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August 25, 2021

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South Valley Area Planning Commission
CITY OF LOS ANGELES

Re: **South Valley Area Planning Commission August 26, 2021 Agenda Item No. 5**
4801 N. Laurel Canyon Blvd. (APCSV-2019-1481-SPE-SPP-CU-ZV)

Dear Planning Commissioners and City Staff:

As previously advised by separate letter, my office represents interested parties and residents of the City of Los Angeles who oppose the above-referenced project.

MD Acoustics has prepared a peer review of the MK Design Study that was provided for the project. MD Acoustics concludes that the car wash has the potential to exceed the City's noise ordinance to the surrounding commercial and residential properties. [A copy of the MD Acoustics report is attached as Exhibit 1.] The findings are important to the surrounding properties and should also be considered by the Commission. I ask that the MD Acoustics study be made part of the record.

Sincerely,

Eduardo Olivo

Eduardo Olivo
Attorney at Law

Enclosure

EXHIBIT 1

Subject: 4801 Laurel Canyon Car Wash – Acoustical Peer Review – City of Los Angeles, CA

Dear Mr. Pouldar:

MD Acoustics, LLC (MD) is pleased to provide a peer review of the MK Design Sound Study (dated 1/7/21) for the proposed 4801 Laurel Canyon Car Wash project, in the City of Los Angeles, CA. This review provides our input as it relates to the noise study and highlights areas where the study inadequately evaluates the noise.

1.0 Comments for the Report

MD has specific comments relating to the report that should be addressed in this analysis as outlined below:

7.0 Methodology

Pg. 10

1. Noise measurements were taken at a height of 36"-48" above finish grade. Section 111.02(a) of the Los Angeles Municipal Code states that the microphone shall be located four to five feet above the ground. Subsequently, the noise model should be calculated four to five feet above the ground.
2. The baseline measurements were based off 60 second samples. Section 111.01(a) of the Los Angeles Municipal Code states that ambient noise shall be averaged over a period of at least 15 minutes.
3. Streets and roads were modelled as a "uniform sound wall" of 60 dBA or 70 dBA. It is unclear how the propagation of street noise was calculated. Line sources such as roads should have a 3 dB drop-off over a doubling of distance. There is no distance given for the 60 dBA and 70 dBA assumptions or reference for these levels. The modeling approach is unclear.

Pg. 11

4. Peak is defined in the report as measurements of short duration. Peak sound pressure is a specific metric which is not generally analyzed for environmental noise. It appears that in this report, peak refers to the Leq levels measured during the loudest minute of the car wash cycle. The metrics should be more clearly defined to determine what each calculation and measurement is referring to.
5. Ambient Noise Level is defined in the report as levels averaged across 15 minutes. As stated in Section 111.01(a) of the Los Angeles Code, ambient noise is taken exclusive of the particular noise

sources to be measured. The report includes the operational noise within the ambient noise levels when only the existing road noise should be included. The metrics should be more clearly defined to determine what each calculation and measurement is referring to.

6. The equation presented appears to linearly average sound levels when they should be logarithmically averaged.

8.2 Samples Tables

Pg.13

7. It appears that a sound level meter was not used which satisfies the requirements for a Type S2A meter as defined by ANSI S1.4. This type of meter is required by Section 111.01(l) of the Los Angeles Municipal Code. It appears that a sound level meter app and internal microphone was used which is insufficient at performing baseline readings as there is no method to calibrate an internal phone mic. ANSI standards are clear and specific on the use of pistonphone calibrators and use on Type 2 (or higher) hardware.
8. The metric of CNEL is mentioned in this section and throughout the report, but CNEL levels are never calculated or presented.

9.1 Traffic Level Description

Pg.15

9. There is no reference or distance given for the expected sound levels given based on traffic flow. It appears to be based on sampled data from Location 3. When comparing Location 3 traffic levels versus sound levels, this methodology is anywhere from 0.27 to 6.33 dB off from the measured data. In traffic noise, a difference of 6 dB corresponds to a quadrupling of cars. The standard Federal Highway Administration's Traffic Noise Model or a similar established standard should be used for predicting noise from traffic.

11.1 Traffic Level Description

Pg.19

10. There is no source given for the blower and vacuum data. It is unknown if these levels refer to sound pressure or sound power levels. No distance is given in relation to these sources. It is not indicated if the reference level is for the vacuum nozzle or turbine. Blower noise levels can vary greatly depending on the manufacturer, so it is important to note which blowers are being modelled. It is also unknown how many blowers have been modeled and what height they are modeled at. These noise sources are the main noise producers on the project site and there is no way to determine if these noise sources were properly evaluated as no reference level has been provided.

11.2 Noise Criteria

11. There is no mention of the Los Angeles Municipal Code, the Land Use Noise Compatibility Matrix, or CEQA in this section. These must be addressed as a part of a Los Angeles noise study. The CEQA

assessment should include an analysis of both construction and operational noise. Construction noise is never mentioned in the report.

11.3 Proposed Site Plan – With implemented Regulatory Compliance Measures, Peak Noise Levels

Pg. 21

12. The proposed 6' CMU wall appears to have a noise reduction of 50 dB which is a significant over assumption. Assuming a height of 3 ft for the vacuum, this wall would have a maximum reduction of 14 dB (See Appendix A). It appears that the STC rating of the wall was used to calculate overall reduction, which does not take into account sound that travels above the wall. More information on how to determine noise exposure based on distance and barrier insertion loss can be found within Federal Transit Authority Manual (Table 4-28) and HUD calculator.

12.0 Recommendations

Pg. 22

13. The report states that 75 dBA is normally considered the upper threshold of acceptable noise at commercial structures, but no source is given. The threshold for powered equipment within 500 ft of a residence is given in Section 112.04 of the Los Angeles Municipal Code. Machinery may not cause the noise level on the premises of any other occupied property to exceed the ambient noise level by more than 5 decibels. CEQA also requires that operational noise must not increase by 3 dBA to or within the normally or clearly unacceptable categories or 5 dBA or greater. The report does not calculate the overall increase from the existing condition or the existing and operational CNEL levels.
14. The report does not clearly label the receptors at the commercial and residential sites or address all surrounding sites.

13.0 Conclusions

Pg. 24

15. It is unclear in this section how the report compares the operational noise levels to the existing condition. The report does not specify at which receptor the operational levels are averaged with the measured existing levels.
16. Most of the measured existing levels (8/10) already exceed the Minimum Ambient Noise Level given by Section 111.03 of the Municipal Code. It is unclear what regulation the noise levels comply with.
17. The existing measurement in Location 5 was 65.8 dBA. The calculated noise levels at that location were 74 dBA. Adding that to the existing condition gives an operational maximum condition of 74.6 dBA. Assuming a condition of 65.8 dBA for 10 minutes and 74.6 dBA for 5 minutes as assumed in the report, the overall operational Leq level is 70.9 dBA, which is 5.1 dB over the existing condition. This

calculation, however, cannot be verified as the assumptions used (which have been taken from the report) were not obtained by the required methods and standards.

2.0 Communications

The review team had no communications with the project applicant or the preparer of the noise study.

3.0 Conclusion

The car wash has the potential to exceed the City's noise ordinance to the surrounding commercial and residential properties according to the report. MD cannot verify the existing measurements or calculations in this study. MD's qualifications are provided in Appendix B. MD is pleased to provide this peer review of the MK Design Sound Study for the 4801 Laurel Canyon car wash. If you have any questions regarding this analysis, please do not hesitate to call us at (805) 426-4477.

Sincerely,
MD Acoustics, LLC



Claire Pincock
Consultant



Mike Dickerson, INCE
Principal

Appendix A: **Calculations**

Barrier Performance Module

This module provides to the user a measure on the barrier's effectiveness on noise reduction. A list of the input/output variables and their definitions, as well as illustrations of different scenarios are provided.

Calculator

View Day/Night Noise Level Calculator (/programs/environmental-review/dnl-calculator/)

View Descriptions of the Input/Output variables.

Note: Tool tips, containing field specific information, have been added in this tool and may be accessed by hovering over the Input and Output variables with the mouse.

WARNING: If there is direct line-of-sight between the Source and the Observer, the module will report erroneous attenuation. "Direct line-of-sight" means if the 5' tall Observer can see the noise Source (cars, trucks, trains, etc.) over the Barrier (wall, hill/excavation, building, etc.), the current version of Barrier Performance Module will not accurately calculate the attenuation provided. In this instance, there is unlikely to be any appreciable attenuation.

Note: Barrier height must block the line of sight

Input Data

H	6	R ¹	2
S	3	D ¹	2
O	5	α	180

Calculate Output

Output Data

h	2	R	3
D	1	FS	13.8618

Reduction From Barrier (dB):

-13.8618

Refresh

Note: If you have separate Road and Rail DNL values, please enter the values below to calculate the new combined Road/Rail DNL :

Road DNL:

Rail DNL:

Calculate

Combined Road/Rail DNL with Barrier Reduction:

Input/Output Variables

Input Variables

The following variables and definitions from the barrier being assessed are the input required for the web-based barrier performance module:

- H = Barrier Height
- S = Noise Source Height
- O = Observer Height (known as the receiver)
- R^1 = Distance from Noise Source to Barrier
- D^1 = Distance from the Observer to the Barrier
- α = Line of sight angle between the Observer and the Noise Source, subtended by the barrier at observer's location

Output Variables

Definitions of the output variables from the mitigation module of the Day/Night Noise Level Assessment Tools as part of the Assessment Tools for Environmental Compliance:

- h = The shortest distance from the barrier top to the line of sight from the Noise source to

Appendix B:
Reviewers Resumes

CLAIRE PINCOCK

ACOUSTICAL CONSULTANT



Claire Pincock graduated from Brigham Young University in the top 5% of her graduating class with a Bachelor of Science degree in Applied Physics with an emphasis in acoustics and a minor in Mathematics. Prior to her joining MD Acoustics, she was a research assistant at BYU.

Her research was focused on speech acoustics, specifically on how speech radiates from the mouth.

<https://www.physics.byu.edu/thesis/archive/2017>

In 2017, Claire presented her research with Dr. Timothy Leishman on speech directivity at the Acoustical Society of America, spring Boston conference where she placed 2nd in the student competition on speech acoustics.

<http://asa.scitation.org/doi/abs/10.1121/1.4987652>



EDUCATION

Brigham Young University

B.S., Applied Physics (Acoustics), 2017

Magna Cum Laude

AFFILIATIONS AND AWARDS

Acoustical Society of America (ASA)

BYU Acoustic Research Group

American Institute of Physics (AIP)

REPRESENTATIVE PROJECT EXPERIENCE

Architectural Acoustics Assessment

- Vista Del Mar Residential Development, Dana Point, CA
- Hampton Inn, Santa Ana, CA

Noise and Vibration Assessment

- Vineland Gas Station and Car Wash, Los Angeles, CA
- Lakeview Terrace Gas Station & Car Wash, Los Angeles, CA
- Van Buren Blvd Express Car Wash, Riverside, CA
- Broadway Gas Station and Car Wash, Los Angeles, CA
- Clinton Keith Service Station and Car Wash, Murrieta, CA
- Old Middlefield Car Wash, Mountain View, CA
- Riverside Car Wash and Retail, Jurupa Valley, CA
- Estrella Commons Residential Development, Goodyear, AZ
- Blackstone & McKinley Multi-Family Development, Fresno, CA
- Haven at 26th Mixed Residences, Rancho Cucamonga, CA
- Berylwood Park Skatepark, Simi Valley, CA
- Marshalls – Del Amo Plaza, Torrance, CA
- Desert Land Ventures, Desert Hot Springs, CA
- Ellis Commons Senior Housing Blasting, Perris, CA

CLAIRE PINCOCK

ACOUSTICAL CONSULTANT — Continued



- Canyon Creek Blasting, San Diego, CA
- Pico Blvd Multi-Family Development Cat32, Los Angeles, CA
- Cyrus One Trane Chillers, Chandler, AZ
- Warner Ave Vault Resonance, Huntington Beach, CA
- Baypoint Preparatory Academy, San Jacinto, CA
- Amani Apartments, Los Angeles, CA
- Kawana Springs Apartments, Santa Rosa, CA
- Jillson and Harbor Residential Developments, Commerce, CA
- Adams Blvd Car Wash and Service Station, Los Angeles, CA

Vibration Assessments

- Canyon Creek Blasting, San Diego, CA
- Warner Ave Vault Resonance, Huntington Beach, CA
- Ellis Commons Senior Housing Blasting, Perris, CA

Construction Noise and Vibration

- Mae Boyar Park Community Building, Oak Park, CA
- Broadway Gas Station and Car Wash, Los Angeles, CA
- Clinton Keith Service Station and Car Wash, Murrieta, CA

Noise Reviews/Updates

- Mt. San Antonio College Facilities and projects Noise Review, Walnut, CA
- French Valley Airport Development, Riverside County, CA
- Cameron Ave Surf Thru Express Car Wash Noise Compliance, Visalia, CA

Court Cases

- Sanctuary at Deseret Ridge, Scottsdale, AZ

Ordinances

- Flagstaff Parks Noise Ordinance, Flagstaff, AZ

Facilities Acoustics Qualifications/Certification

- Ft. Huachuca Anechoic Chamber Qual/Cert, AZ
- MD Acoustics Anechoic Chamber Qualification

MIKE DICKERSON JR., INCE

PRINCIPAL

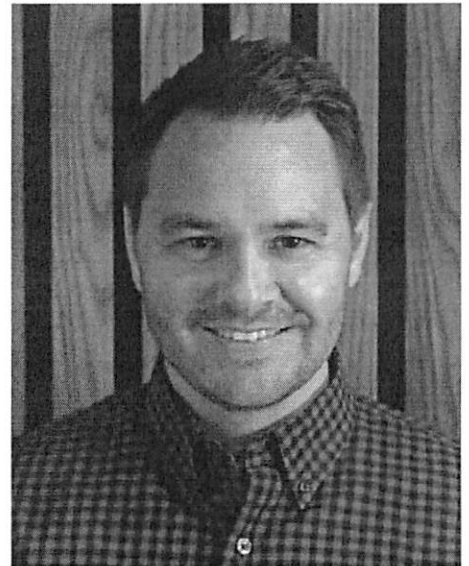


Mike Dickerson has a passion for the science of sound and vibration and has worked professionally in acoustical engineering since 2002. He received his Bachelor of Science degree in Physics, emphasizing in acoustics from Brigham Young University in Utah. He is currently a member of the Institute of Noise Control Engineers (INCE). Motivated by professional growth and opportunity, Mr. Dickerson formed his own acoustical engineering firm, MD Acoustics in 2012.

Mr. Dickerson's versatile experience includes leading and assisting in the design and review of many facets of acoustical engineering and air quality projects, including but not limited to air/noise assessments, ceiling/floor assembly design, architectural design, acoustical product design, vibration analysis and noise mitigation strategies.

Prior to starting his own consulting firm, Mr. Dickerson worked for Sony Entertainment, Parsons, and RK Engineering. He has successfully completed over 4,200 acoustical/air quality assessment reports for various engineering companies, municipalities and other agencies (both public and private). His strategic project planning and cost effective management solutions enabled him to excel in the field of Acoustics and project management.

In 2011, Mr. Dickerson was asked to present a paper at the Acoustical Society of America Seattle, Washington Conference on his research and work on noise and vibration in Cockpit Door Modules. MD continues to work closely with many engineering disciplines and provides quality results.



EDUCATION

Brigham Young University
B.S., Physics (Acoustics), 2005

AFFILIATIONS AND AWARDS

Institute of Noise Control Engineers (INCE)
Acoustical Society of America (ASA)
BYU Acoustic Research Group
Association of Environmental Planners (AEP)

REPRESENTATIVE PROJECT EXPERIENCE

Architectural Acoustics Assessment/Design

- Wells Fargo Corporate Office, Chandler, AZ
- Peoria Sports Complex Seattle Mariners Lobby, Peoria, AZ
- Intel Corporation CH5 216/217, Chandler, AZ
- Mammoth Rock and Bowl, Mammoth Lakes, CA
- Rubios Restaurant, San Diego, CA
- Americana at Brand, Glendale, CA
- 6300 Hollywood Blvd Retail Space, Hollywood, CA
- Calvary Church Renovations, Santa Ana, CA

Noise and Vibration Assessment

- Central Metal Incorporated Reclamation Plant Expansion, Los Angeles, CA
- Sonora Commons North Gateway Transfer Station, Phoenix, AZ
- Hotel and Water Park Development, Garden Grove, CA
- Longbow Development Aircraft Noise, Mesa, AZ
- La Ventilla Development I 10 Freeway, Goodyear, AZ
- Wells Park Pump Improvement, Chino Hills, CA

MIKE DICKERSON JR., INCE

PRINCIPAL — Continued



- Hog Wash Car Wash, Phoenix, AZ
- Ellis Commons Senior Housing Blasting, Perris, CA
- Canyon Creek Blasting, San Diego, CA

Oil and Gas Noise and Vibration Assessment

- La Goleta Storage Field Enhancement, Santa Barbara County, CA
- Whittier Workman Mill Road Oil Rig Drilling Operation, Los Angeles County, CA
- La Goleta Storage Compressor Vibration, Santa Barbara County, CA
- Mills Station Excavation Noise and Vibration, Ventura, CA

Highway/Airport/Rail Noise and Vibration

- Caltrans Yucaipa Bridge Box Culvert Improvement, Yucaipa, CA
- Caltrans SR 110 Freeway Expansion, Los Angeles, CA
- Jackson Hole Airport Noise Contours and Flight Path Evaluation, Jackson Hole, WY
- Light Rail Transit Exposition Blvd to Culver Dr, Los Angeles, CA

Telecommunications

- T Mobile Telecommunication Tower, Calabasas, CA
- T Mobile Telecommunication Tower, Malibu, CA
- Verizon Wireless Telecommunication Tower, Santa Clarita
- Sprint Pinto Lake Cell Tower, Santa Cruz, CA
- ATT Cell Tower, Dover, MA
- ATT Cell Tower, Poway, CA

Construction Noise and Vibration

- La Goleta Storage Field Enhancement (1 yr construction monitoring), Santa Barbara County, CA
- Westin Bonaventura Hotel, Los Angeles, CA
- Railroad Canyon Road Expansion, Riverside, CA

Industrial Noise and Vibration Assessment

- Hexcel Corporation Dust Collector Noise & Vibration, Casa Grande, AZ
- ABB Inverter Operation Noise and Vibration, Tempe, AZ
- Pacific Scientific Shaker Room, Chandler, AZ

Air Quality & Greenhouse Gas Assessment

- Golden Gate National Park Recreation Area, San Mateo, CA
- RAW removal of Contaminated Soils AQ/GHG, Glendora, CA

- Glass House Pharms Cultivation Facility, Cathedral City, CA
- Murrieta Car Wash and Service Station, Murrieta, CA

Semiconductor Noise/Vibration Evaluations

- NXP Semiconductor Building M Vibration Isolation Design/Modifications
- NXP Semiconductor PCW Pump Isolation Vibration Isolation Design
- NXP Semiconductor HVAC Duct Silencer and Acoustical Design
- NXP Semiconductor Demising Wall Evaluation and Redesign
- CyrusOne Data Center Chiller Noise Evaluation and Noise Abatement

Mechanical Equipment (HVAC) Noise and Vibration Assessment

- Kaiser Hospital AHU Louver Replacement Acoustics Review/Design, San Francisco, CA
- Northern Arizona University Communication Building Redesign of Mechanical Systems Noise and Vibration Abatement Assessment and Design Recommendations, Flagstaff, AZ
- UCLA Call Center HVAC Equipment Noise and Vibration Design Review and Recommendations, Agora Hills, CA

Film and Entertainment Noise and Vibration Assessment

- Revolt Studio, Hollywood, CA
- University of Arizona, HSIB, Acoustics Evaluation and Design, Tucson, AZ
- The Van Buren, Phoenix, AZ
- Down to Shop Studios, Los Angeles, CA

Court Cases

- Sanctuary at Deseret Ridge, Scottsdale, AZ
- Westfield Mall, Topanga Canyon Blvd., Woodland Hills, CA
- Mobile Radio Patent infringement, Calfee Attorneys
- Foghorn Noise Acoustic Evaluation and Noise Review, Oxnard, CA

Ordinances

- Flagstaff Parks Noise Ordinance, Flagstaff, AZ
- Queen Creek Noise and Vibration for Well Drilling, Queen Creek, AZ

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August 25, 2021

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South Valley Area Planning Commission
CITY OF LOS ANGELES

Re: **South Valley Area Planning Commission August 26, 2021 Agenda Item No. 5**
4801 N. Laurel Canyon Blvd. (APCSV-2019-1481-SPE-SPP-CU-ZV)

Dear Planning Commissioners and City Staff:

My office represents interested parties and residents of the City of Los Angeles who oppose the above-referenced project. As discussed below, the approvals requested by the applicant and City staff are illegal and must be denied.

Initially, I note that on May 17 and June 22, 2021, pursuant to Government Code section 54954.1, I requested that City staff provide me with notice of the scheduled meeting by the Planning Commission for the project and with a copy of the agenda. City staff failed to provide the notice or the agenda.

The Planning Commission is considering, among other things, the following:

1. Whether the “project” is categorically exempt from the California Environmental Quality Act (CEQA) by CEQA Guidelines Section 15303;
2. Whether, pursuant to Los Angeles Municipal Code (LAMC) Section 11.5.7.F (Specific Plan Exceptions) to allow, among other things:
 - An accessory car wash use, although such use is not permitted by the C4 use limitations of Section 5.B. of the Valley Village Specific Plan;
 - Pursuant to LAMC Section 12.24.W.27, a Conditional Use to allow a Commercial Corner Development with the following deviations from the standards of Los Angeles Municipal Code Section 12.22.A.23;
 - Pursuant to LAMC Section 12.27, a Zone Variance from "Q" Conditions of Ordinance No. 165,108 to allow a car wash where otherwise prohibited.

A. The “Project” Is Not Correctly Defined And Is Subject To CEQA

The Planning Commission is required to comply with the requirement of California Environmental Quality Act (“CEQA”) (Public Resources Code (“PRC”) Sections 21000, et. seq.) in connection with its consideration of the “project” being considered.

PRC Section 20180 (a) provides that:

Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

CEQA defines a “project” as an activity that (1) is a discretionary action by a governmental agency and (2) will either have a direct or reasonably foreseeable indirect impact on the environment. (PRC § 21065.) The test for whether an action constitutes a “project” must take place in the abstract. The courts have established that a proposed activity is a CEQA project if, by its general nature, the activity is capable of causing a direct or reasonably foreseeable indirect physical change in the environment. This determination is made without considering whether, under the specific circumstances in which the proposed activity will be carried out, these potential effects will actually occur. Government agencies examining whether an action constitutes a project under CEQA should be sure to focus on whether the activity could, in general, have a direct or indirect environmental impact and not on whether the action is likely to have specific impacts.

Pursuant to Section 15378 of the CEQA Guidelines, a “project” means the whole of the action. In this case, City staff appears to define the “project” as being limited to the actual construction of the car wash. The staff report does not consider that the project includes the approval of a specific plan exception, approval of a conditional use and a zoning variance. The failure to properly define the project prevents a proper analysis and violates CEQA.

B. The Categorical Exemption Established by CEQA Guideline 15303 Is Not Applicable To The Project

CEQA Regulation 15303 exempts from CEQA projects that consist of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. Staff is requesting that the Commission find that the project in this case is exempt pursuant to subsection (e) of Regulation 15303: “Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.”

As discussed above, the “project” is not properly defined; the full scope of the project does not fall within the 15303 exemption. Even if the scope of the project could be limited to the construction of the car wash, such a project would not constitute a small structure such as a garage, carport, patio, etc. The use of the exemption is improper.

C. The Use Of A Variance To Approve A Use That Is Not Permitted By The City's Zoning Ordinance, Is Illegal

The establishment of a car wash at the subject site is not permitted by the City's zoning ordinances. Staff states, in part, that:

Pursuant to Ordinance 165,108 (Sub Area 6740) adopted in 1989, 'the use of the property shall be limited to the uses existing upon the effective date of this ordinance and thereafter to those of the C1.5-1-VL Zone.' This ordinance, then, in essence restricts the zoning of this previously-C2 lot to C1.5 for the determination of whether a use is allowed on the lot; car washes are first allowed in the C2 zone and therefore not allowed in the C1.5 zone.

Staff advises that the applicant must apply for and receive both a Specific Plan Exception and Zone Variance.

A variance is a permit to build a structure or engage in an activity that would not otherwise be allowed under the zoning ordinance; it cannot, however, be granted to allow a use unauthorized by the zoning ordinance. (Government Code § 65906.) Typically, variances provide relief from regulations such as those governing setbacks, height, square footage, and density. A variance may be granted "only when, because of the special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification." (Government Code § 65906.)

"A zoning variance, and by analogy a specific plan exception, must be 'grounded in conditions peculiar to the particular lot as distinguished from other property' in the specific plan area. Unnecessary hardship therefore occurs where the natural condition or topography of the land places the landowner at a disadvantage vis-à-vis other landowners in the area, such as peculiarities of the size, shape or grade of the parcel." *Committee to Save the Hollywood Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1183, citations omitted. The courts have also discerned in the hardship requirement an additional finding that the hardship be substantial, and that the exception sought must be in harmony with the intent of the zoning laws. (*Id.*)

Further, the special circumstances pertaining to the property must be such that the property is distinct in character from comparable nearby properties. In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, the landowner obtained a zoning variance to build a 93-space mobile home park on 28 acres in Topanga Canyon on property zoned for light agricultural and single-family residences. *Id.* at 510. Applying Government Code section 65906, the *Topanga* found insufficient evidence supported the grant of the variance because there was no evidence concerning comparable neighborhood properties, and therefore concerning whether the variance was necessary to bring the landowner into parity with other parties holding property in the same area. *Id.* at 521.

LAMC Section 11.5.7 establishes specific plan procedures. Subsection F sets forth the findings required for approving exceptions to the specific plan. Among other things, that subsection requires a finding, like a variance, “[t]hat there are exceptional circumstances or conditions applicable to the subject property involved or to the intended use or development of the subject property that do not apply generally to other property in the specific plan area.” LAMC § 11.5.7 F (b).

In this case, the proposed findings states that the “strict application of the specific plan creates an unnecessary hardship because it limits the improvement and expansion of an existing legal use to include a service on site which will mitigate total vehicle trips and be desirable to the public convenience.” The staff report also points out that the current use as a gas station and convenience store were established prior to the establishment of the Specific Plan in 1993. Staff then argues that allowing for customers to receive a car wash at this location further allows the applicant to develop a use which is typically accessory to such gas station uses. The fact the use preexisted the 1993 Specific Plan, which now does not permit the use, means that the use is a “legal nonconforming use.” It is well established that a legal nonconforming use may not be expanded. *Hansen Brothers Enterprises, Inc. v. Board of Supervisors of Nevada County* (1996) 12 Cal.4th 533, 551. Staff is directly advocating the expansion if a legal nonconforming use. This is improper.

The proposed findings in the staff report indicate that: “The unique location (subject to a Specific Plan which prohibits redevelopment or expansion of the legally existing, previously-established use) and existing development of the site are special circumstances applicable to the subject property that do not apply generally to other property in the same zone and vicinity.” Staff states that these circumstances include the large size of the site, history of automotive uses, location on a corner, and adjacency to the nearby Freeway. Staff argues that, in essence, the site is uniquely capable of accommodating the proposed car wash and providing needed access and parking for the proposed incidental use without impeding access to or interference with the existing refueling operation.

The analysis is not focused on the actual characteristics of the subject site. The proposed findings points out that the proposed use is not allowed in the subject zone. The proposed findings then indicate that, because the site already has an existing automotive use and is big enough and located near a freeway, it can handle the proposed use. This is not a proper variance or specific plan exemption analysis. These findings do not support the granting of a variance or a specific plan exemption.

Staff also refers to the adjacent gas station. The fact that the City may have previously allowed a car wash on another property, does not justify the failure in this case to properly consider the legal variance requirements. There is no evidence that relates to the other site that justifies the failure to properly analyze the proposed project in this case.

The intended use is not allowed by the City’s zoning ordinances. If the applicant or the City desire to proceed with the use, they are required to seek a change in the zoning ordinance and comply with all of legal requirements necessary for such a change. Such requirements cannot be avoided by use of the variance procedure.

For all of the above reasons, the Planning Commission should deny the proposed project.

Sincerely,

Eduardo Olivo

Eduardo Olivo
Attorney at Law

SECONDARY SUBMISSIONS

DAY OF HEARING SUBMISSIONS