



City of Pomona
505 S. Garey Avenue
Pomona, CA 91769
City Clerk's Office – (909) 620-2341

Appeal of Planning Commission Action

City's Project Identification Number(s): CUP No. 000360-2024

Name of Project Applicant: AG-5R Pomona Owner LLC

Project Address (Location): 1313 East Phillips Boulevard

Date of Planning Commission Action: May 8, 2024

I, the undersigned, hereby appeal the identified action of the City of Pomona Planning Commission:

☒ Denial of Project.


☐ Conditions of Approval (specify): _____

☐ Other (explain): _____

I, the undersigned, hereby appeal the action of the Planning Commission for the following reason(s)
(please be specific, add additional pages if necessary):

Please see attached correspondence.

Section 560F of the Pomona Zoning Ordinance specifies that decisions of the Planning Commission are final unless appealed in writing by the applicant or any other interested person (as defined in the Code) within 20 calendar days from the date of the action. In accordance with Chapter 29 (Subdivisions), Section 29-51, Appeals, the appeal of the Planning Commission decision to the City Council with respect to tentative maps and parcel maps shall be filed within fifteen (15) days from the date of action. The appeal shall be accompanied by a filing fee as adopted by the City Council by resolution. The appeal form shall be filed with the Pomona City Clerk's Office, 505 S. Garey Ave., Pomona, CA 91769.


James Hoi (May 25, 2024 11:35 PDT)

Signature

Benjamin Miller (AG-5R Pomona Owner LLC)

Print Name

3349 Michelson Drive, Suite 200

Address

Irvine, CA 92612

City State Zip Code

201-723-1269

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Via Electronic Mail & Messenger

May 28, 2024

Pomona Mayor and City Council
Pomona City Hall
505 South Garey Ave.
Pomona, CA 91766

Re: Appeal of Planning Commission's Denial of CUP-000360-2024
Applicant/Appellant: AG-5R Pomona Owner LLC
Property Address: 1313 East Phillips Boulevard

Dear Honorable Mayor Tim Sandoval and Honorable Pomona City Council Members:

Pursuant to Pomona Zoning Ordinance (“**PZO**”) Section .580(F), Applicant and Appellant AG-5R Pomona Owner LLC (“**AG-5R**”) submits this letter to you in support of its appeal of the May 8, 2024 decision of the Pomona Planning Commission (the “**Planning Commission**”) denying AG-5R’s application to develop an outdoor storage facility on the approximately 11 acre site located at 1313 East Phillips Boulevard in the City of Pomona, California 91766 (the “**Property**”).¹

Specifically, AG-5R requests the City Council reverse the Planning Commission’s May 8, 2024 denial of AG-5R’s application for Conditional Use Permit 000360-2024 (the “**CUP No. 000360-2024**”). The Planning Commission’s denial of CUP No. 000360-2024 was improper and unsupported by substantial evidence and should therefore be vacated and overturned by the City Council because, contrary to the Planning Commission’s determination, the findings necessary to grant the CUP can properly be made in accordance with PZO Section .580(B).

For the reasons outlined above and discussed more fully below, and any other grounds that may be presented to the City in connection with this matter, AG-5R respectfully submits this petition requesting that the City Council consider AG-5R’s appeal of the Planning Commission’s denial and, having done so, vacate and overturn the City’s erroneous decision and approve CUP No. 000360-2024.

¹ Assessor’s Parcel Numbers: 8327-021-018, 8327-021-023, 8327-021-024, 8327-021-029.

I. FACTUAL BACKGROUND.

A. The Property & Existing Entitlements.

Use and development of the Property is governed by the PZO and Conditional Use Permit 03-028, which was approved by the City Council in 2004 and authorized use of the Property as a wood recycling facility. (Resolution No. 2004-120, May 17, 2004 [the “**2004 CUP**”].)

The Property was operated as a wood recycling facility under the 2004 CUP prior to and after its acquisition by AG-5R in 2022. And as the 2004 CUP is fully vested, lacks an expiration date, and was authorized by the City Council pursuant to a settlement agreement between RWP Transfer, Inc., a predecessor in interest to AG-5R, and the City, it remains valid today. (*See* RWP Transfer, Inc. v. City of Pomona, Los Angeles County Superior Court Case No. BS087657; PZO, § .580.) Accordingly, AG-5R can continue this use of the Property and any effort to revoke the 2004 CUP by the City Council, including pursuant to uncodified Ordinances No. 4268 and No. 4234, would be unlawful under the well-established principles of California law governing vested rights. (*See Malibu Mountains Recreation, Inc. v County of Los Angeles* (1998) 67 Cal. App. 4th 359, 368-370.)

Notwithstanding the ability to continue the wood recycling use, AG-5R is willing to voluntarily relinquish the 2004 CUP in exchange for CUP No. 000360-2024, which would allow for establishment of new and cleaner uses at the Property compatible with the City’s vision for its future. Indeed, after extensive discussions with City staff and elected officials, City Manager Anita Gutierrez proposed that AG-5R seek approval of a CUP that would authorize a limited range of outdoor storage uses, and, upon approval, AG-5R would voluntarily relinquish the 2004 CUP. In line with this suggestion, and in a good faith effort to honor the community’s desire to eliminate the wood recycling use, in 2024, AG-5R applied for CUP No. 000360-2024 to authorize establishment of an industrial facility on a lot greater than one acre in size in the City’s M-2 (General Industrial) zone. Specifically, CUP No. 000360-2024 would allow for establishment of a limited number of outdoor storage uses at the Property (the “**Project**”). These uses are further described in the Staff Report and accompanying attachments dated May 8, 2024 (the “**Project Staff Report**”). A copy of the Project Staff Report is attached hereto as **Exhibit A**.

After working with Ata Khan, Deputy Director of the City’s Development Services Department, for several months to refine and condition the uses sought for approval, CUP No. 000360-2024 was scheduled for public hearing before the City’s Planning Commission on May 8, 2024.

B. City Staff Recommended Approval, But the Planning Commission Arbitrarily Denied Approval of CUP No. 000360-2024 Without Evidence.

In the Project Staff Report, Deputy Director Khan recommended that the Planning Commission approve CUP No. 000360-2024 subject to recommended conditions of approval. (Exhibit A, p. 1.)

Among other things, the Project Staff Report found that:

- the Property is surrounded by parcels zoned M-2 (General Industrial) and M-1 (Light Industrial);
- the staff worked to eliminate the “speculative nature of the request” and that by enumerating the “specific outdoor storage items that are permitted, and . . . prohibited” the City can “meaningfully and effectively regulate [the] . . . outdoor storage yard”;
- the risk to public health and safety is addressed by imposing a “45 percent storage coverage [limit] on the site,” which limit has in staff’s experience been “effective to reduce fire and safety hazard risks”;
- the Project would “eliminate the potential of a new wood recycling facility . . . which has been associated with serious environmental justice impacts and concerns in the neighboring community”; and
- the “prohibition of storage containers and truck trailers on site” has been included to prevent “the outdoor storage yard becoming a . . . trucking facility or product transportation/fulfillment-oriented use.”

Exhibit A, pp. 2-4.

At the hearing before the Planning Commission on May 8, 2024, Deputy Director Khan gave a presentation in support of the Project. As set forth in the Project Staff Report, Deputy Director Khan’s recommendation was to approve the Project. Benjamin Miller, on behalf of AG-5R, also gave a presentation in support of the Project.

At the hearing, the Planning Commission refused to approve the Project. The decision was arbitrary, as demonstrated by the fact that no evidence was offered in opposition to the Project at the hearing. In fact, the only opposition to the Project was unsubstantiated opinion testimony from two residents of the City, who expressed concern with outsiders operating businesses in the City, and three representatives of Clean & Green Pomona, who made unsubstantiated and far-reaching claims regarding the impacts of industrial uses on residents of the City and the Project’s noncompliance with the City’s General Plan. No evidence was offered to establish that the Project, as conditioned and described in Project Staff Report, would have the deleterious impacts on the community proffered by

the members of Clean & Green Pomona and the Planning Commissioners at the hearing. Furthermore, written comments distributed by members of Clean & Green Pomona at the hearing made no effort to evaluate the impacts that might result from the uses proposed for the Property, failed to reference the Property's location in the City and the unique General Plan policies that apply as a result, and offered no evidence, technical or otherwise, establishing health impacts that could result from the Project. Indeed, contrary to the written comments submitted by Clean & Green Pomona, City staff concluded that the Project would not result in a significant effect on the environment, as evidenced by staff's conclusion that the Project was categorically exempt from the California Environmental Quality Act (Public Resources Code, §§ 21084 *et. seq.*).

Subsequently, following denial, AG-5R was provided with draft findings regarding the denial of CUP No. 000360-2024 (the "**Denial Findings**").² As set forth in Section II below, these findings are entirely unsupported by substantial evidence.

II. THE CITY COUNCIL MUST REVERSE THE PLANNING COMMISSION'S DECISION AND APPROVE CUP NO. 000360-2024.

Under section .580(D)(5) of the PZO, following a hearing, the Planning Commission must "make a determination and announce its decision" to approve, approve conditionally, or deny an application for a Conditional Use Permit and must "set forth findings in support of the decision." The findings and the decision both must be supported by substantial evidence, or the decision should be reversed. (*See Topanga Assn, for the Scenic Community v. County of LA.* (1974) 11 Cal. 3d 506, 514; *McMillan v. Am. Gen. Fin. Corp.* (1976) 60 Cal. App. 3d 175, 177; Code Civ. Proc., § 1094.5.)

Substantial evidence "include[s] facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts, but not argument, speculation, unsubstantiated opinion, or clearly erroneous evidence." (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal. App. 4th 666, 675.) Further, to support denial, an agency "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga, supra*, 11 Cal. 3d at p. 515.) If, based on the evidence before the agency, a reasonable person could not reach the conclusion the agency reached, the decision should be reversed.

Here, the findings made by the Planning Commission to deny the Project are supported by no evidence, let alone substantial evidence. And, as is set forth clearly below in the analysis of the denial findings, not only was there no evidence to support the denial, but the evidence supports the opposite – approval of the Project.

² AG-5R reserves the right to submit additional evidence upon receipt of the final denial resolution from the City.

Denial Finding 1. *The proposed use of the subject site for industrial development, specifically the outdoor storage of materials and equipment, will not contribute to the general well-being of the neighborhood and the community as [AG-5R] cannot assure that it would prove a local storage use for machinery, equipment, and other tools that can be used by local manufacturers and related uses in the City's workplace districts. Furthermore, the potential generation of dust, debris, odor, and noise will not contribute to the well-being of the neighborhood or community.*

AG-5R strongly disagrees that the Project would negatively impact the surrounding property owners, especially considering the permitted wood recycling use that has operated at the Property. For more than two decades, the wood recycling use at the Property has resulted in generation of particulate matter, carbon emissions noise pollution, fires, truck traffic, and visual impacts to the nearby properties. AG-5R is now offering the City a chance to replace that use with a cleaner light industrial storage use that will result in decreased noise impacts, no risk of fire, greatly decreased truck traffic, and increased screening to lessen the visual impact on the surrounding property owners. Indeed, the uses proposed in connection with CUP No. 000360-2024 were specifically selected for their low impact and lack of particulate matter and other airborne particles. Furthermore, as set forth in Section I.B above, these uses have been conditioned to increase the safety of surrounding property owners and decrease the health and environmental impacts associated with the wood recycling use. Accordingly, permitting the requested light industrial uses will have a positive effect on the surrounding properties, will result in the abandonment of the less desirable and higher impact wood recycling use, and, most importantly, will reduce dust, debris, odor, and noise related impacts, thus enhancing the well-being of the community.

Second, as proposed, the Project will offer multiple opportunities for the storage of machinery, equipment, and other tools that will be used locally in the City. The City is amid a dramatic overhaul of the PZO that may result in the significant redevelopment of multiple underutilized areas of the City. Indeed, City staff have indicated the draft PZO set for adoption by the City Council will result in countless construction projects in the City, both involving new development and modifications to existing sites to bring them into compliance with new development and operational standards. Approval of CUP No. 000360-2024 will allow for the local staging and storage of materials, including, but not limited to, roofing, steel building components, precast concrete, tools, concrete and masonry, earthmoving equipment, ladders and scaffolding, and welding supplies. These and other construction materials and equipment that may be stored at the Property will be required for projects over the next decade that will build out the vision identified for the community in the draft PZO. Due to a variety of economic factors, including reduced transportation costs associated with local storage, developers, contractors, and other businesses that serve the construction sector will need to utilize equipment and construction material storage in the City and surrounding communities. Ensuring outdoor storage space, like that proposed in CUP No. 000360-2024, is available in the City will reduce truck trips, traffic and environmental impacts of construction projects in the City. Furthermore, the Project, and others like it, will ensure the City, rather than neighboring municipalities, captures the tax revenue and jobs generated by the development that City staff have indicated will result from adoption of the draft PZO. The City Council should focus on ensuring as much of the economic

activity resulting from the new PZO remains within the City. Projects like the one proposed today will ensure this is the case.

Denial Finding 2. *The applicant's request will be detrimental to the health, safety, peace, or general welfare of persons residing or working in the vicinity as the outdoor storage items requested would contribute to dust, debris, odor, or other public health impacts, including frequent truck trips.*

As discussed immediately above in the context of Denial Finding 1, AG-5R strongly disagrees that the Project will contribute to impacts such as dust, debris, odor, or other public health impacts, including frequent truck trips. The Project will only allow for the storage of a limited range of materials, none of which will generate dust, particulate matter, or odors in volumes significant enough to trigger public health and safety concerns. Furthermore, all operations at the site are subject to conditions, including lot coverage requirements, to ensure the impacts described in Denial Finding 2 do not occur.

Regarding truck trips, the evidence presented by Benjamin Miller to the Planning Commission demonstrated that a reduction of vehicle trips, compared to the existing wood recycling use, will occur. As opposed to the wood recycling use which required frequent truck traffic to and from the Property for deliveries and shipments of wood products, including trips by diesel trucks, outdoor storage uses result in far fewer average daily trips to and from the Property as compared with heavy manufacturing uses, like wood recycling, or warehousing or logistics uses. Indeed, notably absent from the list of proposed uses are warehousing or logistics uses or similarly truck intensive uses. As a result, the amount of carbon emissions and particulate matter pollution will greatly decrease with the approval of the authorized uses.

AG-5R is not requesting to, and has no desire to, engage in any other uses that would have greater environmental impacts, when compared with the impacts to be generated via uses authorized by CUP No. 000360-2024. Therefore, the concerns set forth in Draft Findings 2 are misplaced.

Denial Finding 3. *The subject site takes access from Grand Avenue and Phillips Boulevard, however there is insufficient evidence of how many truck trips may be generated by various storage types, and therefore it may not be adequate to handle traffic generated by the site.*

As noted above, evidence was presented to the Planning Commission that a reduction of vehicle trips, compared to the existing wood recycling use, will occur. As the Property is surrounded by a range of industrial uses, including multiple logistics warehouses and a public utility storage yard, all of which result in significant truck and vehicle trips, the Project's reduction in trips will help to reduce the ongoing traffic impacts on existing roadways in the City, contrary to the assertions in Denial Finding 3.

As opposed to the wood recycling use which required frequent truck traffic to and from the Property for deliveries and shipments of wood products, outdoor storage uses typically result in far fewer average daily trips to and from the Property as compared with heavy manufacturing uses. As

a result, the amount of carbon emissions and particulate matter pollution will greatly decrease with the approval of CUP No. 000360-2024.

Denial Finding 4. *The granting of this conditional use permit will adversely affect the General Plan of the City of Pomona. It would not strengthen the jobs base in the City, specifically in the Workplace District, or target industries that show growth potential for local jobs. The storage of items on a paved surface is inherently not a guarantee of jobs generation.*

Denial Finding 4 suggests that the Project is inconsistent with the City's General Plan. This finding is unsupported and is directly contradicted by the policies and goals identified in the General Plan in connection with the Property's Workplace District land use designation.

First, the Workplace District provides for a mix of regional business and light industrial uses and structures with a maximum height of 9 stories/100 feet and is intended to "continue to support regional business and light industrial buildings that are less compatible with residential neighborhoods." (General Plan, Land Use Element, Fig. 7-A.8.) Furthermore, policies identified as governing development of the Workplace District mandate the "continued operation of older industrial . . . businesses," and the "redevelop[ment of] eastern employment lands with contemporary industrial and light industrial uses." (General Plan, Land Use Element, Goals 6F.G1, 6F.G2, 6F.G3.) The Project helps implement this policy vision set for the General Plan, providing for development at the Property of a contemporary light industrial use, featuring operational conditions and site improvements that will eliminate the harmful impacts of legacy industrial uses, such as the truck trips and airborne contaminants generated by the prior wood recycling use.

The Project will also help achieve the General Plan's goal of revitalizing and refreshing industrial uses in the City. The General Plan identifies the future of industrial uses in the City as involving the "replacement of older building stock with newer facilities." (General Plan, Land Use Element, p. 84.) Here, the Project helps achieve this objective by establishing a new, cleaner light industrial use and phasing out the outdated wood recycling facility. The Project also involves site improvements, such as landscaping and screening, that will reduce its impacts on the surrounding community. Finally, the Property will be leased to tenants, which, based on AG-5R's experience operating similar sites, typically employ approximately 60 people.

Additional General Plan policies identified for the Workplace District and the Project's compatibility with the same are identified in the table attached hereto as **Exhibit B**. The analysis set forth in Exhibit B further confirms that AG-5R's proposal to redevelop an outdated heavy industrial site with a new, clean light industrial use while adding screening and landscaping to improve the physical character of the Property, is the precise type of project envisioned for the Workplace District.

Pomona Mayor and City Council
May 28, 2024
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**III. THIS APPEAL MUST BE CONSIDERED FOLLOWING A NOTICED
PUBLIC HEARING.**

Procedural due process requires that applicants for adjudicative land use entitlements, like CUP No. 000360-2024, are entitled to a fair hearing and an opportunity to be heard. (Code of Civ. Proc., § 1094.5; *Horn v County of Ventura* (1979) 24 Cal. 3d 605, 612.) Accordingly, AG-5R is entitled to a public hearing on this appeal.

IV. CONCLUSION.

In sum, based upon the evidence before the Planning Commission, no reasonable person could reach the conclusion the Planning Commission reached. The only evidence before the Planning Commission supported the exact opposite of the findings that the Planning Commission made; specifically, that the Project aligns with the goals of the General Plan, would be a marked improvement over the current authorized use, and should be approved. The Planning Commission's denial fails to "bridge the analytic gap between the raw evidence and ultimate decision or order." (Topanga, *supra*, 11 Cal.3d at p. 515.) The findings of fact are wholly unsupported and fail to identify legitimate reasons to refuse to approve the Project. And not only was there no evidence to support the denial, but, as set forth above, the evidence supports the opposite – approval of the Project.

Very truly yours,

Eoin D. McCarron

Eoin McCarron

EM

cc: John C. Condas, Esq.
Ata Khan, Deputy Director of Development Services

EXHIBIT A



Planning Commission

Planning Division Staff Report

DATE: May 8, 2024
TO: Chairperson and Members of the Planning Commission
FROM: Planning Division
REQUEST: **Conditional Use Permit (CUP-000360-2024)**
Request to establish an outdoor storage yard on a vacant, improved site at 1313 East Phillips.

Executive Summary

The applicant is requesting to establish an outdoor storage yard by Conditional Use Permit. The existing site is vacant and formerly operated by Recycled Wood Products under an existing entitlement for wood recycling, which the applicant has expressed interest in either surrendering or revoking in place of this request. Staff has identified a specific list of outdoor storage items that could be reasonably and effectively regulated on site, in addition to conditions on variables such as storage coverage, Fire clearance, height, and maintenance that will ensure compatibility with the neighborhood.

Staff Recommendation

Staff recommends approving the request as conditioned by Staff in the attached draft Resolution.

Property Details

Address	1313 East Phillips
Assessor's Parcel Number (APN)	8327-021-018, 8327-021-023, 8327-021-024, 8327-021-029
Lot Size	10.85 acres
General Plan Place Type	Workplace District
General Plan Transect Zone	-
Zoning District	M-2 General Industrial
Historic District	-
Specific Plan	-
City Council District	3
Applicant	AG-5R Pomona Owner LLC
Property Owner	AG-5R Pomona Owner LLC

Related Actions

Planning Commission
May 8, 2024

Historic Preservation	N/A
Code Enforcement	No active code violations.
Building & Safety	N/A
Planning	No previous Planning Commission Actions.

Location of Request**A. General Location**

The subject site consists of four parcels totaling 10.85 acres in size. It is paved and improved with two modular office buildings totaling 2,548 square feet and a large, 35,000 square foot canopy structure. It is entitled for a wood recycling facility, and was formerly used by Recycled Wood Products, who left the site in 2023. It is currently unoccupied. The site can be accessed at Grand Avenue and Phillips Boulevard. To the east of the site along Phillips is American Moving and Rigging, and Gamino's Trucking off Signal and Phillips. To the west is Royal Cabinets, single-unit residential homes, and a house of worship. To the east along Grand is Doss logistics. To the west is Worldpac. The area is generally part of what is considered the Reservoir industrial district.

B. Adjacent Land Uses & Current Zoning

The subject site is located within the M-2 General Industrial Zoning District. Properties to the north and east are all within the same zoning district. The property is bounded to the west by a railroad. Beyond that, westward properties are within the M-1 Light Industrial Zoning District.

C. General Plan Land Use

The subject site is located within the Workplace District land use designation. Properties to the north and east are all within the same General Plan land use designation. Properties to the west, beyond the railroad tracks, are within the Workplace District Edge land use designation, which includes permission for housing.

Request Details**A. Request**

The applicant has requested to establish an outdoor storage yard at the subject location. The applicant has requested multiple types of outdoor storage (Attachment 2). The applicant has prepared a site plan depicting the general piling of outdoor storage, and fire lanes and drive aisles (Attachment 3). The applicant has requested to operate the site 24 hours daily.

Staff Analysis

A. Applicable Code Sections

Section .580 of the Pomona Zoning Ordinance requires a Conditional Use Permit for the establishment of any industrial facility over 20,000 square feet in building size or on a lot greater than one acre.

B. Code Compliance

1. Speculative storage

Staff first analyzed the request to reduce wherever possible the speculative nature of the request, which would allow the city to more meaningfully and effectively regulate an entitled outdoor storage yard. The conditions of approval (Attachment 1) enumerate specific outdoor storage items that are permitted, and ones that are prohibited. By doing this, both the property owner and the City have a clear sense of the types of items that can be placed on site.

2. Public safety and health

Staff next analyzed the request to reduce wherever possible the risk to public safety and health. This is accomplished by imposing a 45 percent storage coverage on the site. This percentage is derived from Staff experience in regulating pallet yards and the pile coverage limits that have been effective to reduce fire and safety hazard risks. There are also conditions imposing 20 foot height maximums, no stacking beyond the wall height for the first 125 feet of the property, and requiring Los Angeles County Fire Department clearance of a site plan to ensure sufficient drive aisles and fire lanes and pile dimensions.

Furthermore, the applicant has expressed interest in surrendering or revoking the existing entitlement for wood recycling relied upon by Recycled Wood Products, who vacated the site in 2023. This would eliminate the potential of a new wood recycling facility from siting at this location, which has been associated with serious environmental justice impacts and concerns in the neighboring community.

3. Storage versus Trucking Facility

Staff also analyzed the request to eliminate the possibility of the outdoor storage yard becoming a bonafide trucking facility or product transportation/fulfillment-oriented use. The prohibition of storage containers and truck trailers on site reduces this possibility.

C. Environmental Review

The City of Pomona, as lead agency, has conducted an environmental review on the proposed

project per the California Environmental Quality Act (CEQA). Pursuant to the provisions of CEQA (Public Resources Code, Section 21084 et. seq.), the guidelines include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA. The Planning Commission will consider adopting a Categorical Exemption in compliance with Article 19, Section 15301, (Class 1—Existing Facilities) in that the project is an existing structure with no proposed expansions. The proposed project described above hereby meets the guidelines for a Categorical Exemption. Therefore, no further environmental review is required.

A. General Plan Conformance

The project site is designated as Workplace District in the Pomona General Plan. The granting of this conditional use permit will not adversely affect the General Plan of the City of Pomona. As conditioned, the permitted outdoor storage items are materials and equipment that can support the uses called out by the Pomona General Plan as essential to for the City's Workplace Districts while precluding those types of outdoor storage items that would contribute to heavier industrial impacts of noise, diminished roadway safety, odor, dust, and debris.

Reviewed, prepared, and submitted by:



Ata Khan

Deputy Director

Development Services Department

Attachments:

1. Draft PC Resolution
2. Applicant Request
3. Proposed Site Plan
4. Proof of Public Noticing

Planning Commission

May 8, 2024

PC RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA, CALIFORNIA APPROVING CONDITIONAL USE PERMIT (CUP 000360-2024) FOR OUTDOOR STORAGE ON A PROPERTY LOCATED AT 1313 EAST PHILLIPS BOULEVARD

WHEREAS, the applicant, AG-5R Pomona, LLC, has submitted an application for Conditional Use Permit for outdoor storage on a property located at 1313 East Phillips Boulevard;

WHEREAS, the subject property is currently located within the M-2 (General Industrial) zoning district;

WHEREAS, the subject property is on a parcel designated as "Workplace District" on the General Plan Land Use Map;

WHEREAS, the approval of a conditional use permit by the Planning Commission is required for the development of an industrial facility of over 20,000 square feet of gross floor area or greater than one acre in size in all M zoning districts;

WHEREAS, the Planning Commission of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on May 8, 2024 concerning the requested Conditional Use Permit; and

WHEREAS, the Planning Commission has carefully considered all pertinent testimony and the staff report offered in the case as presented at the public hearing.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Pomona, California:

SECTION 1. The Planning Commission exercising independent judgment finds that the proposed project will not have a significant effect on the environment. The City of Pomona, as lead agency, has conducted an environmental review on the proposed project per the California Environmental Quality Act (CEQA). Pursuant to the provisions of CEQA (Public Resources Code, Section 21084 et. seq.), the guidelines include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA. The Planning Commission hereby adopts a Categorical Exemption in compliance with Article 19, Section 15301, (Class 1—Existing Facilities) in that the project is an existing developed site with no proposed expansion.

SECTION 2. If any part, provision, or section of this resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or invalid, the remainder of the entirety of this resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this resolution are severable.

SECTION 3. In accordance with Section .580.B of the Zoning Ordinance, the Planning Commission must make five (5) findings in order to approve this Conditional Use Permit. Based on consideration of the whole record before it, including but not limited to, the staff report, public testimony received at the public hearing on this matter, and evidence made part of the public record, the Planning Commission hereby finds as follows:

1. *That the proposed use at the particular location will contribute to the general well-being of the neighborhood or community.*

The proposed use of the subject site for industrial development, specifically, the outdoor storage of materials and equipment, will contribute to the general well-being of the neighborhood and the community by providing a local storage use for machinery, equipment, and other tools that can be used by local manufacturers and related uses in the City's workplace districts. The proposed use will also activate a large site that is otherwise vacant, increasing the likelihood of improved security and maintenance of the property.

2. *That such use will not, under the circumstances of the particular case be detrimental to the health, safety, peace, or general welfare of persons residing or working in the vicinity or detrimental to the use, valuation or enjoyment of property or improvements in the vicinity.*

The applicant's request will not be detrimental to the health, safety, peace, or general welfare of persons residing or working in the vicinity as the outdoor storage items identified preclude those outdoor storage uses that would otherwise contribute to dust, debris, odor, or other public health impacts, including frequent truck trips.

3. *That the site of the proposed use is of adequate topography, size and shaped to accommodate said use as well as all yards spaces, walls, fences, parking, loading, landscaping and any other features necessary to allow said use with the land and uses in the neighborhood and make it compatible thereto.*

The site is rectangular with sufficient width and depth to accommodate fire lanes and other dimensional limitations to ensure Fire safety provisions for any outdoor storage piles. The site is adequate to accommodate required walls, yards, and aisles.

4. *That the site abuts streets and highways are adequate in width and improvements to carry traffic generations typical of the proposed use.*

The subject site takes access from Grand Avenue and Phillips Boulevard, which both are of sufficient width to accommodate traffic generated by the outdoor storage.

5. *That granting of such conditional use permit will not adversely affect the General Plan of the city and conforms to the provisions of the zoning ordinance.*

The granting of this conditional use permit will not adversely affect the General Plan of the City of Pomona. As conditioned, the permitted outdoor storage items are materials and equipment that can support the uses called out by the Pomona General Plan as essential to

for the City's Workplace Districts while precluding those types of outdoor storage items that would contribute to heavier industrial impacts of noise, diminished roadway safety, odor, dust, and debris.

SECTION 4. Based upon the above findings, the Planning Commission hereby approves Conditional Use Permit subject to compliance with all applicable laws and ordinances of the City as well as the addition of the following conditions, violations of which (or failure to complete any of which) shall constitute grounds for revocation of the conditional use permit or any portion thereof:

General Conditions:

1. The subject property shall be developed and/or used in a manner consistent with the project plans reviewed and approved by the Planning Commission on May 8, 2024, and as illustrated in the stamped approved plans. Any major modifications to the approved project plans shall be reviewed and approved by the Planning Commission as part of a modification to the approved plans. Any minor modifications that do not affect the overall intent of the approved project, may be reviewed and approved by the Director of Development Services.
2. This approval shall lapse and become void if the privilege authorized is not utilized within two years from the date of this approval (May 8, 2026), in accordance with Pomona Zoning Ordinance section .580.I. The Planning Commission may extend this period for one year upon receipt of an application for a Time Extension request submitted by the applicant at least thirty days before the expiration date of this approval.
3. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the any action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.

4. In case of a violation of any of the conditions of approval and/or City law, the property owner and tenant will be issued a Notice of Correction. If said violation is not remedied within a reasonable period of time and/or a subsequent violations of the conditions of approval and/or City law occurs within ninety (90) days of any Notice of Correction, the property owner shall be held responsible to reimburse the City for all staff time directly attributable to enforcement of the conditions of approval and/or City law, including, but not limited to, revocation of the herein Conditional Use Permit.
5. The project is subject to a twenty day appeal period. Written appeals may be filed with the City Clerk within twenty days by one or more City Council members, the applicant, or any person owning property within four hundred feet of the exterior boundary of the applicant's property. The appeal shall be filed with the City Clerk within twenty days from the date of action by the Planning Commission.
6. Within six months from occupancy by a tenant, Applicant shall file for a Conditional Use Permit Inspection application and pay applicable fees. The Development Services Director and Code Compliance Supervisor shall conduct an inspection of the proposed operation, at any such time deemed necessary, and review any complaints received on the property. The Director shall determine if the applicant is satisfactorily in compliance against all conditions of approval identified in this Resolution. The Development Services Director may, at his or her discretion, pass or fail an inspection. If noncompliance is determined, the Director may schedule the matter for review by Planning Commission to consider bringing revocation proceedings. Applicant shall file for subsequent Conditional Use Permit Inspection Requests on an annual basis.

Plan Check:

1. The applicant shall include all conditions of approval from Conditional Use Permit on the title sheet of construction plans prior to plan check submittal.
2. The site plan shall include all utility apparatus, such as but not limited to, backflow devices and Edison transformers. Utility meters shall be screened from view from public right-of-ways. Backflow prevention devices shall not be located in the front yard setback and shall be screened from public view. The site plan and elevations shall include the location of all gas meters, water meters, electrical panels, air conditioning units, mailboxes (as approved by the United States Postal Service), and similar items. If located on a building, they shall be architecturally integrated with the design of the building, non-obtrusive, not interfere with sidewalk areas, and comply with required setbacks.
3. The installation of fences and walls that were not contemplated as part of this permit will require the submittal of a "Fence and Wall Permit" for review and approval by the Planning Division.

4. Prior to the issuance of any building permits, the following must be completed:
- a) A *Landscape Plan Check* in substantial conformance to the conceptual landscaping plan submitted as part of the Conditional Use Permit process. Plan should further conform to the State Model Water Efficient Landscape Ordinance, and applicable portions of Section .503-J of the Pomona Zoning Ordinance. A landscaping maintenance bond shall be required and held for a period of six months to ensure the project's compliance with the approved landscaping, at an amount to be determined by the Development Services Manager.
 - b) A *Photometric* plan demonstrating a minimum 0.5 foot-candle of illumination of parking, driveway, walkways, and common areas. Plan shall identify locations of ground-mounted and building-mounted light fixtures, design and photometric information on fixtures, and shielding to orient light away from adjacent properties and buildings.
 - c) Compliance with *Art in Public Places* requirements, per Section .5809-24 of the Pomona Zoning Ordinance; compliance may be met by either placement of an approved public art piece on the project site, or payment of an in-lieu contribution.
 - d) A *Mechanical* plan demonstrating the location, type, size, and appropriate screening of all ground-mounted and roof-mounted mechanical equipment. All mechanical equipment shall be screened from public view.
 - e) A *Sign Permit* will be required for any installation of new signage.

Site Development & Maintenance Conditions

- 7. During demolition, grading, site development, and/or construction, all requirements of the Pomona Zoning Ordinance and Municipal Code, including the noise provisions, shall be adhered to. All activities including truck deliveries associated with construction and grading will be limited to Monday through Saturday, between 7:00 AM and 8:00 PM, and provided the noise level created by such activities do not exceed the noise standard of 65 dB(A) plus the limits specified in section 18-311(b) as measured on residential property and any vibration created does not endanger the public health, welfare, and safety.
- 8. There shall be no activity conducted on the subject site that exceeds the noise and vibration parameters of Pomona City Code Section 18-301, *et seq.*, and City Council Ordinance No. 3939 at any time, or such other ordinance enacted related to noise and vibration.
- 9. The construction area shall be kept clean at all times prior to, during, and after construction.
- 10. The property owner shall remove any graffiti on the project site within 24 hours of discovery. The paint utilized to cover the graffiti shall substantially match the existing structure. In the event that the paint finish of the abated area is noticeably distinguishable from the rest of the structure, the property owner shall paint additional portions of the

14. Replacement of the existing modular office building shall be allowed, provided that the new modular office building does not substantially increase the building footprint, height, or intensity of the building and use.
15. The following types of outdoor storage shall be prohibited on the property at all times:
 - a) Vehicles (Cargo and Passenger Vans, Passenger Cars, Pickup Trucks, SUVs Dump Trucks, Contractor and Service Body Trucks, Stake Bed Trucks)
 - b) Truck Trailers
 - c) Storage Containers and Mobile Offices
 - d) Chassis
 - e) Shipping Containers
16. Any outdoor storage items within the first 125 feet of any street facing lot line must not exceed the height of the screen fence or wall. Any outdoor storage items beyond the first 125 feet of any street-facing lot line may not exceed 20 feet in height.
17. Outdoor storage must not exceed 45 percent of total lot coverage. Outdoor storage must not be located in designated fire lines, drive aisle lanes, parking aisles, or parking spaces.
18. Site may operate 24 hours daily.
19. Accessory shade structures must only be permitted to protect outdoor storage items, at the same square footage maximum equivalent as 45 percent of total lot coverage in accordance with Conditions No. 17 above related to the allowed percentage of outdoor storage, and at a height limit of 20 feet. The only exception to this height is accessory structure additions to the existing, permitted shade, which may not exceed the existing height of said shed.
20. Property Maintenance Program must be submitted for review and approval by the Development Services Director or their designee prior to the issuance of building permits, business license, or business license renewal. The program must do the following:
 - a) Identify the location for all outdoor storage areas.
 - b) Identify the maximum height for all outdoor storage areas.
 - c) Identify all materials intended for outdoor storage.
 - d) The methods and maximum intervals for maintenance of each outdoor storage area.
 - e) Clearance from the Los Angeles County Fire Department of a site plan depicting allowable dimensions and heights of piles and width of drive aisles and fire lanes.
 - f) Landscaping plan depicting compliance with parking lot and site area landscaping as defined by City ordinance.

SECTION 5. The Secretary shall certify to the adoption of this Resolution and forward the original to the City Clerk.

APPROVED AND ADOPTED THIS 8TH DAY OF MAY, 2024

ALFREDO CAMACHO
PLANNING COMMISSION CHAIRPERSON

ATTEST:

ATA KHAN
PLANNING COMMISSION SECRETARY

APPROVED AS TO FORM:

MARCO MARTINEZ
ASSISTANT CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF POMONA)

AYES:
NOES:
ABSTAIN:
ABSENT:

Pursuant to Resolution No. 76-258 of the City of Pomona, the time in which judicial review of this action must be sought is governed by California Code of Civil Procedure Section 10

EXHIBIT B

CITY OF POMONA GENERAL PLAN

Key Workplace District Goals & Policies		Compliance
6F.G2	Provide for continued operation of older industrial and service commercial businesses at specific locations.	Project represents a continuation of industrial uses in an area of the City characterized by industrial development.
6F.G3	Incrementally redevelop eastern employment lands with contemporary industrial and light industrial uses.	The Project implements this policy, replacing a heavy industrial use with a contemporary, light industrial use conditioned and designed to eliminate and minimize community impacts.
6F.G4	Improve the physical character of workplace districts to complement the transition of the area to lighter industrial/higher technology uses.	The Project features multiple on-site improvements, including added screening, security lighting, landscaping, limits on lot coverage, and new paving and resurfacing.
6F.G8	Improve the physical character of existing concentrations of industrial and light industrial development to make them more attractive to new investment and more compatible with nearby residential neighborhoods.	AG-5R's investment in the site will ensure it is a Class A outdoor storage facility attractive to institutional tenants that will bring jobs and long-term investment to the City.
6F.P1	Reserve the Reservoir-East Pomona Industrial area for industrial uses.	The Property is located in the Reservoir-East Pomona Industrial area and involves the continuation of industrial uses in the area.
6F.P2	Attract new businesses by encouraging existing development to implement site and building improvements and by upgrading the streetscape character of existing workplace districts.	AG-5R will implement a host of site improvements, described in greater detail above, that will improve the quality of the site, including areas of the site visible from the public right of way along Phillips Boulevard and Grand Avenue.
6F.P8	Phase out non-conforming heavy industrial and environmentally harmful uses from the area.	If approved, the Project will result in the elimination of a still valid wood recycling use, a heavy industrial and environmentally harmful use.
6F.P15	Maintain design and development standards aimed at improving the appearance of industrial uses.	As conditioned, the Project will implement multiple design and development standards that will improve the site's appearance, including minimizing lot coverage to 45%, the addition of screening, and the addition of landscaping.
6F.P17	Establish regulations that require infill and redevelopment to be of higher quality than existing development.	As set forth in greater detail above, AG-5R's use is high-quality industrial product and will be a major improvement compared to the wood recycling use authorized for the Property.
6F.P19	Require appropriate types of landscaping to soften the visual impact of workplace development and act as a buffer to adjacent neighborhoods.	The Project will incorporate an array of landscaping intended to minimize the site's visual impacts.