

DATE ISSUED: October 10, 2001

REPORT NO. 01-215

ATTENTION: Honorable Mayor and City Council  
Docket of October 16, 2001.

SUBJECT: "Reconsideration" of the previous decision of the City Council denying the appeal of the Torrey Hills Community Coalition and approving the proposed **Chevron Gas Station - Sorrento Hills** project; Planned Commercial Development Permit and Conditional Use Permit No. 99-1200. (Process 3)

REFERENCE: City Council agenda of July 31, 2001, approving the project.

APPLICANT/  
OWNER: Chevron Products Company

### SUMMARY

Issue - Should the City Council grant or deny the appeals filed by the Torrey Hills Community Coalition and Chevron Corporation from the previous decision of the Planning Commission to approve the proposal by the "Chevron Corporation" to construct a gas station, convenience store, and car wash on a vacant 2.5-acre site located within the Sorrento Hills Community ?

Manager's Recommendation - Deny the appeal of the Torrey Hills Community Coalition and approve the project, subject to PCD / CUP permit conditions by the Planning Commission (Attachment 4).

Environmental Impact - The Mitigated Negative Declaration (MND 99-1200) prepared for the project concluded that specific measures would need to be incorporated into the project design in order to mitigate impacts associated with exterior water quality/ hydrology, noise, and paleontological resources to a less than significant level.

San Diego County Air Pollution Control District (APCD) approval - On January 24, 2001, APCD issued the applicant an "Authority to Construct" permit for the proposed gas station on this site. A second "Authority to Construct" permit was issued to the applicant by APCD on August 6, 2001 (Attachment 18).

Community Planning Group Recommendation: On October 17, 2000, the Sorrento Hills Community Planning Board voted unanimously (8-0) to recommend denial of the proposed project (Attachment 10). The Board cited inconsistencies of the project design with the Community Plan's existing neighborhood-commercial designation, potential environmental impacts (pertaining to air quality, transportation, neighborhood character, public safety), and the applicant's proposal to operate a 24-hour commercial use on the site as the primary reasons for their unfavorable recommendation. Further, the Planning Board recommended the following modifications to the project design:

..... a.Limit the hours of operation for the commercial uses on the site from 6:00 a.m. to 9:00 p.m.

..... b.Eliminate the car wash use.

..... c.Modify the design of the monument signs proposed along the project frontage to comply with signage standards of the “Carmel Valley Community Plan”.

..... d.Modify the project’s landscape plan to provide for more mature trees and shrubs.

Hearing Officer Recommendation - On December 13, 2000, the Hearing Officer approved the proposed project, subject to specific conditions of approval. That decision was appealed to the Planning Commission by the Sorrento Hills Community Planning Board.

Planning Commission Recommendation - On February 1, 2001, the Planning Commission voted (6-0-0) to deny the Sorrento Hills Planning Board’s appeal and upheld the previous decision of the Hearing Officer approving the project. However, the Commission conditioned their approval of this project upon the following modifications:

..... a.Limit the hours of operation for the proposed gas station and convenience store from 6:00 a.m. to 10:00 p.m.

..... b.Eliminate Chevron’s standard “blue stripe” and “Chevron” wordmark from the side panel of the steel canopy proposed above the fuel pump area.

..... c.Establish and maintain a 3-foot high landscape berm along the edge of the new building pad fronting on Carmel Mountain Road.

..... d.Modify the landscape plan to replace all deciduous trees with non- deciduous species (minimum 24-inch box size “broad leaf evergreen”); and install double-rows of evergreen shrubs (minimum 4- to 5-foot high) along the project’s Carmel Mountain Road frontage to provide increased screening of the proposed commercial uses on this site from existing residences to the north.

..... e.Modify the size of the monument sign proposed along the project frontage on Carmel Mountain Road to be the same size as the monument sign proposed on East Ocean Air Drive (maximum 3-feet high and 8-feet long).

City Council action - On July 31, 2001, the City Council held a public hearing to consider the conclusions of a “health risk assessment” which was prepared by an independent analyst selected by staff. Following staff’s presentation, and after considering testimony by both project opponents and proponents, the Council voted to approve the project, subject to the previous recommendations of the Planning Commission regarding signage, landscaping and hours of operation.

.....  
Fiscal Impact - None anticipated with this project.

Housing Affordability Impact - None anticipated with this project.

Code Enforcement Impact - None with this project.

BACKGROUND:

The 2.48-acre project site (Attachments 1 and 2) is located at the southwest corner of Carmel Mountain Road and East Ocean Air Drive within the CC-1-3 (formerly the CA) zone of the Sorrento Hills Community Plan. The Community Plan currently designates this site for neighborhood-commercial development; and includes specific language (and an accompanying illustration) in the plan text (Attachment 12) which identifies a gas station and car wash as permitted uses on the subject property (with approval of a Conditional Use Permit).

The entire site is vacant and has been graded in accordance with a previous map approved for the area. The site is surrounded by vacant property designated for neighborhood-commercial development to the east; vacant property adjacent to the south; and residential development to the north (across Carmel Mountain Road). An existing SDG&E utility easement and power lines is located further to the southwest of the subject property (above the existing steep slope).

On March 17, 1997, the City Council approved an amendment to the Sorrento Hills Community Plan (CPA/RZ 95-0554 - "*Torrey Hills*") which, in part, redesignated the project site from light-industrial to neighborhood-commercial; and amended the plan text to include specific language and an accompanying illustration in the amended plan text (pages 48-49) identifying a gas station and car wash as permitted uses on the project site. The 1997 plan amendment also included a corresponding rezone of the project site from M-1B to CA (now the CC-1-3 zone per the Land Development Code).

The CUP/PCD application for this project was submitted to and deemed complete by staff in December, 1999; and is therefore subject to the ordinance provisions of the Municipal Code applicable to this site prior to effectuation of the City's Land Development Code (January, 2000). In accordance with those code provisions, the proposed project is subject to the land use and development regulations of the (then-existing) CA zone, and requires approval of a combination Planned Commercial Development/Conditional Use Permit.

On December 13, 2000, the Hearing Officer approved the proposed project. That decision was subsequently appealed to the Planning Commission by the Sorrento Hills Community Planning Board.

On January 24, 2001, the San Diego County Air Pollution Control District (APCD) issued the applicant an "Authority to Construct" permit for the proposed gas station on this site. A second "Authority to Construct" permit was issued to the applicant by APCD on August 6, 2001 (Attachment 18).

On February 1, 2001, the Planning Commission voted to deny the appeal and upheld the previous decision of the Hearing Officer approving the project, subject to specific modifications of the project design and hours of operation for the proposed commercial uses on this site. There was a considerable amount of testimony presented in opposition to the project at this hearing and the decision of the Planning Commission was subsequently appealed to the City Council by both the

applicant (Chevron Corporation) and the Torrey Hills Community Coalition (Attachment 9).

On April 17, 2001, the City Council considered the extraordinary appeal of the previous decision of the Planning Commission approving this project. At that hearing, there was a considerable amount of public testimony presented to the Council by area residents regarding potential air quality impacts associated with the proposed gas station us on this site; and specifically, potentially harmful impacts pertaining to human exposure to benzene ionization which may result from the operation of the proposed gas station use proximate to existing high voltage power lines to the south.

As a result of this testimony, the Council voted to continue this project and directed staff to prepare a “site specific health risk assessment”, to be prepared by an independent analyst selected by staff. The Council requested that such an analysis (Attachment 15) evaluate the project’s potential adverse effects (if any) associated with human exposure to the ionization of benzene molecules which, as alleged by the scientific studies referenced by the Torrey Hills Community Coalition in their appeal, may occur as a result of contact (and subsequent ionization) of benzene emissions from the proposed gas station with existing high voltage power lines located south of this site.

On July 31, 2001, the City Council held a public hearing to consider the analysis and conclusions of a health risk assessment which was prepared by the independent analyst (Dr. Neal Langerman) selected by staff. Following staff’s presentation, and after considering testimony by both project opponents and proponents, the Council voted to approve the proposed project, subject to the previous recommendations of the Planning Commission regarding signage, landscaping and hours of operation.

However, on August 7, 2001, the City Council directed staff to have the City’s independent analyst prepare a response to questions raised by representatives of the Torrey Hills Community Coalition (Attachment 16) regarding the methodology used in determining some of the conclusions of the risk assessment. The City’s analyst (Dr. Neal Langerman) complied with this request by providing staff with a 5-page response to the Coalition’s issues (Attachment 17).

The City Council also received (for review and consideration) copies of Dr. Langerman’s response to the Coalition’s issues. However, based upon concerns that the methodology / conclusions referenced in the risk assessment may not be consistent with other air quality agency standards, the City Council voted unanimously (9-0-0) on September 18, 2001, to “reconsider” their previous decision of July 31<sup>st</sup>, approving the project. Correspondingly, the Council voted to discuss the “reconsideration” matter (and health risk assessment - air quality issue) further at a noticed public hearing on October 16, 2001.

#### PROJECT DESCRIPTION:

In summary, the project proposes to construct and operate a self-service gasoline station, convenience store, and an automated car wash on the subject property (Attachments 2, 3 and 6). Following is a description of the various building and site improvements proposed for this project:

*Gas station:* Construct a self-service gas station in the central portion of the property (Attachment

2); including the installation of two (20,000 gallon) underground fuel storage tanks, six fuel pump islands (totaling 12 fuel dispensers), and construction of a 23-foot high steel frame canopy above the fuel pump area. This phase of the project requires approval of a Planned Commercial Development Permit and a Conditional Use Permit (per Municipal Code section 101.0510) to authorize the proposed gas station land use on the site.

Convenience store: Construct a one-story (3,000 square-foot) convenience store in the northeast portion of the property (Attachments 2 and 6). This building (maximum height of 26-feet) would be constructed with natural stone, painted stucco walls, and a clay tile roof. In addition to the retail sale of food, fuel and general merchandise items, the applicant is also proposing to sell alcoholic beverages (beer and wine only) in the convenience store; which requires a Conditional Use Permit (per Municipal Code section 101.0515).

Carwash: Construct a one-story automated car wash in the southeastern portion of the site, behind the proposed fuel pump area (Attachments 2 and 6). The plans indicate that the design of this structure (maximum height of 16-feet, 6-inches) would match the architectural style of the convenience store.

Landscaping: The project's landscape plan (Attachment 3) includes a variety of street trees, shrubs and groundcovers which were selected by the applicant to achieve compliance with the City's Landscape Technical Manual and the Sorrento Hills Community Plan; and features the installation of a number of trees and decorative shrubs along the perimeter of both street frontages; and at various locations within the site's interior.

In accordance with the Planning Commission's approval of this project, and prior to the recordation of any permits with the County Recorder's Office, the applicant will be required to modify the project's landscape plan to replace all deciduous trees with non-deciduous species (24-inch box "broad leaf evergreen"); and install double-rows of evergreen shrubs (4- to 5-foot high) along the project frontage on Carmel Mountain Road to provide increased screening of the proposed commercial uses.

Hours of Operation: The applicant is proposing to operate the gas station and convenience store on this site between the hours of 5:00 a.m. - midnight; and the automated car wash between 7:00 a.m. - 10:00 p.m. The hours of operation proposed for the gas station / convenience store are inconsistent with the maximum hours (5:00 a.m. - midnight) approved by the Planning Commission this project.

## DISCUSSION:

**Health Risk Assessment - Air Quality** - On April 17, 2001, the City Council voted to continue this project and directed staff to solicit an independent analyst to prepare a "*site specific health risk assessment*" to evaluate the project's public health impacts (if any) associated with human exposure to hydrocarbon fuel emissions and in particular, adverse health risks associated with the ionization of benzene molecules on the surrounding population. As you are aware, staff solicited Dr. Neal Langerman as the City's independent analyst to prepare the health risk assessment for the project (Attachment 15).

As presented to the City Council at the July 31, 2001 hearing, the health risk assessment concluded (in summary) that the opponents claims of an ionization phenomenon associated with the proximity of high voltage power lines to the proposed gas station site are not supported by the scientific literature referenced by the Torrey Hills Community Coalition (THCC). Dr. Langerman's assessment further concluded the following (*refer also to Attachment 15*):

..... \* The published reports of the University of Bristol scientist (as referenced by the THCC) do not apply to the proposed Sorrento Hills gas station project.

..... \* If a "benzene-corona ion species" is assumed to exist, it's total contribution to the health risk impact of the proposed gas station would be insignificant.

..... \* The overall cancer risk of the proposed Sorrento Hills gas station is estimated to be less than 10 per million.

Following staff's presentation, and after considering testimony by both project opponents and proponents, the Council voted to approve the proposed project, subject to the previous recommendations of the Planning Commission regarding signage, landscaping and hours of operation.

On August 7, 2001, a week following the City Council's approval of this project, the Council directed staff to have the City's independent analyst prepare a response to questions raised by representatives of the THCC (Attachment 16) regarding the methodology used in determining some of the conclusions in the health risk assessment. The analyst (Dr. Neal Langerman) complied with this request by providing staff (and the Council members) with a 5-page written response to the THCC's issues.

In summary, the THCC alleges (Attachment 16) that the conclusions of Dr. Langerman's health risk assessment are invalid because the analysis (or methodology) used to determine the project's projected parts per million cancer ratio impact was based upon an "urban" setting, and not a rural setting (per guidelines used by the County's Air Pollution Control District - APCD). In his response (Attachment 17), Dr. Langerman states that he used the "urban" setting for his analysis of the parts per million cancer ratio risk for the project because it was Dr. Langerman's opinion that the urban setting was the more "appropriate" setting to base his conclusions upon given the specific conditions and environmental surroundings for the subject property.

Dr. Langerman further states in his response that the THCC's issue of urban versus rural setting, with regard to the analysis of the project's cancer risk ratio, is irrelevant given APCD's issuance of two "Authority to Construct" permits (Attachment 18) and; the conclusion of his original Health Risk Assessment (Attachment 15) that there is no chemical reaction possible that would result in the ionization of benzene molecules. The following is a summary of Dr. Langerman's response to the specific questions raised by the THCC (Attachment 17):

THCC statement:

*"We've enclosed the CAPCOA guidelines with appropriate paragraphs highlighted for your review. Our discussion with Mr. Tom Weeks with the San Diego County APCD confirm that the*

*correct table to use for all areas of San Diego is Table 1A, "Rural Dispersion Coefficients", not Table 2A, "Urban Dispersion Coefficients" that Dr. Langerman used in his report to the City".*

#### Dr. Langerman's Response

"I was assigned (by the City of San Diego) the task of assessing the project's "potential public health impacts associated with human exposure to hydrocarbon fuel emissions and in particular, the ionization of benzene molecules". Nowhere in this assignment was I instructed to use the procedures of any specific agency, including those of the San Diego County Air Pollution Control District (APCD). The emphasis in the assignment I received was to assess the potential health impacts using any specific procedure or set of rules. I chose to use the CAPCOA guidelines insofar as they were applicable and relevant for the proposed project / site location. I further chose to make my own, scientifically defensible assumptions, when appropriate."

"The issue raised above essentially comes down to whether the project's location, in terms of the ISCST3 air dispersion model, is more correctly represented by a set of urban or rural parameters. In my professional opinion, based on my familiarity with this modeling method and my examination of the current and future use of the project site, the urban model is more applicable for the proposed project. This approach is allowed under the last paragraph of page 15 of the CAPCOA guidelines."

"This is an issue of San Diego APCD policy versus scientific judgment. I make no claim to challenge the APCD policy. I have used the most supportable scientific assumptions applicable, without regard to any specific policy, as may be utilized by APCD."

#### THCC statement:

*"When using Table 1A and using the same distance assumptions (90 meters from the station center), you will note that the figure in column 6B is 3.11. "*

#### Dr. Langerman's Response

"It is alleged (by the THCC) that I "reduced" the project's risk assessment, based upon the project's hours of operation. Please note that the operative statement in both my health risk assessment and presentation to the City Council on July 31<sup>st</sup> was as follows:"

"In arriving at the concentration estimate for the benzene-corona ion species, this study assumed a steady state concentration of both corona ions and benzene. The proposed service station will only operate 16 hours per day. Thus, any estimate of the actual exposure (to both corona ions and benzene) will reflect a maximum of 5843 hours of operation per year. Using the CAPCOA guideline data will over-estimate, by a factor of 33%, the actual exposure."

"The most reasonable model to use (for purposes of this particular project's risk assessment) is an annualized model that assumes exposures are constant over the course of the day. One could argue that some other model may be more applicable, but given the extremely low estimated concentration of the benzene-corona ion species, such a refinement is unwarranted."

"Nowhere in the preceding statement, or in any aspect of my risk assessment for the project, was any number reduced by 30 percent, 33 percent or any other factor. The statement from my report,

above, is an observation. The final result is directly from the risk assessment.”

THCC statement:

*“In summary, Dr. Langerman’s errors were 1) using the wrong table for calculations (Table 1B instead of table 1A), 2 reducing the cancer risk by 1/3 – although CAPCOA guidelines clearly state that there is generally not significant differences in findings based on hours of operation. ”*

Dr. Langerman’s Response

“As previously stated, there is no error in either my approach / methodology or APCD’s methodology in determining the proposed project’s overall cancer risk ratio, although different models were used by each in determining such risk ratio for the proposed gas station. When the results of the health risk assessment regarding this issue are correctly interpreted, my assumptions provide a risk assessment under the generally accepted guideline of 10. Alternatively, if the accepted APCD model is used, then the APCD guideline of a risk assessment of 100 as a level of concern must be used. This value is contained in Rule 1200 of the APCD Regulation XII. To use a value of 10 (as seems to be suggested by the THCC) is to mix apples and oranges. **In fact, both cancer risk ratio methods provide the same consistent result: that the proposed project does not pose an excessive cancer risk”**

“It should be noted that the preceding statement is based on ambient benzene in the atmosphere, not on the corona ion-benzene species that was the subject of my investigation. My investigation clearly demonstrated that this species, if it actually exists, is at such a low concentration as to be totally insignificant.”

THCC statement:

*“Please note that CAPCOA risk assessment is strictly for benzene and other vapors and specifically does not include the following (page vi of CAPCOA). .. ”* A list follows..... *“If the above referenced emissions were included in the overall risk assessment, we reasonably believe that the total risk would increase to an estimated factor of 20 cancers per million.”*

Dr. Langerman’s Response

“The health risk assessment for this project was based on the ambient concentration of benzene in San Diego’s air, regardless of source. As such, I did not consider it necessary to address the listed sources, since they all contribute to the ambient benzene concentration. Further, to fulfill the purpose and goals of the health risk assessment (as directed by the City), I was not obligated to specifically address these listed sources.”

“The assertion on the part of the THCC that the cancer risk for the proposed service station would increase to 20 cancers per million is not supported by any accepted scientific method; but is rather a “belief” by the THCC representatives. Further, an estimated factor of “20” cancers per million (as alleged by the THCC) is still less than the accepted APCD level of concern of 100 cancers per million.”



THCC statement:

*“Based on this finding, which represents a statistically significant 55% underestimation of the cancer risk, ”*

Dr. Langerman’s Response

“The THCC’s letter does not contain (or reference) a “finding” relative to the assessment’s alleged underestimation of the project’s cancer risk. Further, it is not clear from the THCC’s letter what body of data the statistical significance alluded to by the THCC is derived from. Finally, the THCC’s perceived difference regarding this issue is based on different assumptions, but the end result is the same.”

“Nowhere in my assignment to prepare the health risk assessment for this project was I directed to offer an opinion as to the overall safety of the proposed gas station vis-à-vis other service stations. I was asked questions regarding this matter during my Council testimony on July 31<sup>st</sup>, and have repeated my response (Attachment 17). To reiterate my position, the project’s overall cancer risk on the surrounding human population has been assessed by APCD, which has issued two “Authority to Construct” permits for the gas station (Attachment 18). My assessment, arrived at by similar (but not identical) reasoning, arrived at the same conclusion as that of APCD: **that the proposed gas station on this site does not pose an “unacceptable” cancer risk.**”

CONCLUSION:

As stated at the previous City Council hearings regarding this project, staff supports the siting and design of the commercial uses proposed on this site and has determined (via the draft “Findings of Approval” - Attachment 5) that the project is consistent with the purpose and intent of the Sorrento Hills Community Plan, which identifies a gas station and car wash as permitted uses on this site, subject to approval of a combination CUP/PCD Permit (as proposed by this project).

Further, the “health risk assessment” prepared for this project (Attachment 15), and subsequent response by the City’s independent analyst (Attachment 17) to the air quality issues raised by the project opponents, concluded that there does not appear to be any conclusive scientific argument in support of the opponent’s claims that the proposed gas station will threaten air quality and the public health of those residing within the surrounding area.

The preceding conclusion is also supported by the County’s Air Pollution Control District (APCD) approval of the project, via APCD’s issuance of two “Authority to Construct” permits for the proposed gas station on this site (Attachment 18).

ALTERNATIVES:

1. Approve the proposed project with modified or additional conditions as may be deemed necessary by the City Council to adopt the “Findings of Approval” in Attachment 5.
2. Deny the proposed project.

Respectfully submitted,

Tina P. Christiansen, A.I.A.  
Development Services Director

Approved: George I. Loveland  
Senior Deputy City Manager

KZS: Sullivan: 446-5225

Note: The attachments are not available in electronic format. Copies of the attachments are available for review in the office of the City Clerk.

Attachments:

- .....1. Location Map
- .....2. Site Plan
  - 3. Landscape Plan
- .....4. Draft CUP/PCD Permit
- .....5. Draft CUP/PCD Findings
- .....6. Building Elevations
- .....7. Ownership Disclosure
  - 8. Project Chronology
  - 9. Letters of Appeal
  - 10. Community Group Recommendation
  - 11. Sign Plan
  - 12. Community Plan text
  - 13. Community Plan Land Use Map
  - 14. Project Traffic Information
  - 15. Site Specific Health Risk Assessment
  - 16. Torrey Hills Coalition Letter
  - 17. Health Risk Assessment Response
  - 18. APCD Permits

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