

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



F 8f

Addendum

October 13, 2010

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item 8f**, Coastal Commission Permit Application
#A-6-OMN-10-54 (Kravis & Magnotto), for the Commission Meeting of
October 15, 2010.

Staff recommends the following changes be made to the above-referenced staff report:

1. On page 4, Special Condition #1 shall be revised as follows:

1. Revised Final Plans. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval by the Executive Director, final plans approved by the City of San Diego in substantial conformance with the preliminary plans approved by the Planning Commission on May 20, 2010, with the following change:-

An additional screening wall a minimum of 4-feet in height shall be erected above the 4-foot high wall proposed along the length of the eastern border of the subject site. This additional fencing/wall may be chain link or other material, as long as slats or other material is used to ensure views of the site are screened from the adjacent habitat area.

The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. On page 9, before the final paragraph at the bottom of the page, the following shall be inserted:

In addition, the Commission's staff ecologist, Dr. John Dixon, has reviewed the project. Bird use of the salt ponds is substantial and diverse, and the main habitat

concern with new development in this location would be the potential to disturb birds. Dr. Dixon has concluded that with adequate screening of the project, no adverse impacts to sensitive species would occur, and no further buffer is required. Special Condition #1 requires that in addition to the 4 foot-high masonry wall currently proposed, an additional 4 feet of screened fencing or wall be provided above that. Therefore, as conditioned, the project is consistent with the LCP requirements to protect sensitive resources.

3. At the top of page 10, after the first partial paragraph, the following insertions and revisions shall be made:

The project appellant has submitted an Air Quality Analysis for the proposed project that asserts the City's conclusion that air quality impacts from the proposed car wash will be insignificant is inadequate, and that an EIR should be prepared to assess the impacts (see Exhibit #13). The study suggests that the incremental emissions associated with the construction of the proposed project would expose local residents to substantial pollutant concentrations. However, the appellant has not identified any LCP policies that the proposed project might be inconsistent with. Construction impacts to air quality are expected to be consistent with any development that might occur on the site, which is zoned for commercial uses (Commercial Community (CC-4-2)). A car wash is a permitted use in this zone. There is no evidence that the project will have adverse air quality impacts on coastal resources.

Special Condition #1 requires submittal of final plans consistent with the draft plans, except for the additional 4 feet of screening fence. Special Condition #2 requires submittal of a final landscape plan prohibiting the use of invasive plant materials and certain rodenticides. Special Condition #3 specifically requires that all of the conditions of the approved Mitigated Negative Declaration, which have been incorporated into the project, be implemented. Special Condition #4 states that the conditions placed on the project by the City of San Diego pursuant to an authority other than the Coastal Act remain in full force and effect.

4. The attached Air Quality Analysis shall be attached to the staff report as Exhibit #13.

September 24, 2010

RECEIVED

SEP 24 2010

California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive, Suite 103
San Diego, California 92108-4421
Attn: Diana Lilly

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: Air Quality Analysis: Initial Study/Mitigated Negative Declaration for the Palm Avenue
Car Wash; Coastal Development Permit No. 554574

Ms. Lilly:

Enclosed please find an updated air quality analysis demonstrating the potential significant air
quality impacts associated with the above referenced project.

I can be reached at (818) 703-3294 should you have any questions.

Sincerely,

Signature on file

Bill Piazza

EXHIBIT NO. 13
APPLICATION NO.
A-6-OMN-10-54
Air Quality Analysis
 California Coastal Commission

September 24, 2010

Carmel and Naccasha LLP
1410 Marsh Street
San Luis Obispo, California 93401
Attn: Timothy Carmel, Esq.

Re: Air Quality Analysis: Initial Study/Mitigated Negative Declaration for the Proposed Palm Avenue Car Wash

Mr. Carmel:

In response to your request to assess the adequacy of the air quality element for the above referenced project, the following is provided.

Upon review of the City of San Diego's (City) initial study, no relevant facts, technical studies or other substantial evidence to support the finding that project related impacts are less than significant is provided. Supporting documentation to assert their claim of insignificance associated with the potential for the project to expose individuals to pollutant concentrations is limited to a statement that the project is simply a "carwash and convenience store with no sensitive receptors in close proximity." As a result, "sensitive receptors would not be exposed to substantial pollutant concentrations." Air Quality Dynamics disagrees with this unsupported conclusion and finds that the project's air quality impacts are potentially significant. Although an initial study is neither intended nor required to include the level of detail typically reported in an environmental impact report (EIR), the City's analysis is clearly woeful in its attempt to assess potential environmental impacts. As such, the City cannot support their claim of insignificance.

Due to the City's failure to provide relevant documentation as to the project's potential to expose local residents to particulate emissions generated during construction related activities, a subsequent analysis was prepared by Air Quality Dynamics which clearly shows the project will expose sensitive receptors to substantial pollutant concentrations necessitating the preparation of an EIR.

The following discussion underscores concern for the project's potential to meet the test of significance and technical inadequacy of the City's Initial Study.

FAILURE TO CONSIDER RESIDENTIAL OCCUPANCIES AS SENSITIVE RECEPTORS

The City relies upon the South Coast Air Quality Management District's (SCAQMD) definition of a sensitive receptor when considering the potential impact of project related emissions on an exposed population. Specifically, the City's guidelines state:

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As adopted by the South Coast Air Quality Management District (SCAQMD) in their CEQA Air Quality handbook, a sensitive receptor is a person in the population who is particularly susceptible to health effects due to exposure to an air contaminant than is the population at large. Sensitive receptors (and the facilities that house them) in proximity to localized CO sources, toxic air contaminants or odors are of particular concern.

Further, the guidelines provide a list of land uses identified in the SCAQMD handbook that are considered sensitive receptor locations. Of relevance is the inclusion of "residences" in that compilation. The City, however, for no other reason than exclusion, interprets a residential occupancy to mean medical patients housed in infirmaries or the young and elderly residing in long term care or assisted living facilities. This interpretation is absurd and contrary to the definition of a sensitive receptor adopted by the SCAQMD.¹ For the City's reference, SCAQMD's definition is presented below.

Receptor locations are off-site locations where persons may be exposed to the emissions from project activities. Receptor locations include residential, commercial and industrial land use areas; and any other areas where persons can be situated for an hour or longer at a time. These other areas include parks, bus stops, and side walks but would not include the tops of buildings, roadways, or permanent bodies of water such as, oceans or lakes. For the purposes of a CEQA analysis, the SCAQMD considers a sensitive receptor to be a receptor such as a residence, hospital, convalescent facility were it is possible that an individual could remain for 24 hours.

Notwithstanding the City's acknowledgment that children, the elderly and others who suffer from asthma or have compromised immune systems are considered sensitive individuals, it is most reasonable to assume that they reside in single family homes or similar dwellings over the course of a 24 hour day. Without further dissertation, the residents adjoining the proposed project are clearly sensitive receptors.

INAPPROPRIATE USE OF SIGNIFICANCE CRITERIA TO IDENTIFY CONSTRUCTION RELATED IMPACTS

Based upon an examination of the City's guidelines, a numeric value of 100 pounds per day for airborne dust (i.e., PM₁₀) was established as the significance threshold for construction related activities. This is based upon the San Diego Air Pollution Control District's (SDAPCD) Regulation II, Rule 20.2, AQIA Trigger Level. Please note that this threshold is simply an emission limit. It does not correspond to an ambient air concentration which is required to assess exposure.

The City's guidelines, however, recommend that when "sensitive receptors are involved" a more restrictive threshold based upon both the National and State Ambient Air Quality Standards be applied. Air Quality Dynamics is a loss as to this reference as San Diego is classified as non-attainment for PM₁₀ whereby background concentrations already exceed existing air quality standards. As such, the City does not provide an incremental numeric standard to define exposures to substantial pollutant concentrations.

¹ South Coast Air Quality Management District, 2008. Final Localized Significance Threshold Methodology.

The City is advised to consult SDAPCD's Rule 20.2 (d)(2)(v)(C) which restricts PM₁₀ emissions from meeting or exceeding 10 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) for the 24-hour averaging time as a threshold for assessing exposures to particulate concentrations. The viability and relevance of this threshold is underscored in a recent California Air Resources Board (ARB) advisory.² The advisory states that:

PM₁₀ is among the most harmful of all air pollutants. When inhaled these particles evade the respiratory system's natural defenses and lodge deep in the lungs. Health problems begin as the body reacts to these foreign particles. PM₁₀ can increase the number and severity of asthma attacks, cause or aggravate bronchitis and other lung diseases, and reduce the body's ability to fight infections.

Although particulate matter can cause health problems for everyone, certain people are especially vulnerable to PM₁₀'s adverse health effects. These "sensitive populations" include children, the elderly, exercising adults, and those suffering from asthma or bronchitis. Of greatest concern are recent studies that link PM₁₀ exposure to the premature death of people who already have heart and lung disease, especially the elderly.

In establishing the current ambient air quality standard Mr. Michael P. Kenny, then Executive Officer of the ARB reported that PM₁₀ is "known to be linked with airway conditions, such as asthma and bronchitis" and noted that the PM₁₀ "24-hour standard is the most important (standard) in addressing acute health effects." He continued by stating that:

When the California Air Resources Board established its PM₁₀ standard, it found 50 $\mu\text{g}/\text{m}^3$ to be a health-protective value. A review of recent findings strongly supports the merit of this determination, but suggests that a 50 $\mu\text{g}/\text{m}^3$ level provides little, if any, margin of safety.

Please note that numerous epidemiological studies have repeatedly shown that an incremental increase of 10 $\mu\text{g}/\text{m}^3$ above existing background levels will consistently induce adverse health effects. An excerpt from two respective studies which underscore this contention is provided for your consideration. Dockery et al commenting on the acute respiratory effects of particulate air pollution (American Journal of Respiratory and Critical Care Medicine, Volume 153, 1996) reports that:

While total mortality increased by 1% for each 10 $\mu\text{g}/\text{m}^3$ increase in PM₁₀, respiratory mortality increased by 3.4% and cardiovascular mortality increased by 1.4%. Hospital admissions and emergency department visits increased approximately 1% for all respiratory complaints, and 2% to 3% for asthma. Exacerbation of asthma increased about 3%, as did lower respiratory symptoms. Small decreases in lung function, approximately 0.1%, have also been observed.

Gordian et al while assessing particulate air pollution and respiratory disease (Environmental Health Perspectives, Volume 104, 1996) concludes that:

(A)n increase of 10 $\mu\text{g}/\text{m}^3$ in PM₁₀ is associated with a 3-6% increase in medical visits for asthma and a 1-3% increase in medical visits for upper respiratory illness.

² California Air Resources Board, 2009. Air Pollution - Particulate Matter Brochure.

The authors continue by stating that:

(T)he increased morbidity is associated not just with a vulnerable segment of the population, but with a relatively young, healthy working group as well. These findings could have important implications to U.S. EPA in the ongoing review of the ambient air quality standard for PM₁₀.

To underscore this concern, the SDAPCD acknowledges that PM₁₀ and smaller particles are capable of bypassing the body's natural defenses in the nose and throat and entering the lungs. They report that "(w)hen inhaled, particles can increase the number and severity of asthma attacks and cause or aggravate bronchitis and other lung diseases." In addition, they note that "(c)ommunity health studies also link particle exposure to the premature death of people who already have heart and lung disease, especially the elderly."³ Clearly, these studies not only serve to address the viability of the 10 µg/m³ threshold, but give rise to concern for the subsequent health related impacts associated with anticipated dust generating activities from project construction.

FAILURE TO ADEQUATELY ASSESS PARTICULATE (PM₁₀) EMISSIONS FROM CONSTRUCTION RELATED ACTIVITY

In light of the City's token observance to the assessment of air quality impacts by failing to apply a viable threshold to assess significance, Air Quality Dynamics considered it prudent to perform an initial air quality assessment. This was done to exemplify that incremental emissions associated with construction of the proposed project may expose residential receptors to substantial pollutant concentrations thereby endangering the health of those who reside within the adjoining residential community.

In anticipation of the City's argument that an analysis to assess particulate impacts would be speculative in nature, we remind the City that the U.S. Environmental Protection Agency (U.S. EPA), California Environmental Protection Agency (Cal/EPA) and many local air agencies offer guidance to assist the City in assessing construction related impacts.

One such example is the Localized Significance Threshold (LST) Methodology developed by the SCAQMD. The LST guidance was developed as an implementation tool to assist local agencies in the evaluation of projects subject to CEQA review. The LST methodology presents a representative compilation of existing guidance on emission estimation techniques and air quality modeling.

A review of the project's geotechnical investigation⁴ reveal that "loose undocumented fill and alluvium covers the site to depths ranging approximately from 4 to 8 feet below existing grade. These loose surficial soils are susceptible to settlement upon loading." As such, "(a)ll undocumented fill and alluvium should be completely removed from areas that are planned to receive compacted fills and/or structural improvements." For non-structural areas, the report recommends "overexcavation to a minimum depth of 2 feet b-low existing grade." With

³ San Diego Air Pollution Control District, 2010. Particulate Matter Fact Sheet

⁴ East County Soil Consultation and Engineering, Inc., 2007. Limited Geotechnical Investigation - Proposed Carwash Building, Palm Avenue, APN 616-020-11,17, Imperial Beach, California.

assurance from the City that "proper engineering design and recommendations"⁵ identified in the geotechnical report would be followed, it is anticipated that a significant volume of on-site soils will be excavated and removed to accommodate the building footprint and appurtenant structures.

Based upon the above referenced activity, site preparation and the excavation of identified soils (i.e., overburden) will require the use of heavy equipment such as a bulldozer or similar earth moving contrivance to effectuate removal. Construction equipment such as motor graders which typically generate lower fugitive emissions are often used to quantify emissions from grading activities. However, for overburden removal, their use is not indicated as their function is to create a flat, finish grade surface, not perform the earthmoving functions required to complete this project phase.

With that said, a screening dispersion analysis was performed which quantified the downwind extent from both fugitive and exhaust emissions from the operation of a single bulldozer removing on-site soils. Although additional support equipment would be employed during this project phase, the analysis was simplified to include only excavation related activity.

To characterize particulate source strength, fugitive emissions were quantified through the U.S. EPA predictive emission equation for overburden removal.⁶ Input values for silt and moisture content were derived from the test pit values presented in the geotechnical investigation report. A control efficiency of 61 percent was additionally applied to account for a periodic water spray application.⁷ Combustion emission factors published by the ARB and utilized by the SCAQMD were incorporated to characterize equipment exhaust.⁸ Active construction operations were assumed to occur 7 hours per day over an 8 hour workday. Attachment A presents the emission calculation worksheet which lists the predictive emission equations and corresponding input values.

To quantify particulate concentrations, air dispersion modeling utilizing the AMS/EPA Regulatory Model AERMOD was performed. The model is approved by the U.S. EPA when estimating the air quality impacts associated with point and fugitive sources in simple and complex terrain. Meteorological data provided by the SDAPCD from the Chula Vista monitoring station was incorporated into the modeling exercise to represent local weather conditions and prevailing winds. SDAPCD staff also indicated that the project site is sufficiently close to water bodies and other non-urban land use categories. As such, it was recommended that the model be programmed to account for plume dispersion under the rural land use classification.⁹

To account for variations in local terrain, elevations from the U.S. Geological Survey National Elevation Dataset (NED) utilizing a 1/3 Arc Second resolution were generated by the AERMOD terrain processor (AERMAP) and incorporated into the modeling exercise.

⁵ City of San Diego, Development Services Department, 2010. Initial Study Checklist.

⁶ U.S. EPA, 1995. AP-42, Section 11.9, Table 11.9-1.

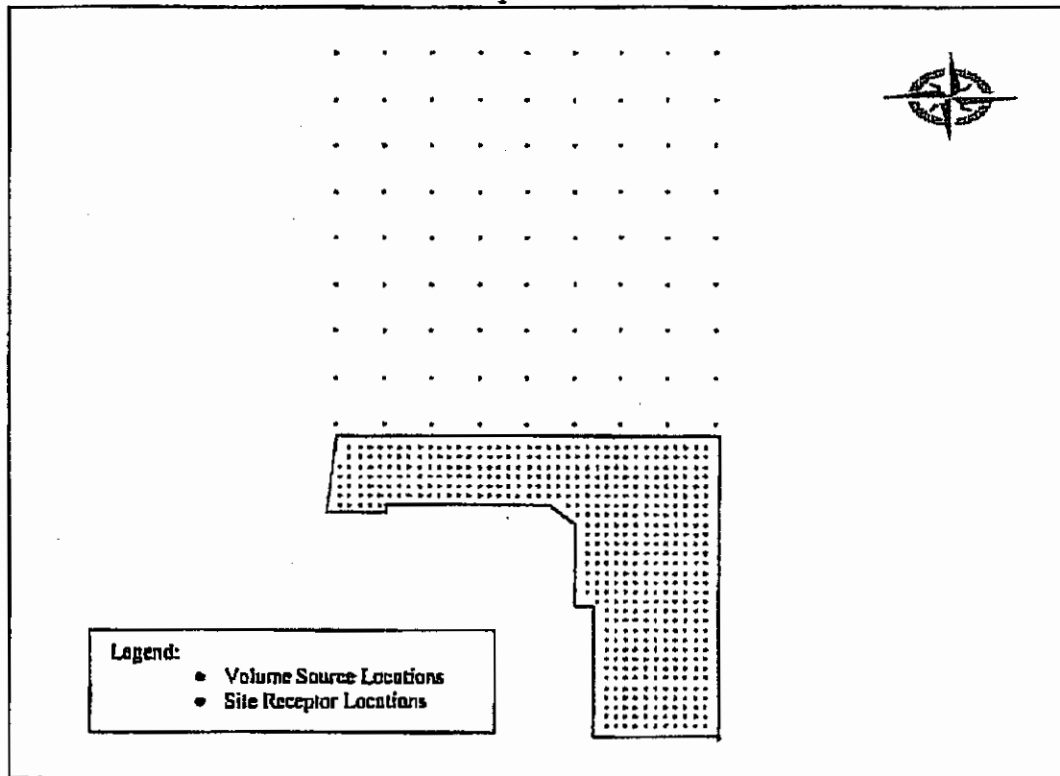
⁷ South Coast Air Quality Management District, 2010. Table XI-A - Mitigation Measure Examples: Fugitive Dust from Construction and Demolition.

⁸ South Coast Air Quality Management District, 2010. Off-road Mobile Source Emission Factors (Scenario Years 2007 -2025).

⁹ San Diego Air Pollution Control District, 2010. Data and consultation provided by Ralph DeSiena, Meteorology Section.

Source treatment outlined in the LST methodology was utilized. One exception was to forgo use of the area source algorithm for fugitive emissions in order to avoid the overestimation of particulate concentrations. Currently, the AERMOD area source algorithm does not account for plume meander during light wind conditions. As such, the assessment utilized a volume source approximation to characterize fugitive source generation. The number and lateral dimensions of each volume source were additionally revised to allow for near field concentration estimates in consideration of the model's limitation to maintain a minimum source-receptor distance (i.e., 1 meter plus 2.15 times the standard deviation of the lateral source dimension). A graphical representation of the source-receptor grid network is presented in Figure 1.

Figure 1
Source-Receptor Grid Network



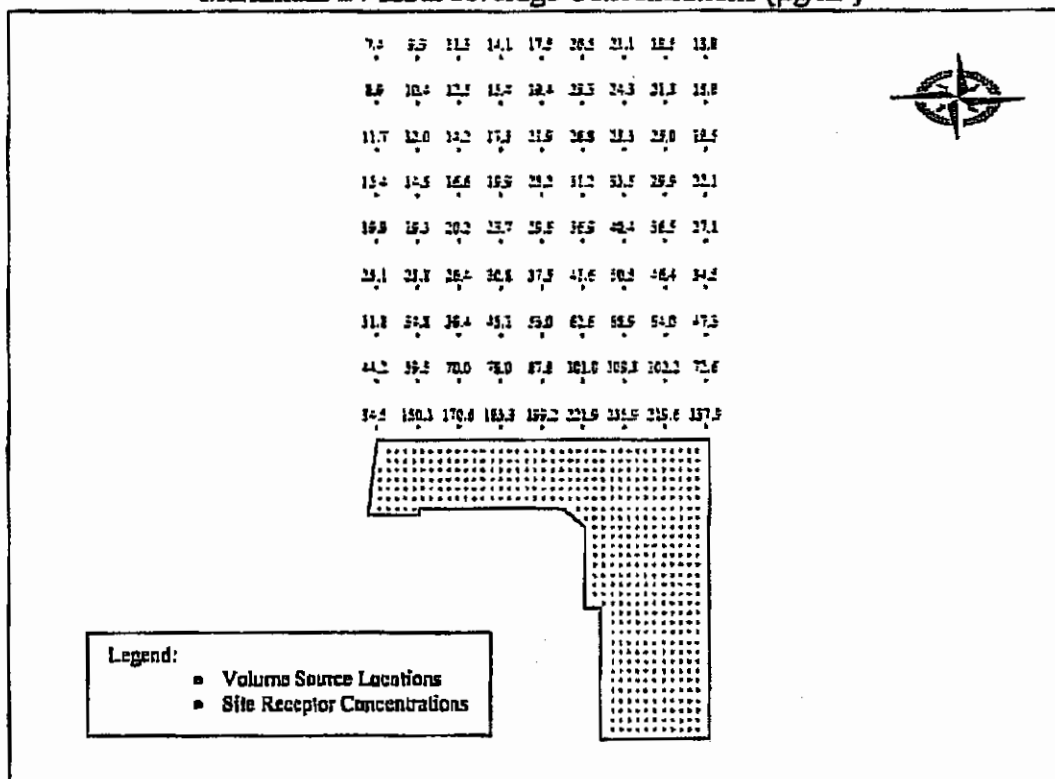
Another variation was to incorporate discrete dry removal mechanisms for exhaust particulates. Based upon the initial LST methodology for the treatment of plume depletion (DRYDPLT), identified weight fractions for fugitive emissions and those referenced in the California Emission Inventory Data and Reporting System (CEIDARS) profile for off-road diesel fired equipment were adjusted to produce a deposition value set of three aerodynamic diameter sizes of 1.0, 2.5 and 10 microns (μm) with weight fractions of 0.3483, 0.5717, and 0.08, respectively. A particle density of 2.3 grams per cubic centimeter was assigned to all size bins.

The emission rate scalar option was invoked to account for particulates generated during the hours of representative construction activity (i.e., 8:00 a.m. to 4:00 p.m.). A value of 0.875 was utilized for each identified hour to effectively allocate source emissions over the 8 hour workday.

A copy of the dispersion model output summary file is provided in Attachment B. For your records, an electronic copy of the complete model input/output files, meteorological data and the NED 1/3 Arc Second GeoTIFF dataset is provided in CD format.

Results of the modeling exercise predicted PM₁₀ concentrations in excess of 10 µg/m³ for all but 3 receptor locations located north of the project boundary. As noted in Figure 2 below, concentration estimates range from 235.9 µg/m³ to 7.4 µg/m³. Based upon available health effects information and concerns raised by the ARB that there are no established safe levels of exposure and little margin of safety in our current 24-hour standard, the incremental emissions associated with the construction of the proposed project would clearly expose sensitive receptors to substantial pollutant concentrations whereby endangering the health of local residents.

Figure 2
Maximum 24-Hour Average Concentrations (µg/m³)



SIGNIFICANT IMPACTS REMAIN REQUIRING THE PREPARATION OF AN EIR

The above discussion identified notable inadequacies in the City's analysis. It has been shown that the City provides nothing more than a token assessment of the air quality impacts associated with the proposed project with no evidence to support the initial study's determination that the project will not expose sensitive receptors to substantial pollutant concentrations. Please note that the above analysis served to exemplify the potential to impact local residents utilizing a single equipment operation. As a result, it is believed that due to the excessive silt and low moisture characteristics of on-site soils, an assessment which incorporates all related support equipment (e.g., loaders and haul trucks) and their operational profiles during earthmoving activities will generate even higher pollutant concentrations.

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Air Quality Dynamics trusts that the preceding analysis demonstrates the inadequacy of the City's air quality assessment, clearly reveals that the project will have significant unmitigated air quality impacts and provides relevant documentation to substantiate the need for the preparation of an EIR. I can be reached at (818) 703-3294 should you have any questions or require additional information.

Sincerely,

Signature on file

Bill Piazza / /
Air Quality Dynamics

:bp

Attachments: as stated and author biography

Biography

Bill Piazza

Mr. Bill Piazza has more than 20 years of experience in the field of environmental health and safety with particular expertise in both air dispersion modeling and health risk assessments. Mr. Piazza has completed more than 200 risk and hazard assessment studies. To date, he has characterized and modeled the contaminant emissions of more than 2,000 commercial, industrial and mobile source emissions.

Mr. Piazza has participated in the drafting of several environmental regulations including Public Resources Code Section 21151.8 and Education Code Section 17213 (e.g., SB 352) which requires school districts to evaluate the impacts of siting schools within close proximity to facilities that emit toxic air contaminants.

Mr. Piazza has performed private consultative services to clients such as MCA and Disney Development Companies, the Los Angeles City Department of Water and Power, Communities for a Better Environment, Corporation for Clean Air, Safe Action for the Environment and the Santa Clarita Organization for Planning the Environment. Mr. Piazza has provided services as a subcontractor to other consulting firms to assess the impact of both process and fugitive emissions associated with projects prepared under the auspices of the California Environmental Quality (CEQA) and National Environmental Policy Acts (NEPA).

Mr. Piazza has consulted with members of the Los Angeles, El Segundo, Huntington Park and Rolling Hills Estates city councils, as well as members of the City of Santa Monica Airport Commission, to address issues related to air toxic emissions.

Mr. Piazza has lectured for several health and hazard assessment classes conducted under the auspices of the University of California, Los Angeles and the University of Southern California and made several presentations to the American Industrial Hygiene Association, Southern California Society for Risk Analysis, California's Coalition for Adequate School Housing and Coalition for Clean Air on community-based risk and exposures to both criteria pollutants and toxic air contaminants.

Mr. Piazza participated as a member of the South Coast Air Quality Management District's (SCAQMD) Localized Significance Threshold Working Group which developed an assessment tool to assist lead agencies in the analysis of air pollution impacts at the local scale. Mr. Piazza was also a member of SCAQMD's MATES II external peer review group responsible for evaluating the agency's technical methodology and implementation plan to characterize ambient levels and "hot spot" concentrations of toxic compounds throughout the South Coast Air Basin. Mr. Piazza is currently a member of SCAQMD's greenhouse gas working group responsible for the development of significance thresholds for projects prepared in accordance with CEQA.

Mr. Piazza additionally participated as a member of the California Air Resources Board's (ARB) Risk Management Subcommittee and Risk Characterization Technical Group responsible for developing statewide assessment methodologies to assess the generation and associated impact of diesel emissions on sensitive receptor populations. Mr. Piazza was also a member of ARB's Community Health Modeling Working Group which was responsible for developing guidelines for the assessment and mitigation of air pollution impacts at the neighborhood scale.

Mr. Piazza's assessment work has also been featured in journal articles published by *Environment and Planning C: Government and Policy* 2002 and the *Journal of Environmental Health*.

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Attachment A

3

Emission Calculation Worksheet

Fugitive Emissions

Overburden Removal

$$\text{Emission Factor (lbs/hr)} = (0.75) \times (1.0 \times (s)^{1.5} \times (M)^{-1.4})$$

s = Material Silt Content (%) 33.5

M = Material Moisture Content (%) 4.3

PM₁₀ Emission Rate (lbs/hr) 18.870

PM₁₀ Emission Rate (g/sec) 2.378

Applied Control Efficiency (%/100) 61

Sources (#) 519

Total PM₁₀ Emissions (g/sec-source) 1.787E-03

Mobile Source Emissions

Operation

$$\text{Emission Rate (lbs/hr)} = (A \times B)$$

A = Equipment Used (#) 1.0

B = PM₁₀ Emission Factor (lbs/hr) 0.1036

PM₁₀ Emission Rate (lbs/hr) 0.1036

PM₁₀ Emission Rate (g/sec) 0.013

Sources (#) 519

Total PM₁₀ Emissions (g/sec-source) 2.515E-05

Note: Material silt and moisture content values obtained by averaging available test and laboratory data from test pit location 1 (TP-1).

Bulldozer exhaust emission factor based upon a nominal horsepower rating of 175 for the 2010 scenario year.

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Attachment B

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**MODELOPTs: CONC ELEV
FLGPOL DRYDPLT

*** UP TO THE FIRST 24 HOURS OF METEOROLOGICAL DATA ***

Surface file: Q2_CVA_PROF.SFC
Profile file: Q2_CVA_PROF.PFL
Surface format: FREE
Profile format: FREE
Surface station no.: 72290
Name: UNKNOWN
Year: 2002

Upper air station no.: 3190
Name: UNKNOWN
Year: 2002

Met Version: 06341

First 24 hours of scalar data

YR	MO	DAY	HR	HQ	U*	W*	DT/DZ	ZICNV	ZIMCH	M-D	LEN	Z0	BOWEN	ALB	REF WS	WD	HT	REF TA	HT	IPCD	PRATE	RH	SFCP	CCVR
02	01	01	01	-2.9	0.077	-9.000	-9.000	-999.	49.	14.5	1.00	1.00	1.00	0.89	1.	10.	285.9	2.***	-9.00	88.	1013.	10		
02	01	01	02	-2.9	0.077	-9.000	-9.000	-999.	49.	14.5	1.00	1.00	1.00	0.89	15.	10.	285.9	2.***	-9.00	94.	1013.	10		
02	01	01	03	-0.7	0.039	-9.000	-9.000	-999.	18.	7.3	1.00	1.00	1.00	0.45	17.	10.	285.9	2.***	-9.00	88.	1013.	10		
02	01	01	04	-7.2	0.128	-9.000	-9.000	-999.	106.	25.7	1.00	1.00	1.00	1.34	44.	10.	285.9	2.***	-9.00	88.	1013.	10		
02	01	01	05	-14.5	0.259	-9.000	-9.000	-999.	303.	108.5	1.00	1.00	1.00	1.79	49.	10.	285.4	2.***	-9.00	94.	1013.	10		
02	01	01	06	-4.0	0.077	-9.000	-9.000	-999.	90.	10.5	1.00	1.00	1.00	0.89	47.	10.	285.4	2.***	-9.00	94.	1013.	3		
02	01	01	07	-3.1	0.077	-9.000	-9.000	-999.	50.	13.3	1.00	1.00	1.00	0.89	48.	10.	284.2	2.***	-9.00	94.	1013.	9		
02	01	01	08	-0.6	0.039	-9.000	-9.000	-999.	18.	9.1	1.00	1.00	0.49	0.45	63.	10.	284.2	2.***	-9.00	100.	1013.	9		
02	01	01	09	5.7	0.124	0.170	0.009	31.	101.	-30.5	1.00	1.00	0.30	0.90	310.	93.	285.4	2.***	-9.00	94.	1013.	10		
02	01	01	10	18.3	0.124	0.358	0.009	91.	100.	-9.4	1.00	1.00	0.23	0.45	352.	10.	287.0	2.***	-9.00	87.	1019.	10		
02	01	01	11	58.6	0.220	0.752	0.012	262.	237.	-16.4	1.00	1.00	0.21	0.89	322.	10.	288.1	2.***	-9.00	82.	1013.	9		
02	01	01	12	66.4	0.432	0.907	0.013	406.	653.	-109.7	1.00	1.00	0.20	2.24	264.	10.	289.2	2.***	-9.00	72.	1013.	9		
02	01	01	13	65.7	0.223	0.930	0.016	443.	277.	-15.2	1.00	1.00	0.20	0.89	266.	10.	290.4	2.***	-9.00	68.	1013.	9		
02	01	01	14	55.5	0.427	0.899	0.014	472.	642.	-126.9	1.00	1.00	0.21	2.24	261.	10.	289.2	2.***	-9.00	77.	1013.	9		
02	01	01	15	37.3	0.418	0.798	0.014	492.	622.	-177.3	1.00	1.00	0.24	2.24	271.	10.	288.1	2.***	-9.00	82.	1013.	9		
02	01	01	16	20.0	0.265	0.652	0.015	502.	328.	-84.1	1.00	1.00	0.33	1.34	284.	10.	288.8	2.***	-9.00	78.	1018.	8		
02	01	01	17	-6.6	0.116	-9.000	-9.000	-999.	110.	21.7	1.00	1.00	0.60	1.34	267.	10.	288.1	2.***	-9.00	82.	1013.	9		
02	01	01	18	-3.8	0.077	-9.000	-9.000	-999.	50.	11.0	1.00	1.00	1.00	0.89	289.	10.	287.0	2.***	-9.00	88.	1013.	5		
02	01	01	19	-1.0	0.039	-9.000	-9.000	-999.	18.	5.2	1.00	1.00	1.00	0.45	340.	10.	287.0	2.***	-9.00	88.	1013.	0		
02	01	01	20	-0.8	0.039	-9.000	-9.000	-999.	18.	6.7	1.00	1.00	1.00	0.45	12.	10.	287.0	2.***	-9.00	88.	1013.	9		
02	01	01	21	-2.9	0.077	-9.000	-9.000	-999.	49.	14.5	1.00	1.00	1.00	0.89	8.	10.	287.0	2.***	-9.00	88.	1013.	10		
02	01	01	22	-0.6	0.053	-9.000	-9.000	-999.	28.	21.6	1.00	1.00	1.00	1.20	295.	93.	287.5	2.***	-9.00	84.	1019.	10		
02	01	01	23	-0.7	0.039	-9.000	-9.000	-999.	18.	7.3	1.00	1.00	1.00	0.45	44.	10.	287.0	2.***	-9.00	88.	1013.	10		
02	01	01	24	-7.2	0.130	-9.000	-9.000	-999.	108.	27.6	1.00	1.00	1.00	1.34	13.	10.	287.0	2.***	-9.00	88.	1013.	10		

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**MODELOPTs:

CONC

ELEV

FLGPOL

DRYDPLT

First hour of profile data

YR	MO	DAY	HR	HEIGHT	F	WDIR	WSPD	AMB_TMP	sigmaA	sigmaW	sigmaV
02	01	01	01	10.0	0	1.	0.89	-999.0	-999.0	-99.00	-99.00
02	01	01	01	93.0	0	303.	2.10	-999.0	-999.0	-99.00	-99.00
02	01	01	01	134.0	0	-999.	-99.00	288.0	-999.0	-99.00	-99.00
02	01	01	01	148.0	0	307.	2.20	-999.0	-999.0	-99.00	-99.00
02	01	01	01	194.0	0	-999.	-99.00	287.5	-999.0	-99.00	-99.00
02	01	01	01	203.0	0	309.	2.30	-999.0	-999.0	-99.00	-99.00
02	01	01	01	254.0	0	-999.	-99.00	286.9	-999.0	-99.00	-99.00
02	01	01	01	258.0	0	326.	2.10	-999.0	-999.0	-99.00	-99.00
02	01	01	01	313.0	0	309.	2.70	-999.0	-999.0	-99.00	-99.00
02	01	01	01	314.0	0	-999.	-99.00	286.5	-999.0	-99.00	-99.00
02	01	01	01	368.0	0	339.	2.20	-999.0	-999.0	-99.00	-99.00
02	01	01	01	374.0	0	-999.	-99.00	286.3	-999.0	-99.00	-99.00
02	01	01	01	423.0	0	13.	1.60	-999.0	-999.0	-99.00	-99.00
02	01	01	01	478.0	0	14.	2.30	-999.0	-999.0	-99.00	-99.00
02	01	01	01	533.0	0	-999.	-99.00	-999.0	-999.0	-99.00	-99.00
02	01	01	01	588.0	0	-999.	-99.00	-999.0	-999.0	-99.00	-99.00
02	01	01	01	643.0	0	-999.	-99.00	-999.0	-999.0	-99.00	-99.00
02	01	01	01	698.0	0	68.	1.40	-999.0	-999.0	-99.00	-99.00
02	01	01	01	753.0	0	4.	2.10	-999.0	-999.0	-99.00	-99.00
02	01	01	01	808.0	1	349.	3.50	-999.0	-999.0	-99.00	-99.00

F indicates top of profile (=1) or below (=0)

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*** AERMOD - VERSION 09292 ***

*** Palm Avenue Car Wash
*** Construction Emissions - PM10

*** 04/28/10
*** 23:43:27
PAGE 5

**MODELOPTs:
FLGPOL

CONC

ELEV

DRYDPLT

*** THE SUMMARY OF HIGHEST 24-HR RESULTS ***

** CONC OF OTHER IN MICROGRAMS/M**3 **

GROUP ID	AVERAGE CONC	DATE (YYMMDDHH)	RECEPTOR (XR, YR, ZELEV, ZHILL, ZFLAG)	OF TYPE	NETWORK GRID-ID
ALL HIGH 1ST HIGH VALUE IS	235.89136c	ON 02122224	AT (490165.60, 3605260.00, 3.93, 3.93, 2.00)	DC	
FUGITIVE HIGH 1ST HIGH VALUE IS	233.38210c	ON 02122224	AT (490165.60, 3605260.00, 3.93, 3.93, 2.00)	DC	
EXHAUST HIGH 1ST HIGH VALUE IS	2.50927c	ON 02122224	AT (490165.60, 3605260.00, 3.93, 3.93, 2.00)	DC	

*** RECEPTOR TYPES: GC = GRIDCART
GP = GRIDPOLR
DC = DISCCART
DP = DISCPOLR

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*** AERMOD - VERSION 09292 ***

*** Palm Avenue Car Wash

04/28/10

*** Construction Emissions - PM10

23:43:27

PAGE 6

**MODELOPTs:

CONC

ELEV

FLGPD

DRYDPLT

*** Message Summary : AERMOD Model Execution ***

----- Summary of Total Messages -----

A Total of 0 Fatal Error Message(s)
A Total of 0 Warning Message(s)
A Total of 425 Informational Message(s)

A Total of 8760 Hours Were Processed

A Total of 192 Calm Hours Identified

A Total of 233 Missing Hours Identified (2.66 Percent)

***** FATAL ERROR MESSAGES *****

*** NONE ***

***** WARNING MESSAGES *****

*** NONE ***

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Biography

Bill Piazza

Mr. Bill Piazza has more than 20 years of experience in the field of environmental health and safety with particular expertise in both air dispersion modeling and health risk assessments. Mr. Piazza has completed more than 200 risk and hazard assessment studies. To date, he has characterized and modeled the contaminant emissions of more than 2,000 commercial, industrial and mobile source emissions.

Mr. Piazza has participated in the drafting of several environmental regulations including Public Resources Code Section 21151.8 and Education Code Section 17213 (e.g., SB 352) which requires school districts to evaluate the impacts of siting schools within close proximity to facilities that emit toxic air contaminants.

Mr. Piazza has performed private consultative services to clients such as MCA and Disney Development Companies, the Los Angeles City Department of Water and Power, Communities for a Better Environment, Corporation for Clean Air, Safe Action for the Environment and the Santa Clarita Organization for Planning the Environment. Mr. Piazza has provided services as a subcontractor to other consulting firms to assess the impact of both process and fugitive emissions associated with projects prepared under the auspices of the California Environmental Quality (CEQA) and National Environmental Policy Acts (NEPA).

Mr. Piazza has consulted with members of the Los Angeles, El Segundo, Huntington Park and Rolling Hills Estates city councils, as well as members of the City of Santa Monica Airport Commission, to address issues related to air toxic emissions.

Mr. Piazza has lectured for several health and hazard assessment classes conducted under the auspices of the University of California, Los Angeles and the University of Southern California and made several presentations to the American Industrial Hygiene Association, Southern California Society for Risk Analysis, California's Coalition for Adequate School Housing and Coalition for Clean Air on community-based risk and exposures to both criteria pollutants and toxic air contaminants.

Mr. Piazza participated as a member of the South Coast Air Quality Management District's (SCAQMD) Localized Significance Threshold Working Group which developed an assessment tool to assist lead agencies in the analysis of air pollution impacts at the local scale. Mr. Piazza was also a member of SCAQMD's MATES II external peer review group responsible for evaluating the agency's technical methodology and implementation plan to characterize ambient levels and "hot spot" concentrations of toxic compounds throughout the South Coast Air Basin. Mr. Piazza is currently a member of SCAQMD's greenhouse gas working group responsible for the development of significance thresholds for projects prepared in accordance with CEQA.

Mr. Piazza additionally participated as a member of the California Air Resources Board's (ARB) Risk Management Subcommittee and Risk Characterization Technical Group responsible for developing statewide assessment methodologies to assess the generation and associated impact of diesel emissions on sensitive receptor populations. Mr. Piazza was also a member of ARB's Community Health Modeling Working Group which was responsible for developing guidelines for the assessment and mitigation of air pollution impacts at the neighborhood scale.

Mr. Piazza's assessment work has also been featured in journal articles published by Environment and Planning C: Government and Policy 2002 and the Journal of Environmental Health.

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September 24, 2010

Carmel and Naccasha LLP
1410 Marsh Street
San Luis Obispo, California 93401
Attn: Timothy Carmel, Esq.

Re: Air Quality Analysis: Initial Study/Mitigated Negative Declaration for the Proposed Palm Avenue Car Wash

Mr. Carmel:

In response to your request to assess the adequacy of the air quality element for the above referenced project, the following is provided.

Upon review of the City of San Diego's (City) initial study, no relevant facts, technical studies or other substantial evidence to support the finding that project related impacts are less than significant is provided. Supporting documentation to assert their claim of insignificance associated with the potential for the project to expose individuals to pollutant concentrations is limited to a statement that the project is simply a "carwash and convenience store with no sensitive receptors in close proximity." As a result, "sensitive receptors would not be exposed to substantial pollutant concentrations." Air Quality Dynamics disagrees with this unsupported conclusion and finds that the project's air quality impacts are potentially significant. Although an initial study is neither intended nor required to include the level of detail typically reported in an environmental impact report (EIR), the City's analysis is clearly woeful in its attempt to assess potential environmental impacts. As such, the City cannot support their claim of insignificance.

Due to the City's failure to provide relevant documentation as to the project's potential to expose local residents to particulate emissions generated during construction related activities, a subsequent analysis was prepared by Air Quality Dynamics which clearly shows the project will expose sensitive receptors to substantial pollutant concentrations necessitating the preparation of an EIR.

The following discussion underscores concern for the project's potential to meet the test of significance and technical inadequacy of the City's Initial Study.

FAILURE TO CONSIDER RESIDENTIAL OCCUPANCIES AS SENSITIVE RECEPTORS

The City relies upon the South Coast Air Quality Management District's (SCAQMD) definition of a sensitive receptor when considering the potential impact of project related emissions on an exposed population. Specifically, the City's guidelines state:

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As adopted by the South Coast Air Quality Management District (SCAQMD) in their CEQA Air Quality handbook, a sensitive receptor is a person in the population who is particularly susceptible to health effects due to exposure to an air contaminant than is the population at large. Sensitive receptors (and the facilities that house them) in proximity to localized CO sources, toxic air contaminants or odors are of particular concern.

Further, the guidelines provide a list of land uses identified in the SCAQMD handbook that are considered sensitive receptor locations. Of relevance is the inclusion of "residences" in that compilation. The City, however, for no other reason than exclusion, interprets a residential occupancy to mean medical patients housed in infirmaries or the young and elderly residing in long term care or assisted living facilities. This interpretation is absurd and contrary to the definition of a sensitive receptor adopted by the SCAQMD.¹ For the City's reference, SCAQMD's definition is presented below.

Receptor locations are off-site locations where persons may be exposed to the emissions from project activities. Receptor locations include residential, commercial and industrial land use areas; and any other areas where persons can be situated for an hour or longer at a time. These other areas include parks, bus stops, and side walks but would not include the tops of buildings, roadways, or permanent bodies of water such as, oceans or lakes. For the purposes of a CEQA analysis, the SCAQMD considers a sensitive receptor to be a receptor such as a residence, hospital, convalescent facility were it is possible that an individual could remain for 24 hours.

Notwithstanding the City's acknowledgment that children, the elderly and others who suffer from asthma or have compromised immune systems are considered sensitive individuals, it is most reasonable to assume that they reside in single family homes or similar dwellings over the course of a 24 hour day. Without further dissertation, the residents adjoining the proposed project are clearly sensitive receptors.

INAPPROPRIATE USE OF SIGNIFICANCE CRITERIA TO IDENTIFY CONSTRUCTION RELATED IMPACTS

Based upon an examination of the City's guidelines, a numeric value of 100 pounds per day for airborne dust (i.e., PM₁₀) was established as the significance threshold for construction related activities. This is based upon the San Diego Air Pollution Control District's (SDAPCD) Regulation II, Rule 20.2, AQIA Trigger Level. Please note that this threshold is simply an emission limit. It does not correspond to an ambient air concentration which is required to assess exposure.

The City's guidelines, however, recommend that when "sensitive receptors are involved" a more restrictive threshold based upon both the National and State Ambient Air Quality Standards be applied. Air Quality Dynamics is a loss as to this reference as San Diego is classified as non-attainment for PM₁₀ whereby background concentrations already exceed existing air quality standards. As such, the City does not provide an incremental numeric standard to define exposures to substantial pollutant concentrations.

¹ South Coast Air Quality Management District, 2008. Final Localized Significance Threshold Methodology.

The City is advised to consult SDAPCD's Rule 20.2 (d)(2)(v)(C) which restricts PM₁₀ emissions from meeting or exceeding 10 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) for the 24-hour averaging time as a threshold for assessing exposures to particulate concentrations. The viability and relevance of this threshold is underscored in a recent California Air Resources Board (ARB) advisory.² The advisory states that:

PM₁₀ is among the most harmful of all air pollutants. When inhaled these particles evade the respiratory system's natural defenses and lodge deep in the lungs. Health problems begin as the body reacts to these foreign particles. PM₁₀ can increase the number and severity of asthma attacks, cause or aggravate bronchitis and other lung diseases, and reduce the body's ability to fight infections.

Although particulate matter can cause health problems for everyone, certain people are especially vulnerable to PM₁₀'s adverse health effects. These "sensitive populations" include children, the elderly, exercising adults, and those suffering from asthma or bronchitis. Of greatest concern are recent studies that link PM₁₀ exposure to the premature death of people who already have heart and lung disease, especially the elderly.

In establishing the current ambient air quality standard Mr. Michael P. Kemmy, then Executive Officer of the ARB reported that PM₁₀ is "known to be linked with airway conditions, such as asthma and bronchitis" and noted that the PM₁₀ "24-hour standard is the most important (standard) in addressing acute health effects." He continued by stating that:

When the California Air Resources Board established its PM₁₀ standard, it found $50 \mu\text{g}/\text{m}^3$ to be a health-protective value. A review of recent findings strongly supports the merit of this determination, but suggests that a $50 \mu\text{g}/\text{m}^3$ level provides little, if any, margin of safety.

Please note that numerous epidemiological studies have repeatedly shown that an incremental increase of $10 \mu\text{g}/\text{m}^3$ above existing background levels will consistently induce adverse health effects. An excerpt from two respective studies which underscore this contention is provided for your consideration. Dockery et al commenting on the acute respiratory effects of particulate air pollution (American Journal of Respiratory and Critical Care Medicine, Volume 153, 1996) reports that:

While total mortality increased by 1% for each $10 \mu\text{g}/\text{m}^3$ increase in PM₁₀, respiratory mortality increased by 3.4% and cardiovascular mortality increased by 1.4%. Hospital admissions and emergency department visits increased approximately 1% for all respiratory complaints, and 2% to 3% for asthma. Exacerbation of asthma increased about 3%, as did lower respiratory symptoms. Small decreases in lung function, approximately 0.1%, have also been observed.

Gordian et al while assessing particulate air pollution and respiratory disease (Environmental Health Perspectives, Volume 104, 1996) concludes that:

(A)n increase of $10 \mu\text{g}/\text{m}^3$ in PM₁₀ is associated with a 3-6% increase in medical visits for asthma and a 1-3% increase in medical visits for upper respiratory illness.

² California Air Resources Board, 2009. Air Pollution - Particulate Matter Brochure.

The authors continue by stating that:

(T)he increased morbidity is associated not just with a vulnerable segment of the population, but with a relatively young, healthy working group as well. These findings could have important implications to U.S. EPA in the ongoing review of the ambient air quality standard for PM₁₀.

To underscore this concern, the SDAPCD acknowledges that PM₁₀ and smaller particles are capable of bypassing the body's natural defenses in the nose and throat and entering the lungs. They report that "(w)hen inhaled, particles can increase the number and severity of asthma attacks and cause or aggravate bronchitis and other lung diseases." In addition, they note that "(c)ommunity health studies also link particle exposure to the premature death of people who already have heart and lung disease, especially the elderly."³ Clearly, these studies not only serve to address the viability of the 10 µg/m³ threshold, but give rise to concern for the subsequent health related impacts associated with anticipated dust generating activities from project construction.

FAILURE TO ADEQUATELY ASSESS PARTICULATE (PM₁₀) EMISSIONS FROM CONSTRUCTION RELATED ACTIVITY

In light of the City's token observance to the assessment of air quality impacts by failing to apply a viable threshold to assess significance, Air Quality Dynamics considered it prudent to perform an initial air quality assessment. This was done to exemplify that incremental emissions associated with construction of the proposed project may expose residential receptors to substantial pollutant concentrations thereby endangering the health of those who reside within the adjoining residential community.

In anticipation of the City's argument that an analysis to assess particulate impacts would be speculative in nature, we remind the City that the U.S. Environmental Protection Agency (U.S. EPA), California Environmental Protection Agency (Cal/EPA) and many local air agencies offer guidance to assist the City in assessing construction related impacts.

One such example is the Localized Significance Threshold (LST) Methodology developed by the SCAQMD. The LST guidance was developed as an implementation tool to assist local agencies in the evaluation of projects subject to CEQA review. The LST methodology presents a representative compilation of existing guidance on emission estimation techniques and air quality modeling.

A review of the project's geotechnical investigation⁴ reveal that "loose undocumented fill and alluvium covers the site to depths ranging approximately from 4 to 8 feet below existing grade. These loose surficial soils are susceptible to settlement upon loading." As such, "(a)ll undocumented fill and alluvium should be completely removed from areas that are planned to receive compacted fills and/or structural improvements." For non-structural areas, the report recommends "overexcavation to a minimum depth of 2 feet below existing grade." With

³ San Diego Air Pollution Control District, 2010. Particulate Matter Fact Sheet

⁴ East County Soil Consultation and Engineering, Inc., 2007. Limited Geotechnical Investigation - Proposed Carwash Building, Palm Avenue, APN 616-020-11,17, Imperial Beach, California.

assurance from the City that "proper engineering design and recommendations"⁵ identified in the geotechnical report would be followed, it is anticipated that a significant volume of on-site soils will be excavated and removed to accommodate the building footprint and appurtenant structures.

Based upon the above referenced activity, site preparation and the excavation of identified soils (i.e., overburden) will require the use of heavy equipment such as a bulldozer or similar earth moving contrivance to effectuate removal. Construction equipment such as motor graders which typically generate lower fugitive emissions are often used to quantify emissions from grading activities. However, for overburden removal, their use is not indicated as their function is to create a flat, finish grade surface, not perform the earthmoving functions required to complete this project phase.

With that said, a screening dispersion analysis was performed which quantified the downwind extent from both fugitive and exhaust emissions from the operation of a single bulldozer removing on-site soils. Although additional support equipment would be employed during this project phase, the analysis was simplified to include only excavation related activity.

To characterize particulate source strength, fugitive emissions were quantified through the U.S. EPA predictive emission equation for overburden removal.⁶ Input values for silt and moisture content were derived from the test pit values presented in the geotechnical investigation report. A control efficiency of 61 percent was additionally applied to account for a periodic water spray application.⁷ Combustion emission factors published by the ARB and utilized by the SCAQMD were incorporated to characterize equipment exhaust.⁸ Active construction operations were assumed to occur 7 hours per day over an 8 hour workday. Attachment A presents the emission calculation worksheet which lists the predictive emission equations and corresponding input values.

To quantify particulate concentrations, air dispersion modeling utilizing the AMS/EPA Regulatory Model AERMOD was performed. The model is approved by the U.S. EPA when estimating the air quality impacts associated with point and fugitive sources in simple and complex terrain. Meteorological data provided by the SDAPCD from the Chula Vista monitoring station was incorporated into the modeling exercise to represent local weather conditions and prevailing winds. SDAPCD staff also indicated that the project site is sufficiently close to water bodies and other non-urban land use categories. As such, it was recommended that the model be programmed to account for plume dispersion under the rural land use classification.⁹

To account for variations in local terrain, elevations from the U.S. Geological Survey National Elevation Dataset (NED) utilizing a 1/3 Arc Second resolution were generated by the AERMOD terrain processor (AERMAP) and incorporated into the modeling exercise.

⁵ City of San Diego, Development Services Department, 2010. Initial Study Checklist.

⁶ U.S. EPA, 1995. AP-42, Section 11.9, Table 11.9-1.

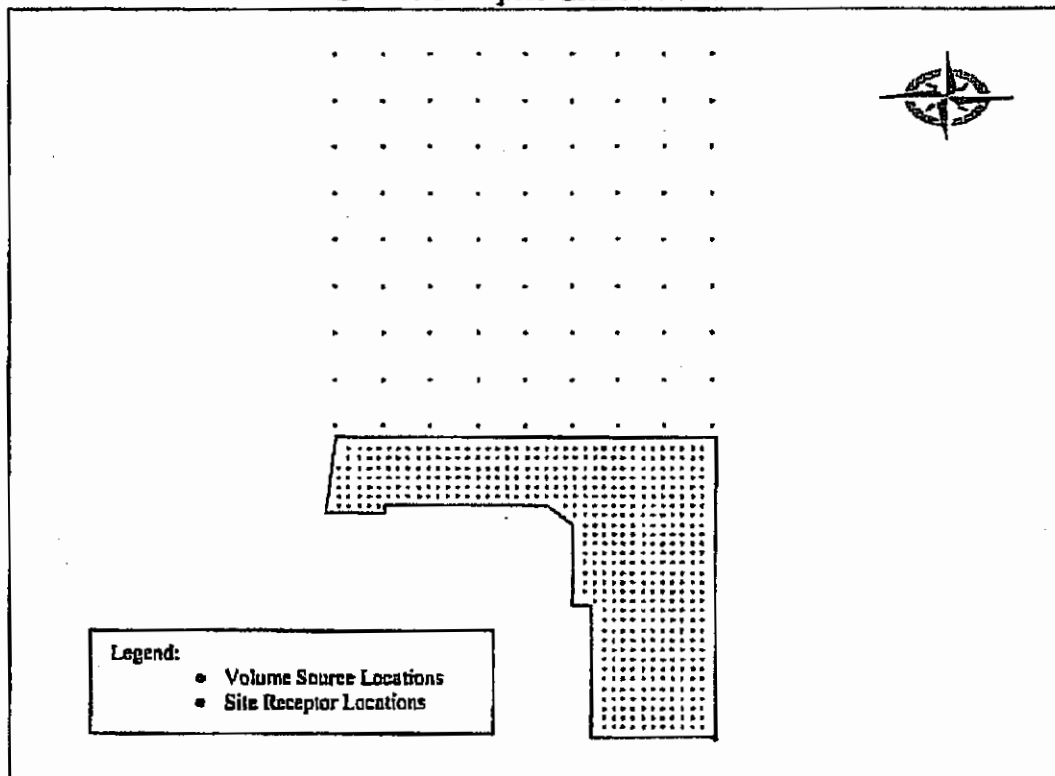
⁷ South Coast Air Quality Management District, 2010. Table XI-A – Mitigation Measure Examples: Fugitive Dust from Construction and Demolition.

⁸ South Coast Air Quality Management District, 2010. Off-road Mobile Source Emission Factors (Scenario Years 2007 -2025).

⁹ San Diego Air Pollution Control District, 2010. Data and consultation provided by Ralph DeSiena, Meteorology Section.

Source treatment outlined in the LST methodology was utilized. One exception was to forgo use of the area source algorithm for fugitive emissions in order to avoid the overestimation of particulate concentrations. Currently, the AERMOD area source algorithm does not account for plume meander during light wind conditions. As such, the assessment utilized a volume source approximation to characterize fugitive source generation. The number and lateral dimensions of each volume source were additionally revised to allow for near field concentration estimates in consideration of the model's limitation to maintain a minimum source-receptor distance (i.e., 1 meter plus 2.15 times the standard deviation of the lateral source dimension). A graphical representation of the source-receptor grid network is presented in Figure 1.

Figure 1
Source-Receptor Grid Network



Another variation was to incorporate discrete dry removal mechanisms for exhaust particulates. Based upon the initial LST methodology for the treatment of plume depletion (DRYDPLT), identified weight fractions for fugitive emissions and those referenced in the California Emission Inventory Data and Reporting System (CEIDARS) profile for off-road diesel fired equipment were adjusted to produce a deposition value set of three aerodynamic diameter sizes of 1.0, 2.5 and 10 microns (μm) with weight fractions of 0.3483, 0.5717, and 0.08, respectively. A particle density of 2.3 grams per cubic centimeter was assigned to all size bins.

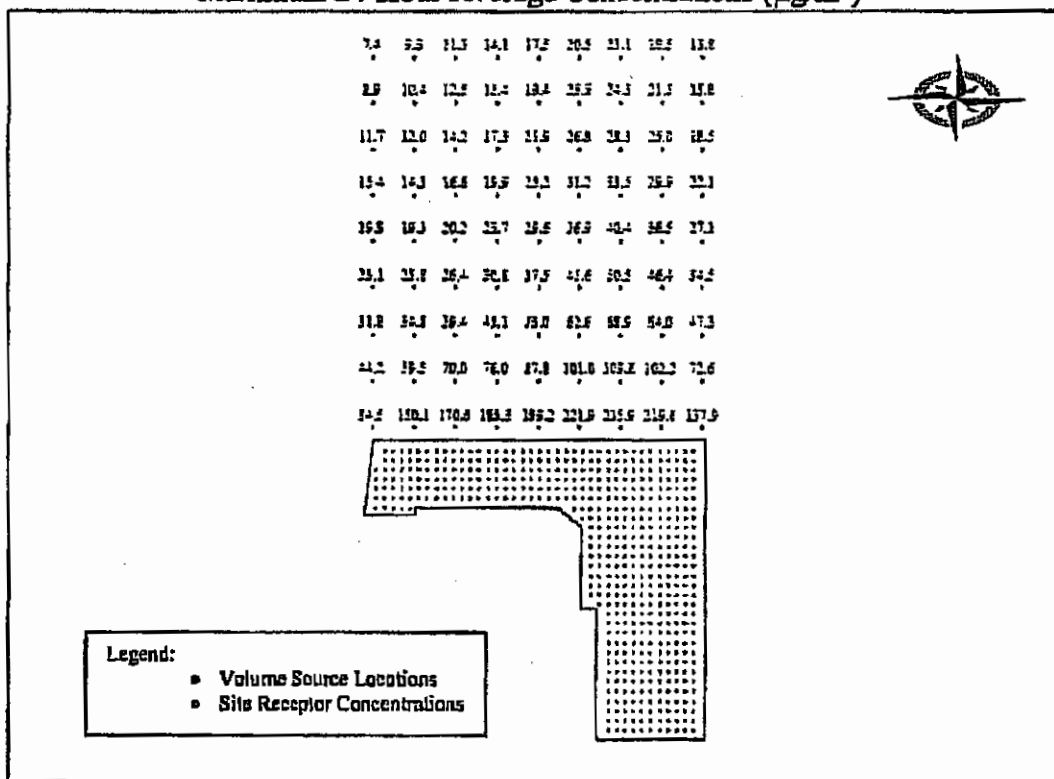
The emission rate scalar option was invoked to account for particulates generated during the hours of representative construction activity (i.e., 8:00 a.m. to 4:00 p.m.). A value of 0.875 was utilized for each identified hour to effectively allocate source emissions over the 8 hour workday.

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A copy of the dispersion model output summary file is provided in Attachment B. For your records, an electronic copy of the complete model input/output files, meteorological data and the NED 1/3 Arc Second GeoTIFF dataset is provided in CD format.

Results of the modeling exercise predicted PM₁₀ concentrations in excess of 10 µg/m³ for all but 3 receptor locations located north of the project boundary. As noted in Figure 2 below, concentration estimates range from 235.9 µg/m³ to 7.4 µg/m³. Based upon available health effects information and concerns raised by the ARB that there are no established safe levels of exposure and little margin of safety in our current 24-hour standard, the incremental emissions associated with the construction of the proposed project would clearly expose sensitive receptors to substantial pollutant concentrations whereby endangering the health of local residents.

Figure 2
Maximum 24-Hour Average Concentrations (µg/m³)



SIGNIFICANT IMPACTS REMAIN REQUIRING THE PREPARATION OF AN EIR

The above discussion identified notable inadequacies in the City's analysis. It has been shown that the City provides nothing more than a token assessment of the air quality impacts associated with the proposed project with no evidence to support the initial study's determination that the project will not expose sensitive receptors to substantial pollutant concentrations. Please note that the above analysis served to exemplify the potential to impact local residents utilizing a single equipment operation. As a result, it is believed that due to the excessive silt and low moisture characteristics of on-site soils, an assessment which incorporates all related support equipment (e.g., loaders and haul trucks) and their operational profiles during earthmoving activities will generate even higher pollutant concentrations.

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Air Quality Dynamics trusts that the preceding analysis demonstrates the inadequacy of the City's air quality assessment, clearly reveals that the project will have significant unmitigated air quality impacts and provides relevant documentation to substantiate the need for the preparation of an EIR. I can be reached at (818) 703-3294 should you have any questions or require additional information.

Sincerely,

Signature on file

Bill Piazza
Air Quality Dynamics

:bp

Attachments: as stated and author biography

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Biography

Bill Piazza

Mr. Bill Piazza has more than 20 years of experience in the field of environmental health and safety with particular expertise in both air dispersion modeling and health risk assessments. Mr. Piazza has completed more than 200 risk and hazard assessment studies. To date, he has characterized and modeled the contaminant emissions of more than 2,000 commercial, industrial and mobile source emissions.

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Mr. Piazza's assessment work has also been featured in journal articles published by *Environment and Planning C: Government and Policy* 2002 and the *Journal of Environmental Health*.

Attachment A

Emission Calculation Worksheet

Fugitive Emissions

Overburden Removal

$$\text{Emission Factor (lbs/hr)} = (0.75) \times (1.0 \times (s)^{1.5} \times (M)^{-1.4})$$

s = Material Silt Content (%)	33.5
M = Material Moisture Content (%)	4.3
PM ₁₀ Emission Rate (lbs/hr)	18.870
PM ₁₀ Emission Rate (g/sec)	2.378
Applied Control Efficiency (%/100)	61
Sources (#)	519
Total PM ₁₀ Emissions (g/sec-source)	1.787E-03

Mobile Source Emissions

Operation

$$\text{Emission Rate (lbs/hr)} = (A \times B)$$

A = Equipment Used (#)	1.0
B = PM10 Emission Factor (lbs/hr)	0.1036
PM ₁₀ Emission Rate (lbs/hr)	0.1036
PM ₁₀ Emission Rate (g/sec)	0.013
Sources (#)	519
Total PM ₁₀ Emissions (g/sec-source)	2.515E-05

Note: Material silt and moisture content values obtained by averaging available test and laboratory data from test pit location 1 (TP-1).

Bulldozer exhaust emission factor based upon a nominal horsepower rating of 175 for the 2010 scenario year.

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DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:

Appeal No. A-6-OMN-10-54 (Kravis & Magnotto, San Diego) Appeal by Timothy J. Carmel from decision of City of San Diego granting permit with conditions to Mark Kravis & Paul Magnotto to construct 8,928 sq. ft. car wash with convenience store, parking, grading and landscaping on a vacant 0.94-ac. site, at 1440 Palm Avenue, Otay Mesa-Nestor, San Diego, San Diego County.

Date and time of receipt of communication:

October 1, 2010 at 10:15 am

Location of communication:

Telephone

Type of communication:

Conference Call

Person(s) in attendance at time of communication:

Anne Blemker

Person(s) receiving communication:

Bonnie Neely

Detailed substantive description of the content of communication:

(Attach a copy of the complete text of any written material received.)

I received a briefing from the project representative in which she described the proposed car wash and unique project site, and informed me that the applicants are in agreement with the staff recommendation. She described the water quality measures being incorporated by the applicants and discussed the environmental benefits of commercial car wash facilities. According to the representative, the resource agencies, including USFWS, have reviewed the project and have no concerns that there would be any adverse impacts to the adjacent habitat area at the former salt pond site. Staff has concluded that *"no buffer is warranted in this particular case, as all impacts have been adequately mitigated, and provision of a buffer would not result in any appreciable improvement to natural resources."*

Date: October 1st 2010

Signature on file

Bonnie Neely, Commissioner

Ex Parte Communication

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OCT 12 2010

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October 12, 2010

BY HAND

Hon. Bonnie Neely and Members of the
Coastal Commission
California Coastal Commission
7575 Metopolitan Drive, Suite 103
San Diego, CA 92108-4421

Re: **Appeal No.: A-6-OMN-10-54**
Applicants: Mark Kravis & Paul Magnotto
Project Location: 1440 Palm Avenue, Otay Mesa-Nestor, San Diego
Project Description: Const. of 8,928 sq.ft. car wash with convenience store
Appellant: Timothy J. Carmel
Staff Report: F8f, dated September 20, 2010

Dear Commissioners:

We represent the Applicants, Mark Kravis and Paul Magnotto. Mr. Kravis and Mr. Magnotto agree with the well reasoned recommendation of the Staff Report and Recommendation dated September 20, 2010 (the "Staff Report"). Mr. Kravis and Mr. Magnotto respectfully request the Commission accept the Staff Report recommendation and approve Coastal Development Permit No. A-6-OMN-10-54 for their Project.

Mr. Kravis and Mr. Magnotto are two small businessmen who decided to open a car wash on Palm Avenue a few years ago. They believe the tens of thousands of vehicles that pass through this busy commercial corridor along Palm Avenue (Highway 75) each day would be well served by a state of the art, environmentally friendly car wash.

As noted in the Staff Report, the proposed car wash (the "Project"):

has been designed with mitigation measures including water quality BMPs, lighting shields, and noise barriers, that are intended

Hon. Bonnie Neely and Members of the Coastal Commission
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to ensure no impacts to environmentally sensitive lands will occur, consistent with the policies of the LCP.

See Staff Report p. 10. The Staff Report carefully evaluates the Permit, expert reports, and the Appellant's complaints that the Project is inconsistent with the certified LCP. Contrary to the Appellant's claims, the Staff Report demonstrates that the effects of lighting, noise, water quality, and air quality were adequately analyzed and sensitive biological resources are protected by the mitigation measures. After evaluating all arguments and information available, the Staff Report concluded that "no direct or indirect impacts to sensitive habitat are expected to occur as a result of the proposed project." *Id.* at p. 1. In reaching this conclusion, the Staff Report notes the following:

Biological Impact

- "The biological survey determined that there are no sensitive resources on the subject site", and that "the habitat adjacent to the subject site is highly disturbed and dominated by non-native grasses and broad leafed weeds." (p. 7)

Lighting

- The conditions that require "all lighting adjacent to the MHPA to be directed away from preserve areas using appropriate placement and shielding, and installing a 4-foot high solid wood fence along the eastern edge of the property to shield the MHPA from automobile headlights" will mitigate any lighting impacts to the sensitive habitat. (p. 8)

Noise

- The noise study performance demonstrates that the "sound attenuation measures were incorporated into the design of the project to reduce noise levels to below 60 dB CNEL," and the restricted hours of operation will ensure that the noise generated "will not be above the required night time noise limit of the adjacent salt pond habitat." (p. 8)

Water Quality

- "The proposed project should improve water quality in the adjacent MHPA" because it includes a system that will process all chemicals through a containment system and either pump them out by a service or distribute it to the sewer. Additionally, since all runoff is contained "commercial car washes are typically considered beneficial to water quality compared to self-washing residential driveways." (p. 8)
- The "drainage improvements installed on the site, in particular, a 1,500 gallon oil/water separator, will capture and divert runoff from the adjacent auto repair facility, which currently drains into the MHPA." (p. 8)

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Buffer

- There is a 9'6" elevation above the wetland and a 4-foot high wall on top of the retaining wall, which creates a vertical buffer and discourages pedestrian entry into the wetland. (p. 9)
- "The adjacent Pond 20 is not part of the South Bay Wildlife Refuge or in an area currently planned for restoration as part of the Refuge....Pond 20 itself serves as a buffer between the high intensity surrounding development and the Refuge. ... Therefore, in this particular case, no value would be added to the Pond by requiring an additional buffer on the subject site." (pp. 9-10)

The biological survey specifically noted that:

The completed project may actually benefit the offsite resources to the east. The construction of the project and required storm water and best management practices will result in the runoff from the site being directed away from the MHPA and being filtered prior to entering into the storm water system. As the site is currently configured water runs directly from the site, including some from the Auto Zone, directly into the MHPA without any filtration. Also the site is currently a source of invasive non-native weed seeds which may enter into the MHPA. Once the project is completed the site will not provide a source of invasive non-native weed seeds.

See Staff Report, Exhibit 8.

The U.S. Fish and Wildlife Services Refuge Complex staff also reviewed the project and has no objection. It specifically determined that the Project would not result in any adverse impacts to the Refuge. See Staff Report p. 10; see also Exhibit 7.

The Staff Report also concluded that the Project is consistent with the California Environmental Quality Act (CEQA). After evaluating the mitigation measures described above, it determined that:

the proposed project is the *least environmentally-damaging* feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

(Emphasis added.) *Id.* at p. 12.

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The Staff Report notes that the current lot configuration is the result of a 2004 lot line adjustment done without the benefit of a coastal development permit.¹ However, it goes on to conclude that “the proposed project, as designed for the current lot configuration, can be found consistent with the resources protection policies of the LCP.” *Id.* at pp. 5, 10.

In fact, the additional mitigation measures are possible *because of* the current lot configuration. The L-Shaped lot permits the Project to include items such as the 9’6” terraced elevation, grading to force the drainage into the swale, and the 1,500 gallon water/oil separator, which will improve both water quality and eliminate drainage that is currently flowing into the MHPA area. *Id.* at p. 8. Development in the previous lot configuration could not have been as sensitively designed because of the limited size and extremely narrow shape of the lot.

There is no credible evidence the Project will have a negative impact on the air quality of the MHPA. Your staff has rejected any claim that the air quality would be affected. The July 22 Staff Report for this Project noted:

The City did evaluate air quality impacts in the Mitigated Negative Declaration and did not identify any potential adverse impacts from the project. The Appellant did not identify any air quality sections of the LCP with which the approved project is inconsistent. There is no evidence that the project will have adverse impacts on coastal resources.

See July 22, 2010 Staff Report F 18.5a, p. 9.

Mr. Kravis and Mr. Magnotto have been informed that the Appellant recently requested that this hearing be continued to permit time for the Appellant to conduct a biological survey. The Mitigated Negative Declaration for this Project was originally prepared and circulated in February of 2010. Over the subsequent 7 months there have been four prior hearings on this Project, before the: (1) City’s Hearing Officer; (2) City Planning Commission; (3) City Council; and (4) this Coastal Commission. The Appellant has submitted objections at each stage in the process, and has had ample opportunity to prepare any reports he felt necessary. Therefore, we believe there is no need for a continuance.

The Project is “designed to avoid impacts to environmentally sensitive habitat and public access and will be consistent with the certified LCP as it relates to the Commercial Community (CC-4-2) zone.” *Id.* at p. 11-12.

¹ Mr. Magnotto processed the lot line adjustment with the City in good faith. After submitting his application to the City, he was not informed that a Coastal Development Permit was needed for the lot line adjustment. As recommended, the issue has been referred back to the City and our clients will work with the City to rectify the inadvertent error.

Hon. Bonnie Neely and Members of the Coastal Commission
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Mr. Kravis and Mr. Magnotto believe the Appellant has not submitted any evidence to show that this Project will do anything other than provide a valuable service to the community. The new business will provide jobs during a recession. It is supported by City Council President Ben Hueso, the area's representative. Other than the Appellant, an attorney who never identified his client during the City's approval process, there has been no community opposition at any previous hearing.

Mr. Kravis and Mr. Magnotto respectfully request the Commission vote "YES" to approve the Coastal Development Permit No. A-6-OMN-10-54 pursuant to the staff recommendation.

Very truly yours,

 *Signature on file*

David E. Watson

DEW:vg

cc: Ms. Diana Lilly

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Mark Kravis

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October 7, 2010

Ms. Esther Sanchez
Oceanside City Council
City of Oceanside
300 North Coast Hwy
Oceanside, CA 92054

HARD COPY TO FOLLOW BY MAIL

Dear Ms. Sanchez,

I am following up on my phone call to you last week regarding my application A-6-OMN-10-54 to develop a car wash in the Otay Mesa-Nestor Community of San Diego. As I indicated in my message, below are the items that I feel are important for discussion in the hearing on October 15th. In my current job, I work with CARB and SWRCB in vapor recovery and piping. I actively looked for and included in this project several items that will reuse water, save water and remove oil from the roads and sewer system. I have put the information in a bullet point list form below for your review and am available for questions by phone at (858) 353-0499.

1. We are using reject/gray water that we will have in excess to irrigate our property and the neighbor's property. This water is taken from the reverse osmosis water process and stored in tanks, rather than being discarded into the sewer.
2. We have included an oil water separator to capture run off from our site and run off from our neighbor's parking lot (Auto Zone). Recently there was an event where a man spilled oil into the Auto Zone parking lot storm drain. When I found out that this had happened, I added the device to our plans to capture any oil and ensure that it doesn't reach the storm drain system.
3. We have included many measures in the construction process to make

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sure we do not disturb the environment. We will have containment before we start containing any run off water. We will have a biologist present and an archeologist present to watch our construction and assure that animals, such as birds, are not disturbed.

4. We have contacted and received verification from both the State and Federal wildlife agencies (USFWS & DFG) as asked by the Coastal Commission.

5. We will use all indigenous plants for landscaping and agree to maintain it and have it verified in 5 years.

6. We have created a landscape buffer and wall to prevent trash, sound, light and people from disturbing the adjacent environment. Presently there is only a small fence there.

7. We are adding cameras to the outside of the building to prevent graffiti, which is currently a problem.

8. We are including bike racks for bikers who use the Strand bike path.

9. We have without question included all environmental requirements that were asked of us, and included some of our own that were not required.

Overall, we believe that we would be good neighbors both to the environment and to the community. In the last hearing, I was accused of being a "Big time developer". That is far from the truth. This is the first project I have ever attempted to build. I'm just a salesman for a piping company. Also note that if we are approved, I will move to the Otay area and operate the business myself. I ask that you please approve this project per your staff's recommendation.

Thank you for your time.

Respectfully,

Mark Kravis.

CC: Diana Lilly CCC Staff

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OCT 12 2010
California
San Diego
District

October 11, 2010

Via U.S. Mail and Facsimile

www.carnaclaw.com

California Coastal Commission
Attn: Diana Lilly
San Diego Coast District Office
7575 Metropolitan Drive, Ste. 103
San Diego, CA 92108-4421

Re: Coastal Permit Decision of City of San Diego; Palm Avenue Car Wash; Coastal
Development Permit No. 554574
De Novo Hearing Set for October 15, 2010

Dear Honorable California Coastal Commissioners:

On August 13, 2010, the Coastal Commission found that substantial issue existed with respect to the City of San Diego's (the "City") decision to summarily accept a one-hundred percent (100%) reduction to the buffer zone. Further research confirms that the City's failure to require Applicant to follow the procedures outlined in Section 143.0141(b) of the Local Coastal Program Land Development Code and its acceptance of an approximately 9-foot "vertical buffer" in place of the statutorily prescribed 100-foot buffer raises significant concerns. The attached report, dated October 11, 2010, prepared by Rincon Consultants, Inc. (the "Rincon Report") indicates that the "vertical buffer" is insufficient to ensure that the adjacent "existing sensitive wetland function and value," "salt flat habitats," and "nesting/breeding habitat for special status avian species" are adequately protected from the proposed development. In place of the 9-foot "vertical buffer," the Rincon Report recommends "a minimum 25-foot horizontal setback distance from the edge of the Multi-Habitat Planning Area ("MHPA") wetland and increasing the sound wall height to eight feet tall (previously 4-foot tall) as a reasonable and prudent combined buffer to (1) provide adequate protection for the existing sensitive wetland functions and values; (2) maintain the wetland and salt flat habitats in their current condition

Letters from Appellant

rather than degrade them further; and (3) protect nesting/breeding habitat essential for special-status avian species likely to use the resources at this location."

The proposed development is a two-story 8,928 square foot car wash facility with convenience store and office uses located on a 0.94 acre property (the "Property"). The Property is currently a vacant L shaped lot located on environmentally sensitive land and immediately adjacent to salt pond wetlands which have been designated as a MHPA.

The San Diego Planning Commission approved the coastal development permit on May 20, 2010, and on June 29, 2010, it was approved by the City Council. On July 9, 2010, we submitted an appeal to the Coastal Commission, and on July 22, 2010, Coastal Commission Staff issued a report in which it found that no substantial issue existed with respect to the grounds on which the appeal was filed. On August 13, 2010, the Commission elected to hear arguments and vote on the substantial issue question. The Commission found that substantial issues were raised by the appeal, and a full public hearing is scheduled for October 15, 2010.

Appellant hereby submits this letter in support of its position that the proposed development is not in conformity with the certified Local Coastal Program Land Development Code (the "Code").

I. Protection of Sensitive Biological Resources

The proposed development is not in conformity with the Code's Environmentally Sensitive Land Regulations, because the Development proposes encroachment into sensitive biological resources and the City did not require Applicant to follow the procedures mandated by Section 143.0141. Moreover, the mitigation and monitoring requirements do not provide sufficient protection of the wetland's sensitive biological resources.

Pursuant to section 143.0110 of the Code, the Environmentally Sensitive Land Regulations (the "ESL Regulations") apply to all proposed development when environmentally sensitive lands are present on the premises. If any portion of the premises contains environmentally sensitive lands, then the ESL Regulations apply to the entire premises. Environmentally sensitive lands include: sensitive biological resources; steep hillsides; coastal beaches (including V zones); sensitive coastal bluffs and Special Flood Hazard Areas (except V zones). A small portion of the eastern edge of the proposed development site falls within Zone A of a Special Flood Hazard Area. As such, the entire site is subject to the ESL Regulations.

Section 143.0141 of the ESL Regulations requires that an applicant follow certain clearly articulated procedures "where the development proposes encroachment into sensitive biological resources." Based on the following, the proposed development falls within the scope of section 143.0141, and the City should have required Applicant to abide by its procedures:

CL

1. The City has designated land directly adjacent to the proposed development as a MHPA. The San Diego Municipal Code Land Development Code Guidelines (the "Guidelines") define a MHPA as "those lands that have been included within the City of San Diego's Multiple Species Conservation Program ("MSCP") Subarea Plan for habitat conservation. These areas have been determined to provide the necessary habitat quantity, quality and connectivity to support the future viability of San Diego's unique biodiversity and thus are considered to be a Sensitive Biological Resource" (emphasis added).
2. A Biological Resources Report performed by RC Biological Consulting Inc. (the "RC Report") indicates that "[p]otential significant impact to wildlife occupying the solar salt evaporation pond or associated levee to the east of the project site may occur due to noise or light intrusion during the construction and operational phases of the Project." In addition, the RC Report states that "there is a moderate to high potential for nesting activity on the solar salt evaporation pond and salt pond dike" by the following birds: California Least Tern, Elegant Tern, Western Snowy Plover, Gun-Billed Tern and Horned Lark. Lastly, the RC Report identifies over twelve (12) sensitive wildlife species with the potential to occur within or adjacent to the proposed development.
3. The Rincon Report confirms that a number of additional mitigation measures are necessary in order to ensure that the adjacent "existing sensitive wetland functions and value," "salt flat habitats," and "nesting/breeding habitat for special status avian species" are adequately protected from the proposed development.

Given that Section 143.0141 is applicable, the City should have demanded that Applicant adhere to the following procedural requirements as set forth in Section 143.0141(a):

State and federal law precludes adverse impact to wetlands or listed non-covered species habitat. The applicant shall confer with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game before any public hearing for the development proposal. The applicant shall solicit input from the Resource Agencies on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat. The applicant shall, to the maximum extent feasible, incorporate the Resource Agencies' recommendations prior to the first public hearing. Grading or construction permits shall not be issued for any project that impacts wetlands or listed non-covered species habitat until all necessary federal and state permits have been obtained.

In its Staff Report, Coastal Commission Staff ("Staff") essentially ignores the fact that the City did not require Applicant to follow the clearly articulated procedures contained in Section 143.0141(a). Instead, Staff relies on language contained in the RC Report that the MHPA is a "highly disturbed wetland, dominated by non-native plants." Yet, this language is not

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dispositive. First, for the three reasons mentioned above, the development clearly falls within the purview of Section 143.0141. Second, the ESL Regulations contain no reference to whether land is "disturbed." Lastly, Staff fails to recognize that "disturbed wetlands" *could certainly become more disturbed without the implementation of proper preservation measures*. The Rincon Report finds Staff's reliance on the "disturbed" nature of the wetlands equally misplaced. According to the Rincon Report, Staff's characterization of the wetlands as disturbed, as an infill lot surrounded by development, and as outside of the South Bay Wildlife Refuge represents a "stringline" method. In other words, Staff relies merely on the extent to which "other structures have already intruded into the sensitive habitat" and fails to satisfy the requirements of Section 143.0141(a).

Not only did the City fail to require Applicant to contact the requisite entities under Section 143.0141(a), the mitigation and monitoring requirements created based on the biological survey, the water quality report performed by TerraData and the noise study performed by Dr. Penzes & Associates do not sufficiently protect the wetland's sensitive biological resources. The mitigation and monitoring requirements include the following: prohibiting direct drainage into the MHPA; requiring all lighting adjacent to the MHPA to be directed away from preserve areas using appropriate placement and shielding; installing a 4-foot high solid wood fence along the eastern edge of the property to shield the MHPA from automobile headlights; no invasive plant material can be utilized in or adjacent to the MHPA; roof drain filters and connecting vehicle wash areas to the sanitary sewer; a 4-foot high masonry wall constructed along the eastern edge of the property from the south property line to the middle of the building; and the car wash cannot operate outside the hours of 7 AM to 10 PM.

In our letter to the Coastal Commission dated July 16, 2010, we argued that the mitigation and monitoring requirements do not adequately address the degree to which the proposed development will impact the wetlands for the following reasons:

- 1) Lighting. No lighting study was prepared for the Project and the City's mitigation is limited to a simple statement that "all proposed lighting shall be directed away from the MHPA and shielded if necessary." The City's mitigation measure and related findings regarding the Project's impacts on the MHPA, in terms of light and glare, are insufficient, unsupported by facts and completely fail to study and mitigate the lighting impacts on the MHPA area from not only the construction related activities, but from the headlights from the significant number of cars which will be using the Project parking lot. Again, if the Project is approved, it will be difficult to "shield" the sensitive MHPA area from the construction activities and a poorly designed parking lot.
- 2) Noise. The City inadequately studied the Project's noise impacts on the sensitive MHPA area. The City noise study analyzed the Project's noise impacts in an environmental setting drastically different from that of the Project. Please see Attachment 1 to the Appeal for further discussion on this matter.

- 3) Water Quality. The City's "water report" failed to consider the various solvents and detergents that the car-wash portion of the Project will use and how these dangerous chemicals could impact the sensitive MHPA area, especially at high concentrations. Although the car-wash facility purports to be "self-contained," some run-off (and spills) is inevitable with car wash facilities. Appropriate analysis of these dangerous chemicals and bio-waste filtration and treatment facilities should be required in order to properly study and mitigate the Project's impacts on the water quality of the sensitive MHPA area.

Staff responded to our first concern by stating that the requirement that the lighting be shielded and directed away from sensitive habitat is a standard and typical mitigation measure for development adjacent to such habitat. Staff also cited to our failure to submit "any evidence suggesting that this mitigation will not be sufficient." The Rincon Report aptly points out that we currently have no idea whether the proposed vertical buffer (which includes the four-foot high solid wood fence and four-foot high masonry wall mentioned above) will adequately shield the sensitive wetland habitat from the "high light level" typically associated with a car wash facility, because the case-by-case analysis required by Sections 143.0141(a) and 143.0141(b) (subsection (b) is discussed at greater length below), was not completed. More specifically, "no lighting plan has been provided to demonstrate that overhead lighting and moving car headlights will be adequately screened from the wetland area" by the vertical buffer. While Staff attempts to inappropriately shift the burden of production and rely on our lack of evidence, the City should have placed the onus on Applicant to perform the analysis required by Section 143.0141(a) and 143.0141(b).

Staff responded to our second concern by stating that the City accepted the noise analysis study as adequate for the subject project, including the proposed grading and fill. This is merely stating the obvious. The Rincon Report aptly points out that we currently have no idea whether the proposed vertical buffer will adequately shield the sensitive wetland habitat from the "intense levels of sound" typically associated with a car wash facility, because the case-by-case analysis required by Section 143.0141(a) and 143.0141(b) was not completed. More specifically, "no demonstration as to the location of the high noise level blowers and similar noise sources of the car wash has been provided that demonstrates that noise levels will be adequately diminished" by the vertical buffer. We do not know whether the vertical buffer will reduce noise levels to 60 dBA or existing ambient level as required by the Guidelines.

Lastly, Staff responded to our third concern by stating that all chemicals used in the car wash would be processed through a containment system and either pumped out by a service or distributed to the City sewer. In addition, all vehicle wash areas must be self-contained and properly connected to a sanitary sewer. However, the Rincon Report raises an additional concern. Staff suggests that any future restoration of the "disturbed wetland" would likely occur in the salt pond, while the more disturbed vegetated area, including the wetland habitat within the drainage adjacent to the project site within the MHPA, would serve as the buffer between the developed car wash and the habitat that may be restored. Staff's analysis appears to

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contradict the ESL Regulations in that the purpose of the buffer is to protect any type of wetland habitat, not just the salt pond. In sum, we do not know whether the drainage requirements adequately protect the entire wetland habitat, including the adjacent drainage, from inevitable run-off and spills.

II. Wetland Buffer

The proposed development is not in conformity with the Code's Environmentally Sensitive Land Regulations, because the proposed development site is immediately adjacent to wetland vegetation and the City did not require Applicant to follow the procedures mandated by Section 143.0141. In addition, the reduction of the required one-hundred-foot (100') buffer to a zero-foot buffer (0') is unwarranted and does not sufficiently protect the wetland's sensitive biological resources.

Section 143.0141(b) provides the following:

Outside and inside the MHPA (Multi-Habitat Planning Area), impacts to wetlands, including vernal pools in naturally occurring complexes, shall be avoided. A wetland buffer shall be maintained around all wetlands as appropriate to protect the functions and values of the wetland. In the Coastal Overlay Zone, the applicant shall provide a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through the process described in 143.0141(a) (above). Mitigation impacts associated with a deviation shall achieve the goal of no-net-loss and retain in-kind functions.

The site of the proposed development clearly falls within the purview of section 143.0141(b), because the site is immediately adjacent to wetland vegetation. In addition, because a small portion of the eastern edge of the subject site falls within Zone A of a Special Flood Hazard Area, section 143.0130 is applicable.

Section 143.0130 states the following:

Allowed uses within environmentally sensitive lands are those allowed in the applicable zone, except where limited by this section.

- (e) Wetland Buffer Areas in the Coastal Overlay Zone. Permitted uses in wetland buffer areas shall be limited to the following:
- (1) Public Access Paths;
 - (2) Fences;
 - (3) Restoration and enhancement activities; and
 - (4) Other improvements necessary to protect wetlands.

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Despite the applicability of Sections 143.0141(b) and 143.0130, the City did not demand that Applicant follow the procedure outlined in Section 143.0141(a). As the Applicant was not required to contact the U.S. Army Corps of Engineers, the U.S. Fish & Wildlife Service and/or California Department of Fish and Game, no determination was made as to whether "a lesser or greater buffer is warranted as determined through the process described in 143.0141(a)." Instead, the City decided to summarily accept a one-hundred percent (100%) reduction to the buffer zone.

In its Report, Staff admits that the fact that the City did not analyze or apply the wetland buffer requirements contained in the environmentally sensitive lands regulations is problematic. In addition, in numerous e-mails to Applicant, Staff has indicated that an "examination of feasible project alternatives that might (or might not) be able to provide some kind of an on-site buffer" should have been considered. Yet, in its Staff Report, Staff again finds the prescribed mitigation measures sufficient to rectify the procedural violation. Staff cites to the fact that the site will be elevated 9'6" from the wetland, which provides a "vertical buffer." In addition, a 4-foot high wall will be placed on top of the retaining wall. According to Staff, this significant elevational distance will discourage pedestrian entry into the wetland from the subject site. The Guidelines make clear, however, that the substitution of the cited mitigation measures for the procedural requirements contained in Section 143.0141(a) is wholly improper. The Guidelines provide the following definition of a "wetland buffer:"

A wetland buffer is an area or feature(s) surrounding an identified wetland that helps to protect the functions and values of the adjacent wetland by reducing physical disturbance from noise, activity and domestic animals and provides a transition zone where one habitat phases into another (emphasis added). The buffer will also protect other functions and values of wetland areas including absorption and slowing of flood waters for flood and erosion control, sediment filtration, water purification, ground water recharge and the need for upland transitional habitat (emphasis added).

The terms "transition zone," "phases," "absorption," "sediment filtration," "water purification," "ground water recharge" and "transitional habitat" prove that "discouraging pedestrian entry into the wetland from the subject site," is neither the sole nor even the primary purpose of a wetland buffer. In addition, the language of the Guidelines indicates that a horizontal buffer cannot be wholly replaced with a vertical buffer as a concrete vertical buffer would serve very few of the articulated purposes of the buffer requirement. Lastly, the Guidelines clarify why an applicant must contact the entities located in Section 143.0141(a) by stating the following:

A wetland buffer shall be maintained around all wetlands as appropriate to protect the functions and values of the wetland. Section 320(b)(2) of the U.S. Army Corps of Engineers General Regulatory Policies (33 CFR 320-330) list criteria for consideration when evaluating wetland functions and values. These

include wildlife habitat (spawning, nesting, rearing, foraging), food chain productivity, water quality, ground water recharge and areas for the protection from storm and floodwaters.

In addition, as articulated above, the Rincon Report finds the buffer analysis inadequate, because "no quantification as to how such a 'buffer' would actually serve to reduce the effects of noise, light and human recreation use (intrusion) into the adjacent MHPA has been provided." Moreover, the Rincon Report finds that a 0-foot vertical buffer is wholly inadequate. The Rincon Report relies, in part, on Wetlands in Washington State - Volume 2: Guidance for Protecting and Managing Wetlands which synthesizes the literature of wetland buffer widths for the Washington State Department of Ecology as part of a US EPA grant and recommends horizontal buffers between twenty-five (25) and seventy-five (75) feet for wetlands with minimal wildlife habitat functions and adjacent low-intensity land uses; fifty (50) to one-hundred and fifty (150) feet for wetlands with moderate habitat functions or adjacent high-intensity land uses; and one-hundred and fifty (150) to three-hundred (300) feet for wetlands with high habitat functions. As the Rincon Report points out, Wetlands provides a great deal of insight into nominal widths that are considered reasonable for sensitive MHPA and wetland habitats.

Based on the Wetlands analysis for wetlands with minimal wildlife habitat functions and adjacent low-intensity uses, the Rincon Report conservatively recommends the following:

A minimum twenty-five (25) foot horizontal setback distance from the edge of the MHPA wetland and increasing the sound wall height to eight feet tall as a reasonable and prudent combined buffer to (1) provide adequate protection for the existing sensitive wetland functions and values; (2) maintain the wetland and salt flat habitats in their current condition rather than degrade them further; and (3) protect nesting/breeding habitat essential for special-status avian species likely to use the resources at this location.

III. Additional Concerns

E-mail correspondence between Staff and Applicant indicate that a lot line adjustment(s) may have been performed on the Property within the last couple of years without coastal development permits.

Section 30106 of the Coastal Act (the "Act") provides that "development subject to the permit requirement is broadly defined and includes . . . change of the density or intensity of use of land, including subdivision under the Subdivision Map Act" and any other division of land, including lots splits. There are, however, certain exemptions to the permit requirement under Section 30610 the Act (improvement to existing single-family residences; improvements to any structure under certain conditions; installation, testing, or placement of a necessary utility; replacement of any structure destroyed by disaster; conversion from multiple-unit residential structure to time share project; and proposed development which director finds to be a temporary event), Sections 13238-13238.2 of the Act (the Coastal Commission's executive

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director may waive the permit requirement for de minimis projects) and Section 30624 (executive director may issue permits for emergency projects or certain small development).

The Act contains certain procedural requirements that must be followed where the development is subject to the permit requirements. Under Section 30603(d) of the Act, a local government taking an action on a coastal development permit shall send notification of its final action ("Notice of Final Action") to the Coastal Commission by certified mail within seven (7) calendar days from the date of taking the action (whether or not the action is appealable). If a local government fails to submit the Notice of Final Action, the appeal period will not begin until the required information is received. Thus, if the Commission never receives a Notice of Final Action from a local government, approval of the coastal development permit is ineffective.

Given that a lot line adjustment clearly falls within the scope of the coastal permit requirement and that it is unlikely that the lot line adjustment(s) falls within any of the enumerated exceptions, the City should have sent a Notice(s) of Final Action to the Coastal Commission when it approved any lot line adjustment(s) on the Property. The City's failure to submit the requisite Notice(s) of Final Act means that the appeals period has not yet begun to run and the lot line adjustment(s) is, therefore, not yet effective.

IV. Conclusion

The proposed development is not in conformity with the certified Local Coastal Plan. The project as currently designed adversely affects environmentally sensitive lands and the City failed to provide the factual basis necessary for the City to find that the project will result in "minimum disturbance." Therefore, approval of the project without a buffer will result in significant environmental impacts to the sensitive MHPA area, causing a degradation of this important natural resource.

Please call if you have any questions or comments.

Sincerely,

CARMEL & NACCASHA LLP

Signature on file

Anthony J. Carmel

TJC:hm
Enclosure

cc: Mark Kravis (w/ enclosure)



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October 11, 2010
Project Number: 10-96810

Timothy J. Carmel, Esq.
CARMEL & NACCASHA, LLP
1410 Marsh Street
San Luis Obispo, California 93401
Via email: tcarmel@carmelnaclatu.com

**Subject: Wetland Buffer Discussion for the Proposed Palm Avenue Car Wash,
City of San Diego, California**

Dear Mr. Carmel:

At your request, Rincon Consultants, Inc. was tasked to peer-review the Biological Resources Report for the Palm Avenue Carwash (RC Biological Consulting, Inc. 2009) and associated mitigation measures proposed for impacts to sensitive biological resources resulting from the above referenced project and to provide an analysis and opinion regarding the need for a wetland buffer. A field visit of the site was conducted by Rincon biologist Jonathan Appelbaum to provide confirmation of sensitive resources in the project vicinity. The proposed car wash is located at the northeast corner of Palm Avenue and 13th Street in the Otay Mesa-Nestor community of the City of San Diego (City). The purpose of our review is focused on the potential need for buffers to avoid significant effects of the car wash on the adjacent known environmentally sensitive lands. The review and analysis was conducted by Ms. Cher Batchelor, a Rincon Senior Biologist with over 13 years of professional biological experience regarding projects within the coastal zone. Rincon's Principal Biologist, Dr. Duane Vander Pluym, reviewed the findings of this letter. Dr. Vander Pluym is a San Diego County-approved biologist, has performed professional biological services within the coastal zone for more than 30 years, and is familiar with the issues present at the subject site. This letter summarizes our review of the project technical documents specifically concerning wetland buffers and our analysis and opinion regarding the need for a buffer to protect sensitive biological resources in the project vicinity.

The subject project comprises development of an 8,928-sq.-ft., two-story car wash with a convenience store on a 0.94-acre lot. The subject property is within the Coastal Overlay Zone and so subject to policies with respect to ESHA that are contained in the California Coastal Act. The biological survey performed by RC Biological Consulting determined that no sensitive resources were present on the subject site; however, along the eastern property line, the proposed car wash facility abuts land designated in the City of San Diego Local Coastal Program (LCP) as a Multi-Habitat Planning Area (MHPA). The

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MHPA is the City's targeted preserve for the Multiple Species Conservation Program (MSCP), a comprehensive habitat conservation planning program for southwestern San Diego County. The adjacent MHPA was historically used as part of the salt pond operations in San Diego Bay, and fresh to salt water wetland vegetation is present within the MHPA. Per SanGIS and confirmed by the RC Biological Consulting report and Rincon biologists, a wetland within a drainage is located immediately adjacent to the property line and the proposed development. It is noted that many of the species included in the MSCP (i.e. Covered Species) are dependent on wetlands for habitat and foraging. The biological resources report for the project found that potential significant impacts to wildlife occupying the solar salt pond or associated levee may occur due to indirect impacts during the construction and operational phases of the project. The biological report also states that there is a moderate to high potential for impacts to special-status (including listed) bird species that could nest on the solar salt evaporation pond and salt pond dike.

The City of San Diego Municipal Code, Land Development Code (LDC) includes the Environmentally Sensitive Lands Regulation (ESL) (Chapter 14, Division 1, Section 143.0101 et seq.) as summarized in the City's Biology Guidelines (August 2004). The ESL defines sensitive biological resources as those lands included within the MHPA as identified in the City's MSCP Subarea Plan, and other lands outside of the MHPA that contain wetlands, classifiable vegetation communities, habitat for rare, endangered or threatened species; or narrow endemic species. The MHPA are those lands that have been included within the City's Subarea Plan for habitat conservation. These areas have been determined to provide the necessary habitat quantity, quality, and connectivity to support the future viability of San Diego's unique biodiversity, and thus are considered to be a sensitive biological resource.

As previously noted, wetlands are located within this MHPA and as stated in Section II of the ESL (Page 6): "A wetland buffer shall be maintained around all wetlands as appropriate to protect the functions and values of the wetland... Wetland buffers should be provided at a minimum 100 feet wide adjacent to all identified wetlands. The width of the buffer may be either increased or decreased as determined on a case-by-case basis, in consultation with the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the Army Corps of Engineers, taking into consideration the type and size of development, the sensitivity of the wetland resources to detrimental edge effects, natural feature such as topography, the functions and values of the wetland and the need for upland transitional habitat."

Based on the ESL the applicant is required to provide the above minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through a case-by case analysis and through consultation with the resource agencies. According to the CCC September 20, 2010 Staff Report and Recommendation on Appeal, the City maintains that the LCP wetlands buffer requirement applies only to development that proposes encroachment into sensitive biological resources (Section 143.0141(a) (b)). The CCC disagreed with the City's interpretation of the LCP buffer requirements, and stated that

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the purpose and intent of a buffer is to provide a transition area between sensitive vegetation and development; thus, the need for a buffer must be evaluated whenever wetland habitat is located within 100 feet of a proposed development, whether on or off the project site. Nonetheless, the most current staff report indicates that the City and the CCC believe that no buffer is necessary with regard to this specific project since the adjacent wetland is disturbed, the wetland is not part of the South Bay Wildlife Refuge, and proposed mitigation measures are anticipated to deflect light, reduce noise, and contain runoff. Specifically, the site would be elevated 9'6" above the wetland (providing a vertical buffer), a 4-foot-high wall is expected to discourage pedestrian entry into the wetland, and runoff would be contained and directed into the City's sewer system. The CCC also considers the site to be an infill lot surrounded by development on three sides and the staff report indicates that the approved development will not be any closer to the wetland habitat than Palm Avenue to the south and the large multi-family residential complex immediately to the north. However, we note that this "stringline" method does not provide any biological basis for excluding a buffer, as it is essentially based on how far other structures have already intruded into sensitive habitat. The CCC also suggests that any future restoration activity in the adjacent MHPA would likely occur in the salt pond, while the more disturbed vegetated area, including the wetland habitat within the drainage adjacent to the project site within the MHPA, would serve as the buffer between the developed car wash and the habitat that may be restored. This appears to contradict the ESL requirements in that the buffer is to protect any type of wetland habitat, not just the salt pond.

Given that (1) the adjacent habitat areas have been designated as MHPA, (2) the biological resources report characterizes the habitat immediately adjacent to the property line within the MHPA as wetland habitat, and (3) the biological report reported a moderate to high potential for listed bird species to nest within the MHPA habitats adjacent to the subject property, the critical question becomes "What is the appropriate buffer for project setback from a wetland within an MHPA boundary that likely supports special-status species?" This poses a problem in that the case-by-case buffer analysis as required by the ESL has not been prepared either by the City or by the RC Biological Consulting report. It is noted that while consultation with U.S. Fish and Wildlife Service (USFWS) has occurred, it is unknown if consultation with the U.S. Army Corps of Engineers (Corps) and California Department of Fish and Game (CDFG) regarding the need for a wetland buffer at this location has occurred.

The purpose of buffers needs to be considered when determining whether or not one is required to protect sensitive biological resources. A buffer is an intrusion zone in which inputs from human uses, including water over-spray, invasive landscaping (trailing vines for instance), fertilizer, noise, light, heat, pet depredation, exotic pests (Argentine ant, house mice, cockroach, etc.), pesticide and herbicide drift, dusting of resources in adjacent sensitive habitats during construction and operations, vegetation management for fire control, and human recreational use. Buffers are also used to provide sufficient space to allow the reduction of energy and nutrient transport from human development to the resource of concern (Granger, et al. April 2005). A buffer can protect wetland functions by

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absorption and slowing flood waters for flood and erosion control, sediment filtration, water purification, ground water recharge, and the need for upland transitional habitat. Various habitat types will differ in the extent to which they can accept inputs from human use while still providing the basic habitat functions that characterizes that specific habitat. Buffers and setbacks are intended for areas in which these inputs will occur while isolating sensitive habitat from most of the detrimental effects of such inputs. Buffers are a common component required by the CCC to protect identified sensitive resources such as those located adjacent to the project site. A document prepared by Coastal Commission staff member Dr. Jonna Engel demonstrates the CCC's recommendation for buffers (Memorandum dated May 15, 2008). In Dr. Engel's discussion of the need to preserve environmentally sensitive habitat areas (ESHA), she states that the Commission protects sensitive habitat (ESHA/MHPA/wetlands) with buffers or setbacks. Setbacks are necessary to insure that development will not significantly degrade the sensitive habitats. Habitat buffers provide functions including keeping disturbances at a distance; reducing herbicide, pesticide, and pollutant hazards; preventing/reducing shading; reducing effects of landscaping activities; and protecting against invasive plant and animal species. She further states that critical to buffer function is that a buffer area is not itself a part of the ESHA, but a "buffer" or "screen" that protects the habitat area from adverse impacts. Dr. Engel also noted that buffers are intended to protect the sensitive habitat as a whole, not just the individual species within that community.

Factors to consider in determining an adequate wetland buffer include the sensitivity of the wetland resources to edge effects and its functions and values. The appropriate size of a buffer is in part determined by the extent to which the inputs are capable of intruding into the sensitive habitat area and the level of such effects. For example, high sound levels are a measurable disturbance that diminishes with distance and can affect wildlife, but such distance is not relevant unless the high sound level specifically disturbs an important biological element (such as disrupting a sensitive bird nesting habitat). When considering buffers, it is also the physical characteristics of the buffer - slope, soils, and vegetation as well as width - that in part determines how well the buffer reduces the adverse impacts of human development and provides the habitat needed by wildlife species that use the adjacent sensitive habitat. Granger, et al. (April 2005) synthesized the literature on the effectiveness of wetland buffer widths for the Washington State Department of Ecology as part of a US EPA grant and recommended horizontal buffers between 25 and 75 feet for wetlands with minimal wildlife habitat functions and adjacent low-intensity land uses; 50 to 150 feet for wetlands with moderate habitat functions or adjacent high-intensity land uses; and 150 to 300 feet for wetlands with high habitat functions. This provides some insight into nominal widths that are considered reasonable for sensitive MHPA and wetland habitats.

The City has proposed that the vertical separation between the drainage and a four-foot wall at the property line would serve as an adequate "vertical" buffer to reduce the environmental effects of noise, light and human recreational use (intrusion) into the adjacent MHPA. However, no quantification as to how such a "buffer" would actually serve to reduce the effects mentioned has been provided. In particular, a four-foot wall is

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not considered adequate to prevent humans from entering into an adjacent property as a wall that height is readily bypassed. Further, no demonstration as to the location of the high noise level blowers and similar noise sources of the car wash has been provided that demonstrates that noise levels will be adequately diminished. It is noted that the City's Guidelines require that noise levels be reduced to 60 dBA or existing ambient levels to mitigate for impacts to sensitive biological resources. No lighting plan has been provided to demonstrate that overhead lighting and moving car headlights will be adequately screened from the wetland area. Another potential concern with the lack of analysis regarding the appropriate buffer for this wetland and MHPA is the precedent setting nature of the action. It is unknown how many other developable parcels within the City would no longer be required to provide a buffer from wetlands as long as the site plans include a low wall.

While we understand that various buffer sizes are recommended by biologists and regulatory agencies on a case-by-case basis based on the many factors discussed above, no biological analysis was performed in this case to determine that no horizontal buffer is needed or should be required, or that a vertical buffer is adequate. Because wetland habitat is immediately adjacent to the site, and it is known that the proposed use, a car wash, will produce relatively intense levels of sound, high light levels, and substantial numbers of people that could intrude into the adjacent MHPA, at least some level of horizontal buffer, in addition to strengthening the vertical buffer component, should be considered. Based on the Granger, et al (April 2005) analysis for wetlands and the buffer size recommendation for minimal wildlife habitat functions and adjacent low-intensity land uses, we recommend at a minimum a 25-foot horizontal setback distance from the edge of this MHPA wetland and increasing the sound wall height to eight feet tall as a reasonable and prudent combined buffer to (1) provide adequate protection for the existing sensitive wetland functions and values, (2) maintain the wetland and salt flat habitats in their current condition rather than degrade them further, and (3) protect nesting/breeding habitat essential for special-status avian species likely to use the resources at this location.

If you have any questions with respect to this review, please contact the undersigned.

Sincerely,
RINCON CONSULTANTS, INC.

Signature on file

Cher Batchelor
Senior Biologist/Project Manager

Signature on file

Duane Vander Pluym, D.Env.
Vice-President, Principal Biologist

REFERENCES

- RC Biological Consulting, Inc. 2009. Biological Resources Report for the Palm Ave Carwash, APNs 516-020-11 & 516-020-17, Project Number 155821. August 27, 2009. Lemon Grove, California.
- City of San Diego. 2004. San Diego Municipal Code Land Development Code Biology Guidelines. August, 2004.
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- Holway, D.A., 2005. Edge effects of an invasive species across a natural ecological boundary. *Biological Conservation* (121): 561-567.
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- Mayer, P.M., S.K. Reynolds, M.D. McCutchen, and T.J. Canfield, October 2005. *Riparian buffer width, vegetative cover, and nitrogen removal effectiveness: A review of current science and regulations*. EPA/600/R-05/118. Cincinnati, OH, U.S. Environmental Protection Agency.

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SEP 22 2010

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

September 17, 2010

Via E-mail and Hand Delivery

tcarmel@carnaclaw.com

Katcho Achadjian
County of San Luis Obispo
County Government Center, Room D-430
San Luis Obispo, California 93408
kachadjian@co.slo.ca.us

Re: Appeal No. A-6-OMN-10-54
Hearing Date: October 13-15, 2010

Dear Commissioner Achadjian:

As the South Central Coast representative to the California Coastal Commission ("Commission"), we respectfully request your assistance in rescheduling the Commission's consideration of the above referenced matter. This matter was originally considered by the Commission on August 13, 2010 in San Luis Obispo. At that time, the Commission found that a substantial issue exists.

I was out of state at the time of the August hearing, but upon my return I attempted to contact the Commission staff member responsible for the project, Diana Lilly, to discuss the hearing schedule and related issues. I called Ms. Lilly on August 30 and 31, and September 3 and 15, 2010, leaving a voice mail message each time requesting a return phone call; I received no response. I was finally able to make contact with Ms. Lilly when I called her today. She informed me that the matter was scheduled for consideration by the Commission at its October 13-15, 2010 meeting in Oceanside.

We have just retained an environmental/biological consultant to assist us in addressing the buffer issue that is central to the Commission's consideration of the project. The consultant has indicated that it is highly unlikely that a compressive report can be prepared prior to the October Commission meeting. We firmly believe that all parties, and most importantly, the Commission will benefit from such a report, especially in light of the fact that the decision on this issue could have broad precedential effects.

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Commissioner Achadjian
September 17, 2010
Page 2

CARMEL & NACCASHA LLP

This is to respectfully request your assistance in rescheduling the matter for any later Coastal Commission meeting. Thank you for your consideration in this matter.

Please call if you have any questions.

Sincerely,
CARMEL & NACCASHA LLP
Signature on file

~~Timothy Carmel~~

TJC:hp

cc: Diana Lilly
Hannah Miller

101

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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SAN DIEGO, CA 92108-4421
(619) 767-2370

**F8f**

Staff: Diana Lilly-SD
Staff Report: September 20, 2010
Hearing Date: October 13-15, 2010

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of San Diego

DECISION: Approval with Conditions

APPEAL NO.: A-6-OMN-10-54

APPLICANT: Mark Kravis & Paul Magnotto

PROJECT DESCRIPTION: Construction of an 8,928 sq.ft. car wash with convenience store, associated improvements, parking, grading and landscaping on a vacant 0.94-acre site.

PROJECT LOCATION: 1440 Palm Avenue, Otay Mesa-Nestor, San Diego, San Diego County. APN 616-020-21

APPELLANTS: Timothy J. Carmel

STAFF NOTES:

At its August 13, 2010 hearing, the Commission found Substantial Issue exists with respect to the grounds on which the appeal was filed. This report represents the de novo staff recommendation.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission approve the de novo permit. The primary issues raised by the subject development relate to the LCP requirements to protect sensitive habitat. Along the eastern property line, the proposed car wash facility abuts land designated in the City of San Diego LCP as Multi-Habitat Planning Area (MHPA). The area was historically used as part of the salt pond operations in San Diego Bay, and disturbed wetland vegetation is present immediately adjacent to the property line and the approved development. However, no direct or indirect impacts to sensitive habitat are expected to occur as a result of the proposed project. The project includes mitigation measures to shield light and noise from entering the MHPA. Drainage diverters and filters will prevent polluted runoff from entering the MHPA. Staff at the U.S. Fish and Wildlife Service National Wildlife Refuge have reviewed the project and have no objections.

Standard of review: Certified City of San Diego Local Coastal Program and the public access and recreation policies of the Coastal Act

SUBSTANTIVE FILE DOCUMENTS: Appeal by Timothy J. Carmel filed 7/9/10; Certified Otay Mesa-Nestor Land Use Plan; City of San Diego Certified LCP; CDP #F8342.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-OMN-10-54 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified LCP and the public access policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following special conditions:

1. Final Plans. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval by the Executive Director, final plans approved by the City of San Diego in substantial conformance with the preliminary plans approved by the Planning Commission on May 20, 2010.

The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Final Landscaping Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a final landscape plan for the review and written approval of the Executive Director. Said plan shall include the following:

- a. A plan showing the type, size, extent and location of all trees/shrubs on the site including the proposed irrigation system and other landscape features;
- b. All new landscaping adjacent to the MHPA shall be drought-tolerant, native and non-invasive plant species. All landscaping must be drought-tolerant, native or naturalizing plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- c. A written commitment by the applicant that all required plantings shall be maintained in good growing condition, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.
- d. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- e. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, which certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

The permittee shall undertake the development in accordance with the approved landscape plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

3. Mitigation and Monitoring Requirements. The applicant shall comply with and implement all of the conditions and project features included in the Mitigated Negative Declaration dated 3/9/10 approved by the City of San Diego, and attached to this permit as Exhibit #6.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. Other Special Conditions from City of San Diego. Except as provided by this coastal development permit, this permit has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description/History. The subject project is development of an 8,928 sq.ft., two-story car wash with a convenience store on a .94 acre lot located on the northeast corner of Palm Avenue and 13th Street in the Otay Mesa-Nestor community of the City of San Diego. The L-shaped lot is currently vacant, although the site has been cleared and graded in the past. The site is zoned for Commercial Community (CC-4-2) uses.

The site is surrounded by a variety of uses, including multi-family residential to the north and an existing car repair building to the southwest. Immediately abutting the site to the east is a property owned by the San Diego Port District and known as the southern part of pond 20A, which was previously part of the Western Salt Company salt pond operation. The pond is designated as Open Space/Special Study area in the Otay Mesa-Nestor Plan, and is part of the City's Multi-Habitat Planning Area (MHPA), and falls within the Commission's original jurisdiction.

The car wash would be located on the eastern side of the lot. Cars would access the car wash facility mainly from 13th street, and exit the car wash onto Palm Avenue. Twenty-four parking spaces are proposed. The project includes grading and filling to level the site, and construction of a 9'6" high stepped retaining crib wall along the eastern property line that would be planted with native vegetation compatible with the adjacent MHPA. A 4-foot high wall would be constructed on top of the retaining wall to block light and noise from entering the MHPA. This wall is proposed to be solid masonry from the southern property line to midway along the property line (120 feet), and wood from that point to the northern property line. All lighting is required to be shaded and adjusted to fall on the subject site. Runoff from parking areas would be directed to a vegetated swale at the southwest corner of the site. No direct drainage into Palm Avenue or the MHPA is permitted. An existing billboard on the site will be removed.

The subject flag-shaped lot was created in 2004, through a lot line adjustment approved by the City of San Diego (see Exhibit #2 for existing lot configuration and Exhibit #5 for previous lot configuration). However, the City has acknowledged that the lot line adjustment was done without benefit of a coastal development permit. This issue will be referred to the City of San Diego for enforcement as a separate matter.

The standard of review is the certified City of San Diego Local Coastal Program and the public access and recreation policies of the Coastal Act.

2. Protection of Sensitive Biological Resources/Water Quality. Relevant policies of the LCP include the following:

§142.0412 Brush Management

Brush management is required in all base zones on publicly or privately owned *premises* that are within 100 feet of a *structure* and contain native or naturalized vegetation.

[...]

(i) In consideration of the topography, existing and potential fuel load, and other characteristics of the site related to fire protection, the Fire Chief may modify the requirements of this Section, and where applicable with the approval of the Building Official, may require building features for fire protection in addition to those required in accordance with Chapter 14, Article 5, Division 7 (Chapter 7A of the California Building Code as adopted and amended) if the following conditions exist:

(1) In the written opinion of the Fire Chief, based upon a fire fuel load model report conducted by a certified fire behavior analyst, the requirements of Section 142.0412 fail to achieve the level of fire protection intended by the application of Zones One and Two; and

(2) The modification to the requirements achieves an equivalent level of fire protection as provided by Section 142.0412, other regulations of the Land Development Code, and the minimum standards contained in the Land Development Manual; and

(3) The modification to the requirements is not detrimental to the public health, safety, and welfare of persons residing or working in the area.

§143.0101 Purpose of Environmentally Sensitive Lands Regulations

The purpose of these regulations is to protect, preserve and, where damaged restore, the environmentally sensitive lands of San Diego and the viability of the species supported by those lands. These regulations are intended to assure that development, including, but not limited to coastal development in the Coastal Overlay Zone, occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area, encourages a sensitive form of development,

retains biodiversity and interconnected habitats, maximizes physical and visual public access to and along the shoreline, and reduces hazards due to flooding in specific areas while minimizing the need for construction of flood control facilities. These regulations are intended to protect the public health, safety, and welfare while employing regulations that are consistent with sound resource conservation principles and the rights of private property owners.

§143.0110 When Environmentally Sensitive Lands Regulations Apply

This division applies to all proposed *development* when *environmentally sensitive lands* are present on the *premises*.

- (a) Where any portion of the *premises* contains any of the following *environmentally sensitive lands*, this division shall apply to the entire *premises*, unless otherwise provided in this division:
 - (1) *Sensitive biological resources*;
 - (2) *Steep hillsides*;
 - (3) *Coastal beaches* (including V zones);
 - (4) *Sensitive coastal bluffs*; and
 - (5) *Special Flood Hazard Areas* (except V zones).

§143.0130 Uses Allowed Within Environmentally Sensitive Lands

Allowed uses within *environmentally sensitive lands* are those allowed in the applicable zone, except where limited by this section.

- (e) *Wetland Buffer Areas* in the Coastal Overlay Zone. Permitted uses in *wetland buffer* areas shall be limited to the following:
 - (1) Public Access paths;
 - (2) Fences;
 - (3) Restoration and enhancement activities; and
 - (4) Other improvements necessary to protect *wetlands*.

§143.0141 Development Regulations for Sensitive Biological Resources

Development that proposes *encroachment* into *sensitive biological resources* or that does not qualify for an exemption pursuant to Section 143.0110(c) is subject to the following regulations and the Biology Guidelines in the Land Development Manual.

- (a) State and federal law precludes adverse impacts to *wetlands* or listed noncovered species habitat. The *applicant* shall confer with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game before any public hearing for the *development* proposal. The applicant shall solicit input from the Resource Agencies on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat. The applicant shall, to the maximum extent feasible, incorporate the Resource Agencies' recommendations prior to the first public hearing. *Grading* or *construction permits* shall not be issued for any project that impacts *wetlands* or Listed non-covered species habitat until all necessary federal and state permits have been obtained.
- (b) Outside and inside the *MHPA*, impacts to *wetlands*, including vernal pools in naturally occurring complexes, shall be avoided. A *wetland buffer* shall be maintained around all *wetlands* as appropriate to protect the functions and values of the wetland. In the Coastal Overlay Zone the applicant shall provide a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through the process described in 143.0141(a). Mitigation for impacts associated with a deviation shall achieve the goal of no-net-loss and retain in-kind functions and values.

A biological survey was performed for the project (RC Biological Consulting, Inc, 8/31/09). The survey determined that there are no sensitive resources on the subject site. Adjacent to the site to the east is the southernmost portion of San Diego Bay, an area designated Salt Pond 20. A jurisdictional wetland delineation was also performed on Pond 20 in 2000 (Merkel & Associates, Inc., 3/17/00). According to these studies, Pond 20 was formerly utilized by the Western Salt Company and its predecessors for commercial salt harvesting, and consists of salt pans, associated dikes, excavated channels, and patches of wetland and upland native and non native vegetation. Over the past century, various internal berms have been constructed, repaired, and removed by operational changes and flooding. The site has not been used for salt pond operations since at least 1944, and the interior of the pond no longer becomes submerged.

The portion adjacent to the subject site consists of disturbed wetland vegetation created by the creation of the salt pans and associated dikes, and some backflow from the tidal canals to the north. Approximately 30-100 feet beyond the vegetated area is a dirt berm/road used for vehicular access around the pond. The 2009 biological report determined that the habitat adjacent to the subject site is highly disturbed and dominated by non-native grasses and broad leafed weeds. The dominant native plant located between the subject site and the berm is salt grass.

Based on the recommendations in the biological survey, the Mitigated Negative Declaration for the project contains a series of mitigation and monitoring requirements, including prohibiting direct drainage into the MHPA, requiring all lighting adjacent to the MHPA to be directed away from preserve areas using appropriate placement and shielding, and installing a 4-foot high solid wood fence along the eastern edge of the property to shield the MHPA from automobile headlights. No invasive plant material can be utilized in or adjacent to the MHPA. Compliance with the mitigation measures described in the Water Quality Technical Report performed for the project (TerraData, 7/18/07) is also required, which include roof drain filters and connecting vehicle wash areas to the sanitary sewer. Based on the direction of the biological survey and a noise study performed for the project (Dr. Penzes & Associates, 6/18/09), sound attenuation measures were incorporated into the design of the project to reduce noise levels to below 60 dB CNEL. Specifically, as described above, there will be a 4 foot-high masonry wall constructed along the eastern edge of the property from the south property line to the middle of the building. The car wash cannot operate outside the hours of 7 AM to 10 PM, to ensure that the noise generated by the proposed dryer/blower will not be above the required night time noise limit of the adjacent salt pond habitat.

Consistent with the LCP's brush management provisions, the City of San Diego Fire Chief determined that no brush management would be necessary adjacent to the building, as the adjacent MHPA vegetation fuel load is so minimal, and because the proposed structure is a commercial building which will be constructed with materials which achieve 1 hour fire rated construction.

With regard to the car wash operation itself, all chemicals used in the car wash would be processed through a containment system and either pumped out by a service or distributed to the city sewer. Project BMPs include the requirement that all vehicle wash areas be self-contained and properly connected to a sanitary sewer. Because all runoff is contained, commercial car washes are typically considered beneficial to water quality compared to self-washing in residential driveways. In addition, the drainage improvements installed on the site, in particular, a 1,500 gallon oil/water separator, will capture and divert runoff from the adjacent auto repair facility, which currently drains into the MHPA. Thus, the proposed project should improve water quality in the adjacent MHPA.

Although no impacts have been identified, the Commission is concerned that the City of San Diego did not appropriately analyze or apply the wetland buffer requirements of the ESL regulations. A portion of the site mapped along the eastern boundary of the lot is mapped as within the 100-year floodplain designation. The floodplain area is considered environmentally sensitive lands under the San Diego Municipal Code. (Per City requirements, the applicant has since submitted updated maps that indicate the site is adjacent to, but not within the flood plain). In addition, because the site is immediately adjacent to wetland vegetation, the subject site is within the 100-foot area typically required as a wetland buffer. This buffer area should be considered a sensitive biological resource area, and thus should also trigger the ESL regulations. Per the above citation, where any portion of the site contains any of the identified environmentally sensitive lands, the ESL regulations apply to the entire site.

However, the City did not specifically analyze how the wetland buffer regulations of the LCP apply to the subject site. As cited above, the LCP requires that a wetland buffer be maintained around all wetlands as appropriate to protect the functions and values of the wetland. In the Coastal Overlay Zone, which includes the subject site, the applicant is required to provide a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through consultation with the resource agencies. The existing disturbed wetland vegetation next to the salt ponds is located immediately adjacent to the subject site. As proposed, there will be no buffer between the wetland and the approved development.

The City has argued that the LCP wetlands buffer requirement applies only to development that proposes encroachment into sensitive biological resources (Section 143.0141(a) (b)). As there are no sensitive biological resources on the project site, and the site is not mapped as a wetland or within the sensitive coastal resource overlay zone, the City did not require a buffer. Rather, the City reviewed the project under the City's Multiple Species Conservation Plan (MSCP), and the potential for the project to impact the adjacent MHPA/wetland area to the east was evaluated using the City's MHPA land use adjacency guidelines to ensure no impacts to the MHPA would result from the project.

The Commission disagrees with this interpretation of the LCP buffer requirements. The purpose and intent of a buffer is to provide a transition area between sensitive vegetation and development; thus, the need for a buffer must be evaluated whenever wetland habitat is located within 100 feet of a proposed development—whether on or off the project site.

In the case of the proposed project, the site will be elevated 9'6" above the wetland, which provides a vertical buffer. The 4-foot high wall on top of the retaining wall and elevational distance will discourage pedestrian entry into the wetland from the subject site. The subject site can be considered an infill lot, as it is surrounded by development on three sides, and the site is clearly committed to development. The approved development will not be any closer to the wetland vegetation than Palm Avenue to the south, and the large multi-family residential complex immediately to the north, which was approved by the Commission in August 1979 (CDP #F8342).

The adjacent Pond 20 is not part of the South Bay Wildlife Refuge or in an area currently planned for restoration as part of the Refuge. Given that it is adjacent to refuge land, and contains remnant wetland and upland vegetation, the site clearly has potential for use as a mitigation or restoration site. Filling and development of the pond would not be an appropriate use. However, future restoration efforts would likely be designed within the current pond configuration; for example, the northern portion of the pond, which has more vegetation and less salt pan, might be revegetated, and the existing berm around the pond could be improved for passive recreational use. Currently, Pond 20 itself serves as a buffer between the high intensity surrounding development and the Refuge. When the Commission approved the 45-unit residential complex north of the subject site, it found that the vacant parcel to the east owned at that time by the salt works would "provide a buffer between the proposed development and the wetlands area." Any future restoration

activity in the MHPA would likely occur in the pond itself, while the disturbed vegetated area between the subject site, the surrounding existing development, and the berm/road serving as a buffer between restored habitat and development. Therefore, in this particular case, no value would be added to the Pond by requiring an additional buffer on the subject site. As required by the LCP, staff at the U.S. Fish and Wildlife Service Refuge Complex have also reviewed the project and determined that it would not result in any adverse impacts to the Refuge.

Special Condition #1 requires submittal of final plans consistent with the draft plans. Special Condition #2 requires submittal of a final landscape plan prohibiting the use of invasive plant materials and certain rodenticides. Special Condition #3 specifically requires that all of the conditions of the approved Mitigated Negative Declaration, which have been incorporated into the project, be implemented. Special Condition #4 states that the conditions placed on the project by the City of San Diego pursuant to an authority other than the Coastal Act remain in full force and effect.

As noted, a lot line adjustment creating the subject site was done without benefit of a coastal development permit, and this violation has been referred to the City of San Diego for future action. However, as described above, the proposed project, as designed for the current lot configuration, can be found consistent with the resource protection policies of the LCP.

In summary, the proposed project has been designed with mitigation measures including water quality BMPs, lighting shields, and noise barriers, that are intended to ensure no impacts to environmentally sensitive lands will occur, consistent with the policies of the LCP. While development will occur immediately adjacent to wetlands and MHPA lands, the Commission, in consultation with the U.S. Fish and Wildlife Service, has determined that as provided for in the LCP, no buffer is warranted in this particular case, as all impacts have been adequately mitigated, and provision of a buffer would not result in any appreciable improvement to natural resources.

2. Public Access. The Coastal Act emphasizes the need to protect and provide for public access to and along the coast. The following Coastal Act policies are applicable to the proposed development:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30252 states, in part:

The location and amount of new development should maintain and enhance public access to the coast by... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation....

Finally, Section 30604(c) of the Coastal Act requires that a specific access finding be made in conjunction with the approval of any development to be located between the first public roadway and the sea, indicating that the development is in conformity with the public access and public recreation policies of Chapter 3. In this case, such a finding can be made.

The subject site is currently fenced and there is no access to the shoreline from the property. Limiting access to the adjacent MHPA is consistent with the resource protection policies of the LCP. Access to the Bayshore Bikeway is available at the northern terminus of 13th Street, approximately 1,000 feet north of the subject site. Thus, the project is consistent with the public access policies of the Coastal Act and the certified Local Coastal Program.

3. Unpermitted Development. Unpermitted development has been carried out on the subject site without the required coastal development permit. As noted, a lot line adjustment creating the subject site was done without benefit of a coastal development permit, and this violation has been referred to the City of San Diego for future action. However, as described above, the proposed project, as designed for the current lot configuration, can be found consistent with the resource protection policies of the LCP.

Although a lot line adjustment has occurred prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

4. Local Coastal Planning. As described above, the proposed project has been designed to avoid impacts to environmentally sensitive habitat and public access, and will be consistent with the certified LCP as it relates to the Commercial Community (CC-4-2)

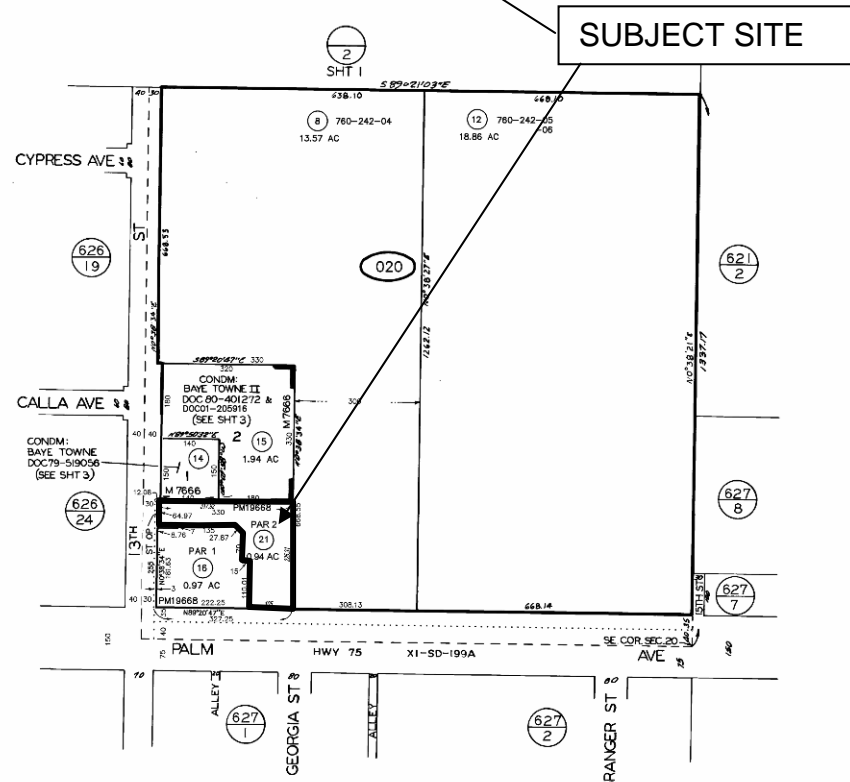
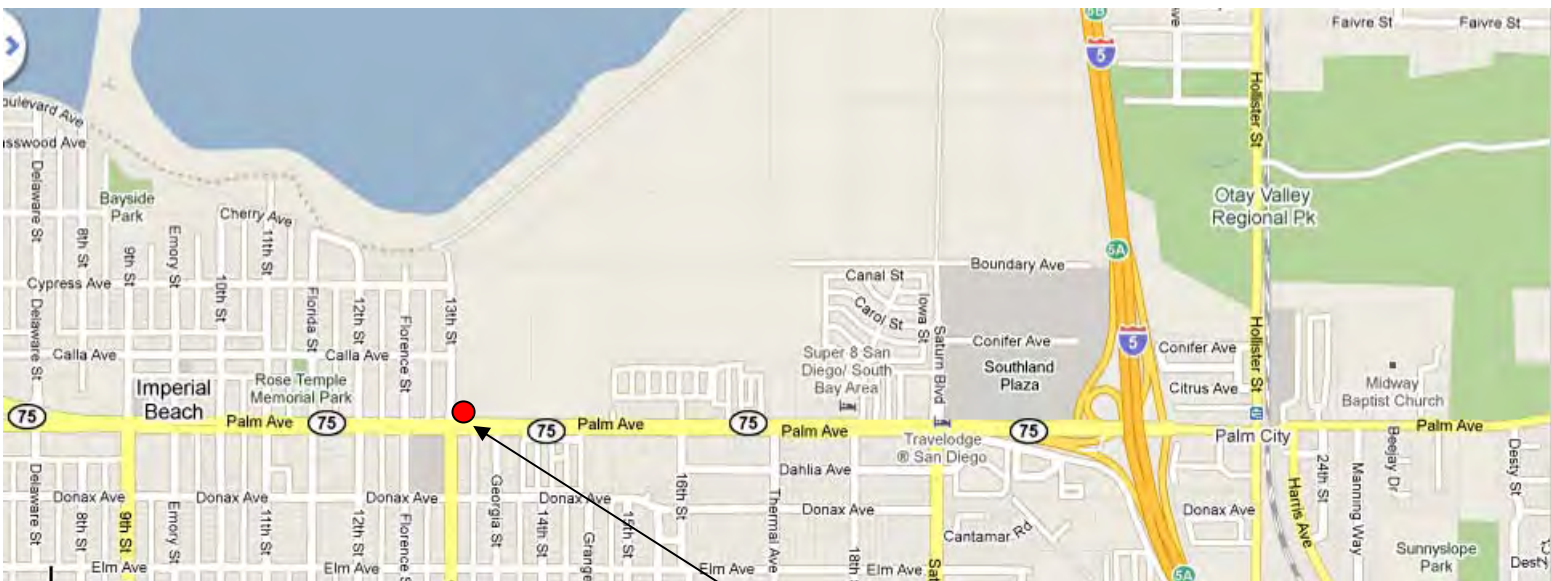
zone. Therefore, the Commission finds that approval of the proposed car wash will not prejudice the ability of the City of San Diego to continue to implement its certified LCP.

5. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As described above, the proposed project has been conditioned to avoid adverse environmental impacts. Mitigation measures including water quality BMPs, lighting shields, and noise barriers, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



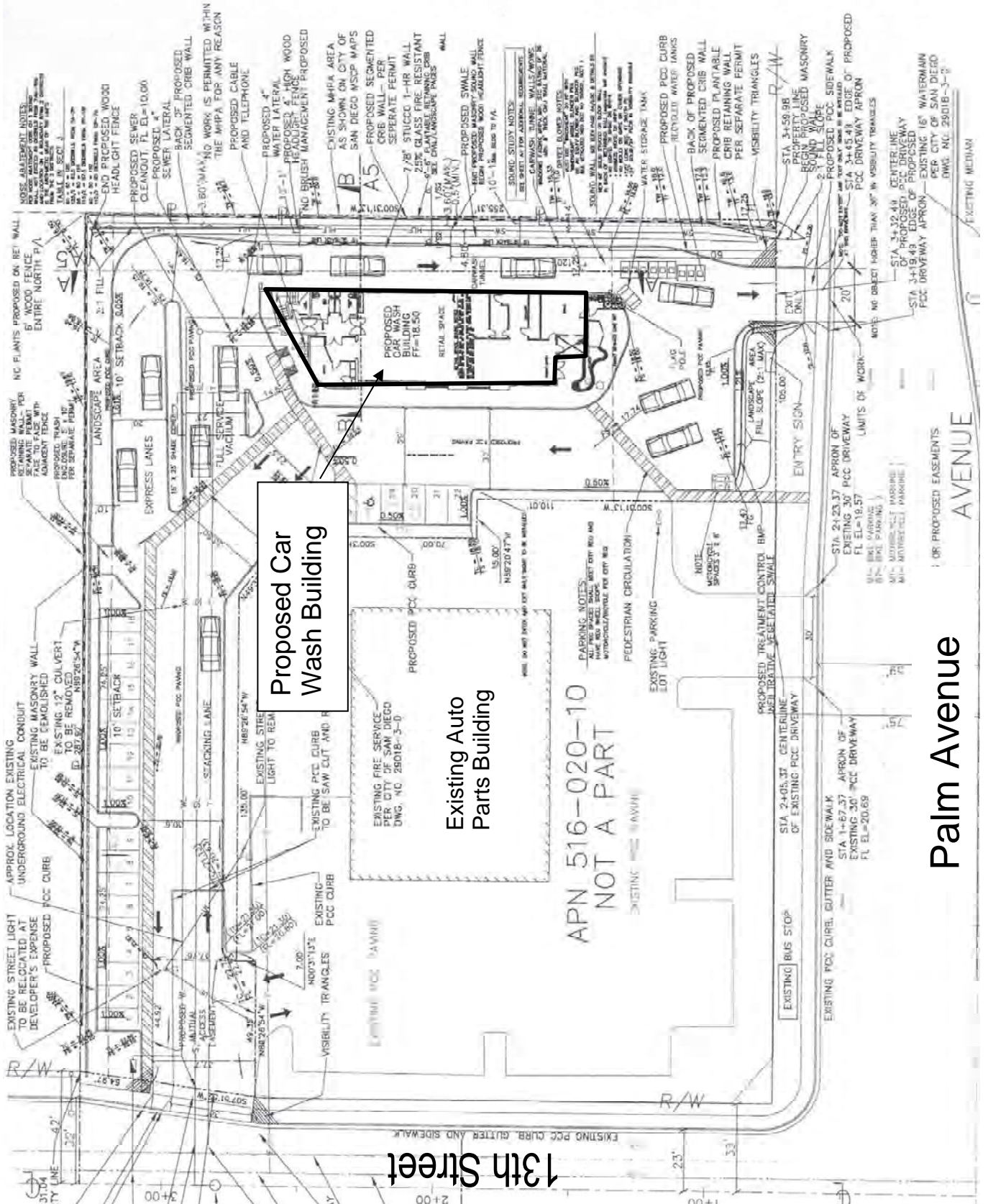
616-02
SHT 2 OF 3
1"=200'

3/18/2009 ACR

CHANGES			
BLK	OLD	NEW	YR CUT
620	14	08/08	01 5893
	15	08/08	01 7997
	12	08/08	02 5907
	10	08/08	09 4767
	10	16&17	08 1426
	11&17	18	08 1281
	12	19&21	02 1335
	18&20	21	02 1381



EXHIBIT NO. 2
APPLICATION NO.
A-6-OMN-10-54
Detail Location Map
California Coastal Commission



Proposed Car Wash Building

Existing Auto Parts Building

APN 516-020-10
NOT A PART

Palm Avenue

AVENUE



EXHIBIT NO. 3
APPLICATION NO.
A-6-OMN-10-54

Site Plan

California Coastal Commission

PARCEL MAP NO. 19668

SHEET 2 OF 2 SHEETS

LEGEND

- INDICATES FOUND MONUMENT AS NOTED
- INDICATES SET LEAD PLUG WITH BRASS DISC MARKED RICE 31915.
- INDICATES SET 1/2"X18" IRON PIN WITH PLASTIC CAP MARKED RICE 31915 UNLESS OTHERWISE NOTED.
- ⊙ INDICATES SET 2"X24" IRON PIPE WITH BRASS DISC MARKED RICE 31915 UNLESS OTHERWISE NOTED.
- () INDICATES RECORD DATA AS SHOWN ON R/15 12049 UNLESS OTHERWISE NOTED.
- [] INDICATES RECORD DATA AS SHOWN ON R/15 1640A.
- DO, INDICATES GRANT DEED TO AUTOZONE DEVELOPMENT CORPORATION RECORDED 10/23/03 AS DOC NO. 2003-1297422 OF O.R.
- DO, INDICATES GRANT DEED TO PAUL D. MAGNOTTO, ET UX, RECORDED 08/29/03 AS DOC NO. 2003-1094114 OF O.R.
- DO, INDICATES GRANT DEED TO AUTOZONE, INC. RECORDED 01/22/99 AS DOC NO. 1999-0036220 OF O.R.
- O.R. INDICATES OFFICIAL RECORDS
- INDICATES PARCEL MAP BOUNDARY
- INDICATES RIGHT-OF-WAY
- INDICATES CENTERLINE
- INDICATES CITY OF IMPERIAL BEACH/CITY OF SAN DIEGO BOUNDARY

BASIS OF BEARINGS

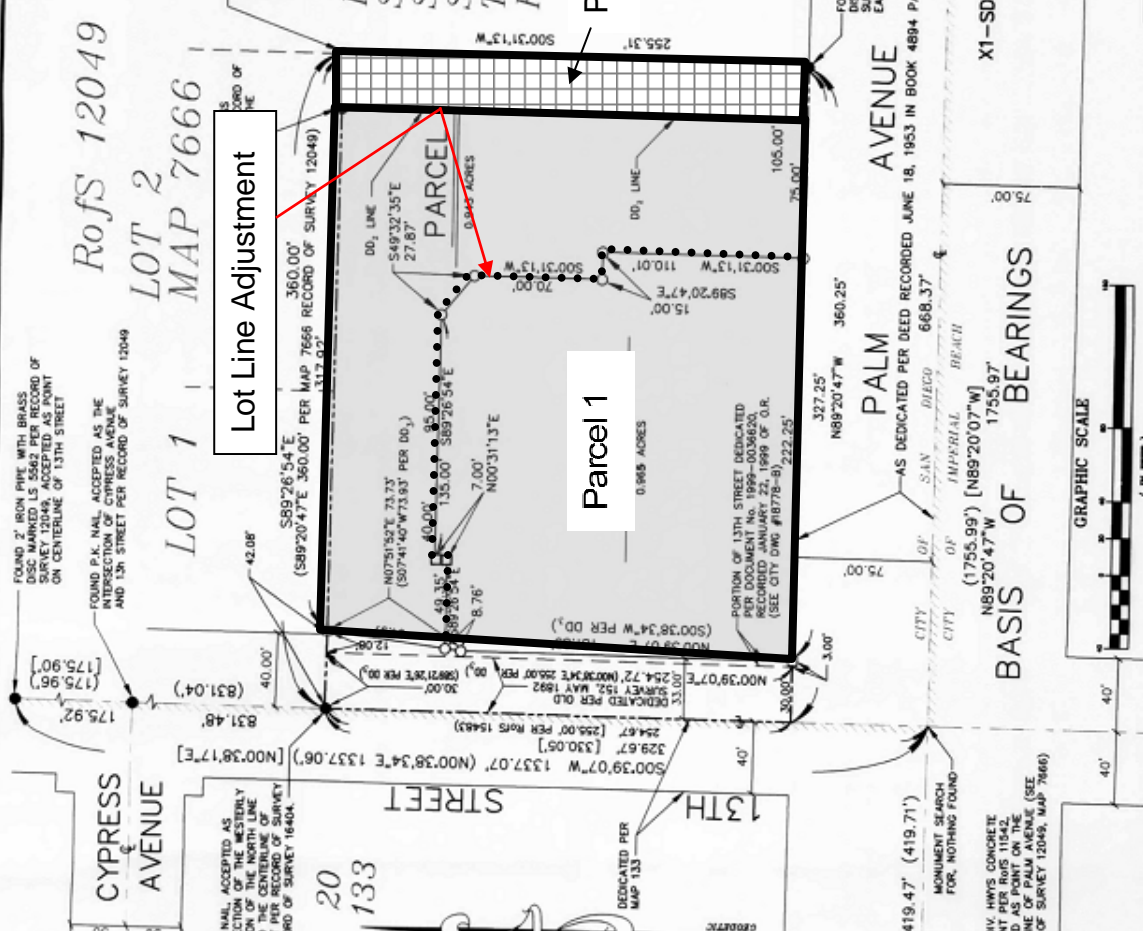
THE BASIS OF BEARINGS FOR THIS SURVEY IS THE CENTERLINE OF PALM AVENUE AS SHOWN ON RECORD OF SURVEY 12049, I.A. 5 892047' E.

NOTES:

- 1) TOTAL AREA WITHIN THIS SUBDIVISION: 2.107 ACRES
- 2) TOTAL NUMBER OF PARCEL: 2

EASEMENT NOTE:

SAN DIEGO GAS AND ELECTRIC EASEMENT, DOCUMENT NO. 104380, RECORDED JUNE 19, 1962 IS ENTIRELY WITHIN 13TH STREET AND IS NOT SHOWN HEREON.



Rofs 12049
LOT 2
MAP 7666

LOT 1
MAP 133

Parcel 1

Parcel 2

Lot Line Adjustment

PORTION
SE 1/4 OF
SE 1/4 OF
SEC. 20
T. 20 S.
R. 2 E. S. B.M.

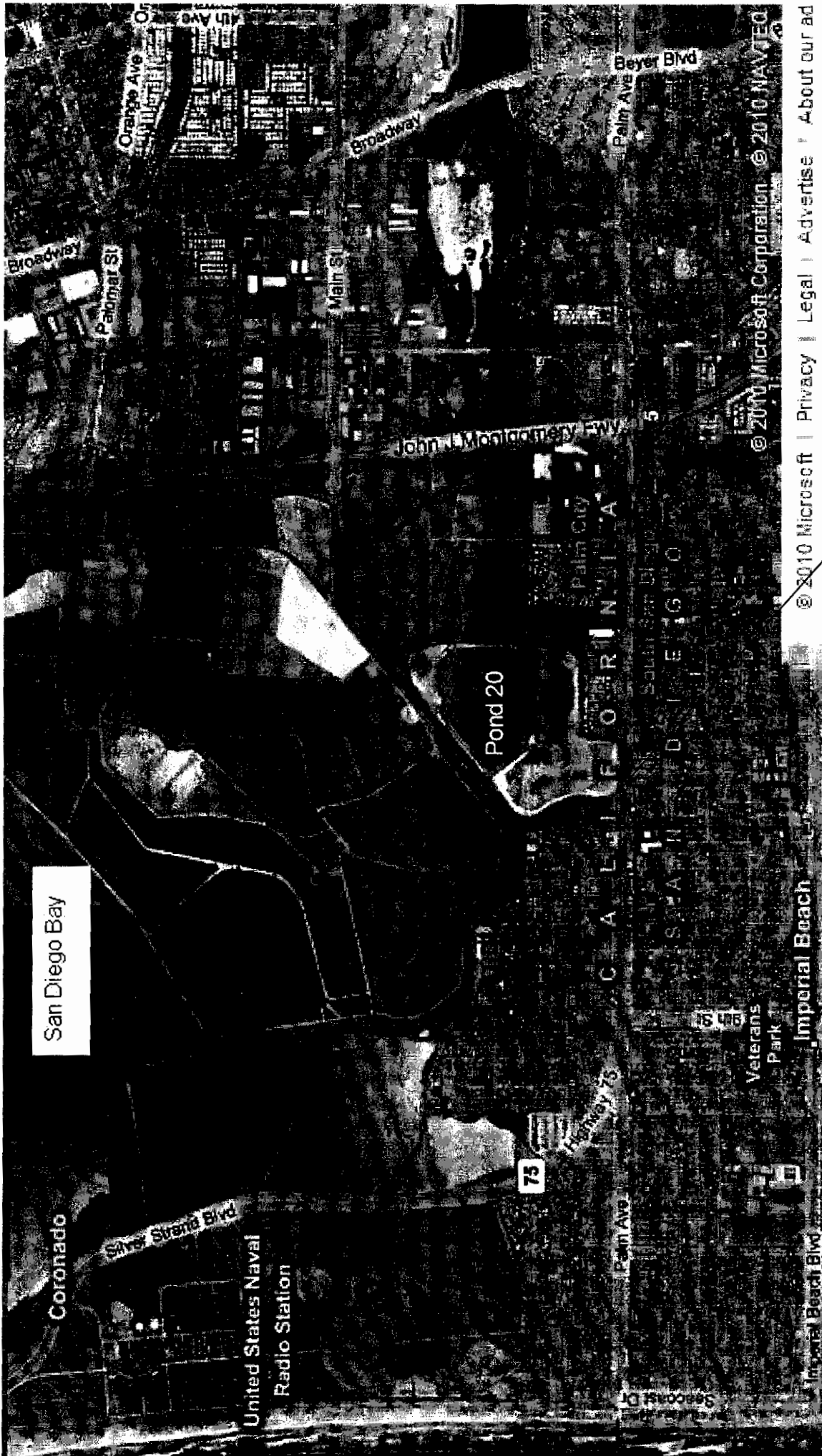
Parcel 1

Parcel 2

EXHIBIT NO. 5
APPLICATION NO.
A-6-OMN-10-54

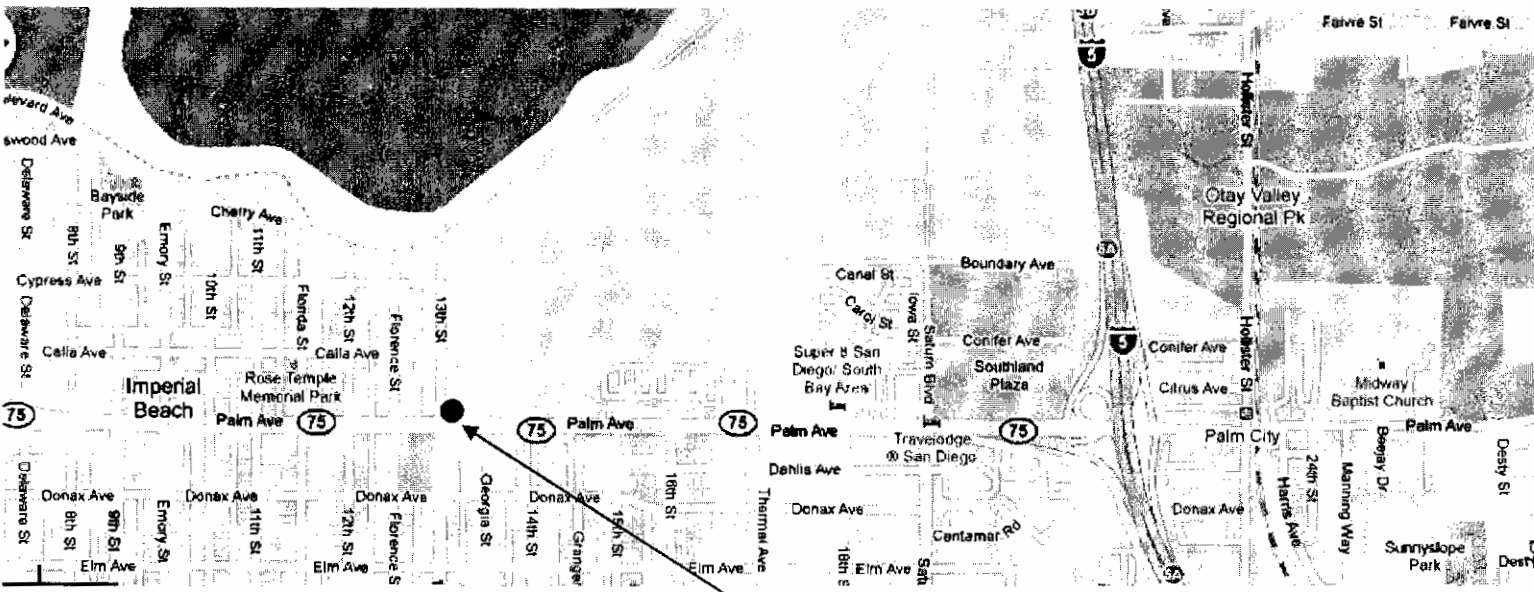
Lot Line Adjustment
(Approved Previously)
California Coastal Commission

T.M. NONE CCSB3: 1792-6295 L.C. 152-1735 J.O. 422937 P.T.S. 37652



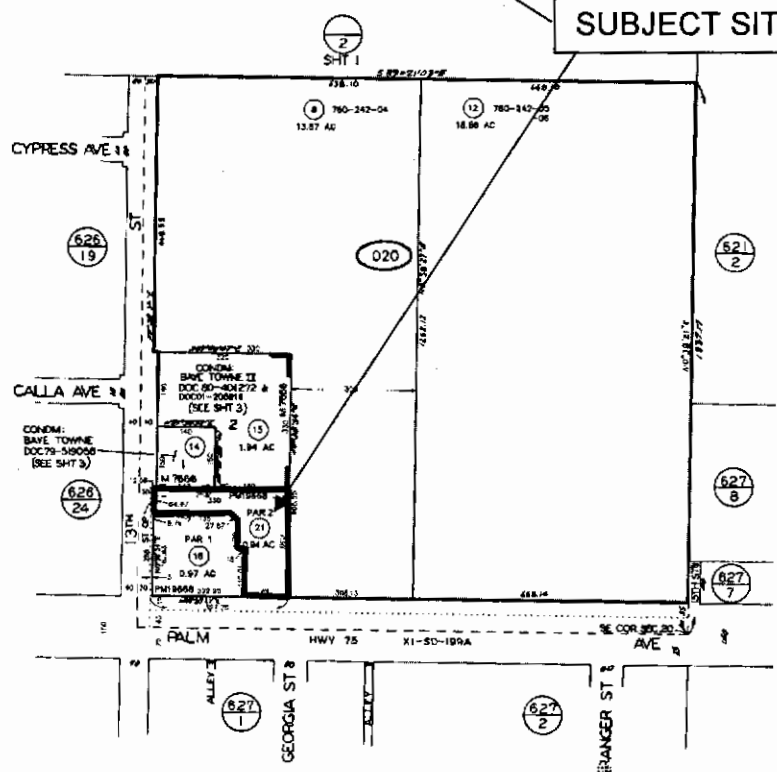
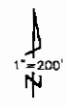
SUBJECT SITE

EXHIBIT NO. 1
APPLICATION NO.
A-6-OMN-10-54
Regional Map
California Coastal Commission



SUBJECT SITE

616-02
SHT 2 OF 3

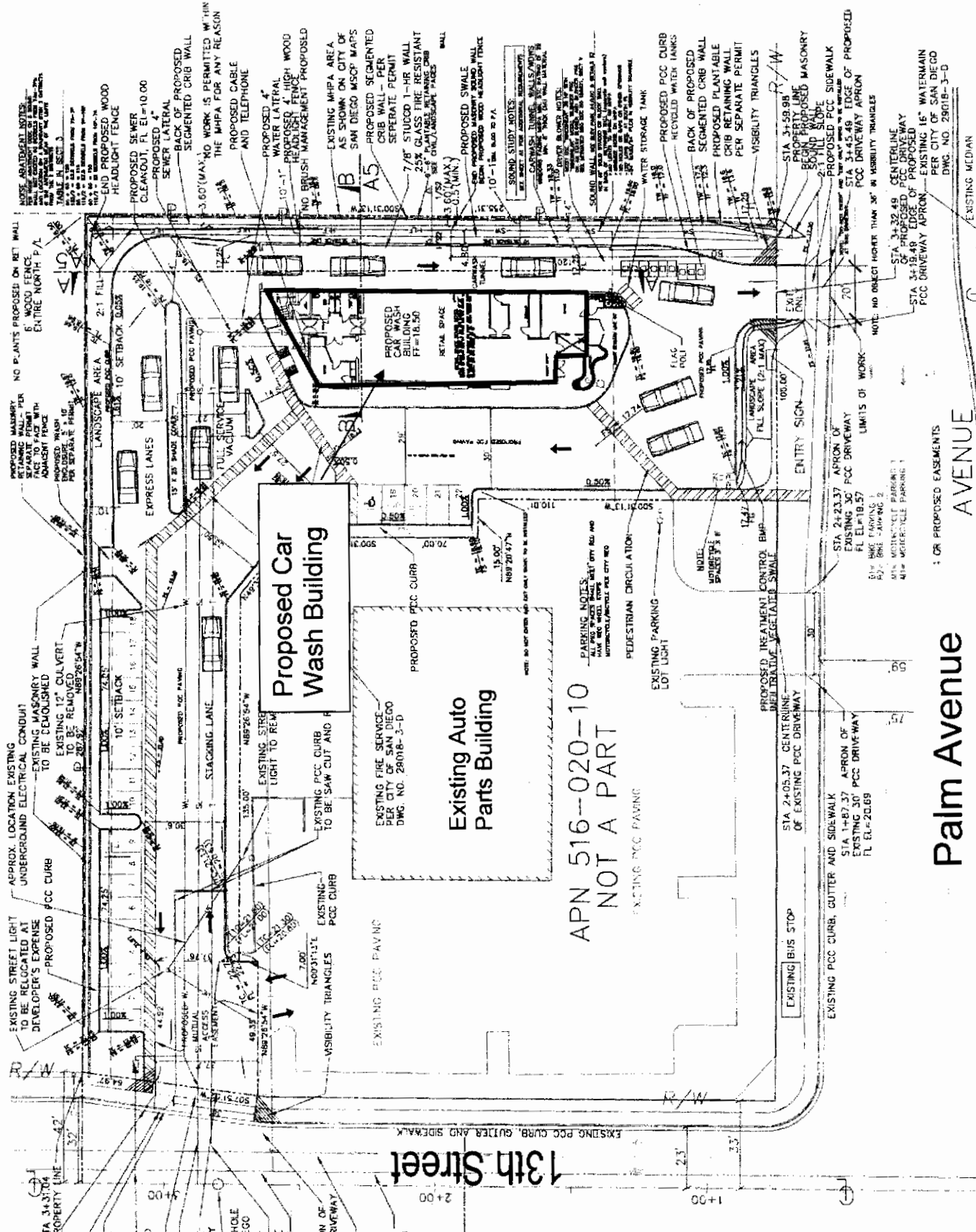


3/18/2000 ACR

CHANGES				
BLK	OLD	NEW	YR	CUT
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EXHIBIT NO. 2
APPLICATION NO.
A-5-OMN-10-54
Detail Location Map
 California Coastal Commission



Proposed Car Wash Building

Existing Auto Parts Building

**APN 516-020-10
NOT A PART**

Palm Avenue

AVENUE

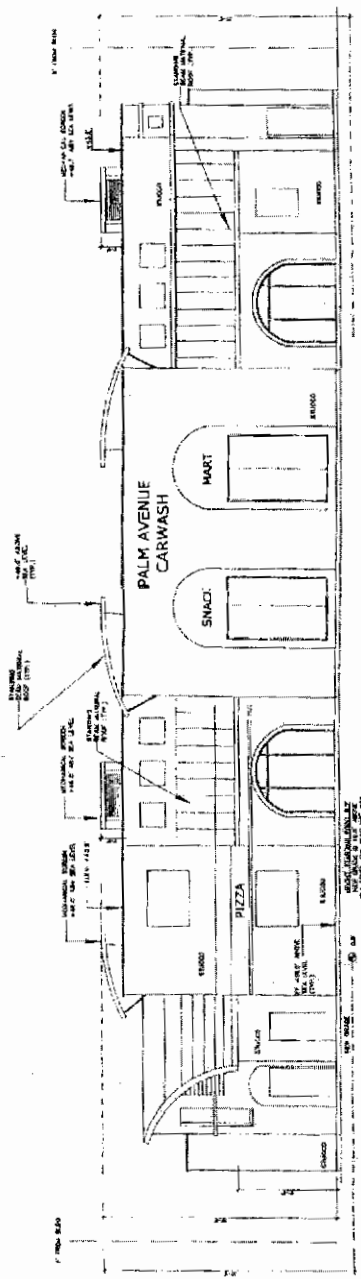
- STA 3+06.71 PROPOSED DRIVEWAY APRON WIDEN EXISTING PCC DRIVEWAY (W=7')
- STA 2+99.78 APRON OF EXISTING 30' PCC DRIVEWAY
- STA 3+10.33 PROPOSED 8' RIDGE WITH CONCRETE PAD
- PROPOSED PCC SIDEWALK
- STA 2+87.59 PROPOSED 4" SEWER LATERAL
- STA 2+80.68 CENTERLINE OF EXISTING PCC DRIVEWAY
- STA 2+80.04 EXISTING SEWER MANHOLE PER CITY OF SAN DIEGO DWG. NO. 14028-4-L
- STA 2+82.59 PROPOSED CABLE/TELEPHONE SERVICE EXISTING 12" SEWERMAIN PER CITY OF SAN DIEGO DWG. NO. 14028-4-L
- STA 2+64.06 APRON OF EXISTING 30' PCC DRIVEWAY EL=23.58
- EXISTING 1'-1/2" GASMAIN PER CITY OF SAN DIEGO DWG. NO. 29018-3-D
- EXISTING 8" WATERMAIN PER CITY OF SAN DIEGO DWG. NO. 29018-3-D



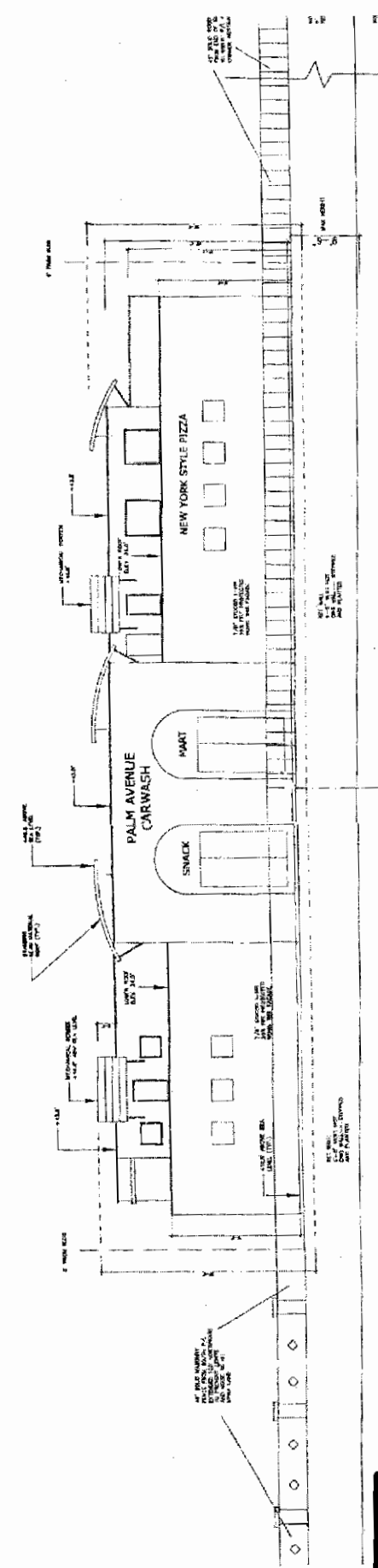
EXHIBIT NO. 3
APPLICATION NO.
A-6-OMN-10-54

Site Plan


California Coastal Commission



WEST ELEVATION

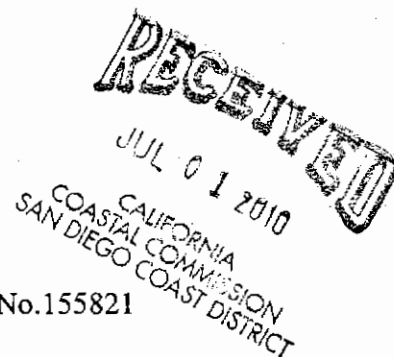


EAST ELEVATION

EXHIBIT NO. 4
APPLICATION NO.
A-6-OMN-10-54
Elevations
 California Coastal Commission



ENTITLEMENTS DIVISION
(619) 446-5460



Project No.155821

SUBJECT: Palm Avenue Car Wash: Coastal Development Permit (CDP) and Site Development Permit (SDP) to construct a 8,928-square-foot two-story car wash with convenience store on a vacant 0.94 acre site. The sloped area on the east of the property would be elevated with fill to level the site. A four-foot high noise wall would be constructed along the eastern edge of the property. The existing masonry wall along the northern end of the property would be demolished and a new six-foot high solid wood wall would be constructed. The project would be located at 1440 Palm Avenue in the CC-4-2 Zone within the Otay Mesa-Nestor Community Plan Area, within the Coastal Overlay (appealable), Coastal Height Limit, FEMA Flood Plain (100-year), and Parking Impact Areas, City and County of San Diego. (A portion of the Southwest quarter of the southeast quarter of the southeast quarter of Section 20, Township 18, Range 2 West San Bernardino Meridian, Map 766).

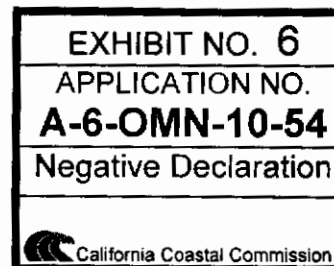
Applicant: Mark Kravis.

UPDATE 3/9/10:

As a result of public review minor revisions have been made to the Draft Negative Declaration (DND). The modification to the document clarifies the project mitigation which already was a project feature. Added language would appear in a ~~strikeout~~ and underlined format. In accordance with the California Environmental Quality Act, Section 15073.5 (c)(4), the addition of new information that clarifies, amplifies, or makes insignificant modification does not require recirculation as there are no new impacts and no new mitigation identified. An environmental document need only be recirculated when there is identification of new significant environmental impact or the addition of a new mitigation measure required to avoid a significant environmental impact.

- I. PROJECT DESCRIPTION: See attached Initial Study.
- II. ENVIRONMENTAL SETTING: See attached Initial Study.
- III. DETERMINATION:

The City of San Diego conducted an Initial Study which determined that the proposed project could have a significant environmental effect on Land Use (MSCP/MHPA),



Historical Resources (Archaeology), and Noise. Subsequent revisions in the project proposal create the specific mitigation identified in Section V of this Mitigated Negative Declaration (MND). The project, as revised, now avoids or mitigates the potentially significant environmental effects previously identified, and the preparation of an environmental impact report will not be required.

IV. DOCUMENTATION:

The attached Initial Study documents the reasons to support the above determination.

V. MITIGATION, MONITORING AND REPORTING PROGRAM:

General Measures which must be completed prior to any authorization to proceed:

A. GENERAL REQUIREMENTS – PART I

Plan Check Phase (prior to permit issuance)

1. Prior to the issuance of a Notice To Proceed (NTP) for a subdivision, or any construction permits, such as Demolition, Grading or Building, or beginning any construction related activity on-site, the Development Services Department (DSD) Director's Environmental Designee (ED) shall review and approve all Construction Documents (CD), (plans, specification, details, etc.) to ensure the MMRP requirements are incorporated into the design.
2. The ED shall verify that the MMRP Conditions/Notes that apply ONLY to the construction phases of this project are included VERBATIM, under the heading, "ENVIRONMENTAL/MITIGATION REQUIREMENTS."
3. These notes must be shown within the first three (3) sheets of the construction documents in the format specified for engineering construction document templates as shown on the City website:
<http://www.sandiego.gov/development-services/industry/standtemp.shtml>.
4. The **TITLE INDEX SHEET** must also show on which pages the "Environmental/Mitigation Requirements" notes are provided.
5. **SURETY AND COST RECOVERY** – The Development Services Director or City Manager may require appropriate surety instruments or bonds from private project *applicants* to ensure the long term performance or implementation of required mitigation measures or programs. The City is authorized to recover its cost to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.

B. GENERAL REQUIREMENTS – PART II

Post Plan Check (After permit issuance/Prior to start of construction)

1. **PRE CONSTRUCTION MEETING IS REQUIRED TEN (10) WORKING DAYS PRIOR TO BEGINNING ANY WORK ON THIS PROJECT.** The PERMIT HOLDER is responsible to arrange and perform this meeting by contacting the CITY RESIDENT ENGINEER (RE) of the Field Engineering Division and City staff from

MITIGATION MONITORING COORDINATION (MMC). Attendees must also include the Permit holder's Representative(s), Job Site Superintendent and the following consultants:

Biologist, Archaeologist

Note:

Failure of all responsible Permit Holder's representatives and consultants to attend shall require an additional meeting with all parties present.

CONTACT INFORMATION:

- a) The PRIMARY POINT OF CONTACT is the RE at the Field Engineering Division – 858-627-3200
- b) For Clarification of ENVIRONMENTAL REQUIREMENTS, it is also required to call RE and MC at 858-627-3360

- 2 **MMRP COMPLIANCE:** This Project, Project Tracking System (PTS) #155821 and /or Environmental Document # 155821, shall conform to the mitigation requirements contained in the associated Environmental Document and implemented to the satisfaction of the DSD's Environmental Designee (MMC) and the City Engineer (RE). The requirements may not be reduced or changed but may be annotated (i.e. to explain when and how compliance is being met and location of verifying proof, etc.). Additional clarifying information may also be added to other relevant plan sheets and/or specifications as appropriate (i.e., specific locations, times of monitoring, methodology, etc)

Note:

Permit Holder's Representatives must alert RE and MMC if there are any discrepancies in the plans or notes, or any changes due to field conditions. All conflicts must be approved by RE and MMC BEFORE the work is performed.

- 3 **OTHER AGENCY REQUIREMENTS:** Evidence of compliance with all other agency requirements or permits shall be submitted to the RE and MMC for review and acceptance prior to the beginning of work or within one week of the Permit Holder obtaining documentation of those permits or requirements. Evidence shall include copies of permits, letters of resolution or other documentation issued by the responsible agency.

Coastal Development Permit

- 4 **MONITORING EXHIBITS**

All consultants are required to submit , to RE and MMC, a monitoring exhibit on a 11x17 reduction of the appropriate construction plan , such as site plan, grading , landscape, etc, marked to clearly show the specific areas including the **LIMIT OF WORK**, scope of that discipline's work, and notes indicating when in the construction schedule that work will be performed. When necessary for clarification, a detailed methodology of how the work will be performed shall be included.

NOTE: Surety and Cost Recovery -- When deemed necessary by the

Development Services Director or City Manager, they may require additional surety instruments or bonds from the Permit Holder to ensure the long term performance or implementation of required mitigation measures or programs. The City is authorized to recover its cost to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.

5 OTHER SUBMITTALS AND INSPECTIONS:

The Permit Holder's representative shall submit all required documentation, verification letters, and requests for all associated inspections to the RE and MMC for approval per the following schedule:

Document Submittal/Inspection Checklist

<i>Issue Area</i>	<i>Document submittal</i>	<i>Assoc Inspection/Approvals/Notes</i>
General	Consultant Qualification Letters	Pre-construction Meeting
Land Use/Biology	Biologist Limit of Work Verification	Limit of Work inspection
Geology	As Graded Soils Report	Geo-technical/fault inspection
Archeology	Archeology Reports	Archaeology/Historic site observation
Noise	Acoustical Reports	Noise mitigation features inspection
Land Use	Land Use Adjacency issues CSVs	Land Use Adjacency issue site observations
Bond Release	Request for Bond Release letter	Final MMRP inspections prior to Bond Release Letter

**C. SPECIFIC MMRP ISSUE AREA CONDITIONS/REQUIREMENTS –
Post Plan Check Phase (after permit issuance)**

The environmental mitigation measures listed above shall be shown on the construction plans or referenced under the heading, "Environmental Requirements."

**Land Use (MSCP/MHPA)
(Biologist Qualification and Construction Monitoring)**

I. Prior to Preconstruction meeting:

- A. The owner/permittee shall provide a letter to the City's Mitigation Monitoring Coordination (MMC) section stating that a qualified biologist, as defined in the City of San Diego's Biological Review References, has been retained to implement the project's biological monitoring program. The letter shall include the names and contact information of all persons involved in the biological monitoring of the project.
- B. The Biologist shall submit required documentation to MMC verifying that any special reports, maps, plans, and timelines; such as but not limited to, revegetation plans, plant relocation requirements and timing, MSCP requirements, avian or other wildlife protocol surveys, impact avoidance areas, or other such information has been completed and updated.

II. Preconstruction Meeting:

- A. The Project biologist shall attend the Preconstruction meeting and discuss the project's biological monitoring program.
- B. The project biologist shall submit a biological construction monitoring exhibit (BCME) (site plan reduced to 11X17) describing the projects biological monitoring program and delineating the location and method of installation of the orange construction fencing to be installed at the limits of disturbance adjacent to any sensitive biological resources as shown on the project's approved construction documents. The exhibit shall also contain a biological monitoring schedule.

III. Prior to Construction:

- A. The project biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance adjacent to sensitive biological habitats as shown on the BCME and approved construction documents.

IV. During Construction:

- A. The project biologist shall monitor construction activities as described on the BCME and approved construction documents to ensure that construction activities do not encroach into biologically sensitive areas beyond the approved limits of disturbance.

III. Post Construction:

- A. The project biologist shall submit a final construction monitoring report to the MMC section within 30 days of construction completion. The report shall address all biological monitoring requirements described on the BCME and approved construction documents to the satisfaction of MMC.

Land Use (MSCP/MHPA)

1. The qualified biologist shall verify that all construction taking place within or adjacent to the Multiple Habitat Planning Area (MHPA) is consistent with the Multiple Species Conservation Program (MSCP) Land Use Adjacency Guidelines including:

- A. **Drainage/Toxics:**
No Direct drainage into the MHPA shall occur during or after construction. The project biologist shall verify that filtration devices, swales and/or detention basins that drain into the MHPA are functioning properly during construction, and that permanent maintenance after construction is addressed.

B. Lighting:

All lighting adjacent to the MHPA shall be directed away from preserve areas using appropriate placement and shielding. In addition, the required 4-foot high solid wood fence along the eastern edge of the property would shield the MHPA from automobile headlights.

C. Invasives:

~~No invasive plant material shall be utilized in or adjacent to the MHPA. For plantings within the MHPA, all plant material must be native.~~

D. Barriers:

New development adjacent to the MHPA is required to provide barriers along the MHPA boundaries to direct public access to appropriate locations, to reduce domestic animal predation, to keep wildlife in the preserve, and to provide adequate noise reduction in the preserve. Barriers may include, but are not limited to: fencing (6ft. vinyl coated chain link or equivalent), walls, rocks/boulders, vegetated buffers, and signage.

E. Grading / Land Development:

For projects within or adjacent to the MHPA, all manufactured slopes associated with site development shall be included within the development footprint.

F. ~~Brush Management:~~

~~New development adjacent to the MHPA must be set back from the MHPA to provide required Brush Management Zone 1 area (Code Sec. 142.0412) on the building pad outside of the MHPA. Zone 2 may be located within the MHPA provided the Zone 2 management will be the responsibility of an HOA or other private entity.~~

HISTORICAL RESOURCES (ARCHAEOLOGY)

I. Prior to Permit Issuance

A. Entitlements Plan Check

1. Prior to issuance of any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits or a Notice to Proceed for Subdivisions, but prior to the first preconstruction meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Archaeological Monitoring and Native American monitoring have been noted on the appropriate construction documents.

B. Letters of Qualification have been submitted to ADD

1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the archaeological monitoring program, as defined in the City of San Diego Historical Resources Guidelines (HRG). If applicable, individuals involved in the archaeological monitoring program must

have completed the 40-hour HAZWOPER training with certification documentation.

2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the archaeological monitoring of the project.
3. Prior to the start of work, the applicant must obtain approval from MMC for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

A. Verification of Records Search

1. The PI shall provide verification to MMC that a site specific records search (1/4 mile radius) has been completed. Verification includes, but is not limited to a copy of a confirmation letter from South Coast Information Center, or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.
3. The PI may submit a detailed letter to MMC requesting a reduction to the 1/4 mile radius.

B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring; the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified Archaeologist and Native American Monitor shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Archaeological Monitoring program with the Construction Manager and/or Grading Contractor.
 - a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.
2. Identify Areas to be Monitored
 - a. Prior to the start of any work that requires monitoring, the PI shall submit an Archaeological Monitoring Exhibit (AME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits.
 - b. The AME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).
3. When Monitoring Will Occur
 - a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
 - b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate site conditions such as depth of excavation and/or site graded to bedrock, etc., which may reduce or increase the potential for resources to be present.

III. During Construction

A. Monitor(s) Shall be Present During Grading/Excavation/Trenching

1. The Archaeological Monitor shall be present full-time during grading/excavation/trenching activities which could result in impacts to archaeological resources as identified on the AME. The Native American monitor shall determine the extent of their presence during construction related activities based on the AME and provide that information to the PI and MMC. **The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities such as in the case of a potential safety concern within the area being monitored. In certain circumstances OSHA safety requirements may necessitate modification of the PME.**
2. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as modern disturbance post-dating the previous grading/trenching activities, presence of fossil formations, or when native soils are encountered may reduce or increase the potential for resources to be present.
3. The monitor shall document field activity via the Consultant Site Visit Record (CSV). The CSV's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (**Notification of Monitoring Completion**), and in the case of ANY discoveries. The RE shall forward copies to MMC.

B. Discovery Notification Process

1. In the event of a discovery, the Archaeological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.

C. Determination of Significance

1. The PI and Native American monitor shall evaluate the significance of the resource. If Human Remains are involved, follow protocol in Section IV below.
 - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required.
 - b. If the resource is significant, the PI shall submit an Archaeological Data Recovery Program (ADRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.
 - c. If resource is not significant, the PI shall submit a letter to MMC indicating that artifacts will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that that no further work is required.

IV. Discovery of Human Remains

If human remains are discovered, work shall halt in that area and the following procedures as set forth in the California Public Resources Code (Sec. 5097.98) and State Health and Safety Code (Sec. 7050.5) shall be undertaken:

A. Notification

1. Archaeological Monitor shall notify the RE or BI as appropriate, MMC, and the PI, if the Monitor is not qualified as a PI. MMC will notify the appropriate Senior Planner in the Environmental Analysis Section (EAS).
2. The PI shall notify the Medical Examiner after consultation with the RE, either in person or via telephone.

B. Isolate discovery site

1. Work shall be directed away from the location of the discovery and any nearby area reasonably suspected to overlay adjacent human remains until a determination can be made by the Medical Examiner in consultation with the PI concerning the provenience of the remains.
2. The Medical Examiner, in consultation with the PI, will determine the need for a field examination to determine the provenience.
3. If a field examination is not warranted, the Medical Examiner will determine with input from the PI, if the remains are or are most likely to be of Native American origin.

C. If Human Remains **ARE** determined to be Native American

1. The Medical Examiner will notify the Native American Heritage Commission (NAHC) within 24 hours. By law, **ONLY** the Medical Examiner can make this call.
2. NAHC will immediately identify the person or persons determined to be the Most Likely Descendent (MLD) and provide contact information.
3. The MLD will contact the PI within 24 hours or sooner after the Medical Examiner has completed coordination, to begin the consultation process in accordance with the California Public Resource and Health & Safety Codes.
4. The MLD will have 48 hours to make recommendations to the property owner or representative, for the treatment or disposition with proper dignity, of the human remains and associated grave goods.
5. Disposition of Native American Human Remains shall be determined between the MLD and the PI, IF:
 - a. The NAHC is unable to identify the MLD, OR the MLD failed to make a recommendation within 48 hours after being notified by the Commission; OR;
 - b. The landowner or authorized representative rejects the recommendation of the MLD and mediation in accordance with PRC 5097.94 (k) by the NAHC fails to provide measures acceptable to the landowner.
 - c. In order to protect these sites, the Landowner shall do one or more of the following:
 - (1) Record the site with the NAHC;
 - (2) Record an open space or conservation easement on the site;
 - (3) Record a document with the County.
 - d. Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that

additional conferral with descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of such a discovery may be ascertained from review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to Section 5.c., above.

D. If Human Remains are NOT Native American

1. The PI shall contact the Medical Examiner and notify them of the historic era context of the burial.
2. The Medical Examiner will determine the appropriate course of action with the PI and City staff (PRC 5097.98).
3. If the remains are of historic origin, they shall be appropriately removed and conveyed to the Museum of Man for analysis. The decision for internment of the human remains shall be made in consultation with MMC, EAS, the applicant/landowner and the Museum of Man.

V. Night and/or Weekend Work

A. If night and/or weekend work is included in the contract

1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
2. The following procedures shall be followed.
 - a. No Discoveries
In the event that no discoveries were encountered during night and/or weekend work, the PI shall record the information on the CSVR and submit to MMC via fax by 8AM of the next business day.
 - b. Discoveries
All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction, and IV - Discovery of Human Remains.
 - c. Potentially Significant Discoveries
If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.
 - d. The PI shall immediately contact MMC, or by 8AM of the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.

B. If night and/or weekend work becomes necessary during the course of construction

1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
2. The RE, or BI, as appropriate, shall notify MMC immediately.

C. All other procedures described above shall apply, as appropriate.

VI. Post Construction

A. Preparation and Submittal of Draft Monitoring Report

1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Historical Resources Guidelines (Appendix C/D)

which describes the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring,

- a. For significant archaeological resources encountered during monitoring, the Archaeological Data Recovery Program shall be included in the Draft Monitoring Report.
 - b. Recording Sites with State of California Department of Parks and Recreation
The PI shall be responsible for recording (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any significant or potentially significant resources encountered during the Archaeological Monitoring Program in accordance with the City's Historical Resources Guidelines, and submittal of such forms to the South Coastal Information Center with the Final Monitoring Report.
2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
 3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
 4. MMC shall provide written verification to the PI of the approved report.
 5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.
- B. Handling of Artifacts
1. The PI shall be responsible for ensuring that all cultural remains collected are cleaned and catalogued
 2. The PI shall be responsible for ensuring that all artifacts are analyzed to identify function and chronology as they relate to the history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate.
 3. The cost for curation is the responsibility of the property owner.
- C. Curation of artifacts: Accession Agreement and Acceptance Verification
1. The PI shall be responsible for ensuring that all artifacts associated with the survey, testing and/or data recovery for this project are permanently curated with an appropriate institution. This shall be completed in consultation with MMC and the Native American representative, as applicable.
 2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.
- D. Final Monitoring Report(s)
1. The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
 2. The RE shall, in no case, issue the Notice of Completion and/or release of the Performance Bond for grading until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

VI. PUBLIC REVIEW DISTRIBUTION:

Draft copies or notice of this Mitigated Negative Declaration were distributed to:

City of San Diego

Central Library (81A)
La Jolla/Riford Branch Library (81L)
City Attorney's Office
Councilmember Hueso, Council District 8
Development Services, PJ Fitzgerald, Development Project Manager
Development Services, Jack Canning, Engineering
Development Services, Myra Herrmann, Environmental
Development Services, Glenn Spindell, Landscape
Development Services, Patrick Thomas, Geology
Development Services, Mitigation, Monitoring Coordination Program
Development Services, Bill Tripp, Permit Planning
Development Services, Victoria Huffman, Transportation
CPCI, Craig Hooker, MSCP

Others

Mark Kravis, Applicant
Tim Carmel
US Fish and Wildlife Service (23)
California Department of Fish and Game (32)
Sierra Club (167)
Mr. Jim Peugh (167A)
California Native Plant Society (170)
Endangered Habitats League (182A)
Historical Resources Board (87)
Carmen Lucas (206)
South Coastal Information Center (210)
San Diego Historical Society (211)
San Diego Archaeological Center (212)
San Diego Natural History Museum (213)
Save Our Heritage Organisation (214)
Ron Christman (215)
Louie Guassac (215A)
Clint Linton (215B)
San Diego County Archaeological Society (218)
Kumeyaay Cultural Repatriation Committee (225)
Native American Distribution List (225A-R)
Otay Mesa Nestor Community Planning Group (228)
Theresa Acerro (230)
Otay Mesa Chamber of Commerce (231A)
Otay Mesa Planning Committee (235)

VII. RESULTS OF PUBLIC REVIEW:

- () No comments were received during the public input period.
- () Comments were received but did not address the draft Mitigated Negative Declaration finding or the accuracy/completeness of the Initial Study. No response is necessary. The letters are attached.
- (x) Comments addressing the findings of the draft Mitigated Negative Declaration and/or accuracy or completeness of the Initial Study were received during the public input period. The letters and responses follow.

Copies of the draft Mitigated Negative Declaration and any Initial Study material are available in the office of the Land Development Review Division for review, or for purchase at the cost of reproduction.

Signature on file

Myra Herrmann, Senior Planner
Development Services Department

February 12, 2010
Date of Draft Report

March 9, 2010
Date of Final Report

Analyst: Lizzi



United States Department of the Interior

FISH AND WILDLIFE SERVICE
San Diego National Wildlife Refuge Complex
6010 Hidden Valley Road, Suite 101
Carlsbad, California 92011



RECEIVED

AUG 30 2010

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

August 27, 2010

Diana Lilly
California Coastal Commission
San Diego Area
7575 Metropolitan Dr., Suite 103
San Diego, CA 92108-4421

Subject: Palm Ave. car wash construction, confirmation of applicant coordination with San Diego Bay National Wildlife Refuge (Coastal Commission Appeal No. A-6-OMN-10-54, City Project #155821)

Dear Ms. Diana Lilly:

This letter is to confirm that Mr. Mark Kravis has coordinated with the San Diego Bay National Wildlife Refuge on his proposal to build a car wash on Palm Ave. in the City of San Diego (Coastal Commission Appeal No. A-6-OMN-10-54, City Project #155821). Because construction will be taking place adjacent to a Multiple Habitat Planning Area, all activities are required to be consistent with the Multiple Species Conservation Program and the Mitigation Monitoring and Reporting Program issued by the City of San Diego with regards to such items as drainage/toxins, lighting, invasives, barriers, grading/land development, and brush management. With these mitigation requirements, the San Diego Bay National Wildlife Refuge does not anticipate there to be any adverse impacts to the Refuge which is located approximately 1/4 mile from the project site.

Sincerely,

Signature on file

Kirk Gilligan
Acting Project Leader
San Diego National Wildlife Refuge Complex

CC: Mark Kravis
14704 Caminito Vista Estrellado
Del Mar, CA 92014

TAKE PRIDE
IN AMERICA

EXHIBIT NO. 7
APPLICATION NO. A-6-OMN-10-54
Letter from USFWS
California Coastal Commission



RC BIOLOGICAL CONSULTING, Inc.

PO Box 1568

Lemon Grove, CA 91946-1568

phone: (619) 463-1072 fax: (619) 463-0859

email: info@rcbio.com

Diana Lilly
Coastal Planner
7575 Metropolitan Drive, Suite 103
San Diego, CA 92119

August 30, 2010

RE: Palm Avenue Car Wash, PTS 155821, CDP # A-6-OMN-10-054

Dear Ms. Lilly,

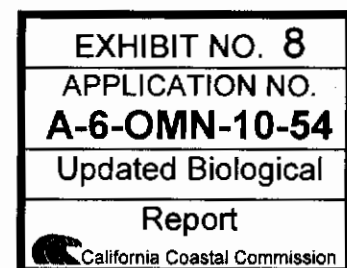
I am providing this letter at the request of Mr. Kravis to address the concerns raised by the Coastal Commission in your email dated July 12, 2010 to PJ Fitzgerald of the City of San Diego.

In the email you had questions regarding wetland buffers. As you are aware from the response provided in the email from PJ Fitzgerald on July 13, 2010, the project does not require a buffer pursuant to the City of San Diego's Land Development Code.

A thorough analysis was performed in the Biological Report of the potential for indirect impacts to MHPA/wetlands offsite to the east. In order to prevent significant indirect impacts from occurring to the MHPA/wetlands offsite design features were incorporated into the project. These features which but are not limited to, include the sound wall and limitations on openings on the eastern side of the building, were a result of one or more redesigns during the course of the project to ensure that no significant indirect impacts will occur as a result of the project.

The completed project may actually benefit the offsite resources to the east. The construction of the project and required storm water and best management practices will result in the runoff from the site being directed away from the MHPA and being filtered prior to entering into the storm water system. As the site is currently configured water runs directly from the site, including some from the Auto Zone directly into the MHPA without any filtration. Also the site is currently a source of invasive non-native weed

Palm Avenue Car Wash
PTS 155821, CDP #A-6-OMN-10-054



seeds which may enter into the MHPA. Once the project is completed the site will not provide a source of invasive non-native weed seeds.

In conclusion, the project has been developed in compliance with the City of San Diego's Land Development Code with regard to the requirement for buffers. Furthermore, a complete and thorough analysis of the potential for significant indirect impacts to occur to offsite MHPA/wetlands was performed in the Biological Report. As a result of design features contained within the project no significant indirect impacts will occur, further establishing that buffers are not necessary.

If you have any questions please do not hesitate to call.

Sincerely,

Signature on file

Robin Church
Principal

Mark Kravis

14704 CAMINITO VISTA ESTRELLADO DEL MAR, CA 92014
TEL 858 792 4088 FAX Home Fax Phone


mkkravis@earthlink.net

August 26, 2010
Diana Lilly
Coastal Commission
7575 Metropolitan Drive
San Diego, CA 92108-442

Dear Ms. Lilly,

I am writing this letter to make you aware and highlight the construction benefits of building this car wash. In the last hearing they were not mentioned and I am hoping you can add them to the report. We already have several items that will be a benefit to the Habitat.

1. We will contain **all** the water run off. In our proposal no water will leave the site and run into the habitat or the road then into the habitat. Everything in contained on site.
2. Removing an eyesore, we are removing a billboard.
3. We are also utilizing reject water from the spot free water system. Typically this water is discarded.
 - a. We are using the reject water for landscaping.
 - b. We are giving reject water to the neighbors for their landscaping.
 - c. Some reject water is used for wash rinses, saving fresh water.
4. We have two bicycle racks.
5. We are adding a 1500 gallon oil water separator to capture any oil from the Auto Zone parking lot before it reaches the swale. (new item)

EXHIBIT NO. 9
APPLICATION NO.
A-6-OMN-10-54
Letters from Applicant
 California Coastal Commission

6. Car washes hire a truck service to maintain oil water separators every 3 months. Therefore this additional oil water separator will be maintained quarterly.
7. We are adding a vertical wall - This will prevent plastic bags and other loose debris from entering the habitat.

Sincerely yours,

Mark Kravis

Mark Kravis For Palm Ave Car Wash

14704 CAMINITO VISTA ESTRELLADO DEL MAR, CA 92014
TEL 858 792 4088 (858) 724-1485

mkkravis@earthlink.net

RECEIVED

JUL 21 2010

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Tuesday, July 20, 2010
Coastal Commissioners
Coastal Commission
7575 Metropolitan Drive
San Diego, CA 92108-4421

Dear Commissioners,

I am writing this letter as a reply to the recent comments and appeal of Mr. Tim Carmel. I will give you a short history and I will lay out the facts, giving you the information you need to make a just decision. It will be short and I appreciate you taking the time to read this.

We have pursued this permit for many years now and have done everything the city of San Diego has asked, including many consulting reports and regular plans. Obviously this has been costly, costing over \$100,000 but my partner and I believe that this car wash will do well and we believe in this project. We have taken every consideration including meeting with our neighbors. We have met with and have made friends with the residents to the north which are the only direct residence to the property. Ms. Laura Nolan from the association was at the second hearing giving us the thumbs up to proceed with the car wash. We have added a wooden fence, tree's and are allowing them to use some excess processed water we have for landscaping on both our properties. We want to do the right thing and have been doing just that.

Mr. Carmel on the other hand has never shown up to a hearing. We have had three hearings so far all by appeal from Mr. Carmel and he was not attended one. We do not know who Mr. Carmel's client is. I called Mr. Carmel last year in September. He said he would call me back with his clients objections and has never returned my call. I hired lawyers to contact Mr. Carmel and he never returned their calls or letters. We do not know who his client is and I believe it is a competitor.

Tel 858 792 4088

Fax 858 725 1485

Email mkkravis@earthlink.net

In the last hearing an agent(Lawyer) of Mr. Carmel was confronted by Ms. Marti Emerald a city council member. Ms. Emerald asked who his client was ,his response "Like I said before , I think who our client is is irrelevant" "I wasn't appraised of who our client is" , "It's somebody, someone who has a beneficial interest"

I am now convinced he works for the competition. I am not sure on the legality of this, but in Mr. Carmel's other letters he states he represents "residents" , (attached). Certainly this is misleading and sad. We were approved overwhelmingly 6-0 in the last hearing. 7-0 in the hearing before and we , my partner and I were the only persons to show up for the first hearing.

Myself and my partner have paid over a \$100,000 in consulting reports for this environmental study. Mr. Carmel has **not** produced one report. His consultants have never been to the car wash location and have only critiqued our reports. This was admitted by Ms. Nicole Sauviat Criste in the second hearing. She was hired by Mr. Carmel. They have produced only an opinion based on our reports. They have no facts and Mr. Carmel's lack of participation (returning my calls) has not allowed these false objections to be cleared up.

Note: The new 100 year flood plan zone is attached to this document.

Respectfully

Mark Kravis.

Mr. Carmel and his UNKNOWN client have invested 0 dollars in actual studies.

Following are my comments in reply to Mr. Carmel's objection. These are here for you if needed.

1.Noise Level -

- a. Mr. Carmel claims that the traffic noise was not considered when calculating the sound study. His consultant misquotes the sound

study. She writes the quote "Our past experience in noise analysis of on-site traffic noise is mainly applied in this study" when the actual study says something different. The actual quote is "The information presented in the traffic study was taken into consideration, in addition our past experience in noise analysis of on-site traffic noise was mainly applied in this study." This is the real quote and I am troubled by this deceptive tactic. Also note that the report also quotes "Combining the noise levels generated by the blower and the traffic noise, combined noise in CNEL at the apartments".

- b. Mr. Carmel claims that the masonry wall will be demolished and replaced with a fence. This is a false assumption. Some of the existing wall will be demolished to build a retaining wall and then replaced to meet the existing non demolished wall. We also have agreed to add up to a 6 ft fence for the neighbors at their discretion. That is why the fence is stated in the plans. Mr. Carmel's assumption is wrong.
- c. Mr. Carmel claims that the car wash tunnel has windows. This is an option I wanted, we are required to purchase windows that meet the sound rating, noted in the report/plan.

2. Lighting -

- a. Mr. Carmel states that a lighting plan is not attached and that he cannot conclude if we are shining too much light on the MHPA. First know that we are a full service car wash. We will not be open after 6:00 pm. We are only using safety lighting. We are using led energy savings lights.
- b. Note : We are actually a benefit to the MHPA on lighting our building will block the light from the residence, Auto zone, and cars driving down palm. No lighting will be placed in the east side of the building.
- c. N/A
- d. N/A

3. Traffic -

- a. Mr. Carmel states that we will generate 1,933 additional trips on 13th street. I do not want to make light of this process, but if I can sell 2000 car washes a day, I will have the busiest car wash in the world. We expect to do about 200 cars per day.

4. Water Quality -

- a. Mr. Carmel claims that our water quality report does not consider chemicals. All car washes produced today are fully contained. All chemicals are distributed in the car wash and rinsed in the car wash. Water is then processed through a containment system and either pumped by a service or distributed to the city sewer. (See Attached documents)

5. Air Quality -

- a. Mr. Carmel claims that during the construction our grading will cause pollution. If you read his report , you will notice that the report is flawed. It does not include watering / wetting the dirt. This is commonly done. Also we are a full service car wash and we will not have any idling cars.
- b. THE CITY STANDARD FOR AIR QUALITY THRESHOLD IS 35,000 SQFT. THIS PROJECT ONLY HAS 8928 SQ FT.

6.

Conclusion - These objections do not warrant a retraction in the cities opinion. No reports were submitted by Mr. Carmel. No points made are legally adequate , noting that the standard of a CDP is to determine the projects build-ability. Also noted by Mr. Carmel the property is commercially zoned CC-4-2.

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www.carnaclaw.com

March 23, 2010

Via Golden State Overnight, Facsimile, and
E-mail

tcarmel@carnaclaw.com

Re: Palm Avenue Carwash

Dear City of San Diego Hearing Officer:

This office represents residents who live near the proposed Palm Avenue Carwash Project (the "Project" or "commercial carwash") site located at 1440 Palm Avenue, San Diego ("City"), with regard to your consideration and certification (adoption) of a proposed mitigated negative declaration for the Project. This letter is intended to address the many substantive and procedural flaws in the environmental review and analysis for the Project and to urge the City to perform additional and legally adequate environmental analysis before considering Project approval.

At the onset, it should be noted that the Otay Mesa-Nestor Community Planning Group (which voted 7-6 to recommend approval of the Project) considered the Project in an environmental vacuum, without the Initial Study and Mitigated Negative Declaration ("IS/MND"), comments, or responses. Attached hereto is an analysis dated March 4, 2010 from environmental planning consultants, Terra Nova Planning & Research, Inc., (the "TN Analysis") identifying the many omissions, errors and inaccuracies contained in the IS/MND for the Project, with an emphasis on the major land use conflicts and unidentified environmental impacts of the Project. The TN Analysis clearly and unambiguously establishes that this Project may have a significant impact on the environment. Simply stated, the manner in which the City has described, processed and analyzed the Project fails to meet basic legal requirements. The City cannot ignore the need for a new initial study in light of the inaccurate Project description and unevaluated and unmitigated environmental impacts.

We object to the legal adequacy and inaccuracy of the IS/MND, and strongly believe that the Project cannot be legally approved without, at a minimum, preparation and consideration of a new initial study, including an accurate Project description and a revised and recirculated IS/MND with appropriate and adequate mitigation measures addressing impacts from the Project's potentially significant noise, light, cultural resource, air quality, traffic/circulation, water quality/hydrology, and aesthetic impacts.

MUSICK, PEELER & GARRETT LLP
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LOS ANGELES
ORANGE COUNTY
SAN DIEGO
SAN FRANCISCO
SANTA BARBARA
WESTLAKE VILLAGE

May 3, 2010

VIA FACSIMILE, E-MAIL AND FIRST CLASS MAIL

Timothy J. Carmel, Esq.
Carmel & Naccasha, LLP
P.O. Box 15729
San Luis Obispo, CA 93406

NO Reply From
Mr. Carmel!
Ⓜ

Re: Palm Avenue Carwash Project

Dear Mr. Carmel:

Over the past three weeks, I have attempted to contact you on several occasions regarding our client, the owner of the Palm Avenue carwash project located on Palm Avenue in San Diego, California. As you are aware, the development site is located at 1440 Palm Avenue, San Diego, California (the "Project"). I have been trying to reach you to discuss the Project and your purported "client's" objections to the Project.

It is my understanding that your office has sent numerous solicitations to residents surrounding the Project in an attempt to influence residents to object to the development of the Project. Moreover, I am informed that your assistant "Hannah" has also been contacting local residents in an effort to have them engage your offices with regard to the development of the Project. We are informed, based on the above solicitations letters you have sent and the information being communicated by Hannah, that numerous misrepresentations are being disseminated to local residents and others regarding the Project. Specifically, it is my understanding that your office has been making statements concerning various studies completed by my client (e.g. air quality, environmental, traffic, etc.) which not only misstate the contents of the studies, but also knowingly and intentionally misquote the facts underlying the studies.

In addition, it is my understanding that Hannah recently attempted to speak with a resident at the Bay Site Villas claiming she had found this resident's contact information via the Google search engine. However, Hannah called this individual's cell phone number, which is not available through public search engines. It is our understanding that Hannah represented to surrounding residents that she was trying to recruit additional interested parties in the neighborhood who would be willing to "shut down" the Project.

MUSICK, PEELER & GARRETT LLP
ATTORNEYS AT LAW

Timothy J. Carmel, Esq.
May 3, 2010
Page 2

Please be advised that our client's investigation has determined that the individuals who you claim are your "clients," have in fact not executed a written engagement agreement with you nor have they agreed to compensate you in any manner for your services. Rather, my client has been informed and believes, that you have in fact been engaged by a competitor.

As you are aware, I have attempted to contact you on several occasions to discuss the Project with you and in fact I have spoken with Hannah in an effort to schedule a call with you. Hannah did inform me that you were going to be out of the office for a couple of days last week due to a "personal matter." However, on each occasion I called your office, I was informed that you were in the office but were not available to speak with me. Thus, I was forced to leave messages both with your assistant, Hannah, and your receptionist, Ashley.

As you are aware, the City has already approved the Project and the expert report you submitted in response to the studies completed by my client is deficient in every respect. There is a near zero chance that the City will reverse its previous decision to approve the Project based on the information you have disclosed to date. As such, it appears to us that you are only engaging in an opportunistic effort designed to delay the Project and waste the City's time and my client's money.

Please be advised that we will be monitoring the facts of this case very closely. While we recognize that individuals have legitimate governmental petition rights to address the Project, those rights have limits. As you know, California Business and Professions Code section 17200 defines actionable unfair competition as "any unlawful or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited Chapter 1....of Part 3 of Division 7 of the Business and Professions Code." Our objections have nothing to do with legitimate petitioning activity rather, we are extremely concerned about material misstatements made to the City (i.e., your firm represents a competitor, not "concerned residents") and patently false and misleading factual statements made to local residents about the Project.

On behalf of my client, I renew my invitation to meet and confer with you regarding your "client's" objections to the Project to see if we may resolve any legitimate concerns. On the other hand, if you do represent a competitor, I assume you will not be

MUSICK, PEELER & GARRETT LLP
ATTORNEYS AT LAW

Timothy J. Carmel, Esq.
May 3, 2010
Page 3

returning my calls and will continue to engage in what we believe are misleading and unfair business practices. I hope I am wrong and as such, await the courtesy of a return telephone call.

Very truly yours,

Signature on file

Timothy J. Daley
for MUSICK, PEELER & GARRETT LLP

TJD:gw

cc: Client

687957.1

LEGEND

FLOW DIRECTION

HEC-RAS CROSS SECTION

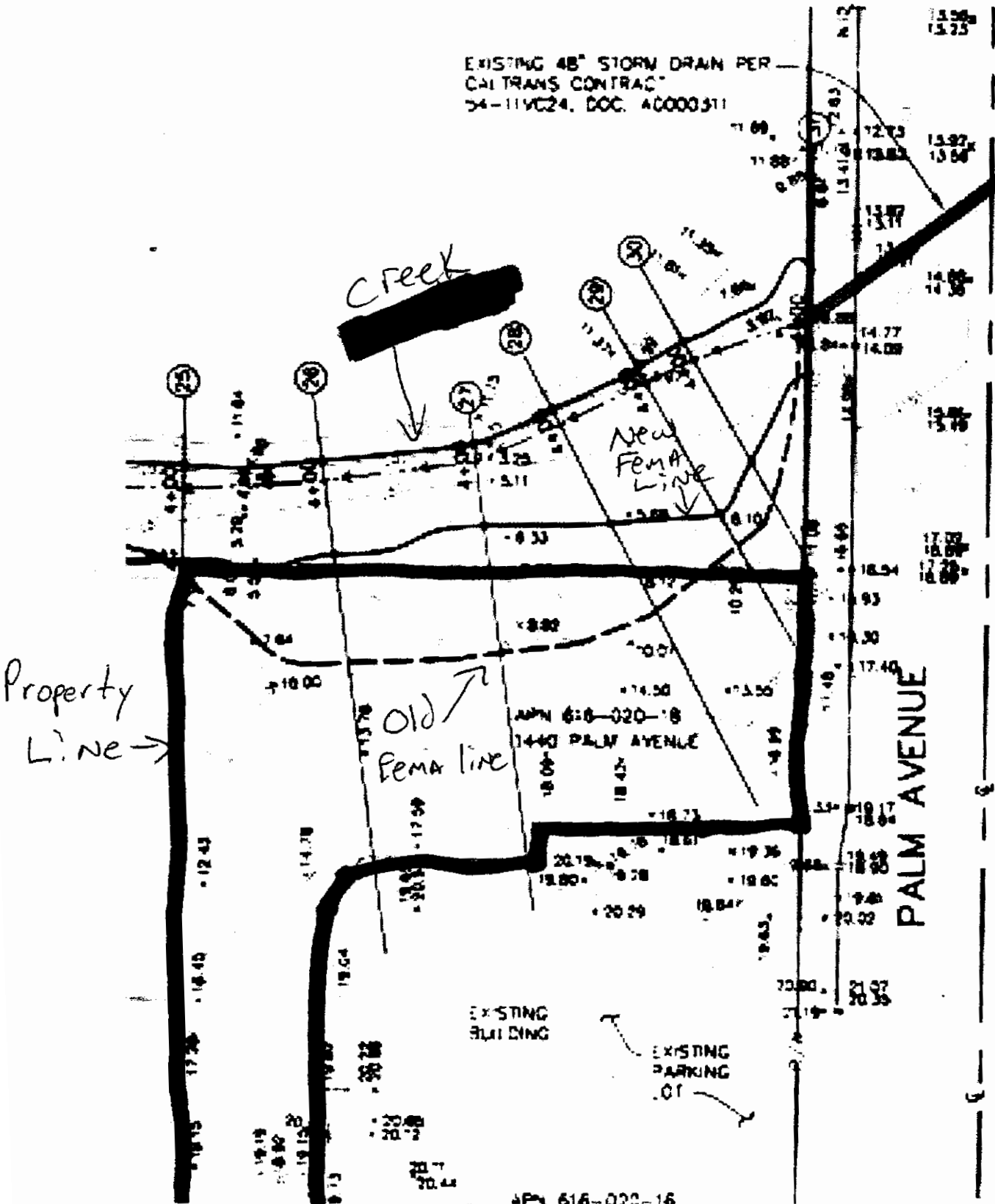
PROPOSED 50-YR & 100-YR FLOODPLAIN

EXISTING 100-YR FLOODPLAIN



TOPOGRAPHY

TOPOGRAPHY SURVEYED BY ALBERT ENGINEERING, INC.
ON JUNE 16 AND 18, 2010



CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
 7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4421
 VOICE (619) 767-2370 FAX (619) 767-2384

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form

RECEIVED

JUL 09 2010

CALIFORNIA
 COASTAL COMMISSION
 SAN DIEGO COAST DISTRICT

SECTION I. Appellant(s)

Name: Timothy J. Carmel

Mailing Address: 1410 Marsh Street

City: San Luis Obispo, CA

Zip Code: 93401

Phone: 805-546-8785

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of San Diego

2. Brief description of development being appealed:

Construction and operation of a 2 story 8,928 square foot car wash and convenience store with offices.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

1440 Palm Avenue, San Diego, CA 92101

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-6-OMN-10-054

DATE FILED:

7/9/10

DISTRICT:

San Diego

EXHIBIT NO. 10

APPLICATION NO.

A-6-OMN-10-54

Appeal Form

California Coastal Commission

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: June 29, 2010

7. Local government's file number (if any): Project No. 155821

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Mark Kravis
14704 Caminito Vista Estrellado
Del Mar, CA 92014

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Timothy J. Carmel, 1410 Marsh Street, San Luis Obispo, CA 93401

(2) Bill Piazza, Air Quality Dynamics, 23150 Ostronic Drive, Woodland Hills, CA 91367

(3) Nicole Criste, Terra Nova Planning and Research, Inc., 400 South Farrell, Suite B-205, Palm Springs, CA 92262

(4) Jon M. Ansolabehere, 1410 Marsh Street, San Luis Obispo, CA 93401

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

See Attachment 1

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signature on file

Signature of Appellant(s) or Authorized Agent

Date: 7/6/10

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

Attachment 1

Appeal from Coastal Permit Decision of Local Government

The Palm Avenue Car Wash project ("Project") is located immediately adjacent to the City of San Diego's ("City") Multi-Habitat Planning Area ("MHPA"). The MHPA is a large conservation area located along the City's coastline which is designed to protect, maintain and enhance an entire ecosystem for a wide variety of protected and endangered wildlife. As approved, the Project does not conform to the standards set forth in the City's local coastal program and is inconsistent with the policies and provisions of the California Coastal Act ("CCA"), including, but not limited to, California Public Resources Code §§ 30001, 30001.5, 30231, 30240 and 30253. As a result, the health, safety and welfare of the coastline environment and multi-species habitat will be adversely impacted and degraded.

Specifically, the City failed to adequately study and mitigate the Project's lighting, noise, water quality and air quality impacts.

Lighting:

The City failed to prepare a lighting study in order to analyze and mitigate the Project's impacts, in terms of light and glare, on the MHPA area. Rather, the City's initial study ("IS") simply states that "all proposed lighting shall be directed away from the MHPA, and shielded if necessary." This is also the extent of the City's mitigation measure. This type of deferred "analysis" and "mitigation" is not only wholly unsatisfactory but it fails to address the lighting impacts on the MHPA area from construction activities as well as the impacts from automobile headlights entering, parking and exiting the Project. Once the Project is approved, it will be difficult to "shield" the MHPA area from a poorly designed parking lot. Mitigation measures should be imposed to adequately limit these impacts on the sensitive species within the MHPA area.

Noise:

The noise study the City prepared is inadequate in that it analyzed the Project's noise impacts in an environmental setting significantly different than the environmental setting proposed. Currently, the Project property gently slopes down toward the MHPA area; however, the Project requires dirt to be excavated and a significant amount of fill material to be hauled in and graded in order for the building pads on the property to be

2 feet above grade. These different elevations in grade will result in very different acoustics than those actually studied. Moreover, the masonry wall currently in place will be removed and replaced with a wooded fence at the higher elevation. Noise attenuation from the wooden fence will be considerably less than the current masonry wall and sound projections at the higher grades will be considerably different. As such, a new noise analysis which accurately studies the Project's real noise impacts based on the Project's environmental setting should be prepared and proper mitigation measures should be imposed.

Water Quality:

The water report prepared by the City fails to analyze the impacts of the various solvents and detergents that the car wash portion of the Project uses and how these potentially dangerous chemicals could impact the MHPA area, especially at high concentrations. Accordingly, appropriate bio-swale filtration and treatment facilities should be required in order to mitigate the Project's impacts on the sensitive habitats of the MHPA area.

Air Quality:

The City refused to prepare an air quality assessment for the Project on the basis that the Project is simply a "carwash and convenience store with no sensitive receptors in close proximity." As such, the City fails to assess the Project's air quality impacts on not only the residential apartment complex next door, but the air quality impacts on the MHPA area. An air quality analysis prepared by the appellant substantiates that the Project will have unmitigated air quality impacts on the surrounding area, especially with respect to the significant amount of excavation, fill and grading activities required for the Project.

AIR QUALITY DYNAMICS

SPECIALIZING IN AIR QUALITY ANALYSIS

May 13, 2010

Carmel and Naccasha LLP
1410 Marsh Street
San Luis Obispo, California 93401
Attn: Timothy Carmel, Esq.

Re: Air Quality Analysis: Initial Study/Mitigated Negative Declaration for the Proposed Palm Avenue Car Wash

Mr. Carmel:

In response to your request to assess the adequacy of the air quality element for the above referenced project, the following is provided.

Upon review of the City of San Diego's (City) initial study, no relevant facts, technical studies or other substantial evidence to support the finding that project related impacts are less than significant is provided. Supporting documentation to assert their claim of insignificance associated with the potential for the project to expose individuals to pollutant concentrations is limited to a statement that the project is simply a "carwash and convenience store with no sensitive receptors in close proximity." As a result, "sensitive receptors would not be exposed to substantial pollutant concentrations." Air Quality Dynamics disagrees with this unsupported conclusion and finds that the project's air quality impacts are potentially significant. Although an initial study is neither intended nor required to include the level of detail typically reported in an environmental impact report (EIR), the City's analysis is clearly woeful in its attempt to assess potential environmental impacts. As such, the City cannot support their claim of insignificance.

Due to the City's failure to provide relevant documentation as to the project's potential to expose local residents to particulate emissions generated during construction related activities, a subsequent analysis was prepared by Air Quality Dynamics which clearly shows the project will expose sensitive receptors to substantial pollutant concentrations necessitating the preparation of an EIR.

The following discussion underscores concern for the project's potential to meet the test of significance and technical inadequacy of the City's Initial Study.

FAILURE TO CONSIDER RESIDENTIAL OCCUPANCIES AS SENSITIVE RECEPTORS

The City relies upon the South Coast Air Quality Management District's (SCAQMD) definition of a sensitive receptor when considering the potential impact of project related emissions on an exposed population. Specifically, the City's guidelines state:

As adopted by the South Coast Air Quality Management District (SCAQMD) in their CEQA Air Quality handbook, a sensitive receptor is a person in the population who is particularly susceptible to health effects due to exposure to an air contaminant than is the population at large. Sensitive receptors (and the facilities that house them) in proximity to localized CO sources, toxic air contaminants or odors are of particular concern.

Further, the guidelines provide a list of land uses identified in the SCAQMD handbook that are considered sensitive receptor locations. Of relevance is the inclusion of "residences" in that compilation. The City, however, for no other reason than exclusion, interprets a residential occupancy to mean medical patients housed in infirmaries or the young and elderly residing in long term care or assisted living facilities. This interpretation is absurd and contrary to the definition of a sensitive receptor adopted by the SCAQMD.¹ For the City's reference, SCAQMD's definition is presented below.

Receptor locations are off-site locations where persons may be exposed to the emissions from project activities. Receptor locations include residential, commercial and industrial land use areas; and any other areas where persons can be situated for an hour or longer at a time. These other areas include parks, bus stops, and side walks but would not include the tops of buildings, roadways, or permanent bodies of water such as, oceans or lakes. For the purposes of a CEQA analysis, the SCAQMD considers a sensitive receptor to be a receptor such as a residence, hospital, convalescent facility were it is possible that an individual could remain for 24 hours.

Notwithstanding the City's acknowledgment that children, the elderly and others who suffer from asthma or have compromised immune systems are considered sensitive individuals, it is most reasonable to assume that they reside in single family homes or similar dwellings over the course of a 24 hour day. Without further dissertation, the residents adjoining the proposed project are clearly sensitive receptors.

INAPPROPRIATE USE OF SIGNIFICANCE CRITERIA TO IDENTIFY CONSTRUCTION RELATED IMPACTS

Based upon an examination of the City's guidelines, a numeric value of 100 pounds per day for airborne dust (i.e., PM₁₀) was established as the significance threshold for construction related activities. This is based upon the San Diego Air Pollution Control District's (SDAPCD) Regulation II, Rule 20.2, AQIA Trigger Level. Please note that this threshold is simply an emission limit. It does not correspond to an ambient air concentration which is required to assess exposure.

The City's guidelines, however, recommend that when "sensitive receptors are involved" a more restrictive threshold based upon both the National and State Ambient Air Quality Standards be applied. Air Quality Dynamics is at a loss as to this reference as San Diego is classified as non-attainment for PM₁₀ whereby background concentrations already exceed existing air quality standards. As such, the City does not provide an incremental numeric standard to define exposures to substantial pollutant concentrations.

¹ South Coast Air Quality Management District, 2008. Final Localized Significance Threshold Methodology.

The City is advised to consult SDAPCD's Rule 20.2 (d)(2)(v)(C) which restricts PM_{10} emissions from meeting or exceeding 10 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) for the 24-hour averaging time as a threshold for assessing exposures to particulate concentrations. The viability and relevance of this threshold is underscored in a recent California Air Resources Board (ARB) advisory.² The advisory states that:

PM_{10} is among the most harmful of all air pollutants. When inhaled these particles evade the respiratory system's natural defenses and lodge deep in the lungs. Health problems begin as the body reacts to these foreign particles. PM_{10} can increase the number and severity of asthma attacks, cause or aggravate bronchitis and other lung diseases, and reduce the body's ability to fight infections.

Although particulate matter can cause health problems for everyone, certain people are especially vulnerable to PM_{10} 's adverse health effects. These "sensitive populations" include children, the elderly, exercising adults, and those suffering from asthma or bronchitis. Of greatest concern are recent studies that link PM_{10} exposure to the premature death of people who already have heart and lung disease, especially the elderly.

In establishing the current ambient air quality standard Mr. Michael P. Kenny, then Executive Officer of the ARB reported that PM_{10} is "known to be linked with airway conditions, such as asthma and bronchitis" and noted that the PM_{10} "24-hour standard is the most important (standard) in addressing acute health effects." He continued by stating that:

When the California Air Resources Board established its PM_{10} standard, it found $50 \mu\text{g}/\text{m}^3$ to be a health-protective value. A review of recent findings strongly supports the merit of this determination, but suggests that a $50 \mu\text{g}/\text{m}^3$ level provides little, if any, margin of safety.

Please note that numerous epidemiological studies have repeatedly shown that an incremental increase of $10 \mu\text{g}/\text{m}^3$ above existing background levels will consistently induce adverse health effects. An excerpt from two respective studies which underscore this contention is provided for your consideration. Dockery et al commenting on the acute respiratory effects of particulate air pollution (American Journal of Respiratory and Critical Care Medicine, Volume 153, 1996) reports that:

While total mortality increased by 1% for each $10 \mu\text{g}/\text{m}^3$ increase in PM_{10} , respiratory mortality increased by 3.4% and cardiovascular mortality increased by 1.4%. Hospital admissions and emergency department visits increased approximately 1% for all respiratory complaints, and 2% to 3% for asthma. Exacerbation of asthma increased about 3%, as did lower respiratory symptoms. Small decreases in lung function, approximately 0.1%, have also been observed.

Gordian et al while assessing particulate air pollution and respiratory disease (Environmental Health Perspectives, Volume 104, 1996) concludes that:

(A)n increase of $10 \mu\text{g}/\text{m}^3$ in PM_{10} is associated with a 3-6% increase in medical visits for asthma and a 1-3% increase in medical visits for upper respiratory illness.

² California Air Resources Board, 2009. Air Pollution - Particulate Matter Brochure.

The authors continue by stating that:

(T)he increased morbidity is associated not just with a vulnerable segment of the population, but with a relatively young, healthy working group as well. These findings could have important implications to U.S. EPA in the ongoing review of the ambient air quality standard for PM₁₀.

To underscore this concern, the SDAPCD acknowledges that PM₁₀ and smaller particles are capable of bypassing the body's natural defenses in the nose and throat and entering the lungs. They report that "(w)hen inhaled, particles can increase the number and severity of asthma attacks and cause or aggravate bronchitis and other lung diseases." In addition, they note that "(c)ommunity health studies also link particle exposure to the premature death of people who already have heart and lung disease, especially the elderly."³ Clearly, these studies not only serve to address the viability of the 10 µg/m³ threshold, but give rise to concern for the subsequent health related impacts associated with anticipated dust generating activities from project construction.

FAILURE TO ADEQUATELY ASSESS PARTICULATE (PM₁₀) EMISSIONS FROM CONSTRUCTION RELATED ACTIVITY

In light of the City's token observance to the assessment of air quality impacts by failing to apply a viable threshold to assess significance, Air Quality Dynamics considered it prudent to perform an initial air quality assessment. This was done to exemplify that incremental emissions associated with construction of the proposed project may expose residential receptors to substantial pollutant concentrations thereby endangering the health of those who reside within the adjoining residential community.

In anticipation of the City's argument that an analysis to assess particulate impacts would be speculative in nature, we remind the City that the U.S. Environmental Protection Agency (U.S. EPA), California Environmental Protection Agency (Cal/EPA) and many local air agencies offer guidance to assist the City in assessing construction related impacts.

One such example is the Localized Significance Threshold (LST) Methodology developed by the SCAQMD. The LST guidance was developed as an implementation tool to assist local agencies in the evaluation of projects subject to CEQA review. The LST methodology presents a representative compilation of existing guidance on emission estimation techniques and air quality modeling.

A review of the project's geotechnical investigation⁴ reveal that "loose undocumented fill and alluvium covers the site to depths ranging approximately from 4 to 8 feet below existing grade. These loose surficial soils are susceptible to settlement upon loading." As such, "(a)ll undocumented fill and alluvium should be completely removed from areas that are planned to receive compacted fills and/or structural improvements." For non-structural areas, the report recommends "overexcavation to a minimum depth of 2 feet below existing grade." With

³ San Diego Air Pollution Control District, 2010. Particulate Matter Fact Sheet

⁴ East County Soil Consultation and Engineering, Inc., 2007. Limited Geotechnical Investigation - Proposed Carwash Building, Palm Avenue, APN 616-020-11,17, Imperial Beach, California.

assurance from the City that "proper engineering design and recommendations"⁵ identified in the geotechnical report would be followed, it is anticipated that a significant volume of on-site soils will be excavated and removed to accommodate the building footprint and appurtenant structures.

Based upon the above referenced activity, site preparation and the excavation of identified soils (i.e., overburden) will require the use of heavy equipment such as a bulldozer or similar earth moving contrivance to effectuate removal. Construction equipment such as motor graders which typically generate lower fugitive emissions are often used to quantify emissions from grading activities. However, for overburden removal, their use is not indicated as their function is to create a flat, finish grade surface, not perform the earthmoving functions required to complete this project phase.

With that said, a screening dispersion analysis was performed which quantified the downwind extent from both fugitive and exhaust emissions from the operation of a single bulldozer removing on-site soils. Although additional support equipment would be employed during this project phase, the analysis was simplified to include only excavation related activity.

To characterize particulate source strength, fugitive emissions were quantified through the U.S. EPA predictive emission equation for overburden removal.⁶ Input values for silt and moisture content were derived from the test pit values presented in the geotechnical investigation report. A control efficiency of 61 percent was additionally applied to account for a periodic water spray application.⁷ Combustion emission factors published by the ARB and utilized by the SCAQMD were incorporated to characterize equipment exhaust.⁸ Active construction operations were assumed to occur 7 hours per day over an 8 hour workday. Attachment A presents the emission calculation worksheet which lists the predictive emission equations and corresponding input values.

To quantify particulate concentrations, air dispersion modeling utilizing the AMS/EPA Regulatory Model AERMOD was performed. The model is approved by the U.S. EPA when estimating the air quality impacts associated with point and fugitive sources in simple and complex terrain. Meteorological data provided by the SDAPCD from the Chula Vista monitoring station was incorporated into the modeling exercise to represent local weather conditions and prevailing winds. SDAPCD staff also indicated that the project site is sufficiently close to water bodies and other non-urban land use categories. As such, it was recommended that the model be programmed to account for plume dispersion under the rural land use classification.⁹

To account for variations in local terrain, elevations from the U.S. Geological Survey National Elevation Dataset (NED) utilizing a 1/3 Arc Second resolution were generated by the AERMOD terrain processor (AERMAP) and incorporated into the modeling exercise.

⁵ City of San Diego, Development Services Department, 2010. Initial Study Checklist.

⁶ U.S. EPA, 1995. AP-42, Section 11.9, Table 11.9-1.

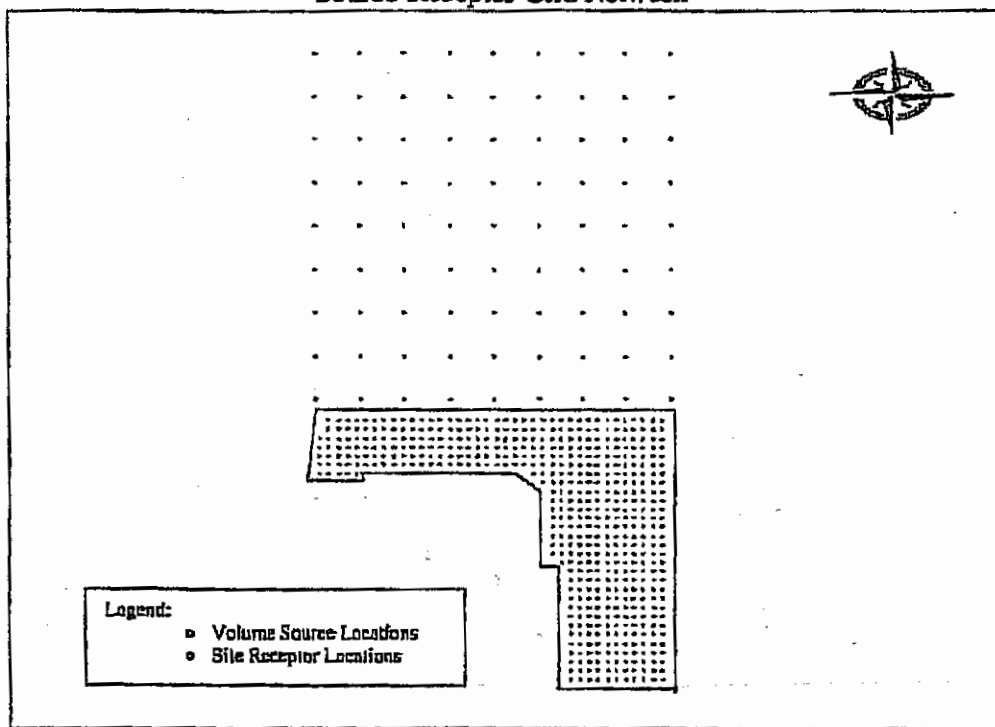
⁷ South Coast Air Quality Management District, 2010. Table XI-A - Mitigation Measure Examples: Fugitive Dust from Construction and Demolition.

⁸ South Coast Air Quality Management District, 2010. Off-road Mobile Source Emission Factors (Scenario Years 2007 -2025).

⁹ San Diego Air Pollution Control District, 2010. Data and consultation provided by Ralph DeSiena, Meteorology Section.

Source treatment outlined in the LST methodology was utilized. One exception was to forgo use of the area source algorithm for fugitive emissions in order to avoid the overestimation of particulate concentrations. Currently, the AERMOD area source algorithm does not account for plume meander during light wind conditions. As such, the assessment utilized a volume source approximation to characterize fugitive source generation. The number and lateral dimensions of each volume source were additionally revised to allow for near field concentration estimates in consideration of the model's limitation to maintain a minimum source-receptor distance (i.e., 1 meter plus 2.15 times the standard deviation of the lateral source dimension). A graphical representation of the source-receptor grid network is presented in Figure 1.

Figure 1
Source-Receptor Grid Network



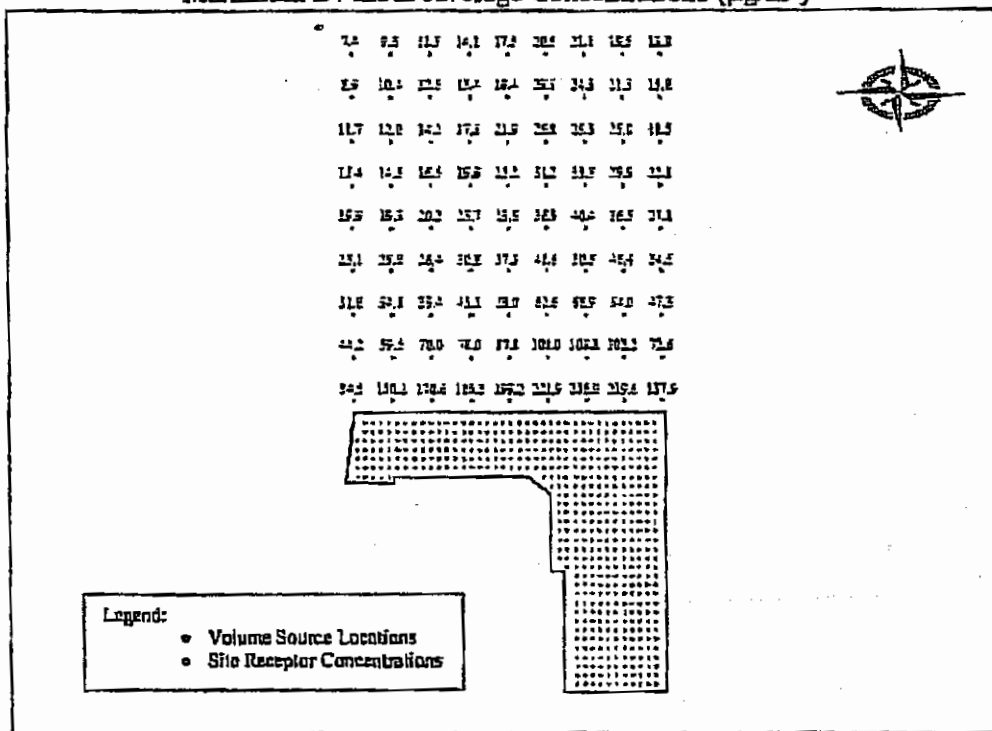
Another variation was to incorporate discrete dry removal mechanisms for exhaust particulates. Based upon the initial LST methodology for the treatment of plume depletion (DRYDPLT), identified weight fractions for fugitive emissions and those referenced in the California Emission Inventory Data and Reporting System (CEIDARS) profile for off-road diesel fired equipment were adjusted to produce a deposition value set of three aerodynamic diameter sizes of 1.0, 2.5 and 10 microns (μm) with weight fractions of 0.3483, 0.5717, and 0.08, respectively. A particle density of 2.3 grams per cubic centimeter was assigned to all size bins

The emission rate scalar option was invoked to account for particulates generated during the hours of representative construction activity (i.e., 8:00 a.m. to 4:00 p.m.). A value of 0.875 was utilized for each identified hour to effectively allocate source emissions over the 8 hour workday.

A copy of the dispersion model output summary file is provided in Attachment B. For your records, an electronic copy of the complete model input/output files, meteorological data and the NED 1/3 Arc Second GeoTIFF dataset is provided in CD format.

Results of the modeling exercise predicted PM₁₀ concentrations in excess of 10 µg/m³ for all but 3 receptor locations located north of the project boundary. As noted in Figure 2 below, concentration estimates range from 235.9 µg/m³ to 7.4 µg/m³. Based upon available health effects information and concerns raised by the ARB that there are no established safe levels of exposure and little margin of safety in our current 24-hour standard, the incremental emissions associated with the construction of the proposed project would clearly expose sensitive receptors to substantial pollutant concentrations whereby endangering the health of local residents.

Figure 2
Maximum 24-Hour Average Concentrations (µg/m³)



SIGNIFICANT IMPACTS REMAIN REQUIRING THE PREPARATION OF AN EIR

The above discussion identified notable inadequacies in the City's analysis. It has been shown that the City provides nothing more than a token assessment of the air quality impacts associated with the proposed project with no evidence to support the initial study's determination that the project will not expose sensitive receptors to substantial pollutant concentrations. Please note that the above analysis served to exemplify the potential to impact local residents utilizing a single equipment operation. As a result, it is believed that due to the excessive silt and low moisture characteristics of on-site soils, an assessment which incorporates all related support equipment (e.g., loaders and haul trucks) and their operational profiles during earthmoving activities will generate even higher pollutant concentrations.

Air Quality Dynamics trusts that the preceding analysis demonstrates the inadequacy of the City's air quality assessment, clearly reveals that the project will have significant unmitigated air quality impacts and provides relevant documentation to substantiate the need for the preparation of an EIR. I can be reached at (818) 703-3294 should you have any questions or require additional information.

Sincerely,

Signature on file

Bill Piazza / /
Air Quality Dynamics

:bp

Attachments: as stated and author biography

Biography

Bill Piazza

Mr. Bill Piazza has more than 20 years of experience in the field of environmental health and safety with particular expertise in both air dispersion modeling and health risk assessments. Mr. Piazza has completed more than 200 risk and hazard assessment studies. To date, he has characterized and modeled the contaminant emissions of more than 2,000 commercial, industrial and mobile source emissions.

Mr. Piazza has participated in the drafting of several environmental regulations including Public Resources Code Section 21151.8 and Education Code Section 17213 (e.g., SB 352) which requires school districts to evaluate the impacts of siting schools within close proximity to facilities that emit toxic air contaminants.

Mr. Piazza has performed private consultative services to clients such as MCA and Disney Development Companies, the Los Angeles City Department of Water and Power, Communities for a Better Environment, Corporation for Clean Air, Safe Action for the Environment and the Santa Clarita Organization for Planning the Environment. Mr. Piazza has provided services as a subcontractor to other consulting firms to assess the impact of both process and fugitive emissions associated with projects prepared under the auspices of the California Environmental Quality (CEQA) and National Environmental Policy Acts (NEPA).

Mr. Piazza has consulted with members of the Los Angeles, El Segundo, Huntington Park and Rolling Hills Estates city councils, as well as members of the City of Santa Monica Airport Commission, to address issues related to air toxic emissions.

Mr. Piazza has lectured for several health and hazard assessment classes conducted under the auspices of the University of California, Los Angeles and the University of Southern California and made several presentations to the American Industrial Hygiene Association, Southern California Society for Risk Analysis, California's Coalition for Adequate School Housing and Coalition for Clean Air on community-based risk and exposures to both criteria pollutants and toxic air contaminants.

Mr. Piazza participated as a member of the South Coast Air Quality Management District's (SCAQMD) Localized Significance Threshold Working Group which developed an assessment tool to assist lead agencies in the analysis of air pollution impacts at the local scale. Mr. Piazza was also a member of SCAQMD's MATES II external peer review group responsible for evaluating the agency's technical methodology and implementation plan to characterize ambient levels and "hot spot" concentrations of toxic compounds throughout the South Coast Air Basin. Mr. Piazza is currently a member of SCAQMD's greenhouse gas working group responsible for the development of significance thresholds for projects prepared in accordance with CEQA.

Mr. Piazza additionally participated as a member of the California Air Resources Board's (ARB) Risk Management Subcommittee and Risk Characterization Technical Group responsible for developing statewide assessment methodologies to assess the generation and associated impact of diesel emissions on sensitive receptor populations. Mr. Piazza was also a member of ARB's Community Health Modeling Working Group which was responsible for developing guidelines for the assessment and mitigation of air pollution impacts at the neighborhood scale.

Mr. Piazza's assessment work has also been featured in journal articles published by *Environment and Planning C: Government and Policy* 2002 and the *Journal of Environmental Health*.

Attachment A

Emission Calculation Worksheet

Fugitive Emissions**Overburden Removal**

$$\text{Emission Factor (lbs/hr)} = (0.75) \times (1.0 \times (s)^{1.5} \times (M)^{-1.4})$$

s = Material Silt Content (%) 33.5
 M = Material Moisture Content (%) 4.3

PM₁₀ Emission Rate (lbs/hr) 18.870
 PM₁₀ Emission Rate (g/sec) 2.378

Applied Control Efficiency (%/100) 61

Sources (#) 519

Total PM₁₀ Emissions (g/sec-source) **1.787E-03**

Mobile Source Emissions**Operation**

$$\text{Emission Rate (lbs/hr)} = (A \times B)$$

A = Equipment Used (#) 1.0
 B = PM10 Emission Factor (lbs/hr) 0.1036

PM₁₀ Emission Rate (lbs/hr) 0.1036
 PM₁₀ Emission Rate (g/sec) 0.013

Sources (#) 519

Total PM₁₀ Emissions (g/sec-source) **2.515E-05**

Note: Material silt and moisture content values obtained by averaging available test and laboratory data from test pit location 1 (TP-1).

Bulldozer exhaust emission factor based upon a nominal horsepower rating of 175 for the 2010 scenario year.

Michael B

*** AERMOD - VERSION 09292 ***

*** Palm Avenue Car Wash
*** Construction Emissions - PM10*** 04/28/10
*** 23:43:27
PAGE 1**MODELOPTS: CONC ELEV
FLGPOL DRYOPLT

*** MODEL SETUP OPTIONS SUMMARY ***

**Model is Setup For Calculation of Average CONCENTRATION Values.

-- DEPOSITION LOGIC --

**NO GAS DEPOSITION Data Provided.

**PARTICLE DEPOSITION Data Provided.

**Model Uses DRY DEPLETION. DDPLETE = T

**Model Uses NO WET DEPLETION. WETOPLT = F

**Model Uses RURAL Dispersion Only.

**Model Allows User-Specified Options:

1. Stack-tip Downwash.
2. Model Accounts for ELEVated Terrain Effects.
3. Use Calms Processing Routine.
4. Use Missing Data Processing Routine.
5. No Exponential Decay.

**Model Accepts FLAGPOLE Receptor Heights.

**Model Calculates 1 Short Term Average(s) of: 24-Hr

**This Run Includes: 1038 Source(s); 3 Source Group(s); and 01 Receptor(s)

**The Model Assumes A Pollutant Type of: OTHER

**Model Set To Continue RUNNING After the Setup Testing.

**Output Options Selected:

- Model Outputs Tables of Highest Short Term Values by Receptor (RECTABLE Keyword)
- Model Outputs External File(s) of High Values for Plotting (PLOTFILE Keyword)
- Model Outputs Separate Summary File of High Ranked Values (SUMFILE Keyword)

**NOTE: The Following Flags May Appear Following CONC Values: c for Calm Hours
m for Missing Hours
b for Both Calm and Missing Hours

**Misc. Inputs: Base Elev. for Pot. Temp. Profile (m MSL) = 55.00 ; Decay Coef. = 0.000 ; Rot. Angle = 0.0
Emission Units = GRAMS/SEC ; Emission Rate Unit Factor = 0.10000E+07
Output Units = MICROGRAMS/M**3

**Approximate Storage Requirements of Model = 4.3 MB of RAM.

**Input Runstream File: carwash_pm10_final.DTA

**Output Print File: carwash_pm10_final.LST

**File for Summary of Results: F:\palm_venue_car_wash\carwash_pm10_final.SUM

*** AERMOD - VERSION 09292 ***

*** Palm Avenue Car Wash
*** Construction Emissions - PM10

*** 04/20/10
*** 23:43:27
PAGE 3

**MODELOPTs: CONC ELEV
FLGPOL DRYDPLT

*** UP TO THE FIRST 24 HOURS OF METEOROLOGICAL DATA ***

Surface file: 02_CVA_PROF.SFC
Profile file: 02_CVA_PROF.PFL
Surface format: FREE
Profile format: FREE
Surface station no.: 72290
Name: UNKNOWN
Year: 2002

Upper air station no.: 3190
Name: UNKNOWN
Year: 2002

Met Version: 06341

First 24 hours of scalar data

YR	MO	DAY	HR	DD	U*	W*	DT/DZ	ZICNV	ZIRCH	M-O	LEN	ZO	BOWEN	ALD	REF	WS	WD	HIT	REF	TA	HT	IPCD	PRATE	RH	SFCP	COVR
02	01	01	01	-2.9	0.077	-9.000	-9.000	-999.	49.	14.5	1.00	1.00	1.00	0.89	1.	10.	285.9	2.***	-9.00	88.	1013.	10				
02	01	01	02	-2.9	0.077	-9.000	-9.000	-999.	49.	14.5	1.00	1.00	1.00	0.89	15.	10.	285.9	2.***	-9.00	94.	1013.	10				
02	01	01	03	-0.7	0.039	-9.000	-9.000	-999.	18.	7.3	1.00	1.00	1.00	0.45	17.	10.	285.9	2.***	-9.00	88.	1013.	10				
02	01	01	04	-7.2	0.128	-9.000	-9.000	-999.	106.	26.7	1.00	1.00	1.00	1.34	44.	10.	285.9	2.***	-9.00	88.	1013.	10				
02	01	01	05	-14.5	0.259	-9.000	-9.000	-999.	303.	108.5	1.00	1.00	1.00	1.79	49.	10.	285.4	2.***	-9.00	94.	1013.	10				
02	01	01	06	-4.0	0.077	-9.000	-9.000	-999.	90.	10.5	1.00	1.00	1.00	0.89	47.	10.	285.4	2.***	-9.00	94.	1013.	9				
02	01	01	07	-3.1	0.077	-9.000	-9.000	-999.	50.	13.3	1.00	1.00	1.00	0.89	48.	10.	284.2	2.***	-9.00	94.	1013.	9				
02	01	01	08	-0.6	0.039	-9.000	-9.000	-999.	18.	9.1	1.00	1.00	0.49	0.45	63.	10.	284.2	2.***	-9.00	100.	1013.	9				
02	01	01	09	5.7	0.124	0.170	0.009	31.	101.	-30.5	1.00	1.00	0.30	0.90	310.	93.	285.4	2.***	-9.00	94.	1013.	10				
02	01	01	10	18.3	0.124	0.350	0.009	91.	100.	-9.4	1.00	1.00	0.23	0.45	352.	10.	287.0	2.***	-9.00	87.	1019.	10				
02	01	01	11	58.6	0.220	0.752	0.012	262.	237.	-16.4	1.00	1.00	0.21	0.89	322.	10.	288.1	2.***	-9.00	82.	1013.	9				
02	01	01	12	66.4	0.432	0.907	0.013	406.	653.	-109.7	1.00	1.00	0.20	2.24	264.	10.	289.2	2.***	-9.00	72.	1013.	9				
02	01	01	13	65.7	0.223	0.930	0.016	443.	277.	-15.2	1.00	1.00	0.20	0.89	266.	10.	290.4	2.	0	-9.00	68.	1013.	9			
02	01	01	14	55.5	0.427	0.899	0.014	472.	642.	-126.9	1.00	1.00	0.21	2.24	261.	10.	289.2	2.***	-9.00	77.	1013.	9				
02	01	01	15	37.3	0.418	0.798	0.014	492.	622.	-177.3	1.00	1.00	0.24	2.24	271.	10.	288.1	2.***	-9.00	82.	1013.	9				
02	01	01	16	20.0	0.265	0.652	0.015	502.	328.	-84.1	1.00	1.00	0.33	1.34	284.	10.	288.8	2.***	-9.00	78.	1010.	8				
02	01	01	17	-6.6	0.116	-9.000	-9.000	-999.	110.	21.7	1.00	1.00	0.60	1.34	267.	10.	288.1	2.***	-9.00	82.	1013.	9				
02	01	01	18	-3.8	0.077	-9.000	-9.000	-999.	50.	11.0	1.00	1.00	1.00	0.89	289.	10.	287.0	2.***	-9.00	80.	1013.	9				
02	01	01	19	-1.0	0.039	-9.000	-9.000	-999.	18.	5.2	1.00	1.00	1.00	0.45	340.	10.	287.0	2.***	-9.00	88.	1013.	0				
02	01	01	20	-0.8	0.039	-9.000	-9.000	-999.	18.	6.7	1.00	1.00	1.00	0.45	12.	10.	287.0	2.***	-9.00	88.	1013.	9				
02	01	01	21	-2.9	0.077	-9.000	-9.000	-999.	49.	14.5	1.00	1.00	1.00	0.89	8.	10.	287.0	2.***	-9.00	88.	1013.	10				
02	01	01	22	-0.6	0.053	-9.000	-9.000	-999.	28.	21.6	1.00	1.00	1.00	1.20	295.	93.	287.5	2.***	-9.00	84.	1019.	10				
02	01	01	23	-0.7	0.039	-9.000	-9.000	-999.	18.	7.3	1.00	1.00	1.00	0.45	44.	10.	287.0	2.***	-9.00	88.	1013.	10				
02	01	01	24	-7.2	0.130	-9.000	-9.000	-999.	108.	27.6	1.00	1.00	1.00	1.34	13.	10.	287.0	2.***	-9.00	88.	1013.	10				

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*** AERMDD - VERSION 09292 ***

*** Palm Avenue Car Wash
 *** Construction Emissions - PM10

*** 04/28/10
 *** 23:43:27
 PAGE 4

**MODELOPTs: CONC ELEV
 FL6POL DRYDPLT

First hour of profile data

YR	MO	DAY	HR	HEIGHT	F	WDIR	WSPD	AWS_TMP	sigmaA	sigmaW	sigmaV
02	01	01	01	10.0	0	1.	0.89	-999.0	-999.0	-99.00	-99.00
02	01	01	01	95.0	0	303.	2.10	-999.0	-999.0	-99.00	-99.00
02	01	01	01	134.0	0	-999.	-99.00	288.0	-999.0	-99.00	-99.00
02	01	01	01	148.0	0	307.	2.20	-999.0	-999.0	-99.00	-99.00
02	01	01	01	194.0	0	-999.	-99.00	287.5	-999.0	-99.00	-99.00
02	01	01	01	203.0	0	309.	2.30	-999.0	-999.0	-99.00	-99.00
02	01	01	01	254.0	0	-999.	-99.00	286.9	-999.0	-99.00	-99.00
02	01	01	01	258.0	0	326.	2.10	-999.0	-999.0	-99.00	-99.00
02	01	01	01	313.0	0	309.	2.70	-999.0	-999.0	-99.00	-99.00
02	01	01	01	314.0	0	-999.	-99.00	286.5	-999.0	-99.00	-99.00
02	01	01	01	368.0	0	339.	2.20	-999.0	-999.0	-99.00	-99.00
02	01	01	01	374.0	0	-999.	-99.00	286.3	-999.0	-99.00	-99.00
02	01	01	01	423.0	0	13.	1.60	-999.0	-999.0	-99.00	-99.00
02	01	01	01	478.0	0	14.	2.30	-999.0	-999.0	-99.00	-99.00
02	01	01	01	533.0	0	-999.	-99.00	-999.0	-999.0	-99.00	-99.00
02	01	01	01	588.0	0	-999.	-99.00	-999.0	-999.0	-99.00	-99.00
02	01	01	01	643.0	0	-999.	-99.00	-999.0	-999.0	-99.00	-99.00
02	01	01	01	698.0	0	68.	1.40	-999.0	-999.0	-99.00	-99.00
02	01	01	01	753.0	0	4.	2.10	-999.0	-999.0	-99.00	-99.00
02	01	01	01	808.0	1	349.	3.50	-999.0	-999.0	-99.00	-99.00

F indicates top of profile (=1) or below (=0)

*** AERMOD - VERSION 0929Z ***

*** Palm Avenue Car Wash
*** Construction Emissions - PM10

*** 04/28/10
*** 23:43:27
PAGE 5

**MODELOPTs: CONC ELEV
FLGPOL DRYDPLT

*** THE SUMMARY OF HIGHEST 24-HR RESULTS ***

** CONC OF OTHER IN MICROGRAMS/H**3

GROUP ID	AVERAGE CONC	DATE (YYMMDDHH)	RECEPTOR (XR, YR, ZELEV, ZHILL, ZFLAG)	OF TYPE	NETWORK GRID-ID
ALL HIGH 1ST HIGH VALUE IS	235.89136c	ON 02122224	AT (490165.60, 3605260.00, 3.93, 3.93, 2.00)	DC	
FUGITIVE HIGH 1ST HIGH VALUE IS	233.38210c	ON 02122224	AT (490165.60, 3605260.00, 3.93, 3.93, 2.00)	DC	
EXHAUST HIGH 1ST HIGH VALUE IS	2.50927c	ON 02122224	AT (490165.60, 3605260.00, 3.93, 3.93, 2.00)	DC	

*** RECEPTOR TYPES: GC = GRIDCART
GP = GRIDPOLR
DC = DISCCART
DP = DISCPOLR

*** AERMOD - VERSION 09292 *** *** Palm Avenue Car Wash
*** Construction Emissions - PM10

*** 04/28/10
*** 23:43:27
PAGE 6

**MODELOPIS: CONC ELEV
FLGPOL DRYDPLT

*** Message Summary : AERMOD Model Execution ***

----- Summary of Total Messages -----

A Total of 0 Fatal Error Message(s)
A Total of 0 Warning Message(s)
A Total of 425 Informational Message(s)

A Total of 8760 Hours Were Processed

A Total of 192 Calm Hours Identified

A Total of 233 Missing Hours Identified (2.66 Percent)

***** FATAL ERROR MESSAGES *****
*** NONE ***

***** WARNING MESSAGES *****
*** NONE ***

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CARMEL & NACCASHA LLP
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Via US Mail

California Coastal Commission
Attn: Diana Lilly
San Diego Coast District Office
7575 Metropolitan Drive, Ste. 103
San Diego, CA 92108-4421

Re: Supplement to Appeal from Coastal Permit Decision of City of San Diego
Palm Avenue Car Wash; Coastal Development Permit No.: 554574

Dear Ms. Lilly,

Per your discussion with our office, this letter shall supplement our original appeal ("Appeal") filed with the California Coastal Commission – San Diego District Office ("Commission") on July 9, 2010 in the above referenced matter. A copy of the original appeal is attached for your reference.

Standard of Review

As you know, the City of San Diego ("City") has a certified local coastal program pursuant to the California Coastal Act of 1976 ("CCA"). California Public Resources Code § 30603(b)(1) states that the grounds for an appeal of an action taken by a local government is "limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program..." Pub. Res. Code § 30603(b)(1).

San Diego Municipal Code ("SDMC") section 126.0708 establishes the City's review process for coastal development consistent with its certified local coastal program and the CCA and sets forth the required findings for issuance of *all* coastal development permits. Specifically, section 126.0708(a)(2) requires the City to find that "the proposed coastal development *will not adversely affect environmentally sensitive lands.*" (Italics added). The City concluded that the Palm Avenue Car Wash Project ("Project") is within the Coastal

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July 16, 2010

Supplement to Coastal Commission Appeal
July 16, 2010
Page 2

CARMEL & NACCASHA LLP

(appealable) Zone and is subject to environmentally sensitive lands regulations."¹ SDMC section 143.0101 sets forth the City's purpose of environmentally sensitive lands regulations. Specifically, section 143.0101 states, in pertinent part:

The purpose of [the environmentally sensitive lands regulations] is to protect, preserve and, where damaged restore the environmentally sensitive lands of San Diego and the viability of the species supported by those lands...[and] are intended to assure that development [including development within the Coastal Overlay Zone], occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area, encourages a sensitive form of development, retains biodiversity and interconnected habitats...and are intended to protect the health safety and welfare...

Therefore, within the context of our Appeal, the Commission must determine if a substantial issue exists as to whether the Project adversely affects environmentally sensitive lands (a finding required by the City's certified local coastal program). Pub. Res. Code § 30625(b)(2). The term "substantial issue" is not defined in the CCA or its implementing regulations; rather, the CCA's regulations indicate that the Commission will hear an appeal unless it finds that the appeal raises "no significant question." 14 CCR § 13155(b). In making this determination, the Commission is guided by the following factors (among others):

1. Degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified local coastal plan;
2. The extent and scope of the development as approved or denied by the local government; and
3. The significance of the coastal resources affected by the decision.

City of San Diego Project Findings

Section II.A of City Resolution No. PC-4591-PC-2, entitled "Supplemental Findings-Environmentally Sensitive Lands," states that "the site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands." The City bases its findings on the determination that "[i]mplementation of the project as conditioned, including required mitigation, will reduce potential impacts to below a level of significance..." We disagree. The City's required findings regarding environmentally sensitive lands are not supported by sufficient factual data or analysis. The environmentally sensitive coastal area of the Multi-Habitat Planning Area ("MHPA") will be significantly and adversely impacted and degraded by construction and operation of this Project.

¹ See Page 2 of the May 13, 2010 Report to the Planning Commission (copy attached).

Supplement to Coastal Commission Appeal
July 16, 2010
Page 3

CARMEL & NACCASHA LLP

Discussion

As you are aware, the MHPA is a large conservation area located along the City's coastline. The MHPA area is intended to protect, preserve and enhance an entire ecosystem for a wide variety of protected and endangered wildlife. The MHPA is beneficial in the sense that it protects an ecosystem on a large scale. However, the MHPA area also concentrates protected wildlife into a confined geographical area. As a result, any impacts to this environmentally sensitive area are compounded and pose a greater and more significant risk to a wider variety of sensitive and endangered wildlife than would be present under normal development conditions. In other words, the City (and the State for that matter) benefits from the MHPA because it provides a significant amount of land to be dedicated as a protected habitat. But with the benefit comes risk because it focuses so many sensitive habitats into a confined area. Therefore, developments which impact this area must be carefully reviewed to assure that they *truly* result in "minimum disturbance."

Accordingly, we appeal the City's approval of the Coastal Development Permit for the Project on the basis that the City either lacked sufficient factual data to find the Project "will not adversely affect environmentally sensitive lands" or ignored clear and credible evidence that the Project would significantly impact environmentally sensitive lands. Specifically:

1. Lighting. No lighting study was prepared for the Project and the City's mitigation is limited to a simple statement that "all proposed lighting shall be directed away from the MHPA and shielded if necessary." The City's mitigation measure and related findings regarding the Project's impacts on the MHPA, in terms of light and glare, are insufficient, unsupported by facts and completely fail to study and mitigate the lighting impacts on the MHPA area from not only the construction related activities, but from the headlights from the significant number of cars which will be using the Project parking lot. Again, if the Project is approved it will be difficult to "shield" the sensitive MHPA area from construction activities and a poorly designed parking lot.
2. Noise. The City inadequately studied the Project's noise impacts on the sensitive MHPA area. The City noise study analyzed the Project's noise impacts in an environmental setting drastically different from that of the Project. Please see Attachment 1 to the Appeal for further discussion on this matter.
3. Water Quality. The City's "water report" failed to consider the various solvents and detergents that the car wash portion of the Project will use and how these dangerous chemicals could impact the sensitive MHPA area, especially at high concentrations. Although the car wash facility purports to be "self contained," some run-off (and spills) is inevitable with car wash facilities. Appropriate analysis of these dangerous chemicals and bio-swale filtration and treatment facilities should be required in order to properly study and mitigate the Project's impacts on the water quality of the sensitive MHPA area.

Supplement to Coastal Commission Appeal
July 16, 2010
Page 4

CARMEL & NACCASHA LLP

4. Air Quality. The City's air quality analysis is limited to a statement that the Project is simply a "carwash and convenience store with no sensitive receptors in close proximity." The City's "analysis" fails to adequately address the Project's significant air quality impacts on the sensitive MHPA area, not only during the Project's operation, but during construction. We have attached an air quality analysis from Bill Piazza, a seasoned air quality expert from Air Quality Dynamics. The analysis, which was submitted to the City, thoroughly addresses the significant air quality impacts on the Project's surrounding area. Please see Attachment 1 to the Appeal for further discussion on this matter.

Conclusion

The City's approval of the Project is inconsistent with the City's certified local coastal plan. The Project adversely affects environmentally sensitive lands, and the City failed to provide the factual basis necessary for the City to find that the Project will result in "minimum disturbance." Therefore, approval of the Project will result in significant environmental impacts to the sensitive MHPA area causing a degradation of this important natural resource.

For the foregoing reasons, we respectfully request the Commission find that our Appeal raises a substantial issue.

Please call if you have any questions or comments.

Sincerely,

CARMEL & NACCASHA LLP

Signature on file 2

Timothy J. Carmel

TJC:ja

Enclosures

cc: Mark Kravis, Project Applicant (via mail; w/o enclosures)
PJ Fitzgerald, Planner, City of San Diego (via e-mail; w/o enclosures)

Code Enforcement Impact: None with this action.

Housing Impact Statement: None with this action.

BACKGROUND

The vacant 0.94 acre L-shaped project site is located at 1440 Palm Avenue in the CC-4-2 (Commercial-Community) zone, within the Coastal (appealable), Coastal Height Limit, FEMA Flood Plain (100-year) and Parking Impact Overlay zones, within the Otay Mesa-Nestor Community Plan area, along the boundary between the City of San Diego and the City of Imperial Beach (Attachment 1). The Otay Mesa - Nestor Community Plan designates the site for Community-Commercial land use (Attachment 2). Land uses to the west, south and north of the site consist of mixed residential and commercial development, and the project site lies adjacent to the Multi-Habitat Planning Area (MHPA) along its eastern property line. Sloping down easterly from 13th Street the site includes a portion of the site mapped within the 100-year floodplain designation. The floodplain area and the MHPA are considered environmentally sensitive lands under the San Diego Municipal Code.

A Process 3 Coastal Development Permit is required for the proposed development because it is located in the Coastal Overlay zone per San Diego Municipal Code (SDMC) Section 126.0702; additionally, a Site Development Permit is required due to the presence of a 100-year floodplain on site, which meets the definition of "environmentally sensitive lands" per SDMC Section 143.01110. On March 24, 2010, the Hearing Officer approved the project as recommended by staff. An appeal of the Hearing Officer's decision to approve the project was filed on April 5, 2010, by Mr. Timothy Carmel (Attachment 11). Public comment letters have been received both in opposition to and in support of the project.

DISCUSSION

Project Description:

The project is requesting a Coastal Development Permit and Site Development Permit (ESL) to allow construction and operation of a two-story 8,928-square-foot car wash facility with convenience store and office uses to be developed on a vacant 0.94 -acre site. The project scope includes a 24 space parking lot (with 2 accessible parking spaces), landscaping, signage and a combination of fences and retaining walls along the eastern and northern property lines. Additionally, improvements to the public rights-of-way along Palm Avenue and 13th Street are proposed to include driveways, sidewalk and landscaping. The boundary between the City of San Diego and the City of Imperial Beach is the easterly right-of-way line of 13th Street and along the northerly right-of-way line of Palm Avenue. The City of Imperial Beach has permit jurisdiction over the 13th Street right-of-way and the California Department of Transportation (Caltrans) has permit jurisdiction over the Palm Avenue/ State Route 74 (SR-75) right-of-way. As such, the applicant will need to obtain permits from the City of Imperial Beach as necessary for any work in the 13th Street right-of-way, and from Caltrans as necessary for any work in the public right-of-way on Palm Avenue/SR-75.

LJM
ves



6 - OMN - 10 - 100

THE CITY OF SAN DIEGO
COASTAL DEVELOPMENT PERMIT
NOTICE OF FINAL ACTION

RECEIVED

California Coastal Commission, San Diego Area Office
7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-4402
Phone (619) 767-2370

JUL 06 2010

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

DATE: June 30, 2010

The following project is located within the City of San Diego Coastal Zone. A Coastal Permit application for the project has been acted upon as follows:

PROJECT NAME - NUMBER: Palm Avenue Car Wash (PTS 155821)
Mitigated Negative Declaration No. 155821

PROJECT DESCRIPTION: Construction of a 8,928 square-foot car wash with convenience store, associated site improvements, parking, grading and landscaping on a vacant 0.94-acre site.

LOCATION: 1440 Palm Avenue, San Diego, CA

APPLICANT'S NAME Mark Kravis and Paul Magnotto

FINAL ACTION: APPROVED WITH CONDITIONS

ACTION BY: Planning Commission (CDP approval May 20, 2010)
City Council (Mitigated Negative Declaration Certification)

ACTION DATE: June 29, 2010 (City Council Certification of MND 155821)

CONDITIONS OF APPROVAL: See attached Permit.

FINDINGS: See attached Resolution.

X Appealable to the Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission only after a decision by the City Council (or Planning Commission for Process 2 and 3 Coastal Development Permits) and within ten (10) working days following Coastal Commission receipt of this Notice, as to the date the Commission's appeal period will conclude.

CITY CONTACT: Patricia J. FitzGerald, Development
1222 First Avenue, MS 401, San Diego
Phone/e-mail : (619) 446-5107/pfitzg

Revised 4/08/10 HMD

EXHIBIT NO. 11
APPLICATION NO.
A-6-OMN-10-54
City Notice of Final
Action
California Coastal Commission

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

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

RECEIVED

JUL 06 2010

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 23430870

COASTAL DEVELOPMENT PERMIT NO. 554575
SITE DEVELOPMENT PERMIT NO. 730066
PALM AVENUE CAR WASH
PROJECT NO. 155821 (MMRP)
PLANNING COMMISSION

This Coastal Development Permit No. 554575 and Site Development Permit No. 730066 is granted by the Planning Commission of the City of San Diego to Paul D. Magnotto and Marnie A. Magnotto, husband and wife as Tenants in Common as to an undivided 50% Interest, and Mark Lewis Kravis as to an undivided 50% Interest as Tenants in Common, Owners/Permittees, pursuant to San Diego Municipal Code [SDMC] Sections 126.0702 and 126.0502.

The 0.94 -acre site is located at 1440 Palm Avenue in the CC-4-2 zone, within the Coastal (appealable), Coastal Height Limit, FEMA Flood Plain (100-year) and Parking Impact Overlay zones, within the Otay Mesa-Nestor Community Plan area. The project site is legally described as a portion of the Southwest quarter of the southeast quarter of the southeast quarter of Section 20, Township 18, Range 2 West San Bernardino Meridian, Map 766.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittees to construct and operate a car wash with convenience store described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated May 20, 2010, on file in the Development Services Department.

The project shall include:

- a. Construction of a 8,928-square-foot, two-story car wash with convenience store;
- b. Convenience store facility hours of operation shall be a maximum of 16 hours a day; car wash hours of operation are limited to between 7AM to 10PM.

- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Off-street parking;
- e. Accessory improvements including fencing and retaining walls; and
- f. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action, or following all appeals.
3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

9. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

10. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

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

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program [MMRP] shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.

13. The mitigation measures specified in the MMRP and outlined in Mitigated Negative Declaration No. 155821 shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the MMRP as specified in Mitigated Negative Declaration No. 155821 to the satisfaction of the Development Services Department and the City Engineer. Prior to issuance of any construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

- Noise
- Historical Resources (Archaeology)
- Land Use (MSCP/MHPA)

ENGINEERING REQUIREMENTS:

15. All excavated material listed to be exported, shall be exported to a legal disposal site in accordance with the Standard Specifications for Public Works Construction (the "Green Book"), 2003 edition and Regional Supplement Amendments adopted by Regional Standards Committee.

16. Public Right-of-Way Improvements: The boundary between the City of San Diego and the City of Imperial Beach is the Easterly Right-of-Way line of 13th Street as it presently exists and along the northerly Right-of-Way line of Palm Avenue as it presently exists. The City of Imperial Beach has permit jurisdiction over the 13th Street right-of-way and the California Department of Transportation (Caltrans) has permit jurisdiction over the Palm Avenue/SR-75 right-of-way. The applicant shall obtain permits from the City of Imperial Beach as necessary for any work in the 13th Street right-of-way (including a temporary encroachment permit). The applicant shall obtain permits from Caltrans as necessary for any work in the public right-of-way on Palm Avenue/SR-75.

17. The drainage system proposed for this development, as shown on the site plan, is private and subject to approval by the City Engineer. All drainage shall be managed on-site and no drainage shall flow directly into Palm Avenue.

18. Prior to the issuance of any building permits, the applicant shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to the requirements of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

19. This project proposes development in Zone A of a Special Flood Hazard Area (SFHA). Because there are no published base flood elevations for this reach, the applicant will be required

to develop those elevations per the methodology set forth in Managing Floodplain Development In Approximate Zone A Areas, A Guide For Obtaining And Developing Base (100-Year) Flood Elevations, April 1995, Federal Emergency Management Agency prior to issuance of a grading permit.

20. Once the base flood elevations have been determined and approved by the City Engineer, all structures built within the SFHA must have the lowest floor elevated 2 feet above the base flood elevation at that location.

21. Prior to occupancy of any structures on lots within the SFHA, an appropriate map revision which removes the structures from the SFHA must be obtained from the Federal Emergency Management Agency (FEMA). The developer must provide all documentation, engineering calculations, and fees which are required by FEMA.

22. Prior to the issuance of any construction permit, the Applicant shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.

23. Prior to the issuance of any construction permit, the Applicant shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.

24. Prior to the issuance of any construction permit the Applicant shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.

25. Prior to the issuance of any construction permit the Applicant shall incorporate and show the type and location of all post-construction Best Management Practices (BMP's) on the final construction drawings, consistent with the approved Water Quality Technical Report.

26. Any party, on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within 90 days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code 66020.

LANDSCAPE REQUIREMENTS:

27. Prior to issuance of any construction permits, landscape construction documents for the revegetation and hydro-seeding of all disturbed land shall be submitted in accordance with the Landscape Standards and to the satisfaction of the Development Services Department. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit 'A,' on file in the Office of the Development Services Department.

28. All planting provided to screen retaining walls along eastern property line shall provide 80% per cent screening of wall within two years.

29. Prior to issuance of any grading permits, complete landscape construction documents, including an automatic permanent irrigation system, shall be submitted to the Development Services Department for approval.

30. Prior to issuance of any construction permits for buildings, complete landscape and irrigation construction documents consistent with the Land Development Manual: Landscape Standards shall be submitted to the City Manager for approval. Construction plans shall take into account a 40 square foot area around each tree which is unencumbered by hardscape and utilities as set forth under SDMC 142.0403(b)5.

31. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections.

32. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or Certificate of Occupancy or a Final Landscape Inspection.

33. Any required planting that dies within 3 years of installation shall be replaced within 30 calendar days of plant death with the same size and species of plant material shown on the approved plan. Required shrubs or trees that die 3 years or more after installation shall be replaced with 15 gallon size or 60-inch box size material, respectively. Development Services may authorize adjustment of the size and quantity of replacement material where material replacement would occur in inaccessible areas or where the existing plant being replaced is larger than a 15 gallon shrub or 60-inch box tree.

MULTIPLE SPECIES CONSERVATION PROGRAM:

34. The issuance of this permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 (EAS) and any amendments thereto (16 U.S.C. Section 1531 et seq.). In accordance with authorization granted to the City of San Diego from the USFWS pursuant to Sec. 10(a) of the ESA and by the CDFG pursuant to Fish & Game Code sec. 2835 as part of the Multiple Species Conservation Program (MSCP), the City of San Diego through the issuance of this Permit hereby confers upon Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement (IA), executed on July 17, 1997 and on File in the Office of the City Clerk as Document No. 00-18394. Third Party Beneficiary status is conferred upon Permittee by the City: (1) to grant Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this permit and the IA, and (2) to assure Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS or CDFG, except in the limited circumstances described in Section 9.6 and 9.7 of the IA.

PLANNING/DESIGN REQUIREMENTS:

35. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.
36. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations.
37. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

TRANSPORTATION REQUIREMENTS

38. Owner/Permittee shall maintain a minimum of 22 automobile spaces (including 1 van accessible space), 2 motorcycle spaces, and 2 bicycle spaces with rack(s) as required by the Land Development Code; 24 automobile spaces (including 1 standard accessible space and 1 van accessible space), 2 motorcycle spaces, and 2 bicycle spaces with rack(s) are shown on the project's Exhibit "A". All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the Development Services Director.
39. The convenience store shall not be open more than 16 hours a day, consistent with the transportation analysis parameters of the approved traffic study.

WASTEWATER REQUIREMENTS:

40. All proposed private sewer facilities located within a single lot are to be designed to meet the requirements of the California Uniform Plumbing Code and will be reviewed as part of the building permit plan check.
41. The Owner/Permittee shall design and construct all proposed public sewer facilities in accordance with established criteria in the most current edition of the City of San Diego Sewer Design Guide. Proposed facilities that do not meet the current standards shall be redesigned or private.
42. All on-site wastewater systems shall be private.
43. The proposed sewer lateral is located in a driveway, it shall be relocated or it shall be private and built according to Figure 2-6 of the City of San Diego Sewer Design Guide. Private sewer laterals require an Encroachment Maintenance and Removal Agreement (EMRA).
44. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any sewer facilities.

45. Sewer lateral connections shall be made in accordance with Table 2-6 0f the City of San Diego Sewer Design Guide.

WATER REQUIREMENTS:

46. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s), if required, outside of any driveway or drive aisle and the removal of any existing unused water services within the right-of-way adjacent to the project site, in a manner satisfactory to the Director of Public Utilities, the City Engineer and the California-American Water Company (CAWC).

47. Prior to the issuance of any certificates of occupancy, public water facilities necessary to serve the development, including services and meters, shall be complete and operational in a manner satisfactory to the Director of Public Utilities, the City Engineer and the CAWC.

48. The City of San Diego will collect a "meter charge" based on the sizes of the domestic water meters installed by CAWC. There are no capacity charges or charges for the other appurtenances such as fire hydrants. The meter charges will be due at the time of building permit issuance.

49. Prior to the approval of any public improvement drawings, the improvement plans (D-sheets) submitted to the City of San Diego for engineering permits must include a signature block, with signature, for CAWC on each sheet.

50. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Water facilities as shown on the approved plans shall be modified at final engineering to comply with standards.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on May 20, 2010 and Resolution No. PC-4591.

PLANNING COMMISSION
RESOLUTION NO. PC- 4591-PC-2
COASTAL DEVELOPMENT PERMIT NO. 554575
SITE DEVELOPMENT PERMIT NO. 730066
PALM AVENUE CAR WASH PROJECT NO. 155821 (MMRP)

WHEREAS, PAUL D. MAGNOTTO AND MARNIE A. MAGNOTTO, HUSBAND AND WIFE AS TENANTS IN COMMON AS TO AN UNDIVIDED 50% INTEREST, and MARK LEWIS KRAVIS AS TO AN UNDIVIDED 50% INTEREST AS TENANTS IN COMMON, Owners/Permittees, filed an application with the City of San Diego for a permit to allow the construction and operation of a car wash with convenience store facility (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Coastal Development Permit No. 554575 and Site Development Permit No. 730066), on portions of a 0.94 -acre vacant site; and

WHEREAS, the project site is located at 1440 Palm Avenue in the CC-4-2 zone, within the Coastal (appealable), Coastal Height Limit, FEMA Flood Plain (100-year) and Parking Impact Overlay zones, within the Otay Mesa-Nestor Community Plan area; and

WHEREAS, the project site is legally described as a portion of the Southwest quarter of the southeast quarter of the southeast quarter of Section 20, Township 18, Range 2 West San Bernardino Meridian, Map 766; and

WHEREAS, on May 20, 2010, the Planning Commission of the City of San Diego considered Coastal Development Permit No. 554575 and Site Development Permit No. 730066 pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings, dated May 20, 2010.

FINDINGS:

I. Site Development Permit (SDMC Section 126.0504)

A. THE PROPOSED DEVELOPMENT WILL NOT ADVERSELY AFFECT THE APPLICABLE LAND USE PLAN.

The project is requesting a Coastal Development Permit and Site Development Permit to allow construction and operation of an 8,928-square-foot car wash with convenience store and office uses to be located on a vacant 0.94 -acre site. Land to the west and north of the site consists of mixed residential and commercial development, and the project site is surrounded by commercial development to the south. The property is zoned CC-4-2 (Commercial-Community), a zone intended to allow for heavy commercial including high intensity, strip commercial characteristics and residential uses. The Otay Mesa-Nestor Community Plan

designates the site for Community-Commercial land use and the proposed project is consistent with this designation. The facility, with the associated site improvements and corresponding development intensity, complies with the development regulations, standards, and policies in effect for the project site per the Otay Mesa-Nestor Community Plan and all other City regulations, policies, guidelines, design standards and adopted land use plans applicable to this site. Therefore, the proposed development will not adversely affect the goals and objectives of the Otay Mesa-Nestor Community Plan.

B. THE PROPOSED DEVELOPMENT WILL NOT BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY, AND WELFARE.

The project is requesting a Coastal Development Permit and Site Development Permit to allow construction and operation of an 8,928-square-foot car wash with convenience store and office uses to be located on a vacant 0.94 -acre site. A Mitigated Negative Declaration No. 155821 has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) Guidelines, which identified the potential for adverse impacts related to Noise, Historical Resources (Archaeology) and Land Use (MSCP/MHPA) and implementation of a Mitigation, Monitoring, and Reporting Program (MMRP) in included as a condition of the project. The MMRP is detailed in Section V of the Mitigated Negative Declaration No. 155821. Implementation of the MMRP would reduce any potential project-related impacts to below a level of significance.

The development permit for this project includes conditions of approval relevant to achieving project compliance with the applicable regulations of the Land Development Code. The project proposes development in Zone A of a Special Flood Hazard Area (SFHA). Because there are no published base flood elevations for this reach, the applicant will be required to develop those elevations per the methodology set forth in Managing Floodplain Development In Approximate Zone A Areas, A Guide For Obtaining And Developing Base (100-Year) Flood Elevations, April 1995, Federal Emergency Management Agency (FEMA) prior to issuance of a grading permit. As a condition of the development permit, once the base flood elevations have been determined and approved by the City Engineer, all structures built within the SFHA must have the lowest floor elevated 2 feet above the base flood elevation at that location. Additionally, the project will support the Otay Mesa-Nestor Community Plan recommendations and guidelines for commercial development by ensuring the building street facades have three-dimensional relief to provide visual interest at the street level, and by incorporating pedestrian circulation and bicycle racks on site to facilitate residents commuting from nearby residential areas to the convenience store. To ensure compatibility with the adjacent residential and open space areas, the project provides setbacks and landscaped buffers, and will utilize earth-tone colored, textured concrete blocks for the planted crib wall adjacent to the MHPA. The use of this site for a mixed use car wash facility is consistent with the Community-Commercial land use designation and the project as conditioned will not be detrimental to the public health, safety, and welfare.

C. THE PROPOSED DEVELOPMENT WILL COMPLY WITH THE APPLICABLE REGULATIONS OF THE LAND DEVELOPMENT CODE.

The use of this site as a mixed use car wash facility with convenience store and office uses, including associated site improvements, complies with the development regulations, standards, and policies in effect for the project site in accordance with the CC-4-2 zone, the Otay Mesa-Nestor Community Plan, and all other City regulations, policies, guidelines, design standards and adopted land use plans applicable to this site, and no deviations are required. Therefore, the project complies with the applicable regulations of the Land Development Code.

II. Supplemental Findings--Environmentally Sensitive Lands (SDMC Section 126.0504)

A. THE SITE IS PHYSICALLY SUITABLE FOR THE DESIGN AND SITING OF THE PROPOSED DEVELOPMENT AND THE DEVELOPMENT WILL RESULT IN MINIMUM DISTURBANCE TO ENVIRONMENTALLY SENSITIVE LANDS.

The project proposes construction and operation of an 8,928-square-foot car wash facility with convenience store and office uses to be located on a vacant 0.94 -acre parcel. The site is located within an area characterized by strip commercial development along Palm Avenue with mixed density residential uses typically developed off the commercial corridor. The L-shaped site lies adjacent to the Multi-Habitat Planning Area (MHPA) along its eastern property line, and sloping down easterly from 13th Street includes a portion of the site mapped within the 100-year floodplain designation. The floodplain area and the MHPA are considered environmentally sensitive lands under the San Diego Municipal Code. Though the project proposes development in Zone A of a Special Flood Hazard Area (SFHA) where there are no published base flood elevations for this site. The applicant will be required to develop those elevations per the methodology set forth in Managing Floodplain Development In Approximate Zone A Areas, A Guide For Obtaining And Developing Base (100-Year) Flood Elevations, April 1995, Federal Emergency Management Agency (FEMA) prior to issuance of a grading permit. As a condition of the development permit, once the base flood elevations have been determined and approved by the City Engineer, all structures built within the SFHA must have the lowest floor elevated 2 feet above the base flood elevation at that location. Though the site does not yet have a FEMA certified base flood elevation, adjacent study areas to the east of the subject property (Zone AE) lists a flood elevation of 11 feet MSL, and the study area to the northwest (Zone AE), lists a flood elevation of 6 feet MSL. It is estimated that the project site base flood elevation is approximately 10 feet MSL, which is below the finish floor elevation of the proposed building (FF=18.5 feet MSL), and meets the criteria for finished floor elevations to be a minimum of 2 feet above the flood elevation.

Due to the site's adjacency to the MHPA, the project is required to utilize mitigation measures in the form of Land Use Adjacency Guidelines in order to avoid significant environmental impacts to the MHPA. Mitigation measures are detailed in Section V of the Mitigated Negative Declaration No. 155821, and include shielding of the MHPA area from light and noise through fence and wall construction along the easterly property boundary, and mechanical equipment utilized within the project is subject to noise limitations. Drainage has been diverted away from the MHPA area, and the retaining/crib wall lying adjacent to the MHPA will be planted with appropriate native plant species.

Implementation of the project as conditioned, including required mitigation, will reduce potential impacts to below a level of significance, and therefore the site is physically suitable for the design and siting of the proposed development, and the development will result in minimum disturbance to environmentally sensitive lands.

B. THE PROPOSED DEVELOPMENT WILL MINIMIZE THE ALTERATION OF NATURAL LAND FORMS AND WILL NOT RESULT IN UNDUE RISK FROM GEOLOGIC AND EROSIONAL FORCES, FLOOD HAZARDS, OR FIRE HAZARDS.

The project is requesting a Coastal Development Permit and Site Development Permit to allow construction and operation of an 8,928-square-foot car wash with convenience store and office uses to be located on a vacant 0.94 -acre site. Land to the west and north of the site consists of mixed residential and commercial development, and the project site is surrounded by commercial development to the south. The proposed project is located in Geologic Hazard Zone 31 as shown on the City's Seismic Safety Study Geologic Hazards Maps. Zone 31 is characterized by high potential for liquefaction, shallow groundwater, major drainages, and hydraulic fills. A "Limited Geotechnical Investigation, Proposed Carwash Building" was prepared for this project by East County Soil Consultation and Engineering, Inc. (their project No. 07-1329H7). The report concluded that the site could be developed as proposed and City Geology staff has concluded that the report adequately addresses the geologic conditions. The project proposes development in Zone A of a Special Flood Hazard Area (SFHA) where there are no published base flood elevations for this site. The applicant will be required to develop those elevations per the methodology set forth in Managing Floodplain Development In Approximate Zone A Areas, A Guide For Obtaining And Developing Base (100-Year) Flood Elevations, April 1995, Federal Emergency Management Agency (FEMA) prior to issuance of a grading permit. As a condition of the development permit, once the base flood elevations have been determined and approved by the City Engineer, all structures built within the SFHA must have the lowest floor elevated 2 feet above the base flood elevation at that location. Though the site does not yet have a FEMA certified base flood elevation, adjacent study areas to the east of the subject property (Zone AE) lists a flood elevation of 11 feet MSL, and the study area to the northwest (Zone AE), lists a flood elevation of 6 feet MSL. It is estimated that the project site base flood elevation is approximately 10 feet MSL, which is below the finish floor elevation of the proposed building (FF=18.5 feet MSL), and meets the criteria for finished floor elevations to be a minimum of 2 feet above the flood elevation.

The project will not significantly alter any natural landform and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

C. THE PROPOSED DEVELOPMENT WILL BE SITED AND DESIGNED TO PREVENT ADVERSE IMPACTS ON ANY ADJACENT ENVIRONMENTALLY SENSITIVE LANDS.

The project is requesting a Coastal Development Permit and Site Development Permit to allow construction and operation of an 8,928-square-foot car wash with convenience store and office uses to be located on a vacant 0.94 -acre site. Land to the west and north of the site consists of mixed residential and commercial development, and the project site is surrounded by commercial

development to the south. The L-shaped project site lies adjacent to the Multi-Habitat Planning Area (MHPA) along its eastern property line, and sloping down easterly from 13th Street includes a portion of the site mapped within the 100-year floodplain designation. Though the project proposes development in Zone A of a Special Flood Hazard Area (SFHA) where there are no published base flood elevations for this site, the applicant will be required to develop those elevations per the methodology set forth in Managing Floodplain Development In Approximate Zone A Areas, A Guide For Obtaining And Developing Base (100-Year) Flood Elevations, April 1995, Federal Emergency Management Agency (FEMA) prior to issuance of a grading permit. As a condition of the development permit, once the base flood elevations have been determined and approved by the City Engineer, all structures built within the SFHA must have the lowest floor elevated 2 feet above the base flood elevation at that location. Though the site does not yet have a FEMA certified base flood elevation, adjacent study areas to the east of the subject property (Zone AE) lists a flood elevation of 11 feet MSL, and the study area to the northwest (Zone AE), lists a flood elevation of 6 feet MSL. It is estimated that the project site base flood elevation is approximately 10 feet MSL, which is below the finish floor elevation of the proposed building (FF=18.5 feet MSL), and meets the criteria for finished floor elevations to be a minimum of 2 feet above the flood elevation.

Due to the site's adjacency to the MHPA, the project is required to utilize mitigation measures in the form of Land Use Adjacency Guidelines in order to avoid significant environmental impacts to the MHPA. Mitigation measures are detailed in Section V of the Mitigated Negative Declaration No. 155821, and include shielding of the MHPA area from light and noise through fence and wall construction along the easterly property boundary, and mechanical equipment utilized within the project is subject to noise limitations. Drainage has been diverted away from the MHPA area, and the retaining/crib wall lying adjacent to the MHPA will be planted with appropriate native plant species. The project site does not provide connectivity between areas of open space and no impacts to wildlife corridors will occur. Therefore the proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.

D. THE PROPOSED DEVELOPMENT WILL BE CONSISTENT WITH THE CITY OF SAN DIEGO'S MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP) SUBAREA PLAN.

The project is requesting a Coastal Development Permit and Site Development Permit to allow construction and operation of an 8,928-square-foot car wash with convenience store and office uses to be located on a vacant 0.94 -acre site. Land to the west and north of the site consists of mixed residential and commercial development, and the project site is surrounded by commercial development to the south. The site lies adjacent to the Multi-Habitat Planning Area (MHPA) along its eastern property line. Due to the site's adjacency to the MHPA, the project is required to utilize mitigation measures in the form of Land Use Adjacency Guidelines in order to avoid significant environmental impacts to the MHPA. Mitigation measures are detailed in Section V of the Mitigated Negative Declaration (MND) No. 155821, and include shielding of the MHPA area from light and noise through fence and wall construction along the easterly property boundary, and mechanical equipment utilized within the project is subject to noise limitations. Drainage has been diverted away from the MHPA area, and the retaining/crib wall lying adjacent

to the MHPA will be planted with appropriate native plant species. The project site does not provide connectivity between areas of open space and no impacts to wildlife corridors will occur. Therefore, with the implementation of the project as conditioned, including the incorporation of the required mitigation measure outlined in MND No. 155821, the proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan.

E. THE PROPOSED DEVELOPMENT WILL NOT CONTRIBUTE TO THE EROSION OF PUBLIC BEACHES OR ADVERSELY IMPACT LOCAL SHORELINE SAND SUPPLY.

The project site is located within Otay Mesa-Nestor adjacent to an area known as the "Salt Ponds" and is not adjacent to any public beaches or local shoreline sand supply. Therefore, the proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

F. THE NATURE AND EXTENT OF MITIGATION REQUIRED AS A CONDITION OF THE PERMIT IS REASONABLY RELATED TO, AND CALCULATED TO ALLEVIATE, NEGATIVE IMPACTS CREATED BY THE PROPOSED DEVELOPMENT.

The project is requesting a Coastal Development Permit and Site Development Permit to allow construction and operation of an 8,928-square-foot car wash with convenience store and office uses to be located on a vacant 0.94 -acre site. A Mitigated Negative Declaration No. 155821 has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) Guidelines, which identified the potential for adverse impacts related to Noise, Historical Resources (Archaeology) and Land Use (MSCP/MHPA). Implementation of a Mitigation, Monitoring, and Reporting Program (MMRP) is included as a condition of the project and is detailed in Section V of the Mitigated Negative Declaration No. 155821. Implementation of the MMRP would reduce any potential project-related impacts to below a level of significance. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

III. Coastal Development Permit- (SDMC Section 126.0708):

A. THE PROPOSED COASTAL DEVELOPMENT WILL NOT ENCROACH UPON ANY EXISTING PHYSICAL ACCESSWAY THAT IS LEGALLY USED BY THE PUBLIC OR ANY PROPOSED PUBLIC ACCESSWAY IDENTIFIED IN A LOCAL COASTAL PROGRAM LAND USE PLAN; AND THE PROPOSED COASTAL DEVELOPMENT WILL ENHANCE AND PROTECT PUBLIC VIEWS TO AND ALONG THE OCEAN AND OTHER SCENIC COASTAL AREAS AS SPECIFIED IN THE LOCAL COASTAL PROGRAM LAND USE PLAN.

The project is requesting a Coastal Development Permit and Site Development Permit to allow construction and operation of an 8,928-square-foot car wash with convenience store and office uses to be located on a vacant 0.94 -acre site. The project site does not contain any existing physical accessway utilized by the general public to and along the ocean and other scenic coastal areas. The proposed site is not identified in the Otay Mesa-Nestor Community Plan or Local Coastal Program Land Use Plan as a public accessway to be utilized by the general public for providing access to the ocean or other scenic coastal area.

The project site does not contain views to or along the ocean. The Otay Mesa-Nestor Community Plan identifies view opportunities to the Otay River Valley, the Western Salt Company's building, salt ponds and salt stacks, and the downtown San Diego skyline across San Diego Bay. The length of 13th Street (which fronts the project site on the west) and the terminus of Georgia Street (across Palm Avenue to the southeast of the project site) are both identified as view corridors to support these view opportunities in the Otay Mesa-Nestor Community Plan. The project will be developed entirely within the property boundaries of the site and will not obstruct, degrade or diminish these scenic view opportunities from adjacent public right-of-way areas. The new development will not interfere with any designated public view corridor, thereby enhancing and protecting public views to and along the scenic areas.

B. THE PROPOSED COASTAL DEVELOPMENT WILL NOT ADVERSELY AFFECT ENVIRONMENTALLY SENSITIVE LANDS.

The project is requesting a Coastal Development Permit and Site Development Permit to allow construction and operation of an 8,928-square-foot car wash with convenience store and office uses to be located on a vacant 0.94 -acre site. Land to the west and north of the site consists of mixed residential and commercial development, and the project site is surrounded by commercial development to the south. The L-shaped project site lies adjacent to the Multi-Habitat Planning Area (MHPA) along its eastern property line, and sloping down easterly from 13th Street includes a portion of the site mapped within the 100-year floodplain designation. Though the project proposes development in Zone A of a Special Flood Hazard Area (SFHA) where there are no published base flood elevations for this site, the applicant will be required to develop those elevations per the methodology set forth in *Managing Floodplain Development In Approximate Zone A Areas, A Guide For Obtaining And Developing Base (100-Year) Flood Elevations*, April 1995, Federal Emergency Management Agency (FEMA) prior to issuance of a grading permit. As a condition of the development permit, once the base flood elevations have been determined and approved by the City Engineer, all structures built within the SFHA must have the lowest floor elevated 2 feet above the base flood elevation at that location. Though the site does not yet have a FEMA certified base flood elevation, adjacent study areas to the east of the subject property (Zone AE) lists a flood elevation of 11 feet MSL, and the study area to the northwest (Zone AE), lists a flood elevation of 6 feet MSL. It is estimated that the project site base flood elevation is approximately 10 feet MSL, which is below the finish floor elevation of the proposed building (FF=18.5 feet MSL), and meets the criteria for finished floor elevations to be a minimum of 2 feet above the flood elevation.

A Mitigated Negative Declaration No. 155821 has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) Guidelines, which identified the potential for adverse impacts related to Noise, Historical Resources (Archaeology) and Land Use

(MSCP/MHPA). Due to the site's adjacency to the MHPA, the project is required to utilize mitigation measures in the form of Land Use Adjacency Guidelines in order to avoid significant environmental impacts to the MHPA. Mitigation measures are detailed in Section V of the Mitigated Negative Declaration No. 155821, and include shielding of the MHPA area from light and noise through fence and wall construction along the easterly property boundary, and mechanical equipment utilized within the project is subject to noise limitations. Drainage has been diverted away from the MHPA area, and the retaining/crib wall lying adjacent to the MHPA will be planted with appropriate native plant species. The project site does not provide connectivity between areas of open space and no impacts to wildlife corridors will occur. The Owner/Permittee has agreed to all conditions in the MMRP and the City will monitor compliance with these conditions. Therefore the proposed coastal development will not adversely affect environmentally sensitive lands.

C. THE PROPOSED COASTAL DEVELOPMENT IS IN CONFORMITY WITH THE CERTIFIED LOCAL COASTAL PROGRAM LAND USE PLAN AND COMPLIES WITH ALL REGULATIONS OF THE CERTIFIED IMPLEMENTATION PROGRAM.

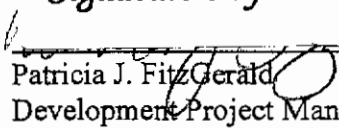
The project is requesting a Coastal Development Permit and Site Development Permit to allow construction and operation of an 8,928-square-foot car wash with convenience store and office uses to be located on a vacant 0.94 -acre site. The Otay Mesa-Nestor Community Plan designates the site for Community-Commercial land use. The project will support the Otay Mesa-Nestor Community Plan recommendations and guidelines for commercial development by ensuring the building street facades have three-dimensional relief to provide visual interest at the street level, and by incorporating pedestrian circulation and bicycle racks on site to facilitate residents commuting from nearby residential areas to the convenience store. To ensure compatibility with the adjacent residential and open space areas, the project provides setbacks and landscaped buffers, and will utilize earth-tone colored, textured concrete blocks for the planted crib wall adjacent to the MHPA. The development will be in conformity with the Otay Mesa-Nestor Community Plan/LCP and complies with the regulations of the certified Land Development Code.

D. FOR EVERY COASTAL DEVELOPMENT PERMIT ISSUED FOR ANY COASTAL DEVELOPMENT BETWEEN THE NEAREST PUBLIC ROAD AND THE SEA OR THE SHORELINE OF ANY BODY OF WATER LOCATED WITHIN THE COASTAL OVERLAY ZONE THE COASTAL DEVELOPMENT IS IN CONFORMITY WITH THE PUBLIC ACCESS AND PUBLIC RECREATION POLICIES OF CHAPTER 3 OF THE CALIFORNIA COASTAL ACT.

The project is requesting a Coastal Development Permit and Site Development Permit to allow construction and operation of an 8,928-square-foot car wash with convenience store and office uses to be located on a vacant 0.94 -acre site. Although adjacent to the MHPA open space area and in the vicinity of the San Diego Bay, and located between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone, the project will not interfere with public access or in any way hinder public utilization of surrounding public recreation areas according to the policies of Chapter 3 of the California Coastal Act.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Site Development Permit No.730066 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Coastal Development Permit No. 554575 and Site Development Permit No. 730066, a copy of which is attached hereto and made a part hereof.

Signature on file Signature on file


Patricia J. Fitzgerald
Development Project Manager
Development Services

Adopted on: May 20, 2010

JO#: 23430870



THE CITY OF SAN DIEGO
COUNCILMEMBER BENJAMIN HUESO
DISTRICT EIGHT

September 13, 2010

California Coastal Commission
7575 Metropolitan Dr. #103
San Diego, CA 92108-4421

Dear Commissioners,

I am writing this letter in support of the Palm Avenue Car Wash project. This project is in my district and I am a strong supporter. The San Diego City Council unanimously supported this project after a thorough discussion. This project is a green project and includes the following:

- All water is kept on site.
- Recycled water is beneficial and reused to wash cars.
- Reclaimed water is used to irrigate the landscaping in place of potable water.
- The project is expected to reduce home driveway washes.
- The project is consistent with the LCP.

Moreover, the project will also help stimulate the local economy during a critical time. This car wash will bring jobs for our residents. Importantly, this project is being hindered by a competitor down the street who is filing a law suit against them and attempting to stop two entrepreneurs simply trying to start and run a business in my district. We should be encouraging them not placing road blocks in their way.

I am looking forward to the project and its community-wide benefits. I ask for your support.

Sincerely,

Signature on file

Ben Hueso
Council President
City of San Diego

