

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



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Filed: July 9, 2010
49th Day: August 27, 2010
Staff: D. Lilly-SD
Staff Report: July 22, 2010
Hearing Date: August 11-13, 2010

STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE

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.

APPELLANTS: Timothy J. Carmel

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission, after public hearing, determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed.

The issues raised by the appellant relate to the LCP requirements to adequately study and mitigate lighting, noise, water quality and air quality impacts. The development is located next to an area 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. The site abuts land designated in the City of San Diego LCP as Multi-Habitat Planning Area (MHPA) along its eastern property line. The approved car wash is required to implement mitigation measures to shield light and noise from entering the MHPA and to divert drainage away from the MHPA. Impacts to air quality are expected to be consistent with a typical car wash facility, which is a permitted use in the Commercial Community (CC-4-2) zone. There is no evidence that the project will have adverse impacts on coastal resources. Staff has determined that these issues

have been adequately addressed by the City in its approval, consistent with the certified LCP.

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.

I. Appellants Contend That: The project, as approved by the City, is inconsistent with the certified LCP with respect to the protection of biological resources and air quality.

II. Local Government Action: The coastal development permit was approved by the San Diego Planning Commission on May 20, 2010. After being appealed to the City Council, it was approved on June 29, 2010. The permit contains special conditions addressing mitigation measures for water quality, flood hazard, invasive species, noise, lighting, adjacency to the Multi-Habitat Planning Area along the eastern border of the site, and other measures, as described below under Section V. Findings and Declarations.

III. Appeal Procedures/Substantial Issue Analysis: After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30604(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date. If the Commission

conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. titl. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City does not raise a substantial issue with regard to the appellant's contentions.

IV. Staff Recommendation on Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-OMN-10-54 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. **A-6-OMN-10-54** does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

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, 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 designed 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. A small portion of the eastern edge of the subject site next to the salt pond lot also falls within Zone A of a Special Flood Hazard Area.

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.

The standard of review is conformance with the policies and provisions of the certified LCP.

2. Protection of Sensitive Biological Resources/Water Quality. The appellant asserts that the approved development is inconsistent with the City of San Diego LCP policies addressing the protection of environmentally sensitive land, specifically, the adjacent MHPA, because of impacts to water quality and from the development's lighting and noise.

The appellant cites the following policy in the certified Local Coastal Program Land Development Code:

§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.

Other ESL regulations include the following:

§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, the area consists of a disturbed wetland created by the creation of the salt pans and associated dikes, the filled area to the west, and some backflow from the tidal canals to the north. The report determined that the habitat is highly disturbed, currently dominated by non-native grasses and broad leafed weeds. The dominant native plant within 300 feet of the subject site is salt grass.

Based on the recommendations in the biological survey, the Mitigated Negative Declaration for the project required 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.

The appellant contends that 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.” Specifically, the appellant notes that no lighting study was prepared for the project, and asserts that the proposed lighting is insufficient. The appellant also asserts that the noise study performed for the project is inadequate because the project involves fill, and thus, the acoustics will be different than

those actually studied, and noise mitigation will be insufficient. The appellant also contends the water report prepared by the City fails to analyze the impacts of the various solvents and detergents that the car wash will use.

Requiring that lighting be shielded and directed away from sensitive habitat is a standard and typical mitigation measure for development adjacent to such habitat. The appellant has not submitted any evidence suggesting that this mitigation will not be sufficient. The noise analysis includes project plans consistent with the approved project, and the City of San Diego accepted the noise analysis study as adequate for the subject project, including the proposed grading and fill. There is no evidence that the noise study is inadequate or inconsistent with the standards of the LCP.

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. Thus, there is no evidence that impacts to environmentally sensitive lands will occur inconsistent with the policies of the LCP.

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 wetland vegetation next to the salt ponds is located immediately adjacent to the subject site. There will be no buffer between the wetland and the approved development. However, the site will be elevated 9'6" from 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. Commission staff

contacted staff at the U.S. Fish and Wildlife Service, who indicated that they were not concerned that there would be any adverse impacts from the project as proposed.

The adjacent wetland is currently highly disturbed, and is not part of the South Bay Wildlife Refuge or in an area currently planned for restoration. The subject site can be considered an infill lot, as it is surrounded by development on three sides, and the approved development will not be any closer to the wetland vegetation than the large multi-family residential complex immediately to the north.

Providing a 100-foot buffer on the L-shaped subject site would provide essentially no room for development on the subject site. Commission staff is currently investigating the history of how the current lot configuration arose, as some lot line adjustments may have occurred without coastal development permits. Nevertheless, given that some development rights exist on the site, it is not evident that any alternative development configuration or use could occur on the site that would be more protective of coastal resources than the proposed project. Residential use (which would require a rezone) is typically considered to have more impacts on adjacent sensitive habitat than commercial uses, and as noted, an increase in the use of commercial car washes can benefit water quality if they result in a reduction in the number of people who wash their cars at home. As described above, the applicant has incorporated mitigation measures addressing potential impacts from the proposed car wash use.

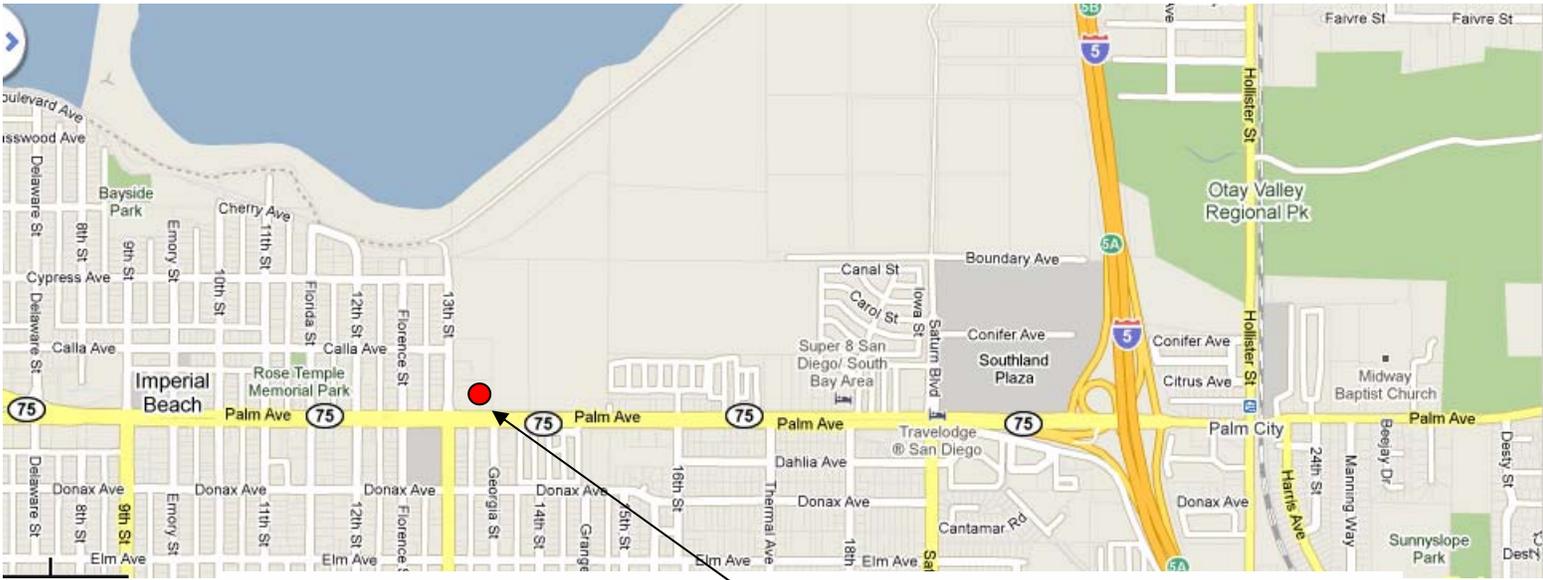
Therefore, in this particular case, the proposed development configuration, including the lack of a buffer, other than fencing and an elevation difference, will not significantly impact coastal resources. There are no additional mitigation measures or alternatives required because the project is not expected to have a significant impact on coastal resources. Thus, the failure of the City to properly analyze the wetland buffer requirements of the certified LCP does not result in impacts of the level of significance required to find substantial issue.

3. Air Quality. The appellant also contends that the City failed 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." 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. Thus, this contention does not raise a substantial issue of consistency with the LCP.

In conclusion, all appropriate measures have been taken to reduce the potential coastal resource impacts to a level of insignificance, and the project does not raise substantial issue with respect to the issues on which the appeal was filed. Therefore, the Commission finds that the allegations made by the appellant do not raise a substantial issue with regard to the project's consistency with the certified LCP.

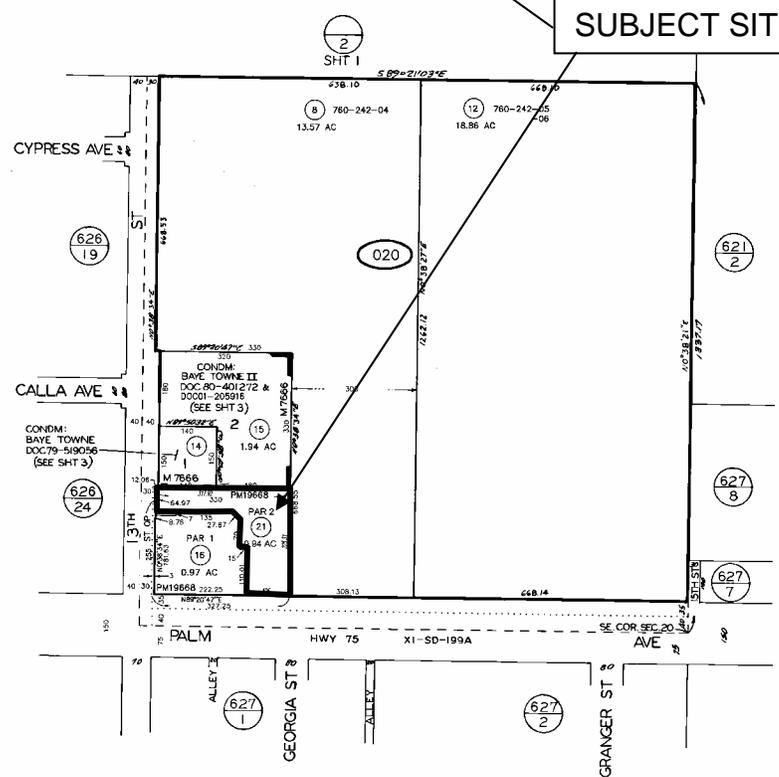
4. Substantial Issue Factors. The Commission typically reviews appealed projects based on five criteria that help define whether or not a project raises substantial concerns regarding the project's consistency with a local government's certified LCP and ultimately the Coastal Act. These factors are listed on page three of this staff report. The factors applicable to this specific appeal can be summarized as: the degree of factual and legal support for the City's determination, the significance of coastal resources affected, the project's precedential value, and whether the concerns raise only local issues, or issues of regional and statewide significance. First, as discussed above, there is strong factual and legal support for the City's determination that the approved development is consistent with the certified LCP. Second, although wetlands are significant coastal resources, the proposed project is not expected to have an adverse impact on wetlands. The approved project permits the development of a car wash facility. The approved development would be sited immediately adjacent to a highly disturbed wetland, separated from the sensitive habitat by walls and an approximate 9'6" elevational difference. The project incorporates mitigation measures to reduce potential impacts to the adjacent sensitive habitat, including shielding lighting, noise blocking walls, limits on the hours of operation, using native landscaping on the crib wall adjacent to the habitat, and incorporating water quality and drainage BMPs. The adjacent habitat is low quality, and the approved development would be no closer to the wetland than the large multi-family development immediately north of the subject site. As a result, no impacts to coastal resources are expected.

Third, while it appears that the City did not properly consider the wetland buffer requirements of the LCP, had they done so here, the project would likely have been approved with the same conditions, given that the Commission staff's consultation with the US Fish and Wildlife Service identified no concerns. Thus, although the City's interpretation of the LCP was incorrect, it can apply the wetland buffer policies correctly in the future, and its failure to do so here did not result in the approval of a project that is inconsistent with the LCP. Finally, based on these considerations, the objections to the project do not raise any substantial issues of regional or statewide significance. The project is only approvable because in this particular case, it will not result in any impacts to coastal resources. Were development to be approved in an area where failure to consider and provide a buffer would result in impacts to sensitive habitat, there would likely be a significant issue. In this case, the project as approved does not raise a substantial issue regarding the project's consistency with the certified LCP.



SUBJECT SITE

616-02
SHT 2 OF 3



3/18/2009 ACR

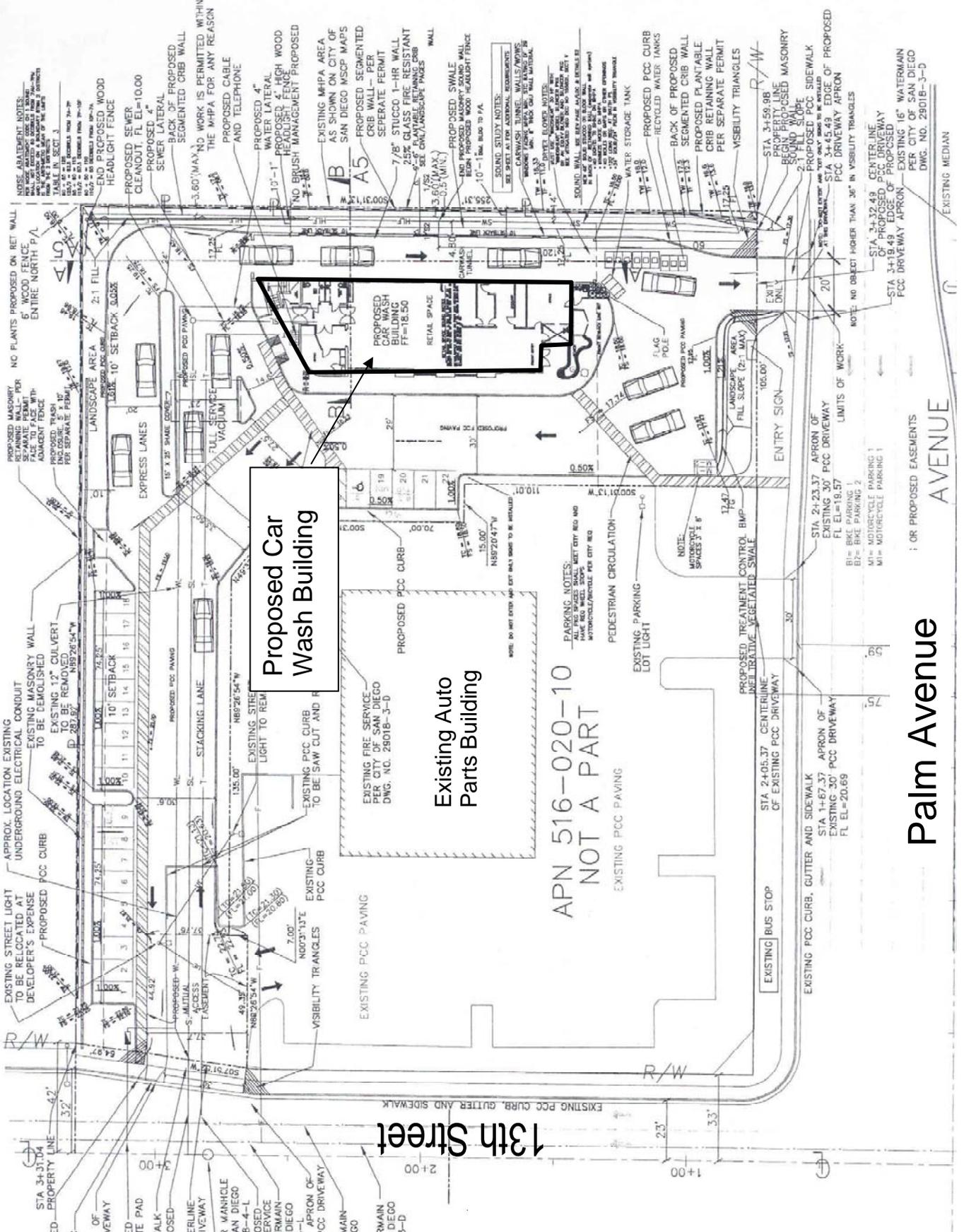
CHANGES				
BLK	OLD	NEW	YR	CUT
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	12	2008	02	5907
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	10	16&17	06	1426
	11&17	18	08	1281
	18	18&20	09	1530
	18&20	21	09	1581



EXHIBIT NO. 1
APPLICATION NO.
A-6-OMN-10-54

Location Map

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 California Coastal Commission



Proposed Car Wash Building

Existing Auto Parts Building

APN 516-020-10
NOT A PART

Palm Avenue



EXHIBIT NO. 2
APPLICATION NO.
A-6-OMN-10-54
Site Plan

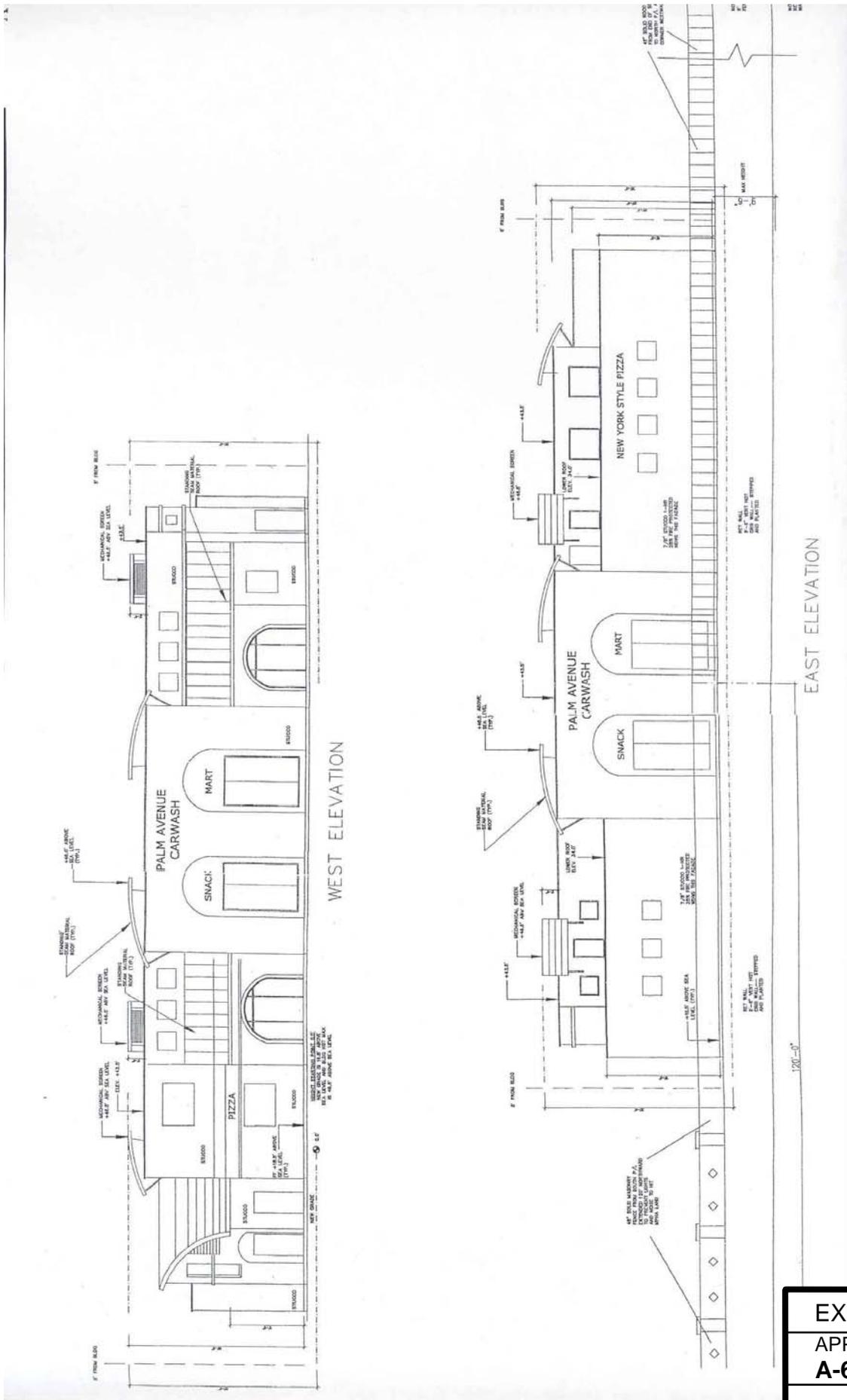


EXHIBIT NO. 3
APPLICATION NO.
A-6-OMN-10-54
Elevations
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
 7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4421
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**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form

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

RECEIVED

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CALIFORNIA
 COASTAL COMMISSION
 SAN DIEGO COAST DISTRICT

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. 4
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 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 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.

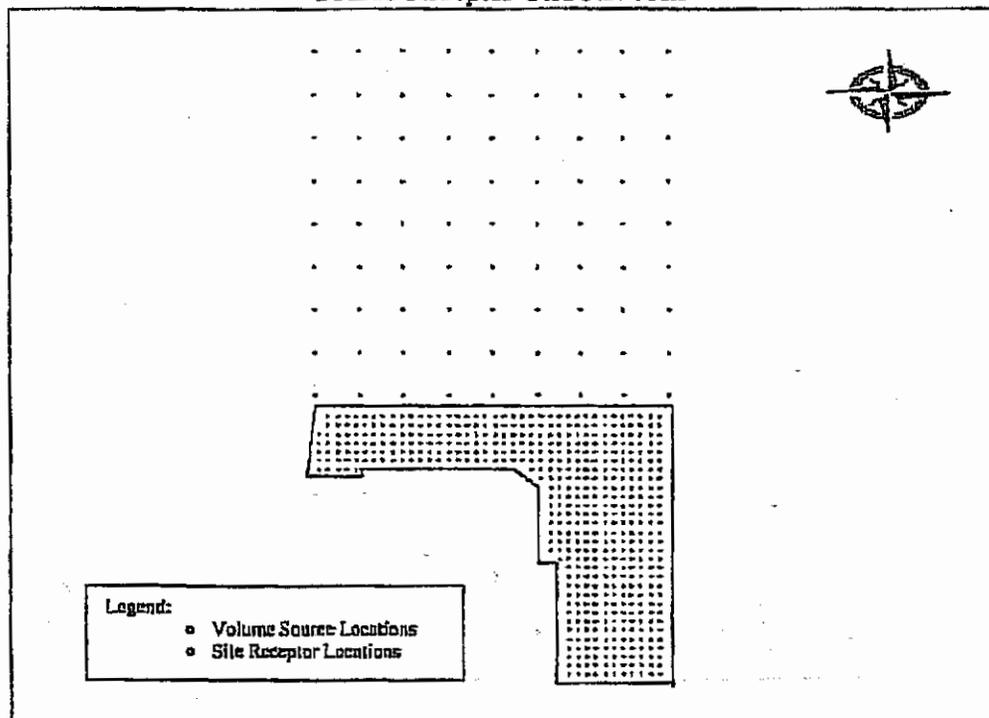
⁷ South Coast Air Quality Management District, 2010. Table XI-A - Mitigation Measure Examples: Fugitive Dust from Construction and Demolition.

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 DeSiana, 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



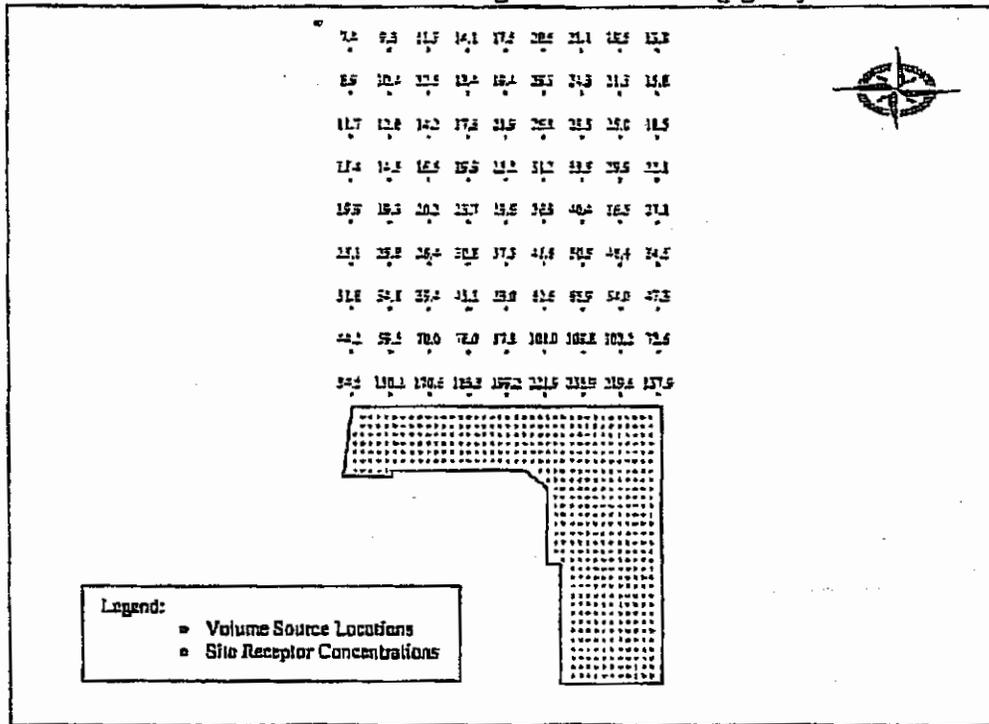
Another variation was to incorporate discrete dry removal mechanisms for exhaust particulates. Based upon the initial LST methodology for the treatment of plume depletion (DRYDPLT), identified weight fractions for fugitive emissions and those referenced in the California Emission Inventory Data and Reporting 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)

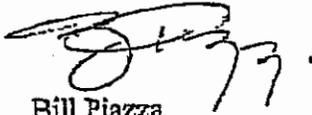


SIGNIFICANT IMPACTS REMAIN REQUIRING THE PREPARATION OF AN EIR

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,



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.

Attachment B

*** AERMOD - VERSION 09292 ***

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

*** 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 (SUMMFILE 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_avenue_car_wash\carwash_pm10_final.SUM

*** AERMCD - VERSION 09292 ***

*** Palm Avenue Car Wash

*** 04/20/10

*** Construction Emissions - PM10

*** 23:43:27

PAGE 3

**MODELOPTs:

CONC

ELEV

FLQPOL

DRYDPLT

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

Surface file: 02_CVA_PROF.SFC

Met Version: 06341

Profile file: 02_CVA_PROF.PFL

Surface format: FREE

Profile format: FREE

Surface station no.: 72290

Upper air station no.: 3190

Name: UNKNOWN

Name: UNKNOWN

Year: 2002

Year: 2002

First 24 hours of scalar data

YR	MO	DY	HR	NO	U*	W*	DT/DZ	ZICNV	ZINCH	M-O	LEN	ZO	BOWEN	ALB	REF	WS	WD	HT	REF	TA	HT	IPCD	PRATE	RH	SFCP	CLUR
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.	10				
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	2.0	-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.	329.	-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	269.	10.	287.0	2.***	-9.00	80.	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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*** 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	AHS_TMP	sigmaA	sigmaM	sigmaV
02	07	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.	2.18	-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 09292 ***

*** 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/M**3 **

GROUP ID	AVERAGE CONC	DATE (YYMMDDHH)	RECEPTOR (XR, YR, ZELEV, ZHILL, ZFLAG)	OF TYPE	NETWORK GRID-10
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 - PH10

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

**MODELOPTs: 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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k

CARMEL & NACCASHA LLP
ATTORNEYS at LAW

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² ALSO ADMITTED IN ILLINOIS
³ ALSO ADMITTED IN WASHINGTON

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

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(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).

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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.

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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

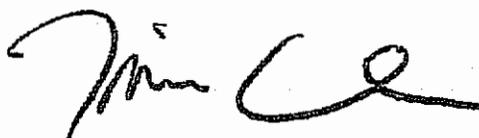
The City's approval of the Project is inconsistent with the City's certified local coastal plan. The Project adversely affects environmentally sensitive lands, and the City failed to provide the factual basis necessary for the City to find that the Project will result in "minimum disturbance." Therefore, 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



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.

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/pfitzgj

Revised 4/08/10 HMD

EXHIBIT NO. 5
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 Of 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) is 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.

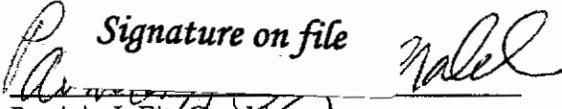
C. THE PROPOSED COASTAL DEVELOPMENT IS IN CONFORMITY WITH THE CERTIFIED LOCAL COASTAL PROGRAM LAND USE PLAN AND COMPLIES WITH ALL REGULATIONS OF THE CERTIFIED IMPLEMENTATION PROGRAM.

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

Patricia J. FitzGerald
Development Project Manager
Development Services

Adopted on: May 20, 2010

JO#: 23430870

Mark Kravis For Palm Ave Car Wash

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

mkravis@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

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

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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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
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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.

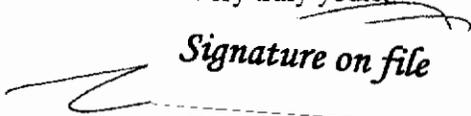
On behalf of my client, I renew my invitation to meet and confer with you regarding your "client's" objections to the Project to see if we may resolve any legitimate concerns. On the other hand, if you do represent a competitor, I assume you will not be

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

