



THE CITY OF SAN DIEGO

Report to the Planning Commission

DATE ISSUED: September 19, 2019 REPORT NO. PC-19-082

HEARING DATE: September 26, 2019

SUBJECT: NEFF RENTAL VARIANCE - Process Three Decision

PROJECT NUMBER: [482367](#)

REFERENCE: Report to the Hearing Officer No. [HO-19-066](#)

OWNER/APPLICANT: Neff Rentals, Inc./Electric Guard Dog LLC

SUMMARY

Issue: Should the Planning Commission deny or affirm an appeal of the Hearing Officer's decision to deny a Variance to allow the electrification of an existing perimeter fence at an equipment rental establishment, located at 6144 Federal Boulevard, in the Encanto Neighborhoods Community Plan?

Staff Recommendation: APPROVE the appeal and reverse the Hearing Officer decision to DENY Variance No. 1698050.

Community Planning Group Recommendation: On April 15, 2019, the Chollas Valley Community Planning Group voted 9-1-2 to recommend approval of the proposed project without conditions.

Environmental Review: This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15303(e), New Construction or Conversion of Small Structures. This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on February 25, 2019, and the opportunity to appeal that determination ended March 11, 2019.

Fiscal Impact Statement: All costs associated with the processing of this project are paid from a deposit account funded by the applicant.

Code Enforcement Impact: None with this action as there are no active code violation cases on the project site.

Housing Impact Statement: The site is located in the CO-2-1 (Commercial-Office) zone and is designated by the [Encanto Neighborhoods Community Plan](#) for Community Commercial uses, both of which specifically prohibit residential development onsite. There are no existing residential units onsite and none are proposed with this action.

BACKGROUND

The proposed project is an application for a Variance to allow the electrification of an existing 10-foot tall fence which surrounds an entire equipment rental establishment operated as "United Rentals", located on a 3.27-acre site at 6144 Federal Boulevard. The site is currently surrounded by two, separate, perimeter fences with a minimum separation of 12 inches. There is a six- to eight-foot tall, non-electrified perimeter fence located at the property line. The 10-foot tall fence proposed for electrification is located interior to the property, behind the existing, non-electrified six- to eight-foot tall perimeter fence. This combination of two fences prevents anyone outside of the property from contacting the electric fence without first scaling the non-electrified fence.

San Diego Municipal Code (SDMC) section [142.0360](#) only allows electrically charged fences in IH (Industrial Heavy) and IL (Industrial Light) zones, as well as agricultural zones, if the fence is at least 600 feet away from a residential zone. The site is located in the [CO-2-1](#) zone and is approximately 100 feet from residentially-zoned property, therefore approval of a Variance is required to electrify the fence. Please see the attached Report to the Hearing Officer No. [HO-19-066](#) for detailed project background and scope information (Attachment 1).

During the Hearing Officer public hearing held on July 10, 2019, there was one public speaker in support of the project, Keith Kaneko, representing the applicant. There were no speaker slips in opposition however a letter opposing the variance was received prior to the hearing (Attachment 5). The Hearing Officer stated that the denial was based on his inability to make the required Variance findings listed in SDMC Section [126.0805 \(a-c\)](#). The Hearing Officer stated that he did not find there were special circumstances or conditions applying to the subject land or premises; that the applicant was not deprived of reasonable use because the site currently operates as an equipment rental facility; and that the variance could be detrimental to the public health, safety or welfare in that the site is near residential development and there are other security measures available to protect the site.

PROJECT APPEAL DISCUSSION

On July 23, 2019, the applicant filed an appeal of the Hearing Officer's decision to deny the Variance (Attachment 2). The applicant's appeal application asserts that the justifications for the Variance were not applicably considered or accurately interpreted by the Hearing Officer. In addition, the appeal application expands on the special circumstances and conditions of the site, including the value of equipment associated with the use, unique lot shape and size, and significant crime history at the site. The appeal application also describes how other means to secure the site are not practical at this location, including guards and intrusion detection systems.

Development Services Department staff continues to support the Variance request based on the draft conditions and findings as they were provided to the Hearing Officer and as described in the attached Report to the Hearing Officer No. [HO-19-066](#).

Staff has provided draft findings (Attachment 3) to support approval of the Variance and draft conditions of approval (Attachment 4).

Conclusion:

City staff has reviewed the Variance and Appeal application and determined that findings can be made to support approval of the Variance. Staff recommends that the Planning Commission reverse the Hearing Officer's decision to deny the Variance, grant the appeal and approve the variance.

ALTERNATIVES

1. Deny the appeal and affirm the Hearing Officer's decision to deny Variance No. 1698050, if the findings to approve the project cannot be affirmed.
2. Grant the appeal and reverse the Hearing Officer's decision to deny Variance No. 1698050, with modifications.

Respectfully submitted,


PJ FitzGerald
Assistance Deputy Director
Development Services Department


Paul Godwin
Development Project Manager
Development Services Department

LOWE/PBG

Attachments:

1. Report to the Hearing Officer No. 19-066
2. Applicant's Appeal of the Hearing Officer Decision
3. Draft Permit Resolution with Findings for Approval
4. Draft Permit with Conditions
5. Opposition Letter sent to Hearing Officer
6. Site Photos



THE CITY OF SAN DIEGO

Report to the Hearing Officer

DATE ISSUED: July 2, 2019 REPORT NO. HO-19-066

HEARING DATE: July 10, 2019

SUBJECT: NEFF RENTAL VARIANCE - Process Three Decision

PROJECT NUMBER: [482367](#)

OWNER/APPLICANT: Neff Rentals, Inc./Electric Guard Dog LLC

SUMMARY

Issue: Should the Hearing Officer approve a Variance to allow the electrification of an existing perimeter fence at an equipment rental establishment, located at 6144 Federal Boulevard, in the Encanto Neighborhoods Community Plan?

Staff Recommendation: Approve Variance No. 1698050.

Community Planning Group Recommendation: On April 15, 2019, the Chollas Valley Community Planning Group voted 9-1-2 to recommend approval of the proposed project without conditions (Attachment 7).

Environmental Review: This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15303(e), New Construction or Conversion of Small Structures (Attachment 6). This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on February 25, 2019, and the opportunity to appeal that determination ended March 11, 2019.

BACKGROUND

The 3.27-acre site is located at 6144 Federal Boulevard, and is developed with an existing equipment rental establishment, operating as "United Rentals", a light- and heavy-duty equipment and tool rental facility. The site is developed with two metal structures, including one fully-enclosed warehouse and one open-sided storage structure, with access provided from two driveways on the north side of Federal Boulevard. The site is located in the [CO-2-1](#) Zone, which is a Commercial-Office zone that prohibits residential development. The [Encanto Neighborhoods Community Plan](#) designates the site for Community Commercial uses with residential development prohibited. The site is bordered by State Route (SR) 94 to the north, existing commercial and light industrial uses to the east and west and single-family residential development to the south on the opposite side of Federal Boulevard. The irregular "L" shaped site is generally level with onsite elevations ranging from 270 to 285 feet above mean sea level. The City of Lemon Grove border is located just north of the project site.

DISCUSSION

The proposed project would allow the electrification an existing 10-foot tall fence which surrounds the entire equipment rental establishment. The existing fence is an open, metal design that was approved with a ministerial building permit under Project No. 408613, Permit No. 1429076. During the inspection process it was determined that while the construction, height and placement of the fence was acceptable, electrification of the fence was not allowed per San Diego Municipal Code (SDMC) Section [142.0360](#). The SDMC allows electrically charged fences in IH (Industrial Heavy) and IL (Industrial Light) zones, as well as agricultural zones, if the fence is at least 600 feet away from a residential zone.

The applicant has requested the approval of a Variance per SDMC Section [126.0802](#) to allow electrification of the existing fence in the CO-2-1 zone, approximately 100 feet from residentially-zoned property to the south, across Federal Boulevard. Staff is supportive of the Variance as there are special circumstances applying to the premises in that the longest frontage (626.28 linear feet) of the irregular, "L" shaped site is adjacent to SR-94. Due to the "L" shaped site configuration, 338.32 linear feet of the southern property line is separated from the Federal Boulevard frontage by another parcel and commercial development. Therefore, a large portion of the equipment storage yard is located behind existing development and is not visible from Federal Boulevard, reducing site security.

Of the 22 commercial other lots located between Federal Boulevard and SR-94 within the City of San Diego, 21 are rectangular, allowing for greater site security due to their increased visibility from the street. The project site configuration, including over 1,300 linear feet of perimeter to be secured, creates security challenges and provides greater opportunity for trespassing, vandalism and theft due to decreased visibility from the street, exposure to transient activity and ease of access from SR-94. The site is located approximately 800 feet east of the SR-94 westbound onramp, further increasing opportunities for theft. These circumstances deprive the applicant of reasonable use of the property in that providing security for their large inventory of rental equipment stored outdoors is challenged by vulnerability to theft and vandalism due to the configuration of the site and its proximity to SR-94.



The requested variance would not be detrimental to the public health, safety. The portion of fence located adjacent to the Federal Boulevard public right-of-way, closest to the residentially-zoned properties, would not be energized. Only the fence sections located next to the adjacent commercial/industrial developments and the SR-94 frontage would be energized. Additionally, the Federal Boulevard right-of-way is 70 feet wide with four travel lanes and a turning lane, providing a physical buffer between the electrified fence and adjacent residential properties.

There is an eight-foot tall, non-electrified perimeter fence located between the property line and the 10-foot tall electric fence, with a minimum 12-inch separate between the two fences. This combination of two fences prevents anyone outside of the property from contacting the electric fence without first scaling the non-electrified fence. In addition, the project is conditioned to provide electric fence warning signage every 60 linear feet to warn individuals coming near the fence, in excess of the 100-linear-foot requirement described in SDMC Section 142.0360.

The electrified portion of the fence is required to comply with California Civil Code Section [835](#), and International Electrotechnical Commission (IEC) Section [60335-2-76](#), which regulate the safety, power output, installation, and operational requirements of electric fences. These regulations ensure that electric fences function as a crime deterrent while not posing a health risk to individuals in the vicinity or who may come into contact with the fence.

Community Plan Analysis

The existing equipment rental establishment complies with the Encanto Neighborhoods Community Plan land use designation of Community Commercial with residential development prohibited. Although the Community Plan does not specifically address electric fences, the project would further several policies of the plan, including Community Plan Land Use Policy No. P-LU-43 "Improve access, visibility, and site conditions along Federal Boulevard to improve the attractiveness of this corridor for warehouse, distribution, and light industrial businesses". Approval of the variance to allow an electric fence would increase the attractiveness of the site by allowing proper security of the facility and equipment stored onsite, ensuring the long-term viability of the site for similar commercial uses. The project would also further Community Plan Urban Design Policy No. P-UD-62 "Buildings and grounds that "self-police" so that residents may participate in its security".

Conclusion

Staff has reviewed the variance request and found the project to be in conformance with the applicable sections of the SDMC and the Encanto Neighborhoods Community Plan. Therefore, staff recommends Hearing Officer approval of Variance No. 1698050.

ALTERNATIVES

1. Approve Variance No. 1698050, with modifications.
2. Deny Variance No. 1698050, if the findings required to approve the project cannot be affirmed.

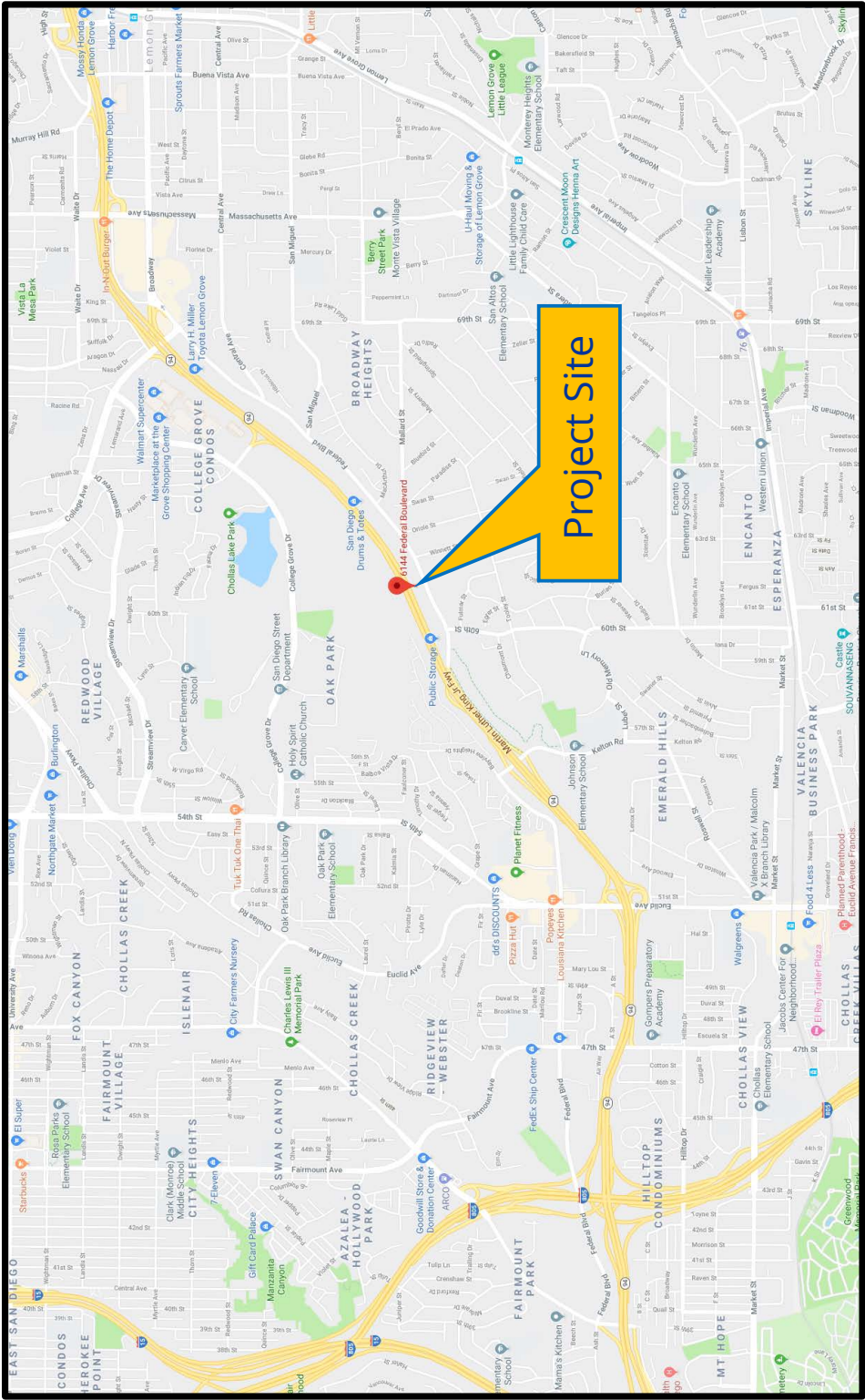
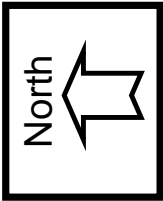
Respectfully submitted,

A handwritten signature in blue ink that reads "Paul Godwin". The signature is fluid and cursive, with the first name "Paul" and last name "Godwin" clearly distinguishable.

Paul Godwin, Development Project Manager

Attachments:

1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photograph
4. Draft Resolution with Findings
5. Draft Permit with Conditions
6. Environmental Exemption
7. Community Planning Group Recommendation
8. Project Plans
9. Ownership Disclosure Statement

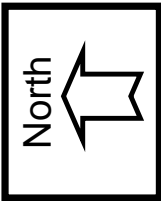


Project Location Map

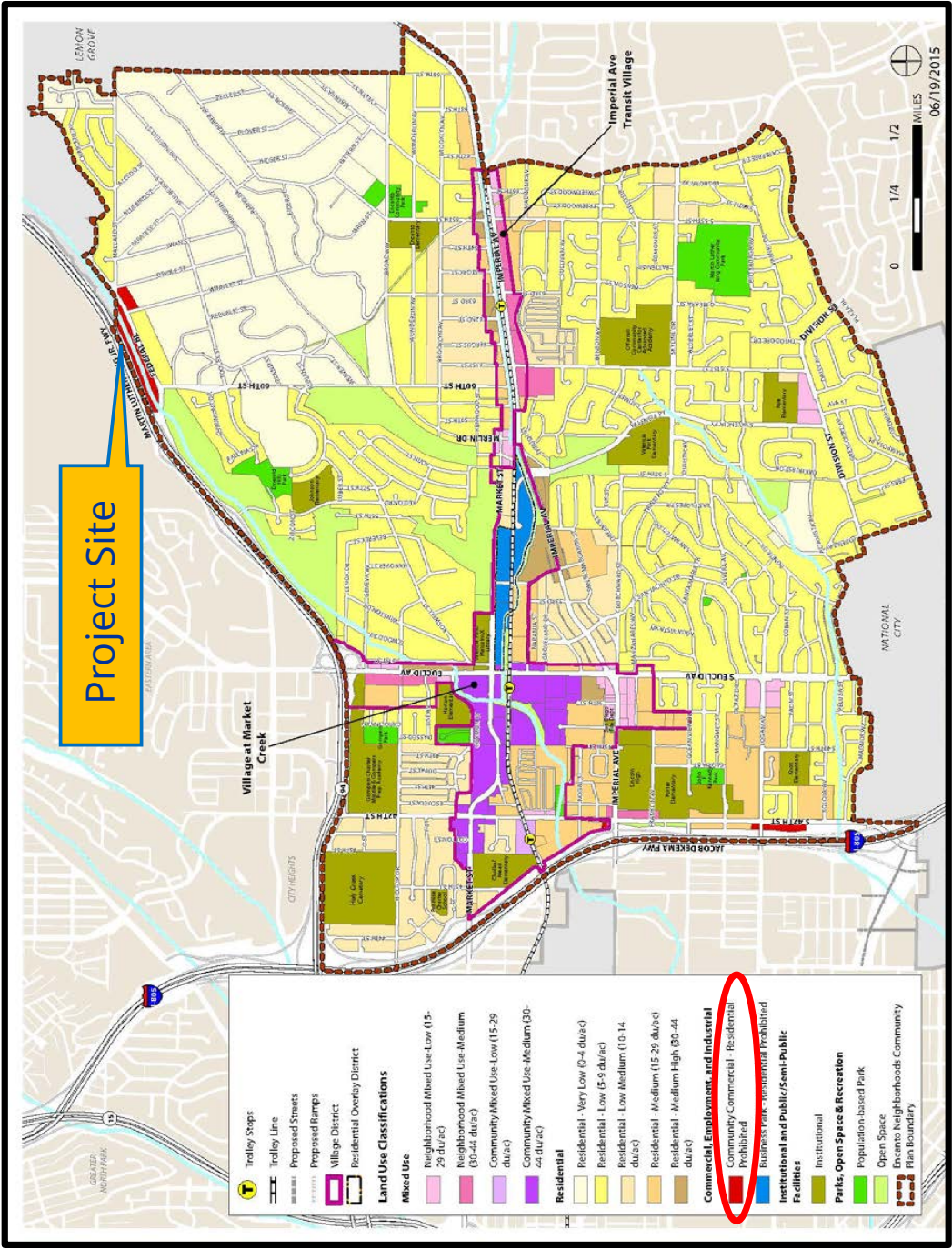
Neff Rental Variance / 6144 Federal Boulevard
Project No. 482367



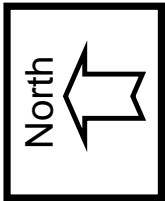
ATTACHMENT 2



Land Use Map
Neff Rental Variance / 6144 Federal Boulevard
Project No. 482367



ATTACHMENT 3



Aerial Photo
Neff Rental Variance / 6144 Federal Boulevard
Project No. 482367



ATTACHMENT 4

HEARING OFFICER
RESOLUTION NO. _____
VARIANCE NO. 1698050

NEFF RENTAL VARIANCE - PROJECT NO. 482367

WHEREAS, Neff Rentals, Inc., Owner, and Electric Guard Dog LLC, Permittee, filed an application with the City of San Diego for a Variance to allow the electrification of an existing perimeter fence at an existing equipment rental company (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Variance No. 1698050), on portions of a 3.27-acre site;

WHEREAS, the project site is located at 6144 Federal Boulevard in the CO-2-1 Zone, in the Encanto Neighborhoods Community Plan;

WHEREAS, the project site is legally described as Lots 8 through 14, inclusive of Encanto Industrial Park, according to Map No. 7035, filed August 30, 1971, in the County and City of San Diego;

WHEREAS, on February 25, 2019, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) under CEQA Guideline Section 15303(e), and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

WHEREAS, on July 10, 2019, the Hearing Officer of the City of San Diego considered Variance No. 1698050 pursuant to the Land Development Code of the City of San Diego;

NOW, THEREFORE,

ATTACHMENT 4

BE IT RESOLVED by the Hearing Officer of the City of San Diego, that it adopts the following findings with respect to Variance No. 1698050:

VARIANCE [SDMC Section 126.0805]

- a. **There are special circumstances or conditions applying to the land or premises for which the variance is sought that are peculiar to the land or premises and do not apply generally to the land or premises in the neighborhood, and these conditions have not resulted from any act of the applicant after the adoption of the applicable zone regulations.**

The proposed project would allow the electrification of an existing 10-foot tall open fence surrounding an existing 3.27-acre equipment rental facility at 6144 Federal Boulevard. The site is surrounded by similar commercial/industrial development to the east and west, State Route (SR) 94 to the north and single-family residential development to the south.

The existing equipment rental establishment complies with the Encanto Neighborhoods Community Plan land use designation of Community Commercial with residential development prohibited. Although the Community Plan does not specifically address electric fences, the project would further several policies of the plan, including Community Plan Land Use Policy No. P-LU-43 "Improve access, visibility, and site conditions along Federal Boulevard to improve the attractiveness of this corridor for warehouse, distribution, and light industrial businesses". Approval of the variance to allow an electric fence would increase the attractiveness of the site by allowing proper security of the facility and equipment stored onsite, ensuring the long-term viability of the site for similar commercial uses. The project would also further Community Plan Urban Design Policy No. P-UD-62 "Buildings and grounds that "self-police" so that residents may participate in its security".

There are special circumstances applying to the premises in that the longest frontage (626.28 linear feet) of the irregular, "L" shaped site is adjacent to SR-94. Due to the "L" shaped site configuration, 338.32 linear feet of the southern property line is separated from the Federal Boulevard frontage by another parcel and commercial development. Therefore, a large portion of the equipment storage yard is located behind existing development and is not visible from Federal Boulevard, reducing site security.

Of the 22 commercial other lots located between Federal Boulevard and SR-94 within the City of San Diego, 21 are rectangular, allowing for greater site security due to their increased visibility from the street. The project site configuration, including over 1,300 linear feet of perimeter to be secured, creates security challenges and provides greater opportunity for trespassing, vandalism and theft due to decreased visibility from the street, exposure to transient activity and ease of access from SR-94. The site is located approximately 800 feet east of the SR-94 westbound onramp, further increasing opportunities for theft.

ATTACHMENT 4

These circumstances deprive the applicant of reasonable use of the property in that providing security for their large inventory of rental equipment stored outdoors is challenged by vulnerability to theft and vandalism due to the configuration of the site and its proximity to SR-94.

- b. The circumstances or conditions are such that the strict application of the regulations of the Land Development Code would deprive the applicant of reasonable use of the land or premises and the variance granted by the City is the minimum variance that will permit the reasonable use of the land or premises.**

The proposed project would allow the electrification of an existing 10-foot tall open fence surrounding an existing 3.27-acre equipment rental facility at 6144 Federal Boulevard. The site is surrounded by similar commercial/industrial development to the east and west, SR-94 to the north and single-family residential development to the south.

There are special circumstances applying to the premises in that the longest frontage (626.28 linear feet) of the irregular, "L" shaped site is adjacent to SR-94. Due to the "L" shaped site configuration, 338.32 linear feet of the southern property line is separated from the Federal Boulevard frontage by another parcel and commercial development. Of the 22 commercial lots located between Federal Boulevard and SR-94 within the City of San Diego, 21 are rectangular, allowing for greater site security due to their increased visibility from the street. Because of the project site's "L" shape configuration, a large portion of the equipment storage yard is located behind existing development and is not visible from Federal Boulevard.

The site configuration, including over 1,300 linear feet of perimeter to be secured, creates security challenges and provides greater opportunity for trespassing, vandalism and theft due to decreased visibility from the street, exposure to transient activity and ease of access from SR-94. These circumstances deprive the applicant of reasonable use of the property in that providing security for their large inventory of rental equipment stored outdoors is challenged by vulnerability to theft and vandalism due to the configuration of the site and its proximity to SR-94. The project has been conditioned to not electrify the portion of fence located along the Federal Boulevard right-of-way, closest to the adjacent residential development, as this area is the least vulnerable for security and would represent the minimum variance needed to permit reasonable use of the premises.

- 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 portion of fence located adjacent to the Federal Boulevard public right-of-way, closest to the residentially-zoned properties, would not be energized. Only the fence sections located next to the adjacent commercial/industrial development and the SR-94 frontage would be energized. Additionally, the Federal Boulevard right-of-way is 70 feet wide with four travel lanes and a turning lane, providing a physical buffer between the electrified fence and adjacent residential properties.

ATTACHMENT 4

There is an eight-foot tall non-electrified perimeter fence located between the property line and the 10-foot tall electric fence, with a minimum 12-inch separate between the two fences. This combination of two fences prevents anyone outside of the property from contacting the electric fence without first scaling the non-electrified fence. In addition, the project is conditioned to provide electric fence warning signage every 60 linear feet to warn individuals coming near the fence.

The electrified portion of the fence is required to comply with California Civil Code Section [835](#), and International Electrotechnical Commission (IEC) Section [60335-2-76](#), which regulate the safety, power output, installation, and operational requirements of electric fences. These regulations ensure that electric fence function as a crime deterrent while not posing a health risk to individuals who may contact the fence. Therefore, 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.

- d. The granting of the variance will not adversely affect the applicable land use plan. If the variance is being sought in conjunction with any proposed coastal development, the required finding shall specify that granting of the variance conforms with, and is adequate to carry out, the provisions of the certified land use plan.**

The existing equipment rental establishment complies with the Encanto Neighborhoods Community Plan land use designation of Community Commercial with residential development prohibited. Although the Community Plan does not specifically address electric fences, the project would further several policies of the plan, including Community Plan Land Use Policy No. P-LU-43 "Improve access, visibility, and site conditions along Federal Boulevard to improve the attractiveness of this corridor for warehouse, distribution, and light industrial businesses". Approval of the variance to allow an electric fence would increase the attractiveness of the site by allowing proper security of the facility and equipment stored onsite, ensuring the long-term viability of the site for similar commercial uses.

The project would also further Community Plan Urban Design Policy No. P-UD-62 "Buildings and grounds that "self-police" so that residents may participate in its security". Therefore, granting of the variance will not adversely affect the applicable land use plan. The site not located within the Coastal Zone, therefore a Coastal Development Permit is not required.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

ATTACHMENT 4

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Variance No. 1698050 is hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Variance No. 1698050, a copy of which is attached hereto and made a part hereof.

Paul Godwin
Development Project Manager
Development Services

Adopted on: July 10, 2019

IO#: 24006595

ATTACHMENT 5

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION
501

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

INTERNAL ORDER NUMBER: 24006595

SPACE ABOVE THIS LINE FOR RECORDER'S USE

HEARING OFFICER
VARIANCE NO. 482367
NEFF RENTAL VARIANCE - PROJECT NO. 482367

This Variance No. 1698050 is granted by the Hearing Officer of the City of San Diego to Neff Rentals Inc., Owner, and Electric Guard Dog LLC, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0802 (Variance). The 3.27-acre site is located at 6144 Federal Boulevard in the CO-2-1 Zone, in the Encanto Neighborhoods Community Plan. The project site is legally described as Lots 8 through 14, inclusive of Encanto Industrial Park, according to Map No. 7035, filed August 30, 1971, in the County and City of San Diego.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to allow the electrification of an existing perimeter fence at an existing equipment rental establishment described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated July 10, 2019, on file in the Development Services Department. The project shall include:

- a. Variance to allow the electrification of an existing 10-foot tall, open perimeter fence surrounding the existing equipment rental establishment. The portion of fence fronting on Federal Boulevard shall not be electrified and the project will maintain a non-electrified, six-foot, open perimeter fence between the property line and the 10-foot tall electrified fence.
- b. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36-month period, this permit shall be void unless an Extension of Time has been granted.

ATTACHMENT 5

Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by July 24, 2022.

2. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
3. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
4. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
5. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
6. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
7. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.
8. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.
9. If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

ATTACHMENT 5

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

PLANNING/DESIGN REQUIREMENTS:

11. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

12. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

13. The portion of fence facing the Federal Boulevard right-of-way shall not be energized at any time. All other fence frontages may be energized.

14. The Owner/Permittee shall place warning signs indicating the presence of an electrified fence a minimum of one sign per 60 linear feet of fencing.

INFORMATION ONLY:

- The issuance of this discretionary permit alone does not allow the immediate commencement or continued operation of the proposed use on site. Any operation allowed by this discretionary permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.

ATTACHMENT 5

- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Hearing Officer of the City of San Diego on July 10, 2019, and Resolution No. ??

ATTACHMENT 5

Permit Type/PTS Approval No.: Variance No. 1698050

Date of Approval: July 10, 2019

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Paul Godwin
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

Neff Rentals, Inc.
Owner

By _____
NAME
TITLE

Electric Guard Dog LLC
Permittee

By _____
NAME
TITLE

ATTACHMENT 6

NOTICE OF EXEMPTION

(Check one or both)

TO: ☒ Recorder/County Clerk
 P.O. Box 1750, MS A-33
 1600 Pacific Hwy, Room 260
 San Diego, CA 92101-2400

☐ Office of Planning and Research
 1400 Tenth Street, Room 121
 Sacramento, CA 95814

FROM: City of San Diego
 Development Services Department
 1222 First Avenue, MS 501
 San Diego, CA 92101

Project Name/Number: Neff Rental Variance/482367

SCH No.: N.A.

Project Location-Specific: 6144 Federal Boulevard, San Diego, California 92114

Project Location-City/County: San Diego/San Diego

Description of nature and purpose of the Project: A VARIANCE for the installation of a 10-foot high electrically charged perimeter fence for an existing equipment rental establishment, on a 3.27-acre site. The 3.27-acre site is in the CO-2-1 zone within the Encanto Neighborhoods Community Plan Area. The site is designated Community Commercial-Residential Prohibited in the Encanto Neighborhoods Community Plan.

Name of Public Agency Approving Project: City of San Diego

Name of Person or Agency Carrying Out Project: John Lee, John Q. Lee (Firm), 550 Assembly Street, 5th Floor, Columbia, South Carolina 29201, (323) 401-1819

Exempt Status: (CHECK ONE)

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c))
- ☒ Categorical Exemption: Categorically exempt from CEQA pursuant to CEQA State Guidelines, Section 15303 (e), New Construction or Conversion of Small Structures.

Reasons why project is exempt: The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment. The project meets the criteria set forth in CEQA Section 15303 that allows for the construction of limited numbers of new, small facilities or structures. This exemption including but are not limited to: accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences. The exemptions listed in CEQA Section 15300.2 would not apply.

Lead Agency Contact Person: Rhonda Benally

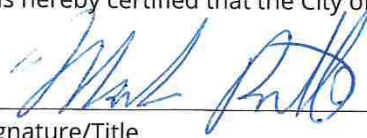
Telephone: (619) 446-5468

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project? ☐ Yes ☐ No

ATTACHMENT 6

It is hereby certified that the City of San Diego has determined the above activity to be exempt from CEQA



Signature/Title Senior Planner

March 12, 2019

Date

Check One:

☒ (X) Signed By Lead Agency

☐ () Signed by Applicant

Date Received for Filing with County Clerk or OPR:

Godwin, Paul

From: Sandi Sawa Hazlewood <sandihazlewood@gmail.com>
Sent: Monday, June 24, 2019 4:15 PM
To: Godwin, Paul
Subject: Re: Neff Rental Variance - Project No. 482367

Paul,

No conditions on the recommendation to approve. 9-1-2.

Sandi

On Fri, Jun 21, 2019 at 9:40 AM Godwin, Paul <PGodwin@sandiego.gov> wrote:

Hi Sandi –

Can you please confirm the vote and if there were any recommendations from your group?

Thank you,

Paul Godwin

Development Project Manager III
City of San Diego
Development Services Department

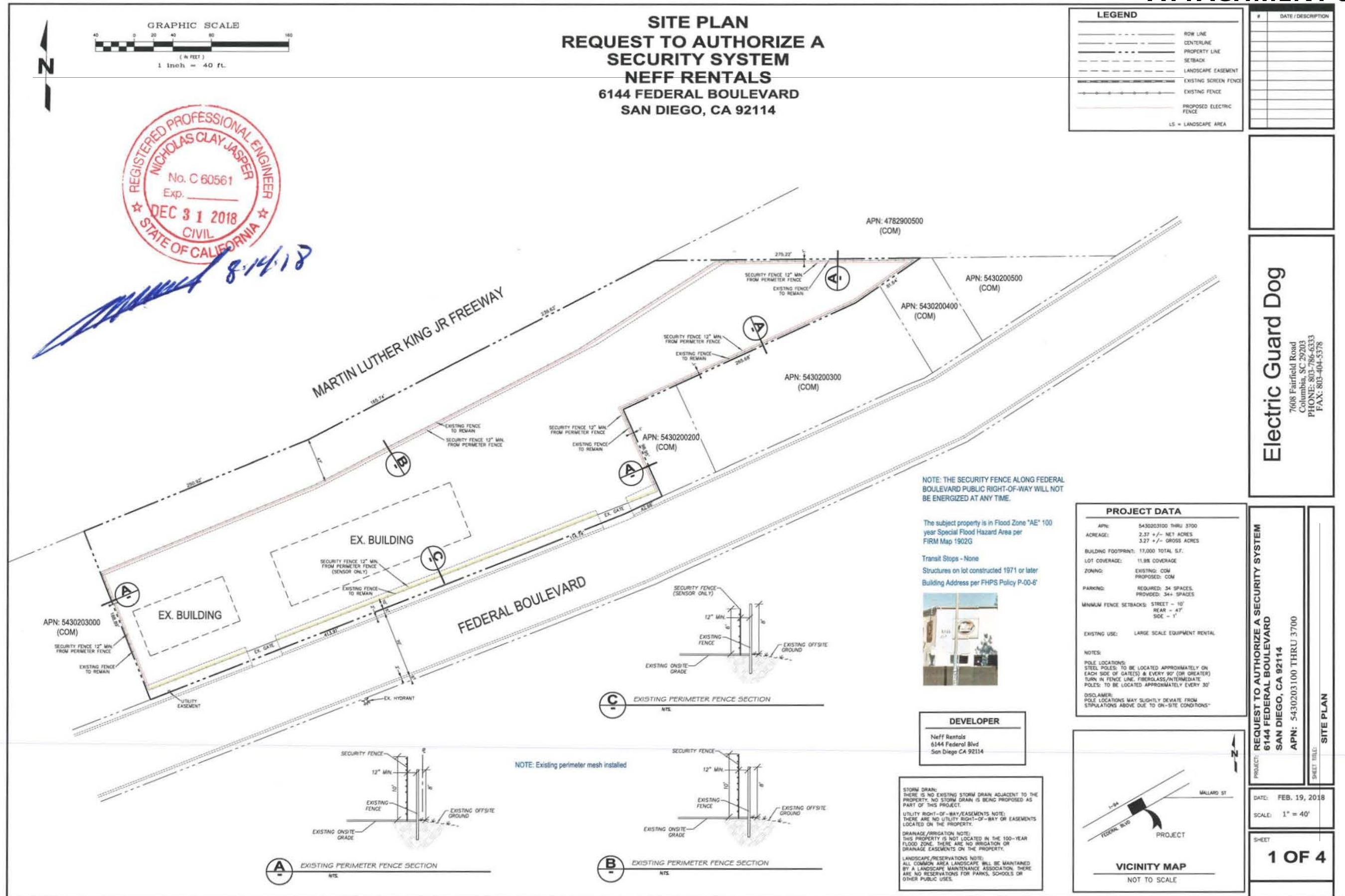
T 619-446-5190

SanDiego.gov

Visit SanDiego.gov/DSD to pay invoices, schedule inspections, check project status, request a code enforcement investigation and other online services.

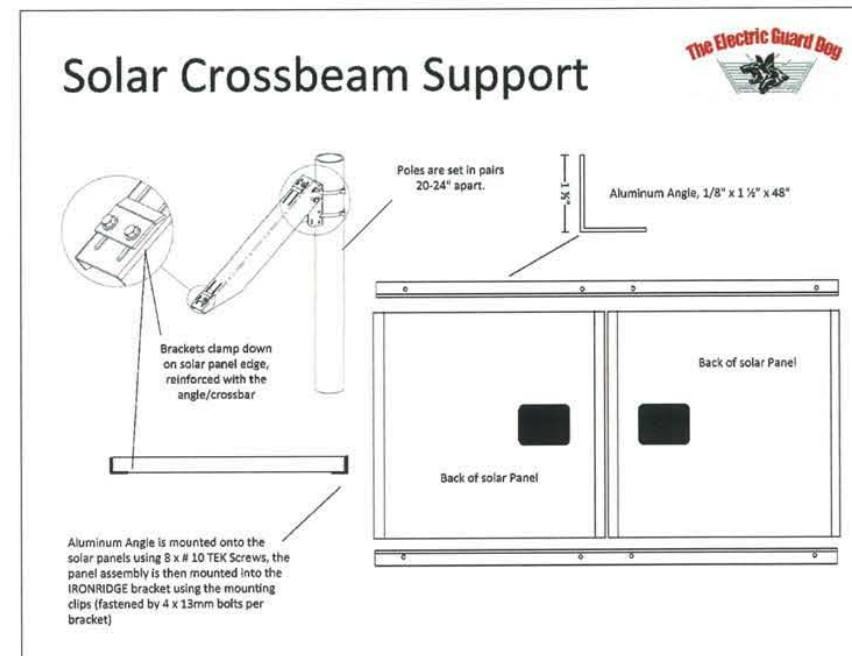
CONFIDENTIAL COMMUNICATION

This electronic mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not an intended recipient, or the employee or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you



2 OF 4

3 OF 4

[illegible]

Electric Guard Dog
7608 Fairfield Road
Columbia, SC 29203
PHONE: 803-786-6333
FAX: 803-404-5378

PROJECT: REQUEST TO AUTHORIZE A SECURITY SYSTEM
 6144 FEDERAL BOULEVARD
 SAN DIEGO, CA 92114
 APN: 5430203100 THRU 3700

DATE: JAN. 24, 2015

SCALE: N/A

SHEET

4 OF 4



[Signature] 8-12-18

ATTACHMENT 9



City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☐ Conditional Use Permit
☒ Variance ☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment • ☐ Other _____

Project Title
VARIANCE REQUEST FOR 10-FT HIGH, 12-VOLT DC BATTERY OPERATED SECURITY FENCE INSIDE THE EXISTING PERIMETER FENCE.

Project No. For City Use Only

482367

Project Address:

6144 FEDERAL BLVD

Part I - To be completed when property is held by Individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ Yes ☒ No

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

ATTACHMENT 9

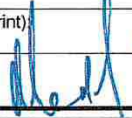
Project Title: VARIANCE REQ FOR 10-FT HIGH SECURITY FENCE INSIDE PERIMETER FENCE	Project No. (For City Use Only)
--	--



Part II - To be completed when property is held by a corporation or partnership

Legal Status (please check):

☒ Corporation ☐ Limited Liability -or- ☐ General) What State? NJ Corporate Identification No. 27-3496443
☐ Partnership

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property. Please list below the names, titles and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all corporate officers, and all partners in a partnership who own the property). A signature is required of at least one of the corporate officers or partners who own the property. Attach additional pages if needed. **Note:** The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process. **Additional pages attached** ☐ Yes ☒ No

Corporate/Partnership Name (type or print): NEFF RENTALS <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee Street Address: <u>3750 NW 87th Ave Ste 400</u> City/State/Zip: <u>Miami, FL 33178</u> Phone No: <u>305-513-3350</u> Fax No: <u>305-513-4156</u> Name of Corporate Officer/Partner (type or print): <u>MARK IRION</u> Title (type or print): <u>CEO</u> Signature :  Date: <u>3/14/16</u>	Corporate/Partnership Name (type or print): <input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee Street Address: City/State/Zip: Phone No: Fax No: Name of Corporate Officer/Partner (type or print): Title (type or print): Signature : Date:
Corporate/Partnership Name (type or print): <input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee Street Address: City/State/Zip: Phone No: Fax No: Name of Corporate Officer/Partner (type or print): Title (type or print): Signature : Date:	Corporate/Partnership Name (type or print): <input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee Street Address: City/State/Zip: Phone No: Fax No: Name of Corporate Officer/Partner (type or print): Title (type or print): Signature : Date:
Corporate/Partnership Name (type or print): <input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee Street Address: City/State/Zip: Phone No: Fax No: Name of Corporate Officer/Partner (type or print): Title (type or print): Signature : Date:	Corporate/Partnership Name (type or print): <input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee Street Address: City/State/Zip: Phone No: Fax No: Name of Corporate Officer/Partner (type or print): Title (type or print): Signature : Date:

	City of San Diego Development Services 1222 First Ave., MS-302 San Diego, CA 92101	Development Permit/ Environmental Determination Appeal Application	FORM DS-3031 November 2017						
In order to assure your appeal application is successfully accepted and processed, you must read and understand <u>Information Bulletin 505, "Development Permits/Environmental Determination Appeal Procedure."</u>									
1. Type of Appeal: <input checked="" type="checkbox"/> Appeal of the Project <input type="checkbox"/> Appeal of the Environmental Determination									
2. Appellant: Please check one <input checked="" type="checkbox"/> Applicant <input type="checkbox"/> Officially recognized Planning Committee <input type="checkbox"/> "Interested Person" (Per M.C. Sec. 113.0103)									
Name: ELECTRIC GUARD DOG LLC / KEITH KANEKO		E-mail: CBAUSINGER@ELECTRICGUARDDOG.COM							
Address: 550 ASSEMBLY ST 5TH FL	City: COLUMBIA	State: SC	Zip Code: 29201						
Telephone: 803-404-6189									
3. Project Name: NEFF/UNITED RENTALS LOW VOLTAGE PERIMETER SECURITY SYSTEM									
4. Project Information <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;">Permit/Environmental Determination & Permit/Document No.:</td> <td style="width: 30%;">Date of Decision/Determination</td> <td style="width: 30%;">City Project Manager:</td> </tr> <tr> <td>PTS 482367</td> <td>7/10/2019</td> <td>PAUL GODWIN</td> </tr> </table>				Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination	City Project Manager:	PTS 482367	7/10/2019	PAUL GODWIN
Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination	City Project Manager:							
PTS 482367	7/10/2019	PAUL GODWIN							
Decision(Describe the permit/approval decision): THE REQUEST IS FOR A VARIANCE TO ALLOW AN 8-10FT, LOW VOLTAGE, PERIMETER SECURITY SYSTEM INSIDE THE EXISTING PERIMETER BARRIER. THE SECTION OF FENCING ALONG FEDERAL BLVD WILL NOT BE ENERGIZED; IT WILL ONLY BE AN AUDIBLE ALARM IF COMPROMISED. THE HEIGHT ALONG FEDERAL WILL ALSO ONLY BE 8-FT TALL, NOT 10.									
5. Ground for Appeal(Please check all that apply): <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Factual Error <input type="checkbox"/> Conflict with other matters <input checked="" type="checkbox"/> Findings Not Supported </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> New Information <input type="checkbox"/> City-wide Significance (Process Four decisions only) </td> </tr> </table>				<input type="checkbox"/> Factual Error <input type="checkbox"/> Conflict with other matters <input checked="" type="checkbox"/> Findings Not Supported	<input type="checkbox"/> New Information <input type="checkbox"/> City-wide Significance (Process Four decisions only)				
<input type="checkbox"/> Factual Error <input type="checkbox"/> Conflict with other matters <input checked="" type="checkbox"/> Findings Not Supported	<input type="checkbox"/> New Information <input type="checkbox"/> City-wide Significance (Process Four decisions only)								
Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in <u>Chapter 11, Article 2, Division 5 of the San Diego Municipal Code</u> . Attach additional sheets if necessary.) <div style="text-align: center; font-size: 1.2em; margin-top: 20px;">PLEASE SEE ATTACHED FOR DESCRIPTION OF GROUNDS FOR APPEAL</div> <div style="text-align: center; margin-top: 50px;">  </div>									
6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.									
Signature: <u>Keith Kaneke</u>		Date: <u>7-22-19</u>							
Note: Faxed appeals are not accepted.									



The #1 Theft Deterrent Service in the U.S.

**550 Assembly St., 5th Floor
Columbia, SC 29201**

UNITED RENTALS AKA NEFF RENTALS – DESCRIPTION OF GROUNDS FOR APPEAL
FINDINGS NOT SUPPORTED

To the Planning Commission of the City of San Diego,

On July 10th, 2019, Hearing Officer Duke Fernandez reviewed Report No. HO-19-066 and denied our request for a variance (No. 1698050). Staff had conducted a diligent and comprehensive review of the project and was recommending approval. Despite these efforts and a recommendation of approval, Mr. Fernandez opined that our project does not meet Variance findings - items a., b., and c. in the Report to the Hearing Officer (SDMC Section 126.0805).

The Grounds for Appeal are founded on a concern that our proposal and associated justifications were not applicably considered, nor accurately interpreted. As such, we respectfully request to appeal the decision made by the Hearing Officer and ask for thorough consideration by the Planning Commission.

Listed below is a summary of special circumstances and conditions that uniquely apply to the property:

1. Outdoor Storage Required: Extensive inventory of high-value equipment, tools, and vehicles that must be stored outdoors
2. Property Characteristics: The unique shape of the lot, in conjunction with the location of the property, compromises the ability to effectively secure the facility with other security measures; much of the property boundary is not readily viewable by law enforcement or the passerby, and thereby offers concealment for the criminal class to discretely trespass onto the property.
3. Permitted Use Type: The property is permitted as an equipment rental facility and the nature of their business is bound by a necessity to display and store heavy equipment, tools and vehicles in their outdoor lot – there is no option to store most of these assets indoors.
4. Community Planning Group: Chollas Valley Community Planning Group heard the proposed project and recommended approval without conditions
5. Crime History: this property has had a consistent experience with trespass and associated theft (stolen equipment, tools, etc.), often resulting in significant losses associated with replacement costs, missed deliveries to customers, and associated work hours to resolve the aftermath of a crime incident (equipment damage repair, administrative tasks, customer response and relations, etc.)

Each of the abovementioned items will be presented and expanded upon at the forthcoming appeal hearing before the Planning Commission.

Without the granting of this Variance, the trespassing criminal class will be able to access the project site with ease and continue to burglarize the property. Thus, the strict application of the Code would result

in a practical difficulty and unnecessary hardship for this property. Moreover, the granting of the variance will be in harmony with the general purpose and intent of the regulations - the general safety and welfare of the public will be enhanced, crime will be prevented, and the city can redirect police resources and energy toward crime other than property break-ins and theft.

The variance is the necessary mechanism to relieve a practical difficulty and resultant hardship. Cameras record crime and don't prevent it, guards are unreliable (don't show up for work, sleep on the job, and at times are complicit in the criminal action) and other forms of intrusion detection are passive and/or reactive. The proposed perimeter security system is a proactive security system that deters the criminal class from attempting to commit a crime on a property. Even more, the installation of this system will monitor the property and increase the security of the surrounding properties and immediate area by deterring the criminal element from targeting the property and neighborhood.

Our project meets the variance findings, as evidenced by Staff's recommendation of approval in the Report to the Hearing Officer. As such, we respectfully request thorough consideration by the Planning Commission and that approval be granted for this variance. Much appreciated.

Respectfully,



Keith Kaneko
Director of Business Development

Electric Guard Dog, LLC
916-532-6012
kkaneko@electricguarddog.com
electricguarddog.com

Follow us:



PLANNING COMMISSION
RESOLUTION NO. _____
VARIANCE NO. 1698050
NEFF RENTAL VARIANCE - PROJECT NO. 482367

WHEREAS, Neff Rentals, Inc., Owner, and Electric Guard Dog LLC, Permittee, filed an application with the City of San Diego for a Variance to allow for the electrification of an existing perimeter fence at an existing equipment rental company (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Variance No. 1698050), on portions of a 3.27-acre site;

WHEREAS, the project site is located at 6144 Federal Boulevard in the CO-2-1 Zone, in the Encanto Neighborhoods Community Plan;

WHEREAS, the project site is legally described as Lots 8 through 14, inclusive of Encanto Industrial Park, according to Map No. 7035, filed August 30, 1971, in the County and City of San Diego;

WHEREAS, on February 25, 2019, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) under CEQA Guideline Section 15303(e), and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

WHEREAS, on July 10, 2019, the Hearing Officer of the City of San Diego denied Variance No. 1698050, pursuant to the Land Development Code of the City of San Diego:

WHEREAS, on July 23, 2019, an appeal of the of the Hearing Officer's decision to deny the Variance was filed by the applicant;

WHEREAS, on September 26, 2019, the Planning Commission of the City of San Diego considered an appeal of the Hearing Officer's July 10, 2019, decision to deny Variance No. 1698050 pursuant to the Land Development Code of the City of San Diego;

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of San Diego, that it adopts the following findings with respect to Variance No. 1698050:

VARIANCE [SDMC Section 126.0805]

- a. **There are special circumstances or conditions applying to the land or premises for which the variance is sought that are peculiar to the land or premises and do not apply generally to the land or premises in the neighborhood, and these conditions have not resulted from any act of the applicant after the adoption of the applicable zone regulations.**

The proposed project would allow for the electrification of an existing 10-foot tall open fence surrounding an existing 3.27-acre equipment rental facility at 6144 Federal Boulevard. The site is surrounded by similar commercial/industrial development to the east and west, State Route (SR) 94 to the north and single-family residential development to the south.

The existing equipment rental establishment complies with the Encanto Neighborhoods Community Plan land use designation of Community Commercial with residential development prohibited. Although the Community Plan does not specifically address electric fences, the project would further several policies of the plan, including Community Plan Land Use Policy No. P-LU-43 "Improve access, visibility, and site conditions along Federal Boulevard to improve the attractiveness of this corridor for warehouse, distribution, and light industrial businesses". Approval of the variance to allow an electric fence would increase the attractiveness of the site by allowing proper security of the facility and equipment stored onsite, ensuring the long-term viability of the site for similar commercial uses. The project would also further Community Plan Urban Design Policy No. P-UD-62 "Buildings and grounds that "self-police" so that residents may participate in its security".

There are special circumstances applying to the premises in that the longest frontage (626.28 linear feet) of the irregular, "L" shaped site is adjacent to SR-94. Due to the "L" shaped site configuration, 338.32 linear feet of the southern property line is separated from the Federal Boulevard frontage by another parcel and commercial development. Therefore, a large portion of the equipment storage yard is located behind existing development and is not visible from Federal Boulevard, reducing site security.

Of the 22 commercial other lots located between Federal Boulevard and SR-94 within the City of San Diego, 21 are rectangular, allowing for greater site security due to their increased visibility from the street. The project site configuration, including over 1,300 linear feet of perimeter to be secured, creates security challenges and provides greater

opportunity for trespassing, vandalism and theft due to decreased visibility from the street, exposure to transient activity and ease of access from SR-94. The site is located approximately 800 feet east of the SR-94 westbound onramp, further increasing opportunities for theft. The applicant has also indicated that a consistent history at the site, including trespassing, theft and vandalism has resulted in significant monetary losses.

These circumstances deprive the applicant of reasonable use of the property in that providing security for their large inventory of rental equipment stored outdoors is challenged by vulnerability to theft and vandalism due to the configuration of the site and its proximity to SR-94.

- b. The circumstances or conditions are such that the strict application of the regulations of the Land Development Code would deprive the applicant of reasonable use of the land or premises and the variance granted by the City is the minimum variance that will permit the reasonable use of the land or premises.**

The proposed project would allow for the electrification of an existing 10-foot tall open fence surrounding an existing 3.27-acre equipment rental facility at 6144 Federal Boulevard. The site is surrounded by similar commercial/industrial development to the east and west, SR-94 to the north and single-family residential development to the south.

There are special circumstances applying to the premises in that the longest frontage (626.28 linear feet) of the irregular, "L" shaped site is adjacent to SR-94. Due to the "L" shaped site configuration, 338.32 linear feet of the southern property line is separated from the Federal Boulevard frontage by another parcel and commercial development. Of the 22 commercial lots located between Federal Boulevard and SR-94 within the City of San Diego, 21 are rectangular, allowing for greater site security due to their increased visibility from the street. Because of the project site's "L" shape configuration, a large portion of the equipment storage yard is located behind existing development and is not visible from Federal Boulevard.

The site configuration, including over 1,300 linear feet of perimeter to be secured, creates security challenges and provides greater opportunity for trespassing, vandalism and theft due to decreased visibility from the street, exposure to transient activity and ease of access from SR-94. These circumstances deprive the applicant of reasonable use of the property in that providing security for their large inventory of rental equipment stored outdoors is challenged by vulnerability to theft and vandalism due to the configuration of the site and its proximity to SR-94. The project has been conditioned to not electrify the portion of fence located along the Federal Boulevard right-of-way, closest to the adjacent residential development, as this area is the least vulnerable for security and would represent the minimum variance needed to permit reasonable use of the premises.

- 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 portion of fence located adjacent to the Federal Boulevard public right-of-way, closest to the residentially-zoned properties, would not be energized. Only the fence sections located next to the adjacent commercial/industrial development and the SR-94 frontage would be energized. Additionally, the Federal Boulevard right-of-way is 70 feet wide with four travel lanes and a turning lane, providing a physical buffer between the electrified fence and adjacent residential properties.

There is a six- to eight-foot tall non-electrified perimeter fence located between the property line and the 10-foot tall electric fence, with a minimum 12-inch separate between the two fences. This combination of two fences prevents anyone outside of the property from contacting the electric fence without first scaling the non-electrified fence. In addition, the project is conditioned to provide electric fence warning signage every 60 linear feet to warn individuals coming near the fence.

The electrified portion of the fence is required to comply with California Civil Code Section [835](#), and International Electrotechnical Commission (IEC) Section [60335-2-76](#), which regulate the safety, power output, installation, and operational requirements of electric fences. These regulations ensure that electric fence function as a crime deterrent while not posing a health risk to individuals who may contact the fence. Therefore, 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.

- d. The granting of the variance will not adversely affect the applicable land use plan. If the variance is being sought in conjunction with any proposed coastal development, the required finding shall specify that granting of the variance conforms with, and is adequate to carry out, the provisions of the certified land use plan.**

The existing equipment rental establishment complies with the Encanto Neighborhoods Community Plan land use designation of Community Commercial with residential development prohibited. Although the Community Plan does not specifically address electric fences, the project would further several policies of the plan, including Community Plan Land Use Policy No. P-LU-43, "Improve access, visibility, and site conditions along Federal Boulevard to improve the attractiveness of this corridor for warehouse, distribution, and light industrial businesses". Approval of the variance to allow an electric fence would increase the attractiveness of the site by allowing proper security of the facility and equipment stored onsite, ensuring the long-term viability of the site for similar commercial uses.

The project would also further Community Plan Urban Design Policy No. P-UD-62, "Buildings and grounds that "self-police" so that residents may participate in its security". Therefore, granting of the variance will not adversely affect the applicable land use plan. The site not located within the Coastal Zone, therefore a Coastal Development Permit is not required.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

ATTACHMENT 3

BE IT FURTHER RESOLVED that, the appeal is granted, and the Hearing Officer's decision is reversed, based on the findings hereinbefore adopted by the Planning Commission, Variance No. 1698050 is hereby APPROVED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Variance No. 1698050, a copy of which is attached hereto and made a part hereof.

Paul Godwin
Development Project Manager
Development Services

Adopted on: September 26, 2019

IO#: 24006595

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION
501

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

INTERNAL ORDER NUMBER: 24006595

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PLANNING COMMISSION
VARIANCE NO. 482367

NEFF RENTAL VARIANCE - PROJECT NO. 482367

This Variance No. 1698050 is granted by the Planning Commission of the City of San Diego to Neff Rentals Inc., Owner, and Electric Guard Dog LLC, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0802 (Variance). The 3.27-acre site is located at 6144 Federal Boulevard in the CO-2-1 Zone, in the Encanto Neighborhoods Community Plan. The project site is legally described as Lots 8 through 14, inclusive of Encanto Industrial Park, according to Map No. 7035, filed August 30, 1971, in the County and City of San Diego.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to allow the electrification of an existing perimeter fence at an existing equipment rental establishment described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated September 26, 2019, on file in the Development Services Department.

The project shall include:

- a. A Variance to allow the electrification of an existing 10-foot tall, open perimeter fence surrounding the existing equipment rental establishment. The portion of fence fronting on Federal Boulevard shall not be electrified. The project will maintain a non-electrified, six- to eight-foot tall, open perimeter fence, serving as a buffer between the property line and the 10-foot tall electrified fence.
- b. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36-month period, this permit shall be void unless an Extension of Time has

been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by September 26, 2022.

2. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
3. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
4. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
5. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
6. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
7. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.
8. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.
9. If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

PLANNING/DESIGN REQUIREMENTS:

11. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

12. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

13. The portion of fence facing the Federal Boulevard right-of-way shall not be energized at any time. All other interior 10-foot tall fence frontages may be energized.

14. The Owner/Permittee shall place warning signs indicating the presence of an electrified fence a minimum of one sign per 60 linear feet of fencing. These signs shall be placed on both of the fences so that warning is provided to individuals both inside and outside the property.

INFORMATION ONLY:

- The issuance of this discretionary permit alone does not allow the immediate commencement or continued operation of the proposed use on site. Any operation allowed by this discretionary permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.

ATTACHMENT 4

- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on September 26, 2019, and
Resolution No. ??

ATTACHMENT 4

Permit Type/PTS Approval No.: Variance No. 1698050

Date of Approval: September 26, 2019

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Paul Godwin
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

Neff Rentals, Inc.
Owner

By _____
NAME
TITLE

Electric Guard Dog LLC
Permittee

By _____
NAME
TITLE

Godwin, Paul

From: Maxwell, Stacie on behalf of DSD HearingOfficer
Sent: Friday, July 5, 2019 2:23 PM
To: Fernandez, Duke
Cc: Daly, Tim; Brazier, Noah; Godwin, Paul
Subject: FW: An Electrified Fence

FYI

Stacie L. Maxwell
Legislative Recorder
City of San Diego
Development Services Department
T (619) 446-5332
smaxwell@sandiego.gov

CONFIDENTIAL COMMUNICATION

This electronic mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not an intended recipient, or the employee or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.

-----Original Message-----

From: city_heights@yahoo.com [mailto:city_heights@yahoo.com]
Sent: Friday, July 05, 2019 11:08 AM
To: DSD HearingOfficer <HearingOfficer@sandiego.gov>
Cc: Maxwell, Stacie <SMaxwell@sandiego.gov>
Subject: An Electrified Fence

Postoffice Box 5859
City Heights CA 92165
July 5, 2019

The Hearing Officer
Development Services Department
1222 First Avenue
San Diego CA 92101

Dear Mr. Fernandez,

Next Wednesday you will hear the Neff Rentals application

(PTN482367) to electrify a fence around a rental storage facility at 6144 Federal Boulevard in the Encanto Neighborhoods Community Plan area. The Municipal Code (§142.0360) allows electrified fences in special areas for special reasons, and otherwise the MC forbids electrified fences. Municipal Code §126.0802 authorizes variances, except for density increases, but does not relieve applicants of the burden to justify requested variances.

MC §142.0360 is a sensible, reasonable regulation, designed to protect urban citizens and wildlife from electrification. The Hearing Officer should not lightly allow a variance. The justification for a variance should show overwhelmingly that an electrified fence is a good idea in the proposed circumstance, and the Hearing Officer should not accept claims of potential intrusion and theft, or claims of profit reduction as part of the justification. Those can be managed by other forms of security, by less dangerous anti-crime features at the premises, and by insurance coverage for potential losses.

The Hearing Officer should also consider whether granting the variance establishes a precedent to be used more and more frequently by other storage facility owners, and then likely by other businesses. Electrified fences are suitable features in rural and agricultural areas owing to the small populations of individuals who understand electrified fences. They are not suitable features in urban settings filled with citizens who do not understand electrified fences; who often do not know what an electrified fence is. The Municipal Code correctly recognizes that fact and provides for it by forbidding electrified fences. If the Hearing Officer grants the variance, even with conditions, the Hearing Officer's justification must include a discussion of the safety aspects of this and future electrified fences for naïve individuals in urban settings.

Jim Varnadore
City Heights



Looking east down eastbound SR-94, project site on right, immediately adjacent to freeway



Looking west down Federal Boulevard, project site and entrance on right. Existing residential on the left on opposite side of the street



Looking west down Federal Boulevard, just east of the project site towards adjacent commercial/industrial development in the City of Lemon Grove.



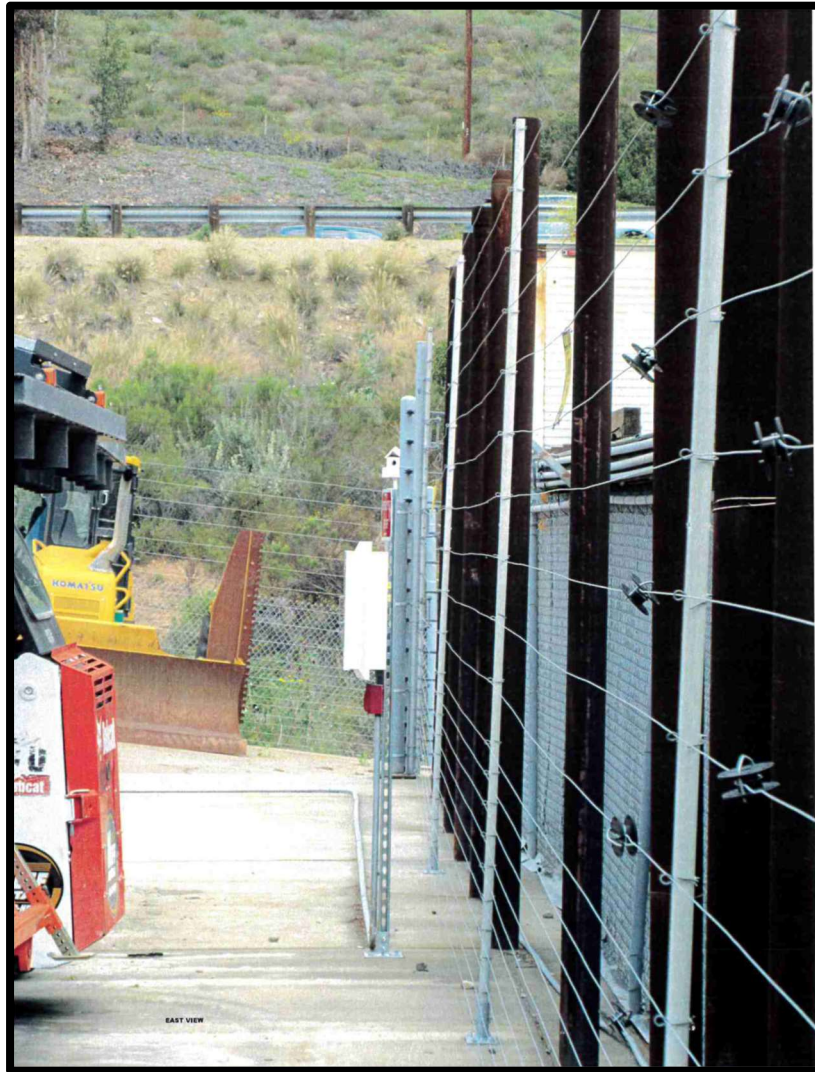
Residentially-zoned land located just south of the project site, across Federal Boulevard (towards east of project site border)



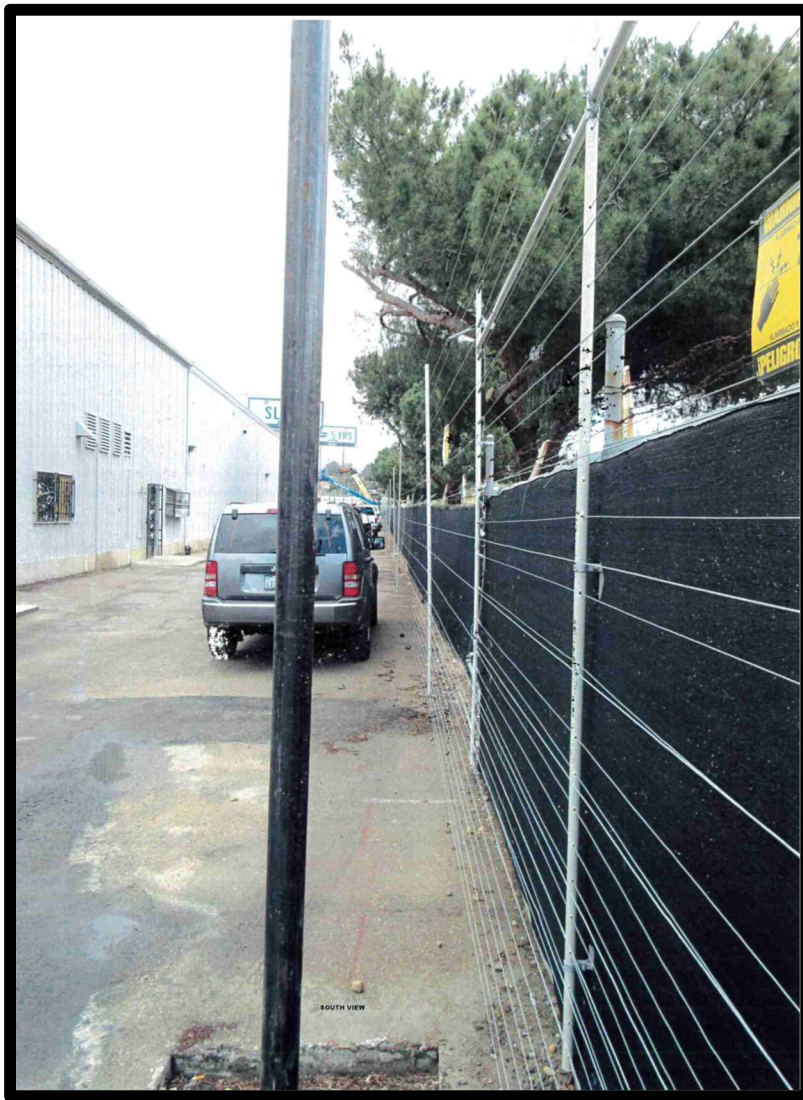
Residentially-zoned land located just south of the project site, across Federal Boulevard (towards west of project site border)



Typical view of fence to be electrified, located interior to project site



Typical view of fence to be electrified at interior of site, with non-electrified fence at perimeter. Existing non-electrified fence is located between the electrified fence and the property line, creating a buffer so those outside the property cannot contact the electrified fence without scaling the non-electrified perimeter fence.



Typical view of dual fences along Federal Boulevard. With Variance approval, neither fence would be electrified along the Federal Boulevard Frontage.



Typical view of dual fences, with fence to be electrified located interior to the site.



Outdoor equipment storage