



SCHWARTZ SEMERDJIAN
Attorneys at Law

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March 20, 2018

VIA U.S. MAIL AND EMAIL

Stan Donn, AICP, Project Manager
City of Chula Vista, Development Services Department
276 Fourth Avenue, Chula Vista, CA 91910
Email sdonn@chulavistaca.gov

**Re: DR 15-0037, CUP 15-0023 (Appeal)
Wash-N-Go carwash**

Dear Mr. Donn:

I am writing this letter on behalf of Mr. Rod Bisharat who is the owner of business directly across the street from the proposed Wash- N-Go carwash located at 495 Telegraph Canyon Rd. Mr. Bisharat filed an appeal of the Planning Commission decision approving the project and the Conditional Use Permit. The matter is set for hearing on March 27, 2018.

The Notice of Public Hearing indicates that the project will be reviewed under a categorical exemption to the California Environmental Quality Act (CEQUA) pursuant to Section 15332 of the State CEQUA Guidelines. The Appellant takes exception to an approval pursuant to this CEQUA exemption which is meant to apply to In-Fill Development Projects where the project would not result in significant effects to traffic, noise, air quality, or water quality. This CEQUA exemption does not apply where the proposed project's unusual size, location, nature and scope will have significant environmental impacts on its surroundings. A significant effect on the environment means a substantial or potentially substantial, adverse change in the environment to any of the physical conditions within the area affected by the project including land, air, water and ambient noise. The Development Services Director serves as the initial finder of fact as to whether a particular project presents circumstances that are unusual for projects in the exempt class.

The proposed Wash-N-Go carwash is not your typical or usual infill development. It is located on the site of a former gasoline station which has contaminated soil which has levels of Ethylbenzene which is a known carcinogenic as well as levels Toluene and Xylene as documented in the March 8, 2002 letter from the County of San Diego Department of Environmental Health Plan and Water Quality Division. The contaminated soil may also contain Benzene, also a known carcinogenic, as well as Xylene and MTBE which at the time of the 2002 testing were not capable of being detected because of the then available limits of the testing equipment in 2002. According to the County's report, there are 20 cubic yards of contaminated soil on-site with concentrations exceeding 100 mg/kg. The report also indicates that corrective



SCHWARTZ SEMERDJIAN

Attorneys at Law

Stan Donn

March 20, 2018

Page 2

action should be reviewed if the land use changes. Given new construction and grading will occur on the site where there is documented contaminated soils, this potentially substantial environmental effect within the area affected by the project needs to be studied to determine whether it is significant.

The purpose of CEQUA is to inform the public and decision makers about the potential environmental effects prior to a project approval and identify ways environmental damage can be avoided or significantly reduced by adoption of mitigation measures or changes in the project.¹ Typically, when a former gasoline station site has contaminated soils and is redeveloped, the City within the jurisdiction of the project and/or for the bank lending institution requires current soil testing before the project is approved and removal of any contained soil as a condition of any approval. In order for the City to be an unbiased factfinder and the public adequately informed of potential environmental impacts, soil tests should be required to document the current conditions before Council approval and a public hearing and any contaminated soils be removed as a condition of project approval.

The materials on which the Planning Commission approved the project made no mention of contaminated soils on-site nor any environmental analysis report relied on by the Commission for its approval of a development on contaminated soils. Also of significance is the fact that the civil engineering plans apparently reference a dry well system where water generated on-site, for example water coming off of cars after they are washed, is treated and then injected back into the soil. The leaching of water on-site through soils contaminated with known carcinogens may have environmental effects on the water table below and needs some level of environmental analysis rather than simply relying on a categorical exemption that assumes, without study, there are not any environmental effects on water quality.

The Wash-N-Go project also has other features that distinguish it from others in the exempt class based on its location directly adjacent to a dedicated lane for a freeway on-ramp and the potential traffic impacts on the intersection of Halecrest Drive and Telegraph Canyon Road. A traffic impact analysis done for the Sharp Chula Vista Medical Center recently established that the Telegraph Canyon Road/I-805 NB ramp will operate at a D level of service as well as the street segment between Halecrest Drive to Oleander Avenue. Near-Term plus Project Conditions in the same study revealed that the Near Term Operations of this on-ramp in peak PM hour conditions will operate at a E level of service as will the street segment between Halecrest Drive and Oleander Avenue. See, attached tables.

The section of Telegraph Canyon Road and the 805 freeway which directly abuts the Project is one of the busiest in the city. The intersection at the project site at Halecrest Drive is

¹ Pub. Res. Code § 21000,21001



SCHWARTZ SEMERDJIAN

Attorneys at Law

Stan Donn

March 20, 2018

Page 3

already significantly impacted. When the land for the new lane to ease traffic congestion on Telegraph Canyon Road was acquired from both the Appellant's property and former gasoline station at 495 Telegraph Canyon Rd., access from the project site onto Telegraph Canyon Road was prohibited as noted by the City's traffic engineer at the Planning Commission Hearing. The project as approved by the Planning Commission removes this condition without any analysis of how this new circulation from the site may impact an on-ramp already projecting to be operating in a E level service not to mention the safety issues presented by cars lining up to turn onto a busy freeway on-ramp.

The location of the project with cars exiting onto Halecrest Drive where the street segment at this intersection is also projected to operate at a E level of service needs to be evaluated. Under current conditions when there are two or more vehicles stopped at the intersection of Halecrest Drive and Telegraph Canyon Road, cars cannot exit the project site. See, attached pictures. Because of the traffic conditions at the on-ramp, the Halecrest driveway will be the area where patrons will exit the site but will be blocked when cars are stopped at the light. To compound this problem, the driveway for existing the gas station owned by Appellant is directly across the street on Halecrest. Because of the high volume of traffic on Telegraph Canyon Road this is also the exiting driveway for the gas station. "Experience with the mainsprings of human conduct..."² are alone enough to predict the traffic conflicts and potential dangers of cars competing to enter onto Halecrest with cars already waiting to turn right to get onto the freeway or proceed west on Telegraph Canyon Road. However, rather than speculating on the variables of human conduct, a traffic impact and safety analysis should be done by the neutral factfinder, the City. A traffic safety analysis is necessary rather than relying on a categorical exemption where there is a reasonable possibility, due to the unusual nature of the location of the project, that the project will have a significant impact on the traffic environment.

Lastly, the administrative record for the planning commission contains letters from an attorney for a Judy Walsh that contests the adequacy of a study regarding environmental impact of the project on the noise level affecting the Walsh's home and nearby neighbors. I noted from reading this attorney's letter that he likewise felt not only did the record not support a finding this particular project **will not be** a detrimental impact to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property in the area, but he also took exception based on the noise impacts that the project is exempt under CEQUA. This attorney's letter, a copy of which is attached, apparently prompted an additional noise analysis which would also lead to a conclusion that the project should not be exempt but instead environmental impacts, including cumulative impacts of noise, should be considered under CEQUA.

² *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1114.



SCHWARTZ SEMERDJIAN

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Stan Donn

March 20, 2018

Page 4

One obvious solution to the noise impacts on the adjacent residential area would be to relocate the noise generating drying blowers to an area that is already adjacent the freeway on-ramp rather than having it directly adjacent to the residential homes. It is not clear from the administrative record of the Planning Commission hearing why this more obvious site plan which would address the noise conditions was not considered in a CEQUA alternative analysis or implemented as a condition of the CUP permit. The Appellant is familiar with the large decibels of noise generated by these blowers and feels Mrs. Walsh's concerns are appropriate and they create a potentially substantial change in the environment as it affects ambient noise. The applicant owns another carwash in the Rosecrans area which could be used as a comparative basis for a noise study that addresses concerns reflected in the attorneys letter.

On behalf of Mr. Bisharat, I would ask that you not evaluate this project under categorical exemption for infill projects but instead undertake a CEQUA environmental analysis so the public and decision makers are adequately informed of the impacts of this project prior to a public hearing and can consider alternatives or mitigation measure and changes to the project which might avoid or reduce the environmental impacts. This is based on the unusual circumstances of the project location as not only being on top of a former gasoline station site with contaminated soils, but also as being adjacent to a busy and already impacted freeway on-ramp and intersection with projected E levels of service. The safety of persons simultaneously exiting the project site and Mr. Bisharat's gas station and those already using Halecrest Drive at the intersection of Telegraph Canyon Road needs to be carefully evaluated and considered to avoid a public safety hazard. Pictures of the applicant's existing car wash and the significant number of cars using his car wash demonstrate how such a project causes back ups and conflicts with the existing street system.

Sincerely,

John S. Moot
of

SCHWARTZ SEMERDJIAN
CAULEY & MOOT LLP

JSM:ac

cc

Councilmember Patricia Aguilar, District 2 paguilar@chulavistaca.gov;

Assistant City Attorney Mike Shirey MShirey@chulavistaca.gov;

Chris Bauer cbauer@chulavistaca.gov; Rima Thomas rthomas@chulavistaca.gov;

Caroline Young CYoung@chulavistaca.gov; Steve Power SPower@chulavistaca.gov



County of San Diego

GARY W. ERBECK
DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
LAND AND WATER QUALITY DIVISION
P.O. BOX 129261, SAN DIEGO, CA 92112-9261
(619) 338-2222 FAX (619) 338-2377
1-800-253-9933

RICHARD HAAS
ASSISTANT DIRECTOR

DM

March 8, 2002

Mr. Roy Thun
ARCO Products Company
4 Centerpointe Dr.
La Palma, CA 90623-1066

Dear Mr. Thun:

UNDERGROUND STORAGE TANK (UST) CASE H12571-002
ARCO NO. 6138
495 TELEGRAPH CANYON RD., CHULA VISTA, CA 91910

This letter confirms the completion of a site investigation and corrective action for the underground storage tanks formerly located at the above-described location. Thank you for your cooperation throughout this investigation. Your willingness and promptness in responding to our inquiries concerning the former underground storage tanks is greatly appreciated.

Based on information in the above-referenced file and with the provision that the information provided to this agency was accurate and representative of site conditions, this agency finds that the site investigation and corrective action carried out at your underground storage tank(s) site is in compliance with the requirements of subdivisions (a) and (b) of Section 25299.37 of the Health and Safety Code and with corrective action regulations adopted pursuant to Section 25299.77 of the Health and Safety Code and that no further action related to the petroleum release at the site is required.

This notice is issued pursuant to subdivision (h) of Section 25299.37 of the Health and Safety Code. Please contact Danny Martinez at (619) 338-2456 if you have questions regarding this matter.

Sincerely,

GARY W. ERBECK, Director
Department of Environmental Health
Site Assessment and Mitigation Program

DM:GWE:kd

Enclosure

cc: Regional Water Quality Control Board
Allan Patton, SWRCB, UST Cleanup Fund Program
Fabio Minervini, England Geosystem Environmental Engineering

WP/H12571-2-CLO

"Environmental and public health through leadership, partnership and science"

Case Closure Summary
Leaking Underground Fuel Storage Tank Program

I. AGENCY INFORMATION

DATE: March 1, 2002

Agency Name: County of San Diego, Environmental Health, SAM	Address: P.O. Box 129261	
City/State/ZIP: San Diego, CA 92112-9261	Phone: (619) 338-2222	FAX: (619) 338-2377
Responsible Staff Person: Danny Martinez	Title: Environmental Health Specialist	

II. CASE INFORMATION

Site Facility Name: ARCO Station 6138				
Site Facility Address: 495 Telegraph Canyon Road, Chula Vista, CA 91910				
RB LUSTIS Case No: N/A	Local Case No: H12571-002		LOP Case No: N/A	
URF Filing Date: 18 August, 1999	SWEEPS No: N/A			
Responsible Parties:	Address:		Phone Number:	
ARCO Attn: Roy Thun	4 Centerpointe Dr. La Palma, CA 90623		(661) 2873855	
Tank No.	Size In Gal.	Contents	Closed In Place/Removed	Date
1	None (dispenser upgrade)	N/A	N/A	N/A

III. RELEASE AND SITE CHARACTERIZATION INFORMATION

Cause and Type of Release: Gasoline from leaking product dispenser			
Site Characterization complete?	Yes	Date Approved By Oversight Agency: January 23, 2002	
Monitoring Wells Installed?	No	Number: N/A	Proper Screened Interval? N/A
Highest GW Depth Below Ground Surface: > 40 feet		Lowest Depth: unknown	Flow Direction: unknown
Most Sensitive Current Use: Groundwater having designated beneficial uses for agricultural and potential beneficial for municipal Surface water having designated beneficial uses for industrial, non-contact water recreation and various habitats			
Are Drinking Water Wells Affected?	No	Aquifer Name: Telegraph Area/Sweetwater Hydrologic Unit (909.11)	
Is Surface Water Affected?	No	Nearest/Affected SW name: Telegraph Canyon adjacent to the site	
Off-Site Beneficial Use Impacts (addresses/locations): none			
Report(s) on file?	Yes	Where Is Report(s) Filed? County of San Diego, Environmental Health	
TREATMENT AND DISPOSAL OF AFFECTED MATERIAL			
Material	Amount (Include Units)	Action (Treatment or Disposal w/Destination)	Date
Tank(s)		Removed in 1991	
Soil (from borings)	6 drums	Disposed to TPS in Adelanto	10/24/01
Decontamination Water	55 gallons	Disposed to Demenno Kerdoon	10/24/01

Case Closure Summary
Leaking Underground Fuel Storage Tank Program

III. RELEASE AND SITE CHARACTERIZATION INFORMATION (Continued)

H 12571-002

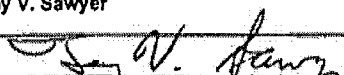
MAXIMUM DOCUMENTED CONTAMINANT CONCENTRATIONS - - BEFORE AND AFTER CLEANUP									
Contaminant	Soil (ppm)		Water (ppm)		Contaminant	Soil (ppm)		Water (ppm)	
	Before	After	Before	After		Before	After	Before	After
TPH (Gas)	2400	2400	N/A	N/A	Ethylbenzene	9.3	9.3	N/A	N/A
Benzene	< 2	< 2	N/A	N/A	Xylene	200	200	N/A	N/A
Toluene	11	11	N/A	N/A	MTBE	<14	<14	N/A	N/A

Comments:
 Soil samples taken during dispenser upgrades revealed Total Petroleum Hydrocarbon contamination beneath dispensers at approximately 3.5 feet below ground surface (bgs). Subsequent sampling from soil borings drilled to 40 bgs revealed contaminant concentrations are below laboratory detection levels indicating that the contamination is restricted to shallow depths. Groundwater was not encountered in any of the borings drilled during the assessment.
 The consultant states that approximately 20 cubic yards of contaminated soil with concentrations exceeding 100 mg/kg remains onsite. From the information submitted as part of the assessment, there appears to be no risk to human health or the environment and no cleanup is required.
 Case 001 (closed in 1997) involved contamination from underground storage tanks. Soil vapor extraction was performed for three years and confirmation samples taken in 1997 revealed that remediation was successful.

IV. CLOSURE

Does completed corrective action protect existing beneficial uses per the Regional Board Basin Plan?	Yes
Does completed corrective action protect potential beneficial uses per the Regional Board Basin Plan?	Yes
Does corrective action protect public health for current land use?	Yes
Case oversight completed based upon the current/future site use as a gas station.	
Site Management Requirements:	
Any contaminated soil excavated as part of subsurface construction work must be managed in accordance with the legal requirements at that time.	
Should corrective action be reviewed if land use changes?	Yes
Monitoring Wells Decommissioned: No	Number Decommissioned: N/A
	Number Retained: N/A
List Enforcement Actions Taken: Notice of Corrective Action and Reimbursement Responsibility	
List Enforcement Actions Rescinded: N/A	

V. LOCAL AGENCY REPRESENTATIVE DATA

Name: Tony V. Sawyer	Title: Hydrogeologist Land and Water Quality Division
Signature: 	Date: 3-4-2

VI. RWQCB NOTIFICATION

Date Submitted to RB: N/A soils only case	RB Response: N/A
RWQCB Staff Name: N/A	Title: N/A
	Date: N/A

VII. ADDITIONAL COMMENTS, DATA, ETC.

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This document and the related CASE CLOSURE LETTER, shall be retained by the lead agency as part of the official site file.



ARCO
Food mart
wash
379
389
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ARCO
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369
399
379

DRUX
CLEANERS
DON'S
AUTO REPAIR

NEW CAR WASH
NOW OPEN

ICE COLD
REFRESHMENT
W/ LIME & MINT
Coca-Cola



ARCO
food mart
car wash

3

CARWASH

ARCO
379
389
399
379

D-LUX
CLEANERS
DON'S
AUTO REPAIR

WOODWILL
LANDSCAPE CENTER

NEW
NO



ARCO
food mart
car wash
379
3
stop engine

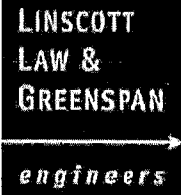
CAR WASH

ARCO
379
389
399
379

DEUX
CLEANERS
DON'S
AUTO REPAIR

GOODWILL

571



TRAFFIC IMPACT ANALYSIS
SHARP CHULA VISTA MEDICAL CENTER
OCEAN VIEW TOWER
Chula Vista, California
March 22, 2016

LLG Ref. 3-15-2536

Prepared by:
Amelia Giacalone
Transportation Planner III

Jorge Cuyuch
Transportation Engineer I

Under the Supervision of:
John Boarman, P. E.
Principal

**Linscott, Law &
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**TABLE 10-1
NEAR TERM INTERSECTION OPERATIONS**

Intersection	Control Type	Peak Hour	Near Term		Near Term + Project		Project % of Entering Volume (>5%)	Impact Type
			Delay ^a	LOS ^b	Delay	LOS		
1. Telegraph Canyon Road / I-805 SB Ramps	Signal	AM	12.0	B	12.0	B	1%	None
		PM	37.3	D	37.8	D	1%	
2. Telegraph Canyon Road / I-805 NB Ramps	Signal	AM	46.6	D	47.1	D	1%	Cuml
		PM	63.1	E	65.7	E	1%	
3. Telegraph Canyon Road / Oleander Avenue	Signal	AM	25.3	C	25.6	C	1%	None
		PM	26.2	C	26.6	C	1%	
4. Telegraph Canyon Road / Medical Center Drive	Signal	AM	28.0	C	29.7	C	2%	None
		PM	34.4	C	38.3	D	3%	
5. Telegraph Canyon Road / Heritage Road	Signal	AM	54.1	D	54.8	D	0%	None
		PM	45.9	D	46.2	D	1%	
6. Medical Center Court / Medical Center Drive	Signal	AM	21.8	C	30.9	C	11%	None
		PM	25.2	C	43.0	D	11%	
7. Medical Center Court / Loop Road Access West	OWSC ^c	AM	14.5	B	15.9	C	17%	None
		PM	16.7	C	33.7	D	21%	
8. Medical Center Court / Loop Road Access East	OWSC	AM	13.8	B	20.3	C	15%	None
		PM	15.9	C	21.4	C	18%	
9. Medical Center Court / Main Hospital Dwy	OWSC	AM	15.3	C	21.9	C	18%	None
		PM	11.4	B	13.5	B	22%	
10. E Palomar Street / Medical Center Drive	Signal	AM	33.2	C	33.4	C	4%	None
		PM	50.8	D	52.0	D	4%	
11. E Palomar Street / Medical Center Court	Signal ^d	AM	9.0	A	9.3	A	3%	None
		PM	10.9	B	11.6	B	3%	
12. E Palomar Street / Heritage Road	Signal	AM	97.3	F	97.7	F	1%	Cuml
		PM	51.2	D	51.8	D	1%	
13. Olympic Parkway / I-805 SB Ramps	Signal	AM	63.8	E	64.0	E	0%	Cuml
		PM	84.2	F	85.7	F	0%	

**TABLE 11-2
LONG TERM WITH PROJECT STREET SEGMENT OPERATIONS**

Street Segment	Classification	LOS C Capacity ^a	Long-Term with Project		Significance Criteria		Impact Type
			ADT ^b	LOS ^c	Project ADT > 800	Project % of Entering Volume (>5%)	
Telegraph Canyon Road							
Halecrest Drive to Oleander Avenue	7-Lane Expressway	61,250	70,900	E	635	1%	Cumulative
Oleander Avenue to Medical Center Drive	6-Lane Prime Arterial	50,000	65,800	F	828	1%	Cumulative
Medical Center Drive to Heritage Road	6-Lane Prime Arterial	50,000	52,500	D	524	1%	None
Medical Center Drive							
Telegraph Canyon Road to Medical Center Court	Class I Collector	22,000	24,400	D	1,490	6%	None
Medical Center Court to E. Palomar Street	Class I Collector	22,000	11,800	A	773	7%	None
Medical Center Court							
East of Medical Center Drive	Class II Collector	12,000	14,400	E	2,263	16%	Direct
North of E. Palomar Street	Class II Collector	12,000	5,600	A	497	9%	None
E. Palomar Street							
Oleander Avenue to Medical Center Drive	4-Lane Major Road	30,000	17,800	A	359	2%	None
Medical Center Drive to Medical Center Court	4-Lane Major Road	30,000	17,900	A	0	0%	None
Medical Center Court to Heritage Road	4-Lane Major Road	30,000	14,100	A	497	4%	None
Olympic Parkway							
I-805 Ramps to Oleander Avenue	6-Lane Prime Arterial	50,000	46,300	C	331	1%	None
Oleander Avenue to Brandywine Avenue	6-Lane Prime Arterial	50,000	48,800	C	276	1%	None

with LOS A representing the best operating conditions and LOS F representing the worst. Level of service designation is reported differently for signalized and un-signalized intersections, as well as for roadway segments.

In the 2010 Highway Capacity Manual (HCM), Level of Service for signalized intersections is defined in terms of delay. The level of service analysis results in seconds of delay expressed in terms of letters A through F. Delay is a measure of driver discomfort, frustration, fuel consumption, and lost travel time. *Table 4-1* summarizes the signalized intersections levels of service descriptions.

4.3.1 Signalized Intersections

Table 4-2 depicts the criteria, which are based on the overall average control delay for a signalized intersection. The level of service criteria is stated in terms of the average control delay per vehicle for a 15-minute analysis period. Control delay includes initial deceleration delay, queue move-up time, stopped delay, and final acceleration delay.

Level of service A describes operations with very low delay, (i.e. less than 10.0 seconds per vehicle). This occurs when progression is extremely favorable, and most vehicles arrive during the green phase. Most vehicles do not stop at all. Short cycle lengths may also contribute to low delay.

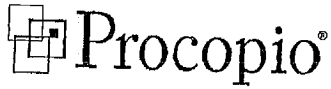
Level of service B describes operations with delay in the range 10.1 seconds and 20.0 seconds per vehicle. This generally occurs with good progression and/or short cycle lengths. More vehicles stop than for LOS A, causing higher levels of Average delay.

Level of service C describes operations with delay in the range 20.1 seconds and 35.0 seconds per vehicle. These higher delays may result from fair progression and/or longer cycle lengths. Individual cycle failures may begin to appear. The number of vehicles stopping is significant at this level, although many still pass through the intersection without stopping.

Level of service D describes operations with delay in the range 35.1 seconds and 55.0 seconds per vehicle. At level D, the influence of congestion becomes more noticeable. Longer delays may result from some combination of unfavorable progression, long cycle lengths, or higher v/c ratios. Many vehicles stop, and the proportion of vehicles not stopping declines. Individual cycle failures are more frequent.

Level of service E describes operations with delay in the range of 55.1 seconds to 80.0 seconds per vehicle. This is considered to be the limit of acceptable delay. These high delay values generally indicate poor progression, long cycle lengths, and high v/c ratios. Individual cycle failures are frequent occurrences.

Level of service F describes operations with delay in excess of over 80.0 seconds per vehicle. This is considered to be unacceptable to most drivers. This condition often occurs with over-saturation (i.e., when arrival flow rates exceed the capacity of the intersection). It may also occur at high v/c ratios below 1.00 with many individual cycle failures. Poor progression and long cycle lengths may also be major contributing causes to such delay levels



AGRI-2018

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AUSTIN
DEL MAR HEIGHTS
PHOENIX
SAN DIEGO
SILICON VALLEY

January 4, 2018

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
VIA E-MAIL (CYOUNG@CHULAVISTACA.GOV)

Caroline Young
Development Services Project Manager
Development Services Department
City of Chula Vista
276 Fourth Ave.
Chula Vista, CA 91910

Re: Wash 'N Go Carwash; 495 Telegraph Canyon Road
Project No. DR15-0037, CUP-15-0023, & PER16-0003
Inadequate Noise Analysis Report; Erroneous Use of Categorical Exemption; Inability to make findings for CUP

Dear Caroline:

This letter is in response to your letter, dated November 17, 2017, providing Eilar Associates, Inc.'s response, dated October 13, 2017 ("Response Letter"), to our October 4, 2017 letter regarding the proposed Final Noise Analysis Report, dated August 7, 2017 ("Noise Study") for the above referenced project ("Project"). Although we appreciate the City's response, our concerns regarding the impacts of unevaluated noise sources and the impact the Project may have on the ambient noise levels remain unaddressed. We are also responding to recent notice of intent to adopt a CEQA categorical exemption in support of a conditional use permit for the project. The Noise Report does not support the use of a categorical exemption, or the ability to make all findings required of a CUP.

As you know from the multiple correspondence to date, we represent elderly individuals living immediately next door to the proposed car wash facility. We have stated our concerns that the facility will cause disruptive noise to the adjacent residences, yet these concerns remain unaddressed. This project seeks to have unmitigated and unsupervised noise from cars waiting to enter the car wash immediately adjacent to homes. It is wholly predictable that noise from these cars and the operation will be disruptive to these neighbors, affecting their health and welfare. Until this impact is recognized, addressed and adequate mitigation is provided, consideration of the CUP is premature and subject to challenge.

Project Noise Report does not address the issue.

The noise study purports to evaluate a "worst-case" scenario for the Project, but only evaluates one noise source. A "worst-case" scenario that does not take into account all of the noise sources arising from the site such as the vacuums, intercoms, and customer noise (radios, idling cars, loud conversations, horns) ("Unevaluated Noise Sources") is wholly inadequate. Such a limited analysis cannot be used as a basis to determine whether the Project will exceed the municipal code requirements or whether the Project may have an impact on the environment or on the health and welfare of surrounding residences. These are separate inquiries.

The applicant's Response Letter simply dismissed the potential impacts of the Unevaluated Noise Sources and offered no evaluation to support the dismissal. While the dryers (which were the sole noise source evaluated) may be the dominant source of noise, they are not the only source. More importantly, the Unevaluated Noise Sources would be immediately adjacent to the residential properties and are of particular concern to such residents. As the Response Letter concedes, the vacuums and intercoms will generate noise and, rather than explain how such noises impact the environment, merely states the noises "are not expected to be significant" or would be of brief duration and would be minimal compared to the dryer noise.

There are several issues with these contentions. First, a mere statement that such noises are not expected to be significant is not sufficient to properly evaluate whether such noise sources alone, or taken together with other noise sources, will have an impact on the environment or meet the municipal code requirements. The decision maker cannot determine to what extent the Unevaluated Noise Sources will be heard in the adjacent residences, and as a result there is no way for Planning Commission to make the required finding for the permit:

"That such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity; (CVMC 19.14.080 B.)

There is no support for making such finding relative to the noise impacts to the adjacent residences.

Second, the comparison of the intercom noise and other Unevaluated Noise Sources to the dryer noise is irrelevant; the impact of the these noise sources on the environment and surrounding homes is the relevant inquiry. This requires measurement of noise levels, proximity to homes, and number of occurrences throughout the day, and if impacts occur, how such impacts can be eliminated or minimized. None of these issues are addressed in the noise study.

Third, the fact that the intercoms would be of brief duration, and therefore may not impact the average hourly noise levels, does not mean that such noises will not disruptive and impact the residential properties. Residential properties immediately adjacent to the carwash will be subject to such disruptive noises regardless of the impact on the hourly average. Moreover, the high number of sporadic and brief noise sources would in fact be more disruptive to the neighboring residences.

The Response Letter also incorrectly contends that customer noise is "unpredictable" and "out of control of the carwash operators" which would make modeling of such noises infeasible. However, noise from idling cars, radios, and car horns is both predictable and very common at car

washes and this is what makes their impact so significant. This impact is unassessed, and no mitigation is proposed for the impact. The unpredictability of the timing of such noises does not alleviate the requirement to evaluate and mitigate for such foreseeable impacts. To determine the potential impacts, the applicant can use a similarly designed and situated car wash as a reference and create real, objective measurements. In addition, noise from idling cars is not unpredictable, especially in modeling a worst-case scenario with assumptions that the Project will be used at capacity. Car idling is often modeled to determine noise from circulation within a development. Therefore, at a minimum, the Noise Study should include an analysis of noise from idling cars, radios, speakers, etc. and an assessment of this impact on neighboring homes.

In addition, the contention that the noise sources are out of the control of the carwash operators is incorrect. The City could require as a condition of approval that employees be located at the queue line and at the vacuums to police the facility so that customers keep noise volumes down, turn their radios down or refrain from using loud voices and their car horns. Signs can be posted in addition to having onsite employees, but signs alone will do little to prevent such noises. Also, the project is proposing a sound barrier wall near the adjacent commercial property— a sound wall of effective height can also be constructed along the property line bordering the residential properties to limit impacts. Such design of a sound barrier requires an analysis of the noise first, then a determination of the barrier necessary to protect neighboring residences.

Finally, as noted in our previous letters, CEQA Guidelines require the City to evaluate if the Project will have a temporary, permanent or periodic increase in ambient noise levels in the Project vicinity above levels existing without the Project. The determination of whether the Project will comply with the City's noise ordinance is a separate inquiry under CEQA and the CUP findings. The City's noise ordinance does not establish the sole threshold for significance under CEQA and does not limit consideration under the CUP findings. Therefore, *a finding that the Project complies with the noise ordinance does not mean that it has no impact on the environment or that the project is not detrimental to the health, safety or general welfare of persons residing or working in the vicinity.* The Noise Study has no evaluation of the increase in ambient noise levels above the current levels. As noted in the Noise Study, the ambient noise levels in the area are very high, increases to these ambient noise levels can be detrimental to the residents located immediately adjacent to the Project.

The Noise Study still contains significant deficiencies that need to be addressed before the City can rely on its findings to determine whether the Project will comply with the City's noise ordinance and whether Project will have an impact on the environment.

Use of a Categorical Exemption is Inappropriate for the Permit.

Any consideration of this project under a CEQA categorical exemption would be without substantial support and erroneous. Moreover, the use of a categorical exemption for in fill property (§ 15332) as noted in the public notice, is wholly inappropriate. This exemption is specifically intended for "environmentally benign infill projects," and does not apply to a project that would result in any significant offsets relating to traffic, noise or air quality. The City is not able to provide this assurance given the current level of analysis. Moreover, this assurance cannot be assumed in this situation. CEQA guidelines § 15300.2 prohibits the use of a categorical exemption where there "is a reasonable probability that the activity will have a significant effect on the environment due to



unusual circumstances." Here, the location is a busy, unsupervised car wash immediately adjacent to residential homes is just such an unusual circumstance.

We have previously deplored the City and the applicant to take our clients' concerns and address them in a meaningful manner through multiple correspondence. However, both have failed to do so. Instead, you refer to an inadequate Noise Study, which is a diversion from the project impacts of highest concern. The Noise Study still needs to include the potential impacts of the Unevaluated Noise Sources and any corresponding mitigation measures, and the Noise Study needs to include an analysis of any increases in ambient noise levels in the Project vicinity, including the affected homes. We respectfully request that you either instruct the project applicant to address these needs, or deny the application outright.

Best regards,

Theodore J. Griswold
Partner, of
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CC: Planning Commissioners
Ms. Judith Wilson

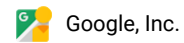
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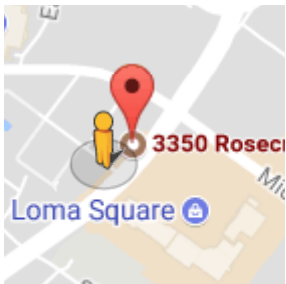


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