



# AGENDA REPORT

**Department:** Planning  
**Prepared by:** Martin Reeder, AICP – Asst. Director of Community Development  
**Meeting Date:** Tuesday, May 6, 2025  
**Approved by:** Scott W. Huth, Interim City Manager

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**SUBJECT:**

Staff Report Describing the Discretionary Application Process for the Sweetwater Gas Station Project.

**RECOMMENDATION:**

File the Report.

**BOARD/COMMISSION/COMMITTEE PRIOR ACTION:**

Not Applicable.

**EXPLANATION:**

This staff report intends to provide information on the discretionary permit process and to address concerns raised regarding the review of the Sweetwater Gas Station project under said process.

**Previous Action**

The property in question consists of five lots along the Sweetwater Road corridor between Olive Street and Orange Street. Three of the properties were annexed into National City in 2020 and all five were rezoned from residential to mixed-use as part of the same process. There was also an approved project for a small commercial center with a drive-through coffee shop, but that permit expired the same month as the subject permit was submitted.

**April 1, 2025 City Council meeting**

The City Council directed staff to modify this report to include a more robust discussion of CEQA (California Environmental Quality Act), ex-parte meetings, and findings for denial. These items are discussed in the following sections below: “CEQA”, “Afterword” (ex-parte communications), and “Staff Recommendation” (findings for denial).

**Application**

City staff is tasked with representing and protecting the community through the policies and goals of the General Plan, as well as balancing the rights of property owners and developers to pursue projects through the regulations of the Municipal Code (NCMC). The applicant for this project submitted a Conditional Use Permit<sup>1</sup> (CUP) application on **April 29, 2024** for a retail convenience store with alcohol sales, drive-through food/beverage business, gas station, automated car wash,

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<sup>1</sup> A Condition Use Permit is a type of land development permit that allows a use of land that isn't normally permitted by zoning laws, but can be allowed if specific conditions are met.

and a five-unit apartment building. All uses but the apartments require a CUP. A Zone Variance application was submitted later in the process, as described further on in this report.

A discretionary permit that involves multiple requests that would otherwise each require a permit if applied for individually are routinely bundled under one fee. It is a similar amount of work with regard to analysis, report writing, and presentation. In this example, a CUP involving multiple conditionally-allowed uses would only require payment of one CUP fee. A CUP permit fee of \$3,703 was submitted with the application.

### Land Use Code

Title 18 (Zoning) of the Municipal Code regulates land uses and urban form in the City. Land uses are categorized as either ministerial or discretionary. Ministerial permits are for uses that are allowed by right, or with no discretion involved. This includes building permits, grading permits, or developments that meet all minimum requirements of the Municipal Code. Residential uses, such as the proposed apartments, would generally be considered a by right development in the Major Mixed-Use District (MXD-2) zone in which the project is located. A discretionary permit requires approval by the Planning Commission and/or the City Council. The Sweetwater Gas Station project is considered a discretionary project, as the majority of the requested development requires a CUP, which is a discretionary permit.

### Application Processing

After reviewing the project request, Planning staff provided an Incomplete Letter<sup>2</sup> on **May 29, 2024**, asking for a traffic study, evidence of a community meeting for the alcohol sales request, and compliance with various design guidelines contained in the Municipal Code. A modified version of the project with the same components was submitted on **July 23, 2024**. After review of this resubmittal, Planning staff provided a second Incomplete Letter on **August 6, 2024**. Comments referred to the need for another community meeting, a traffic study (although preparation was already in process), and additional architectural design considerations. While a community meeting had been held in the interim, the meeting advertisement did not meet City requirements; therefore, a second community meeting was required (and ultimately held).

In the intervening period, the applicant team prepared a traffic study, which was submitted to the City for review and was ultimately approved on **November 8, 2024**. It was determined that the Project was presumed to have a less-than-significant impact on Vehicle Miles Traveled (VMT) with regard to the California Environmental Quality Act (CEQA) guidelines for assessing potential transportation impacts. This determination was made based on the Project consisting of local-serving retail use less than 50,000 square feet in size and because the residential portion of the Project was a small project generating less than 110 Average Daily Trips (ADT). While the traffic did not rise to the level of CEQA, the traffic study did point to the need for a new traffic signal at Sweetwater Road and Orange Street. This was included as a condition of approval.

While design changes were made, the applicant found that compliance with all applicable Municipal Code design guidelines was not possible due to site constraints, primarily the triangular

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<sup>2</sup> The Permit Streamlining Act (Government Code § 65943) requires that a reviewing agency inform an applicant of whether the application is complete or incomplete within 30 days of application submittal.

nature of the property. Due to this hardship, the applicant applied for a Zone Variance<sup>3</sup>, which requested wider driveways, less-than-required street wall width, and parking within the front yard setback. Similarly to the discussion related to bundling multiple CUP requests mentioned above, a Zone Variance request involving multiple requests would also be assessed one Zone Variance fee. A permit fee of \$3,703 was submitted with the Zone Variance request.

Permit Authority

Chapter 18.12 (Permits and Applications) of the Municipal Code indicates what type of permits require what level of approval. In general, all staff-level decisions may be appealed to the Planning Commission and all Planning Commission decisions may be appealed to the City Council. NCMC 18.12 states that the Planning Commission is either the decision maker or that it makes a recommendation to the City Council for approval or denial as follows:

Role of Review Authority			
Application Type	Planning Staff	Planning Commission	City Council
Conditional Use Permit	Recommend	Decision	Appeal
Variance	Recommend	Decision	Appeal

Public Hearing

A public hearing was scheduled for the Planning Commission meeting of **November 18, 2024**. Under preferred circumstances a staff report will be in final draft form prior to publishing the required 10-day public notice. However, in this case, staff was still working on the report when the notice was published. This was primarily due to staff wishing to help the applicant move the project forward prior to the end of the year. With City staff being furloughed for two weeks over the Christmas holiday and there being no Planning Commission meetings scheduled for January 2025 (due to the regular meeting days falling on observed holidays), the project would experience a significant delay. Many project applicants have extenuating circumstances (e.g., escrow, financing, due diligence period, etc.) and, as such, staff will help to expedite processes when possible. Setting this item for hearing in November was intended as such, as a decision made by the Planning Commission at that meeting would theoretically be in front of City Council in December, prior to the end of the year.

However, between the public notice advertisement and the November 18th Planning Commission meeting, it was determined that additional analysis was needed, which required more time than was available prior to the meeting. Proceeding without the analysis would result in a report going to the Commission without adequate legal review. Because the public hearing had been advertised, the application was not able to be removed from the agenda prior to the November 18 meeting. At the November 18, 2025 meeting, the Planning Commission received public comments from 11 community members. The Commission ultimately voted to continue the item

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<sup>3</sup> A Zone Variance allows a property owner to deviate from strict zoning ordinance requirements when unique circumstances, like unusual lot shape or topography, create a practical difficulty or hardship.

to **December 2, 2024** in order to provide additional review time for staff. At the subsequent meeting on December 2, 2024, the Planning Commission voted to deny the CUP and Zone Variance request by a vote of 4-2 with one member absent.

#### Notice of Decision

In the case of a Planning Commission decision, per [NCMC 18.12.040 D. 5](#), a Notice of Decision is transmitted to the City Council as an informational item, usually on the Consent Calendar portion of the agenda. Notice of Decision, the only available action for the City Council to take is to file the Notice of Decision or to hold the item for a public hearing. While the item is on consent, the Council may not consider additional public testimony or discuss the merits of the project. However, the City Council may elect to set the item for a future public hearing in order to receive additional analysis or testimony (a *de novo* public hearing). If the notice is filed, the Planning Commission decision is final (approval or denial). An applicant or aggrieved person may file an appeal of a Planning Commission decision to the City Council within 30 days, at which time the Council would hold a subsequent public hearing, take public testimony on the merits of the appeal, and render a decision. City Council decisions or filing of Planning Commission decisions (absent an appeal) are final. Any subsequent action would be through the public legal system.

A Notice of Decision must be transmitted to the City Council within 30 days ([NCMC 18.12.040 D. 5](#)) and is routinely on the agenda of the next regularly-scheduled City Council meeting. While this is typically within two or three weeks, in some cases that timeline might be shorter. For example, if there are extenuating circumstances (as discussed above.), a Notice of Decision may be placed on a City Council agenda within days of a Planning Commission meeting. In this case, the next City Council meeting was the day after the Planning Commission meeting, thus it was impossible to get the Notice of Decision on that agenda. However, there were no regularly-scheduled City Council meetings until 2025. In order to help the applicant get to a decision by the end of the year and to meet the City's 30-day requirement, the Notice of Decision was placed on the agenda for the only remaining scheduled meeting of 2024, which was the Special City Council Meeting of **December 10, 2024**. This meeting was held in order to certify the results of the election, but this item was also added to the agenda.

As previously mentioned, an applicant may file an appeal of a Planning Commission decision to the City Council within 30 days. The choices in this case at this time were to move forward with the Notice of Decision or to appeal. In the case of the Notice of Decision, it would still be possible for the City Council to hold over the item for a public hearing, but that is not guaranteed. The only way to ensure a public hearing is to file the appeal. Planning staff communicated to the applicant that the expected outcome, based on previous experience, was that the City Council would most likely file the Notice of Decision, affirming the Planning Commission denial.

#### Withdrawal

An applicant may withdraw an application at any point in the process for any reason (e.g., change in direction, financial, public concern, etc.). In the case of a public hearing for which a public notice has been advertised, the discretionary body would still need to open the public hearing, solicit public comment, and close the public hearing. At that point, the acting body would typically continue the item off calendar, as was done by the Planning Commission. The applicant could then choose to abandon the project, re-design or resubmit, or walk away. However, any change in the project would result in the process starting over. In this case, the Notice of Decision on the

Consent Calendar was not a public hearing and the applicant chose to withdraw their project application December 10, 2024, the day the Notice of Decision was scheduled to be considered.

### Staff Recommendation

During the public hearing process, the respective discretionary body (board, commission, or council) puts stock in the opinion of staff, as they are generally the subject matter experts with regard to land use. Staff works to remain neutral, providing a recommendation and optional findings for denial. It is then up to the discretionary body to decide which findings to adopt based on the facts and public testimony discussed at the public hearing. In cases where the Planning Commission votes contrary to the recommendation of staff, staff will not generally change their recommendation at the City Council level, but rather will state the history of the recommendation. Staff's initial recommendation is based on the merits of the application as presented, including any and all conditions of approval, which are intended to ensure that the project complies with applicable regulations and aligns with the broader goals and objectives of the local planning framework. Any public comment or community input is considered by the discretionary body and is taken into account when making a decision. Staff accepts and advances the decision of the discretionary body.

A project may not always conform to all General Plan policies or goals. However, it is under the purview of the discretionary body to determine if there are additional merits to consider that would offset any concerns to the contrary. For example, additional density may be granted for a multiple unit residential project if some units are restricted as affordable. In this case, the community benefits from additional affordable housing opportunities, although the development density may be more than the surrounding area exhibits. Ultimately, appropriate findings must be made to support the decision.

### **\*Updated information related to Staff Determination\***

Staff will almost always include findings for denial, as well as for approval with a staff report. In the case of this project, there was uncertainty over which of the seven components would be included or omitted per Planning Commission direction. In their staff report, staff encouraged the Planning Commission to consider each request made by the applicant on their individual merits, as it is within the purview of the Planning Commission to approve all or some of the requests, or deny the project as a whole if appropriate findings can be made. As staff had maintained that the project was ambitious and should be scaled back, it was expected that the project would be at least continued in order to be redesigned (scaled back), at which time staff would have a better idea on how to craft denial findings.

At the Planning Commission meeting where a decision was made, 41 community members registered an opinion of the proposal (37 in opposition and four in support), with 26 speakers raising concerns related to public safety, air pollution, public nuisance, and public convenience and necessity for the sale of alcoholic beverages for off-site consumption. The resolution adopted by the Planning Commission recommended denial of the project based on these findings.

### CEQA

Planning staff brought this project application forward to the Planning Commission with the recommended adoption of a CEQA Notice of Exemption as an Infill Development Project (CEQA Class 32). This was primarily due to the fact that the project screened out of CEQA with regard to

VMT, as previously discussed. However, there was also discussion related to possible excessive noise emissions associated with the proposed automatic car wash. The car wash was presented by the applicant to staff as being of the newest technology with relation to noise attenuation. Staff had asked for noise information, but none was initially provided. This was not considered as much of an issue initially, as the car wash exit (usually the noisiest part of the operation) was on the south side of the property, adjacent to Sweetwater Road. However, a site design change necessitated by the traffic study's queuing analysis resulted in the car wash being flipped 180 degrees, resulting in the exit being on the north side, closest to the neighboring residential area. However, conditions were included with the draft approval resolution that required compliance with Municipal Code noise standards and for a noise study to be provided prior to construction.

**\*Updated information related to CEQA\***

The Local Transportation Analysis provided to the Planning Commission included a traffic impact analysis, which identified substantial effects from the proposed project. While impacts were analyzed, the project was not subject to further study by the California Environmental Quality Act (CEQA) because no significant impact on Vehicle Miles Traveled (VMT) were found. The threshold for VMT impacts for a similar development is a project with at least 50,000 square feet of proposed commercial floor area. The basis for a project's traffic impacts is the anticipated trip generation. The analysis found that the project would generate a total of 2,743 daily trips with 195 AM peak hour trips and 231 PM peak hour trips. Of these 1,961 daily trips are Primary trips as opposed to Pass-By. Primary trips are those that are new to the street system as opposed to vehicles that are already circulating within the adjacent street network.

Based on the fact that the project screened out of CEQA with regard to VMT, the only other potential issues that warrant discussion are noise (initially discussed above) and air quality. In the CEQA checklist (Initial Study) prepared for the previous project (Annexation, Zone Change, and CUP), since expired (drive-through coffee shop), air quality was discussed in the context of a project generating 1,390 daily trips (an additional 621 excluding Pass-By trips). In the case of the recently-denied project, the additional Primary trips were three times as many and the project included a gas station. However, as mentioned above, the since-adopted VMT analysis requirement screens out this project. Therefore, with regard to other air quality analyses in the Initial Study, the findings were thus:

*The City does not have any applicable air quality plan or standards that would apply in this case. Air quality is under the purview of the San Diego County Air Pollution Control District. The County of San Diego and National City are in attainment for all California Clean Air Act (CCAA) pollutants with the exception of ozone. Approval of this project will not conflict with or obstruct the implementation of the San Diego County Regional Air Quality Strategy (RAQS) to manage air quality in our region.*

It should be noted that a new gas station is required to obtain an operation permit from the San Diego County Air Pollution Control District (APCD), which will be subject to National Emission Standards for Hazardous Air Pollutants (NESHAP) and Air Toxic Control Measures (ATCM). This requirement was included as a recommended condition of approval of the project, violation of which would have constituted a violation of the CUP.

The Initial Study for the Annexation and Zone Change (and now-expired CUP) concluded that no mitigation was required and a Negative Declaration was adopted as Based on the totality of this analysis, staff was confident in using the Class 32 CEQA exemption (Section 15332):

*CEQA Guideline Section 15332 identifies the Class 32 categorical exemption for projects characterized as in-fill development. This exemption is intended to promote infill development within urbanized areas. The class consists of environmentally benign in-fill projects which are consistent with local general plan and zoning requirements. This class is not intended to be applied to projects which would result in any significant traffic, noise, air quality, or water quality effects.*

As discussed in the original report and at the Council meeting of April 1, 2025, there may have been a benefit in having additional time to perform CEQA analysis, especially related to car wash noise emanation. Staff strives to provide effective project analysis, both related to CEQA and City policies/codes, and will continue to monitor project timelines to ensure adequate environmental and regulatory analysis.

#### Afterword

A discretionary permit applicant is a client. The client pays a fee for an application, knowing that they will lose the application fee in the case of a denial by the discretionary body. An application request may not be popular with a respective community or consistent with all goals or policies of the City, but it is the right of a property or business owner to apply. As long as the proposed use is permitted (conditionally or otherwise), the City is obligated to take in an application. It is then up to the approving body to make a decision on the project. If solicited by the applicant, staff will often provide an opinion at the beginning of a discretionary application process about any perceived issues or on the likelihood of approval. While staff cannot provide any certainty, they will educate applicants on historical precedence and the most likely outcome. However, this is never put forward as being an assumption to be relied upon; the decision to apply is always in the hands of the applicant.

Applicants will often meet with staff prior to an application or during the processing period to discuss the facts of a project and ask for advice. For example, if an applicant holds a community meeting for an alcohol license request and receives significant pushback from the community, staff might suggest some mitigating circumstances to assuage concerns at the Planning Commission or City Council hearings. These will be reflected in the draft conditions of approval for a project. Likewise, an applicant may meet with elected or appointed officials to educate them on a pending project that will be on a future agenda. Depending on the project, City officials may have follow-up questions for staff on the project proposal, merits, or procedural questions related to the application process.

In the case of the Sweetwater Gas Station project, Planning staff discussed with the applicant prior to application submittal and prior to the item moving forward for a public hearing that the proposal was very complex and that they should consider a reduced project. This included removing the residential component and/or one of the commercial components. However, the applicant chose to pursue the project as initially proposed. With the exception of the removal of an above-ground propane tank due to Fire Department regulations, the project was ostensibly the same as that which was originally submitted.

**\*Updated information related to Ex Parte Communications\***

Ex parte Communications occur when, prior to considering a matter on a public meeting agenda, a member or members of the City Council receive information, oral or written or otherwise pertaining to that particular matter outside the public meeting. This would include meetings with project applicants and/or community members. It is common for elected officials to meet with their constituents to hear concerns regarding a potential project. These ex parte contacts are not legally prohibited. However, they are subject to certain guidelines in order to preserve the integrity of the decision-making process and to insure due process for all involved.

First, the meetings should be informational only and the elected official should not provide any indication of the decision they might make on the project, nor should they share their position on issues related to the project. This is to ensure that the decision-maker remains impartial and without bias.

Second, all ex parte communications must be disclosed at the time of the public hearing on the project. This is to ensure that any decision is made based on information that was available to all decision-makers.

In this case, the Mayor and his assistant did on occasion communicate with the applicant regarding concerns the applicant had regarding the process. These procedural questions were relayed to staff via the City Manager and ultimately addressed with the applicant. These ex parte communications would have had to be disclosed had there been a hearing on the Project before the City Council.

**FINANCIAL STATEMENT:**

Not applicable. Informational item only.

**RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:**

Not Applicable

**ENVIRONMENTAL REVIEW:**

This is not a project under CEQA, and is therefore, not subject to environmental review. CCR15378; PRC 21065.

**PUBLIC NOTIFICATION:**

The Agenda Report was posted at least 72 hours before the Regular Meeting date and time, and 24 hours before a Special Meeting in accordance with the Ralph M. Brown Act

**ORDINANCE:**

Not Applicable

**EXHIBIT:**

Not Applicable