

Exhibit V
Appeal of CEQA Determination



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May 11, 2023

VIA U.S. MAIL AND ELECTRONIC MAIL

Jennifer Clark, Director
Planning & Development
City of Fresno
2600 Fresno Street
Fresno, California 93721

Re: APPEAL OF ENVIRONMENTAL ASSESSMENT
Development Permit Application No. P22-01346
Our File No.: 041235.000000

Dear Ms. Clark:

Pursuant to Fresno Municipal Code section 15-5005(I), Xiamy Ly-Yang on behalf of Rivendell Community, Inc., and Gerry Mirassou as Co-Trustee of the Mirassou Survivor's Trust created April 30, 2005 (Owner of Airport Village) hereby appeal the findings of the Director and Planning Commission that Development Permit Application No. P22-01346 is categorically exempt from CEQA under 14 CCR § 13332 /Class 32 In-Fill Project. A copy of the Notice of Exemption filed on May 8, 2023 is attached hereto as Exhibit "A" and is incorporated by this reference as though fully set forth herein. The basis of this Appeal is that there is a reasonable probability that the designated activity for the Project will have a significant effect on the environment due to unusual circumstances. (14 CCR § 15300.2(c).)

As detailed in the numerous comment letters presented in opposition to the Project, the Project is located adjacent to an adult daycare facility for autistic individuals. These individuals are particularly susceptible to noise, traffic and parking concerns associated with the Project. (See Letters in Opposition, attached hereto as Exhibit "B", incorporated by references as though fully set forth herein.) Despite the unusual circumstance and reasonable probability of significant environmental effects being brought to the Director and Commission Members' attention, no findings were made regarding the issues in violation of CEQA.

Ms. Ly-Yang and Mr. Mirassou are concurrently petitioning Mayor Dyer and Councilmember Maxwell to appeal the approval of Development Permit Application No. P22-01346. A copy of that Petition will be provided under separate cover. Please include this Appeal and the subsequent Petition in the Record of Proceedings associated with the Project.

///

Jennifer Clark
May 11, 2023
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Please contact the undersigned with any questions, comments or concerns. I have previously requested special notice of any actions taken regarding this Project.

Very truly yours,



Christopher S. Hall

CSH

Enclosures

cc: Mayor Jerry Dyer
Councilmember Tyler Maxwell
Xiamy Ly-Yang
Gerry Mirassou
Jose Valenzuela
Kristi Costa

041235-000000 9108485.1

EXHIBIT “A”

NOTICE OF EXEMPTION

FROM: City of Fresno
Planning and Development Department
2600 Fresno Street, 3rd Floor
Fresno, California 93721-3604

TO: X Fresno County Clerk
2220 Tulare Street
Fresno, California 93721

____ Office of Planning & Research SCH NO.: N/A
P.O. Box 3044, Room 212
Sacramento, California 95812-3044

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FILED
MAY 08 2023 TIME 12:11 PM
FRESNO COUNTY CLERK
By [Signature] DEPUTY

Project Title: Development Permit Application No. P22-01346

Project Location: 4941 East McKinley Avenue (APN: 491-291-05)

Project Location - City: City of Fresno

Project Location - County: County of Fresno

Description of Nature, Purpose, and Beneficiaries of Project: Environmental Assessment No. P22-01346 was filed by Orlando Ramirez of Ramirez Planning, Inc., on behalf of Mohamad Assad, and pertains to ±0.69 acres of vacant property. Development Permit Application P22-01346 requests authorization to construct a ±3,500 square-foot automated carwash building with approximately 16 vehicle-self-service vacuum stalls. In addition, the project proposes on and off-site improvements including but not limited to landscaping, a modified drive approach and utilities. The project is located in the IL (*Light Industrial*) zone district.

Name of Public Agency Approving Project: City of Fresno, Planning and Development Department

Name of Person or Agency Carrying Out Project: Orlando Ramirez of Ramirez Planning, Inc.

Exempt Status: (check one)

- ☐ Ministerial - PRC § 21080(b)(1); CEQA Guidelines §15268
☐ Declared Emergency - PRC § 21080(b)(3); CEQA Guidelines §15269(a)
☐ Emergency Project - PRC § 21080(b)(4); CEQA Guidelines §15269(b) and (c)
☒ **Categorical Exemptions - CEQA Guidelines 15332/Class 32**
☐ Statutory Exemption - PRC § _____

Reasons why project is exempt: The proposed project is characterized as in-fill development and is consistent with the conditions of Section 15332/Class 32 exemption, as demonstrated in the attached Categorical Exemption Determination for Development Permit No. P22-01346.

Lead Agency Contact Person: Jose Valenzuela, Supervising Planner

Telephone No.: (559) 621-8070

If filed/signed by applicant:

Attach certified document of exemption finding ☐ (check if attached)

Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: _____

[Signature]

Date: 5/5/2023

DP No. P22-01346
CEQA Notice of Exemption
May 5, 2023

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Printed Name and Title: Jose Valenzuela, Supervising Planner
City of Fresno Planning and Development Department

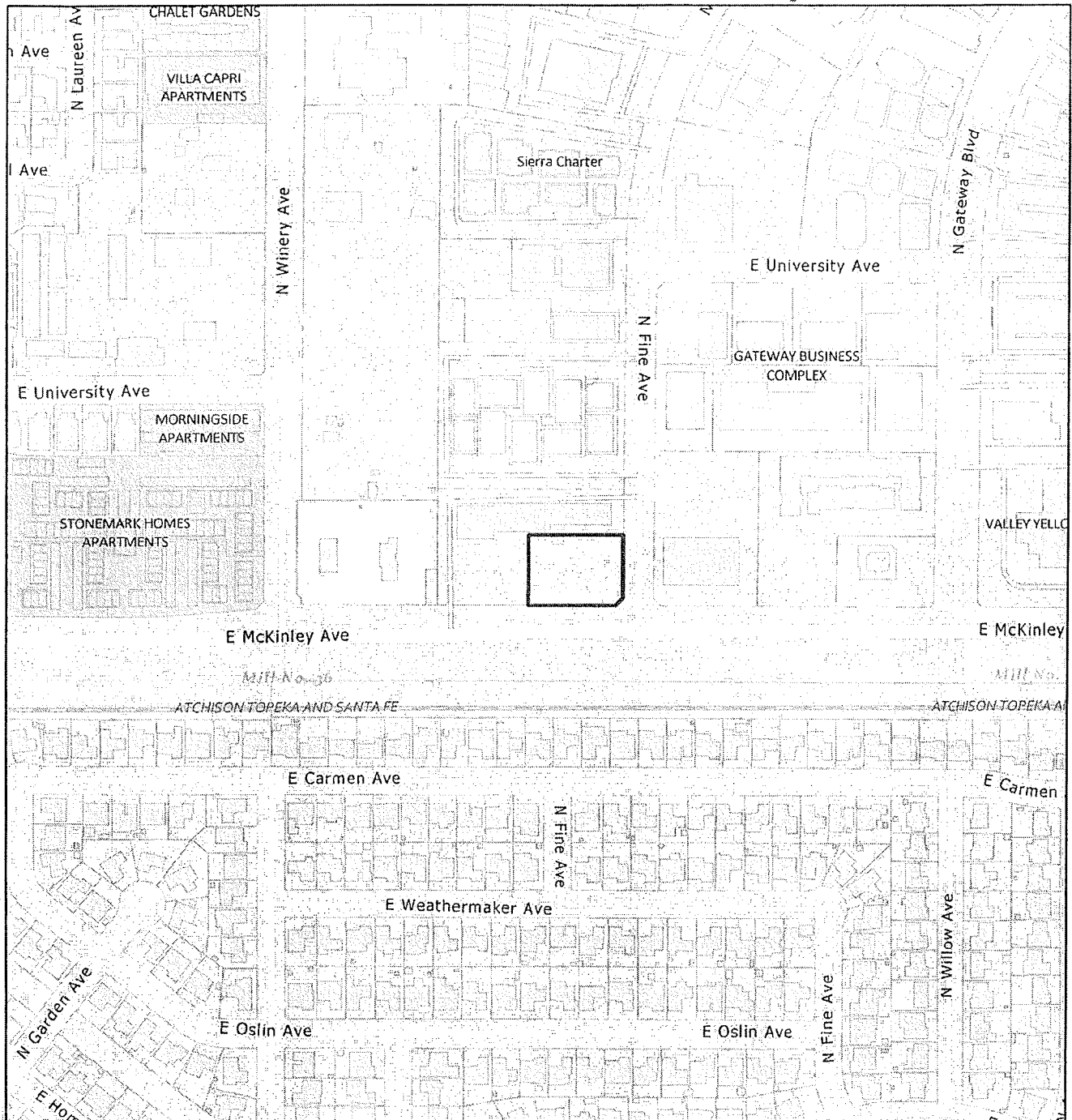
☒ Signed by Lead Agency

☐ Signed by applicant


Attachments: Exhibit A - Vicinity Map
Categorical Exemption Determination for P22-01346

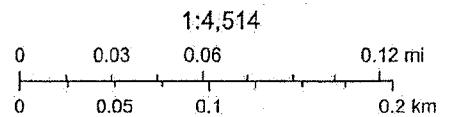
Exhibit A - Vicinity Map

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 Subject Property



**CITY OF FRESNO
CATEGORICAL EXEMPTION
ENVIRONMENTAL ASSESSMENT FOR
DEVELOPMENT PERMIT APPLICATION NO. P22-01346**

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THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY
EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS
ACCORDING TO ARTICLE 19 OF THE STATE CEQA GUIDELINES.

APPLICANT: Orlando Ramirez
Ramirez Development
4233 West Wathen Avenue
Fresno, CA 93722

PROJECT LOCATION: 4941 East McKinley Avenue, located on the northwest corner of East McKinley and North Fine Avenues in Fresno, California.
APN: 494-291-05 (Council District 4)

PROJECT DESCRIPTION: Development Permit Application No. P22-01346 was filed by Orlando Ramirez of Ramirez Development and pertains to a $\pm 4,400$ square-foot building consisting of a 120-foot carwash tunnel and 16 vacuum stalls on a ± 0.69 -acre parcel located at the property noted above. The subject property is located in the IL (*Light Industrial*) zone district.

This project is exempt under Sections 15332/Class 32 (In-fill Development Projects) of the California Environmental Quality Act (CEQA) Guidelines as follows:

Section 15332/Class 32 (Class 32/In-Fill Development Projects) of the CEQA Guidelines exempts from the provisions of CEQA, projects characterized as in-fill development, which meet the following conditions:

- a) The project is consistent with the applicable general plan designation and all applicable general policies as well as with applicable zoning designation and regulations.

The proposed project (Automobile/Vehicle Washing) will meet all the provisions of the Fresno Municipal Code. The project is consistent with the Fresno General Plan designation, policies, and zoning. The existing IL (Light Industrial) zone district is consistent with the Employment-Light Industrial planned land use designation approved for this site by the Fresno General Plan, McLane Community Plan, and the Fresno County Airport Land Use Compatibility Plan.

- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

The proposed project (Automobile/Vehicle Washing) is located within the city limits, occurs on a vacant site of approximately 0.69 acres, which is less than the five-acre maximum, and is surrounded by offices.

- c) The project has no value as habitat for endangered, rare or threatened species.

The site is currently vacant the Fresno Program Environmental Impact Report (PEIR) did not identify this site as habitat for rare or threatened species. Surrounding developments consists of

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existing fast-food restaurants and offices; therefore, it has no value as habitat for endangered, rare, or threatened species.

- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

The proposed project was routed to the San Joaquin Air Pollution Control District, the city of Fresno Public Utilities Department-Water Division, Fresno Metropolitan Flood Control District, and no significant effects were identified relating to traffic, noise, air quality, or water quality.

Traffic

Senate Bill (SB) 743, signed in 2013, changes how transportation studies are conducted in California Environmental Quality Act (CEQA) documents. Vehicle miles traveled (VMT) replaces motorist delay and level of service (LOS) as the metric for impact determination. The Office of Planning and Research provides a Technical Advisory (TA) as a guidance document to establish thresholds for this new VMT metric. The TA acknowledges that conditions may exist that would presume that a development project has a less than significant impact. These may be size, location, proximity to transit, or trip-making potential. As a result of the final rulemaking surrounding SB 743 and the implementation deadline of July 1, 2020, the City of Fresno adopted new VMT thresholds and guidelines to address the shift from delay-based LOS CEQA traffic analyses to VMT CEQA traffic analyses on June 25, 2020 and became effective on July 1, 2020.

Based upon the City of Fresno's adopted VMT thresholds and guidelines, screening of projects is permitted if a project qualifies as a low trip generator (less than 500 daily trips generated). The proposed automated car washing project consists of approximately 4,400 square feet of building consisting of a 120-foot automated-washing tunnel. Vehicle washing facilities experience the most traffic on Saturdays and peak hours can vary between 10 a.m. to 1 p.m. and 3 p.m. to 5 p.m. Peak hour demand rate on Saturday is generally 20% higher than on weekdays. Based on a peak rate number of 14.2 peak trips per 1,000 sf gross floor area (4,400 sf. building), anticipated peak trips will not exceed 62 vehicle peak hour demand rate and is anticipated to generally occur between 3:00 and 4:15 p.m. Trip generation rates for the proposed project was gathered through analysis of the 10th Edition Trip Generation Manual published by the Institute of Transportation Engineers (ITE). Subsequently, the project includes site improvements to the 0.69-acre commercial parcel that upon full buildout, the carwash is anticipated to be used by 300-400 vehicles per day. The total estimated ADT generated by the proposed project is less than the 500 ADT established screening threshold. Given the adopted significance threshold criteria of the City of Fresno, staff determined that the proposed project can be screened out from further VMT impact analysis and, therefore, would not result in any significant traffic impacts based upon the City of Fresno's adopted thresholds and guidelines for VMT analyses.

Noise

Staff reviewed the policies of the Fresno General Plan, Fresno Program Environmental Impact Report (PEIR), and Municipal code to determine if the proposed project produces a significant increase in ambient noise levels. The City of Fresno Noise Element of the General Plan establishes a Noise Exposure from Stationary Noise Sources standard of 50 dBA Hourly Equivalent Sound Level (Leq) and a Maximum Sound Level (Lmax) of 70 dBA during the daytime (7 a.m.-10 p.m.) and 45 dBA and 60 dBA for nighttime (10 p.m.-7 a.m.) respectively. The noise exposure standard is applied to the property line of the receiving land use.

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Hourly Equivalent Sound is a single-number representation of the fluctuating sound level in decibels over a specified period of time, in this case one hour. It is a sound-energy average of the fluctuating level. The Maximum Sound Level is the highest value measured by the sound level meter over a given period of time, based on the time-weighted sound level in dB, using either the fast or slow time constant. A-weighting decibels (dBA) are the measurements from a sound meter which gives more value to where the ear is more sensitive and less value to frequencies that the ear is not as sensitive to. Most modern sound meters automatically convert to A-weighted decibels. In other words, the A-weighted decibel provides a measurement to how the human ear perceives sound.

Knowledge of the following relationships is helpful in understanding how changes in noise and noise exposure are perceived:

Except under special conditions, a change in sound level of 1 dB cannot be perceived;

- A 3 dB change is considered a just-noticeable difference;
- A 5 dB change is required before any noticeable change in community response would be expected. A 5 dB increase is often considered a significant impact; and
- A 10 dB increase is subjectively heard as an approximate doubling in loudness and almost always causes an adverse community response.

Outdoor ambient noise levels are permitted to be higher for urban areas and commercial sites, and higher still for industrial areas.

Longstanding City policy for stationary sources has been to require enclosure, muffling, and/or greater setbacks so that adjacent properties are not exposed to excessive noise levels. Nuisance noise abatement has been accomplished through the City's Noise Ordinance. Noise from transportation facilities has been controlled primarily by State and federal standards but also by distancing sensitive uses from these facilities, and by use of sound-proofing construction measures, such as masonry walls and sealed buildings.

According to the project applicant the proposed car wash would utilize MacNeil RS -301 High Side Washer, MacNeil RS-400 Low Side Washer with MacNeil brush systems. The proposed car wash would also utilize a Motor City Wash Works Air One Dryer system. Noise level measurements were provided at both the entrance and exit sides of the car wash tunnel. The dryer (blower) portion of the operation represents the loudest equipment, which is located at the tunnel exit. Therefore, noise levels at the exit side of the tunnel are louder than those at the entrance side of the tunnel. The measured noise levels provided describe the project-related noise levels at a distance of fifty (50) feet directly facing both the tunnel entrance and the tunnel exit. Numbers obtained from identical facilities in the region provide readings of 71 Leq and 75 Lmax at 50 feet, directly facing the entrance. Readings from 50 feet and directly facing the tunnel exit are 79 Leq and 82 Lmax. The car wash tunnel will be oriented in an east/west alignment direction, where the tunnel walls will provide varying levels of acoustical shielding to locations to the north and south. The entrance portion of the carwash tunnel will be approximately 140 feet when measured at an approximate 45 degree angle, from the nearby Rivendell Adult Day Care Center door and approximately 85 feet from the west property line. Noise levels can be expected to be reduced to 6-8 dB at 50 feet away measured at a 45 degree angle from the tunnel entrance and further decibel reduction at a greater distance. The exit portion of the tunnel will face North Fine Avenue, near the East McKinley Avenue and North Fine Avenue corner. Facing the tunnel at 90-degrees, noise levels can be expected to be reduced by 10-15 dB below noise levels that were measured directly

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in line with the tunnel, at the same distance of 50 feet. Further noise reduction would occur with the proposed exit tunnel located approximately 143 feet away from the adjacent office building and 122 feet from the north property line.

The project would include a vacuum station area with approximately 16 vacuum stalls. The project would utilize Vacutech Model: FT-DD-T330HP4 (30HP T3 Turbine Vacuum Producer with Exhaust Silencer) vacuum units at the site. Noise level data provided by the manufacturer indicates that the noise levels associated with the vacuum units would be expected to be approximately 60 dB at a distance of 5 feet from the turbine. The closest proposed vacuum unit to the north property line adjacent to exiting office land uses is setback a distance of approximately 30 feet. Taking into account the standard rate of attenuation with increased distance from a point source (-6 dB/doubling of distance), noise levels associated with the vacuum units would not exceed the standards of 50 Leq and 70 Lmax at the shared property lines.

The proposed project will not involve activities which would be anticipated to result in major noise-generating stationary uses which would impinge on existing noise-sensitive uses within the project area, including but not limited to those daycare and office uses located at a distance of more than 120 feet from the proposed carwash tunnel.

Air Quality

The project is conditioned to comply with any applicable regulations and conditions from the San Joaquin Valley Air Pollution Control District and the project is subject to review by the agency in regard to air quality during construction and operation. No significant air quality impacts were identified the air district.

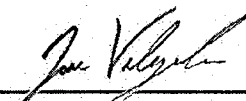
Water Quality

The site has been reviewed and conditioned by the Fresno Metropolitan Flood Control District, Fresno County Public Health, and the City of Fresno Public Utilities in regard to water quality. The surrounding properties have been substantially developed and therefore utilities and public services infrastructure exists in the area. Therefore, no significant water quality impacts were identified.

None of the exceptions to Categorical Exemptions outlined in the CEQA Guidelines, Section 15300.2 apply to the project. Furthermore, the proposed project is not expected to affect the environment significantly. A categorical exemption, as noted above, has been prepared for the project, and the area is not environmentally sensitive.

Date: December 8, 2022

Submitted by:



Jose Valenzuela
Supervising Planner
Planning & Development
Department
(559) 621-8070

EXHIBIT “B”



**McCORMICK
BARSTOW LLP**
ATTORNEYS AT LAW

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christopher.hall@mccormickbarstow.com

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March 14, 2023

Jose Valenzuela
City of Fresno
Supervising Planner Development Services Division
Via email: Jose.Valenzuela@fresno.gov
PublicCommentsPlanning@fresno.gov

Re: Development Permit Application No. P22-01346
4941 E. McKinley Ave. Project (APN 494-291-05)

Dear Mr. Valenzuela and Commission Members:

This letter is submitted in opposition to Development Permit Application No. P22-01346, for Property at 4941 East McKinley Avenue (APN 494-291-05) (the "Project"). The undersigned, and the law firm of McCormick Barstow, LLP, has been retained to represent Xiamy Ly-Yang ("Sammy") and Gerry Mirassou. Sammy is a tenant at the adjacent parcel (4927 East McKinley Avenue, Fresno, CA 93727) and the operator of Rivendell Community Inc., an Adult Development Center. Mr. Mirassou is Co-Trustee of the Mirassou Survivor's Trust created April 30, 2005, the owner of Airport Village. Please include this correspondence in the Planning Commission's information packet for consideration.

My clients oppose the Project on the grounds that the Project is inconsistent with the uses of the adjacent properties and violates the terms of the Cross Access & Parking Agreement (Exhibit "P" to the Staff Report). They also object to the Applicants improperly attempting to make use of a categorical exemption to avoid examination of the significant environmental impacts that will be created if the Project is approved. My clients ask that the Planning Commission deny the Application in its entirety for the following reasons. Alternatively, the Planning Commission must require that the Applicant prepare an Environmental Impact Report ("EIR") to examine the significant environmental impacts caused by the Project and analyze and adopt feasible mitigation measures to eliminate or reduce those impacts.

It is our understanding that there is progress on a planned development located on 4941 East McKinley Avenue in Fresno. Specifically, we understand that the intended development of this parcel is an automated carwash, which is of great concern as set forth herein. There are serious concerns about the detrimental and damaging impacts of the proposed project, with respect to both the existing use of the neighboring property owned by Gerry Mirassou and the impact of the project upon the current tenants of the neighboring property, who provide tremendous community services to a vulnerable population in Fresno.

The larger area, commonly known as Airport Village, was planned and developed as an integrated commercial/office complex with shared access and shared parking. (See, Exhibit “P” to the Staff Report.) Generally, the Project involves removing parking spaces, changing the location of the handicap access ramp, relocating the entrance driveway, automobile stacking areas immediately in front of existing offices tenants, and blocking traffic due to stacking in relocated driveway. What is greatly distressing is that this project will drastically impact the current tenants as well as future prospective tenants on the neighboring property—yet, the neighboring landowner, Mr. Mirassou was never consulted about these potential issues or permitted to engage in dialogue with the developer and/or the City, nor given notice of the proposed Project. Nor was Mr. Mirassou given notice when his property was rezoned to light industrial as part of city-wide rezoning effort. Had notice been provided, Mr. Mirassou would have expressed his concern with the rezoning of his property, given its existing use. Even so, the regulations governing Employment Districts require consideration existing uses so as to provide for the proper location of businesses that may have the potential to generate off-site impacts. (14 CC&R § 15-1301.) The operation of a carwash next to the existing use of Parcel “A” as an adult care facility is fundamental inconsistent.

One critical concern is the parking associated with the Project. Based upon a review of plans and blueprints, it appears that Surf Thru Car Wash plans to remove the handicap spaces directly in the front and center of the building on Mr. Mirassou’s property, and move such spaces to the westernmost part of the parking lot. It further appears that the handicap access ramp to the building is also intended to be moved to the westernmost part of the site. Not only will handicap persons have to cross the street to get to the ramp, but it is a significant distance—about 350 feet to get to the easternmost part of the building. In addition to the handicap spaces, it appears that the Project proposes to remove 43 parking spaces from Parcel B, as well as 17 spaces from the property owned by Mr. Mirassou, leaving only 38 spaces for said property. The 38 remaining spaces are less than the required 41 spaces for the property’s commercial/office use (one space per 400 sq. ft.), resulting in Mr. Mirassou’s property no longer meeting City of Fresno parking regulations, potentially creating a nonconforming land use.

Not only does the proposed Project impede existing property use and compliance, but it also uniquely threatens a group of vulnerable, underprivileged adults. Since 2018, Airport Village has been home to Rivendell Community Inc. (“Rivendell”), an agency serving underprivileged and vulnerable adults with disabilities. Rivendell is owned by Xiamy Ly-Yang. Rivendell offers services five (5) days per week, and its clientele range from severely to mild developmentally disabled adults. Rivendell provides a safe haven to low-income disabled adults who are often socially isolated from the mainstream community due to their disabilities, language barriers, societal and cultural stigmatization, and inadequate services. Rivendell is one of a handful of agencies that serves disabled adults in the Central Valley and has become an integral part of the Fresno community. Many local families, and their

disabled children, depend on Rivendell to provide assistance and care for these vulnerable adults.

Critically, Rivendell also provides a unique service in on-site job and work training. These jobs at Rivendell are specifically tailored to the needs of the clients. For example, at Rivendell's bakery kitchen, the adults can work a few hours per day under the proper supervision of Rivendell staff to so that they can develop job skills, job training, and gain further independence.

Sadly, the proposed Project jeopardizes the services that Rivendell will be able to offer the Fresno community, and may jeopardize Rivendell in its entirety. The cumulative impact of the proposed Project on this vulnerable population was not considered in approving a categorical exemption. Nor was the correct baseline established to evaluate potentially significant environmental impacts. Specifically, the construction of the car wash will result in loud noises from the car washing machines and the large vacuums and the music from the customers' cars. With the vulnerable adult population just steps away, these constant, high-volume noises will cause very likely substantial harm to many of Rivendell's clients who experience sensory integration challenges, which include visual and auditory triggers. The Applicant's own noise study shows that the Project will generate operational noise levels that exceed 65. It also shows that levels will reach as high as 60 in certain spots of Rivendell. Tragically, these sensory integration challenges often present through a physical manifestation of stress and anxiety, such as self-abusive behavior, including clients hitting themselves on the head repeatedly, scratching their own faces, and hitting themselves on the temples. Should the Project be approved, Rivendell's families and clients will likely be unable to continue to participate in the Rivendell program, resulting in this vulnerable group of underprivileged adults and families lacking necessary support and forcing Rivendell to close its doors and lay off all of its employees.

Additionally, the establishment of a car wash in this location presents other safety concerns for this disadvantaged group. As discussed above, Surf Thru Car Wash is proposing to demolish the existing handicap parking stalls right in front of the main entrance to Rivendell. Therefore, Rivendell's clients with wheelchairs and walkers will no longer have direct and unimpeded access to the main entry door. The distance from the existing handicap parking stalls to the facility's main door is about 5 feet away, whereas the new location of the handicap stalls under Surf Thru Car Wash's proposal places these handicap spaces at hundreds of feet away from the main door. These new handicap parking stalls would also be located on the far west side of the parking lot, which, in addition to the physical distance, will be challenging for Rivendell's clients and the public to navigate to the building. The path to Rivendell from across the parking lot has a multitude of support structures that will impede client wheelchairs and walkers along the side of the Rivendell building. The support structures would likely have to be removed and rearranged to allow for a clear path for Rivendell's disabled clients to access the main entrance, which poses an issue for Rivendell and the property owner, Mr. Mirassou.

Along the same lines, the car wash appears to threaten the existing busing and family transportation to and from Rivendell. Many of the adults are brought to the facility by large EOC buses. Given the disabilities of Rivendell's clients, including those clients in wheelchairs, these buses require a significant amount of space and time to load/unload the adults into and out of the bus. As we understand, the existing project proposes to modify the existing entrance from Fine Avenue for its customers, which would result in Rivendell's buses being unable to use such entrance. This would also preclude Rivendell families and parents from having a safe space to enter the facility and drop off their children.

At its core, the Project proposal as planned, threatens the existence of Rivendell and drastically interferes with and obstructs Mr. Mirassou's use of his own property. We respectfully urge the City to consider these detrimental impacts of Surf Thru Car Wash and take necessary and appropriate actions to address these such detrimental impacts and to protect the vulnerable and underserved adults in the Fresno community.

I. CEQA

The Application improperly make use of Categorical Exemption Class 32 (In-Fill Development). A Class 32 exemption from the mandates of CEQA is only available if certain criteria is met. On such criteria is that it must be demonstrated that the project would not result in any significant effects relating to traffic, noise, air quality and water quality. (14 CCR § 15332(d).) A categorical exemption is unavailable when there is a reasonable probability that an activity will have a significant effect on the environment due to unusual circumstances. (14 CCR § 15300.2(c).)

An unusual circumstance exists due to the unusual yet vital use made on the adjacent property. As set forth above, Rivendell provides a necessary service to some of the City's most underserved and sensitive residents. These individuals are unusually susceptible to noise and traffic impacts. Adequate disabled parking is crucial to servicing this community. Yet, nowhere in the Environmental Assessment for the proposed Project is this community recognized, much less protected.

A. Noise

The Noise Study prepared by MD Acoustics, LLC establishes that the Project will generate operational noise levels in excess of 65 dB(A). (Exhibit "O" to Staff Report.) Levels within the Airport Village facility, where Rivendell is located, will range between 65 and 45 dB(A). Table 15-2506-B of the Fresno Municipal Code establishes that the maximum allowable dB(A) for schools and office buildings is 45. It also establishes that the maximum allowed for other noise sensitive uses is to be established by the Review Authority. Despite the study and the limits established by the Fresno Municipal Code, the Environmental Assessment for the Project concludes

that the proposed Project will not impinge on existing noise-sensitive uses in the area of the Project.

The proposed Project will have a significant effect on the adjoining property. The Noise Study conducted for the Project at the request of Fresno County Environmental Health demonstrates that the noise generated by the operation of the Project will exceed allowable standards for neighboring property owners and users. No effort in the study was made to evaluate the unusual circumstance created by the presence of Rivendell and its sensitive clients. Because it has been demonstrated that the proposed Project will have a significant noise impact, and the report fails to evaluate the unusual circumstance of the noise sensitive clients of Rivendell, the Class 32 exemption is unavailable.

B. Traffic and Circulation

The proposed Project will also have a significant impact on traffic and circulation. The Site Plan for the proposed Project shows that it is anticipated that the carwash customers will make exclusive use of the entry on Fine Street. This is the same entrance that the buses and vans that transport the clients of Rivendell utilize to enter the premises. Without this access, those buses and vans must make a U-turn on McKinley at Fine to enter the premises to the west on McKinley. The analysis of traffic effects in the Environmental Assessment omit any consideration of the loss of an entrance and the resulting impacts created by numerous buses and vans being forced to make a U-turn to enter the Rivendell premises.

Also, the Site Plan shows that the cars from the carwash will be able to enter the parking lot on Parcel "A" at the "cross-access location". This will create a situation where the disabled clients of Rivendell are forced to navigate a congested parking lot full of carwash customers in a hurry to get back to work. This obviously creates a circulation safety issue to this unique community. The Environmental Assessment omits any discussion or analysis of the impacts on circulation created by this situation, instead focusing exclusively on the trips per day generated by the new business. Because of the unusual circumstances of the Project location, a Class 32 exemption is unavailable and an EIR is required to evaluate the potentially significant environmental impacts created by the Project.

C. Parking

The proposed Project will also create significant impacts to existing parking, including disabled parking. Construction according to the Site Plan will cause the loss of sixty (60) parking stalls, including 17 on the property owned by Mr. Mirassou and utilized by the tenants of Airport Village. It includes the loss of crucial disabled spaces and forces people in wheelchairs to navigate the onslaught of carwash patrons existing through Parcel "A". No evaluation of this impact is performed. Nor is it explained how Applicant can cause the loss of parking spaces on property not owned by the

March 14, 2023
Page 6

Applicant or force Mr. Mirassou to accept construction on his property to accommodate the Applicant.

If the Applicant believes that the Declaration of Restrictions Regarding Non-Exclusive Common Parking and Access ("Parking and Access Agreement") authorizes modification of Parcel "A" to accommodate the carwash, the Applicant is mistaken. (Exhibit "P" to Staff Report.) This document, created at a time that it was anticipated that Parcel "B" would be put to the same use as Parcel "A", simply allowed for reciprocal parking. It does not give the owner of Parcel "B" the right to make modifications to the existing improvements to Parcel "A" and certainly does not authorize the removal of parking stalls to accommodate a carwash. Simply put, the Applicant cannot build out the Project as reflected on the Site Plan because the Applicant does not own the rights to alter Parcel "A".

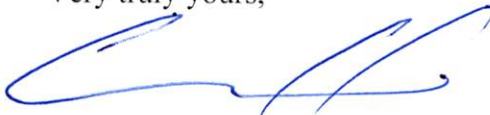
In fact, the Parking and Access Agreement mandates that the Project not be approved as designed. Under the Agreement, the tenants of Parcel "A" have a right to ingress and egress for persons and vehicles through Parcel "B", presumably through the Fine Street entrance. The design of the proposed Project effectively eliminates this recorded right and would be a violation of the restrictions and covenants if built.

II. Conclusion

Sammy and Mr. Mirassou respectfully request that the members of the Planning Commission deny the Application to protect the existing tenants of Airport Village and their clients. The clients of Rivendell are vulnerable, unique, and made of an important and underserved community. There are plenty of places to build a carwash, but immediately adjacent to an Adult Care Facility for autistic peoples is not one of them.

If the members are not willing to deny the Project outright, an Environmental Impact Report is required to analyze the significant environmental impacts cause by the proposed Project and require the adoption of all feasible mitigation measures. Failure to require an EIR will constitute an abuse of discretion and render the approvals subject to reversal.

Very truly yours,



Christopher S. Hall

CSH

041235-000000 8905262.1



Fresno City Hall
2600 Fresno Street
Fresno, CA 93721

Date: May 31, 2022

RE: APPLICATION NUMBER P22-01346

My name is Xiamy Ly-Yang and I am the CEO of Rivendell Community, Inc., a non-profit organization that serves adults with disability, since 2007. I am writing this letter to you with the intent of convincing Planning and Development departments not to approve the construction of Surf-Thru (carwash) on the corner of Fine and East McKinley Avenue. I strongly believe that a car wash is not the best fit for our neighborhood and the businesses that are currently operating there. A car wash will bring a lot of noises and ruckus from their large machines and noisy vacuum to the music from their customer's cars.

My agency is located at the corner of Fine and East McKinley for the past couple of years and my clients have enjoyed the quiet and safe open space of our facility and its surroundings. My clientele ranges from severe to mild developmental disabilities. My autistic clients have a challenging time dealing with loud noises, overstimulation, busy environment and changes. My agency is the only facility in Fresno County that serves South-East Asians disabled clients. Our clients are very often socially isolated from the mainstream community due to language barriers, societal and cultural stigmatization, lack of knowledge in resources and culturally inadequate services. Our clients come from low socio-economic backgrounds.

The construction of Surf-Thru car wash will cause loud noises which will trigger my clients to experience an overwhelming amount of stress and anxiety. Additionally, if the car wash were to be approved, the ongoing traffic brought on by the carwash will pose a dangerous threat to my clients who go AWOL and often dart out the front door. Legally, I cannot restrain these clients nor lock the front doors to keep them inside the building. These clients will be in danger of being harmed and/or ran over by the cars at Surf-Thru car wash.

Another very critical threat Surf-Thru car wash will pose to my clients has to do with traffic. My clients are brought into my facility by large EOC buses which need a good amount of space and time to load/unload. Many of my clients are in wheelchairs. I fear that the Surf-Thru customers will not have the patience to wait 5-10 minutes for a bus to load up clients in wheelchairs and poses as a threat to my staff and my clients if they try to speed around the buses.

4927 E. MCKINLEY AVENUE ■ FRESNO, CALIFORNIA 93727

OFFICE: 559.276.1171

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Please, consider the safety of my clients and the services I provide for the disabled South East Asian community when coming to a decision.

Should you have further questions, I can be reached at 559-458-1958 and by email at xiamyly@gmail.com.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Xiamy Ly-Yang', is written over a light gray, wavy background line.

Xiamy Ly-Yang, MSW
CEO

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Esteemed Planning Commissioners:

Airport Village was planned and developed as an integrated commercial/office complex with shared parking, access and egress. Developing this car wash completely negates that premise. Our major concern is how the car wash both immediately and in the long term impacts our building and its tenants. Removing parking spaces, changing the location of the handicap access ramp, relocating the entrance driveway closer to the existing building, automobile stacking areas immediately in front of existing offices tenants, blocking through traffic due to stacking in relocated driveway, constructing an S-curb in the main driveway, not being able to actively, or passively, for that matter, be involved in the planning process, by either the City of Fresno or the developer are all major concerns.

What is most disturbing is why the developer is allowed to change, remove and rearrange parking and access to our building in such a manner that it drastically impacts current tenants as well as future prospective tenants. By removing parking spaces to the point that we no longer meet City of Fresno parking standards for our building makes us an illegal, nonconforming land use. Furthermore, Development of this car wash conflicts with **Sec. 15-1301 PURPOSE (Employment Districts)** of the Fresno Municipal Code as follows:

Part B. Provide for the appropriate location of businesses that may have the potential to generate off-site impacts, while providing to ensure compatibility in use and form with existing and planned uses.

List of major concerns that follows illustrates the incompatibility of the car wash to our existing commercial/office use :

- Removed 43 spaces from their parcel plus 17 from ours leaving only 38 spaces for our building, which is less than the required 41 spaces for our commercial/office use (one space per 400 sq. ft.)
- They have not provided any on site parking for employees and/or service vehicles,
- They have removed the handicap spaces from directly in the front and center of the building to the Westernmost part of the parking lot. The access ramp to the building is also moved to the westernmost Part of the site. Not only to handicap persons have to cross the street to get to the ramp but it is approximately 350 feet to get to the easternmost part of the building. Furthermore, this directly impacts the existing adult day care center since the handicap spaces and ramp are now directly in front of their entryway.
- If the stacking area for the car wash is full, cars waiting to use the facility will have to wait in the driveway, thus blocking access to the parking area for our building. Furthermore, if the car wash is very busy, cars could be backed up all the way to Fine thus impeding traffic turning from McKinley on to Fine. The idling of the cars 10 feet from the building and tenants would be disruptive and create a noise and air quality problem. Cars entering from the southwest entrance to the property going to the car wash facility would have to turn right into the car wash, and if cars queued up there to get in the car wash both sides of the drive would be blocked totally restricting traffic flow. It appears that the S curb extends directly into the west-bound traffic lane.
- Neither the City of Fresno nor the developer of the car wash notified us of the proposed car wash. We had absolutely no input into how the car wash layout would affect us. We certainly would have voiced concerns regarding removal of our parking spaces as well as the other concerns indicated above. Plus,

by not advising us we had no opportunity to appeal the project.

-Giving this project a categorical exemption under CEQA because it is an infill project does not adequately address the negative impacts of the project. A noise study needs to be conducted to determine the impact on the building tenants from 16 vacuum machines, the noise generated by the machinery of the car wash and cars idling in front of the offices. The impact on the relocation of the handicap spaces and ramp needs to be addressed pursuant to ADA requirements as well as its impact on the existing adult day care use. The project may have air quality issues as well with cars idling in front of tenant spaces.

-This project was built in 1981 as an integrated commercial center. The main building of 16,400 sq. ft. and a 6,400 future building site were approved with shared parking and access. This is totally contrary to that proposal. It not only restricts access but rearranges access and removes parking to the detriment of the main building.

-In 2016 the property was zoned M-1-P. It was rezoned at that time to **IL (light industrial)** as part of a city-wide rezoning initiative. Under the M-1-P zone a conditional Use Permit would have been required for a car wash and we would have been properly notified of the proposed use and we would have been able to formerly object and make our concerns known in a public forum. We were not notified of that rezoning, and, therefore, did not have a chance to determine how that zone change would affect us nor publicly object to our parcel being rezoned. Thus, we were not able to voice our opinion on the rezoning. The rezoning to **IL** creates a situation which limits commercial uses to a maximum 6,000 sq. ft. and allows only ancillary office uses. Thus, we are currently a nonconforming use since our building is 16,400 sq. ft. and we have existing office uses that are not ancillary to other uses.

Airport Village was a thriving commercial center in the 1980's and into the 1990's. The tenants back then were directly related to the also thriving office area to the east. Tenants included a business machine concern, office supply, in-line restaurant and offices. As computer age and big box retailers began to take hold and the office area began to decline these uses were no longer viable. Upon their departure, Fresno Airport began to grow and we took on a car rental agency. When the car rental agency found a location closer to the airport, we found that the area began to change and was no longer a viable commercial area. Thus, we began to lease to uses catering to the changing area. Besides office uses we leased to a church and then as the Asian population began to grow we provided space to our major tenant now, the adult day care center. We are adapting our uses to the area as it evolves and we will continue to do so. Approval of the car wash would, without a doubt, severely impair our building now and for the future.

I appreciate the opportunity to comment and voice my concerns regarding the proposed car wash and thank you in advance for your consideration of this matter. I want to reiterate our strong objection to the car wash as it would severely impact our center to the point that it would render it unviable for future uses.

Sincerely,

Gerry Mirassou
Co-Owner Airport Village



Dear Tyler Maxwell and Fresno City Planning
Commission:

November 17, 2022

This is a letter of opposition to the proposed Surf Thru Car Wash in the parking lot of 4927 East McKinley Avenue. This is the address of the Rivendell Community Center, contracted with Central Valley Regional Center. CVRC is a non-profit corporation under State of California to provide services to persons with developmental disabilities. These are the clients at Rivendell.

We are requesting a denial for the Surf Thru car wash at this location for the following reasons:

1. Clients at Rivendell and surrounding businesses utilize the parking lot for their customers/clients. At Rivendell, the parking lot is used for outdoor activities including exercise and walking.
2. The noise from the car washing machines and vacuums are intrusive as many clients experience sensory integration challenges which include visual and auditory triggers. Often, consumers at car washes play loud, vibrating music.
3. Typically car washes bring more traffic and congestion. The Rivendell Center uses the parking lot on weekends in hosting community activities. Often, the parking lot is full on these occasions.
4. Express Lube and Car Wash is located at 4853 East McKinley, approximately one-quarter of a mile from Rivendell. Most people would question the need for another car wash.
5. The establishment of a car wash in this location would be detrimental to the well-being of all people in this location/ complex. As this disadvantaged group presently participates in outdoor activities, including walks in the neighborhood, socialization, and independent living skills, we must advocate for them, as they are unable to do it for themselves.

In consideration of the above reasons, we ask that you, as our representatives in government, deny this requested plan for a Surf Thru on this property.

Sincerely,

All the Families and clients of Rivendell Community, Inc.

4927 E. MCKINLEY AVENUE ■ FRESNO, CALIFORNIA 93727

OFFICE: 559.276.1171

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EMAIL: rivendellfresno@outlook.com



RIVENDELL

COMMUNITY INC

Adult Development Center

[Signature]

Pao mont

Yue Lee

Bia Chong Lee

Ko, Vne

Mailee

[Signature]

[Signature]

sheng xiong

Glen

Koehnam

L yag

Dale Yang

Ma Lee

[Signature]

Bia Chong Lee

Anita Yang

Chu Vne

Jimmy Lee

Cherry Lee

PHA MOUA

LEE moua

Hana Yang

Cher Noll KANG

LORPZO CHANG

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Signatures of clients and Families opposing the construction of SurfThru.

Xiang Ly-yang
Muller

Barbara
Encha
Morales

Mary
Mindy Yang
Randy
Wit
Seung Lot

Theresa
Jeffrey

You Yang
Kong Yang

Concepcion
Song Chum

Nam

Yi Yang
Lisa Xiong

Chunmelo

Beech

Pin Thao
Sung

Ngan
Vang Yang
Bia Vang
Per Vang

Salvador Rivera
John

BILL MALLETT

Cherry Lee

Yang Fou Lee
Perin Lee

Steve Lee

To: Jose Valenzuela

From: Gerry Mirassou

On Wednesday April 12th, myself, my attorney, Christopher Hall and my real estate broker, Zack Kaufman met with the developers of the proposed car wash, Mohammad Assad, his father, his consultant, Orlando Ramirez and his real estate broker at the office of Christopher Hall. We reiterated our concerns regarding the impact of the project on Airport Village, i.e., using our parcel to accommodate their use and the impacts the car wash would have on our existing and future use of the property. We also questioned them on why we were not notified during the planning stages of the project so as to avoid the present conflicts between the two sides. After approximately an hour and a half of discussion we concluded the meeting with no progress toward a resolution of our differences.

Although they offered to remove two of the vacuum stalls along the driveway and convert them to handicap parking spaces to mitigate their use of our property we were resolute in our insistence that they cannot use our site at all to develop their car wash. They cannot remove parking spaces, change the driveway location or relocate the handicap parking spaces. We also stated that the car wash would disturb existing tenants of our building due to noise from the car wash machinery, radios, and constant automobile traffic and stacking.

We emphasized that the car wash is not compatible with our current uses or other potential uses allowed in Airport Village and that their proposal to remove spaces from our site would severely limit future uses since we would not be able to meet parking requirements. Furthermore, we emphasized that approval of the car wash conflicts with **SEC, 15-1301 PURPOSE (Employment Districts)** of the Fresno Municipal Code which states that uses is these zones *"provide for the appropriate location of businesses that may have the potential to generate offsite impacts, while providing to ensure compatibility in use and form with existing and planned uses."* We strongly asserted that the proposed car wash is not compatible to our use and should be a reason for denial. They stated that the car wash would help us because it would bring in more traffic.

The developers asked us that since we were opposed to the car wash, what other uses might we agree to. We mentioned that a sandwich shop, coffee shop or retail business would be compatible uses as that was what the original site development plan for the parcels envisioned. During our discussion of potential uses, if not a car wash, we discussed that us buying their parcel was a possibility; however, the price they mentioned was too far out of line for our consideration. We were somewhat surprised that they offered to sell the property since they stated that they had a solid deal with the **Surf Thru** company. It makes us wonder if they really do have a deal with Surf Thru or if they are just using this proposal as a pretext to leverage a sale to us.

As far as I recall, these were the salient points of our meeting with the developers of the proposed car wash. We steadfastly oppose its approval and considerate its negative impacts to our property very significant and contrary to Sec.15-1301 PURPOSE (Employment Districts). Approval of this car wash project would, in effect, severely limit the use of our property now and in the future.

Thank you for your consideration of this matter and we are available to answer further question or provide further information.

Sincerely,

Gerry Mirassou. Co-owner of Airport Village