

## Regular Council Meeting

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# FRESNO CITY COUNCIL

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**FRESNO** 

## Public Comment Packet

### ITEM(S)

#### 10:20 A.M (ID 23-1233)

Hearing to consider Development Permit Application No. P22-01346 and related Environmental Assessment No. P22-01346 pertaining to ±0.69 acres of property located on the northwest corner of East McKinley and South Fine Avenues (Council District 4) - Planning & Development Department.

1. CONSIDER Environmental Assessment (EA) No. P21-01346, dated December 8, 2022, a determination that the proposed project is categorically exempt under Section 15332/Class 32 (In-Fill Development Project) of the State of California Environmental Quality Act (CEQA) Guidelines; and,
2. DENY the appeal and UPHOLD the action of the Planning Commission and Planning and Development Department Director to approve Development Permit Application No. P22-01346, authorizing the construction of an automated car wash facility subject to compliance with the Conditions of Approval dated December 8, 2022.

**Contents of Supplement:** Public comment emails

#### 1-U (ID 23-1281)

BILL - (for introduction) Adding Section 9-110 to Chapter 9 of the Fresno Municipal Code, Adding the Infectious Disease Lab Accountability and Transparency Ordinance.

**Contents of Supplement:** Public comment emails

**Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

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August 21, 2023

**VIA HAND DELIVERY**

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

Dear Councilmembers:

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 City Council's information packet for consideration. The Project was approved by the Planning Commission on May 3, 2023 by a vote of 4-2.

Garry Bredefeld  
Councilmember  
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Nelson Esparza  
Councilmember  
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Tyler Maxwell  
Councilmember  
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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 to the Planning Commission).<sup>1</sup> 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 Applicant must be required to 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 before the Planning Commission.) 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.

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<sup>1</sup> All references to the Staff Report refer to the Staff Report prepared for the Planning Commission. As of the time of the writing of this letter, the Staff Report to the City Council has not yet been released to the public.

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. The fact that the Site Plan submitted by the Applicant requires modification of land owned by Mr. Mirassou, and the fact that Mr. Mirassou would not voluntarily allow such modification, was made known to the Planning Commission. Rather than requiring an amended site plan that did not impact property owned Mr. Mirassou, the Planning Commission imposed a condition that any alteration of Mr. Mirassou's property would require his approval. This approach effectively rendered the submitted Site Plan a nullity.

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. The findings of the Planning Commission omitted any discussion of the unusual circumstance presented by the existing adjoining use and failed to make any findings regarding the unusual circumstance or potential significant impacts.

### 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 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".

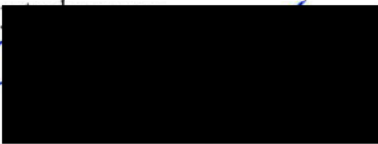
In fact, the Parking and Access Agreement mandates that the Project not be approved as designed. Under the Agreement, the tenants of Parcel "A" have a right to ingress and egress for persons and vehicles through Parcel "B", presumably through the Fine Street entrance. The design of the proposed Project 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 City Council grant the appeal of the approval of the Application in order 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 Councilmembers are not willing to stop the Project outright, an Environmental Impact Report is required to analyze unusual circumstance created by the important and sensitive clients of Rivendell and 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.

Ver

  
Christopher S. Hall

CSH

cc: Ms. Jennifer Clark, Director of Development  
Mr. Jose Valenzuela, Supervising Planner  
Kristi M. Costa, Esq.

**Mary Quinn**

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**From:** noreply@granicusideas.com  
**Sent:** Monday, August 21, 2023 1:04 PM  
**To:** Clerk Agendas  
**Subject:** [BULK] New eComment for City Council on 2023-08-24 9:00 AM - Regular Meeting

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[City of Fresno](#)

## New eComment for City Council on 2023-08-24 9:00 AM - Regular Meeting

Dan Waterhouse submitted a new eComment.

Meeting: City Council on 2023-08-24 9:00 AM - Regular Meeting

Item: 1.-U. ID 23-1281 BILL - (for introduction) Adding Section 9-110 to Chapter 9 of the Fresno Municipal Code, Adding the Infectious Disease Lab Accountability and Transparency Ordinance.

eComment: I oppose this item. It's an attempt at political grandstanding.

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