November 2, 2026

By email only: hearingofficer@sandiego.gov

Hearing Officers Antoinette Gibbs and Jeffrey Szymanski
City of San Diego
Development Services Department
7650 Mission Valley Road
San Diego, CA 92108

Re: PRJ 1129058-Request for Variance
3855 Ruffin Road
Hearing Officer Agenda Item 1-November 4, 2026

Dear Hearing Officers Gibbs and Szymanski:

I represent 3855 Ruffin Road, LLC, the owner of the above-referenced property ("Property") and applicant for the above-referenced Project. The purpose of this letter is to state the Applicant's objections to the City's proposed requirements that the Applicant (1) dedicate a four-foot-wide strip of its property for public right-of-way and (2) construct a new public sidewalk, as conditions of this variance. For the reasons below, neither requirement applies to this Project under the Municipal Code, and neither satisfies the constitutional requirements of essential nexus and rough proportionality. We therefore request that the variance be approved without either requirement.

Project Summary

The project is located at 3855 Ruffin Road in the Kearny Mesa neighborhood of San Diego and involves applications for a variance, a grading permit, and a building permit. The project is to widen the existing parking pad by approximately eight feet so that the drive aisle can be widened from 17 to 24 feet for truck traffic and to resolve truck, automobile, and pedestrian conflicts. Importantly, the Project does not increase traffic, enlarge the building structure, increase the number of parking spaces, or place any wall or foundation in the existing public right-of-way. Nevertheless, as a condition of permit issuance, the City requires a four-foot-wide dedication along the property frontage and construction of a "new four-foot sidewalk within the public right-of-way along Ruffin Road fronting the project site." (Report, p. 3.)

Variance Application

As the Staff Report to the Hearing Officer dated October 28, 2026 ("Report") states, "special circumstances and site conditions are present" to support a variance. Furthermore, the Report states

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> "[The Project's] special circumstances and conditions on the site are unique to the land or premises and do not apply generally to the land or premises in the neighborhood. Therefore, Planning staff supports the variance based on hardships created by the evidence provided by the applicant demonstrating that the existing environmentally sensitive lands are at the rear of the property, along with current site conditions, such as the significant slope grade differential from the sidewalk up to the parking lot area, physically preclude the reasonable use of the premises."

Despite these statements, the Report recommends denial for one reason only. In staff's words:

> "The applicant does not agree to provide the required improvements. Therefore, although staff could support the requested variance if improvements were provided, staff must recommend denial pursuant to SDMC Section 126.0805 . . . because findings (c) and (d) cannot be made."

(Report, p. 3.) The Report concludes that staff "are recommending denial of the project due to noncompliance with the necessary public improvements." (Report, p. 6.) In other words, staff would support the variance if the Applicant dedicated its property and built a public sidewalk and recommends denial because the Applicant declines.

The objection to the failure to agree to providing the City with additional private property does not come from the planning department, but from the engineering department. Staff there cites San Diego Municipal Code ("SDMC") section 142.0601 *et seq.*, establishing when private development must provide public facilities. SDMC section 142.0610(a) states in part

> "no *structure* shall be erected or enlarged, and no Building Permit shall be issued, for any *lot* unless the *streets* and *alleys* abutting the *premises* have been dedicated and improved along the abutting frontage to the prevailing standards of the City of San Diego."

That is, to obtain the requested permit, the applicant is required to bring their property's frontage up to the City's current street standards. There are three reasons the City should not require the Applicant to meet the requirements of this code section.

First, the construction of a retaining wall is exempt from the requirements of SDMC section 142.0610(a). Specifically, the construction of accessory structures is exempt. (SDMC §142.0611(b).) Per the municipal code, an accessory structure includes,

> "*Accessory structure* means a *structure* attached to or detached from a primary *structure* located on the same *premises* that is customarily incidental and subordinate to the *primary structure* or use. The term *accessory structure* includes accessory buildings."

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(SDMC § 113.0103.) While a retaining wall is a "structure" under SDMC section 113.0103, it is more precisely an accessory structure in this instance. The Project consists of retaining and planter walls, together with the grading needed to build them and widen the existing parking pad behind them. The walls will be detached from the existing industrial building, located on the same premises, and incidental and subordinate to that building and its use. The City's environmental determination for this Project twice states that "[p]lanters and retaining walls are accessory structures." (Report, Attachment 4.) The Report does not address the municipal code exemption. Nor does SDMC section 142.0620 supply independent authority for the conditions: it requires conditions "in accordance with Section 142.0610" and to mitigate "any impact the development may have on existing public facilities," and staff has identified no such impact. For this reason alone, the Hearing Officer should grant the variance without the dedication and sidewalk requirements.

Second, staff has never explained why this dedication and this sidewalk construction are necessary for this site. The property is located in the Kearny Mesa Community Plan area ("KMCP") and is designated as Industrial and Tech Park use. The KMCP classifies Ruffin Road as a four-lane collector with a two-way left-turn lane (KMCP, Figure 14), as staff confirmed in its written responses of April 1, 2026. Staff has identified the basis for the dedication as Ruffin Road's collector classification, Street Design Manual section 1.5.3, and Street Design Manual Figure 5-6, a 14-foot parkway. (Email from W. Rogers, March 20, 2026.) Section 1.5.3 addresses two-lane collectors. For four-lane urban collectors, the Street Design Manual assigns parkway configurations according to the abutting land use, and staff has not explained how it selected the configuration it is applying to this industrial frontage. Nor has staff explained how a four-foot dedication from this single parcel relates to any planned width for Ruffin Road: staff has acknowledged that the Manual's typical 110-foot section for a four-lane collector includes parking lanes, which Ruffin Road does not have and which staff knows of no plan to add. (April 1, 2026 responses, Q2.) The Street Design Manual itself states that it "does not establish a legal standard." These unanswered questions underscore the absence of any individualized determination. In any event, as explained below, the requirement is unconstitutional as applied to this Project.

Requiring Dedication is Unconstitutional

The third reason the Hearing Officer should reject the application of SDMC section 142.0610(a) is that the City's reliance on that code section without a demonstration of nexus and rough proportionality is unconstitutional. The Takings Clause of the U.S. Constitution prohibits government from taking private property for a public purpose without providing just compensation to the private property owner. (U.S. Const. amend. V.) The California state constitution affords citizens the same protections. (CA Constitution art. I § 19.)

Courts evaluate the constitutionality of permit conditions under a two-part test. First, permit conditions must have an "essential nexus" to a legitimate government interest. (*Nollan v. California Coastal Comm'n* (1987) 483 U. S. 825, 837.) The essential nexus test requires a logical connection between the government's legitimate state interest and the permit condition.

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(*Id.*) Second, permit conditions must be "roughly proportional" to the impacts of the proposed development. (*Dolan v. City of Tigard* (1994) 512 U. S. 374, 391.) "[T]he city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." (*Dolan,* 512 U.S. at 391.)

Until recently, this test was only applied to *ad hoc* permit conditions, and not to those required by generally applicable legislation. (*See Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854; *San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643; *California Bldg. Indus. Ass'n v City of San Jose* (2015) 61 Cal.4th 435, cert denied (2016) 577 U.S. 1179.) In 2024, however, the United States Supreme Court held that the takings analysis is the same regardless of whether the land use permit condition is imposed legislatively or administratively. (*Sheetz v. County of El Dorado* (2024) 601 U.S. 267, 279.)

Accordingly, regardless of the source of the four-foot dedication requirement—whether it is *ad hoc* or required by generally applicable legislation, the City must demonstrate both an essential nexus to its legitimate interests and a rough proportionality between the dedication requirement and the project's impact on the City's land use interests. Furthermore, a permit condition of this kind must satisfy the essential nexus and rough proportionality requirements whether the City grants the permit subject to the condition or denies the permit because the owner refuses it. (*Koontz v. St. Johns River Water Management Dist.* (2013) 570 U.S. 595, 606.)

Despite written requests on December 1, 2025, December 5, 2025, March 20, 2026, and March 21, 2026, the City has never provided the nexus analysis supporting why a project for a retaining wall that places no wall or foundation in the existing public right-of-way and generates no new traffic must dedicate land and build a new public sidewalk at substantial cost; nor has the City demonstrated the rough proportionality required to support the dedication—there is nothing in the record suggesting that the project will have any impact, let alone one that requires dedication of four feet of private property. Instead, City staff has indicated that the dedication is required by generally applicable legislation—SDMC 142.0610(a). Under *Sheetz*, a condition imposed by a municipal code must satisfy the same essential nexus and rough proportionality requirements as any other permit condition. (*Sheetz*, 601 U.S. at 279.)

Staff's own Report identifies no impact of this Project that the dedication or sidewalk would mitigate. The sidewalk the City requires is one "that was not installed during the original development of the project site" (Report, p. 3)—a pre-existing condition along this frontage, not one created by this Project. Consistent with that, the City's environmental determination describes the Project as involving "no expansion of use." (Report, Attachment 4.)

Findings (c) and (d) Can Be Made

While the Report suggests the findings cannot be made for SDMC section 126.0805(c) and (d), that is not the case. The Applicant's revised findings for those sections (memorandum dated October 3, 2026, which staff has now included with the Report) are:

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(c) The granting of the variance will be in harmony with the general purpose and intent of the regulations and will not be detrimental to the public health, safety, or welfare.

The variance is consistent with the purpose and intent of the front-yard retaining wall regulations. Those regulations limit the visual bulk of walls along the street. The Code itself accepts stepped walls as a means of achieving that goal: it permits two retaining walls in the front yard when separated horizontally. (SDMC § 142.0340(c).) The Project follows the same approach. A four-foot planter wall at the front is landscaped and screens the taller retaining wall, which is set back behind it. The result is a terraced, planted frontage rather than a single tall wall at the street.

The variance will improve, not harm, public health and safety. Today, commercial trucks bound for the Site's only loading dock must travel through a 17-foot aisle and maneuver among parked cars, employees, and customers. Widening the aisle to 24 feet separates those movements and removes a recurring conflict between trucks and pedestrians. This is the outcome the Kearny Mesa Community Plan seeks: it calls for adequate loading internal to industrial development, efficient delivery of goods to industrial uses, and freight movement that "minimizes conflict with other roadway users, such as pedestrians, bicyclists, transit users, and motorists." (KMCP Policies 4.42–4.44, p. 36.)

The Project will not burden the public. It adds no parking spaces, floor area, employees, or vehicle trips and will not increase traffic on Ruffin Road. The walls will be engineered and built under a City grading permit and building permit. The walls are located entirely on private property, outside the existing public right-of-way, and will not obstruct sight distance for vehicles entering or leaving the Site.

(d) The granting of the variance will not adversely affect the applicable land use plan.

The applicable land use plan is the Kearny Mesa Community Plan ("KMCP"). The variance does not change the Site's land use designation, use, density, or intensity. It allows an existing industrial business to keep operating at the Site safely, which is the outcome the KMCP seeks.

The KMCP designates the Site Industrial and Technology Park. That designation "allows for a wide variety of industrial employment uses, including manufacturing, research and development, corporate headquarters, and other industrial uses." (KMCP, p. 12.) The applicant's research, development, and manufacturing business is squarely within it.

The KMCP stresses retaining such uses: "[t]here is a need to preserve Kearny Mesa's industrial parks since these industrial businesses are location sensitive and vital for economic prosperity." (KMCP, p. 16.) The Site lies within the Ruffin Technology Cluster, which the KMCP describes as supporting "large-scale employment users in a setting that is unencumbered by sensitive users or sites," where "existing businesses can expand operations and emerging industrial uses can co-locate." (*Id.*) Safe truck access to a loading dock is basic infrastructure for a manufacturing use. By providing it, the variance helps keep an established industrial employer in the cluster the KMCP intends to preserve.

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The Project also implements specific KMCP policies:

- **Flexibility for existing industrial employers.** Policy 1.4 directs the City to "provide flexibility to serve operational and expansion needs of existing industrial employers within Prime Industrial Lands." (KMCP, p. 30.) A limited deviation from a wall height standard, so that an existing manufacturer can meet its operational need for code-compliant aisles and safe truck access, is the flexibility Policy 1.4 calls for.

- **Preserving industrial land for industrial operations.** Policy 1.2 seeks to "[p]reserve industrial lands for employment uses." Policy 1.5 protects land in the Ruffin Technology Cluster "to accommodate existing, new, and relocation of industrial operations for the City's economic base." (*Id.*) Industrial land is preserved in substance only if the operations on it can function. The variance keeps this Site usable for the industrial operations these policies protect.

- **On-site loading and goods movement.** Policy 4.43 calls for "adequate loading spaces internal to non-residential development to minimize vehicle loading and minimize truck storage spillover on adjacent streets." Policy 4.42 seeks to "[e]nsure efficient movement and delivery of goods to … industrial uses." Policy 4.44 seeks to accommodate freight "in a manner that minimizes conflict with other roadway users, such as pedestrians … and motorists." (KMCP, p. 36.) The Project keeps truck access and loading on site and separates trucks from employees and customers.

- **Pedestrian safety in parking areas.** Policy 4.12 calls for walkways in parking areas that are clearly differentiated and safe. (KMCP, p. 33.) The wider aisle reduces the existing conflict between delivery trucks and people walking through the lot.

Staff's conclusions on findings (c) and (d) rest entirely on the public improvement requirement. As to finding (c), the Applicant submits that the finding is directed to the variance itself—relief from the front-yard wall height limits of SDMC section 142.0340—and staff does not contend that the walls themselves are detrimental to public health, safety, or welfare; to the contrary, staff finds the walls are needed to stabilize an eroding slope. As to finding (d), the policies staff cites describe goals for the pedestrian, bicycle, and transit network—Policy 4.7, for example, calls for "utilizing existing right-of-way and seeking additional right-of-way"—but none requires that a particular parcel dedicate land as a condition of an unrelated permit. Policy 5.1 concerns pedestrian-oriented mixed-use development, which has no application to Prime Industrial Lands, and the KMCP places the urban pathway for this segment of Ruffin Road on the west side of the street. (KMCP, Table 4.)

As is discussed above, there are many policies in the Kearny Mesa Community Plan that are supported by the Project. A project need not be in perfect conformity with each and every policy of the applicable land use plan; it is consistent if, considering all its aspects, it furthers the plan's objectives and policies and does not obstruct their attainment. (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717–718; *Save Our Heritage Organisation v. City of San Diego* (2015) 237 Cal.App.4th 163, 186-187.) The City's own attorney has noted that compliance with every element of a plan is not possible:

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> "[L]and use plans can consist of several hundreds of pages and usually address various elements such as the overall land uses, mobility, conservation, recreation, and economic prosperity. Given this range of topics, it is not uncommon for land use plans to contain conflicting policies."

(San Diego City Attorney Memorandum, June 28, 2017 (MS-2017-14)).

The Project furthers the KMCP's core industrial-retention, goods-movement, and loading policies, and conflicts with no fundamental, mandatory, and specific policy of the land use plan. That the Project does not provide a four-foot dedication of private property on the east side of Ruffin Road where there are no other sidewalk improvements is not a material conflict.

Corrections for the Record

The Report contains some errors that we respectfully request the Hearing Officer correct on the record:

1. The Report continues to describe the project as an "expansion" (for example, "any expansion of the facility is limited without the proposed retaining wall"). The project widens the existing parking pad to correct a substandard drive aisle. It does not intensify the use of the existing development and adds no parking spaces, floor area, employees, or vehicle trips.

2. The plan callouts referring to a proposed 4' sidewalk and a proposed right-of-way dedication "per separate permit" are not part of the application.

3. The plans are titled "Variance PMT-3330006" as directed in staff's Project Issues Report (comment 131); the correct approval number is PMT-3339006.

4. The Report characterizes the Applicant as requesting that the City "waive" the sidewalk and dedication requirements. The Applicant does not seek a waiver; its position is that those requirements do not lawfully apply to this Project.

Conclusion

We respectfully request the Hearing Officer do the following:

1. Correct the record regarding the items above;

2. Substitute the findings for SDMC section 126.0805 (c) and (d) above for those in the Staff Report, and grant the application for a variance without the conditions requiring dedication of the Applicant's property or construction of a new sidewalk, either due to an exemption under SDMC section 142.0611(b), or due to the unconstitutionality of the application of SDMC section 142.0610(a).

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3. If the Hearing Officer is not inclined to approve the variance on that basis, we respectfully request that the decision state the specific grounds, including whether the decision rests on the Applicant's refusal to provide the dedication and sidewalk.

The Applicant objects to the proposed right-of-way dedication and, separately, to the proposed sidewalk requirement; does not consent to either; and reserves all rights and remedies under the United States and California Constitutions and applicable law.

Sincerely



Andrea Contreras

cc: Travis Cleveland (by email only: tcleveland@sandiego.gov)

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