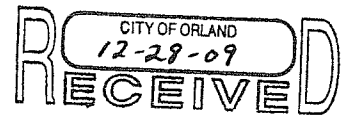


APPEAL RECEIVED FROM
FRIENDS OF ORLAND



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December 23, 2009

VIA FEDERAL EXPRESS

City Clerk
Members of the City Council
City of Orland
815 Fourth Street
Orland, CA 95963

RE: Appeal of Site Plan Review #2009-01, Approval of Crystal Geysers
Application for the Construction and Operation of a 112,500
Square Foot Sparkling Beverage Bottling Facility and Warehouse

Dear City Clerk and Members of the City Council:

Please find enclosed a check in the amount of \$350.00 to appeal the Technical Advisory Committee's (TAC) approval of the Crystal Geysers Bottling Plant and Warehouse. The TAC approval occurred on December 16, 2009. The Application for Site Plan Review is number 2009-01 by PLP, LLC, Richard Seklych, Vice President Manufacturing, Crystal Geysers Water Company, and James F. Strandberg, CHG, Vice President Malcolm Pirnie, Inc. My clients who are appealing the TAC approval of Site Plan Review #2009-01 and the approval of the Crystal Geysers Bottling Plant and Warehouse are Friends of Orland, Gregory Appel, and Matt Vreschagin. I include in this letter specific grounds for the appeal of the TAC's approval of the Crystal Geysers Bottling Plant, and I incorporate into this appeal all other grounds stated by citizens and organizations who also appeal the approval of the Crystal Geysers Bottling Plant. In the appeal process I will rely on my own comments as well as those of all other citizens and organizations. My clients oppose the proposed Crystal Geysers Bottling Plant. The specific grounds for appeal are as follows:

1) CEQA review is required for the Crystal Geysers Bottling Plant and Warehouse. The TAC's approval was not ministerial, but involved the exercise of discretion. Guidelines §15061(b)(3) the "common sense" exemption is not applicable to the Crystal Geysers Bottling Facility and Warehouse approval. The reasons that the common sense exemption is not applicable are explained in the attached letter dated November 17, 2009.

2) The City lacks substantial evidence to support a conclusion that there is no possibility of a significant effect on the environment. This issue is discussed in detail in the December 8, 2009, letter from Sabrina Teller to the City Manager.

3) The City may not mitigate its way into qualifying for an exemption. This issue is well explained in the case of *Salmon Protection and Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102.

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4) The Project may have a significant impact on the noise environment. There remain a number of issues that are unresolved concerning the noise impacts of the Project. The City improperly used a noise study that modeled noise in the City of Orland using the FHA model for trucks. This model is inapplicable because it is not effective for trucks speeds below 30 mph. Along much of the route the Crystal Geyser trucks will travel, the truck speed is less than 30 mph. Trucks are noisier at lower speeds.

5) The noise study improperly considered only the City's General Plan policies for noise and did not take into account the County's General Plan's noise policies which are more strict. The City was required to apply the County's General Plan Noise Policy to the lands bordering the plant that are in the County.

6) The City did not obtain any data of actual noise emissions from cooling towers similar to the cooling tower proposed for the Crystal Geyser Plant, and therefore the proposed mitigation for cooling tower noise is speculative.

7) The City has used an incorrect and outdated standard to show that the single-event level noise from big rig trucks will not have a significant impact on sleep pattern of residents.

8) The City does not have adequate background noise levels in order to make determinations as to the impact of Project noise and trucking noise. There are no nighttime noise levels.

9) The loading dock noise measurements and calculations are ineffective to assess the noise levels to be generated from the loading dock.

10) The noise study failed to include cumulative sources of noise and therefore underestimated the noise onsite.

11) There is no evidence that the 6-foot sound wall will be effective in reducing the noise levels at adjacent properties.

12) Appellants contend that the Project may have significant noise impacts based upon the above stated points, all documents filed before the TAC, and all information that may be presented at the hearing on the appeal.

13) The Project may have a significant impact on the State Route 32/Papps Avenue intersection. The Project has not adequately mitigated its impacts on State Route 32/Papps Avenue.

14) A traffic impact study is necessary for the Project to establish its impacts on State Route 32 as well as State Route 32/I-5 interchange.

15) The Project may have significant impacts on air quality. There is no limitation on particulates that may be generated from construction equipment.

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16) The Project may have significant impacts on air quality because of the evaporation of water and the formation of bottles, which may place particulates into the air.

17) The Project may have a significant impact on health risks. The Project fails to include an analysis of toxic air contaminants and a health risk assessment.

18) The Project fails to include sufficient detail on site drainage to support the conclusion that the Project will not have significant impacts during 100-year flood conditions.

19) The Project fails to document the impacts of a high volume of water use in an area where water supply had been limited by 3 years of drought.

20) The Project studies are not sufficient to conclude that the Project will have no impact on water contaminants in the area or on Project wells. The information provided by the City is not sufficient to show that the Project will not cause a movement of the existing toxic plume caused by the off site leakage of dry cleaning chemicals. The studies are not sufficient to show there will not be toxic pollutant effects related to industrial operations within 1000 feet of the intended Project site related to industrial operations closed in the past.

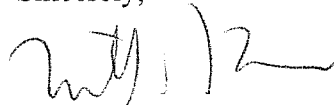
21) The Project studies do not include an analysis of groundwater quality across the range of groundwater depths to determine that other chemicals are not present in the pumping well or the monitoring wells that may be associated with past industrial activity close to the Project site, or the existing chemical plume.

22) The Project studies fail to include enough information showing that the Project will now have no impacts on greenhouse gas emissions.

23) The Project studies fail to show that the PET waste will not have a significant impact on the environment.

24) The Project fails to include an analysis of the Project's energy use, including peak energy demand. There has been no adequate analysis of energy conservation mitigation measures for the Project.

Sincerely,



WILLIAM D. KOPPER

WDK:kgr

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William D. Kopper

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Paralegal
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November 17, 2009

Ms. Nancy Sailsbery
Community Services Department Director
Members of the Technical Advisory Committee
City of Orland
815 Fourth Street
Orland, CA 95963

RE: Application for Site Plan Review #2009-01 by PLP, LLC,
Richard Seklych, Vice President Manufacturing, Crystal Geyser
Water Company, and James F. Strandberg, CHG, Vice President
Malcolm Pirnie, Inc., for Construction and Operation of a
112,500 square foot Crystal Geyser Bottling Facility and Warehouse

Dear Ms. Sailsbery and Members of the Technical Advisory Committee:

I represent Friends of Orland, Gregory Appel, and Matt Vreschagin, who are residents of the City of Orland, who are concerned about the proposed Crystal Geyser Bottling Plant. I incorporate all other comments of citizens and organizations into these comments. My clients oppose the Crystal Geyser Bottling Facility (the "Project") for a number of reasons, some of which are set forth in this letter. In this letter, I have set forth both the procedural problems with the City's processing of the Crystal Geyser Bottling Plant Application, and also the substantive environmental problems with the Project.

PROCEDURAL ISSUES

The City proposes to approve the Geyser Bottling Plant and Warehouse pursuant to its Site Plan Review Ordinance, Chapter 17.82 of its Municipal Code. Section 17.82.020 of the Municipal Code precludes a person from constructing any building or structure or making structural and physical improvements until site plan review has been completed by the City. Section 17.82.030 of the Code states as follows:

Site plan review applications, revocable and conditional, may be issued for any of the uses or purposes for which said permits are required or permitted by the terms of this Title. The City may impose such conditions as it deems necessary to secure the purposes of this Title, Code, or other City standards, and may require tangible guarantees or evidence that such conditions are being, or will be, complied with.

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The site plan review is expansive and includes traffic and circulation, building arrangement, historic character, setbacks, walls and fences, noise emissions and control measures, off street parking, grading, drainage, landscaping and other elements of development. Although the City states in Section 17.82.030 that "The site plan review application is a ministerial permit", it is not a ministerial action under the California Environmental Quality Act. For example, a building permit for a hotel project was considered a discretionary project because prior approvals of the project were conditioned on preparation of traffic, subsidence, and sewer capacity studies and the City had complete authority over aesthetic elements of the project. (*Miller v. City of Hermosa Beach* (1993) 13 Cal.App.4th 118.) Likewise, the approval process for a building permit for a 26-story, multiple-use tower for which the City had authority to require modifications and its employees had (a) exercised substantial discretion in setting standards and (b) waived other standards set by ordinance was considered discretionary. (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d, 259.) A construction permit for a trailer park was considered discretionary because generalized standards calling for exercise of judgment were to be applied, e.g., determinations about whether the water supply would be sufficient, whether site drainage would be adequate, whether use restrictions were necessary, and whether occupancy limitations were needed. (*People v. Department of Housing and Community Development* (1975) 45 Cal.App.3d 185, 193.)

To ensure maximum environmental protection, any doubts about whether an action is ministerial or discretionary must be resolved in favor of finding a discretionary determination. (*Day v. City of Glendale* (1975) 51 Cal.App.3d 817, 823; *People v. Department of Housing and Community Development* (1975) 45 Cal.App.3d 185, 194.)

The City's site plan review of the Crystal Geyser Bottling Plant is discretionary because the City limited the amount of water Crystal Geyser can remove from the groundwater table each year, required a noise study and noise mitigation measures, and exercised aesthetic control over the design of the Project. The City has applied conditions and mitigation measures to the Project, rather than mechanically applying the building code to an approved use.

The Crystal Geyser Bottling Plant is a project requiring CEQA review. Firstly, it is an activity that involves an exercise of powers by a public agency to carry out, support or authorize it. (Public Resources Code §21065.) Secondly, the activity will result in the change in the physical environment because a vacant field will be transformed into a warehouse and bottling plant. Additionally, water will be pumped out of the ground table to be used by the bottling plant. (Public Resources Code §21065.) Thirdly, the Project involves a discretionary decision by the City of Orland. Public Resources Code §21080(a) states that CEQA applies to discretionary projects.

In order to avoid the City's obligation to complete CEQA review, the City states that the Project is exempt under Guidelines §15061(b)(3) which states:

The activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no

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possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

The City has misapplied this exemption which has been titled the "common sense" exemption. Whether a particular activity qualifies for the "common sense" exemption from CEQA presents an issue of fact and the agency invoking the exemption has the burden of demonstrating it applies. An agency's obligation to provide factual support for its decision that an activity is exempt from CEQA under the "common sense" exemption is all the more important why the record shows that opponents of the Project have raised arguments regarding possible significant environmental impacts.

Before determining that an activity is exempt from the California Environmental Quality Act under the "common sense" exemption, the agency must examine the evidence presented in the Administrative Record. (*Muzzy Ranch Corporation v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372.) The City of Orland has not analyzed all the concerns that have been raised by citizens and organizations concerning whether the Project has potential to cause a significant environmental impact. The evidence appears to show that in fact the Project will cause a significant environmental impact. For example, the noise generated from the Project exceeds the standards in the City's General Plan, and it is only through mitigation measures that the City alleges the noise can be brought down to an acceptable range.

The Project will also draw a significant amount of water from the water table which has dropped in the last few years. To mitigate for this impact the City has limited the amount of water the Project can draw from the water table. The aesthetic aspects of the Project have been mitigated with concrete walls and plantings. These are but a few examples. In *Muzzy Ranch* the court held that a County Airport Land Use Commission's adoption of the land use compatibility plan for an area surrounding Travis Air Force Base was exempt from CEQA review under the "common sense" exemption. The court found the plan embraced the existing County General Plan and zoning restrictions on residential housing development for the area, and the only possible new effect of the plan was to make it more difficult for local agencies to change their policies in the future to permit increased development within the area. Adopting a plan that is in conformity with existing restrictions on land is far different from approving a new project that has potential environmental impacts.

In *California Farm Bureau Federation v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173 the California Farm Bureau Federation challenged the decision of the California Wildlife Conservation Board and California Department of Fish and Game that a project involving conversion of agricultural land into wildlife habitat was exempt from CEQA. The court held the project was not exempt under the "common sense" exemption. In *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106 the Court of Appeal reversed a City's decision that an ordinance providing for geological study and tests of the foothill's area was exempt from review under CEQA. The court stated that an agency's "common sense" exemption determination under the California Environmental Quality Act must be supported by evidence in the record demonstrating that the

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agency considered possible environmental impacts in reaching its decision. The court stated that the agency's determination could not be supported by an implied finding that the project would not have a significant environmental impact. Further, the agency could not impose the burden on members of the public in the first instance to prove the possibility for substantial and adverse environmental impact because this would frustrate CEQA's fundamental purpose of insuring that government officials make decisions with environmental consequences in mind.

In *Davidon Homes* the court stated that the showing required of a party challenging the "common sense" exemption determination under CEQA is slight, as the exemption requires the agency to be certain that there is no possibility that the project may cause significant environmental impacts. If legitimate questions can be raised about whether the project might have significant impacts and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that the project is exempt.

In the initial paperwork for the Project, the City took the position that the Project would have no environmental impacts after mitigation. In the most recent staff report prior to the meeting of November 18, 2009, the City has taken the position that the mitigation measures are now conditions of the Project and therefore the Project as conditioned will have no environmental impacts. Apparently, the City changed the words in the Project documents from "mitigation measures" to "conditions of approval" in the belief that if the mitigation measures are phrased as "conditions of approval" then the Project would qualify for the "common sense" exemption.

The City's analysis is in error. In *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 673, the court, after finding CEQA violations in reversing the trial court, stated the county may comply with CEQA by requiring modification of the project or additional mitigation measures as conditions of approval. Similarly, in *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1222 the court stated that the City would be able to comply with CEQA by providing mitigation measures as condition of approval. The court stated: "The City may require modification of the project and/or additional mitigations as conditions of reapproval." The courts recognize that mitigation measures are often included as conditions of approval, but they are nevertheless mitigation measures.

The City's proposed approval process was expressly disapproved in *Salmon Protection and Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102. The County of Marin approved construction of a house within a riparian area designated by the County as an environmental resource of critical concern. The County concluded that the project was categorically exempt from CEQA because it entailed construction of a single-family residence. The County did not make express findings on the specific regulatory exemption prohibiting categorical exemption for projects that "may impact on an environmental resource of...critical concern", but found generally that any adverse environmental impacts **were eliminated by mitigation measures adopted as conditions for project approval**. The trial court found that the County erred in relying upon mitigation measures to grant a categorical exemption from CEQA. The Court of Appeal affirmed and stated:

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Only those projects having no significant effect on the environment are categorically exempt from CEQA review. (Public Resources Code §21080(b)(9), 21084(a).) If the project may have a significant effect on the environment, CEQA review must occur and only then are mitigation measures relevant. Mitigation measures may support a negative declaration but not a categorical exemption.

The *Salmon Protection and Watershed Network* court specifically rejected the idea that the “common sense” exemption to CEQA was available if mitigation measures were adopted as conditions of approval. The City’s approach clearly and unequivocally violates CEQA. The City needs to go back to square one and conduct an initial study and do a proper environmental review of this Project.

SUBSTANTIVE ENVIRONMENTAL ISSUES

Although the City believes that it has addressed all of the substantive environmental issues related to the Project and that all of the environmental impacts have been mitigated by the conditions of approval, there remain potential environmental impacts of the Project that have not been properly addressed by the Project documents.

A. Noise Impacts

On page 15 of the noise study included as part of the Project application, the noise study states: “The City of Orland has suggested an alternative truck route for trucks which may arrive between the hours of 10:00 pm and 6:00 am. The project applicant has provided information which indicates that no more than 5 trucks would access the site during the nighttime hours, which are defined above.” The Project conditions of approval do not include a requirement that an alternative truck route be used at night. The data included in the noise assessment is insufficient to determine that there would not be sleep deprivation impacts related to the nighttime trucking noise along the designated truck route. Firstly, there is no sound level data collected for any of the residential areas along the truck route. Secondly, there has been no consideration of the impact of single event level noise generated by the trucks on the residences along the truck route. In *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1379-1380, the court stated that it is state legislative policy to “[t]ake all actions necessary to provide the people of this state....with freedom from excessive noise,” and “[r]equire governmental agencies at all levels to consider qualitative factors as well as economic and technical factors...”. (*Id.* at 1379-1380.) “[T]hrough CEQA, the public has a statutorily protected interest in quieter noise environments.” (*Id.* at 1380.)

In *Berkeley Keep Jets Over the Bay Committee* the court held that an agency must consider the impact of a single event noise on individuals sleep patterns. In this case, the noise analysis has included no single event level data for the trucks passing along the truck route, especially Highway 32 where a number of residences are located. The application is silent about the types of trucks that

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will be traversing Highway 32 at night. Will the trucks be big rig trucks, or mid-size trucks? Without information about the trucks, and the existing sound levels along Highway 32 at night, it is impossible to conclude that the Project will not have a significant impact on the noise environment.

There are also noise impacts related to the operation of the bottling facility that are not adequately addressed. The application is silent as to whether loading and unloading activities will take place at night. The loading docks are not described as being sealed into the building. Therefore, it would appear that the trucks will be unloaded to the concrete and the noise of the movements of pallets, the rear beepers from forklifts, and the noise from air brakes and trucks starting and stopping will occur at night. These impacts are not addressed in the noise study and may have a significant impact on the residences to the east, as well as the residential area that is planned for the north. The noise study fails to include any information that these type of noise impacts are satisfactorily mitigated. A 6-foot sound wall is ineffective for noise sources that are higher than 6 feet, and also for noise sources that are generated a distance from the 6-foot sound wall. The description of the operation of the bottling facility and the loading docks is insufficient to conclude that there will be no noise impacts from the bottling facility.

The noise study was also deficient in failing to analyze the impacts of the noise of trucks maneuvering on site. Like loading and unloading noise and docking noise, the maneuvering of trucks on site is considered a stationary source of noise, not a mobile source of noise. These noise impacts are likely to be significant and are single event level noise sources. The impact of this noise source on adjacent residences and the future residential area to the north was not addressed in the noise study or any of the Project documents. There is an absence of information about the noise generated by the trucks on site, the period of time the noise is generated, and the times of this noise. In addition to specifying the number of truck trips per day, the noise study should indicate the types of trucks that will present at the facility.

The noise study points out that the noise sources will include the well, noise from the compressor room inside the facility, the air conditioning and other mechanical equipment on the roof, the chiller, and the cooling towers. The Application reports that all of these noise sources can be reduced to a less than significant level by fitting the various components with noise reducing low-speed fans, and applying acoustical materials to reduce the sound levels. However, there is no detail about these mitigation measures. There is also no indication in the noise study that the cumulative impact of all the different source of noise would not be significant at the property line even after mitigation. The noise study lacks detail as to how the absorbent material will be designed to reduce the noise from the chiller and cooling towers. The application of sound absorbing material around facilities such as chillers and cooling towers has caused Legionnaires disease in some cases. Some detail needs to be provided as to the materials and how they will be installed.

Apparently, the 6-foot wall on the north side of the building is to serve as a sound wall to reduce noise from the bottling plant. However, the noise study includes no explanation as to how this wall will reduce the noise impacts of the Project. The noise study does not include any

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information as to how the noise wall will function to reduce noise from the Project site.

B. Parking

Proposed condition 14.A.2. states all parking spaces and accesses shall be improved with Portland cement or asphalt concrete. The Project Application reports that one of the mitigation measures to reduce the Project's energy consumption and impact on greenhouse gas emissions is to pave the parking areas in cement. Therefore, the City's condition of approval that allows the Project areas to be paved in asphalt would appear to be inconsistent with the Application. Paving the parking area in asphalt would increase the heat load of the Project and its use of energy.

Condition 14.B.10 allows the Project to go forward providing only 13 parking spaces for cars. Further, condition 15 states: "No off-street parking/loading/unloading shall be allowed at any time." The Project will have 20-25 employees. It is therefore unclear that the Project provides adequate parking. There is no public transportation system that provides services from the City or any other location to the Project site. There is no requirement that the Project developer set up a mandatory car pool program. It would therefore appear likely that all of the employees will drive their individual cars to work and park at work. Appendix G of the CEQA Guidelines, Section XV(f) states that a significant impact on the environment may result if the Project provides inadequate parking capacity. This Project appears to provide inadequate parking capacity and therefore may have a significant impact on the environment. Before the City approves the Project on an exemption from CEQA, it would appear that the adequacy of the parking must be addressed.

Condition 14.B.10 provides 10 parking spaces for trucks. However, the Project description indicates that there will be 25 to 30 truck trips per day. The Project description is silent as to where Crystal Geysers' trucks will park, if not at the Project site. The Project description includes insufficient information that the parking will be adequate for trucks.

C. Transportation

Condition No. 14.B.11.b assumes that there will be: "sufficient room for the turning and maneuvering of vehicles on site." However, the Orland Fire Department conditions of approval state: "The current driveway entrance near the southeast corner of the proposed building does not allow adequate turn radius for trucks to make the transition from the entrance, around parked cars, and then proceed northbound along the east wall." There is no evidence that the site plan has been revised and that there is adequate room for both the parking and the turning of trucks on site. The turning area appears extremely tight. The lack of an adequate on site circulation system could be a fire hazard. This is a significant environmental impact that does not appear to have been addressed.

The Project conditions of approval state that the intersection at State Route 32 and Papps Avenue is slated to be signalized by the end of 2010. The Project documents are silent as to whether the bottling facility will add significant traffic to the intersection of State Route 32 and Papps Avenue. The Project documents do not discuss whether the signalization is necessary as a mitigation

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measure for Project traffic. Further, there is no discussion as to whether the Project should pay a fair share of the cost of the signalization of the intersection of State Route 32 and Papps Avenue.

In the draft staff report for the meeting of July 15, 2009, the staff reported a Caltrans condition of approval. The report stated as follows: “[A] traffic impact study (TIS) should be prepared for the proposed project due to the number of peak hour trips this commercial development will generate and the proximity to the state highway system (SR 32). Caltrans would appreciate the opportunity to review the scope of the TIS before the study begins. The “Guide for Preparation of Traffic Impact Studies” can be found on the Caltrans website []. Please provide Caltrans with copies of any further actions regarding this project.”

In response to this comment, the staff stated that the traffic information was included in the noise study. The noise does include some traffic volumes for various streets, but it is not a traffic impact study. The final staff report prior to the November 18, 2009, Technical Advisory Committee Meeting does not include Caltrans’ request for a traffic impact study. The City implies that Caltrans has withdrawn this request, but there is no letter from Caltrans in the file or other information that indicates that Caltrans no longer requests a traffic impact study. It would appear that a traffic impact study is necessary to determine the Project’s impacts on State Route 32. Much of the Project traffic will be truck traffic, which has a greater impact on intersections than car traffic. Before it can be determined that the Project does not have a significant impact on traffic circulation, the City would have to complete a traffic impact study. Without this information, the City cannot exempt the Project from CEQA because it has no environmental impacts.

D. Air Quality Impact

The Project conditions are insufficient to conclude the Project will not have air quality impacts. The construction mitigation measures include: “limit fugitive dust from leaving the site during construction activities,” and “prevent fugitive dust from interfering with traffic conditions.” Additionally, there is a condition that grading and excavation will be suspending when wind gusts exceed 15 mph and that the speed on unpaved surfaces shall be limited to 15 mph. There are no limits on the particulates that may be generated from the construction equipment. The conditions of approval do not appear to comply with Section 85 of the Glenn County Air Pollution Control District Rules that limit particulates from all sources.

The Project conditions do not appear to address Guidelines Appendix G Section III(d), which requires agencies to consider whether a project will expose sensitive receptors to substantial pollutant concentrations. The bottling facility and distribution center will generate substantial diesel truck traffic each day and especially at the Project site where the diesel trucks are maneuvering into their docks. The Project description and conditions have failed to consider whether the added toxic air contaminants (diesel particulate matter) will have a significant impact on increasing cancer risk for the residential area to the north and the residents to the east. A California Air Resources Board (CARB) study has shown that beverage distribution centers may have a substantial impact on increasing cancer risk at adjacent residences.

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E. Drainage Issues

The Project description does not include any detail about how the on site drainage will be managed. In part of the application, Crystal Geysler states that there will be no off site stormwater discharged from the Project site. However, there are no drainage conditions as part of the Project. It would seem unlikely that Crystal Geysler could design an on site storm drainage system that did not discharge any drainage water off site. Even if, the requirement is that "all off site stormwater will be conveyed through and discharged from the property in conformance with the requirements of the City engineer," this does not assure that there will be no impacts from drainage. In order for the City to assure that there will be no significant impacts during 100-year flood conditions, the Project application and conditions must include greater detail. This is especially true since the entire southern part of the parcel is a drainage basin. The City needs to describe how the storm drainage system will work and why there will be no drainage impacts.

F. Water Impacts

The volume of use of the water is not well described in the Project documents. The use of water on the site is high even compared to agricultural use on a 10.3 acre parcel. Crystal Geysler proposes to use as much as 22.4 acre feet per year of City potable water in addition to the 160 acre feet per year for the bottling plant, or 184 acre feet per year total. This amount of water is enough to irrigate 45-50 acres, or about 5 times the 10 acre parcel. The Project documents fail to address whether the use of such a high volume of water should be considered as an environmental impact in an area where water supply has been limited by 3 years of drought.

In addition to the volume of water used by the Project, the studies are not sufficient to conclude that the Project will have no impact on water contaminants in the area or on Project wells. As pointed out by one commentor on the Project, the property to the west of Road 200, the old "BK" property, may have residue from industrial operations. These industrial uses may have contaminated the subsoils and/or the groundwater. The firms "Chem-Trol", "Chemonics" and "Fire-Trol" all operated industrial projects that used toxic chemicals within 1,000 feet of the intended Project site. There has been no study as to what chemicals were used in the manufacture, cleaning, lubricating and painting of heavy equipment at these industrial sites. There has been no study of the subsoils or the groundwater.

One of the weaknesses concerning the analysis of the water impacts of the Project is that it does not include a more extensive analysis of groundwater quality across the range of groundwater depths to verify that PCE or its bi-products are not present in either the pumping well or the associated monitoring wells. Likewise, there has been no analysis of groundwater quality across the range of groundwater depths to determine that other chemicals are not present in the pumping well or the monitoring wells that may be associated with past industrial activity close to the Project site.

For these reasons it cannot be said that the Project will not have a significant impact on water or water quality.

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G. The Project Description and Conditions of Approval Fail to Consider the Impacts of the Waste Generation from the Project

PET pellets used to manufacture plastic bottles pose significant threats to marine life. Approximately 60 billion pounds of pellets are produced annually in the United States. When these tiny plastic spheres are accidentally released into the environment, birds and animals mistake them for food and subsequently die through starvation, choking, or infection. The plastic often contains harmful chemicals such as phthalates, bisphenol A., styrene, or vinyl chloride which can leach into the water.

The Project description does not include any information on the control of PET pellets and PET waste. The facility will receive and store PET pellets in order to manufacture bottles on site. An environmental document should discuss the management procedure to adopt and prevent the release of PET pellets and PET waste products into the environment.

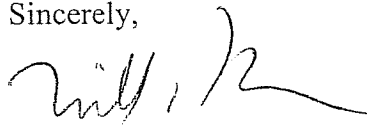
H. Energy Use

The bottling facility will use a substantial amount of energy. An environmental document should be prepared to address energy mitigation measures that could reduce the Project's use of energy. Many of these energy conservation measures are included in Appendix F of the CEQA Guidelines. For example, an environmental document could address: the potential siting, orientation, and design of the project to minimize energy consumption, including transportation energy. The environmental document could address the potential for reducing peak energy demand, or alternative fuel or energy systems. Further, an environmental document could address energy conservation potential.

CONCLUSION

The Project requires an Environmental Impact Report. The application is inadequate for the City to determine that the Project will have no impact on the environment. The City should process the Project in accordance with the California Environmental Quality Act.

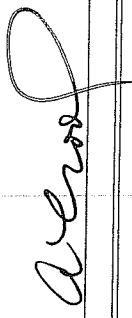
Sincerely,





WILLIAM D. KOPPER

WDK:kgr

00541

12/28/09	William D. Copper	CK# 8204	Appeal Fee Crystal Geyser	\$ 350.00
DATE	RECEIVED FROM		DESCRIPTION	AMOUNT
<p>City of Orland CITY HALL • 815 FOURTH STREET ORLAND, CALIFORNIA 95963</p>				
				17274

8204	90-515-1211
DATE	December 23, 2009
PAY TO THE ORDER OF	City of Orland
	\$ 350.00
Three-hundred and Fifty-dollars and 00/100	DOLLARS
 <p>FIRST NORTHERN BANK 434 Second Street • Davis, CA 95616 (530) 758-7500 www.thatmybank.com</p>	
FOR	Crystal Geyser
	
⑆008204⑆ ⑆2605156⑆0302038⑆⑆	

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