



APPEAL APPLICATION FORM

Appeal the decision of the:

- Zoning Administrator
Planning Commission

STAFF USE ONLY
Date Received: 11-18-15
Fee: \$250
Receipt #: 005-00053395
Case #: DR15-0010

Application Information

Name of Appellant: Kenny Ray & Mitch Compton
Phone: 619 596-7500
Address: [Redacted]
Business Address: 1830 Gillespie Way, El Cajon CA 92020
Project Address: 4404 Bonita Road, Chula Vista CA
Project Description: Administrative Design Review

Please use the space below to provide a response to the decision you are appealing. Attach additional sheets, if necessary. Grounds for an appeal must be based on at least one of the following:

- (1) Factual Error. The statements or evidence relied upon by the decision maker when approving, conditionally approving, or denying a permit, map, or other matter was inaccurate;
(2) New Information. New information is available to the applicant or the interested person that was not available through that person's reasonable efforts or due diligence at the time of the decision; or
(3) Findings Not Supported. The decision maker's stated findings to approve, conditionally approve, or deny the permit, map, or other matter are not supported by the information provided to the decision maker.

In order for an appeal to be valid, detailed responses must be included which cite at least one of the above reasons for the appeal along with substantiation of the facts and circumstances on which the claim of the appeal is based.

- 2. Correspondence from adjoining property owners was submitted to the Project Planner with requested for it to be provided to the Zoning Administrator during consideration of Application (see attached). 2. Requested information from Planner in writing with no reply. 2. One of these RFI pertained to confirmation that opponents correspondence had in fact been provided to the ZA 1 & 2. Adjoining property owner within 500' from the Applicants address didn't receive a public notice from the City.
1. If Opposition letters, photos and Technical Reports submitted to Planner weren't provided ZA, file was incomplete

Appeal Form Directions

Pursuant to the Chula Vista Zoning Ordinance Chapter 19.14, an interested party may appeal the decision of the Zoning Administrator, or Planning Commission to the City Council. The appellant must be an interested party. An interested party means a person who was present at a public hearing from which an appeal arose and who had filed a speaker slip with the decision maker at that public hearing, or a person who expressed an interest in the project in writing to that decision maker before the close of the public hearing or a decision on an action from which an appeal may be filed.

[Redacted Signature] Signature of Appellant
Date: November 17th, 2015

DO NOT WRITE IN THIS SPACE

The above matter has been scheduled for public hearing before the: [] City Council On ___/___/___

Development Services Department City Clerk

CITY OF CHULA VISTA

Planning Division

STATEMENT OF AMOUNT DUE

APPEAL FOR DR15-0010
 11-18-2015 7:10:05 AM
 005-00053395 /\$ 250.00

Finance Use Only:

Name on Check: Mitchell T Compton

Date: 11-18-15

Project Name or Address: Appeal For DR15-0010

<u>Amount</u>	<u>Description</u>	<u>Case# & DQ#</u>	<u>Acct Number</u>	<u>Trans Code</u>
\$ _____	Appeal, CUP, DRC, EIR, GPA, IS, PSP, PUD, Rezone, SPA Plan, Subdivision (all public hearing), Deposits	_____	00892-2721/010 8000000	9501
\$ _____	Cash Bond Deposit or EIR/IS/ND Consultant, Annex/Detachment, State board of Equalization Fee	_____	00861-2721	9130
\$ <u>250</u>	Appeal, CUP, DRC, Variance, (no public hearing), Special Event Permit, Outside Sales, Home Occupation, Zoning Permit.	<u>DR15-0010</u>	12533-3701 (flat fee)	2000
\$ _____	Sale of Maps, Plans, Specs, Copies, Publications	_____	12531-3722	2061
\$ _____	Plan Check Fee, Landscape Plan Approval, Garage Conversion, Sign Permits	_____	1231-3722	2101
\$ _____	Park (and in-lieu fee)	_____	71500-4561	4600
\$ _____	Residential Const. Tax	_____	71700-3061	0161
\$ _____	Review of Previous I.S.	_____	12531-3755	2200
\$ _____	Consultant Qualifications	_____	12531-4991	6001
\$ _____	Other: _____	_____	_____	_____
\$ <u>250</u>	TOTAL			

Prepared by Alfonso C

Kenneth A Ray

Bonita CA 91902

City of Chula Vista
Development Services Department
276 Fourth Avenue
Chula Vista CA 91910

11/17/2015

Dear Project Manager please attach to Appeal Application Form as Page 2, 3 & 4.

(1) Factual Error, a CEQA guideline that is to be applied to all Class 1 categorical exemptions is "Does the project fit the general rule-having no possibility of having an impact on the environment 14 CCR 15061 (B) (3).

a, City was aware of ongoing violation of its Noise Control Ordinance ("NCO") at the applicant's site. This violation per the Cities NCO constitutes an environmental violation. See attached package from Owner's (DS Bonita Centre, LLC) attorney (Corey Taylor) to Safeway Inc. dated May 16, 2013, See attached Vons Grocery Co /Safeway Inc. 30 Day Notice to Perform or Quit, in which it is claimed "...You have failed to perform the above by operating the roof-installed chiller units (the "Units") comprising a portion of the Heating, ventilation, and air conditioning system ("HVAC") within the premises in a manner that violates the applicable Noise Ordinance" ...". Specifically, the units are operating at a sound level that exceeds what is allowable"..., see attached ..."Acoustical Analysis Vons Market Rooftop Mechanical Noise Bonita Center", see attached approved "Sound Wall" plan B13-1694 approved by the CV Building Department, See attached photos showing actual sound wall constructed with serious deviations from plans approved by City. Notice bottom 30" of Sound Walls facing residential properties has been left completely open leaving walls incapable of performing as Noise Control Barriers as intended in the Owners Acoustical Report page 3 ..." Each completed noise control barrier must present a solid face from top to bottom and end to end. Cutouts are not permitted except for drain holes.

EXCEPTIONS TO CATEGORICAL EXEMPTIONS

If the project is determined to be categorically exempt, the Lead Agency must consider whether the exemption is negated by an exception pursuant to CEQA Guidelines, Section 15300, and Public Resources Code, Section 21084. Such exceptions may apply under the following circumstances:

1. The project site is environmentally sensitive as defined by the project's location. A project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.

2. The project and successive projects of the same type in the same place will result in cumulative impacts;
3. There are "unusual circumstances" creating the reasonable possibility of significant effects;
4. The project may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock, outcroppings, or similar resources, within an officially designated scenic highway, except with respect to improvements required as mitigation for projects for which negative declarations or EIRs have been prepared;
5. The project is located on a site that the Department of Toxic Substances Control and the Secretary of the Environmental Protection have identified, pursuant to Government Code section 65962.5, as being affected by hazardous wastes or clean-up problems; or
6. The project may cause a substantial adverse change in the significance of an historical resource.

Items 1, 2 & 3 are applicable exceptions to the claimed CEQA Exemption;

1. In all local Governmental Jurisdictions special environmental and use conditions apply to Commercially Zoned properties that are appurtenant to Residential Zoned Properties. Because of the excessive and unmitigated noise from the cumulative exterior Roof Top HVAC and Refrigeration Plant equipment at the Applicants location, it poses a serious environmental impact on the adjoining SFR which are slightly above and in line of sight of the source of the excessive noise. This noise interferes with the neighboring property owner's right to the quiet enjoyment of their respective properties. Did the Cities Development Services Director and the Zoning Administrator take this into consideration when the exemption was granted?
2. Because the City continues to allow new and old business's alike to populate the roofs of these buildings with more and more HVAC and Refrigeration Equipment, not only has the excessive noise not been abated to within compliance of the Cities Noise Control Ordinance, the excessive noise has become louder as a result of these cumulative environmental impacts.
3. Since bringing this environmental concern, from adjoining property owners, to the Cities attention beginning in 2006, the City has yet to take any code enforcement actions and has yet to even come to the adjoining residential properties to listen to the excessive noise problem. No actions of any kind have been taken by the City to enforce its own section 19.68 Noise Control Ordinance. This constitutes an "unusual circumstance" that has exacerbated the severity and significance of the problem.

In closing we ask that the City reconsider the approval of this application. Approval of this application will be detrimental to the health, safety and general welfare of persons residing in the vicinity and will be injurious to other properties and improvements in the vicinity. We believe a strong case can be made that the ZA approval was based on incomplete and non factual information. The Approval also relied on

misinterpretations of the guidelines established for exemptions of CEQA Guidelines, Section 15300, and Public Resources Code, Section 21084. The courts have ruled that the use of CEQA exemptions should embrace projects that combat environmental harm, not those that diminish existing environmental protections. Item 7 of the ZA's decision indicates that the project will comply with all sections of the Cities Title 19 of the municipal code and all other applicable City Ordinances in effect at the time of the approval of this Design Review Permit ("DRP"). As an offer of compromise, we would agree to withdraw our appeal of the ZA's approval of the above mentioned DRP should it be conditionally approved so the applicant is specifically required to fully comply with the Cities NCO.

The following is taken directly from the Cities Chapter 19.68 Performance Standards and Noise Control Ordinance;

... "Whereas, excessive noise and vibration are a serious hazard to the public health and welfare and the quality of life, and Whereas, the people have a right to and should be ensured an environment free from noise and vibrations that may jeopardize their health or welfare or degrade the quality of life;

Now therefore, it is the policy of the city to prevent noise and vibrations which may jeopardize the health or welfare of its citizens or degrade the quality of life."...

Kenneth A Ray

Ser: 15x1117.0012

Cc: S. McKinley
M. Compton

Kenneth A Ray

From: Janice Fenimore-Scott [mailto:jfscott@dserg.com]
Sent: Tuesday, June 18, 2013 11:32 AM
To: mitch@██████████ kar@██████████
Cc: corey@██████████; Henry Avila; Don Armstrong; Michelle Gray
Subject: Bonita Center Vons Noise Mitigation Progress Update
Attachments: Bonita - Letter from Vons 061213 pdf; _Certification_.htm

Mitch as per our telephone conversation today, attached is a copy of the letter we received from Vons acknowledging the issue with the chiller, the steps taken to date and the commitment to continue to resolve until the issue is mitigated

I understand that Merri of Vons has given you this update verbally, but wanted to let you know that we did receive the commitment from Vons in writing as well

We will continue to monitor. Please let me know if you hear/see any work and we will keep you updated on our side as well Thanks Mitch!



**DONAHUE
SCHRIBER**

Janice Fenimore-Scott, CSM | Director Property Management

Donahue Schriber Realty Group | 200 E. Baker Street, Suite 100 | Costa Mesa, CA 92626

714.966.6416 direct | 714.545.1400 main | 714.966.5416 fax

jscott@dserg.com email | donahueschriber.com website



WRITER'S TELEPHONE NUMBER: (626) 821-7057
WRITER'S FACSIMILE NUMBER: (626) 821-7914
WRITER'S E-MAIL: SAM.SHINK1@SAFEGWAY.COM

Wednesday, June 12, 2013

Corey E. Taylor, Esq.
Law Office of Corey E. Taylor
27201 Puerta Real, Suite 465
Mission Viejo, CA 92691

VIA CERTIFIED MAIL RETURN RECEIPT
REQUESTED

Donahue Schriber Realty Group, L.P.,
dba DS Bonita Centre, LLC
200 East Baker Street, Suite 100
Costa Mesa, CA 92626

VIA CERTIFIED MAIL RETURN RECEIPT
REQUESTED

Subject: Lease between Donahue Schriber Realty Group, L.P., dba DS Bonita Centre, LLC ("Landlord) and The Vons Companies Inc. ("Tenant") with respect to Vons #2130; 4404 Bonita Road, Bonita, California 91902 ("Premises")

Dear Mr. Taylor and Landlord:

This letter is written in response to Landlord's formal notice dated May 16, 2013 ("Landlord's Notice"), demanding that Tenant replace or otherwise mitigate the noise emanating from the roof-based chiller units operating at the Premises ("Noise Issue") within thirty (30) days of Landlord's Notice pursuant to its obligations to do so under Articles 4.1, 13.3, and 16.1 of the Lease. Please be advised that Tenant has in fact diligently been pursuing a solution to the chiller noise for the past number of weeks and intends to continue to do so until the noise level is abated to a level that is at or below acceptable city standards.

In that regard, Tenant has identified two potential solutions to the Noise Issue. They are:

- Installation of sound diverters: Tenant has already completed installation of the diverters, but that unfortunately did not solve the problem, and;
- Structural sound screen: Tenant is actively pursuing this option and is currently investigating the structural engineering required to install such a screen on the roof around the units.

Tenant will continue to diligently pursue implementation of a solution to the Noise Issue, will update Landlord on its progress as warranted, and advise Landlord when the Noise Issue has been solved. However, given the structural nature of the sound screen solution, that solution is not expected to be in place until after thirty (30) days from Landlord's notice has elapsed and, pursuant to Article 16.1 of the Lease, Tenant is granted such additional time past thirty (30) days as may be necessary to implement such solution.

If either of you have any questions in the meantime, please contact me by phone or e-mail as indicated at the top of this letter.

Very truly yours,

SAM SHINK
Director of Real Estate

Safeway Inc.
Vons Division
618 Michillinda Ave.
Arcadia, CA 91007-6300

Copy: Karen Elliott, Esq. (Safeway)

P.O. Box 513338
Los Angeles, CA 90051-1338

COREY E. TAYLOR
ATTORNEY AT LAW

May 16, 2013

**VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED**

Safeway Inc.
Attn: Manager, Real Estate Law
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229

Re: *Notice to Perform or Quit – Vons located at 4404 Bonita Rd, Bonita, CA 91902 (“Premises”)*

Dear Safeway Inc.:

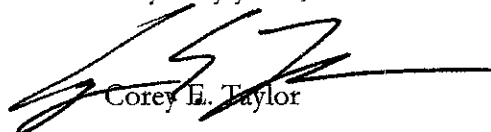
This firm represents DS Bonita Centre, LLC, a California limited liability company (“Lessor”), the owner of the center that includes the Premises. Enclosed please find a Notice to Perform or Quit (“Notice”) which requires Vons Grocery Co. (now Safeway Inc.) (“Lessee”) to replace or otherwise mitigate the noise emanating from the roof-based chiller units operating at the Premises (“Units”).

In response to several complaints from homeowners adjacent to the center that includes the Premises, and after Lessee failed to address the issues despite requests from Lessor, Lessor commissioned an acoustical analysis concerning the Units. That analysis revealed that noise from the Units exceeds allowable levels. To assist Lessee in remedying this default, a copy of that acoustical analysis is enclosed.

Should you have any questions about the foregoing, the Notice, or any of the enclosed documents, please contact the undersigned. Otherwise, please correct the defaults set forth in the Notice and provide written proof of same to the undersigned within thirty days hereof.

Thank you for your prompt attention to these matters.

Very truly yours,


Corey E. Taylor

Enclosures: Per above.

cc: Lessor

NOTICE TO PERFORM OR QUIT
(Code of Civil Procedure Section 1161(3))

To: LESSEE IN POSSESSION: Vons Grocery Co./Safeway Inc. (“Lessee”) and any and all other sublessees or lessees-in-possession.

From: LESSOR: DS Bonita Centre, LLC, a California limited liability company (“Lessor”).

Re: PREMISES LOCATED AT: 4404 Bonita Road, Bonita, CA 91902 (“Premises”).

PLEASE TAKE NOTICE THAT that pursuant to the August 19, 1976 lease as amended (“Lease”) under which you hold possession of the Premises described in this Notice, you covenanted to perform the following: Use (Lease, Article 4, Section 4.1) and Repairs, Maintenance and Reconstruction (Lease, Article 13, Section 13.3).

Section 4.1 of the Lease states, in pertinent part:

Lessee covenants that it will not use the demised premises or any part thereof for any use or purpose in violation of the laws or regulations of any governmental entity having jurisdiction over the demised premises. . . .

Section 13.3 of the Lease states, in pertinent part:

In addition, Lessee shall maintain the heating and air conditioning and plumbing and electrical systems within the demised premises.

You have failed to perform the above by operating the roof-installed chiller units (the “Units”) comprising a portion of the heating, ventilation, and air conditioning system (“HVAC”) within the Premises in a manner that violates the applicable Noise Ordinance for the County of San Diego (“Ordinance”). Specifically, the Units are operating at a sound level that exceeds what is allowable under Section 36.404 (General Sound Level Limits) of the Ordinance. A copy of the applicable provisions of the Ordinance are provided herewith.

PLEASE TAKE FURTHER NOTICE THAT that, pursuant to Section 16.1 of the Lease, within Thirty (30) days after service of this Notice on you, you must perform the stated covenants and conditions by replacing the Units or otherwise mitigating the noise emanating from the Units so as to make them compliant with the Ordinance.

IN THE ALTERNATIVE, you are hereby required to vacate and turn over possession of the Premises to Lessor within Thirty (30) days of the service of this Notice on you, or the Lessor will institute legal proceedings against you to declare the forfeiture

of the Lease and to recover possession of the Premises, rent, damages, court costs and attorneys' fees. You are further notified that the Lessor does hereby elect to declare the forfeiture of the Lease if the breaches listed in this Notice are not cured within the required time.

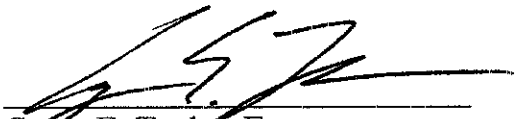
PLEASE TAKE FURTHER NOTICE THAT that, pursuant to Section 20.2 of the Lease, Lessee is notified that Lessor has the right, but not the obligation "to correct or remedy any default upon the part of Lessee under any provision of this lease, and Lessee agrees that, in the event Lessor shall correct or remedy any such default, Lessee shall pay to Lessor the cost thereof upon demand." Lessor reserves the right to act pursuant to this section of the Lease.

This Notice to Perform or Quit is not a waiver of the right of the Lessor to hold Lessee responsible for any other breaches of the Lease or for any sums due under the Lease including but not limited to future rent loss and any and all other damages that the Lessor may suffer as a result of your breach of the Lease including but not limited to any and all damages that Lessor is entitled to pursuant to law and/or in accordance with the Lease, or any other of Lessor's rights and remedies.

Dated: May 16, 2013

LESSOR
DS Bonita Centre, LLC, a California limited liability company
By: Law Office of Corey E. Taylor
Attorney for Lessor

By:



Corey E. Taylor, Esq.

Law Office of Corey E. Taylor
27201 Puerta Real, Suite 465
Mission Viejo, CA 92691
(949) 429-3481

Business Hours: M-F 9:00 a.m. to
5:00 p.m.

SEC. 36.404. GENERAL SOUND LEVEL LIMITS.

(a) Except as provided in section 36.409 of this chapter, it shall be unlawful for any person to cause or allow the creation of any noise, which exceeds the one-hour average sound level limits in Table 36.404, when the one-hour average sound level is measured at the property line of the property on which the noise is produced or at any location on a property that is receiving the noise.

**TABLE 36.404
SOUND LEVEL LIMITS IN DECIBELS (dBA)**

ZONE	TIME	ONE-HOUR AVERAGE SOUND LEVEL LIMITS (dBA)
(1) RS, RD, RR, RMH, A70, A72, S80, S81, S87, S90, S92 and RV and RU with a density of less than 11 dwelling units per acre.	7 a.m. to 10 p.m. 10 p.m. to 7 a.m.	50 45
(2) RRO, RC, RM, S86, V5 and RV and RU with a density of 11 or more dwelling units per acre.	7 a.m. to 10 p.m. 10 p.m. to 7 a.m.	55 50
(3) S94, V4 and all commercial zones.	7 a.m. to 10 p.m. 10 p.m. to 7 a.m.	60 55
(4) V1, V2 V1, V2 V1 V2 V3	7 a.m. to 7 p.m. 7 p.m. to 10 p.m. 10 p.m. to 7 a.m. 10 p.m. to 7 a.m. 7 a.m. to 10 p.m. 10 p.m. to 7 a.m.	60 55 55 50 70 65
(5) M50, M52 and M54	Anytime	70
(6) S82, M56 and M58.	Anytime	75
(7) S88 (see subsection (c) below)		

(b) Where a noise study has been conducted and the noise mitigation measures recommended by that study have been made conditions of approval of a Major Use Permit, which authorizes the noise-generating use or activity and the decision making body approving the Major Use Permit determined that those mitigation measures reduce potential noise impacts to a level below significance, implementation and compliance with those noise mitigation measures shall constitute compliance with subsection (a) above.

(c) S88 zones are Specific Planning Areas which allow different uses. The sound level limits in Table 36.404 above that apply in an S88 zone depend on the use being made of the property. The limits in Table 36.404, subsection (1) apply to property with a residential, agricultural or civic use. The limits in subsection (3) apply to property with a commercial use. The limits in subsection (5) apply to property with an industrial use that would only be allowed in an M50, M52 or M54 zone. The limits in subsection (6) apply to all property with an extractive use or a use that would only be allowed in an M56 or M58 zone.

(d) If the measured ambient noise level exceeds the applicable limit in Table 36.404, the allowable one-hour average sound level shall be the one-hour average ambient noise level, plus three decibels. The ambient noise level shall be measured when the alleged noise violation source is not operating.

(e) The sound level limit at a location on a boundary between two zones is the arithmetic mean of the respective limits for the two zones. The one-hour average sound level limit applicable to extractive industries, however, including but not limited to borrow pits and mines, shall be 75 decibels at the property line regardless of the zone in which the extractive industry is located.

(f) A fixed-location public utility distribution or transmission facility located on or adjacent to a property line shall be subject to the sound level limits of this section measured at or beyond six feet from the boundary of the easement upon which the facility is located.

SEC. 36.405. REPAIRING, REBUILDING OR TESTING MOTOR VEHICLES.

It shall be unlawful for any person to repair, rebuild or test any motor vehicle in such a manner as to cause a disturbing, excessive or offensive noise as defined in section 36.402 of this chapter.

SEC. 36.406. POWERED MODEL VEHICLES.

It shall be unlawful for any person to operate a powered model vehicle between 9 p.m. and 7 a.m. A powered model vehicle operated in a County park shall meet the daytime sound level standards for an RS zone measured at a point 100 feet from the park property line or 100 feet from where the model vehicle is being operated, whichever is less.

SEC. 36.407. REFUSE VEHICLES & PARKING LOT SWEEPERS.

No person shall operate or allow to be operated, a refuse compacting, processing, or collection vehicle or a parking lot sweeper between the hours of 10 p.m. to 6 a.m., in or within 100 feet of a residential zone.

CHRISTOPHER JEAN & ASSOCIATES, INC.
ACOUSTICAL CONSULTING SERVICES

May 6, 2013

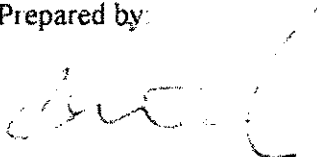
ACOUSTICAL ANALYSIS

VONS MARKET ROOFTOP MECHANICAL NOISE

BONITA CENTER

COUNTY OF SAN DIEGO

Prepared by:



Christopher Jean, INCE

Prepared for: MR DON ARMSTRONG
DONAHUE SCHRIBER REALTY
200 E Baker Street, Suite 100
Costa Mesa, California 92626

CHRISTOPHER JEAN & ASSOCIATES, INC.
ACOUSTICAL CONSULTING SERVICES

SUMMARY

This analysis has been completed to document the existing noise impacts caused by rooftop mechanical refrigeration equipment and the necessary mitigation measures for the Bonita Center Vons market located in the Bonita area of the County of San Diego. A list of requirements and recommendations is given in the following summary. Details are discussed in the body of the report.

A EXTERIOR NOISE CONTROL

Sound walls at least ten feet (10') high must be constructed around the south, east and west sides of each multi-fan chiller unit as shown on Exhibit 3 found in the body of the report. Panels of one inch (1") thick Tectum (or equivalent) must be applied to the south side of the sound wall between the two chiller units.

B NOISE CONTROL BARRIER CONSTRUCTION MATERIALS

The required noise control barriers may be constructed using any of the following materials:

- (1) Minimum 18 gauge corrugated sheet steel
- (2) Stucco on wood frame
- (3) 3/4" plywood
- (4) Modular sound wall systems
- (5) Any combination of the above materials or any material with a surface weight of at least 3.5 pounds per square foot.

Each completed noise control barrier must present a solid face from top-to-bottom and end-to-end. Cutouts are not permitted except for drain holes.

C INTERIOR NOISE CONTROL

The aforementioned sound walls will produce compliance with the County noise limits at the first floor levels of the adjacent residences as required by the Noise Ordinance. However, the sound walls will be less effective at any second floor rooms with any view of the offending rooftop mechanical units. If noise complaints continue to occur after the prescribed sound walls are erected, the next mitigation step would be to upgrade the windows of the adjacent residences with sound rated units (not generic dual or triple pane). However, more investigative work would be necessary to determine the sound rating required to achieve a given noise reduction goal.

D PROJECT DISCLOSURE

The County noise limits represent a compromise between ideal acoustical conditions and the practical limits of conventional noise mitigation technologies. Compliance with the County Noise Ordinance does not guarantee, require or even imply that offending noise sources must be mitigated to inaudibility. Compliance with a nighttime exterior noise limit of 50 dBA Leq means that rooftop mechanical noise will remain clearly audible at the affected residential uses.

Do not misrepresent the degree of the exterior acoustical mitigation as anything more than meeting the Noise Ordinance limits during any phase of this project. Never, ever, use any form of the term "Soundproof" to describe any portion of this project.

CHRISTOPHER JEAN & ASSOCIATES, INC.
ACOUSTICAL CONSULTING SERVICES

1 0 INTRODUCTION

This report presents the results of a noise impact study of the existing rooftop mechanical units installed atop the Bonita Center Vons market located in the Bonita area of the County of San Diego. This report includes a discussion of the existing rooftop mechanical noise levels at the adjacent residential uses and the recommendations for mitigating such noise into compliance with the County Noise Ordinance.

A vicinity map showing the general location of the project site is presented in Exhibit 1 - Site Location Map. An aerial photograph of the existing market and its surroundings is shown on Exhibit 2. The study was commissioned in response to noise complaints from the residential uses directly south of the Vons market.

2 0 APPLICABLE NOISE CRITERIA

The County of San Diego has a Noise Ordinance. The text of Section 36.404 General Sound Level Limits is contained in Appendix 1. The Noise Ordinance assigns day and night noise limits by land use zoning. The Ordinance assigns a daytime limit of 50 dBA Leq and a nighttime limit of 45 dBA Leq to low density residential uses. The Ordinance also assigns a daytime limit of 60 dBA Leq and a nighttime limit of 55 dBA Leq to commercial uses.

The Ordinance further states that the "sound level limit at a location on a boundary between two zones is the arithmetic mean of the respective limits for the two zones." In this case, the arithmetic mean of the residential and commercial limits would be 55 dBA Leq during the day and 50 dBA Leq at night. Since the rooftop refrigeration equipment must run 24 hours, the nighttime limit of 50 dBA Leq applies.

3.0 EXISTING NOISE LEVELS

Acoustical measurements were performed overnight at 3926 Otay Lakes Road and 4348 Loma Paseo on Wednesday, May 1, 2013. Measurements were taken both at the fence lines of the residential properties as well as just outside the nearest walls of the residential structures. The measurements were taken three times, first around 10 PM, next around Midnight and again around 2 AM. The measurements were conducted using a pair of Larson-Davis Model 700 Integrating Sound Level Meters. The measurement results are listed in Table 2.

TABLE 2

MEASURED LEQ NOISE LEVELS

<u>LOCATION</u>	<u>FENCE LINE</u>			<u>NEAR WALL OF HOUSE</u>		
	<u>10 PM</u>	<u>12 AM</u>	<u>2 AM</u>	<u>10 PM</u>	<u>12 AM</u>	<u>2 AM</u>
3926 Otay Lakes Rd	59.4	59.6	59.1	54.5	55.8	55.9
4348 Loma Paseo	57.6	57.0	56.9	57.1	56.3	55.7

The results of Table 2 show that rooftop mechanical noise at the affected residential uses is not only very consistent in level but also consistently exceeds the County's nighttime noise limit by 4.5 to 9.5 dBA. It was also observed during the measurements that the nighttime noise environment at the two residential properties was dominated by the rooftop mechanical equipment with only sporadic traffic noise adding to the total.

An examination of the rooftop mechanical units on Thursday, May 2, 2013, showed that the majority of the rooftop mechanical noise is being produced by two large chiller units. An eight-fan chiller unit is installed about 25 feet from, and parallel to, the rear wall of the market building. A twelve fan chiller unit is installed about eight feet (8') north of the first chiller unit. Both chillers stand about six feet high atop one foot high curbs placing the fans about seven feet above the roof deck. Measurements of these chillers reported levels as high as 81 dBA at a distance of 10 feet.

4 0 MITIGATION MEASURES

4 1 EXTERIOR MITIGATION

Successful mitigation of rooftop mechanical noise will require the use of sound walls either at the source or along the residential property lines. Since erecting sound walls along the residential property lines will require special construction due to the slope edges and much longer walls, the more cost effective approach would be to erect the sound walls around the noise sources.

The impacted land uses are at a higher elevation than the roof of the market. This means that the sound walls will need to be fairly tall in order to effectively shield the residential uses from the chiller noise sources. This elevation difference also means that separate sound walls will need to be erected around each chiller unit.

Calculations contained in Appendix 2 were performed to determine how high the sound walls must be to produce the required 10 dBA (9.5 dBA violation) of noise reduction. The calculations show that the sound walls must be at least 10 feet high and must extend around the south, east and west sides of each chiller unit as shown on Exhibit 3. As the sound wall between the two chiller units could create unwanted reflected energy back toward the residential uses, it will be necessary to install one-inch thick panels of Tectum (or equivalent) on the south face of the sound wall between the two chiller units.

The required noise control barriers may be constructed using any of the following materials:

- (1) Minimum 18 gauge corrugated sheet steel
- (2) Stucco on wood frame
- (3) 3/4" plywood
- (4) Modular sound wall systems
- (5) Any combination of the above materials or any material with a surface weight of at least 3.5 pounds per square foot

Each completed noise control barrier must present a solid face from top-to-bottom. Cutouts and/or openings are not permitted except for drain holes.

5.2 INTERIOR

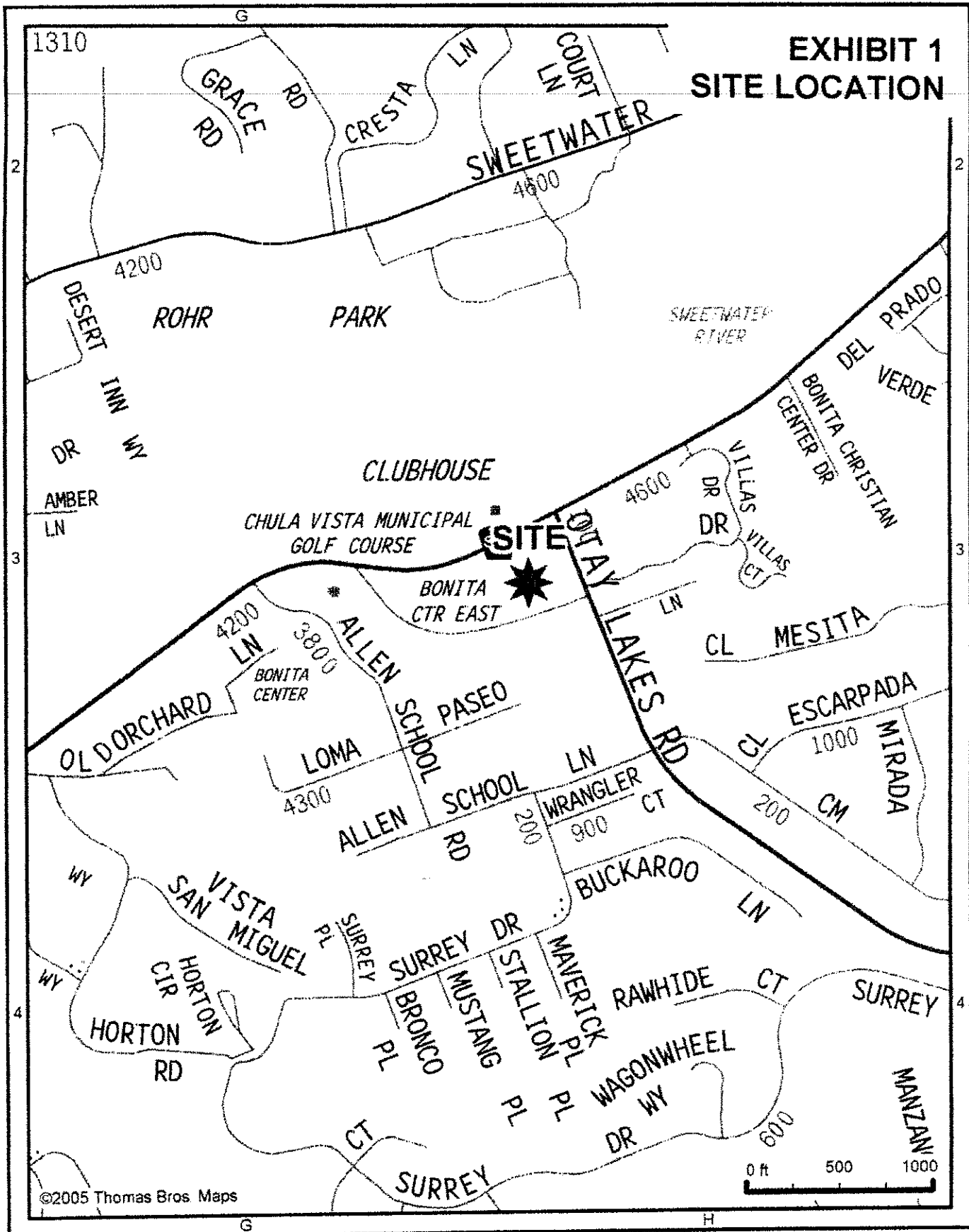
The exterior mitigation measures will be less affected at any second floor rooms of the impacted residences. Although the specified exterior mitigation will produce compliance with the Noise Ordinance, further noise reduction could be achieved by replacing the windows of second floor rooms with any view of the market rooftop with sound rated window units. Please note that this does not mean generic dual or triple pane windows. Should the noise complaints continue and it is decided that further mitigation is warranted, it will be necessary to investigate the current noise reduction yield of the existing window assemblies before the necessary replacement window sound ratings can be determined.

5.3 PROJECT DISCLOSURE

The County noise limits represent a compromise between ideal acoustical conditions and the practical limits of conventional noise mitigation technologies. Compliance with the County Noise Ordinance does not guarantee, require or even imply that offending noise sources must be mitigated to inaudibility. Compliance with a nighttime exterior noise limit of 50 dBA Leq means that rooftop mechanical noise will remain clearly audible at the affected residential uses.

Do not misrepresent the degree of the exterior acoustical mitigation as anything more than meeting the Noise Ordinance limits during any phase of this project. Never, ever, use any form of the term "Soundproof" to describe any portion of this project.

EXHIBIT 1 SITE LOCATION

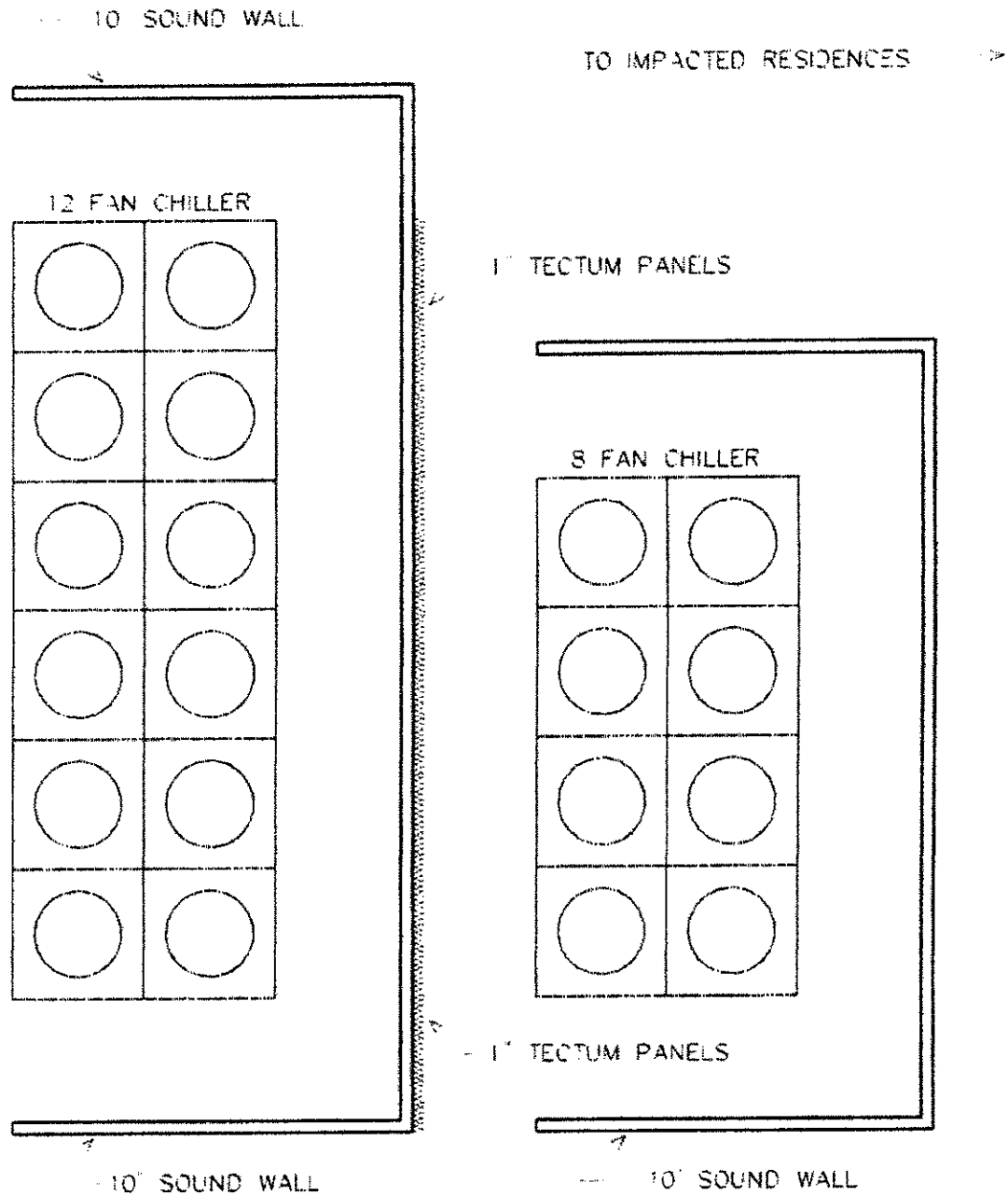


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EXHIBIT 2
AERIAL PHOTO



EXHIBIT 3



SOUND WALL LAYOUT

CHRISTOPHER JEAN & ASSOCIATES, INC.
ACOUSTICAL CONSULTING SERVICES

APPENDIX 1

GENERAL SOUND LEVEL LIMITS

P O BOX 2325 • FULLERTON, CALIFORNIA • 92837
PHONE: 714-805-0115

SEC. 36.404. GENERAL SOUND LEVEL LIMITS.

(a) Except as provided in section 36.409 of this chapter, it shall be unlawful for any person to cause or allow the creation of any noise which exceeds the one-hour average sound level limits in Table 36.404, when the one-hour average sound level is measured at the property line of the property on which the noise is produced or at any location on a property that is receiving the noise

**TABLE 36.404
SOUND LEVEL LIMITS IN DECIBELS (dBA)**

ZONE	TIME	ONE-HOUR AVERAGE SOUND LEVEL LIMITS (dBA)
(1) RS, RD, RR, RMH, A70, A72, S80, S81, S87, S90, S92 and RV and RU with a density of less than 11 dwelling units per acre.	7 a.m. to 10 p.m.	50
	10 p.m. to 7 a.m.	45
(2) RRO, RC, RM, S86, V5 and RV and RU with a density of 11 or more dwelling units per acre.	7 a.m. to 10 p.m.	55
	10 p.m. to 7 a.m.	50
(3) S94, V4 and all commercial zones	7 a.m. to 10 p.m.	60
	10 p.m. to 7 a.m.	55
(4) V1, V2 V1, V2 V1 V2 V3	7 a.m. to 7 p.m.	60
	7 p.m. to 10 p.m.	55
	10 p.m. to 7 a.m.	55
	10 p.m. to 7 a.m.	50
	7 a.m. to 10 p.m. 10 p.m. to 7 a.m.	70 65
(5) M50, M52 and M54	Anytime	70
(6) S82, M56 and M58.	Anytime	75
(7) S88 (see subsection (c) below)		

(b) Where a noise study has been conducted and the noise mitigation measures recommended by that study have been made conditions of approval of a Major Use Permit, which authorizes the noise-generating use or activity and the decision making body approving the Major Use Permit determined that those mitigation measures reduce potential noise impacts to a level below significance, implementation and compliance with those noise mitigation measures shall constitute compliance with subsection (a) above

(c) S88 zones are Specific Planning Areas which allow different uses. The sound level limits in Table 36.404 above that apply in an S88 zone depend on the use being made of the property. The limits in Table 36.404, subsection (1) apply to property with a residential, agricultural or civic use. The limits in subsection (3) apply to property with a commercial use. The limits in subsection (5) apply to property with an industrial use that would only be allowed in an M50, M52 or M54 zone. The limits in subsection (6) apply to all property with an extractive use or a use that would only be allowed in an M56 or M58 zone.

(d) If the measured ambient noise level exceeds the applicable limit in Table 36.404, the allowable one-hour average sound level shall be the one-hour average ambient noise level, plus three decibels. The ambient noise level shall be measured when the alleged noise violation source is not operating.

(e) The sound level limit at a location on a boundary between two zones is the arithmetic mean of the respective limits for the two zones. The one-hour average sound level limit applicable to extractive industries, however, including but not limited to borrow pits and mines, shall be 75 decibels at the property line regardless of the zone in which the extractive industry is located.

(f) A fixed-location public utility distribution or transmission facility located on or adjacent to a property line shall be subject to the sound level limits of this section measured at or beyond six feet from the boundary of the easement upon which the facility is located.

SEC. 36.405. REPAIRING, REBUILDING OR TESTING MOTOR VEHICLES.

It shall be unlawful for any person to repair, rebuild or test any motor vehicle in such a manner as to cause a disturbing, excessive or offensive noise as defined in section 36.402 of this chapter.

SEC. 36.406. POWERED MODEL VEHICLES.

It shall be unlawful for any person to operate a powered model vehicle between 9 p.m. and 7 a.m. A powered model vehicle operated in a County park shall meet the daytime sound level standards for an RS zone measured at a point 100 feet from the park property line or 100 feet from where the model vehicle is being operated, whichever is less.

SEC. 36.407. REFUSE VEHICLES & PARKING LOT SWEEPERS.

No person shall operate or allow to be operated, a refuse compacting, processing, or collection vehicle or a parking lot sweeper between the hours of 10 p.m. to 6 a.m., in or within 100 feet of a residential zone.

CHRISTOPHER JEAN & ASSOCIATES, INC.
ACOUSTICAL CONSULTING SERVICES

APPENDIX 2

SOUND WALL HEIGHT CALCULATIONS

P O BOX 2325 • FULLERTON, CALIFORNIA • 92837
PHONE 714-805-0115

POINT SOURCE BARRIER REDUCTION, WALL HEIGHT VARIABLE

 50 FT. SOURCE REFERENCE LEVEL..... = 67

PROJECT.....VONS ROOFTOP MECHANICAL NOISE
 DESCRIPTION..CHILLER SCREEN WALLS -- 2ND FLOOR
 SOURCE HEIGHT..... 7
 SOURCE ELEVATION..... 0
 RECEIVER ELEVATION..... 20
 BARRIER ELEVATION..... 0
 RECEIVER HEIGHT..... 5
 DISTANCE TO SOURCE..... 5
 DISTANCE TO RECEIVER... 100
 NOISE LEVEL AT RECEIVER W/O BARRIER..... 60.6

WALL HEIGHT		TNL	TIL
6.0	60.6	60.6	-0.0
FN	0.0000		
6.5	60.6	60.6	-0.0
FN	0.0000		
7.0	60.6	60.6	-0.0
FN	0.0000		
7.5	60.6	60.6	-0.0
FN	0.0000		
8.0	55.5	55.5	5.0
FN	0.0020		
8.5	54.9	54.9	5.7
FN	0.0404		
9.0	53.8	53.8	6.8
FN	0.1251		
9.5	52.8	52.8	7.8
FN	0.2522		
10.0	51.6	51.6	8.9
FN	0.4175		
10.5	50.5	50.5	10.0
FN	0.6168		
11.0	49.5	49.5	11.0
FN	0.8460		
11.5	48.6	48.6	11.9
FN	1.1015		
12.0	47.8	47.8	12.7
FN	1.3800		

POINT SOURCE BARRIER REDUCTION, WALL HEIGHT VARIABLE

50 FT. SOURCE REFERENCE LEVEL..... = 67

PROJECT..... VONS ROOFTOP MECHANICAL NOISE

DESCRIPTION..CHILLER SCREEN WALLS

SOURCE HEIGHT..... 7
 SOURCE ELEVATION..... 0
 RECEIVER ELEVATION..... 10
 BARRIER ELEVATION..... 0
 RECEIVER HEIGHT..... 5
 DISTANCE TO SOURCE..... 5
 DISTANCE TO RECEIVER... 100
 NOISE LEVEL AT RECEIVER W/O BARRIER..... 60.6

WALL HEIGHT		TNL	TIL
6.0	60.6	60.6	-0.0
FN	0.0000		
6.5	60.6	60.6	-0.0
FN	0.0000		
7.0	60.6	60.6	-0.0
FN	0.0000		
7.5	55.5	55.5	5.0
FN	0.0014		
8.0	54.9	54.9	5.7
FN	0.0393		
8.5	53.8	53.8	6.8
FN	0.1266		
9.0	52.7	52.7	7.9
FN	0.2603		
9.5	51.5	51.5	9.1
FN	0.4365		
10.0	50.4	50.4	10.2
FN	0.6510		
10.5	49.3	49.3	11.2
FN	0.8995		
11.0	48.4	48.4	12.2
FN	1.1780		
11.5	47.6	47.6	13.0
FN	1.4829		
12.0	46.9	46.9	13.7
FN	1.8108		



Development Services Department

Code Enforcement Division

Tuesday, November 06, 2012

MITCHELL COMPTON

[REDACTED]
BONITA, CA 91902

RE: NIGHT TIME NOISE VIOLATION - ROOF HVAC EQUIP.
4404 BONITA RD - VONS

The City of Chula Vista has received your complaint in which you allege that the above address is in violation of the Chula Vista Municipal Code. The City has advised the tenant and/or property owner of the alleged violation and has requested voluntary compliance. No further action will be taken, as the City of Chula Vista is currently unable to conduct field inspections for violations of this nature.

The National Conflict Resolution Center may be able to assist you and all parties involved to reach a mutually acceptable solution. The National Conflict Resolution Center may be contacted by telephoning (619) 238-2400 or online at their website at www.ncrconline.com.

Thank you for doing your part in trying to solve problems in our community. Your cooperation and understanding is appreciated.

Sincerely,

EMILY NOVAK
Sr Code Enforcement Officer

Kenneth A Ray

From: Richard Zumwalt [RZumwalt@chulavistaca.gov]
Sent: Monday, November 16, 2015 11:39 AM
To: 'Kenny Ray'; Mitchell Compton II
Cc: Lou El-Khazen; Kelly Broughton
Subject: RE: Filing appeal

Ken, I forwarded your e-mail to our Code Enforcement Manager, Lou El-Khazen. I also cc'd Kelly Broughton. We have asked Von's to prepare and submit a noise letter report of their HVAC and condensers with their building permit application for our review. Thanks.

Richard E. Zumwalt, AICP
Associate Planner, Development Services Department
276 Fourth Ave, Chula Vista, Ca. 91910
(619) 691-5255

From: Kenny Ray [mailto:████████████████████]
Sent: Friday, November 13, 2015 10:46 AM
To: Richard Zumwalt; Mitchell Compton II
Subject: Filing appeal

Richard,

Due to scheduling conflicts & availability, Monday, the 16th, will be our last opportunity to file the Appeal. If you could respond to my 10/12 e-mail and request for written confirmation that the city will accept a noise report from our acoustical engineering consultant. We will seriously consider forgoing the Appeal.

Again the Cities acceptance of a report provided by Mitch & I was verbally approved by Kelly in the presence of the Mayor, with her assistant in the room taking notes. In that meeting we disputed the Helix letter, which had been represented as a bonafide Noise Report. Even the Mayor was troubled by that letter and agreed with us that it was unlike any noise study or technical report any of us had ever seen before. That was when it was agreed that we could hire a professional consultant to test & report their test results. We were told that if our consultants report confirmed that the noise level from the Von's plant was still excessive and not in compliance the City would immediately initiate a code enforcement procedure and require compliance of the Cities section 19.68 NCO.

Please acknowledge by next Monday if we can provide these two assurances from your office. We would also agree to meet Monday to further discuss if that would be useful.

Thanks for your consideration,

Sent from my iPhone

Begin forwarded message:

From: Kenny Ray <████████████████████>
Date: November 12, 2015 at 4:15:50 PM PST
To: Richard Zumwalt <RZumwalt@chulavistaca.gov>
Cc: Mitchell Compton II <████████████████████>
Subject: Re: Von's Facade Remodel Design Review

Richard,

Thank you for your response. Are you still requiring a noise report letter with the permit application? Will the sound test be taken with the full plant in normal operation? You'll notice that for most or all of the last report the city accepted from Von's, the plant was turned off during the so called noise monitoring? The NCO doesn't say anything about levels of noise at the property line. It says anywhere on an adjacent property. All we have ever asked for, is to have the excessive level of noise right at our SFR reduced to be compliant with the City's NCO. I frankly don't care what level the noise is at the roof top equipment or down below at the PL...

If the city will commit to assisting us in achieving compliance up in front of our homes we will consider forgoing the appeal. However, until we have that commitment we will oppose any and all approvals granted to these business operators as long as they continue to be in non compliance of the City of Chula Vista's section 19 NCO.

Sent from my iPhone

On Nov 12, 2015, at 11:54 AM, Richard Zumwalt <RZumwalt@chulavistaca.gov> wrote:

Ken, sorry for the delay, I reviewed your e-mail and needed to discuss it with our management before we could respond. Because your questions relate to code enforcement and the noise ordinance, we have referred them to our Code Enforcement Manager Lou El-Khazen. He is looking into it and will get back to you as soon as he can. The latest on the Von's roof equipment building permit is that I have heard from the Von's contractor today and they are ready to submit the building permit application to the City. The Von's façade remodel Design Review project that was approved by the Zoning Administrator does not propose changes to the HVAC/condensers, or the rear elevation of the Von's building, therefore the project does not alter or affect the noise generated by the HVAC/condensers. However, the noise data that you submitted was reviewed and we found that it was helpful and relevant background information to the discussion of the noise issue, which is a separate issue from the façade remodel project. Thanks for bringing this matter to our attention, I think we are working towards a solution.

Richard E. Zumwalt, AICP
Associate Planner, Development Services Department
276 Fourth Ave, Chula Vista, Ca. 91910
(619) 691-5255

From: Kenneth A Ray [REDACTED]
Sent: Tuesday, November 10, 2015 7:55 PM
To: Richard Zumwalt
Cc: 'Mitchell Compton II'
Subject: FW: Von's Facade Remodel Design Review has been approved

Richard,

Can you tell me if you will be responding to my 11/5/2015 E-mail (see below) before 10/12/2015 as requested? Has Von's returned to process the required building permit you mentioned in your 11/5/2015 e-mail? Mitch recently explained to me that a staff member in the code enforcement division stated in the presence of his consultant that

Kenneth A Ray

From: Kenneth A Ray [mailto:kay@kenard.net]
Sent: Tuesday, November 10, 2015 7:55 PM
To: 'Richard Zumwalt'
Cc: 'Mitchell Compton II'
Subject: FW: Von's Facade Remodel Design Review has been approved

Richard,

Can you tell me if you will be responding to my 11/5/2015 E-mail (see below) before 10/12/2015 as requested? Has Von's returned to process the required building permit you mentioned in your 11/5/2015 e-mail? Mitch recently explained to me that a staff member in the code enforcement division stated in the presence of his consultant that the City wouldn't accept an Acoustical Engineers Sound Study from the home owner's? In this instance the home owner's are also the generators of the complaint. However the City has already accepted and relied upon a letter from Von's that contradicted a comprehensive sound study paid for and provided by Von's Landlord and actual owner of the property Donahue Schriber. I believe that legally, in this instance, Von's and Donahue Schriber are both the alleged violators of the Cities 19.68 Noise Control Ordinance. Additionally, in your 11/5/2015 e-mail below you indicate the requirement of a second "Noise Letter Report" from Von's. Isn't this a gross double standard? The City routinely accepts technical reports prepared by hired professional consultants from all types of people, why is it any different in this case? Mitch and I, in the presence of Mayor Marie Salas, were told by Kelly that if we obtained a Sound Report that contradicted the Von's report, the City would accept it and initiate an enforcement action to have the excessive noise reduced to within compliance. Why can't I get a response to my request to have this confirmed in writing? If something has changed and it wouldn't be acceptable any longer why won't the City just come out and simply say that.

So far you have refused to respond to my request for written confirmation of that issue and several others. One of which was my request to have it confirmed in writing that our correspondence and opposition pertaining to DR-15-0010 had been included in the information provided by your office to the ZA (Michael Walker) for inclusion and consideration of the application. We have a right to know this and your failure to respond may force us to file the appeal just to get an answer to that question alone. Did the City receive public comments other than ours? By your refusal to answer these simple questions you are withholding important public information that is critical to our process of making a fully informed decision in the matter of the Appeal. Please reconsider your lack of response to my written request for this public information.

AOR: S McKinley
Ser: 15X0198

Kenneth A Ray, President

[kar@kenard.net](mailto:kay@kenard.net)

KENARD

CONSTRUCTION COMPANY, INC.

1830 Gillespie Way, Suite 105

El Cajon, CA 92020

P – 619-596-7500 F – 619-596-0723

www.kenard.net

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Kenneth A Ray

From: Kenneth A Ray [kar@kenard.net]
Sent: Thursday, November 05, 2015 7:15 PM
To: 'Richard Zumwalt'; 'Mitchell Compton II'
Cc: 'Miguel Tapia'; 'Kelly Broughton'
Subject: RE: Von's Facade Remodel Design Review has been approved

Richard,

It should be pretty obvious to anyone paying attention that Von's just got caught with their pants down while attempting, once again, to make unauthorized unpermitted modifications to their roof top Refrigeration Plant. You have the recent photos from me showing the complete dismantling and removal of the SAW. I can assure you that the cost to R&R the SAW alone far exceeded the dollar value of work that would require a building permit. Add to that, when confronted by their Landlord about the removal of the SAW, Von's assured them that they had only removed the SAW temporarily to accommodate some needed modifications to the Plant (changing out Condensers). The Landlord also advised that they had asked Von's if they had obtained a City Building Permit and was told that Von's had not gotten a permit. According to the Landlord Von's had agreed to immediately apply for any required City permits and be completed with the work, including reassembly of the SAW, on or before 11/10/2015. This all came about because Mitch & I brought the Von's removal of the SAW to their Landlord's and the City's attention. If not for that, Von's most likely would have gotten away with these attempted unpermitted unauthorized Refrigeration Plant modifications. You have to wonder why they would risk upsetting their Landlord and the City over what is already a very contentious issue. I suspect the City Building Department is aware that not all mechanical equipment is compliant with current code & environmental requirements. Pieces of mechanical equipment that were both code & environmentally compliant a couple of years ago are no longer allowed to be put in operation due to changes in the M, P & E codes. These changes include types of refrigerant used, energy efficiency standards, Title 24 Compliance, DBa sound levels produced by equipment in operation and a lot of other technical features, too many to list here. The level of sound that most exterior mechanical equipment is required to operate at or below is typically 50 to 55 DBa right at the equipment. Routinely, Mechanical Sub Contractors pull permits to R&R existing Mechanical equipment over the counter at most local Building Departments. The fees are very reasonable and the equipment manufacturers provide the contractors with full submittal data certifying that the new equipment meets or exceeds current code & environmental requirements.

It is encouraging to finally see the City step up and require Von's to actually comply with the requirements you mention below. However, it continues to be perplexing that the City persist in allowing Von's to exceed the very same Noise Control Ordinance (NCO) you reference below. There are no provisions in the City's NCO that allows or waives non compliance if the mechanical equipment is existing or old. In fact, often Mechanical equipment falls out of compliance with NCO requirements due to age, malfunction or lack of proper maintenance. I'm sure the City has received plenty of noise complaints about squealing drive belts or worn out bearings, misaligned fans and many other transient problems on this type of equipment. In addition to the constant noise from the Von's Plant it also produces an even louder noise that I believe is associated with the on off cycling of the equipment. It has been explained to Mitch and I that the City lacks the funds to go out and actually perform sound testing for these types of excessive noise complaints. My past response has been that the City doesn't need any special equipment, anyone that comes to our homes in the evening and listens to the noise from the Von's Plant will know it to be too loud. I get comments from guests that it's like living next to an airport and they ask how can we put up with it? I once again offer an open invitation for you or anyone in your Department or the City at large to come to my home and just listen. To my knowledge in the 10 years I have been requesting assistance from the City over this problem no one from the City has bothered to come to our homes and just listen.

I would like to formally pose the following question to both you and Kelly once again;

If I provide the City with a current Acoustical Study & Report showing that the recorded noise coming from the Von's refrigeration plant, exceeds the permissible limits set forth in the City's NCO, will the City initiate a code

enforcement action and require Von's to comply with the Cities NCO? Of course any environmental firm I engage will be on the Cities approved list of Acoustical Consultants. These studies are expensive and there is no point in preparing a second one unless the City agrees in writing that which they have already agreed to verbally

I'll wait for 7 days for a response to this question and if none is forthcoming I will send a certified copy of this letter w/ background information to all sitting Counsel Members and the Mayor and request assistance from them.

Kenneth A Ray, President

kar@kenard.net

KENARD
CONSTRUCTION COMPANY, INC.

1830 Gillespie Way, Suite 105

El Cajon, CA 92020

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From: Richard Zumwalt [<mailto:RZumwalt@chulavistaca.gov>]
Sent: Thursday, November 05, 2015 3:36 PM
To: 'Mitchell Compton II'; Kenny & Debbie Ray
Cc: Miguel Tapia; Kelly Broughton
Subject: RE: Von's Facade Remodel Design Review has been approved

Ken and Mitchell, here is a copy of the Von's Bonita Center Design Review decision of approval for your review. You have the right to file an appeal to the City Council if you wish. The required fee that you would have to pay is \$250 as the appellant. The deadline is 10 business days (not counting weekends and holidays) after the project was approved, which was on November 3. The appeal period ends Wednesday 11/18 and we close at 4 pm. Here is the link to the form:

<http://www.chulavistaca.gov/home/showdocument?id=5012>

Since I know you are very concerned about the noise impact from the roof-mounted HVAC/condensers, the latest on that issue is that Von's has contacted us about replacing their HVAC/condenser units. We have informed them that a building permit is required to do this, and that our Noise Control Ordinance would apply to this permit. We have also requested that they prepare and submit a noise letter report, analyzing the HVAC/Condenser unit's compliance with the City's exterior noise limits at the property line, for our review and approval prior to approval of this building permit. This permit would be separate from the façade remodel project, which does not propose modification of the HVAC/condensers, or the rear portion of the roof, and thus would not have any affect on the sound generated by the HVAC units. However, as of today's date, they haven't submitted the building permit for the HVAC/condensers or the noise letter report yet. Give me a call if you have any further questions or need assistance.

Richard E. Zumwalt, AICP
Associate Planner, Development Services Department
276 Fourth Ave, Chula Vista, Ca. 91910
(619) 691-5255

From: Mitchell Compton II [REDACTED]
Sent: Wednesday, November 04, 2015 6:29 PM
To: Richard Zumwalt
Cc: Miguel Tapia; Kenny & Debbie Ray
Subject: Re: Von's Facade Remodel Design Review has been approved

Richard,

Thanks for the email please send me a copy of the decision and how to appeal. My neighbor Ken Ray is cc'ed on this as well.

Best,

Mitch

On Wed, Nov 4, 2015 at 6:25 PM, Richard Zumwalt <RZumwalt@chulavistaca.gov> wrote:

Good evening, Mitchell. The Design Review Permit (case # DR-15-0010) for the Von's Bonita Center facade remodel project has been approved by the Zoning Administrator. Let me know if you would like a copy of the decision, or if you have any questions about the project or the appeal process. Thanks.

Richard E. Zumwalt, AICP
Associate Planner, Development Services Department
276 Fourth Ave, Chula Vista, Ca. 91910
[\(619\) 691-5255](tel:6196915255)

--

Please excuse any typos I'm on my mobile phone

--

Mitchell I. Compton II
President
Dominion West Properties, Inc.

M: (619) 454-2840

O: (619) 259-5485

F: (619) 259-5486

P.O. Box 1949

Bonita, CA 91908-1949

mitch@dominionwest.com

www.dominionwest.com

CalBRE#01195602

Kenneth A Ray

From: Kenneth A Ray [kar@kenard.net]
Sent: Wednesday, November 04, 2015 8:51 PM
To: 'Richard Zumwalt'
Cc: 'Miguel Tapia'; 'Mitchell Compton II'
Subject: RE: Von's facade remodel Design Review Permit
Attachments: FW_ Noise complaint, 4404 Bonita Road, Chula Vista, CA.pdf

Richard,

I'm attaching my October 15, 2015 e-mail package sent to you and Kelly Broughton. In the last 20 days neither you or Kelly have responded to that correspondence. You now, just this evening, ask me to let you know if I want a copy of the ZA decision and I find that extremely curious. I have already formally in writing requested the ZA decision and other legal information pertaining to the above mentioned discretionary application. I have already requested multiple items related to the DR15-0010 Design Review Application which you now advise has been approved by the ZA. Please confirm if the ZA was provided with the attached information per my request. Is our appeal to be heard by an entity like the San Diego County Board of Planning & Zoning Appeals?

As follow up to Safeway's removal of the Sound Attenuation Walls (SAW) (see attached). After Don Armstrong told Mitch and I that he knew nothing about Von's removal of the SAW, he later reported that they had done so to access the refrigeration equipment and change out "condensers". I notified Don in writing that any new Mechanical equipment placed on that roof had to be approved by the City Building and fire Departments at a minimum. And that a normal part of the approval process was to confirm conformance with BEES, SEER, Title 24 and also that the level of sound generated by the equipment doesn't exceed the Cities approved DBa restrictions on exterior mechanical equipment. This type of equipment very often is required by the fire jurisdiction to have safety interlocks that shut it down the equipment in the event of fire or smoke. Don also confirmed that Von's had proceeded without first obtaining a permit from the City of Chula Vista or obtaining Landlord permission to tear down the SAW. He advised that Von's would be obtaining a permit before proceeding any further and would be doing so immediately. However, within just a couple of days the SAW was put back, unfortunately in same defective way. I say "defective way" because the approved SAW was field modified from the City approved Plans & permit titled "Sound Attenuation Walls". When I brought this modification to the attention of the Acoustical Engineer, that provided the testing & report for the Landlord, that contained the SAW design, he advised that leaving the entire bottom 30" of the SAW facing our homes open had rendered it completely incapable of reducing the noise or mitigating the excessive noise as he had intended. Also, you can check but I seriously doubt that any recent mechanical permit was pulled by Von's as no work was done to the plant while the walls were down and no new equipment was craned onto the roof. The excessive noise continues unabated and at this point not only isn't the City enforcing their own noise ordinance, they are actually assisting Von's ongoing violation of that ordinance?

Kenneth A Ray, President

kar@kenard.net

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From: Richard Zumwalt [mailto:RZumwalt@chulavistaca.gov]
Sent: Wednesday, November 04, 2015 6:37 PM
To: 'kar@kenard.net'
Cc: Miguel Tapia
Subject: Von's facade remodel Design Review Permit

Good evening, Kenneth. The Design Review Permit (case # DR-15-0010) for the Von's Bonita Center facade remodel project has been approved by the Zoning Administrator. Let me know if you would like a copy of the decision, or if you have any questions about the project or the appeal process. Thanks.

Richard E. Zumwalt, AICP
Associate Planner, Development Services Department
276 Fourth Ave, Chula Vista, Ca. 91910
(619) 691-5255

From: [Kenneth A Rav](#)
To: ["kbroughton@chulavistaca.gov"](mailto:kbroughton@chulavistaca.gov)
Cc: [Mitchell Compton II](#); ["Richard Zumwalt"](#)
Subject: FW: Noise complaint, 4404 Bonita Road, Chula Vista, CA
Date: Thursday, October 15, 2015 11:15:00 PM
Attachments: [CV Complaint Letter final.docx](#)
[Vons 051613 Complete.pdf](#)
[Bonita - Letter from Vons 061213.pdf](#)
[admin@tycoproperties.com_20140121_171050.pdf](#)
[Pro Building Maintenance.pdf](#)
[Helix LTR.PDF](#)
[photo.jpg](#)
[photo.jpg](#)

Mr. Broughton,

Subject; Case # DR15-0010 Design Review Application

Site Address: 4404 Bonita road, Chula Vista, CA

I'm sending this as additional formal public opposition from an adjoining property owner of the pending decision of the Subject Design Review Permit Application. I'm also sending and have been sending this information to others in the City including but not limited to elected public officials and other interested parties. Mr. Zumwalt left a voice mail last night, notifying me that the above mentioned Application was being administratively approved by the City Zoning Administrator & your Department. Below you will find a request for information sent to Mr. Zumwalt dated September 24, 2015 and an e-mail dated August 20, 2015 summarizing the ongoing Excessive Noise Violations at the Site Address. It was the September e-mail correspondence and several subsequent phone calls from me that Mr. Zumwalt was finally responding to albeit after normal business hours on my office answering / recording device. You will also find below Mr. Zumwalt's response to my August e-mail in which he claims he has escalated our Excessive Noise concerns to his management team and not heard back. He goes on to mention that the City has reached out to the Applicant Donahue Schriber to obtain additional information and indicates I can contact him for further updates anytime. Even though updates were requested by me from Mr. Zumwalt, none were provided other than the mentioned message left by Mr. Zumwalt last night on my answering device. I hereby request that these e-mails and the attachments to those e-mails and the attachments to this e-mail become part of the public record for this Application. Mr. Zumwalt indicated, in his message last night, that my earlier e-mails and all of this information was already part of the public record for this case. That is good information but please confirm in writing that all of this information has been entered into the public record and provided to the Zoning Administrator. I would greatly appreciate written confirmation that the ZA had this public input from me, an adjoining property owner, at her disposal during her considerations and were considered as part of the ultimate decision in this case. This has direct bearing on informed determination of the merits of an appeal of the ZA's approval of this Application.

I find it hard to believe that with all of the documentation provided your department, with respect to the excessive noise generated by the Von's Roof Top Refrigeration Plant (the Plant) at the subject Site Address, that you could represent, in the Cities Public Notice for this case, that there were no environmental concerns. I'm sure we can agree that excessive noise, that both

exceeds the safe limits memorialized in the Cities adopted Noise Ordinance and is professionally monitored and reported to be a constant source of excessive noise, is an environmental concern and public hazard. This is why technical sound studies are a basic requirement of an environmental impact analysis. This is well established in Local, State & Federal Government codes, rules and legislation. I understand that under these circumstances no environmental studies were required by your office by the Applicant. However, that isn't the same as not providing submitted public input or failing to inform the ultimate decision makers, who are political appointees of the Cities elected officials, of a potential serious ongoing environmental violation at the Applicants proposed site. The City has also adopted rules which specifically limit the level of sound produced by this type of mechanical equipment. The recorded sound levels taken right at this equipment were far in excess of those limits also. Again, was the Zoning Administrator advised of the ongoing excessive noise concerns, that the City has been made aware of, at the Applicants Site? I formally request copies of the staff report and recommendations and any other background information, including mine, that was provided the ZA in this matter. I as an adjoining property owner, within 500' of the Applicants Site Address, believe I'm entitled to a copy of both these staff findings & recommendations, and also a copy of the Zoning Administrators Decision in this matter. It is also my understanding that you have recently reaffirmed verbally in the presence of multiple parties that once a sound study, that contradicts the claims contained in the 6/24/2014 Helix report, is provided your office, you will initiate an enforcement action for the Von's Excessive Noise violations. This was the same agreement discussed face to face with you and the honorable Mayor to be Marie Salas in her office just prior to her successful campaign & election to that office. Was the ZA made aware of these potential or pending city enforcement actions at the Applicants Site Address?

The record will show that the City has in their possession two sound Studies, one is the pre build report prepared by Christopher Jean & Associates that was conducted and prepared prior to the construction of the Sound Attenuation Walls (SAW) constructed by their tenant Safeway. As you know the Applicants Tenant Safeway agreed in writing to construct the SAW to mitigate the Excessive Noise Violations Monitored and included in the Owners pre build Acoustical Report. The Owners put their Tenant Safeway on notice that their recent Acoustical Report showed conclusively that the Plant was producing noise far in excess of the Cities Noise Ordinance and that this Violation of a Governmental Law or Ordinance constituted a breach of the Lease Agreement. That notice placed a 3 day cure or quit requirement on Safeway. Safeway agreed in writing to remedy the problem and reduce the Excessive Noise to within compliance of the Cities Noise Ordinance. They also requested and were granted additional time to prepare the engineering plans needed to construct the SAW structure Around the plant as shown in the Owners Sound Report & Recommendations. The second report was conducted subsequent to Safeway's construction of the SAW and was conducted over a year after receiving the Owners Notice. Subsequent to the SAW construction, Mitch and I reported to the Owner's that a deviation from their Acoustical consultants SAW designs and the Cities approved plans and Permit for the SAW had rendered the SAW useless for the intended purpose of a reduction in the Excessive Noise. They had left the bottom 30" of the walls completely wide open when the design required the walls to be a solid barrier from the roof to the top of the SAW with no penetrations or openings of any kind Safeway authorized the Helix report to show conclusively that the SAW had reduced the Excessive Noise. As I believe you now know, the entire SAW Structure, constructed by Safeway's Building maintenance

company around the Plant, with approved plans & permits issued by the City, has been completely removed (see attached photos). The result of that is that since the SAW has been completely demolished and is no longer part of the equation, we are literally back to square one. This means that the only Report & Recommendations applicable to the Plant in its current condition would be the pre build report prepared by Christopher Jean and associates for the Owners. 100% of the Helix Environmental involvement occurred after the SAW was in place and was claimed to have reduced the Excessive Noise from the Plant. That report claims that noise from the plant with the SAW in place is comparable to the background traffic noise. Any monitoring or conclusions in the Helix report can't be relied upon as the SAW has been totally demolished and is no longer capable of contributing to any Noise Reduction. Was the ZA provided with copies of the two attached sound reports? Please note that the first report per its title sheet was specifically requested and prepared for Don Armstrong of the Donahue Schriber Group the Applicant. Don told Mitch and I today, that he didn't know anything about the SAW removal until we showed him at a meeting at the Site today.

I'm reattaching copies of both Reports to this E-mail and hereby request once again that they be made part of the public record as would be any and all other local area public opposition or support input submitted in response to a pending application process during its required public notice period. Per the notices and Mr. Zumwalt, we have until tomorrow October 16, 2015 to submit our comments to your office for consideration. Mr. Zumwalt, in his phone message last night, seemed distressed due to the lateness of my most recent phone message left for him on October 14, 2015. As mentioned above this was only the last of several attempts to re contact Mr. Zumwalt for the promised update in this matter. I would also point out that all of the attachments to this e-mail, with the exception of the two photos of the dismantled SAW taken today, has been in the Cities possession for quite a long time now. Each of these attachments were provided to your office again on August 20th 2015 as attachments to e-mailed opposition to the pending Application (see e-mails below). That was after receiving the August 7th 2015 Notice of Application and the subsequent DR15-0010 Public Notice from the Zoning Administrator of the City of Chula Vista. Pursuant to information contained in the Notice from the ZA Notice, E-mails that properly identify the case information are an acceptable form of public comment pertaining to the Application.

Thanks in advance for your consideration,

Kenneth A Ray, President
kar@kenard.net

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Thank you

From: Kenneth A Ray [mailto:kar@kenard.net]
Sent: Thursday, September 24, 2015 4:19 PM
To: 'Richard Zumwalt'
Cc: 'Mitchell Compton II'
Subject: RE: Noise complaint, 4404 Bonita Road, Chula Vista, CA

Richard,

Thank you for your response. Can you tell us if there have been any developments with respect to the excessive noise problem. This is the problem that Mitch Compton and I have brought to the City of Chula Vista and your department's attention? We are prepared to provide the City with another sound study that will certify that the level of sound produced from the Von's roof top Refrigeration Plant is excessively high and in violation of the City of Chula Vista's and the County of San Diego's adopted Noise Ordinance. The new report will also once again establish that the noise is continuous 24/7 and not the result of Traffic noise.

Prior to engaging our consultant to perform the testing, we ask that the City acknowledge the following;

1. Should the new report verify the noise, generated from the Refrigeration Plant located on the Roof of the Von's, is in non compliance with the Cities adopted Noise Ordinance, the City will agree to initiate code enforcement.

Kenneth A Ray, President
kar@kenard.net

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Thank you

From: Richard Zumwalt [mailto:RZumwalt@chulavistaca.gov]

Sent: Tuesday, August 25, 2015 2:21 PM
To: 'kar@kenard.net'
Cc: 'Mitchell Compton II'
Subject: RE: Noise complaint, 4404 Bonita Road, Chula Vista, CA

Thanks for the call, and yes we received your e-mail. This issue has been elevated to our management team, but I haven't heard from them yet. We asked the Applicant – Donohue Schreiber - to clarify what changes they are making to the rear elevation, and we also informed them that noise issue is still a concern with the neighbors, and to get back to us with a response to these requests. We are awaiting their response. Please contact me or my supervisor Miguel Tapia at 619-691-5291 when you would like an update on the status of this project.

Richard E. Zumwalt, AICP
Associate Planner, Development Services Department
276 Fourth Ave, Chula Vista, Ca. 91910
(619) 691-5255

From: Kenneth A Ray [<mailto:kar@kenard.net>]
Sent: Thursday, August 20, 2015 4:58 PM
To: Richard Zumwalt
Cc: 'Mitchell Compton II'
Subject: Noise complaint, 4404 Bonita Road, Chula Vista, CA

Mr Zumwalt,

Thank you for sending the recent notice of Application (DR15-0010). Has there been a permit issued for this location recently? There is ongoing construction demolition occurring over the last week or more in the rear parking area beside the Vons. Today they were filling a low boy dumpster with broken concrete (see attached photos).

I would like to take this opportunity to introduce myself. My family and I live directly to the South of the Vons Store at 3926 Otay Lakes Road. We have been trying to resolve a noise problem with the assistance of the City and the past & current Owners of this retail commercial center for many years. As background information I'm attaching an Acoustical Engineers Report (Christopher Jean & Associates) that was prepared for the current Owners (DS Bonita Centre, LLC). I'm also attaching other relevant information & correspondence.

Just prior to the last time the City issued a discretionary permit for site improvements at this address (2013), My neighbor Mitch Compton and I met with the Owners to discuss this issue. Per those discussions the Owners and Vons agreed to work diligently until the excessive noise coming from the Vons roof top refrigeration equipment was compliant with the Cities noise Ordinance. This is when the Owners engaged their Acoustical Consultant to perform the Sound Analysis & Report (see Vons 051613). Vons agreed with the Owners to construct the Sound Walls per the recommendations included in that report. After approximately another year of further waiting the Sound Walls were constructed by the Von's building maintenance company (Pro Building Maintenance). Unfortunately, my neighbors and my family noticed no real reduction of the excessive noise generated by the Von's roof top refrigeration equipment. From our homes we

could see that the walls weren't constructed per the Owner's Acoustical Consultant's design or the "Sound Wall Plans" approved by the City of Chula Vista (B13-1694). Instead of solid walls from the roof to the top of 10' high walls, the bottom 30" of these walls are left completely wide open. We can actually still see the bottoms of the 8 & 12 fan updraft chillers from our homes (open attached video link). We immediately reported this to the Owners who agreed to follow up sound testing to see if the constant level of noise produced by the Vons Roof Top equipment had been reduced to a level that was within compliance of the regulations contained in the City & County Noise Ordinance. Unfortunately, instead of bringing back the consultant that had performed the May 6, 2013 Acoustical Analysis, Vons was allowed to bring in a different consultant (Helix Environmental). Helix provided a 3 page letter, dated June 24, 2014, for the Vons in house Real Estate Counsel (Sam Shink). The letter is based solely on a single test performed when the Roof Top Equipment was turned off. The Test was at approximately 10:00PM and represents that "Excluding the traffic-only ambient noise, the equipment-only noise is estimated to be in compliance of the ordinance, rounded to the nearest dBA." Unlike the prior Sound Analysis Report, which contains very specific scientific information pertaining to multiple sample locations & memorializes the actual sound test results from testing that lasted all through the night and early morning hours. The Helix letter has none of that information and includes many defects including but not limited to the following;

1. It failed to do any actual sound testing on the Roof next to the equipment producing the noise
2. It fails to mention the "Sound Walls" Vons had constructed to reduce the excessive noise
3. It fails to mention the prior consultants report.
4. It fails to include any actual dBA Noise level test results.
5. It fails to mention any deviation in the levels of traffic-only noise monitored from approximately 10:00 PM to 10:20 PM.
6. It fails to include any mention of testing of the combined Roof Top Equipment & Traffic noise.
7. It fails to include any mention of any testing of the noise generated by equipment-only.
8. It fails to include any mention of either the equipment or traffic noise being a constant source of excessive noise.
9. It fails to include any traffic only testing from 10:20PM to 8:00 AM.
10. It fails to include any equipment only testing from 10:20 PM to 8:00 AM

All in all the Helix Letter is fatally flawed and would never pass any kind of 3rd party peer review process. How can a single 20 minute traffic only sound test at 10:00PM on a Tuesday night be any kind of fair representation of traffic noise from 10:00 PM to 7:00AM Monday through Friday and from 10:00PM to 8:00 AM Saturdays & Sundays. These are the hours established in the Cities noise ordinance covering normal hours of sleep, during these hours there is a 10 dBA reduction to the noise limits in the ordinance. There is also a provision for an additional 5dba reduction if the noise is a constant source. If an environmental consultant were to include such flawed methodology & testing protocol in a Draft EIR it would be rejected immediately upon review. Any informed local area opposition group would have a hey day with that kind of bad science.

I request the opportunity to speak to the planning commission and or City Counsel concerning this

matter. I have already spoken to current Mayor Salas about this and have an understanding of what we can do to assist the City in the enforcement of its adopted noise ordinance. We will provide the City with more current documentation based on actual scientific fact & observations. This data will show conclusively that the "Sound Walls" constructed by Vons failed to reduce the excessive noise. This noise exceeds the City of Chula Vista's & the County of San Diego's allowable noise limits right at the equipment, right at the Property Line and right at our homes. This noise is a 24/7 constant source of excessive noise and is a serious environmental violation that has been allowed to continue unabated.

<https://www.dropbox.com/s/w8ogiyu74ojzpes/Vons%20Roof%2001192015%20HD.mp4?dl=0>

Kenneth A Ray, President

kar@kenard.net

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2014/09/09

