghouse, whence the Planning Division received comments from the Desert Tortoise Council, whose comments were responded to in the Staff Report the Planning Commission reviewed. As to housing, as cited in the Staff Report, the property is zoned General Commercial, the zoning is consistent with the Commercial Land Use designation. The General Commercial zoning designation is primarily intended to accommodate commercial/ office and service uses, and limited residential housing uses.

2. Appellant Argument: The link cited in the Planning Commission's Staff Report to review the MND was inaccurate and directed the reader to a different project CEQA document.

LUS Response: The Planning Commission was informed at the start of the public hearing that the link cited to the MND in Exhibit A of the Staff Report was inaccurate, but that the Staff Report also included the correct link to the MND under the list of attachments on page 22 of the report. Therefore, the MND remained accessible to the public and Planning Commission notwithstanding the error. Prior to the hearing, the MND had also been circulated for public review and comment on both the County website and the State Clearinghouse and a notice of intent to adopt the MND was provided in accordance with CEQA. Staff received comments from the Desert Tortoise Council as a result of County notices, but no comments from the Appellant. The Appellant has failed to show how the error in the Planning Commission Staff Report was in any way prejudicial or sufficient grounds to deny the Project on appeal.

3. Appellant Argument: The desert residents and property owners are concerned over the development of another liquor store (overconcentration) in the community that already has plenty of such stores.

LUS Response: The Project is a multi-purpose commercial use and does not exclusively function as a liquor store. The Applicant does intend to obtain a Type 20 Alcohol License that permits the sale of beer and wine, but not spirits.

Pursuant to the concerns of overconcentration of alcohol sales LUS staff did contact the Department of Alcoholic Beverage and Control (ABC). Staff was informed that there was an overconcentration of On-Sale of Beer and Wine licenses in the Census Tract for the Project area. Because there is an overconcentration, it would be up to ABC to require the Applicant to file an application of Public Convenience or Necessity with County Planning as a condition of future alcohol sales. The County would then be required to make a finding that a public convenience or necessity will be served by ABC granting of the Type 20 license.

PROCUREMENT

Not applicable

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Jason Searles, Supervising Deputy County Counsel, 387-5455) on July 18, 2023; Finance (Penelope Chang, Administrative Analyst, 387-4886) on July 27, 2023; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on July 28, 2023.

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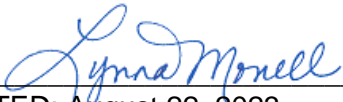
Record of Action of the Board of Supervisors
San Bernardino County

Hearing Opened
Public Comment: None
Hearing Closed

APPROVED

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Col. Paul Cook (Ret.)

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: August 22, 2023



cc: LUSD - Wardlaw w/ NOD & Rec.
File LUSD/Planning Appeals w/ attachments
JLL 08/25/2023