



**CITY OF MENIFEE
APPEAL APPLICATION**

Decision to be appealed: See below

APPELLANT/REPRESENTATIVE Allen Matkins Leck Gamble Mallory & Natsis, LLP

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PROPERTY OWNER IPT Menifee CC LLC
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Name of Project, APN/Address: Murrieta Road Warehouse Project

Appealing the decision of (Specify Community Development Director, Building and Safety Director City Manager, Planning Commission): Planning Commission

Action and Date: October 23, 2024, Planning Commission Agenda Item No. 9.3

Explain specify what action or decision is being appealed: See attached appeal letter

Do you have additional evidence not already presented? X Yes No. If Yes, please attach.

What result to you want? See attached appeal letter

Applicant's Signature [Signature] Date: 10/31/2024

Owner Certification: I certify under the penalty of the laws of the State of California that I am the property owner of the property that is the subject matter of this appeal application. I am authorizing and hereby do consent to the filing of this application and acknowledge that the final approval by the City of Menifee, if any, may result in restrictions, limitations and construction obligations being imposed on this real property.

Owner's Signature: [Signature] Date: 10-30-2024

Print Name: Peter Schafer, Authorized Signatory, IPT Menifee CC LLC

Written authorization from the legal property owner is required. An authorized agent for the owner must attach a notarized letter of authorization from the legal property owner.

No application will be accepted until is complete and the fee paid.

Once complete, you will receive confirmation and a hearing date as well as additional appeal information. For questions, please contact the City Clerk at (951) 672-6777.

Allen Matkins

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Via Email (sroseen@cityofmenifee.us)

October 31, 2024

Honorable Mayor and City Councilmembers
Attn: Stephanie Roseen, Acting City Clerk
City of Menifee
29844 Haun Road
Menifee, CA 92586

**Re: Notice of Appeal of October 23, 2024, Planning Commission Denial of
Murrieta Road Warehouse Project**

Honorable Mayor and City Councilmembers:

This firm represents IPT Menifee CC LLC (“Applicant”), the Applicant for the proposed Murrieta Road Warehouse Project (“Project”) which involves the entitlement and construction of an approximately 517,720 square-foot (“SF”) speculative warehouse building comprised of 20,320 SF of ground floor office space, 7,000 SF of mezzanine office space and 505,932 SF of warehouse space located south of Floyd Avenue, east of Geary Street, west of Murrieta Road, and north of McLaughlin Road within the City of Menifee (“City”) (Assessor Parcel Numbers [APNs]: 330-210-010, -011, -013, and -062, 330-560- 001 through 330-560-040, 330-570-001 through 330-570-033, and 330-571-001 through 330-571-005) (the “Property”).

On October 23, 2024, the City Planning Commission considered the Project entitlements, which include Plot Plan No. PLN22-0179 and Environmental Impact Report (State Clearinghouse No. 2023110162) and the associated Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program, at a noticed public hearing. The Planning Commission, which freely acknowledged that the Project was consistent and compliant with all applicable development and design standards governing development on the Property as well as being among the express types of development contemplated for the Economic Development Corridor – Northern Gateway (“EDC-NG”) area, improperly transformed the public hearing on the Project entitlements into a referendum on the EDC-NG’s allowance of warehouse uses as a whole and impact of warehouse projects on nearby, legal nonconforming residential uses.

Ultimately, the Planning Commission rejected Staff’s recommendation for approval and the Project’s clear compliance and consistency with all applicable zoning and development standards and the City’s recently-adopted Good Neighbor Policies and voted 2-3 to **deny** the Project.

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In accordance with Municipal Code section 2.20.150, the purpose of this letter is to set forth the grounds upon which the Applicant appeals the Planning Commission's denial of the Project. A check in the amount \$3,879.99 was previously delivered to the City to cover the requisite appeal fee. We respectfully request that this letter and the attachments hereto be included as part of the administrative record for this matter.

As outlined more fully below, and subject to such additional grounds, information and evidence as may be presented to the City Council prior to and during the public hearing on this Appeal, the Planning Commission's denial of the Project entitlements, including Plot Plan No. PLN22-0179 and Project EIR, should be vacated and overturned for the following reasons: (i) the Planning Commission failed to make adequate (or any) findings in support of its denial, as required by longstanding California law; and (ii) the Planning Commission improperly conflated the Project with the greater issue of warehouse development in the EDC-NG thereby depriving Applicant of the right to a fair hearing on the merits of the Project itself. Each of the foregoing, standing alone, in addition to any other that may be raised prior to or during the forthcoming City Council hearing on the Appeal, constitutes grounds for vacating and overturning the Planning Commission's denial of the Project entitlements.

The Planning Commission's Action Must be Vacated and Set Aside Because it Failed to Make Adequate – or Any – Written Findings to Support its Denial of the Project

Where an administrative agency is required to make findings to support a quasi-judicial decision, the findings must “bridge the analytic gap between the raw evidence and ultimate decision.” (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; see also *Healing v. California Coastal Com.* (1994) 22 Cal.App.4th 1158, 1167.) The findings must be “sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the [Commission's] action.” (*Id.*, at p. 514.) The granting or denial of an application for a Plot Plan, like a conditional use permit or other discretionary permit/entitlement, is a quasi-judicial action that must be supported by valid findings.

In this instance, the Planning Commission made no findings and adopted no resolution setting forth the justification for its decision to deny the Project approvals. Absent such findings and explanation for its denial, the “analytical gap” cannot be bridged in this instance and therefore, on this basis alone, the Planning Commission's denial of the Project must be overturned.

Further, to the extent that the City takes the position that the “general discussion” by Planning Commission of the Project's perceived impacts of warehouses to the quality of life of the surrounding neighborhood, disagreement with the existing, City-approved zoning for the site that expressly contemplates and allows for the exact uses proposed by the project and alleged impacts to residential property values, that is not sufficient to justify the denial of the Project. (See *Pacifica*

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Corp. v. City of Camarillo (1983) 149 Cal.App.3d 168, 179 [“Council debate ... is not the equivalent of *Topanga* findings.”].) Thus, “the evidence [does not] support the [proposed] findings” (*Healing, supra*, 22 Cal.App.4th at 1167), and the Planning Commission failed to provide any – much less adequate – facts to “bridge the analytic gap between the raw evidence and ultimate decision.” (*Topanga, supra*, 11 Cal.3d at p. 515).

Even assuming the denial *was* supported by a resolution, which it was not, the Planning Commission could not – and cannot – identify facts to support denial of the Project because the Project is unquestionably consistent with both the underlying General Plan and Zoning designations and applicable development standards and there is no basis to find that the Project would be detrimental to the health, safety, or general welfare of the surrounding neighborhood and/or the City in general. (Dev. Code, § 9.80.70.) For example, as set forth in the resolution to approve the Project entitlements prepared by Staff in support of their recommendation of approval:

General Plan and Zoning Consistency: The Property’s General Plan land use designation of EDC-NG is intended to provide economic vitality and flexibility in land use options to promote economic development along the City’s major corridors. The Project is consistent with the EDC-NG and City Development Code’s development and design standards and a multitude of General Plan policies, including (among others) the following:

- **LU-1.1:** Concentrate growth in strategic locations to help preserve rural areas, create place and identity, provide infrastructure efficiently, and foster the use of transit options.
 - The Project site is located close to Ethanac Road (a City-designated truck route) with direct access to the Interstate 215 freeway. The location is well suited for industrial development to promote easily accessible routes for employees and delivery personnel and the location helps concentrate activity and development near the major transit corridors of the City as opposed to the rural areas or traveling through residential areas.
- **LU-1.5:** Support development and land use patterns, where appropriate, that reduce reliance on the automobile and capitalize on multimodal transportation opportunities.
 - The Project’s infrastructure improvements include new roadways, roadway widening, intersection improvements, and sidewalks. All of these improvements will help promote multimodal transportation opportunities for employees and residents surrounding the Project site. Furthermore, the Applicant is at the forefront of the Global Traffic Analysis currently being prepared to analyze traffic impacts associated with current and pending industrial development in the EDC-NG and propose solutions to enhance

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and improve traffic flow, including through the use of alternative and multimodal transportation methods.

- **CD-3.5:** Design parking lots and structures to be functionally and visually integrated and connected; off-street parking lots should not dominate the street scene.
 - Consistent with the City's Development Code, Design Guidelines and Good Neighbor Policies, perimeter landscaping improvements that are eleven percent (11%) greater than the City's requirements are provided in order to visually screen the parking lots, truck court, and drive aisles from surrounding roadways. In addition, over 73,000 SF of the Property is being utilized for the development of new roadways for the benefit of the surrounding properties and greater EDC-NG area.
- **CD-3.9:** Utilize Crime Prevention through Environmental Design (CPTED) techniques and defensible space design concepts to enhance community safety.
 - The Project is conditioned to include extensive lighting and security cameras at all entrances and exits is specifically designed to limit concealed areas for greater visibility and security.
- **CD-3.12:** Utilize differing but complementary forms of architectural styles and designs that incorporate representative characteristics of a given area.
 - The Project building is designed to meet the City's Industrial Good Neighbor Policies, as well as City of Menifee Design Guidelines such as building form, roof form, massing and articulation, materials and colors, windows, doors, and entries.
- **CD-3.14:** Provide variations in color, texture, materials, articulation, and architectural treatments. Avoid long expanses of blank, monotonous walls or fences.
 - The Project's architecture and design incorporates varied colors, recesses, varied roof lines, wall plane changes, glazing, and other architectural treatments that break up wall areas to avoid long expanses of blank, monotonous walls and the Project will provide extensive landscaping and screening improvements to minimize and mitigate visual impacts.

Compliance with Applicable Development Standards and Requirements: Per Section 9.80.020 of the Development Code, the new construction of non-residential projects of more than 2,500 square feet of floor area requires the processing of a Plot Plan. The Project's application and design for Plot Plan No. PLN22-0179 was analyzed and evaluated in light of the City's

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Development Code, Industrial Good Neighbor Policies, and Industrial Design Guidelines and determined by Staff to be consistent with all applicable development and design standards.

Most significantly, the City's recently-adopted Good Neighbor Policies were created to address the exact scenario presented by the Project – the mitigation of impacts of industrial projects located near residential and other sensitive receptors. In this case, of course, the residential properties to the north are inconsistent with the current EDC-NG zoning regulations and are therefore considered legal nonconforming uses. Notwithstanding this fact, the Project meets and/or exceeds all of the applicable Good Neighbor Policies, including with respect to screening, building design, community outreach, increased building and loading dock setbacks, on-site truck queuing, on-site signage, and environmental mitigation measures as set forth in and enforceable via the Project EIR and Mitigation Monitoring and Reporting Program (MMRP).

No Adverse Impacts to Community Health, Safety and Welfare: The Project EIR included a comprehensive and detailed analysis of the potential impacts of the Project to the surrounding community, including with respect to traffic, air quality, noise and Greenhouse Gas (GHG). The Project EIR concluded that the Project, with applicable mitigation, would not result in any adverse environmental or other impacts and, to the extent that such impacts would occur, the immense benefits the Project would provide to City residents (infrastructure improvements, jobs, impact fee contributions, increased property taxes and other revenue) far outweighed the alleged potential impacts. In addition, the Project was designed with aesthetically pleasing architectural features and landscaping which will enhance the surrounding area and, as noted above, complies fully with all applicable development standards and other regulations.

Further to the above, the Planning Commission provided some questions and commentary about the Project EIR and the finding that the Project would have significant and unavoidable impacts regarding GHG emissions and would reduce property values for the nearby legal nonconforming residential properties.

First, as noted by Staff, the vast majority of GHG emissions (86 percent) would be caused by non-construction-related mobile sources (vehicle and truck traffic) that are subject to rigorous State and Federal standards and mitigation measures. The imposition and enforcement of these measures in conjunction with the completion of construction and occupancy of the Project will result in significant reductions to the Project's vehicle-related GHG emissions. For example, the Advanced Clean Cars II rule approved by the California Air Resources Board ("CARB") establishes a year-by-year roadmap so that by the year 2035 one-hundred percent (100%) of new cars and light trucks sold in California will be zero-emission vehicles. The rule anticipates that from 2026 through 2040, vehicle-related climate warming pollution will be reduced a cumulative total of 395 million metric tons, which is equivalent to avoiding the greenhouse gases produced from the combustion of 915 million barrels of petroleum. (<https://ww2.arb.ca.gov/news/california-moves-accelerate-100-new-zero-emission-vehicle-sales-2035>.)

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In addition, from a GHG standpoint, the Project's potential impacts are significantly lower than those that would result from alternative projects, including a 643,730 square foot business park project, a 375,509 square foot of commercial retail project and a 591 multifamily housing (low-rise) dwelling unit residential project. (See Exhibit A [GHG Comparative Analysis Table].) In any event, it bears noting that the City has recently approved a number of other warehouse/distribution projects whose anticipated GHG emissions would, like the Project, exceed the applicable threshold of 3,000 metric tons of carbon dioxide equivalent (MTCO₂e) per year for non-residential development (e.g., , the Menifee Commerce Center (9/28/2022), Motte Business Center (2/22/2024) and CADO Menifee Industrial Warehouse Project (8/16/2024)).

With respect to the Project's noise impacts, it bears noting that *any development* on the Property or within the surrounding area will result in a significant increase in noise levels over and above existing ambient levels, particularly given that development of any kind would require conversion of the existing, lightly-used dirt roadways, such as Geary Street, into new paved streets thereby causing a corresponding increase in traffic and traffic-related noise. Thus, although the Project would result in a significant noise impact as compared to the existing undeveloped conditions, this impact must be evaluated in context with the practical reality of the Property.

Finally, as regards the impact of warehouse development on property values, empirical data related to warehouse/distribution uses in the Inland Empire shows unequivocally that industrial development actually enhances and increases property values for surrounding neighborhoods. (See Exhibit B [South Bloomington / Fontana | 10-Year Resales Overview].) In any event, the impacts to property values in the area would generally have been realized at the time the EDC-NG was originally established and the scope of permitted future non-residential uses defined for residents and property owners – not on a project-by-project basis as the EDC-NG area is developed in accordance with the approved land use regulations and development standards. Thus, any claims that the proposed Project and other warehouse development would adversely affect property values for the handful of legal nonconforming residential properties situated to the north of the Property are completely unfounded and are unsupported by any defensible data or evidence.

The Planning Commission Improperly Conflated its Consideration of the Project With the Permissibility and Scope of Warehouse Development in the EDC-NG

Under the City's Development Code, warehouse and distribution uses are permitted by right in the EDC-NG subject only to approval of a plot plan and confirmation of the findings set forth in Section 9.80.70 of the City's Development Code. As noted above, there is and was no dispute among the Planning Commission that the proposed Project is consistent and compliant with all applicable zoning and development standards and regulations, including the City's 2022 Good Neighbor Policies intended to address the impacts of warehouse development near residential and other sensitive receptors, and that the *Project itself* would not result in adverse impacts to the health, safety and welfare of the surrounding community.

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Acknowledging the above and that the Project is in the “right place” for this type of development in the City, the Planning Commission nonetheless took issue with the number of proposed warehouse developments in the EDC-NG and expressed a desire that the City Council take action to amend the EDC-NG zoning regulations to prohibit future warehouse development. In doing so, the Planning Commission transformed the hearing on the merits of this Project on this Property and its compliance with the applicable zoning and other land development standards and regulations into a greater referendum and discussion of the allowance of warehouse development in the EDC-NG as a whole.

“‘[Q]uasi-judicial’ or ‘administrative’ hearings are subject to the fair process requirements of Code of Civil Procedure section 1094.5(b) and, when a vested property or liberty interest is implicated, to the due process requirements of both the federal and state constitutions.” (The California Municipal Law Handbook (Cal. CEB 2023) § 2.56 citing *Today’s Fresh Start, Inc. v Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 212.) The Plot Plan application is a discretionary City permit and the October 23, 2024, Planning Commission hearing was a quasi-judicial hearing pursuant to which Applicant was entitled to due process. The Planning Commission’s decision to disregard the clear and objective development standards and design criteria that were intended to govern their consideration of the Project in favor of an emotional colloquy on the influx of industrial warehouse development in the EDC-NG (and greater Inland Empire region as a whole) and the “other” uses that they would prefer to see be developed in the EDC-NG was wholly improper and violated Applicant’s fundamental due process rights to a fair hearing on the merits of the Project.

Therefore, in addition to the reasons set forth above related to the City’s failure to adopt written findings supported by facts explaining the basis for its decision to deny the Project entitlements, the Planning Commission’s conflation of the Project’s specific merits with the greater issue of warehouse development in the EDC-NG as a whole is grounds for reversal of its decision.

Conclusion

Based upon the foregoing, and the additional documents, information and evidence that may be further presented at or before the City Council hearing on this Appeal, the Applicant respectfully requests that the City Council: (i) schedule the City Council hearing on the Appeal for the earliest available date but **no later than** December 4, 2024; and (ii) vacate and overturn the Planning Commission’s October 23, 2024, denial of the Project entitlements and adopt a resolution approving the Project entitlements and certifying the Project EIR.

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

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Please contact me if you have any questions or wish to discuss this matter in further detail.

Very truly yours,



Paige H. Gosney

PHG

Enclosures

cc: Cheryl Kitzerow, Community Development Director
Orlando Hernandez, Deputy Community Development Director
Ryan Fowler, Principal Planner
Armando G. Villa, City Manager
Jeff Melching, City Attorney

EXHIBIT A

(GHG Comparative Analysis Table)

- The Proposed Project consists of an approximately 533,252 square foot warehouse building on 24.63 acres
- Scenario 1: 536,441 square foot manufacturing use (0.50 floor-to-area ratio of FAR) on 24.63 acres.
- Scenario 2: 643,730 square foot business park use (0.60 floor-to-area ratio of FAR) on 24.63 acres.
- Scenario 3: 375,509 square foot of commercial retail (0.35 floor-to-area ratio of FAR) on 24.63 acres.
- Scenario 4: 591 multifamily housing (low-rise) dwelling units (24 dwelling units per acre of FAR) on 24.63 acres.

TABLE 1: ALL SCENARIOS REGIONAL OPERATIONAL EMISSIONS

Source	Emissions (lbs/day)					
	VOC	NO _x	CO	SO _x	PM ₁₀	PM _{2.5}
Proposed Project	21.95	27.85	104.1	0.64	19.18	5.32
Scenario 1	28.79	36.48	188.56	0.55	38.71	10.30
Scenario 2	55.45	179.15	526.27	2.24	132.48	36.27
Scenario 3	88.33	70.70	599.80	1.32	110.08	28.77
Scenario 4	36.25	29.51	192.18	0.44	30.91	8.73

TABLE 2: ALL SCENARIOS GHGS EMISSIONS TOTAL

Source	Total CO ₂ e
Proposed Project	4,805.13
Scenario 1	8,793.93
Scenario 2	32,248.90
Scenario 3	16,160.70
Scenario 4	6,716.81

EXHIBIT B

(South Bloomington / Fontana | 10-Year Resales Overview)

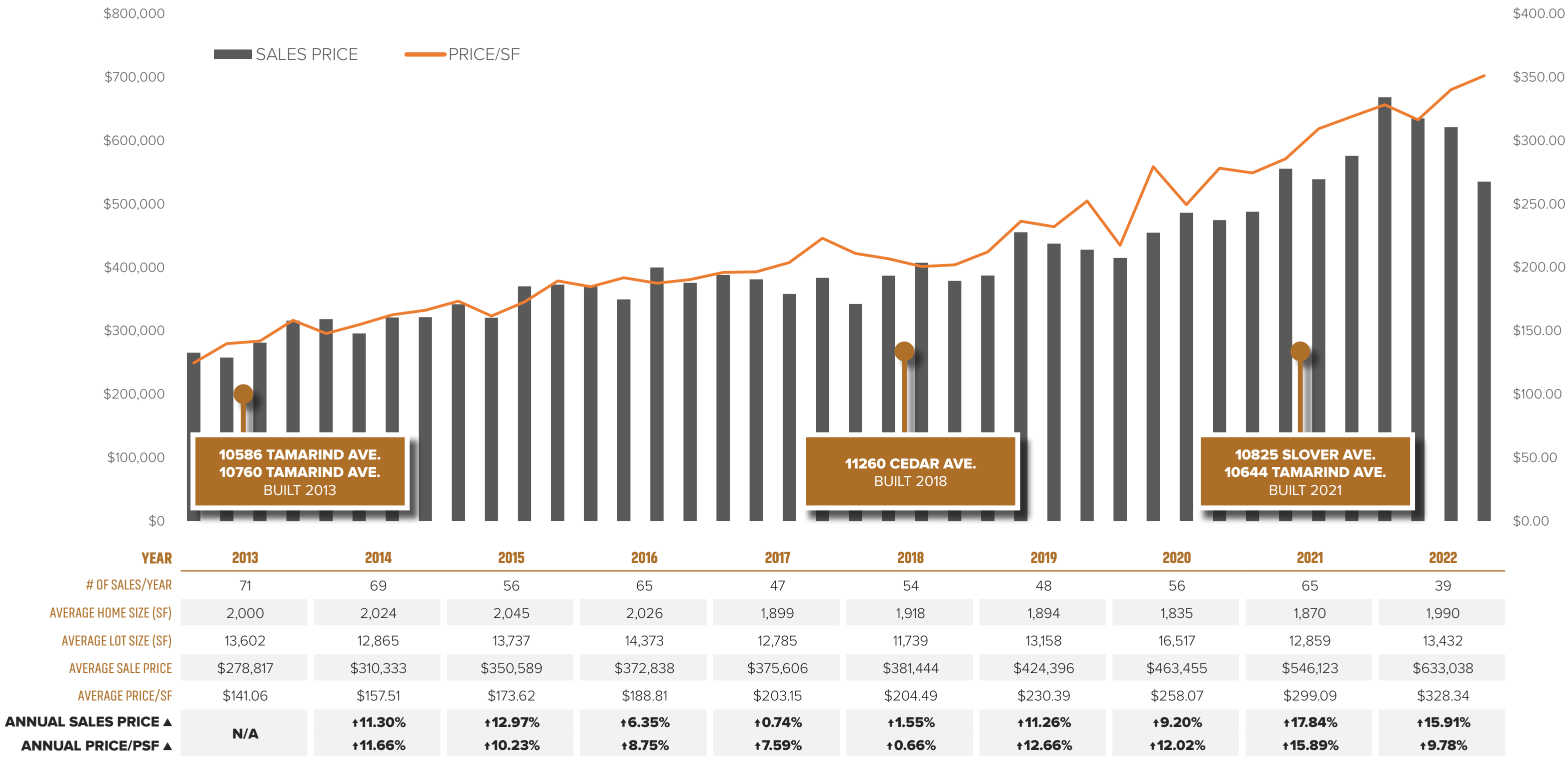
South Bloomington / Fontana | 10-Year Resales Overview

The subject area includes the residential communities generally located south of Slover Avenue, north of Jurupa Avenue, east of Sierra Avenue, and west of Likac Avenue within the Bloomington and Fontana submarkets.



South Bloomington / Fontana | 10-Year Resales Overview

From January 2013 until December 2022, a total of 570 residences were sold in the subject area (outlined on the following page). This data includes only single-family detached residences larger than 1,200 square feet situated on lots smaller than two acres. During this time, the average price of a home increased 127.04% and the average price per square foot increased 132.76%.



Source: LandVision / Digital Map Products (LightBox)