

TO: City Planning Commission

DATE: September 22, 1999

FROM: Staff

CASE FILE NO.: VM65-567

SUBJECT: Consideration of revocation of a Major Variance for a service station at 4035 Park Boulevard in the "Detached Unit Residential" General Plan Land Use Classification and the R-50 Medium Density Residential Zone. (Environmental Determination: Exempt; Section 15261(b), State CEQA Guidelines; project approval predates CEQA.) (Historic Status: Non historic property (NHP), survey rating: X.) (Planning Area: Lower Hills)

BACKGROUND AND RECENT ACTIVITY: The City Planning Commission has reviewed and heard public testimony on this case on several occasions. A previous staff report to the Commission, dated June 16, 1999, included a detailed chronology of project events and it and all related previous staff reports are included for reference in Attachment G. For purposes of this report, the most relevant and recent events are summarized below.

City's Actions & Litigation

In November 1996, the Commission determined that the contaminated soil and groundwater on and around the service station posed a serious public nuisance and added new conditions of approval to the original Major Variance (VM65-567). The most significant conditions 1) reaffirmed the limited operation of a re-opened service station to operations permitted by the variance VM65-567; 2) required that all on- and off-site contamination be "cleaned" before a service station could re-open; and 3) allowed the Commission to review the progress of the (environmental) cleanup work and to consider allowing re-opening the service station, amending the conditions, or setting a revocation hearing. New conditions also were added due to operational changes that the applicant proposed for the re-opened service station. For example, the applicant proposed to convert the station from a 4-pump full service operation to a 2-pump self service operation.

The applicant appealed the Commission's determination to the City Council, which upheld the Commission's decision on March 18, 1997 (Resolution No. 73346 C.M.S.). The applicant then challenged the City's decision in Superior Court, which ultimately upheld the City's decision as well. The case is now before the Court of Appeal. Both parties have fully briefed the case on appeal and are awaiting an oral argument date from the court. A final decision from the Court of Appeal could occur any time during the next months.

ENVIRONMENTAL
PROTECTION
99 SEP 20 PM 4:00

(See Reverse Side)

#5

Environmental Cleanup Activity and Code Compliance

Since the City Council's determination in March 1997, the Commission has held three compliance reviews on the status of the cleanup activities: in March 1998, October 1998, and most recently June 1999. Each compliance review generally consisted of updates on the environmental workplan preparation and the site monitoring process.

Additionally, since 1991, the Code Compliance Division of Building Services received numerous complaints about blighted conditions or unauthorized activity occurring on the site. In response, the City abated problems on the site on several occasions. A more detailed discussion of these actions is provided below.

At its June 16, 1999 meeting, the Commission asked the City Attorney to review the matter of blight on the site and determine whether administrative compliance actions should be implemented and whether the City should seek legal action to compel the property owner to improve the conditions of his property. In response, the City Attorney met with Code Enforcement staff and requested that staff conduct a site investigation to identify any and all code violations on the site. Code Enforcement staff's work found violations related to overgrown weeds, trash, and large open containers on the site, as well as deterioration of the building. The City Attorney then directed Code Enforcement staff to issue a Notice to Abate, which is a prerequisite to filing any legal action against a property owner. An initial Notice to Abate dated July 27, 1999, was mailed to the property owner, Mr. Shirazian, and his attorney, Mr. Self. Due to an invalid address, the notice that was mailed to the property owner was returned by the postal service. Based on information provided by property owner's attorney, Mr. Self, in a letter dated August 10, 1999, the City Attorney directed Code Enforcement staff to reissue a revised Notice to Abate, dated August 11, 1999, to both Mr. Self and the property owner. In a letter dated August 16, 1999, Mr. Self acknowledged receipt of the revised notice and provided additional correction to Mr. Shirazian's mailing address.

Environmental remediation work, which started August 4, 1999 (and described below), required use of the property to stage construction vehicles until approximately mid-August, however based on subsequent inspection by Code Enforcement staff, the applicant has substantially complied with the August 11, 1999 Notice to Abate (letter dated September 17, 1999, Attachment H). As of the writing of this report, there were no open complaints on the property.

Consideration of Revocation

At its June 16, 1999 meeting, the Commission also directed staff to set a revocation hearing for the Major Variance (VM65-567) on September 22, 1999. In light of the pending litigation, the Commission specified that the revocation hearing should determine whether there is sufficient evidence other than the contamination issues (for example, negligent property maintenance) to warrant revocation of the variance. The litigation primarily focuses on contamination issues on the site, and the contamination issues are directly linked to 1) the Commission's finding of (environmental) public nuisance and 2) its adoption of specific new conditions of approval. The ultimate legality of both actions is subject to the court's impending decision.

Therefore, this report outlines the non-contamination related evidence for the Commission's consideration under Option A below. Staff has also included additional options for the Commission's consideration. They include (Option B) proceeding with revocation hearing and decision only after the court issues a final decision; or (Option C) allowing immediate re-opening of the service station with conditions as to the quality of the station. Each option is discussed below.

DISCUSSION: The original Major Variance (VM65-567) permitted the operation of an automotive service station in a residential zone that does not allow this type of activity. Revocation of the variance would prohibit any future service station use on the property. The variance involves vested right issues, and revocation should be considered only after seeking reasonable and necessary actions to resolve any associated violations, unless based on substantial evidence it is determined that a serious public nuisance exists and a compelling action is required. In response to the Commission's direction and to facilitate further discussion, staff has outlined the following options, which vary widely in approach, aggressiveness, and possible outcomes.

Summary of Options

The following table provides a summary of each option, each of which is described in detail further in this report.

	Key Points	Possible Outcomes
OPTION A: Revocation: Violation of City Codes & Ordinances; Public Nuisance	<ul style="list-style-type: none"> • Immediate revocation • Revocation based on existing documented evidence, not pending conditions of approval • Revocation based on finding that existing property conditions create a public nuisance 	<ul style="list-style-type: none"> • Site available for reuse as residential or limited neighborhood commercial uses

<p>OPTION B: Revocation: Violation of Conditions of Approval (environ- mental)</p>	<ul style="list-style-type: none"> • Revocation after court decision, within approximately 6 months • Revocation based on unsatisfactory progress of environmental cleanup • Revocation based on court-affirmed conditions of approval 	<ul style="list-style-type: none"> • Site available for reuse as residential or neighborhood commercial use
<p>OPTION C: Allow Immediate Re-opening of Station</p>	<ul style="list-style-type: none"> • Allows owner to proceed immediately to re-open station • Will preclude consideration of revocation upon a favorable court ruling, unless owner creates new public nuisance or seriously violates the Zoning Regulations or conditions of approval • Determines that adequate progress has occurred on environmental cleanup • Commission could add new conditions of approval 	<ul style="list-style-type: none"> • Likely completion of on- and off-site cleanup • Removal of blighted, vacant property • Establishment of a well-designed facility through intensive administrative design review

OPTION A: Consider revocation based on code compliance issues.

Under Option A, the Commission would review evidence and testimony regarding past and current, if any, violations of the Zoning Regulations and related City codes and ordinances. The Commission would determine whether a serious public nuisance exists and whether there is a compelling need to take action to abate such a public nuisance. Then, the Commission would determine if adequate evidence exists to revoke the variance.

Code Compliance History

Prior to making any revocation decision based on the existence of a serious public nuisance, it would be appropriate for the Commission to consider the code compliance history of the site. Over the years, there have been numerous violations, City abatement actions, and fines imposed. The Commission could help to support a revocation decision by considering and analyzing: (1) the incidence of blighted conditions on the site; (2) the ongoing use of public funds for the extensive staff time used to respond to complaints, monitor and document site conditions; and (3) ongoing use of public funds for administrative and real costs of contracting for abatement services.

As previously mentioned, City records document blight-related code violations on the site beginning in 1991, and all Notices to Abate are included in this report (Attachment B). However,

the blight-related information provided in the following table begins in 1995, which generally coincides with when the current property owner, Mr. Shirazian, assumed ownership of the property from Desert Petroleum, and is also when automated City records and photo documentation of site conditions are available in the City record file of the property.

The following table identifies each complaint chronologically. In response to each complaint, Code Enforcement staff investigated the reported violation, photographed the site conditions, and issued a Notice to Abate to the property owner via US certified mail. This is standard City procedure for responding to alleged code violations. On no occasion did the property owner respond to the City's Notice to Abate within the specified time period. Therefore, the City abated the blight and billed the property owner for the cost of work performed. At the time this report was prepared, the balance due to the City for work done on the site between June 1997 and October 1998 (including subsequent liens forwarded to the Alameda County Assessor) totaled \$11,144.50. This total reflects a payment of \$727.00 that was made on July 21, 1999 (Attachment C).

Summary of Code Compliance History

Date (Case No.)	Complaint	Notice Date	Action	Balance (+ lien)
8/15/95 (9504929)	• Work without permits	-	• 8/29/95 • Permit issued (no record)	NA
2/27/96 (9600941)	• Blight: Trash/debris	• 4/12/96	(no record)	-
(9603095)	• Blight: Trash/debris	• 7/8/96	(no record)	-
3/13/96 (9601242)	• Alleged work w/o permits	-	• 7/16/99 Inspection found no illegal work	NA
4/16/97 (9702293)	• Blight: weeds, broken windows	• 5/19/97 (ret: forward address unknown)	• 6/30/97 City cleaned site; boarded windows	\$2,670
5/6/97* (9702360)	• Blight: weeds, unsecured property			
4/3/98* (9801989)	• Blight: weeds, trash/debris, unsecured fence	• 4/3/98	• 4/29/98 City cleaned site, erected new fence	\$5,687
7/8/98 - 7/27/99* (9805332)	• Blight: "continued removal of violations"	• 7/8/98 (ret. unable to forward) • 5/13/99 (ret. invalid)	• 7/24/98 City Cleaned site	\$1907

		address) • 6/2/99 (ret. forward address exp. • 7/27/99 resent to corrected address • 8/11/99		
9/10/98 - 3/99* (9807248)	• Blight: weeds, trash/debris	• 9/18/98 (ret. attempted not known)	• 10/7/98 City cleaned site	\$880

*Photo documentation attached to this report

Timing

Should the Commission determine that evidence exists that support the finding that a public nuisance exists on the site due to the persistent blight violations, and that there is a compelling need to take action, the Commission could act immediately on Option A.

OPTION B: Consider revocation based on violation of Conditions of Approval.

As indicated, the Commission (in November 1996) and City Council (in March 1997) imposed numerous new conditions on the applicant. The validity of many of those conditions, especially those related to the Commission's (environmental) public nuisance findings are being contested in litigation and are currently pending before the Court of Appeal. Under Option B, if the court upholds the Commission's finding of a serious (environmental) public nuisance and imposition of the additional conditions by the City, the Commission could review the variance conditions and determine whether sufficient evidence exists to revoke the variance.

Prior to revocation, the City must send official notice to all parties involved, hold a public revocation hearing, and give all parties and the public opportunities to submit evidence on the issue before the Commission. Notice for the current hearing was sent to all affected parties. While the Commission will consider every condition of approval, it will most likely focus on Conditions No. 14, 15, and 18.

Condition No. 14 states:

The City Planning Commission reserves the right, after notice and public hearing, to alter conditions of approval or revoke this variance if it is found that the approved activity is violating any of the conditions of approval, or the provisions of the Zoning Regulations, or that the operation is causing a public nuisance.

Condition No. 15 states:

Subject to Condition No. 18 (below), all on- and off-site toxic remediation work shall be completed to the satisfaction of the Alameda County Environmental Protection Services, prior to the commencement of any work for the reopening of the service station and prior to the issuance of any City building permits for this site.

Given the nature of events surrounding this project, the Commission, depending upon the evidence presented, could consider revocation of the variance based on Condition No. 18.

Condition No. 18 states:

That Major Variance VM65-567 shall be reviewed... with regards to the progress and completion of the toxic remediation work (on- and off-site)[,] and dependent upon the owner's compliance with these conditions and the state of the toxic remediation work, the Planning Commission...may allow the reopening of the service station, consider amending the conditions of approval, or set a revocation hearing.

Progress and Status of Cleanup

Regular monitoring of the on-and off-site groundwater did not begin until 1994. Although some contaminants most likely migrated off the site between 1989 and 1994, substantial contamination levels existed on the site in 1996 - levels high enough for the Commission to determine that it posed a public risk. Actual site work to implement the approved environmental remediation workplan (Attachment D) started on August 4, 1999, three years after the Commission's determination. The workplan entails installing additional monitoring wells (for sampling), a recovery well and linear recovery trench (for extraction), and adding oxygen-releasing compounds underground (to reduce Benzene concentrations).

Based on the quarterly monitoring reports, the three year period between the Commission's determination and the current work activity, there was enough time for a substantial amount of contamination to dissipate or migrate off-site, leaving most of the service station site relatively "clean" (Attachment E). During the past two years, between January 1997 and June 1999, Desert Petroleum (previous property owner) worked to retain environmental consultants to assess the level of on- and off-site contamination and develop a viable remediation workplan. The workplan was submitted to Alameda County several times and was subsequently revised several times based on modifications required by the County. During this period, Desert Petroleum also worked to secure a State pre-authorization for

reimbursement funds for cleanup work performed (Attachment F). This request was also submitted to and considered by the State several times due to the modified scope of the series of revised workplans. Desert Petroleum is currently the sole funder of the cleanup cost.

Considerations for Revocation

The Commission may consider that had either Desert Petroleum, or Mr. Shirazian (current property owners), started the on- and off-site cleanup during or prior to 1997 (immediately following the City Council's action), the extent and level of existing off-site contamination may have been significantly minimized. This lack of action may be considered negligent and reflect a lack of due diligence by the owner to complying with the conditions of approval. Although the applicant may argue that he diligently pursued the cleanup during this period, the Commission's decision to act will be based on evidence submitted to it.

Implications of Premature Revocation

It is important to emphasize that Option B would consider revocation of the variance only after the court renders a decision on the applicant's appeal. Until then, neither the status of public nuisance nor the conditions of approval are final. If the court rules against the City and upholds the applicant's appeal, all or part of the City's decision relating to the gas station could be invalidated. Therefore, an immediate revocation of the variance based on a violation of any of the pending conditions would be premature and may subject the City to subsequent lawsuits.

However, the Commission could consider revocation of the variance based on violation of the conditions of approval, pending a favorable ruling by the court.

Timing

The Commission could act on Option B in approximately 3 to 6 months, based on the City Attorney's estimation of when the court is likely to give a final decision.

OPTION C: Allow immediate re-opening of the service station.

Under Option C, the Commission would allow the service station to re-open based on the reduced level of on-site contamination and the progress of the off-site environmental cleanup that is currently underway and described above. Similar to Option B, this option relies on whether the Commission finds that the remediation work has progressed at a reasonable pace.

Considerations for Re-opening the Service Station

Condition No. 15 states that "the toxic remediation work shall be complete to the satisfaction of Alameda County

Environmental Protection Services (ACEPS), prior to...reopening the service station..." However, as of the writing of this report, ACEPS staff was unable to project how long the current remediation process will take to comply with the County's standard, and thus with Condition No. 15.

As discussed in Option B, the level of on-site contamination has apparently diminished significantly over the past years, and cleanup work on the confirmed areas of off-site contamination is currently underway. Although early reports indicated that the contamination had not extended past Brighton Avenue, the adopted workplan includes installation of "an additional monitoring well to determine the extent of the contamination. According to Fire Services staff, the "Third Quarter 1999 Monitoring Report" is currently being prepared, and should reflect the findings of the new monitoring well.

Despite the fact that neither the reduction of on-site contamination nor the current cleanup work may be due to efforts put forth by the current property owner, the outcomes will 1) eventually meet Condition No. 15, or may 2) currently satisfy a "level of progress" that meets Condition No. 18, which allows the Commission to consider reopening the service station. The following conditions should be considered under this Option:

20. Subject to the Condition No. 21 below, the applicant shall obtain all necessary administrative zoning approvals; building permits and any other City, County or State permits required to reopen the service station within 90 days of this determination or no later than December 22, 1999, and that the service station shall be open for operation within 120 days of this determination or no later than January 22, 2000.
21. That Major Variance VM65-567 shall be reviewed 60 days from the date of this determination or no later than November 24, 1999, with regard to the progress toward compliance with the above condition, and at that time, the Planning Commission may consider amending the conditions of approval, or revoke the major variance.
22. That the property shall be maintained free from litter, weeds and other growth, and all structures on the site shall be secured and free of undue hazards conditions at all times.
23. (supercedes Condition No. 7) The applicant shall submit a litter control plan to the satisfaction of the Director of City Planning prior to operation of the activity, which include (a) design, location, and number of litter containers to be installed on the site; said containers

shall be installed prior to the start of the activity; (b) establishes a management schedule for keeping the premises and surrounding area in a one block radius of the perimeter of the site free from litter origination from the operation of the activity.

If the Commission pursues Option C, it may precede a favorable ruling from the court, in which case the Commission will have forfeited any present opportunity to revoke the variance, due to existing violations, and thus eliminating the service station altogether. However, the Commission would reconsider revoking the variance if the property owner creates a new public nuisance or seriously violates the Zoning Regulations or conditions of approval. Alternatively, this option could result in a new service station of exceptional design quality and the removal of an underutilized property that is a periodic blight on the area. Condition No. 10 (which was not appealed by the applicant) subjects the final design of the service station to approval by the Director of City Planning, and this provides the City a process by which to ensure superior design treatment of the rehabilitated structure and site. Furthermore, the reopened station would be subject to several operations-related conditions of approvals (also not appealed by the applicant), and any subsequent violation of those conditions would be subject to revocation of the variance at that time.

Also, if the Commission does not ultimately revoke the variance, it may add new conditions related to the operation of the activity and condition of the facility that directly respond to historic problems on the site, whether the service station is in operation or not. Such conditions could address litter and debris control, facility maintenance, landscaping maintenance, security, and any blight issues identified on the site.

Timing


The Commission could act immediately on Option C and direct the applicant to proceed with obtaining all necessary permits to reopen the service station.

RECOMMENDATION:

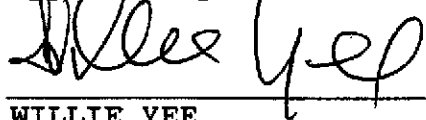
1. Pursue Option B: Await the outcome of a final decision from the California Court of Appeal. If the Court of Appeal's decision is favorable to the City and fully upholds the lower court decision, schedule a compliance hearing and consider revoking the Major Variance (VM65-567) pursuant to Option B above.

September 22, 1999

Prepared by:


Crescentia L. Brown, AICP
Planner III

Approved by:


WILLIE YEE
Zoning Administrator

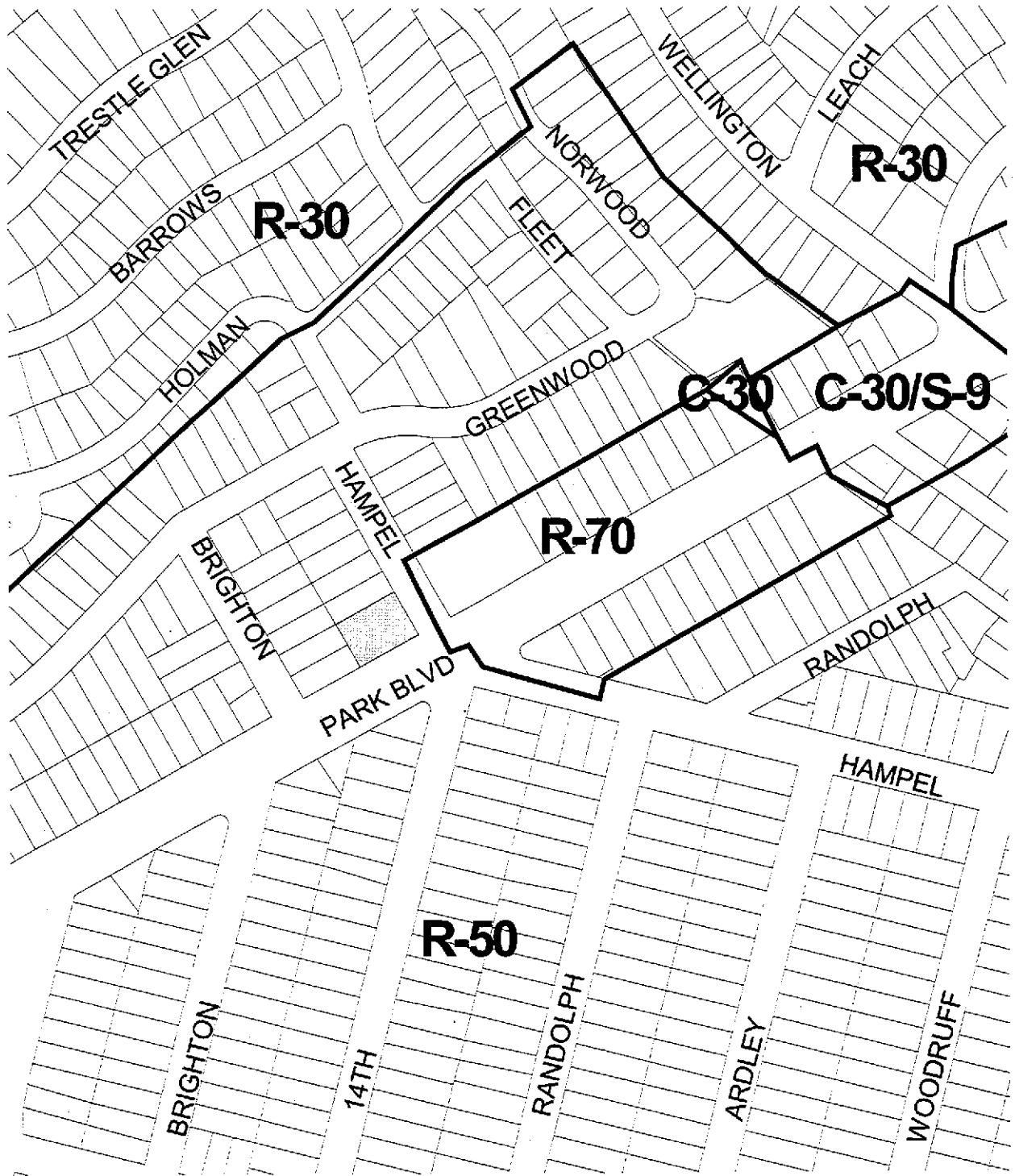
Approved and forwarded to the
City Planning Commission:


LESLIE GOULD
Chief of Planning

ATTACHMENTS:

- A. Location Map
- B. Code Compliance Records, including Notices to Abate and Photos
- C. Invoice of Fees Due, dated September 10, 1999
- D. Approved Workplan for Toxic Remediation, prepared by Western Geo-Engineers, dated July 15, 1999
- E. Maps of Contamination Plumes, dated November 24, 1998; February 23, 1999; and May 5, 1999
- F. Pre-Approval of Corrective Action Costs, State Water Resources Control Board, dated June 30, 1999
- G. City Planning Commission Staff Reports, dated:
June 16, 1999 (VM65-567);
October 1, 1998 (VM65-567);
March 18, 1998 (VM65-567);
November 20, 1996 (A96-143/VM65-567);
October 23, 1996 (VM65-567), including Board of Adjustments staff report dated October 22, 1965, minutes of October 27, 1965 meeting, and Resolution No. 46278 C.M.S., dated December 7, 1965;
October 9, 1996 (A96-143), including Partial Plot Plan and Section drawings; and
- H. Letter of Compliance with August 11, 1999, Notice to Abate.

CITY OF OAKLAND PLANNING COMMISSION



Location Map



APPLICANT: City Planning Commission
ADDRESS / LOCATION: 4035 Park Blvc. ZONING DISTRICT: R - 50
CASE FILE NO.: VM 65-567

CITY OF OAKLAND

HOUSING CONSERVATION DIVISION PH.: (415) 273-3381
OFFICE OF COMMUNITY DEVELOPMENT * 15TH FLOOR * KAISER CENTER
300 LAKESIDE DRIVE * OAKLAND, CA 94612-3537

OFFICIAL NOTICE TO ABATE A BLIGHT AND OF YOUR RIGHT TO APPEAL

Date: 4-11-91

Case Number: EN572

Affected Address: 4035 PARK BLVD

To: DESERT PETROLEUM INC.
TAX DEPARTMENT
P.O. BOX 1601
OXNARD, CA 93032

Accessor's Parcel Number: 24-533-
GARY GROVES
Housing Inspector:

VIOLATIONS: The property located at 4035 PARK BLVD, Oakland, was observed by a Housing Inspector, on or about 4-10-91, to be either:

1. vacant and unsecured, permitting entry to unauthorized persons and/or,
2. the premises contained trash, debris, recyclables, graffiti, and/or disabled vehicles or parts and/or it was not properly secured, and/or
3. the building (or other structure) was deteriorated, abandoned, hazardous, illegally constructed or was not being put to its permitted use.

This is in violation of Chapter 15 of the Oakland Municipal Code (OMC) (The "Blight" ordinance) or the Oakland Housing Code (OHC). This letter constitutes your official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building and/or remove all trash, debris and/or graffiti, (and to commence reasonable action to abate the remaining items in the List of Violations), within ten (10) days of the date of this Notice shall result in the City cleaning, removing the graffiti and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean the premises, remove any junk, trash, debris, graffiti, and secure openings: \$200- to \$500-.

In addition to these charges, there will be an added Administrative Fee of \$250, and Fee Charged Reinspections of \$150 each (if applicable), to cover the City's costs. Section H-307 OHC stipulates that all charges not paid within five (5) days shall be secured by the recording of a lien filed with the

Postage	
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	

Address on the reverse of this for
 items 1 and/or 2 for additional services
 and 4 & 5.

LAKE SIDE DRIVE, 15TH FLOOR • OAKLAND, CA 94612-3537

Office of Community Development Code Compliance Section (510) 238-3344
 FAX: (510) 238-2226
 TDD 839-6451

OFFICIAL NOTICE TO ABATE A BLIGHT AND OF YOUR RIGHT TO APPEAL

To: ATTN: JOHN RUTHERFORD
DESERT PETROLEUM INC
P.O. BOX 1601
OXNARD, CA. 93032

Date: MARCH 18, 1992
 Affected Address: 4035 PARK BL.
 Assessor's Parcel Number: 024 0533 007
 Case No: 21143
 Housing Inspector: LARRY CARTER

VIOLATIONS: The property located at 4035 PARK BL Oakland, California was observed by a Housing Inspector, on or about MARCH 3, 1992, to contain one or more of the following conditions:

The structure(s) was/were

1. Vacant and unsecured, permitting entry to unauthorized persons;
2. ✓ The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts and/or the structure was not properly secured;
3. The dwelling, or other structure, was deteriorated, abandoned, hazardous, illegally constructed or was not being put to its permitted use.

This is in violation of Chapter 15 of the Oakland Municipal Code (OMC) (the Blight Ordinance) or the Oakland Housing Code (OHC). This letter constitutes your official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations, within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean the premises, remove any junk, trash, debris, graffiti, and secure openings: \$ 500.00 to \$ 1,000.

OFFICIAL NOTICE TO ABATE A BLIGHT

TO: DESERT PETROLEUM INC. DATE: AUGUST 16, 1993
P.O. BOX 1601 CASE NO: 34343
OXNARD, CA. 93032 AFFECTED ADDRESS: 4035 PARK BD.
ASSESSORS PARCEL NUMBER: 024 0533 007
CODE ENFORCEMENT INSPECTOR: LARRY CARTER

DEAR PROPERTY OWNER:

VIOLATION: The property located at 4035 PARK BD. Oakland, California, was observed by a Code Enforcement Inspector on or about AUGUST 13, 1993. The property at that time exhibited "GRAFFITI" in various locations on the property. This is a violation of Chapter 16 of the Oakland Municipal Code.

GRAFFITI PROHIBITED

"No person owning or otherwise in control of any real property within the City shall permit or allow any graffiti to be placed upon or remain on any permanent structure located on such property when the graffiti is visible from any street or other public or private property."
Sec. 16-1.03 OMC

This is your Official Notice and you are hereby directed to remove the offending graffiti by the Due Date below.

This Notice shall be complied with, in accordance with the laws, ordinances and rules applicable thereto by AUGUST 31, 1993. Failure to comply with this order may result in prosecution, fine and/or Fee-Charge Reinspections. Fee-Charge Reinspections are \$200.00 per reinspection.

Sincerely,
Larry Carter
Code Enforcement Inspector
Phone: (510) 238-3381
8-9 a.m. & 3:30-4:20 p.m.

Date Issued AUG. 16, 1993 Callback Date AUG. 31, 1993 Date ABATED _____

OFFICE OF PLANNING & BUILDING • 1330 BROADWAY • OAKLAND, CALIFORNIA 94612

Code Compliance Section . (510) 238-3381

(510) 238-7200
TDD 839-6451

OFFICIAL NOTICE TO ABATE A BLIGHT AND OF YOUR RIGHT TO APPEAL

To:

Desert Petroleum Inc.
P.O. Box 1661
Oakland, CA 94632

Date:

6-2-94

Affected Address:

4035 Park Blvd.

Assessor's Parcel Number:

24-533-07

Case No:

39963

Housing Inspector:

JAN ST. DENIS

VIOLATIONS: The property located at 4035 Park Blvd Oakland, California, was observed by a Housing Inspector, on or about May 27-1994, to contain one or more of the following conditions:

The structure(s) was/were

1. Vacant and unsecured, permitting entry to unauthorized persons;
2. The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts and/or the structure was not properly secured;
3. The dwelling, or other structure, was deteriorated, abandoned, hazardous, illegally constructed or was not being put to its permitted use.

This is in violation of Chapter 15 of the Oakland Municipal Code (OMC) (the Blight Ordinance) or the Oakland Housing Code (OHC). This letter constitutes your official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations, within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean the premises, remove any junk, trash, debris, graffiti, and secure openings: To be determined by bid.

CLASS POSTAGE
PAID SERVICES (S)
RIGHT OF THE RETURN
SERVICE WINDOW OR
MAILBOX
JOB TO THE RIGHT OF
THE ARTICLE
YOUR NAME AND ADDRESS
BY MEANS OF THE
ARTICLE RETURN RE
AUTHORIZED AGENT OF THE AD
ON THE FRONT OF THIS
FORM 3811.
105603-23

CITY OF OAKLAND



OFFICE OF PLANNING & BUILDING • 1330 BROADWAY • SIXTH FLOOR • OAKLAND, CALIFORNIA 94612

Code Compliance Section

(510) 238-3381
TDD (510) 839-6451

OFFICIAL NOTICE TO ABATE A BLIGHT AND OF YOUR RIGHT TO APPEAL

To:

DESERT PETROLEUM INC
C/O TAX DEPT
P.O. BOX 1601
OXNARD, CA 94602

Date: 7/20/95
Affected Address: 4035 PARK BLVD.
Assessor's Parcel Number: 024-0533-007
Case No: _____
Code Enforcement Inspector: WILLIAM SINGMAN

VIOLATIONS: The property located at 4035 PARK BLVD Oakland, California, was observed by a Code Enforcement Inspector, on or about 7-7-95, to contain one or more of the following conditions:

The structure(s) was/were

1. Vacant and unsecured, permitting entry to unauthorized persons;
2. The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts and/or the structure was not properly secured;
3. The dwelling, or other structure, was deteriorated, abandoned, hazardous, illegally constructed or was not being put to its permitted use.

This is in violation of Chapter 15 of the Oakland Municipal Code (OMC) (the Blight Ordinance) or the Oakland Housing Code (OHC). This letter constitutes your official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations, within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean the premises, remove any junk, trash, debris, graffiti, and secure openings will be determined by bid.

Complaint#: 9504929

Filed: 08/15/95 Rcvd by: GME Station* CE-INSP Source* 2 TELEPHONE CALL
 Address: 4035 PARK BL Suite: Parcel: 024 -0533-007-00
 Responsible Station* CE-INSP Dist: 03 Primary Inspector GE Alternate
 Existing Use* 13 GAS SERVICE STATION Parcel Condition: X
 Descr: GAS STATION CANOPY DEMOLISHED W/O PERMIT. CONFIRMED BY ENG SVCS 8/15.
 EXC/GRADING (130 YARDS) W/O PERMIT; OB950186 (OBSTRUCT) ISS 08/03/95.
 Notice: EXCAVATION/GRADING W/O PERMIT COMPLAINT REFERRED TO ENG-SVCS.

Owner: DESERT PETROLEUM INC Tel:
 Address: P O BOX 1601 OXNARD CA Zip: 93032
 Agent:
 Complainant: MICHAEL GABRIEL; PRES, NBRHOOD ASSOC. 482-3128 Tel: (510)273-4074
 Complainant Response Requested? (Y/N): Y Response: Ltr/Tel/Oth:

<u>x</u> Violation Types*	<u>Station*</u>	<u>Dist</u>	<u>Last Action</u>	<u>Date</u>	<u>By</u>	<u>Disposition</u>
OBC 41	CE-INSP	02				V 08/15/95

Bottom

F2=Bookmark F3=Ext F24=Com ENTER=Next Selection

Complaint#: 9600941

Filed: 02/27/96 Rcvd by: TEC Station* CLERICAL Source* N NEIGHBOR

Address: 4035 PARK BL Suite: Parcel: 024 -0533-007-00

Responsible Station* CC-INSP Dist: 02 Primary Inspector Alternate

Existing Use* Parcel Condition: X

Descr: VACANT GAS STATION: BRANCHES FROM A TREE, TRASH & FURNITURE

Notice:

Owner: DESERT PETROLEUM INC

Tel:

Address: P O BOX 1601

OXNARD CA

Zip: 93032

Agent:

Complainant: JULIA MARSHALL

Tel: (510) 530-7564

Complainant Response Requested? (Y/N): N Response:

Ltr/Tel/Oth:

<u>* Violation Types*</u>	<u>Current Station*</u>	<u>Dist</u>	<u>Last Action</u>	<u>Date</u>	<u>By</u>	<u>Disposition</u>
_ OMC 20	CC-INSP	JAC				C 05/07/96

Bottom

F2=Bookmark F3=Ext F24=Com

ENTER=Next Selection



Receipt for Certified Mail
 No Insurance Coverage Provided
 Do not use for International Mail
 (See Reverse)

CITY OF OAKLAND



DING • 1330 BROADWAY • SIXTH FLOOR • OAKLAND, CALIFORNIA 94612

(510) 238-3381
 TDD (510) 839-6451

PS Form 3800, March 1993

Sept. 16	
Desert Petroleum	
P.O. Box 1601	
Oxnard, Cal. 93032	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

4-16 *year*

CE TO ABATE A BLIGHT AND OF YOUR RIGHT TO APPEAL

PETROLEUM INC
c 1601
CA. 93032

Date: 4/12/96
 Affected Address: 4035 PARK Blvd.
 Assessor's Parcel Number: 24 0533 007
 Case No: 9600941
 Code Enforcement Inspector: NESTOR JACKS

VIOLATIONS: The property located at 4000 PARK Blvd. Oakland, California, was observed by a Code Enforcement Inspector, on or about 4/4/96, to contain one or more of the following conditions:

- The structure(s) was/were
- Vacant and unsecured, permitting entry to unauthorized persons;
 - The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts and/or the structure was not properly secured;
 - The dwelling, or other structure, was deteriorated, abandoned, hazardous, illegally constructed or was not being put to its permitted use.

This is in violation of Chapter 15 of the Oakland Municipal Code (OMC) (the Blight Ordinance) or the Oakland Housing Code (OHC). This letter constitutes your official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations, within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean the premises, remove any junk, trash, debris, graffiti, and secure openings will be determined by bid.



CITY OF OAKLAND



OFFICE OF PLANNING & BUILDING • 1330 BROADWAY • OAKLAND, CALIFORNIA 94612

	3102				
Administration	238-7202	Building Services	238-3587	Planning	238-3941
Engineering Services	238-2110	Operations	238-3443	Zoning	238-7206

CODE COMPLIANCE DEPT. 238-3381

OFFICIAL NOTICE TO ABATE A BLIGHT AND OF YOUR RIGHT TO APPEAL

TO:

DESERT PETROLEUM INC
 TAX DEPARTMENT
 PO Box 1601
 OXNARD, CA 93032

Date: 7/8/96
 Affected Address: 4035 PARK BLVD
 Assessor's Parcel Number: 24-533-7-0
 Case No.: 9603095
 Code Enforcement Inspector: William Singman

VIOLATIONS: The property located at 4035 PARK BLVD, Oakland, California, was observed by a Code Enforcement Inspector, on or about 7-3-96, to contain one or more of the following conditions:

The structure(s) was/were:

1. Vacant and unsecured, permitting entry to unauthorized persons;
2. The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts and/or the structure was not properly secured;
3. The dwelling, or other structure, was deteriorated, abandoned, hazardous, illegally constructed or was not being put to its permitted use.

This is in violation of Chapter 15 of the Oakland Municipal Code (OMC) (The Blight Ordinance) or the Oakland Housing Code (OHC). This letter constitutes your official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations, within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean the premises, remove any junk, trash, debris, graffiti, and secure openings will be determined by bid.

Complaint#: 9601242

Filed: 03/13/96 Rcvd by: ALH Station*, CLERICAL Source*, 2 TELEPHONE CALL
Address: 4035 PARK BL Suite: Parcel: 024 -0533-007-00
Responsible Station* BD-INSP Dist: 06B Primary Inspector Alternate
Existing Use* Parcel Condition: X
Descr: DOING EXTENSIVE WORK W/O PERMIT. POSSIBLY PUTTING IN GAS TANKS

Notice: Closed by administrative action per R.D.

Owner: DESERT PETROLEUM INC

Tel:

Address: P O BOX 1601

OXNARD CA

Zip: 93032

Agent:

Complainant: JONATHAN BREAWLT

Tel: (510)531-0567

Complainant Response Requested? (Y/N): Y Response:

Ltr/Tel/Oth:

<u>* Violation Types*</u>	<u>Station*</u>	<u>Dist</u>	<u>Last Action</u>	<u>Date</u>	<u>By</u>	<u>Disposition</u>
-	BD-INSP	06B				C 07/16/99

Bottom

F2=Bookmark F3=Ext F24=Com

ENTER=Next Selection

Complaint#: 9702293 NOT VISITED
 Filed: 04/16/97 Rcvd by: JDC Station* CLERICAL Source* 2 TELEPHONE CALL
 Address: 4035 PARK BL Suite: Parcel: 024 -0533-007-00
 Responsible Station* CD-INSP Dist: WS Primary Inspector Alternate
 Existing Use* Parcel Condition: X
 Descr: OVERGROWN WEEDS - FIRE HAZARDS OVER 1 FOOT HIGH - BROKEN WINDOWS

Notice:
 Owner: TONYS SERVICE STATION Tel:
 Address: 23C CIRCLE DR TIBURON CA Zip: 94920
 Agent:
 Complainant: JOHNATHAN BREAUULT/484-LAKEPARK AV/94601 Tel: (510)531-0567
 Complainant Response Requested? (Y/N): Y Response: Ltr/Tel/Oth:

* Violation Types* Station* Dist Last Action Date By Disposition

F2=Bookmark F3=Ext F24=Com ENTER=Next Selection

Complaint#: 9702360

Filed: 05/06/97 Rcvd by: TEC Station* CLERICAL Source* N NEIGHBOR

Address: 4035 PARK BL Suite: Parcel: 024 -0533-007-00

Responsible Station* BD-INSP Dist: 06B Primary Inspector Alternate

Existing Use* Parcel Condition: X

Descr: VACANT GAS STATION: OVERGROWTH

Notice: Closed by administrative action per R.D.

Owner: TONY'S SERVICE STATION

Tel:

Address: 23C CIRCLE DR TIBURON CA

Zip: 94920

Agent:

Complainant: MICHAEL GABRIEL

Tel: (510)273-4074

Complainant Response Requested? (Y/N): Y Response:

Ltr/Tel/Oth:

* Violation Types*	Station*	Dist	Last Action	Date	By	Disposition
-	BD-INSP	06B				C 07/16/99

Bottom

F2=Bookmark F3=Ext F24=Com

ENTER=Next Selection



CITY OF OAKLAND

OFFICE OF PLANNING AND BUILDING - 1330 BROADWAY - OAKLAND, CALIFORNIA 94612

Code Compliance 238-3381 Bldg. Services 238-3102 Inspection Services 238-3587

CODE COMPLIANCE SECTION (510) 238-3381

OFFICIAL NOTICE TO ABATE A BLIGHT

To:

TONYS SERVICE STATION
230 CIRCLE DRIVE
TIBURON, CA 94920

Date:

5/19/97

Affected Address:

4035 PARK BLVD

Assessor's Parcel Number:

24 533 7 0

Case No.:

9702360

Housing Inspector:

William SINGMAN

VIOLATIONS: The property located at 4035 PARK BLVD
Oakland, California, was observed by a Housing Inspector, on or about
5/15/97, to contain one or more of the following conditions:

The structure(s) was/were:

1. X Vacant and unsecured, permitting entry to unauthorized persons;
2. X The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts and/or the structure was not properly secured;
3. X The dwelling, or other structure, was deteriorated, abandoned, hazardous, illegally constructed or was not being put to its permitted use.
4. _____ SEE THE ATTACHED NOTICE TO ABATE (REQUIREMENTS).

This is in violation of Chapter 15 of the Oakland Municipal Code (OMC) (the Blight Ordinance) or the Oakland Housing Code (OHC). This letter constitutes your official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations, within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean the premises, remove any junk, trash, debris, graffiti and secure openings: To be determined by bid.

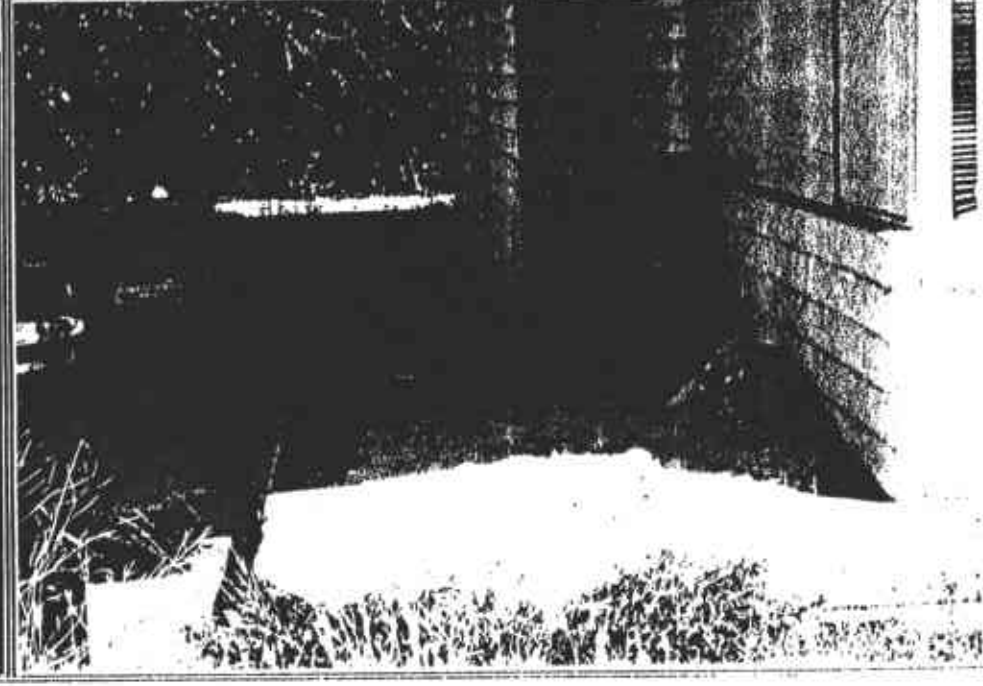
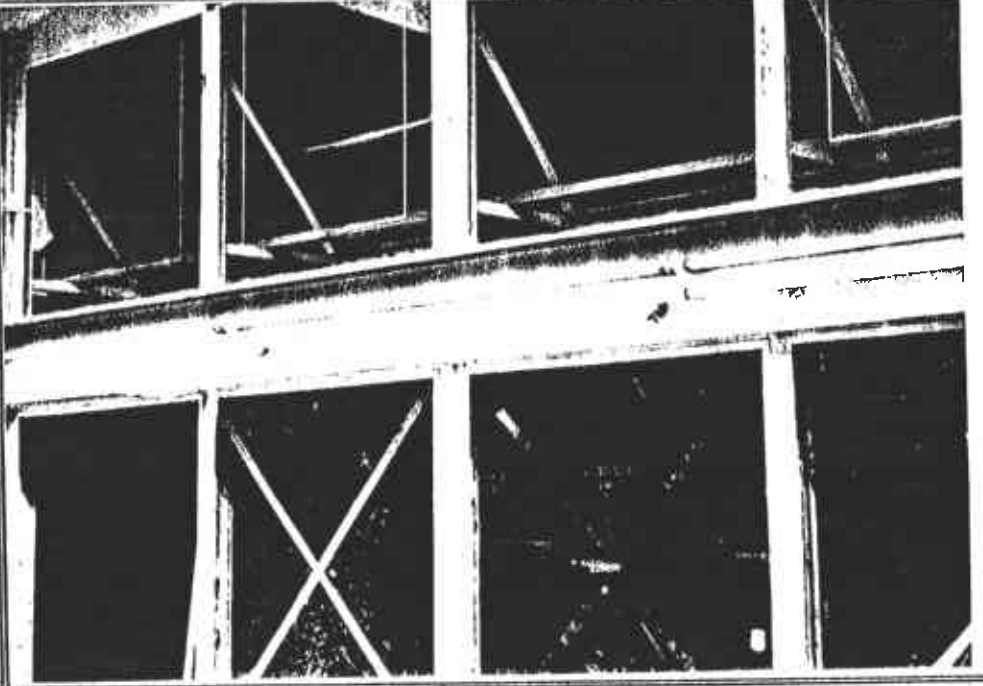
Address 4035 Kirk

PHOTOGRAPHS

Date 6-26-97

Before

After



Address

11225 1011

PHOTOGRAPHS

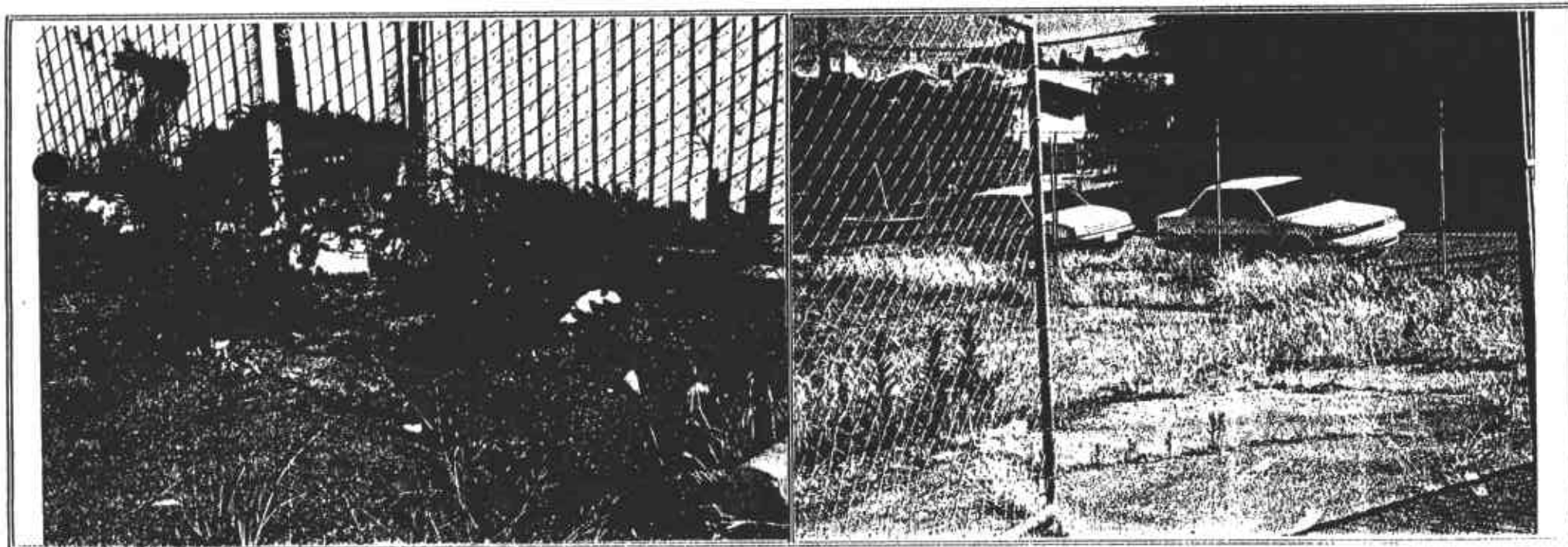
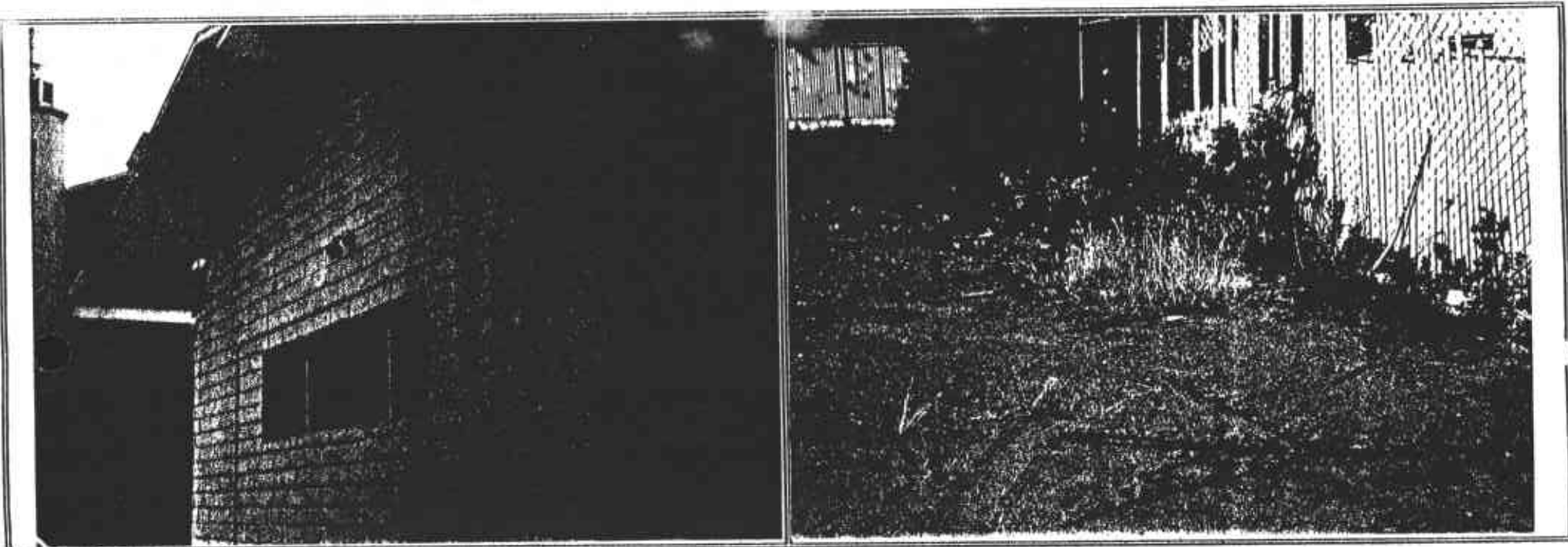
Date

6-26-97

Before



After



Address

4035

611

PHOTOGRAPHS

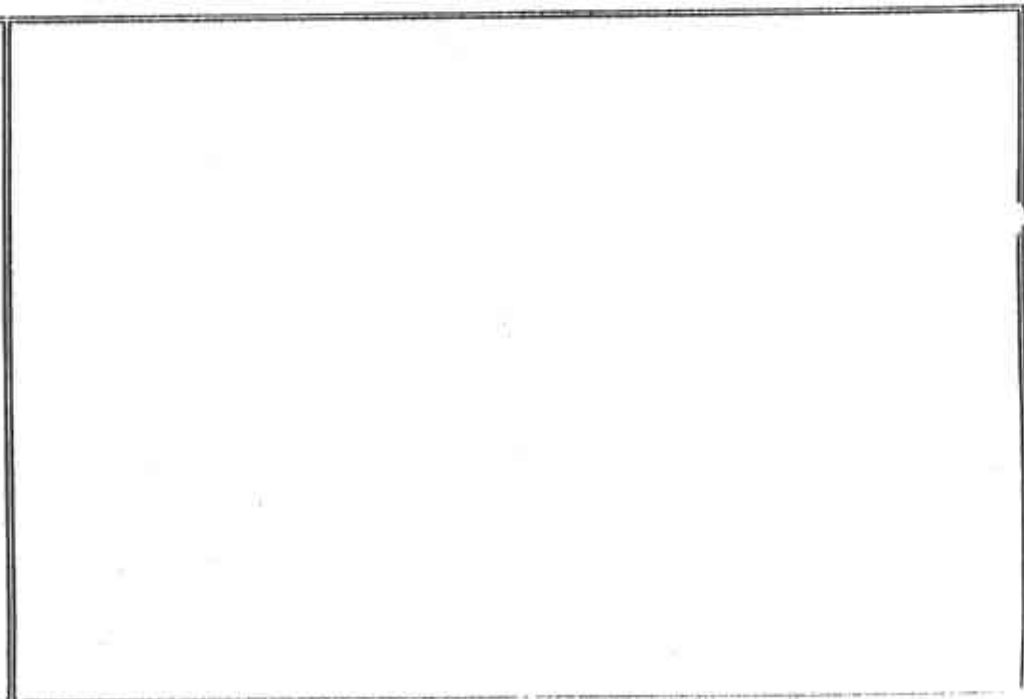
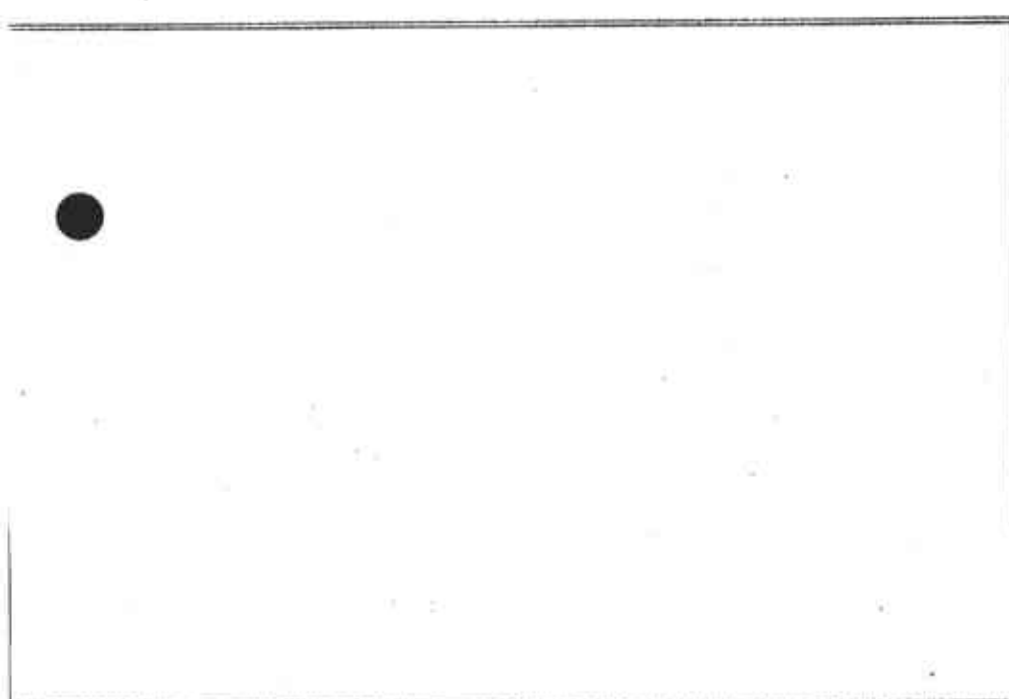
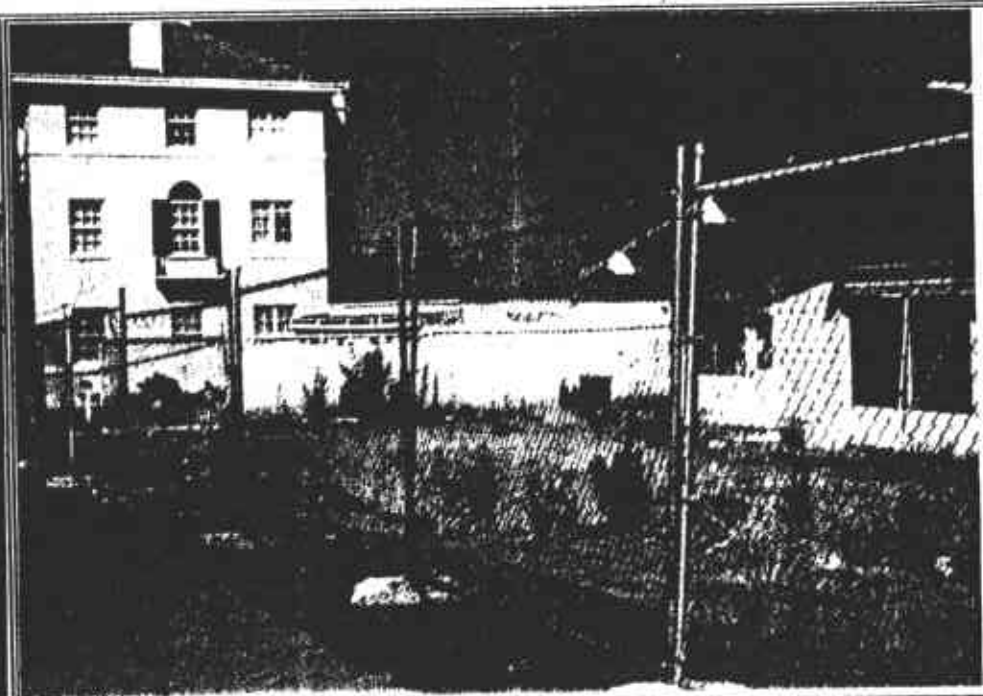
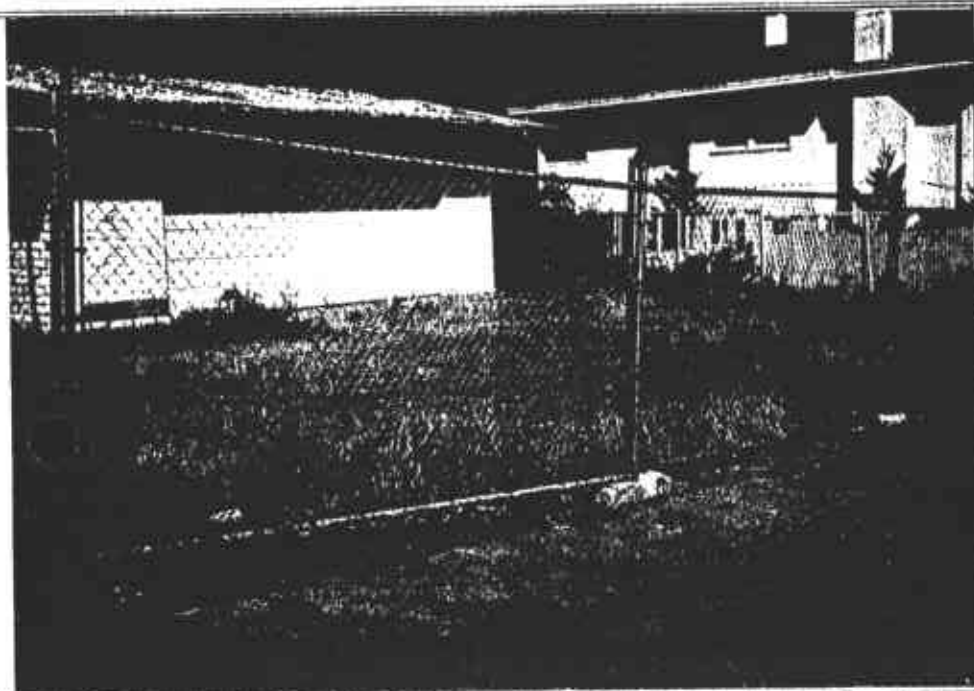
Date

6-26-97

Before



After



Address

11022 11th

PHOTOGRAPHS

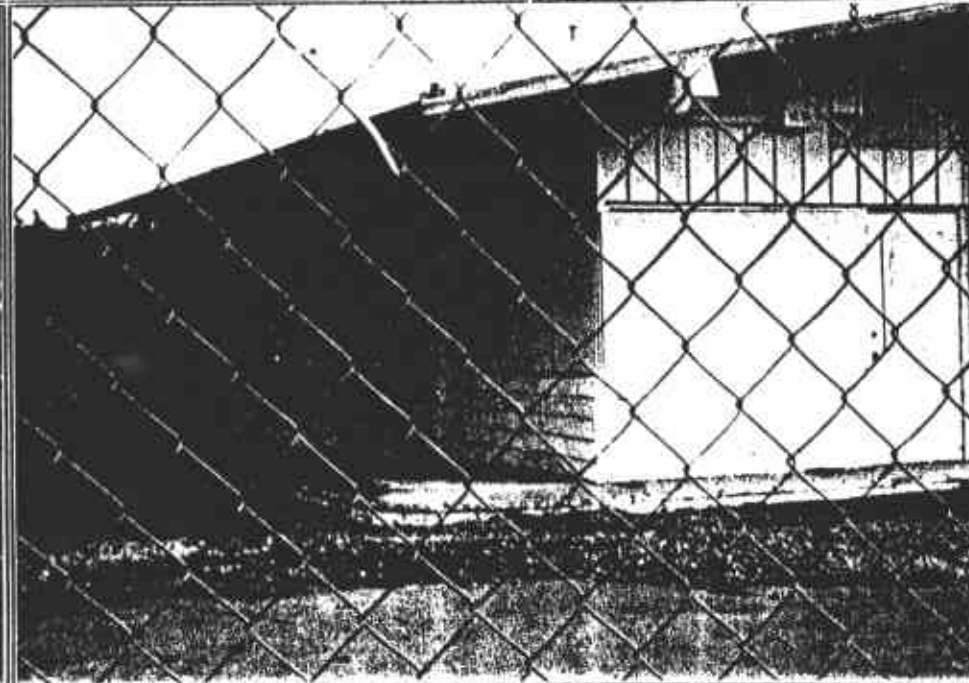
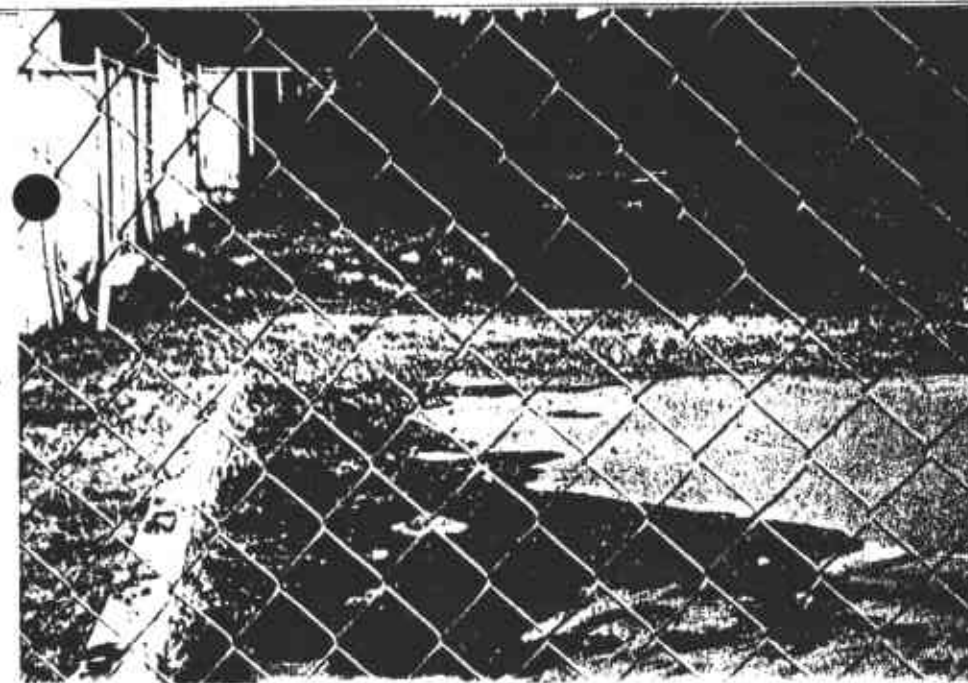
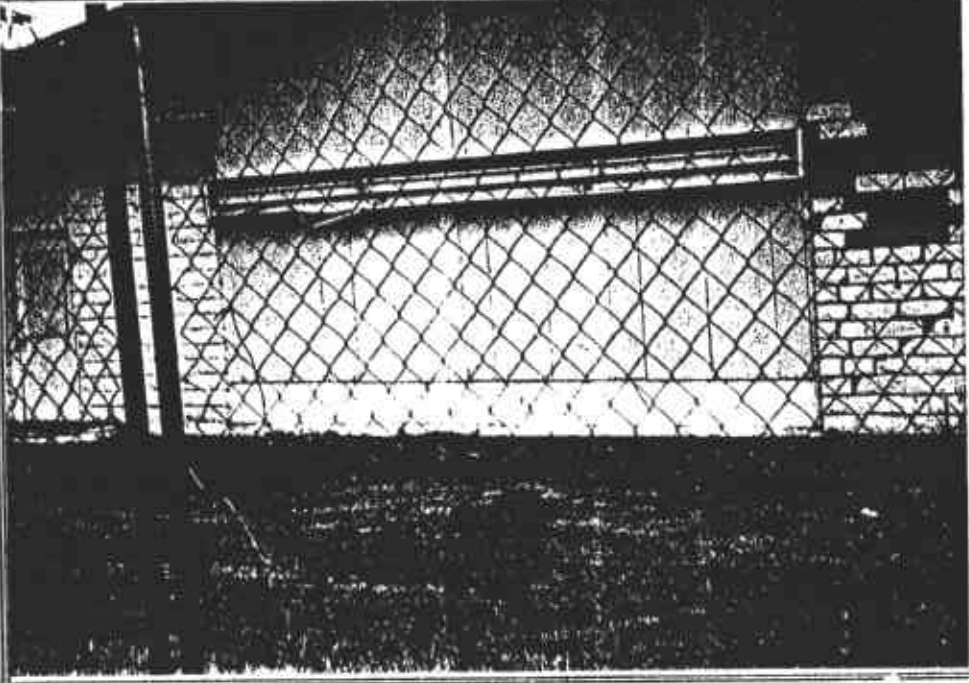
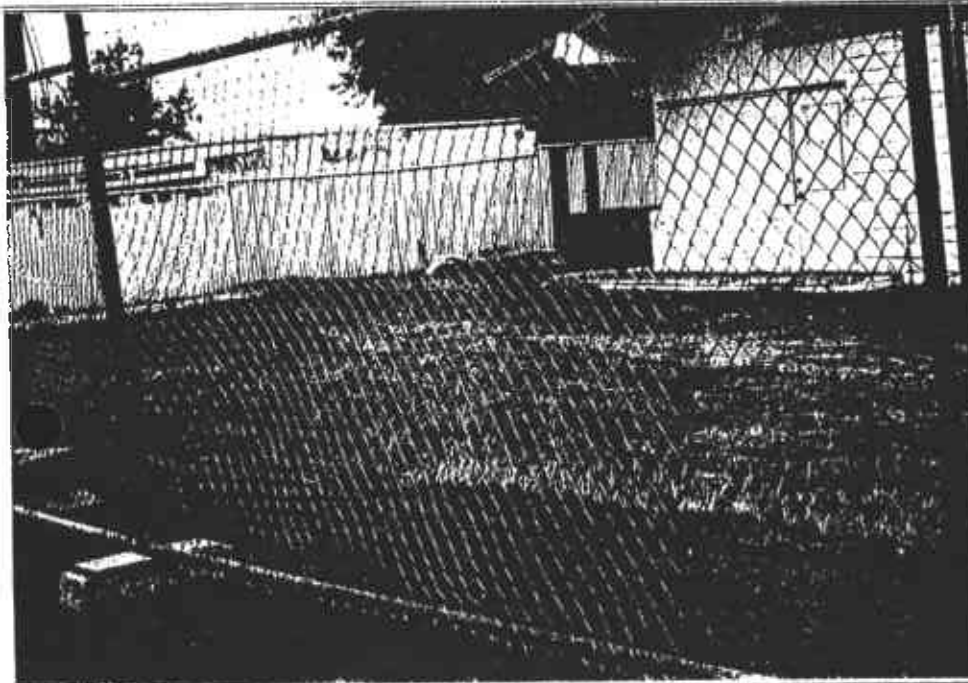
Date

6-30-97

Before



After



Address 752

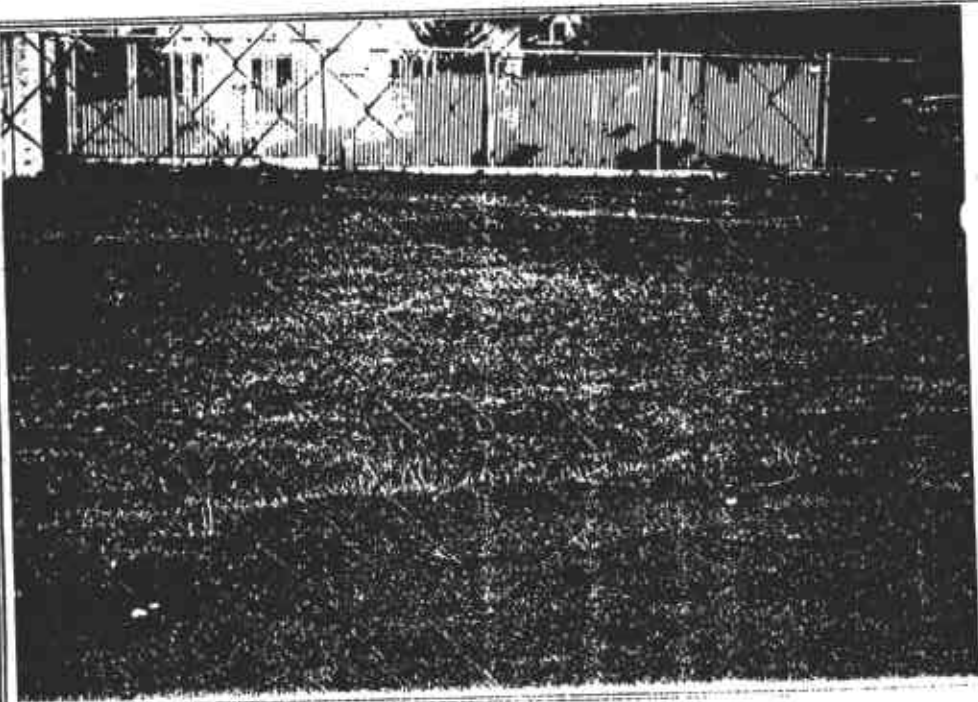
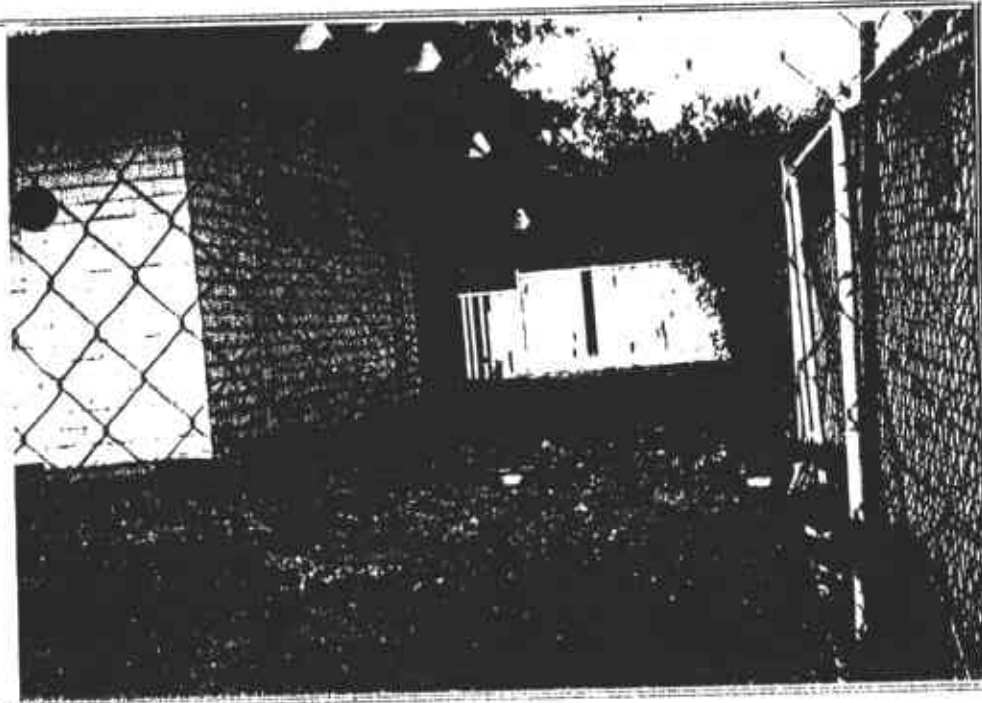
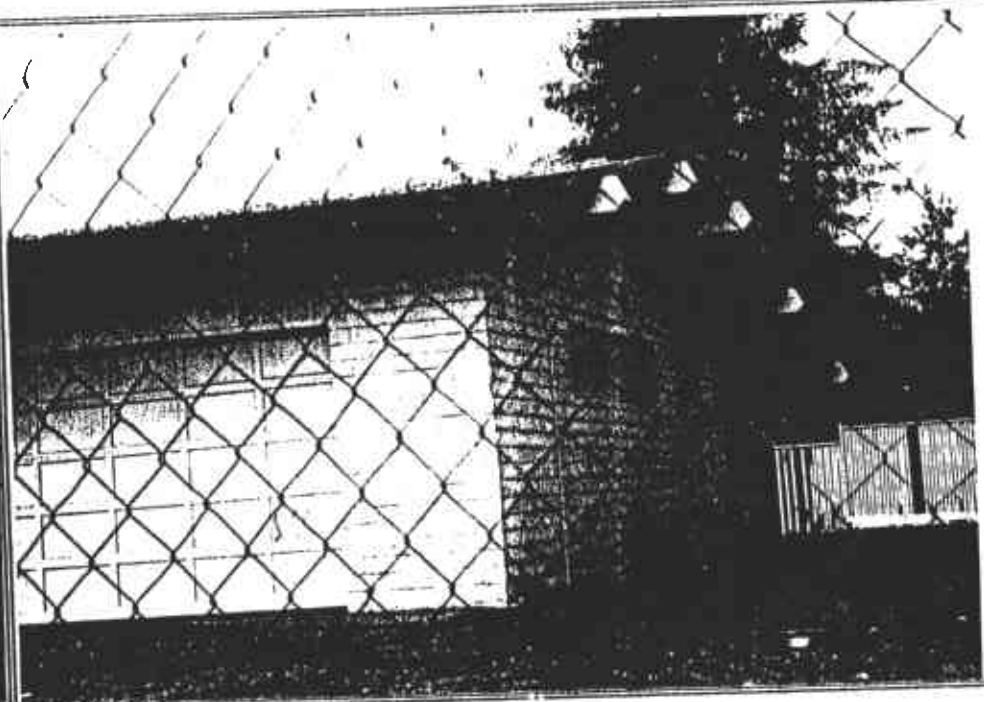
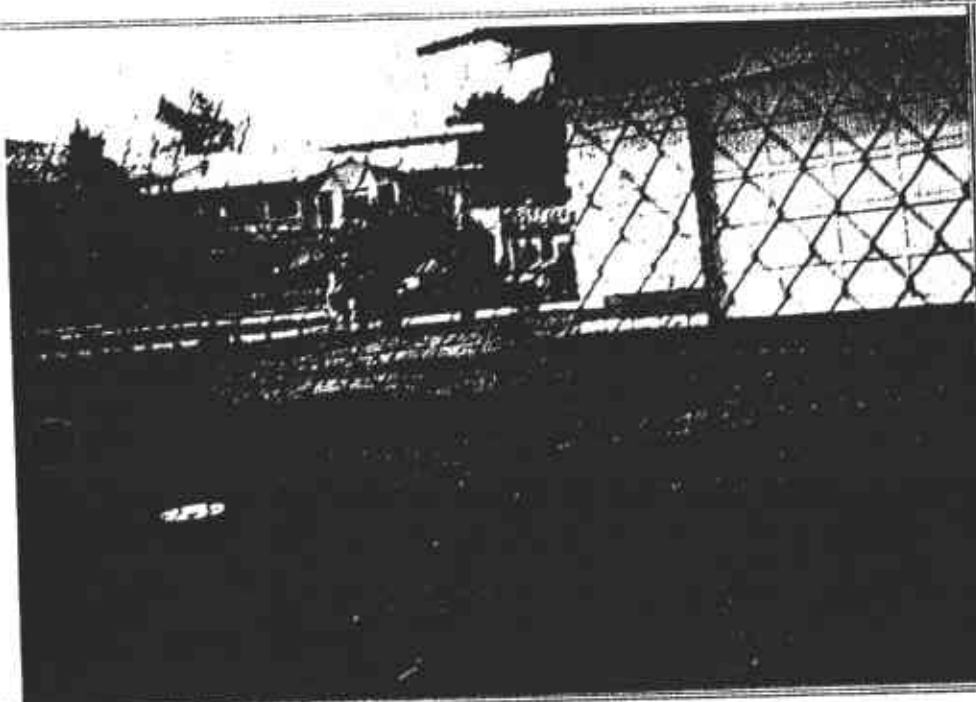
PHOTOGRAPHS

Date

6-30-97

Before

After



Complaint#: 9801989

Filed: 04/03/98 Rcvd by: SIN Station* CD-INSP Source* N NEIGHBOR
Address: 4035 PARK BL Suite: Parcel: 024 -0533-007-00
Responsible Station* CD-INSP Dist: 04 Primary Inspector WS Alternate
Existing Use* 13 GAS SERVICE STATION Parcel Condition: X
Descr: VACANT GAS STATION HAS HIGH WEEDS, TRASH AND DEBRIS AND FENCE IS NOT
PROPERLY SECURED.

Notice:

Owner: TONYS SERVICE STATION

Tel:

Address: 23C CIRCLE DR

TIBURON CA

Zip: 94920

Agent:

Complainant:

Tel:

Complainant Response Requested? (Y/N): N Response:

Ltr/Tel/Oth:

* Violation Types*	Current Station*	Dist	Last Action	Date	By	Disposition
_ OMC 20	CD-INSP	04				AB 04/24/98

Bottom

F2=Bookmark F3=Ext F24=Com

ENTER=Next Selection

CITY OF OAKLAND

Code Compliance Division

1330 BROADWAY, 6TH FLOOR

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

OAKLAND, CALIFORNIA 94612

(510) 238-3381

FAX (510) 238-7287

TDD: (510) 238-6332

**CODE COMPLIANCE SECTION (510) 238-3381
OFFICIAL NOTICE TO ABATE A BLIGHT**

To: TONYS SERVICE STATION
230 CIRCLE DRIVE
TIBURON, CA 94920-2131

Date: 4/3/98
Affected Address: 4035 PARK BLVD
Assessor's Parcel Number: 024 0523 007 00
Case No.: 9801989
Code Enforcement Inspector: William Singman

VIOLATIONS: The property located at 4035 PARK BLVD
Oakland, California, was observed by a Housing Inspector, on or about
4/1/98, to contain one or more of the following conditions:

The structure(s) was/were:

- 1. X Vacant and unsecured, permitting entry to unauthorized persons;
- 2. X The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts and/or the structure was not properly secured;
- 3. _____ The dwelling, or other structure, was deteriorated, abandoned, hazardous, illegally constructed or was not being put to its permitted use.
- 4. _____ **SEE THE ATTACHED NOTICE TO ABATE (REQUIREMENTS).**

This is in violation of Chapter 15 of the Oakland Municipal Code (OMC) (the Blight Ordinance) or the Oakland Housing Code (OHC). This letter constitutes your official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations, within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean the premises, remove any junk, trash, debris, graffiti and secure openings: To be determined by bid.



4035 PARK BLVD
4/23/98



4035 PARK BLVD
4/23/98



4035 PARK BLVD
4/23/98

AFTER

BEFORE

* P H O T O G R A P H S * DATE

ADDRESS



4035 PARK BLVD
4/29/98



4035 PARK BLVD
4/29/98

DISCRIPTION:



4035 PARK BLVD
4/29/98

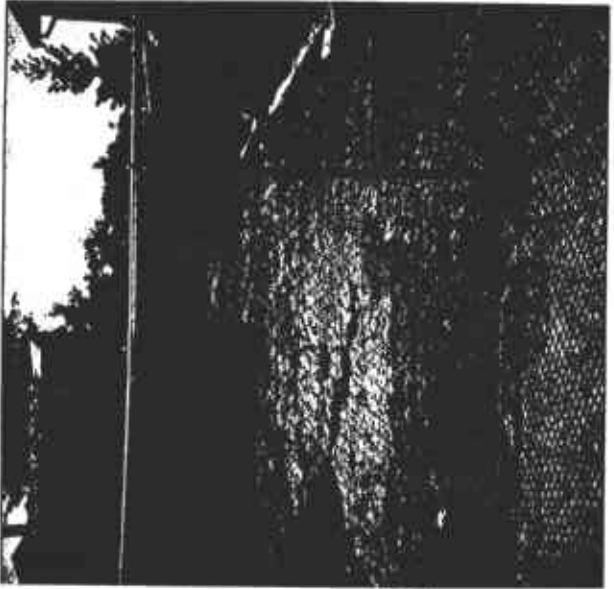


4035 PARK BLVD
4/29/98

DISCRIPTION:



DISCRPTION:



403T PARK BLVD
4/29/98



AFTER BEFORE

P H S * DATE

Complaint#: 9805332

Filed: 07/08/98 Rcvd by: HOL Station*, CB-INSP Source*, 2 TELEPHONE CALL
 Address: 4035 PARK BL Suite: Parcel: 024 -0533-007-00
 Responsible Station*, CB-INSP Dist: 04 Primary Inspector, KG Alternate
 Existing Use* Parcel Condition: X
 Descr: CONTINUE TO REMOVE CODE VIOLATIONS REGARDING BLIGHTED PROPERTY AND
 BOARDED BUILDING

Notice:

Owner: TONY'S SERVICE STATION

Tel:

Address: 23C CIRCLE DR

TIBURON CA

Zip: 94920

Agent:

Complainant: JONANTHAN BREAU

Tel:

Complainant Response Requested? (Y/N): Y Response:

Ltr/Tel/Oth:

* Violation Types*	Station*	Dist	Last Action	Date	By	Disposition
OMC 20	CD-INSP	03	Ntc of Viol - No F	09/06/99	KG	V 06/14/99

Bottom

F2=Bookmark F3=Ext F24=Com

ENTER=Next Selection

appropriate spaces on the front of this
cable blocks in item 1 of Form 3811.
102595 98-B-P0005
only.

1 postage, certified mail fee, and
2 the right of the return
the article at a post office service
the garment stub to the right of the
to receipt, and mail the article.
number and your name and address
at front of the article by means of the
back of article. Endorse front of article
number.
3, or to an authorized agent of the
front of the article

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY
DWAY, 6TH FLOOR OAKLAND, CALIFORNIA 94612
(510) 238-3381
FAX (510) 238-7287
TDD: (510) 238-6332

CODE COMPLIANCE SECTION (510) 238-3381
OFFICIAL NOTICE TO ABATE A BLIGHT

To: TONY'S SERVICE STATION
23 Circle Dr.
Tiburon, CA 94920-2131

Date: July 8, 1998

Affected Address:
4035 Park Bl.

Assessor's Parcel Number:
024-0533-007-00

Case No.: 9805332

Code Enforcement Inspector:
Antoinette Holloway

VIOLATIONS: The property(ies) located at 4035 Park Bl.

Oakland, California, was(were) observed by a Code Enforcement Inspector, on or about
June 6, 1998, to contain one or more of the following conditions:

The structure(s), premises, or vacant lot(s) was/were:

- 1. Vacant and unsecured, permitting entry to unauthorized persons;
- 2. X The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts, and/or the structure was not properly secured;
- 3. The dwelling, or other structure, was deteriorated, abandoned, hazardous, illegally constructed or was not being put to its permitted use.
- 4. **SEE THE ATTACHED NOTICE TO ABATE (REQUIREMENTS).**

This is in violation of Chapter 8.24 of the Oakland Municipal Code (OMC), the Blight Ordinance, or the Oakland Housing Code (OHC). This letter constitutes your official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building(s) and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations, within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, installing galvanized chain link fencing, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean, secure premises, remove any junk, trash, debris, graffiti and secure openings: To be determined by bid.

ADDRESS 4035 Park Blvd

* P H O T O G R A P H S *

DATE 7/23/98

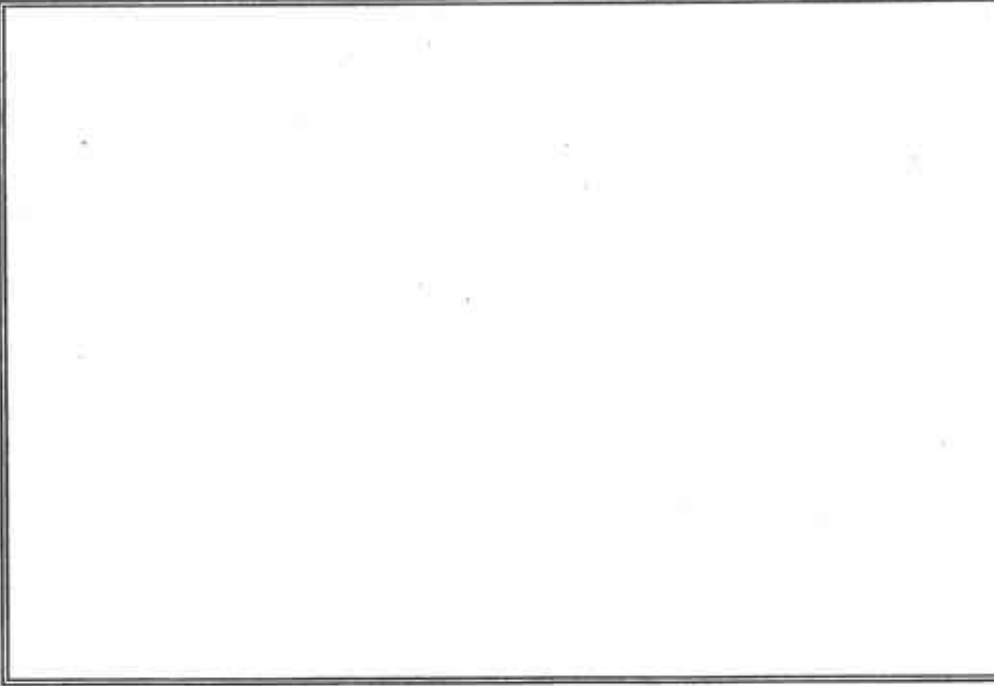
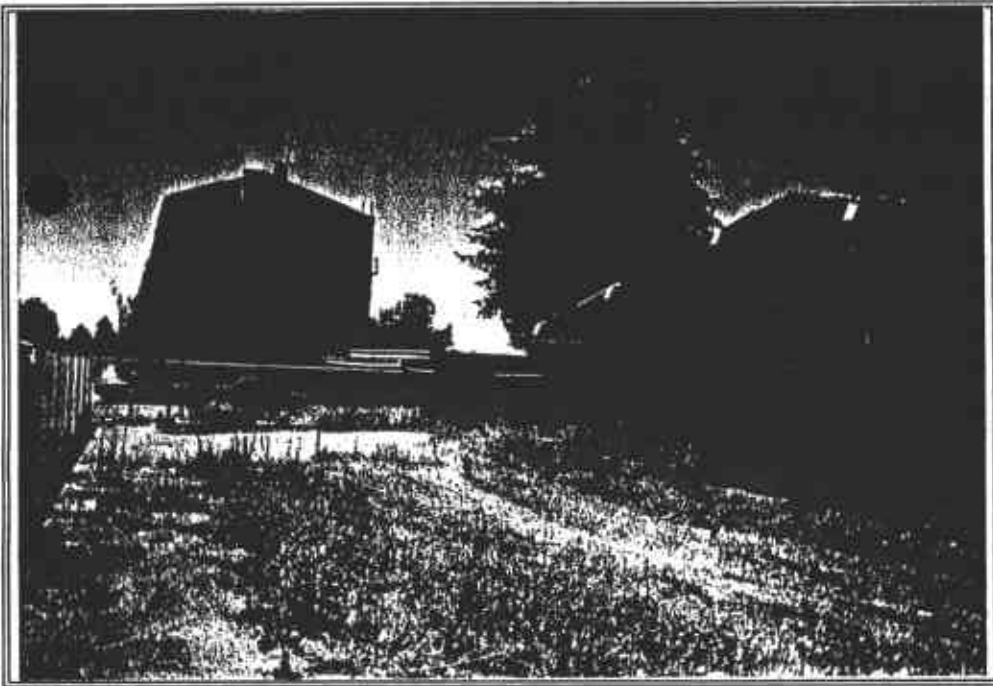
BEFORE

AFTER



DISCRIPTION:

DISCRIPTION:



ADDRESS

4035 Pine Blvd

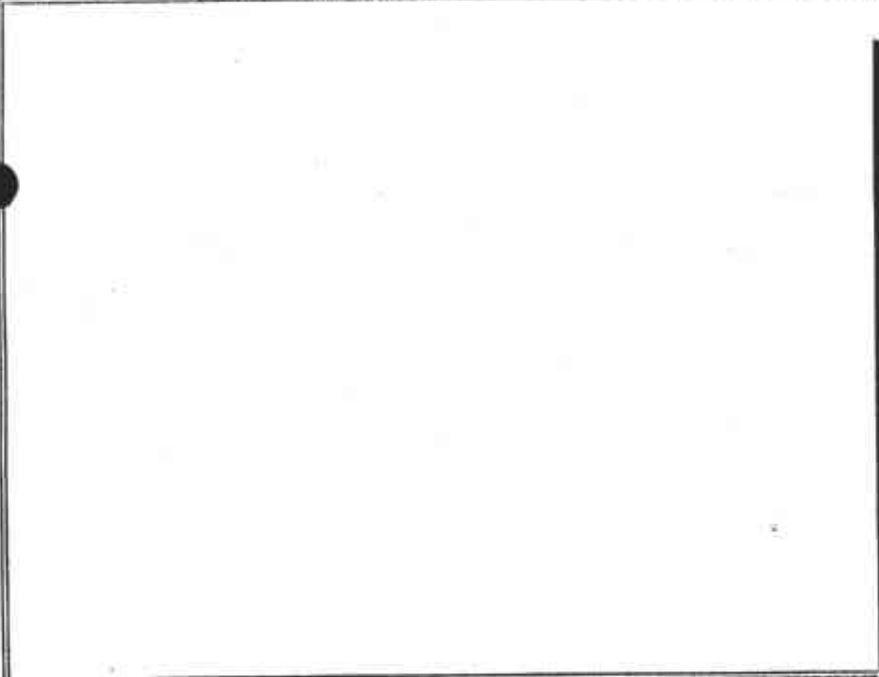
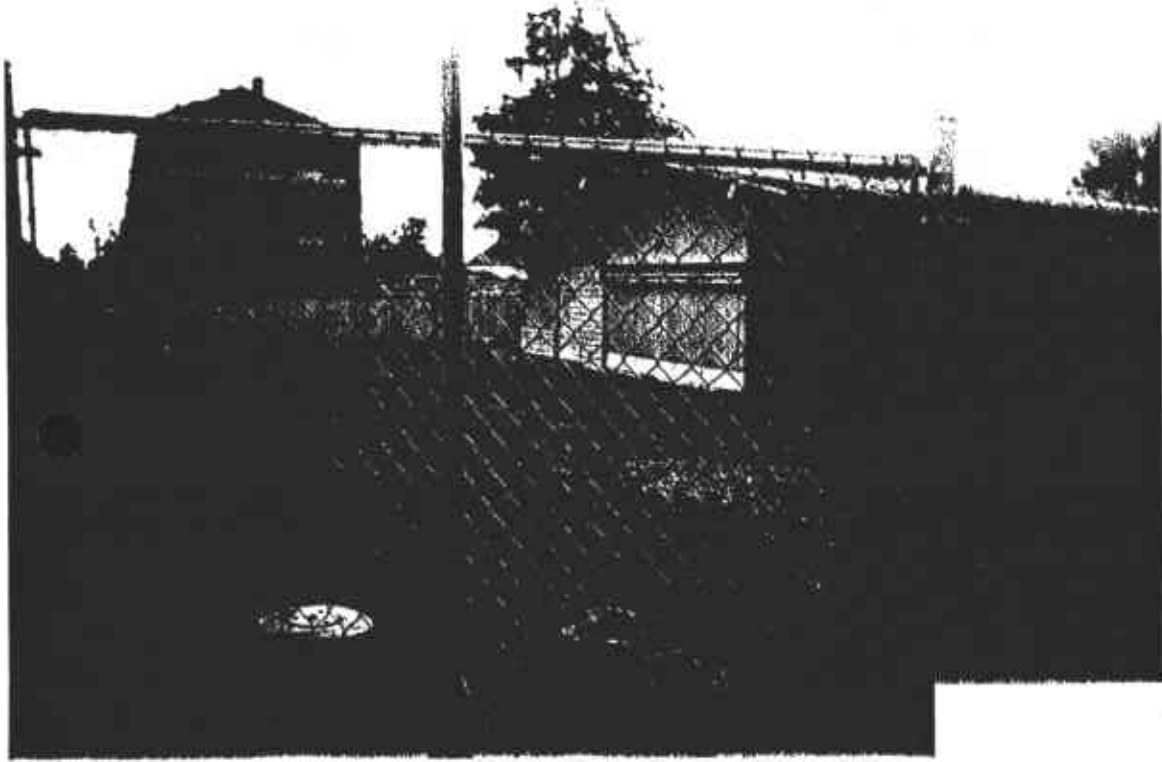
* PHOTOGRAPHS *

DATE

7/24/96

BEFORE

AFTER

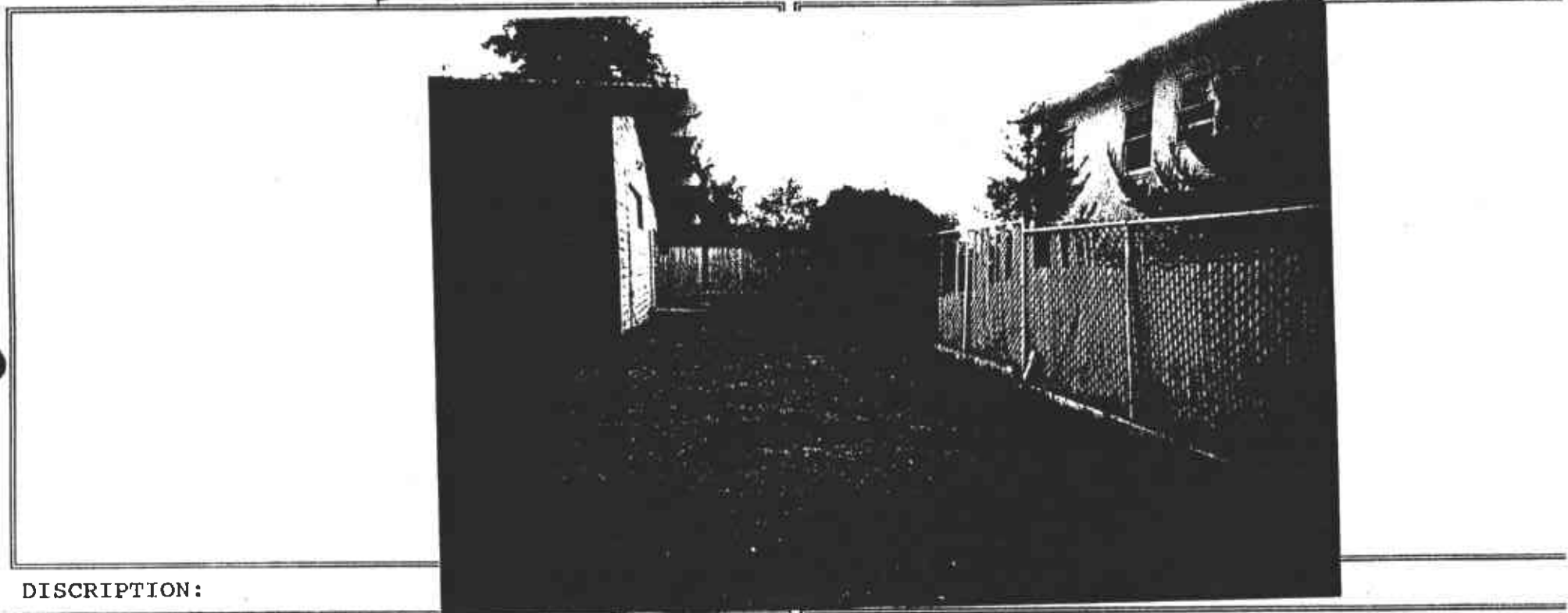


ADDRESS 4035 Park Blvd

* P H O T O G R A P H S * DATE 7/24/98

BEFORE

AFTER



DISCRIPTION:

Complaint#: 9807248

Filed: 09/10/98 Rcvd by: JDC Station* CLERICAL Source* 2 TELEPHONE CALL
Address: 4035 PARK BL Suite: Parcel: 024 -0533-007-00
Responsible Station* CD-INSP Dist: 03 Primary Inspector Alternate
Existing Use* Parcel Condition: X
Descr: OVERGROWN/TRASH & DEBRIS

Notice:

Owner: TONY'S SERVICE STATION

Tel:

Address: 23C CIRCLE DR

TIBURON CA

Zip: 94920

Agent:

Complainant: JONATHAN BREAU

Tel: (510)531-0567

Complainant Response Requested? (Y/N): Y Response:

Ltr/Tel/Oth:

Current

<u>* Violation Types*</u>	<u>Station*</u>	<u>Dist</u>	<u>Last Action</u>	<u>Date</u>	<u>By</u>	<u>Disposition</u>
OMC 20	CB-INSP	03	CLOSED CASE-ACTION	10/07/98	HOL AB	10/07/98

Bottom

F2=Bookmark F3=Ext F24=Com

ENTER=Next Selection

CODE COMPLIANCE SECTION (510) 238-3381
OFFICIAL NOTICE TO ABATE A BLIGHT

To: Tonys Service Station
23 Circle Dr. Apt. C
Tiburon, CA 94920

Date: 9/18/98

Affected Address:

4035 Park Bl.

Assessor's Parcel Number:

024-0533-007-00

Case No.: 0807248

Code Enforcement Inspector:

Antoinette Holloway

VIOLATIONS: The property(ies) located at 4035 Park Bl.

Oakland, California, was(were) observed by a Code Enforcement Inspector, on or about 9/16/98, to contain one or more of the following conditions:

The structure(s), premises, or vacant lot(s) was/were:

- 1. Vacant and unsecured, permitting entry to unauthorized persons;
- 2. X The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts, and/or the structure was not properly secured;
- 3. The dwelling, or other structure, was deteriorated, abandoned, hazardous, illegally constructed or was not being put to its permitted use.
- 4. SEE THE ATTACHED NOTICE TO ABATE (REQUIREMENTS).

This is in violation of Chapter 8.24 of the Oakland Municipal Code (OMC), the Blight Ordinance, or the Oakland Housing Code (OHC). This letter constitutes your official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building(s) and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations, within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, installing galvanized chain link fencing, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean, secure premises, remove any junk, trash, debris, graffiti and secure openings: To be determined by bid.

ANT Young

ADDRESS

4035 Park Blvd

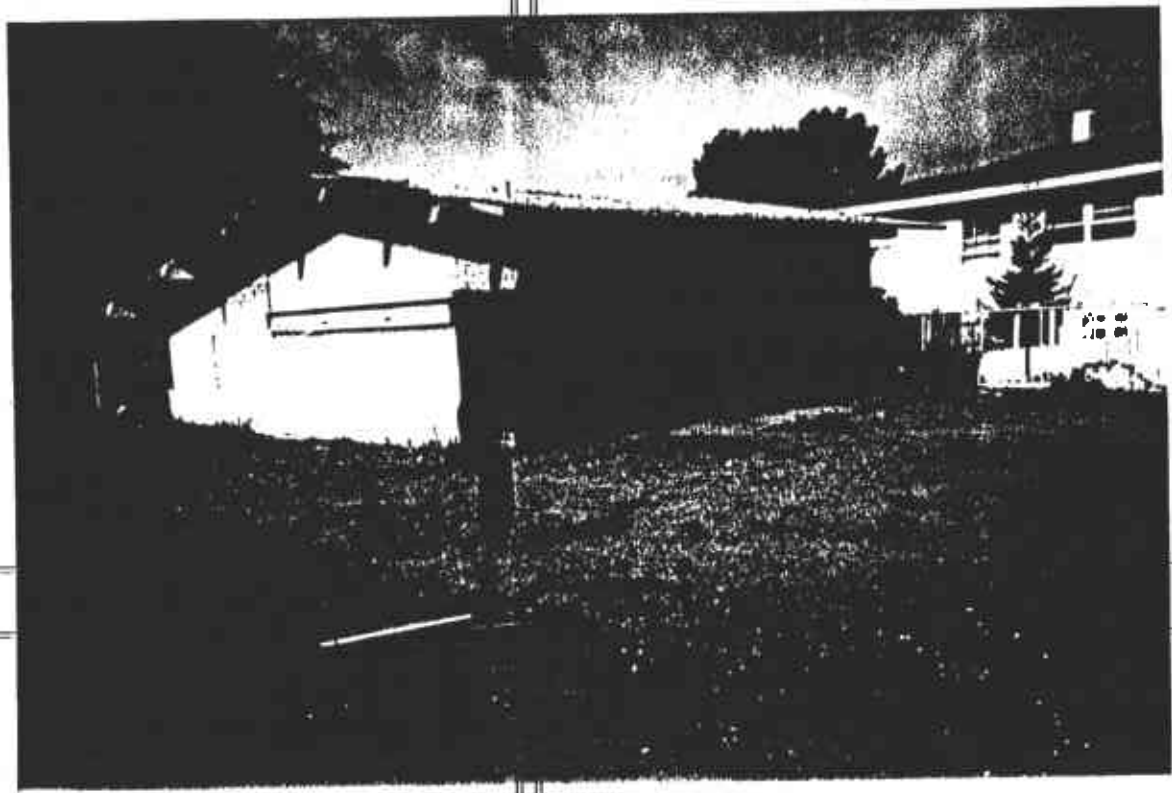
* PHOTOGRAPHS *

DATE

Sept 18/78

BEFORE

AFTER



DISCRIPTION:

ADDRESS

4035 Park Blvd

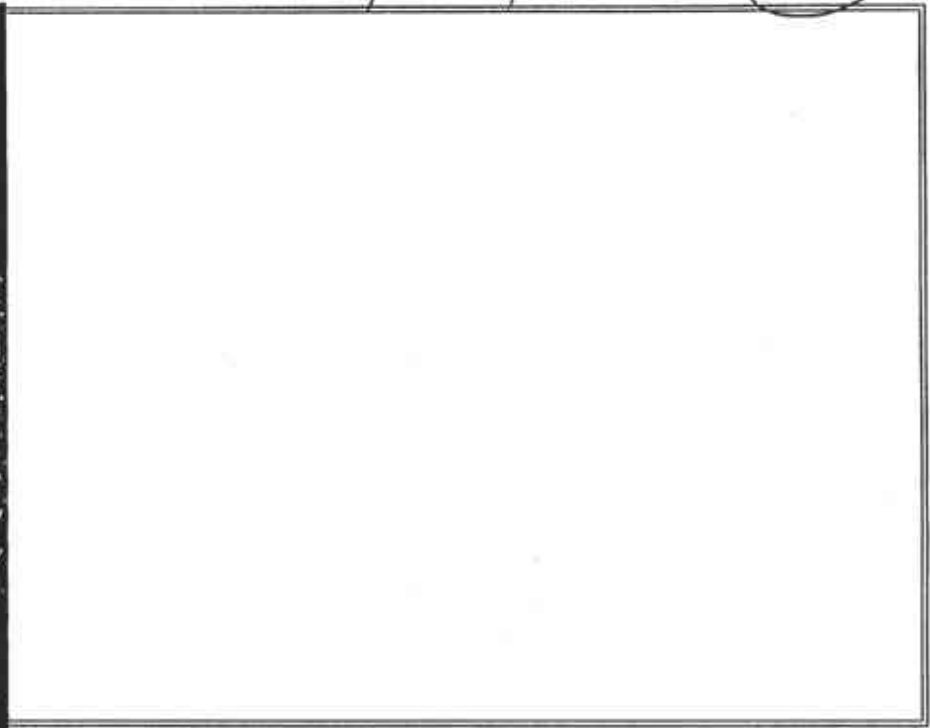
* P H O T O G R A P H S *

DATE

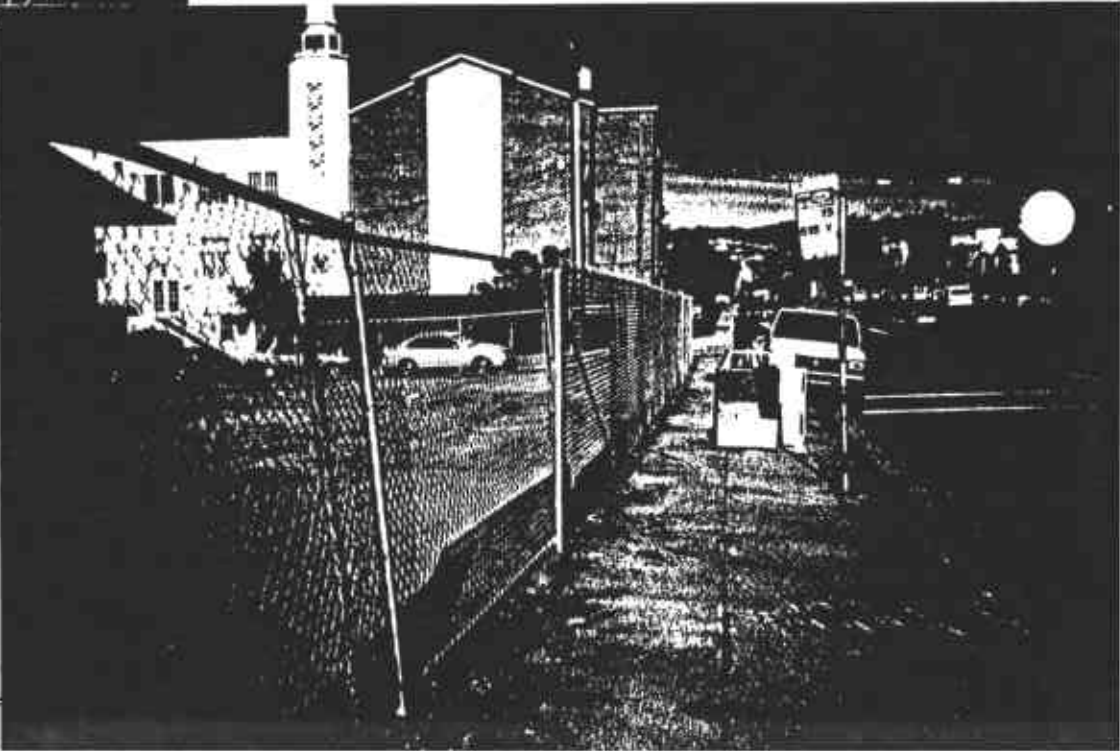
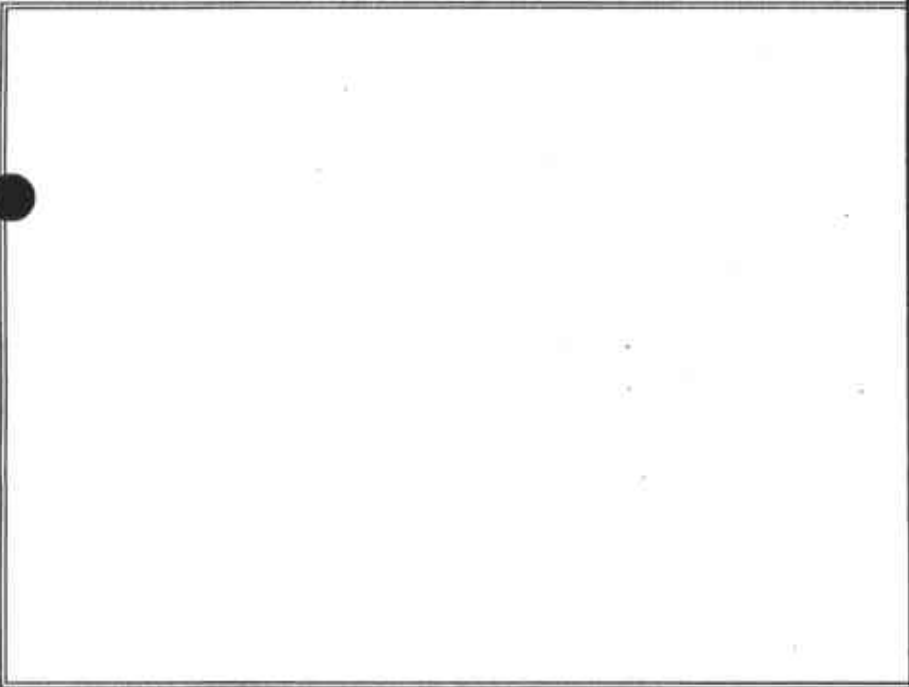
October 7/98

BEFORE

AFTER



DESCRIPTION:



ADDRESS

4035 Park Blvd

* PHOTOGRAPHS *

DATE

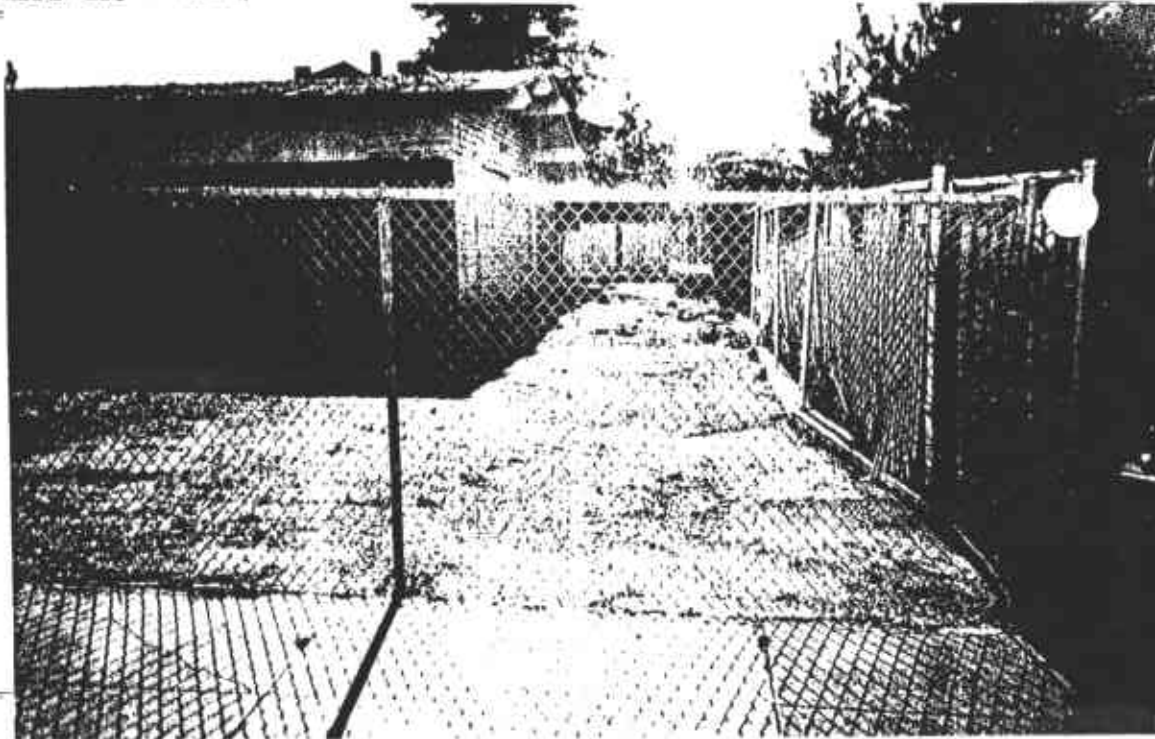
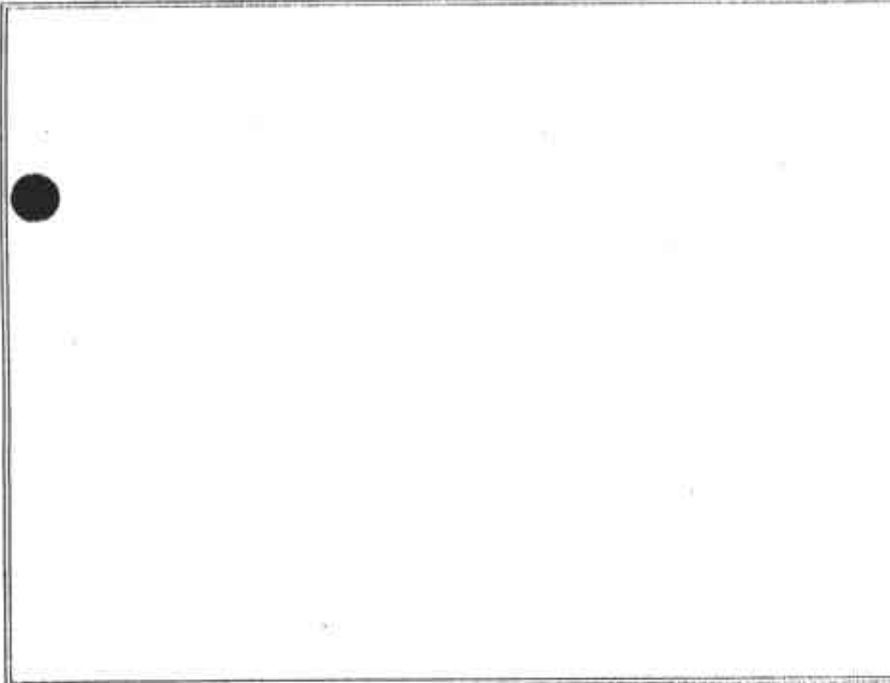
October 7/98

BEFORE

AFTER



SECTION:





CITY OF OAKLAND

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

Code Compliance Division 250 Frank H. Ogawa Plaza, Suite 2340 OAKLAND, CALIFORNIA 94612
(510) 238-3381
FAX (510) 238-2959
TDD: (510) 238-6312

CODE COMPLIANCE SECTION (510) 238-3381 OFFICIAL NOTICE TO ABATE A BLIGHT

TO:

*Terry's Service Station
23C Circle Drive
Tiburon, CA 94920*

Date: May 3, 1999

Affected Address: 4035 Frank Blvd
Oakland, CA

Assessor's Parcel No.:
024-0533-007-00

PTS Case No.: 9805332

Combination/Specialty Inspector:

VIOLATIONS: The property(ies) located at 4035 Frank Blvd, Oakland, California, was(were) observed by a Combination/Specialty Inspector/Code Enforcement, on or about April 12, 1999, to contain one or more of the following conditions:

The structure(s), premises, or vacant lot(s) was/were:

1. Vacant and unsecured, permitting entry to unauthorized persons;
2. X The premises contained trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts, and/or the structure was not properly secured;
3. The dwelling or other structure was deteriorated, abandoned, hazardous, illegally constructed, or was not being put to its permitted use.
4. **SEE THE ATTACHED NOTICE TO ABATE (REQUIREMENTS).**

This is in violation of Chapter 8.24 of the Oakland Municipal Code (OMC), the Blight Ordinance, or the Oakland Housing Code (OHC). This letter constitutes your Official Notice to Abate the violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building(s) and/or remove all trash, debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining items on the List of Violations within ten (10) days of the date of this Notice, shall result in the City cleaning, removing the graffiti, installing galvanized chain link fencing, and/or securing the premises as necessary. The owner of record will be billed for all incurred charges. Estimated charges to clean, secure premises, remove any junk, trash, debris, graffiti and secure openings: To be determined by bid.

Class postage, certified mail fee
guaranteed stub to the right of the
sent the article at a post office
hazard)
stick, the guaranteed stub to the right
within the receipt, and mail the article
d mail number and your name and a
it to the front of the article by means
x to back of article. Enclose front of
the number.
dressed, or to an authorized agent
on the front of the article.
the appropriate spaces on the front
the applicable blocks in Item 1 of Form.
an inquiry.
102595-914

CODE COMPLIANCE SECTION (510) 238-3381 OFFICIAL NOTICE TO ABATE A BLIGHT

TO:
Ali Shirazian
209 Picadilly Pl #6
San Bruno, CA 94606

Date: *June 2, 1999*
Affected Address: *4035 Park Blvd*
Oakland, CA
Assessor's Parcel No.:
024-0533-007-00
PTS Case No.: *9805332*
Combination/Specialty Inspector:
Supervisor A. Holloway

VIOLATIONS: The property(ies) located at *4035 Park Blvd*,
Oakland, California, was(were) observed by a Combination/Specialty Inspector/Code
Enforcement, on or about *June 1, 1999*, to contain one or
more of the following conditions:

The structure(s), premises, or vacant lot(s) was/were:

1. Vacant and unsecured, permitting entry to unauthorized persons;
2. The premises contained trash, debris, overgrowth, recyclables, graffiti,
and/or disabled vehicles or vehicle parts, and/or the structure was not
properly secured;
3. The dwelling or other structure was deteriorated, abandoned, hazardous,
illegally constructed, or was not being put to its permitted use.
4. SEE THE ATTACHED NOTICE TO ABATE (REQUIREMENTS).

This is in violation of Chapter 8.24 of the Oakland Municipal Code (OMC), the Blight Ordinance,
or the Oakland Housing Code (OHC). This letter constitutes your Official Notice to Abate the
violation(s) listed above.

DUE DATE, FEES AND CHARGES: Failure to secure the building(s) and/or remove all trash,
debris, overgrowth, and/or graffiti and to commence reasonable action to abate the remaining
items on the List of Violations within ten (10) days of the date of this Notice, shall result in the
City cleaning, removing the graffiti, installing galvanized chain link fencing, and/or securing the
premises as necessary. The owner of record will be billed for all incurred charges. Estimated
charges to clean, secure premises, remove any junk, trash, debris, graffiti and secure openings:
To be determined by bid.

Ali You...



CITY OF OAKLAND

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

Code Compliance Division

250 Frank H. Ogawa Plaza, Suite 2340

OAKLAND, CALIFORNIA 94612

(510) 238-3381

FAX (510) 238-2959

TDD: 238-6312

NOTICE TO ABATE

TO: Ali Shirazian
209 Piedmont St. #6
San Bruno, CA
94606

Date: 7/27/99
R/S No.: 9805332
Address: 4035 Park Blvd.
AP No.: 24-0533-007-00

An inspection of your property was made on 7/16/99. Attached is a List of Violations which must be corrected within the required time frame and in accordance with the codes and regulations of the City of Oakland. **Your failure to comply with this order by the compliance due date(s) for noted hazards(*), Non Hazards, may result in reinspection fee charges, all required enforcement costs, permits and related fees.** Substandard action may also be taken to vacate the premises should conditions warrant.

NOTE: You or your agent are required to be present at scheduled reinspections. Should you or your agent not keep the appointment or the work not be performed and accessible for inspection, you will be billed and notified of the next Fee-charged Reinspection date. Should the bill not be paid within the prescribed time, a lien shall be recorded against the property for the amount of the bill plus a lien fee of \$125.00. **The fee for releasing a lien is an additional \$125.00.**

The first Fee Charged Reinspection is scheduled below. Morning appointments are from 9:00 a.m. to 12:00 p.m. Afternoon appointments are from 12:00 p.m. to 3:00 p.m. Reinspections made after the compliance due date are fee-charged at \$220.00 per reinspection until compliance is achieved.

First Fee Charged Reinspection Date: 8/11/99
Morning _____ Afternoon

By: [Signature]
Specialty/Combination Inspector/
Code Compliance/Building Services
Phone No.: (510) 238-6211
Office Hrs: 8-9 a.m. or 3:30-4:00 p.m.

Compliance Due Date: 8-10-99
Second Fee Charged Reinspection: 8-18-99
Morning _____ Afternoon



CITY OF OAKLAND

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

Code Compliance Division

250 Frank H. Ogawa Plaza, Ste. 2340

OAKLAND, CALIFORNIA 94612

(510) 238-3381

FAX (510) 238-2959

TDD: 238-6312

(Revised)

NOTICE TO ABATE

TO: ALI Shirazian
c/o Tony's Service Station
23C Circle Dr.
Tiburon, CA. 94920

Date: 8/11/99
R/S No.: 9805332
Address: 485 Park Blvd
AP No.: 24-0533-007-00

An inspection of your property was made on 7/16/99. Attached is a List of Violations which must be corrected within the required time frame and in accordance with the codes and regulations of the City of Oakland. **Your failure to comply with this order by the compliance due date(s) for noted hazards(*), Non Hazards, may result in reinspection fee charges, all required enforcement costs, permit and related fees.** Substandard action may also be taken to vacate the premises should conditions warrant.

NOTE: You or your agent are required to be present at scheduled reinspections. Should you or your agent not keep the appointment or the work not be performed and accessible for inspection, you will be billed and notified of the next Fee-charged Reinspection date. Should the bill not be paid within the prescribed time, a lien shall be recorded against the property for the amount of the bill plus a lien fee of \$125.00. The fee for releasing a lien is an additional \$125.00.

The first Fee Charged Reinspection is scheduled below. Morning appointments are from 9:00 a.m. to 12:00 p.m. Afternoon appointments are from 12:00 p.m. to 3:00 p.m. Reinspections made after the compliance due date are fee-charged at \$220.00 per reinspection until compliance is achieved.

First Fee Charged Reinspection Date: 8/27/99
Morning Afternoon

By: Charles Kennedy
Specialty/Combination Inspector
Code Compliance/Building Services
Phone No.: (510) 238-6216
Office Hrs: 8-9 a.m. or 3:30-4:30 p.m.

Compliance Due Date: 8/26/99
Second Fee Charged Reinspection: 9/3/99
Morning Afternoon

NOTICE TO ABATE (continuation)

Address: 4039 Park Blvd.

Case No. 9805332

Date: 7/27/09

ITEM NO.	** *	Life-threatening conditions requiring immediate correction Hazardous conditions seriously affecting habitability
		<p>Your property captured above is in violation of the Blight Ordinance (OMC Chapter 8.24.010, 020, 050, 060, 070 and 8.24.080). Violations include:</p> <ol style="list-style-type: none">1. Weeds and overgrowth.2. Deteriorated paint, missing and/or broken windows, broken and uneven pavement and grading.3. Deteriorated fencing.4. Storage of potentially hazardous waste in large metal barrels. <p>Moreover, the structure is not being used for what it was designed and constructed, and may be obsolete due to zoning and/or use changes.</p> <p>Adapt this structure for useful purposes or remove it, fence the lot to prevent illegal entry & dumping and maintain it in such a way that it does not create a blighting condition.</p>

COMPLAINT#: _____

OR STREET: _____ SFX: ___ NO.: _____

OR PARCEL#: 024 -0533-007-00

I

<u>L</u>	<u>INVOICE#</u>	<u>DUE DATE</u>	<u>CMPLNT#</u>	<u>AMOUNT DUE</u>	<u>PAID</u>	<u>VOIDED</u>	<u>LIEN#</u>	<u>TRANSFER</u>
-	I0004626	08/03/97	9702293	910.00		07/25/97		
-	I0004663	08/04/97	9702293	2,220.00			L003355	08/07/98
-	I0004893	08/22/97	9702293	450.00			L003355	08/07/98
-	I0007812	05/14/98	9801989	5,437.50			L004765	08/09/99
-	I0007997	05/28/98	9801989	250.00			L004765	08/09/99
-	I0008706	08/17/98	9805332	680.00			L005145	08/09/99
-	I0008806	08/31/98	9805332	250.00			L005145	08/09/99
-	I0009860	11/26/98	9807248	630.00			L005671	08/09/99
-	I0010007	12/11/98	9807248	250.00			L005671	08/09/99
-	I0013137	07/10/99	9805332	727.00	07/21/99			
-	I0013629	08/07/99	9805332	727.00			L007422	
-	I0014002	09/13/99	9805332	250.00			L007422	

I=View Invoice, L=View Lien
 F1=Hlp F3=Ext F4=Lien Data F12=Prv

- UNDERGROUND UTILITIES**
- G NATURAL GAS UTILITY
 - W WATER UTILITY
 - SW SEWER UTILITY
 - ST STORMWATER UTILITY

-  PROPOSED GROUNDWATER/REMEDIAL ACTION MONITOR WELLS
-  RECOVERY TRENCHES WITH PROJECTED FLOW DIRECTION

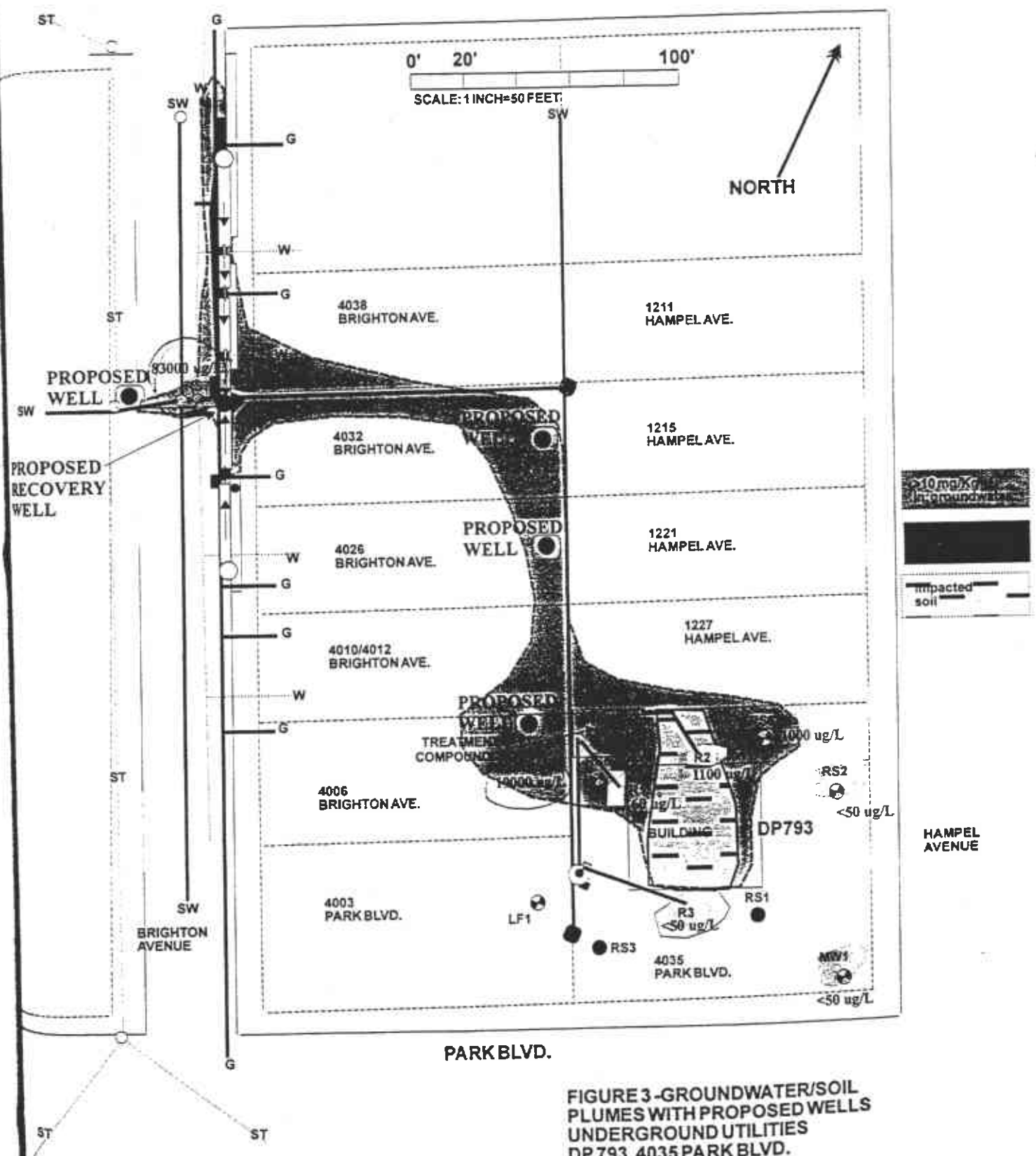


FIGURE 3-GROUNDWATER/SOIL PLUMES WITH PROPOSED WELLS UNDERGROUND UTILITIES DP 793, 4035 PARK BLVD. OAKLAND, CALIFORNIA

FEBRUARY 23, 1999



**WESTERN
GEO-ENGINEERS**
CALIF. CONTRACTOR #513857
REGISTERED GEOLOGISTS

1386 EAST BEAMER STREET
WOODLAND CA 95776-6003
(530) 668-5300,
FAX (530) 662-0273
wege@mother.com

July 15, 1999

Mr. Tom Peacock
Alameda County
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6782

99 JUL 19 PM 3:29
ENVIRONMENTAL
PROTECTION

Dear Mr. Peacock:

The following workplan discusses the need and procedures for injection of treated groundwater recovered from the soon to be installed receptor trench along Brighton Avenue into recovery wells (R-1, R-2 and R-3) associated with former Desert Petroleum Station #793.

1.0 SITE LOCATION AND DESCRIPTION

Former Desert Petroleum #793 is a non-active service station, located on the northwest corner of the intersection of Park Boulevard and Hampel Street at 4035 Park Blvd., Oakland, California (Figure 1), parcel # 024-0533-007. The site is located in projected section 32; T1S; R3W; MDB&M at an approximate elevation of 210 feet above mean sea level (Figure 2).

2.0 LOCAL GEOLOGY

2.1 Geomorphology

The site is located on the western slope of the Berkeley Hills. The Berkeley Hills are a northwest-southeast trending range within the Coastal Range Province of California. Erosion of the Coastal Ranges has filled the valleys within and bordering the Coastal Range with sequences of gravels, silts, sands, and clays.

2.2 Stratigraphy

The native soil from surface to 13 feet below ground surface (BGS) consists of dark brown silty clay. The dark brown clay is underlain by light brown stiff clay that includes subrounded to

ATTACHMENT E
9/22/99

rounded metavolcanic gravel. This clay extends to approximately 23 feet BGS at the northwest corner of the site. A fine to medium sand, clayey sand, and silty sand underlies the gravel and clay.

3.0 WORKPLAN

During the construction of the receptor trench, it is anticipated that dewatering of the excavation will be a necessity, see Figures 3 and 4. This recovered groundwater will be placed into a 21,000-gallon capacity Baker Tank that will be located on the service station property. Water will be transported from the receptor trench to the Baker Tank via a 1000-gallon capacity polyethylene tank positioned in the bed of a one ton truck. Transfer of water from the 1000-gallon tank to the 21,000-gallon tank will be performed using a gasoline rated centrifugal pump and one inch diameter gasoline rated hose. Once it becomes apparent that the weekly purged volume does not mandate the storage capacity of the 21,000-gallon Baker Tank, this tank will be cleaned and removed from the site. The 1000-gallon capacity polyethylene tank will be placed in the treatment compound to hold the purged groundwater until it is treated and injected. And a 200-gallon capacity polyethylene tank will be used to transport the purged water from the receptor trench to the 1000-gallon polyethylene tank.

3.1 Cost Benefit Breakdown to Handle Purged Groundwater

- Estimated Evergreen vacuum truck rate during dewatering and weekly purging of receptor well for one year \$82,500, for removal, trucking and disposal.
- Estimated WEGE pump truck during dewatering and weekly purging of receptor well for one year \$24,800, with gravity feed treatment/reinjection system.
- If reinjection method is not used, and if the City of Oakland would allow discharge to sewer. The additional yearly costs for sewer discharge versus injection is approximately \$7,100.

3.2 SCHEDULE

July 12, 1999	Received Pre-Approval letter from UST fund.
July 15, 1999	Hand deliver two week notice to residences along Brighton Avenue: Start construction of receptor trench along Brighton Avenue.
July 28 - 30, 1999	Staging-in equipment and preparing site for installation of receptor trench.
August 2, 1999	Start excavating of receptor trench.
August 20, 1999	Completion of receptor trench.
August 24, 1999	Perform Quarterly groundwater sampling with natural attenuation monitoring and nutrient analysis of wells, including newly installed wells and receptor trench.
August 31, 1999	Start weekly groundwater removal from receptor trench and nutrient addition at recovery well R-3. Commence with injection of treated groundwater produced from receptor trench and monitor wells into R-3.

3.3 TREATMENT OF RECOVERED GROUNDWATER

Treatability Study

All purged groundwater (recovered from dewatering for receptor trench, monitor well development, monitor well purging/sampling and weekly purging of receptor trench) will be stored in a 21,000-gallon capacity Baker Tank that will be delivered to the site clean. Once approval is granted from Alameda County Health, approximately 500 gallons of water will be pumped from the Baker Tank through two in series 50-gallon capacity activated water carbons (Wheelabrator Aqua Scrub) at a rate not to exceed 5 gallons per minute (gpm) into a 1000 gallon capacity polyethylene tank, see Figure 5. Water samples will be obtained from sample ports located prior to the water scrubs, between the water scrubs and at the exhaust of the water scrubs. These samples will be analyzed for TPHg, BTEX and MTBE. Upon receipt of State of California Certified Laboratory report of results a request will be made to initiate injection of the treated groundwater into R-1 at a rate not to exceed 5 gpm. The injection of this treated groundwater will continue until the Baker Tank is empty and removed from the site. Once the water stored in the Baker Tank has been completely injected into R-1 then weekly injection of water recovered from the weekly purging of the receptor trench and/or monitor wells will be performed at a rate of 5 gpm not to exceed 1000 gallons per day/week, see Figure 6.

The weekly purging and injection of 1000 gallons of treated groundwater will continue for approximately two months to evaluate the benefit of weekly purging of 1000 gallons versus continuous pumping from the receptor trench and continuous discharge/injection into R-1

Nutrient Augmentation

After completion of the receptor trench, weekly purging will commence, extracting approximately 1000 gallons of gasoline contaminated groundwater per visit. Prior to treating and injecting this purged water into R-1 groundwater, samples will be obtained from R-1, the receptor trench, newly installed wells at 4006 Brighton Avenue and 4026 Brighton Avenue and RS-7. These samples will be analyzed for TPHg, BTEX, MTBE, Dissolved Oxygen, Sulfate, Nitrate, Ferrous Iron, ORP, Nitrogen as Ammonia and Ortho Phosphates.

Western Geo-Engineers anticipates augmenting the treated groundwater with sodium hexametaphosphate and ammonium sulfate. In an earlier workplan dated November 5, 1997 (revised December 9, 1997), trisodium phosphate (TSP) was suggested. Further research of this additive indicated that TSP would need to be in combination with Mono-Sodium Phosphate (MSP) to maintain a pH between 6.5 and 7.5 and that the TSP-MSP solution would not invade the formation as much as was hoped.

Phosphate

Research of the current literature indicates that the direct addition of orthophosphate may cause the precipitation of insoluble phosphate salts, thus plugging the infiltration wells and the surrounding aquifer.

In sodium hexametaphosphate (SHMP), the phosphate is in the form of polyphosphate, which forms complex ions with the calcium and iron ions and does not precipitate out of solution. Additionally SHMP has a neutral pH of 7 and may be used in the treatment of potable water.

Ammonium Sulfate

Ammonium sulfate as an ammonia source may be mixed into the SHMP water mixture. In addition to ammonia, this will also supply some sulfate, an important electron acceptor, to the system.

No additives will be used until results of the above mentioned groundwater sampling has been completed and evaluated.

4.0 COLLECTION AND ANALYSIS OF GROUNDWATER SAMPLES

The third quarter sampling should occurred on or about August 24, 1999. Water samples will be collected from monitor wells MW1, RS-2, RS-5, and RS-6 located on-site and RS-7 located in the center of Brighton Avenue to the northeast of the site (Figure 3). Water samples will also be collected from the three onsite water recovery/injection wells (R1, R2 and R3), from the receptor trench wells (3 wells, one at each end and one at the center), from the backyard wells to be installed at 4006 and 4026 Brighton Avenue and from the down gradient well installed in the city easment west of Brighton Avenue across from 4032 Brighton Avenue. Appendix A contains QA/QC, details, methods, procedures, abbreviations, and acronyms used in sampling and analysis.

4.1 Depth to Water Measurements

Depth to water will be measured at all monitor wells, the three onsite water recovery/injection wells, the three receptor trench wells, the two backyard wells and the downgradient well. The depth to water measurements are derived using a product/water interface probe. Measurements are referenced to surveyed elevation at the top of casing at each well.

4.2 Purging of Monitor Wells

David Pittman Well Purge (DPWP), using a truck mounted vacuum lift pump and one-inch diameter PVC tubing will purge the monitor wells of three volumes of water. This is the same truck and operator as has been regularly used under the name of Lawrence Tank Testing. The

specific volume of water removed from each well will be recorded on the well sampling data sheets.

4.3 Collection and Certified Analysis of Groundwater Samples

After purging, the wells will be allowed to recover to at least 80% of their original well volumes. A groundwater sample is then collected from each well with a disposable polyethylene bailer and decanted, with no headspace, into two 40 ml VOA vials containing 0.5 ml HCL acid as a preservative. North State Environmental Laboratories has been contracted to analyze all water samples for concentrations of TPH-G, BTEX, and MTBE using EPA methods 5030/8015M/8020. Method 8020 presence of MTBE will be verified with EPA Method 8260. The February 23, 1999 sample results showed all wells below laboratory lower detection limits for MTBE using standard methods and the September 1998 samples from all wells were also analyzed for the Fuel Oxygenants using EPA Method 8260. All wells tested below laboratory lower detection limits.

Fuel Oxygenants	Laboratory Lower Detection Limits
Ethanol	500 ug/L
Methyl-t-Butyl Ether (MTBE)	1 ug/L
Di Isopropyl Ether (DIPE)	5 ug/L
Tertiary Butyl Alcohol (TBA)	5 ug/L
Ethyl t Butyl Ether (ETBE)	5 ug/L
t-Amyl Methyl Ether (TAME)	1 ug/L

Selected wells will also be analyzed by NSE for Nitrogen as Ammonia, Ortho Phosphates, methane, carbon dioxide and hydrocarbon degraders (R-1, RS-7, receptor trench middle well and the backyard wells).

WEGE will field measure the following on all wells using the HACH DR/2000 Spectrophotometer: Dissolved Oxygen, Sulfate, Nitrate and Ferrous Iron.

Also field measurements of pH, conductivity, temperature and oxygen reduction potential (ORP) will be obtained,

4.4 Disposition of Waste Water

The wastewater generated from the purging of the monitor wells, dewatering for installation of the receptor trench and weekly purging of the receptor trench will be placed into the 21,000 capacity Baker Tank. This water will then be pumped through 2 50-gallon activated carbon water scrub units in series prior to being injected into R-1 to act as the carrier for the nutrients to remediate the sewer lateral. A treatability study will be performed prior to injection. Also concurrence from Alameda County Health will be obtained prior to injection.

Once it is established that the 21,000 gallon capacity tank is no longer needed, a smaller (1000 gallon capacity) polyethylene tank will be placed in the treatment compound located at 4035 Park

Blvd. to contain the weekly purged groundwater prior to treatment and injection/nutrient augmentation.

5.0 LIMITATIONS

This report is based upon the following:

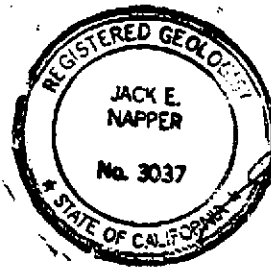
- A. The observations of field personnel.
- B. The results of laboratory analyses performed by a state certified laboratory.
- C. Referenced documents.
- D. Our understanding of the regulations of the State of California, Alameda County and the City of Oakland.
- E. Changes in groundwater conditions can occur due to variations in rainfall, temperature, local and regional water use, and local construction practices.
- F. In addition, variations in the soil and groundwater conditions could exist beyond the points explored in this investigation.

State Certified Laboratory analytical results are included in this report. This laboratory follows EPA and State of California approved procedures; however, WEGE is not responsible for errors in these laboratory results. Western Geo-Engineers is a corporation under California Registered Geologist #3037 and/or Contractors License #513857. The services performed by Western Geo-Engineers have been conducted in a manner consistent with the level of care and skill ordinarily exercised by members of our profession currently practicing under similar conditions in the State of California and the Oakland area. Our work and/or supervision of remediation and/or abatement operations, active or preliminary, at this site is in no way meant to imply that we are owners or operators of this site. Known or suspected contamination of soil and/or groundwater must be reported to the appropriate agencies in a timely manner. No other warranty, expressed or implied, is made.

Sincerely,



George Converse
Geologist



Jack E. Napper
Ca. Reg. Geologist #3037

cc: Mr. John Rutherford, Desert Petroleum (805) 644-6784
Mr. Leroy Griffin, Oakland Fire Dept.

-WEGE-

**DESERT STATION #793
4035 Park Blvd.
Oakland, California**

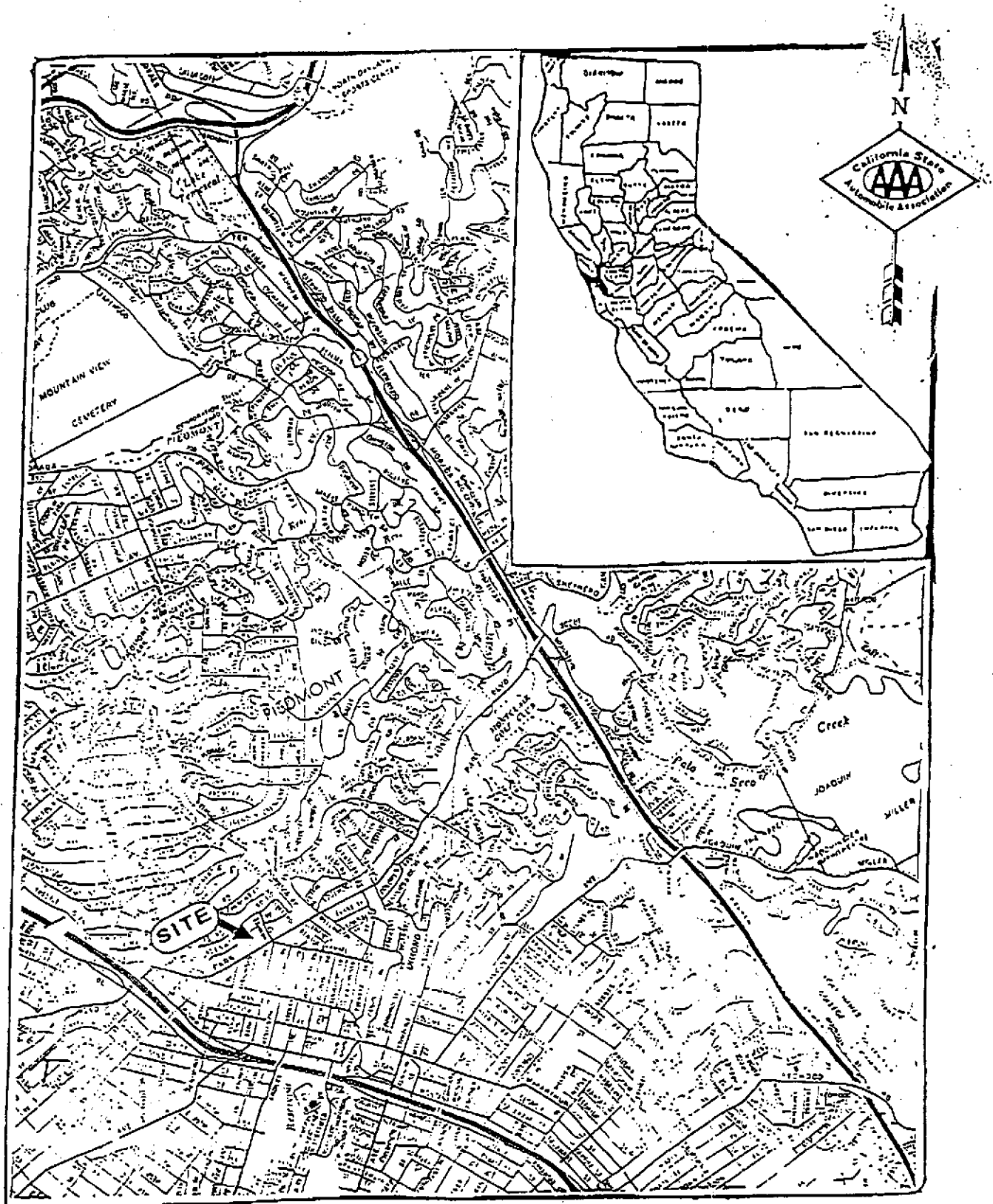


FIGURE 1

Location (AAA Map)

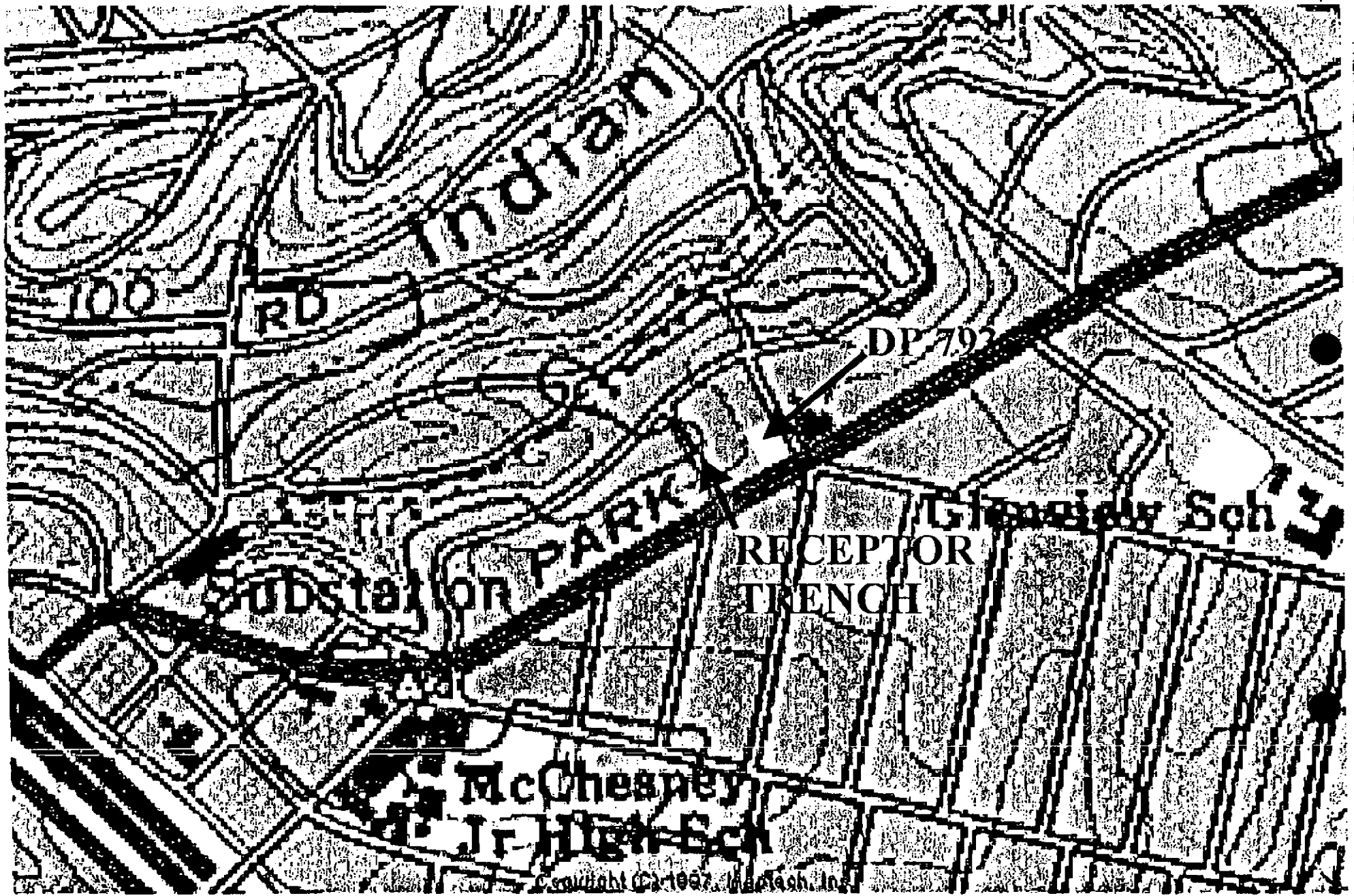
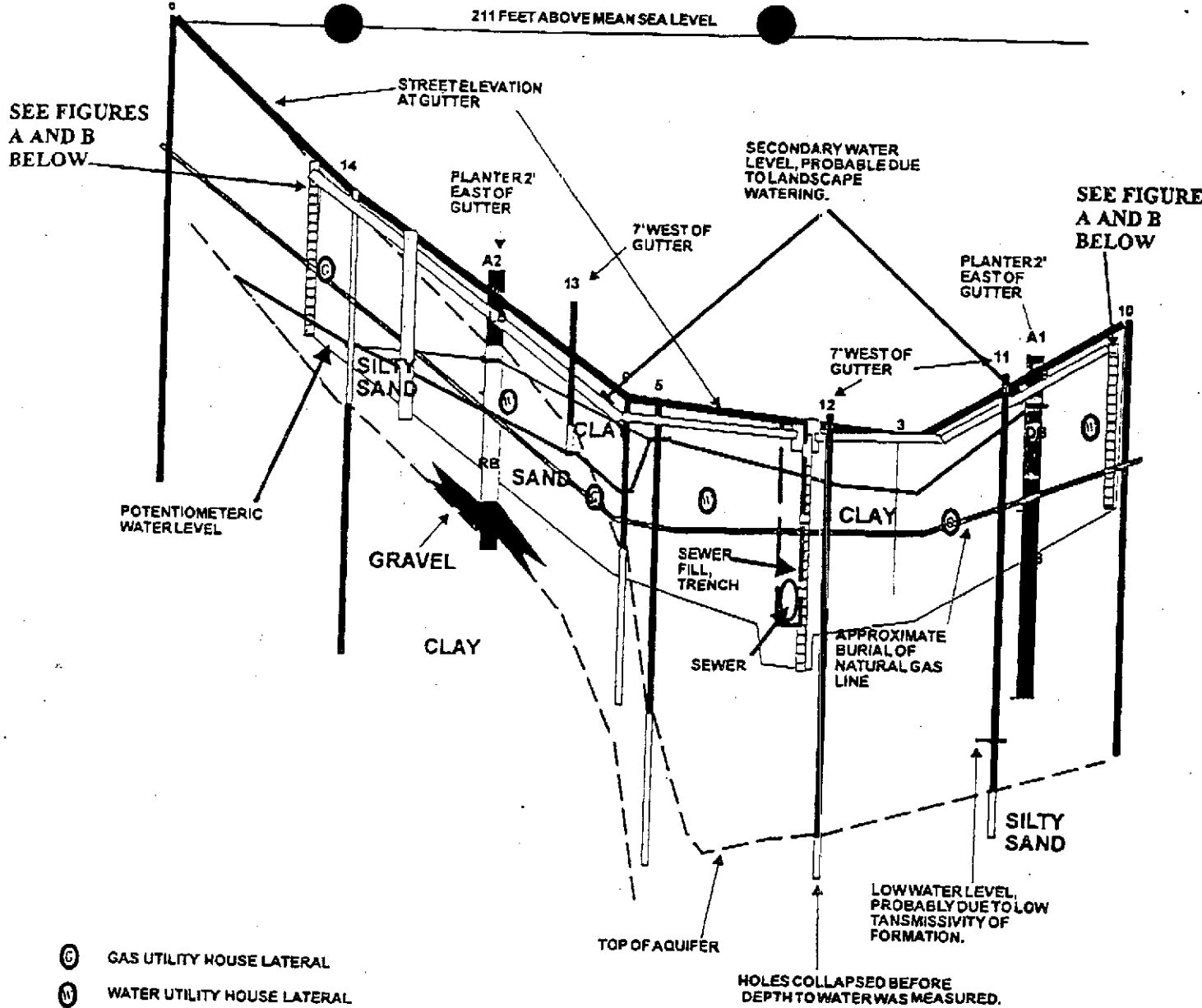


FIGURE 2
PORTION OF OAKLAND EAST 7.5 MINUTE USGS TOPOGRAPHIC MAP

NOR
↑

FROM : PLUMEDUC CO EHS HRZ-OPS
S10 337 9335
1999-09-16 17:04 #206 P. 09/12



- ⓐ GAS UTILITY HOUSE LATERAL
- Ⓜ WATER UTILITY HOUSE LATERAL
- LB LIGHT BROWN
- DB DARK BROWN
- RB RED BROWN
- PROPOSED RECEPTOR TRENCH

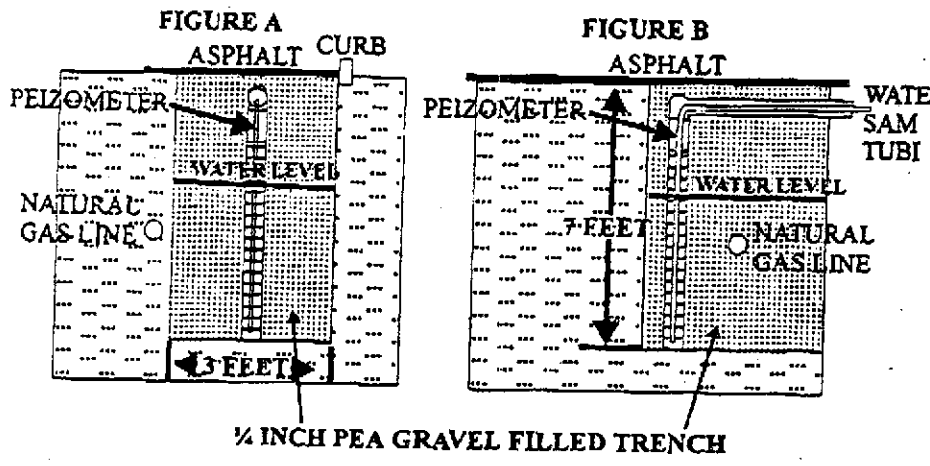
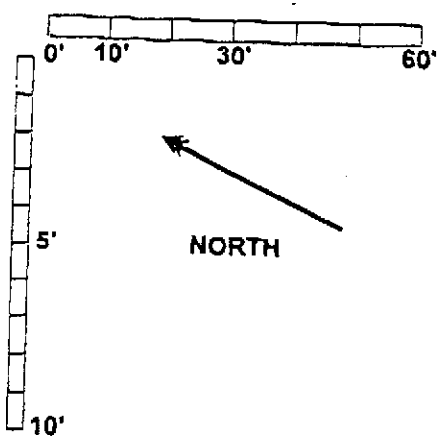
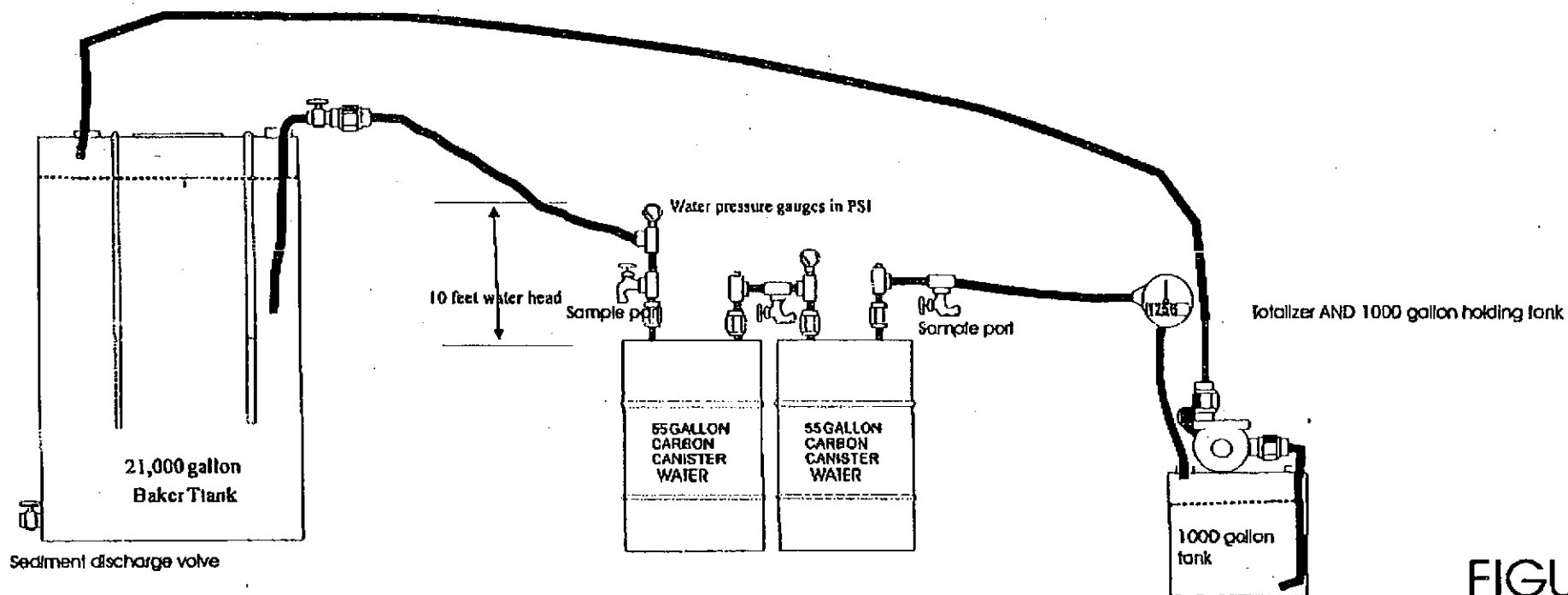
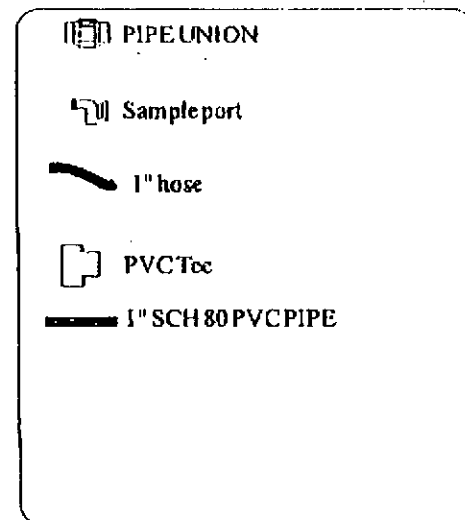
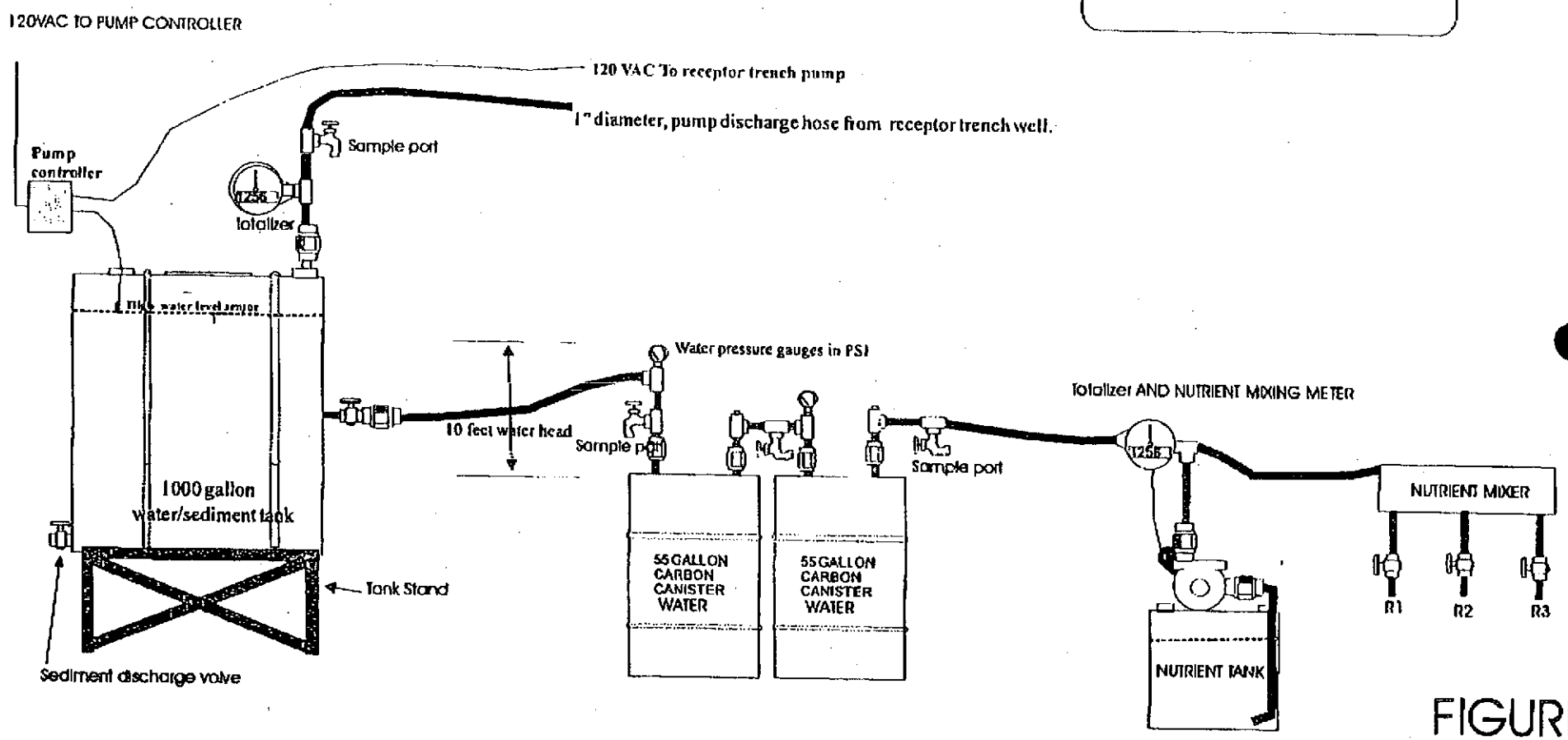
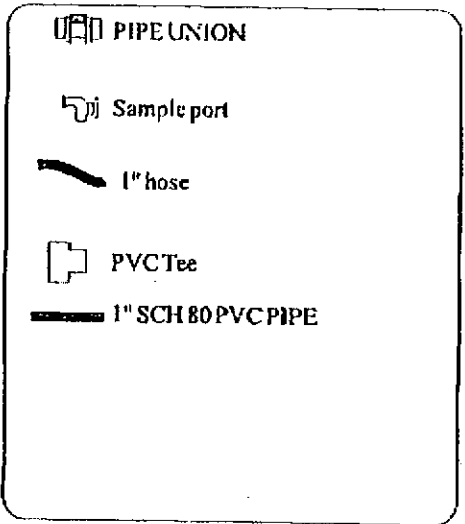


FIGURE 4
CROSS SECTION
CONCEPTUAL RECEPTOR TRENCH
FOR FREE PRODUCT AND GROUNDWATER RECOVERY
DP793, 4035 PARK BLVD.
OAKLAND, CALIFORNIA

PURGED GROUNDWATER TREATABILITY STUDY FOR REINJECTION



FIGURE



FIGURE



State Water Resources Control Board



Gray Davis
Governor

Winston H. Hickox
Secretary for
Environmental
Protection

Division of Clean Water Programs
2014 T Street • Sacramento, California 95814 • (916) 227-7886
Mailing Address: P.O. Box 944212 • Sacramento, California • 94244-2120
FAX (916) 227-4530 • Internet Address: <http://www.swrcb.ca.gov/~cwp/home/ustcf>

June 30, 1999

John Rutherford
Desert Petroleum, Inc.
P O Box 1601
Oxnard, CA 93032

**PRE-APPROVAL OF CORRECTIVE ACTION COSTS, CLAIM NO. 003274,
SITE ADDRESS: 4035 PARK BLVD, OAKLAND, CA 94602**

I have reviewed your request, received on March 24, 1999, for pre-approval of corrective action costs; I will place these documents in your file for future reference. I have included a copy of the "Cost Pre-Approval Request" form; please use this form in the future for requesting pre-approval of corrective actions costs.

With the following provisions, the total cost pre-approved as eligible for reimbursement, for completing the June 11, 1998 Western Geo-Engineers workplan approved by the Alameda County EHD (County) in their October 6, 1998 letter, is \$50,487; refer the proposal for a breakdown of costs.

Be aware that this pre-approval does not constitute a decision on reimbursement: all reasonable and necessary corrective action costs for work directed and approved by the County will be eligible for reimbursement per the terms of your Letter of Commitment at costs consistent with those pre-approved in this letter.

*All future costs for corrective action must be approved in writing by Fund staff.
Future costs for corrective action must meet the requirements of
Article 11, Chapter 16, Underground Storage Tank Regulations.*

- The actual costs and scope of work performed must be consistent with the pre-approval for it to remain valid.
- The work products must be acceptable to the County and the Regional Water Quality Control Board.
- It is my opinion that it is unnecessary to obtain three bids for this scope of work; the Fund's three bid requirement is waived for this scope of work.
- If a different scope of work becomes necessary, then you must request pre-approval of costs on the new scope of work.
- Although I have referred to the Pile Construction proposal in my pre-approval above, please be aware that you will be entering into a private contract: the State of California cannot compel you to sign any specific contract. This letter pre-approves the costs as presented in the proposal dated February 2, 1999 by Pile Construction for conducting the work approved by the County.

99 AUG 25 PM
ENVIRONMENTAL
PROTECTION

ATTACHMENT F
9/22/99

California Environmental Protection Agency

I also want to remind you that the Fund's regulations require that you obtain at least three bids, or a bid waiver from Fund staff, from qualified firms for all necessary corrective action work. The legislation governing the Fund requires that the Fund assist you in procuring contractor and consultant services for corrective action. If you need assistance in contracting for corrective action services, don't hesitate to call me.

Please remember that it is still necessary to submit the actual costs of the work as explained in the Reimbursement Request Instructions to confirm that the costs are consistent with this pre-approval before you will be reimbursed. *Please insure that your consultant prepares their invoices to include the required break down of costs on a time and materials basis, that invoiced tasks are consistent with the original proposal, and that reasonable explanations are provided for any changes made in the scope of work or increases in the costs. When the invoices are submitted you must include copies of all:*

-
- subcontractor invoices,
 - technical reports, when available, and
 - applicable correspondence from the County.

Please call if you have any questions; I can be reached at (916) 227-7886.

Sincerely,

Sriram S. Iyer

Sriram Iyer, Water Resources Control Engineer
Technical Review Unit
Underground Storage Tank Cleanup Fund

Enclosure

cc:

Mr. Thomas Peacock
Alameda County EHD
1131 Harbor Bay Pkway, 2nd Fl.
Alameda, CA 94502-6577

TO: City Planning Commission DATE: June 16, 1999
FROM: Staff CASE FILE NO.: VM65-567
SUBJECT: Review of compliance with Zoning Regulations, consideration of adding conditions of approval, and consideration of revocation of a Major Variance for a service station at 4035 Park Boulevard in the "Detached Unit Residential" General Plan Land Use Classification and the R-50 Medium Density Residential Zone. (Environmental Determination: Exempt; Section 15261(b), State CEQA Guidelines; project approval predates CEQA.) (Historic Status: Non historic property (NHP), survey rating: X.) (Planning Area: Lower Hills)

BACKGROUND: A service station was originally constructed on the project site in 1931. In 1966, the Tidewater Oil Company reconstructed the station and expanded the auto services provided at the facility. The station was closed in 1989, after the Loma Prieta earthquake, when a faulty pipe replacement released gasoline on the site. In 1984, Desert Petroleum Inc. (former property owners) removed the underground tanks containing inflammable liquid, and gasoline was detected in the soil and groundwater during subsurface investigation of the site. No operations have occurred on the site since 1989. Key project events that have occurred since 1989 are outlined below:

1995. Current property owner, Ali Shirazian, applied to reopen the service station; Zoning Administrator determined that the proposal was consistent with original Major Variance (VM65-567) approved by the City Council.
- July 1996. Michael Gabriel of the Glenview Neighborhood Association (GNA) appealed Zoning Administrator's determination.
- October 1996. Public Hearing held on Administrative Appeal; Planning Commission called for a revocation hearing to review the facility's compliance with the Zoning Regulations, determine whether public nuisances existed, and consider revocation or modification of Major Variance (VM65-567).
- November 1996. Planning Commission determined that public nuisances (soil and groundwater contamination) existed at the site and approved staff report, all findings and additional conditions of approval. Commission reserved its right to allow the re-operation of the service station subject to its cleanup status, and requested 12-month compliance review.
- December 1996. Applicant appealed Commission's finding of public

(See Reverse Side)

ATTACHMENT G
9/22/99

- nuisances and approval of additional conditions of approval.
- March 1997. City Council upheld Planning Commission's decision.
- Spring 1997. Applicant filed lawsuit against the City's determination.
- Sept. 1997. State Water Resources Control Board (SWRCB) issued pre-approval for preliminary cleanup costs (\$4,200).
- November 1997. City Attorney postponed 12-month compliance review pending resolution of litigation. Western Geo-Engineers and Desert Petroleum submitted workplan for on-site and off-site cleanup to the City of Oakland Fire Services Agency and Alameda County Department of Environmental Health (DEH).
- February 1998. Court's Order upheld City's determination.
- March 1998. Planning Commission held 12-month compliance review. Additional site analysis information needed by staff; Commission directed staff to continue monitoring preparation of workplan, and requested 6-month compliance review.
- October 1998. Planning Commission held 6-month compliance review. Development of cleanup workplan ongoing; Commission directed staff to continue monitoring preparation of workplan, and requested 6-month compliance review.

STATUS OF SITE CONDITIONS AND CLEANUP: Since the previous compliance review on October 1, 1998, Western Geo-Engineers submitted a final Risk-based Corrective Action workplan for on-site and off-site cleanup to Alameda County DEH and the City of Oakland Fire Services Agency. Alameda County DEH is responsible for reviewing and accepting the final workplan, which was accepted November 6, 1998. Western Geo-Engineers has subsequently submitted the workplan to the State Water Resources Control Board (SWRCB), which is the body that may pre-authorize reimbursement funding for site cleanup actions after the County approves the workplan. Mr. Peacock, manager of the Alameda County DEH, indicated that the SWRCB would consider the pre-authorization or reimbursement funding during June 1999.

Additionally, since the October 1, 1998 compliance review, Western Geo-Engineers has prepared two quarterly reports on the status of the on-and off-site contamination. Based on staff's cumulative analysis of the Third Quarter 1998, Fourth Quarter 1998, and First Quarter 1999 Reports, the level of contamination on the project site is dissipating, especially at the southeast corner of the site (at Hampel Avenue & Park Blvd.). The quarterly

reports also indicate that the contamination is migrating down gradient (along the rear yards of residential properties to the north, and westward toward Brighton Avenue). Although no monitoring wells currently exist on private residential properties along Brighton Avenue, evidence of the migration is based on groundwater samples from seven on-site wells and one off-site well in the Brighton Avenue right-of-way. Over time, the site's conditions might allow for natural attenuation of contaminants; however the proposed cleanup actions would significantly accelerate the cleanup process.

Draft Cleanup Workplan

The workplan for site cleanup proposes the following measures:

1. Install additional monitoring wells (for sampling groundwater) to assess the actual extent of off-site contamination. The proposed wells would be located on private residential lots between the site and the existing well on Brighton Avenue. Each property owner has granted access to allow the installation of the proposed monitoring wells on his or her property. Off-site monitoring and cleanup will be prohibited if access is not granted.
2. Install a new linear recovery trench (for catching contaminants down gradient and pumping them out for recovery) on the east side of Brighton Avenue in the public right of way, parallel to the street.
3. Install a new recovery well (for extracting intercepted contaminants) on the west side of Brighton Avenue in the public right of way, parallel to the street.
4. Add oxygen releasing compounds underground to aid in reducing concentrations of Benzene (a component of gasoline) located on and off the site.

Desert Petroleum may begin the site cleanup measures listed above when the SWRCB pre-authorizes reimbursement funding for the cost of cleanup activities. However, no circumstances exist that prohibit Desert Petroleum from paying the cost of cleanup up-front.

STATUS OF APPEAL LITIGATION: In December 1996, the applicant appealed the Commission's November 1996 (1) findings of public nuisances on the site; and (2) approval of modified conditions of approval) to the Superior Court, and subsequently to the California Court of Appeals. The applicant's legal counsel and the City of Oakland's counsel submitted their respective opening and response briefs to the Court of Appeals in November and December 1998. The applicant's attorney obtained several continuances on appeal due to illness and has yet to file a reply brief on appeal. The applicant's reply is due to be filed on June 29, 1999. However, the applicant's attorney recently sought a continuance in an unrelated case with the City because of his

June 16, 1999

recent illness, therefore it is highly possible that the applicant's reply brief will not be filed by June 29, 1999.

Upon receiving the required briefs from both parties, the Court of Appeals will schedule a date to hear oral arguments. The City Attorney has indicated that the scheduling process can take from three to six months. If the Court upholds the appeal, all or part of the City's decision relating to the gas station could be invalidated. Moreover, the City would be subject to a request for damages and attorneys fees. If the Court denies the appeal, the City decision should not be disturbed

CITY AND COUNTY AGENCY ROLES: The City of Oakland Fire Services Agency and the Alameda County Department of Environmental Health (DEH) Agency are the two bodies that are primarily involved in the review and oversight of the environmental-related activities involving the site. The Oakland Fire Services Agency, staffed by Leroy Griffin, is primarily responsible for enforcement of the underground tank law, which includes permitting new tanks or other hazardous materials facilities. As authorized by the State Certified Uniform Program Agency (CUPA) program (enacted by Senate Bill 1082) the City requested that the project site be overseen by the Alameda County DEH, which is managed by Thomas Peacock. The primary roles of the County are to review and accept the cleanup workplan, oversee the progress of cleanup activities, enforce cleanup standards, and determine when the site is "clean".

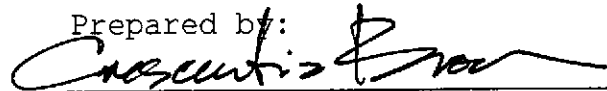
STATUS OF CODE COMPLIANCE: In October 1998, the Code Compliance Division of Building Services received a complaint regarding unsightly conditions on the project site. In response, a City code inspector visited the site, documented the site conditions, and notified the property owner. The applicant did not respond to the notice within the specified time period, therefore the City cleaned the site, erected a fence to prohibit unauthorized access on the site, and billed the property owner for the cost of work performed. The property owner has not remitted any payment as of the writing of this report. A subsequent complaint related to overgrowth on the site was received in March 1999. On May 3, 1999, Code Compliance staff mailed notice to the property owner, however the mailed notice was returned due to an incorrect address listed in the City's records. Code Compliance staff will re-notice the property owner on approximately June 4, 1999, and the owner will have approximately 10 days to respond before the City takes further action on the property.

Tom Peacock (Alameda County DEH), Leroy Griffin (Oakland Fire Services Agency), Code Compliance staff and a representative from Desert Petroleum Inc. will be present at the June 16, 1999 Commission meeting to provide information on activities that have occurred after to the preparation of this report.

RECOMMENDATIONS:

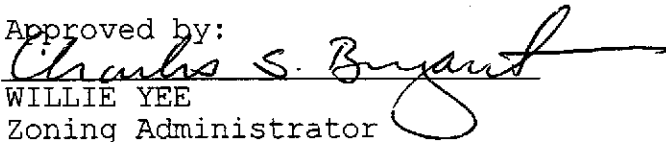
1. Direct staff to continue monitoring implementation of the Tier II Risk Assessment and the implementation of the Risk-based Corrective Actions for the site;
2. Pending the results of the Tier II Risk Assessment and the outcome of ongoing litigation in the California Court of Appeals, conduct a compliance review in approximately six months.

Prepared by:

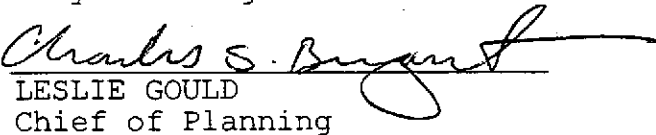


Crescentia L. Brown, AICP
Planner III

Approved by:

for 
WILLIE YEE
Zoning Administrator

Approved and forwarded to the
City Planning Commission:

for 
LESLIE GOULD
Chief of Planning

- ATTACHMENTS:**
- A. Location Map
 - B. Staff Report dated October 1, 1998 with Attachments

TO: City Planning Commission

REPORT DATE: October 1, 1998

FROM: Staff

CASE FILE NO.:

VM65-567

SUBJECT:

Review of compliance with Zoning Regulations, consideration of adding conditions of approval, and consideration of revocation of a Major Variance for a service station at 4035 Park Boulevard in the R-50 Medium Density Residential Zone. (Environmental Determination: Exempt; Section 15261(b), State CEQA Guidelines; project approval predates CEQA.) (Planning Area: Lower Hills)

BACKGROUND AND HISTORY: On February 18, 1998, the City Planning Commission held a compliance review of the site clean-up at a vacant service station at 4035 Park Boulevard. The service station was originally built in 1931. In 1966, the tidewater Oil Co. reconstructed and operated the station as 'full-service' facility. The station was closed in 1989, after the Loma Prieta earthquake, when a faulty pipe replacement released gasoline on the site. Desert Petroleum, Inc. (former property owners) removed the underground inflammable liquid tanks, and during subsurface investigation of the site, gasoline was detected in the soil and groundwater. The site has remained vacant since 1989.

At the February 18, 1998, compliance review, the Commission raised several questions about the Risk-based Corrective Action (RBCA) process, or workplan, for site cleanup. Western Geo-Engineers prepared the RBCA on November 5, 1997. The Fire Services Agency of the City of Oakland is administering and overseeing the workplan. During a follow-up commission meeting on March 18, 1998, Leroy Griffin, Hazardous Materials Supervisor with the City of Oakland Fire Services Department, reported that the workplan for toxic remediation work (on-site and off-site clean-up) was not finalized and that he was awaiting additional information (i.e., electron acceptors, vapor samples). In addition, data about groundwater contamination was needed prior to initiating an additional site study (tier II) to determine whether the site conditions would allow for natural attenuation.

The previous staff report dated March 18, 1998, (which incorporates the previous report dated November 20, 1996) is attached. Together, they present a detailed case background including zoning approvals, appeals and litigation. Additional supporting correspondence, reports and draft workplans are included as attachments to the March 18, 1998 staff report.

(See Reverse Side)

ATTACHMENT B

6/16/99

October 1, 1998

STATUS OF CLEANUP: As of the writing of this report, the following events have occurred regarding the site cleanup activities. Leroy Griffin of the Fire Services Agency and Thomas Peacock of Alameda County verbally indicated their receipt of two reports. On June 11, 1998, Western Geo-Engineers provided Mr. Peacock with a workplan, and on August 12, 1998, both Mr. Peacock and Mr. Griffin received the *Third Quarter Monitoring Report*, which reports the findings of recent groundwater testing on the site. Both reports provide information that will help determine the lateral extent of site contamination - whether the contaminated area has moved or dissipated. Conclusions from Mr. Peacock's and Mr. Griffin's review of these reports was not available as of the preparation of this report. Mr. Griffin also reported that residents near the site are currently being contacted for their approval to allow additional groundwater sampling on private property. Other events include that a fence that prohibits access has been installed around the site, and Mr. Griffin indicated the property owner stated he was not aware that the fence had been installed. The owner could not be reached for comment regarding the status of the site cleanup process of the property.

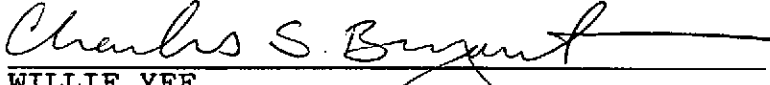
Both Mr. Peacock and Mr. Griffin will report all recent project activities and report findings at the October 1, 1998 Commission meeting.

- RECOMMENDATIONS:**
1. Direct staff to continue monitoring implementation of the Tier II Risk Assessment for the site;
 2. Pending the results of the Tier II Assessment, including data on groundwater and vapor monitoring, conduct another compliance review in six months.

Prepared by:


for CRESCENTIA L. BROWN, AICP
Planner II

Approved:


for WILLIE YEE
Zoning Administrator

October 1, 1998

Approved for forwarding to
City Planning Commission:



LESLIE GOULD
Acting Chief of Planning

ATTACHMENTS: A. Staff Report dated March 18, 1998 with
Attachments.

COMMISSION ACTION: Approved
Vote: 4 ayes, 1 noe - to approve
Date: October 1, 1998

|
2V65567C.DOC

TO: City Planning Commission REPORT DATE: March 18, 1998

FROM: Staff CASE FILE NO.: VM65-567

SUBJECT: Review of compliance with conditions of approval and consideration of amending conditions of approval of a previously approved Major Variance for a service station at 4035 Park Boulevard in the R-50 Medium Density Residential Zone. (Planning Area: Lower Hills.)

BACKGROUND AND HISTORY: The service station at 4035 Park Boulevard. was originally built in 1931. It was reconstructed and operated by Tidewater Oil Co. as a 'full-service' type service station in 1966. The station was then closed in 1989, after the Loma Prieta earthquake, when a faulty piping replacement job released gasoline on the site. Desert Petroleum, Inc. (former property owners) took responsibility to remove the underground inflammable liquid tanks (Certificate No. 9821, June 8, 1994). During subsurface investigations of the site, gasoline was detected in the soil and groundwater. Since 1989, the petroleum-impacted site has remained vacant.

On February 18, 1998, the City Planning Commission held a compliance review of the vacant service station. At that meeting, new questions related to the site were asked. Staff was also asked to provide clarification of the Risk-Based Corrective Action (RBCA) process that is currently being conducted on the site.

The following information is provided in response to those questions:

First, a copy of a "Demand for Payment", issued by the CEDA Code Compliance Accounting Division on February 9, 1998, was provided to staff by Michael Gabriel, a nearby property owner (see Attachment I). According to the Code Compliance Division, complaints were received on September 17, 1997 from Mr. Gabriel that the site was in a state of blight. In response to Mr. Gabriel's complaint, Code Compliance gave notice to the owner to abate, clean up, and board up the property, in particular, to clear up trash and debris. The owner failed to act, so the City sent out a contractor to do the work. According to the "Demand for Payment", the City's cost to clean up the site totalled \$2,776.58. A lien has been placed on the property, which will be released when the property owner pays this the City.

Second, questions were raised about why it has taken so long to begin clean up of the site. There are several reasons for this, including: (1) the site has been in litigation since 1997; (2) investigations are still being conducted on the site; (3) bids by contractors to conduct on- and off-site studies are being reviewed;

(SEE REVERSE SIDE)

ATTACHMENT A
10/1/98

March 18, 1998

and (4) the County has been reviewing the work plan for clean up of the site. These factors are discussed in more detail below.

Third, the Risk-Based Corrective Action (RBCA) is conducted to assess subsurface contamination to determine "cost-effective measures for protection of human health and environmental resources." The RBCA system classifies sites according to the magnitude and immediacy of human health and environmental risks, depending on whether the current hazard is acute, chronic, or aesthetic. To address these hazards and determine clean up goals, there is a three-tiered evaluation, Tier I, II, and III, from the least risk-based screening levels to the requirement to collect additional data as needed. These RBCA screening tests are described in the Manual for Risk-Based Corrective Action (see Attachment J).

ZONING APPROVALS APPEALS AND LITIGATION: The following summary and sequence of zoning approvals and events, which recapitulate the physical characteristics and operational issues related to the service station site, is provided because they influence the manner in which site-specific soil and groundwater cleanup levels will be implemented protecting human health and the environment.

Sometime during 1995, Mr. Ali Shirazian purchased the site from Desert Petroleum, Inc. Mr. Shirazian then contacted the Zoning Manager Oakland to inquire if the vacant facility could be utilized as a service station. The Zoning Manager determined that revised plans were necessary to determine if the facility would be restored to its original condition. Consequently, Mr. Shirazian submitted revised plans. On October 24, 1995, the Zoning Manager made the determination that the latest submitted revised plans were consistent with the facility approved by the City Council in 1965 (Resolution No. 46278 C.M.S. reversing the denial of a Major Variance, VM65-567).

On July 5, 1996, Mr. Michael Gabriel of the Glenview Neighborhood Association (GNA) appealed the Zoning Manager's consistency determination. A public hearing on the Administrative Appeal (Case Number A96-143) was conducted on October 9, 1996. At the hearing, the Planning Commission directed that a revocation hearing be held to determine whether a public nuisance exists at the site, and to consider revocation or modification of the Major Variance (VM65-567).

The revocation hearing was conducted on October 23, 1996 to review the service station's compliance with the Zoning Regulations, consider adding conditions of approval, determine whether public nuisances exist, and consider revocation of the Major Variance. Alameda County's Hazardous Materials Specialist, Thomas Peacock, testified that of over 800 contaminated sites in Alameda County, the site is one of the County's top ten.

March 18, 1998

At the November 20, 1996 Planning Commission meeting, based on community testimony and evidence in the record that the site's soil and groundwater contamination did not meet the requirements of State and local health laws, the Planning Commission determined that a public nuisance exists at the site. The Commission also approved the staff report, including all findings and conditions of approval. Moreover, the Planning Commission reserved the right to allow the reopening of the service station subject to its cleanup status, which was scheduled to be reviewed at a 12-months compliance review meeting.

On December 20, 1996, David A. Self, Attorney for Mr. Ali Shirazian, filed an appeal of the Commission's decision to approve the conditions of approval attached to the Major Variance and their decision that a public nuisance exists.

On January 17, 1997, a public hearing was conducted by the City Council on the appeal. Subsequently, on March 18, 1997, the City Council upheld the decision of the City Planning Commission in adding conditions of approval and determining that a serious public nuisance exists. (Resolution No. 73346 C.M.S.).

Mr. Shirazian then filed a lawsuit on the City's determination. At the November 19, 1997 Planning Commission meeting, the City Attorney gave a verbal status report that the 12-months compliance review was postponed pending resolution of the litigation. Subsequently, on February 4, 1998, the City Attorney provided the Commission with a verbal status report of the Court's Order which upheld the determination of the City of Oakland in adding conditions of approval to the Major Variance for the service station. Property owners of the service station site may appeal this decision to the Court of Appeals.

The remaining portion of this report Compliance is to address the status of the site cleanup.

COMPLIANCE REVIEW: As mentioned above, results from investigations of soil and groundwater samples at and surrounding the Desert Petroleum site (4035 Park Boulevard) resulted in the determination that there is on- and off-site contamination. According to investigations, remediation is also required in the residential area immediately downgradient of the site, in particular, along Brighton Avenue. Several studies have been conducted by environmental engineers, e.g., Western Geo-Engineers and SOMA Environmental Engineering, etc. Several meetings have been conducted by the County of Alameda, Environmental Health Services with the former and new property owners, and environmental engineers, soil engineers and toxicologists to discuss the parameters for a risk assessment of the site.

Reimbursement funding has been obtained by Desert Petroleum, Inc. John Rutherford of Desert Petroleum, Inc., had formerly applied to

March 18, 1998

the State Water Resources Control Board (SWRCB) for funding for corrective action to cleanup the site. Based upon the (SWRCB), Division of Clean Water Programs, review of corrective action costs of site cleanup incurred to date, the State Board issued a Letter of Commitment in an amount not to exceed \$100,000. (Underground Storage Tank Cleanup Fund, Claim No. 3274, dated September 25, 1995). The costs incurred for containing and cleaning up the toxins of the site to date is approximately \$250,000.

On January 1997, staff was informed by Cheryl Gordon, California Environmental Programs of the State of California, that the approved State Funding to clean up the site is not transferable to the new property owners of the site, namely, Mr. Shirazian and Mr. Razi. Therefore, subsequent meetings to review and proceed with all active claims for reimbursement for corrective action costs involved both the former and new property owners.

During 1997, further monitoring and investigations of the 'Desert Petroleum site # 793' was conducted to determine on- and off-site contamination, including migration of the free product plume at Brighton Avenue ("Free Product Investigation Report along Brighton Avenue" with "Corrective Action Workplan", WEGE, dated 4/3/97).

On May 6, 1997, the County of Alameda issued a letter to Desert Petroleum acknowledging receipt of reports on groundwater monitoring and sampling, and free product along Brighton Avenue. Concerns regarding the workplan, which involved groundwater injection and recovery, were discussed with Regional Water Quality Control Board (RWQCB). At that time, it was noted that a risk assessment or risk evaluation must be conducted and approved by the County's Environmental Health Services to determine the threat to human health, using three scenarios for the subject site, namely, residential, commercial, and construction scenarios.

The State Water Resources Control Board (SWRCB) requires pre-approval for reimbursement of remediation costs. On September 29, 1997, Steve Marquez of the State Water Resources Control Board issued a pre-approval for corrective action costs for the amount of \$4,200. (Tier II).

On November 5, 1997, a workplan was prepared by Western Geo-Engineers to perform remedial efforts at the site and the surrounding areas (Risk Base Corrective Action --RBCA-- tier II). Due to the topography and land use (residential) of the area affected by dissolved and free phase gasoline plume, screening studies are to be conducted at the service station, a portion of the sewer lateral (northwest of site into rear yards of adjacent residential properties), and Brighton Avenue. In general, the work performed to date includes clean-up of the top portion of the site, excavating the soil, and removing old tanks. Data from the Tier II Risk Assessment conducted downgradient of the site (Brighton

March 18, 1998

Avenue) is still to be evaluated by the City of Oakland, Fires Services Agency.

Subsequently, on November 19, 1997, Desert Petroleum submitted the workplan to perform a RBCA Tier II Risk Assessment for review and approval by Alameda County. On December 5, 1997, Thomas Peacock of the County of Alameda, responded to John Rutherford of Desert Petroleum regarding the County's concerns of the workplan (Tier II Risk Assessment) and that the County "... accepts your workplan...".

On December 12, 1997, the County of Alameda met with John Rutherford of Desert Petroleum, Inc. (former property owner), Ali Shirazian and Toni Razi (new property owners), Mansour Sepher of SOMA Environmental, and George Converse of Western Geo-Engineers (WEGE) to further discuss some concerns regarding the workplan, in particular, the course of corrective action for remediating the site to a Tier II level.

STATUS OF CLEANUP: On January 2, 1998, staff contacted Mr. Thomas Peacock regarding the progress of the toxic remediation work (on- and off-site) proposed for the site. Mr. Peacock stated that he had approved a workplan to perform a Risk Base Corrective Action (RBCA) Tier II, dated November 5, 1997. At that time, he reiterated that the site was among the top ten toxic sites in Alameda County. He also stated that due to the State's Consolidated Uniform Program Agency (CUPA), the Fire Services Agency of the City of Oakland would be administering and overseeing the workplan. At that time, Mr. Peacock suggested that staff contact Mr. Leroy Griffin, Supervisor of Hazardous Materials for the Oakland Office of Emergency Services, Fire services Agency.

Staff has had verbal discussions and meetings on January 12th and February 2nd, 1998 with Mr. Griffin. On January 30, 1998, Mr. Griffin informed staff that he received a copy of the workplan from Mr. Peacock.

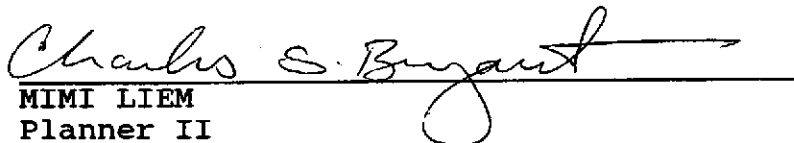
Mr. Griffin commented that, "the workplan had not been finalized", and stated that he is waiting for more data and information from the investigations proposed in the workplan. Based on verbal conversations with Mr. Griffin, it appears he still needs to obtain data on the concentrations of electron acceptors and vapor samples (Items 6 and 7, Page 2, Workplan for Tier Two). Once the current groundwater concentrations of the constituents of concern and electron acceptors are determined, the Tier II studies will be performed. According to Mr. Griffin, "The sampling of the soils at this site will determine if conditions are consistent to allow for natural attenuation." Furthermore, the results of the Tier II assessments will provide cost benefit remedial action plans and suggest that no further action is needed for the different studies conducted on the site.

March 18, 1998

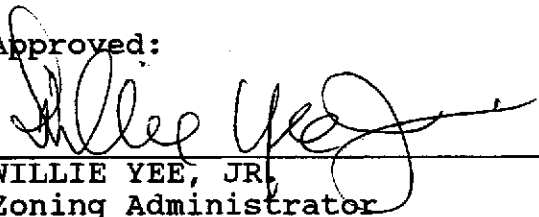
RECOMMENDATION:

1. Direct staff to continue monitoring implementation of the Tier II Risk Assessment for the site;
2. Pending the results of the Tier II Assessment, including data on groundwater and vapor monitoring, conduct another compliance review in six months.

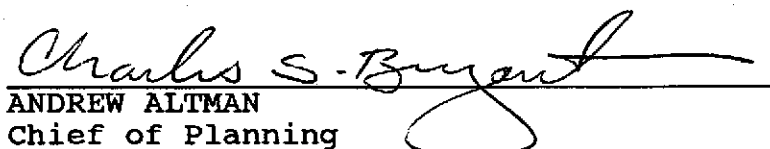
Prepared by:

for 
MIMI LIEM
Planner II

Approved:


WILLIE YEE, JR.
Zoning Administrator

Approved for forwarding to the
City Planning Commission:

for 
ANDREW ALTMAN
Chief of Planning

- ATTACHMENT:**
- A. Location Map
 - B. Correspondence Letter from Alameda County dated December 5, 1997.
 - C. Letter from Desert Petroleum to County of review of workplan dated November 19, 1997.
 - D. Workplan for Tier II prepared by WEGE dated November 5, 1997.
 - E. Pre-Approval for Corrective Action Costs, Claim No. 3274, dated September 29, 1997.
 - F. County's letter to Desert Petroleum of reports dated May 6, 1997.
 - G. Underground Storage Tank Cleanup Fund, Claim No. 3274 dated September 25, 1995.
 - H. Staff Report dated November 20, 1996.

TO: City Planning Commission

DATE: November 20, 1996

FROM: Staff

CASE FILE No.: A96-143 and VM65-567

APPELLANT: Glenview Neighborhood Association

SUBJECT: Administrative appeal of a determination by the Director of City Planning that submitted plans for a service station at 4035 Park Boulevard in the R-50 Medium Density Residential Zone are consistent with the original approval pursuant to Resolution No. 46278 C.M.S. adopted by the City Council on December 7, 1965; review of compliance with the Zoning Regulations, consideration of adding conditions of approval, determination of whether public nuisances exist, and consideration of revocation of a Major Variance for the service station. (Environmental Determination: Exempt, Section 15261(b), project approval predates CEQA; or Section 15268, ministerial project.)

I. HISTORY AND BACKGROUND: In 1931, a service station was constructed at 4035 Park Boulevard (southwest corner of Park Boulevard and Hampel Street) "as a complex of three buildings (ie: a lubrication building, office and pump island and comfort station)". The area surrounding the property became R-50 Medium Density Residential Zone when the zoning ordinance was adopted in 1935. In October 1965, Tidewater Oil Company applied for a Major Variance (VM65-567) to demolish the existing service station and construct and operate a new full-service type service station. The variance was denied by the Board of Adjustments. That application was appealed to the City Council. The City Council reversed the decision, and approved the Major Variance pursuant to Resolution No. 46278 C.M.S. on December 7, 1965. On May 18, 1966, the City issued Tidewater Oil Company a Notice of Approval of Application "To reconstruct and operate a service station" (City Manager's Permit No. 42233). The service station closed in 1989 and has not operated since (Attachments A and B).

The service station site at 4035 Park Boulevard has been contaminated since 1989. According to Alameda County Environmental Protection Services letter dated September 26, 1996, "There was a release of gasoline from this site in 1989, reportedly from a faulty piping replacement job. When the station operators failed to take action to cleanup the leak, Desert Petroleum [the prior owner] took responsibility for conducting a subsurface investigation." Based on soil, water and vapor samples collected at and surrounding the site, gasoline was detected in soil and groundwater at the site and in all of the surrounding residential properties which were investigated. Therefore, it has been determined that this contamination, which has been ongoing for over seven years, has also migrated to adjacent sites. Some of the on-

(See Reverse Side)

ATTACHMENT H

3/18/98

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site contaminated soil has been removed.

The site was recently purchased by Mr. Ali Shirazian, who desired to reopen the service station. In response to inquiries by Mr. Ali Shirazian, the Zoning Manager wrote a letter dated October 24, 1995, which made the determination that the property, "... may be utilized as a service station, provided that no expansion of the facility occurs without all required City approvals." Based on available city records and field observations by staff, Code Compliance officers, and community members (i.e., members of the Glenview Neighborhood Association (GNA)), it was determined that the original service station had been altered without permit. Consequently, Mr. Shirazian was asked to submit revised plans to the Zoning Manager that would restore the facility to its original condition. On June 25, 1996, based on information available at Building Services, the Zoning Manager made the determination that the latest submitted revised plans and elevations were consistent with the facility that was approved by the City in 1965.

On July 5, 1996, Mr. Michael Gabriel, President of GNA, appealed the Zoning Manager's consistency determination. The Administrative Appeal hearing of the Zoning Manager's determination was set for October 9th and, subsequently, at the request of the appellant, was extended to the October 23, 1996.

II. ADMINISTRATIVE APPEAL: Based upon the evidence contained in the public record, the Commission makes the following findings regarding the administrative appeal:

1. The canopy and a portion of the original roof were demolished without permit (Attachment C).
2. The revised plans do not indicate that the original roofing materials, including tar and white gravel, will be replaced-in-kind.
3. The free-standing monument sign ("Rhino" business identification sign) to be located along the Park Boulevard frontage, and the proposed gas price signs would not maintain the original signage with regards to height, sign shape, design, lettering and content, surface finish, and design character of the original 'Phillips 66' sign.
4. The windows installed on the Park Boulevard facade modified the original facade which was constructed in 1965. Provided the above alterations to the facility's plans are amended to restore the facility to its originally approved design, the latest submitted revised plans and elevations will substantially conform to the building approved and constructed

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in 1965.

5. There is no evidence that the original facility cannot be entirely replicated.
6. If the revised plans are amended so that the items referenced in subparagraphs (1) through (4) above are altered to comport with the original approval, the plans and elevations will substantially conform to what was approved by the City in 1965.
7. Due to a 1989 earthquake and 1991 electrical fire in City offices, the original plans for the full-service type service station for this site are not available.
8. The Commission has relied on information developed from site visits by staff, City files, testimonial and documentary evidence submitted by neighborhood residents, public agencies, and the property owner.
9. The property owner did not produce any plans or photographs of the 1965 service station that contradicted the evidence in the City's files, or that was produced by neighborhood residents regarding the original design of the service station.

The Planning Commission's decision of this Administrative Appeal is final, and there is no appeal to the City Council of this decision.

III. CHANGE OF OPERATING CHARACTERISTICS: Based upon the evidence in the record, the Commission makes the following findings regarding the original and the proposed operating characteristics of the service station:

1. The original service station was approved and operated as a full-service gas station, which provided regular, unleaded and diesel gasoline, and minor automotive repair.
2. The applicant now proposes to operate a self-service station with pump dispensers providing regular-, plus-, and premium-unleaded gasoline.
3. The self-service characteristics could potentially affect traffic flow, automobile stacking, and the rate at which vehicles enter and exit the station.
4. The self-service operation has the potential to increase the number of customers, because of convenience and efficiency factors.

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5. The station fronts on a major collector street and is adjacent to residential facilities.
6. The change is a significant change in the operating characteristics of the service station, and pursuant to Sections 2010 and 9604 et seq. of the Zoning Regulations, the change cannot be done lawfully, unless the change complies with the applicable Zoning sections.
7. The distinct change in operating characteristics would potentially result in new and different impacts (e.g. traffic, increased customer volume, and noise, etc.) on the surrounding residential uses.

On July 13, 1996, Felix A. Seidler of Reeves, Seidler & Howell, attorney for the owner, submitted a letter dated July 13, 1996 with proposed conditions of approval (Attachment D) that have been incorporated into this report.

The Commission finds that the following conditions of approval are reasonably necessary to address the potential impacts of the self-service station:

CONDITIONS OF APPROVAL ATTACHED TO AND MADE PART OF ZONING CASE FILE NO. VM65-567: (Modifications to the Conditions of Approval as directed by the City Planning Commission at the November 20, 1996 meeting are indicated in bold print.)

1. The project shall be operated in accordance with the authorized use described in this staff report, and constructed according to revised plans for a service station that are consistent with the originally approval pursuant to Resolution No. 46278 C.M.S. adopted by the City Council in 1965, and include the required revisions to the roof, freestanding sign, and removal of building windows to make the facility consistent with the original approval; provided further, that the project incorporate the revisions listed below as conditions of approval.
2. That the authorized use of this approval, Automotive Servicing Commercial Activity, is primarily the sale of gasoline and is subject to the regulations of the Bay Area Air Quality Management District (BAAQMD) and other applicable governing agencies; that the operation and maintenance of motor vehicles shall to secondary to the primary use of service station; provided further, that all automotive servicing shall be performed within the building; that no tow services shall be performed to or from this site.

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3. That the hours of operation for the gasoline dispensing facility and fueling trucks shall be limited to 5:00 a.m. to 10:00 p.m., Monday through Sunday, and that minor automotive servicing shall be limited to the same hours, Monday through Saturday. The City Planning Commission may modify these hours after holding a public hearing.
4. That there shall be no open, overnight storage of automobiles, any automotive-related parts, equipment, or storage bins, etc., except within the building.
5. That the owner and/or customers shall not park vehicles on sidewalks or streets and shall not block ingress/egress to the site, except for legal on-street parking of motor vehicles. Parking of vehicles, which were being serviced at the facility, in the public right-of-way shall be prohibited.
6. That the owner or an appointed employee shall request loiterers (anyone that loiters immediately outside the premises for more than ten minutes without any purpose) to leave. Police assistance shall be sought, if the request is not honored.
7. That trash receptacles shall be located in the service station building and at each of the dispenser-islands; that the owner shall sweep, contain, and dispose of any contaminants or discharge from motor vehicles, and litter at the service station, abutting sidewalks and gutters, daily (there shall be no on-site overnight storage of such materials).
8. That on-site surface runoff containing motor vehicle products, paint, solvents, or other contaminants shall not be allowed to be discharged onto adjacent properties, the sidewalk, street or to enter the City storm drain system; that all on-site activities and conditions shall comply with all applicable provisions of the Clean Water Act (1972) as amended by the Water Quality Act of 1987, and City of Oakland Storm Water Management and Controls Ordinance No. 11590 C.M.S.
9. There shall be no outdoor speaker or attendant bell, no exterior vending machines, and no exterior pay phones on the site.
10. The facility's final design, including all exterior design details and the final selection of exterior materials, colors and textures, shall be submitted to and approved by the Director of City Planning prior to the issuance of building permits.

November 20, 1996

11. That a landscaping plan, lighting plan, and sign plan, including any building mounted and freestanding signs, shall be submitted for review and approval for consistency with the original approval pursuant to Resolution No. 46278 C.M.S. adopted by the City Council in 1965 to the Director of City Planning, prior to issuance of building permits; that such a landscape plan shall be installed prior to a final building permit inspection; that the landscape plan shall be subject to the City standards for required landscaping and screening per Section 8100 of the Oakland Zoning Regulations, including that all landscaping be permanently maintained in a neat, safe and healthy condition; that signs shall be subject to the Zoning Regulations, Section 7000 General Limitations on Signs, including that no streamers or pennants shall be permitted on the site.
12. The self-service station and its operation are approved pursuant to the Planning Code only, and shall comply with all other applicable codes and requirements imposed by other agencies and City departments.
13. Changes to approved plans shall be subject to review and approval at a new public hearing by the City Planning Commission.
14. The City Planning Commission reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this variance if it is found that the approved activity is violating any of the Conditions of Approval, or the provisions of the Zoning Regulations, or that the operation is causing a public nuisance.
15. Subject to Condition No. 18, all on- and off-site toxic remediation work shall be completed to the satisfaction of the Alameda County Environmental Protection Services, prior to the commencement of any work for the reopening of the service station and prior to the issuance of any City building permits for this site.
16. That any additional uses other than those approved hereby, and as described in this report, shall require a separate application and approval.
17. Prior to issuance of a Certificate of Occupancy, the applicant shall execute and record with Alameda County Recorder's Office a copy of these conditions of approval on a form approved by the Director of City Planning within 30 days of the effective date of this approval. Proof of recordation shall be provided to the Director of City Planning.

November 20, 1996

18. That Major Variance VM65-567 shall be reviewed 12-months from this determination or by November 20, 1997, with regards to the progress and completion of the toxic remediation work (on- and off-site) and dependent upon the owner's compliance with these conditions and the state of the toxic remediation work, the Planning Commission, at that time, may allow the reopening of the service station, **consider amending the conditions of approvals, or set a revocation hearing.**
19. This permit shall become effective upon satisfactory compliance with the above conditions. An appeal of the Commission's decision on the "change of operating characteristics" of the self-service station may be taken to the City Council by any interested party within ten calendar days after the date of this determination or by December 2, 1996.

IV. PUBLIC NUISANCE: Based on community testimony and other evidence in the record, soil and groundwater contamination has existed at this site since 1989. Thus, the site has been contaminated for over seven years. On June 8, 1994, the City issued Desert Petroleum Inc. (former property owner) a Permit to Excavate and Install, Repair, or Remove Inflammable Liquid Tanks. The tank removal permit, which was granted by the Fire Services Agency, is subject to review and approval by other agencies such as the Bay Area Air Quality Management District (BAAQMD). On February 1995, Mr. Shirazian (the current property owner), submitted an Underground Tank Installation Plan along with an Underground Storage Tank Permit Application to the Alameda County Health Care Services Agency, Environmental Protection Services. This application is pending approval by the Alameda County Agency.

When members of the Glenview Neighborhood Association reviewed the plans submitted with this application, they were concerned that tanks might be installed prior to proper remediation of the site. Based on letters of correspondence and community testimony, further concern was expressed regarding the possibility that, although soil contamination may have been contained and some of it removed from the site, groundwater contamination remains below the site, and had leaked to adjacent residential properties.

According to community testimony and evidence in the record, the proposed cleanup and remediation activity on- and off-site is not complete. According to a letter from Alameda County Environmental Protection Services, a "Sewer Lateral Investigation Report, Desert Petroleum Station #793, 4035 Park Boulevard, Oakland, CA," prepared by WEGE, dated 7/3/96, was submitted to their agency. Data presented in this report indicate that "... soil and groundwater

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contamination remains below the residential area immediately downgradient of the former DP station." According to this report, "WEGE identified product sheen on groundwater in this area." The document identified that, "The first priority is to remediate the free product. It must be removed 'to the maximum extent practicable' and 'in a manner that minimizes the spread of contamination.'" According to the agency's Hazardous Materials Specialist, Mr. Thomas Peacock, as part of the interim free product remediation work plan, a well would be located at 4032 Brighton Avenue, thereby enabling Environmental Protection Services to determine the thickness of the product, and facilitate its recovery.

At the October 23rd public hearing, the Alameda County Environmental Protection Services's Hazardous Materials Specialist, Mr. Thomas Peacock, testified that this service station site at 4035 Park Boulevard is one of the top ten contaminated sites of over 800 sites in Alameda County. Additional evidence indicated that installation of the new underground storage tanks for reopening of the station could potentially negatively impact toxic remediation work and could make it difficult to identify future on-site toxic releases. Mr. Peacock also testified that a reasonable timeframe for remediation of the site would be three to five years. However, it is currently unknown when remediation of the site will be completed. According to testimonies received at the October 23rd public hearing, the State Water Resources Control Board had issued a "Letter of Commitment" for reimbursing costs to cleanup the site in the amount not to exceed \$100,000. to Desert Petroleum, Inc. (pursuant to Underground Storage Tank Cleanup Fund, Claim No. 003274 dated September 5, 1995).

Testimony was also given at the October 23rd public hearing that Desert Petroleum, Inc. (former owner) has filed for Chapter 11 bankruptcy protection. Therefore, a timeframe to complete remediation, on- and off-site, is difficult to forecast. Moreover it is difficult to forecast when the adverse impacts on adjacent and nearby residential properties will be abated. At this time, Alameda County Environmental Protection Services has not approved a final remediation plan for the Desert Petroleum site at the 4035 Park Boulevard (see Alameda County Environmental Protection Services letter dated August 12, 1996).

According to testimony by Mr. T. Peacock, long term exposure to contaminants could cause illness to humans and could have negative impacts on the environment. If the site remains unremediated of soil and groundwater contaminants, toxins could migrate and contaminate additional areas on adjacent and nearby residential properties. The potential migration of contaminants and secondary effects to human health could, thereby, potentially result in

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adversely affecting the public health and welfare of surrounding residents. Such contamination could also impair property values.

According to Mr. T. Peacock's testimony, the concomitant circumstances of an existing unremediated and contaminated site along with reopening a service station on the site could exacerbate the remediation plans and work plan proposed for this site. Therefore, in accordance with the Zoning Regulation's objectives to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare, and to achieve the proposals of Oakland's General Plan, it is important that the City of Oakland shall ensure that if a new service station operation were to commence, such an operation will not impede further remediation efforts on this site. Moreover, it is important to ensure that the current contamination, on- and off-site, be remediated prior to the reopening of the service station. The City Planning Commission, therefore, finds that the on- and off-site contamination constitutes a serious public nuisance and, that, because the station is adjacent to a residential community and is located on a major collector street, a compelling public necessity requires that the public nuisance be abated.

Therefore, the City Planning Commission finds that further evaluation of the contamination situation is required. Moreover, that further investigation of the activities on the site is mandatory in terms of how future land uses would coexist with and promote the livability of existing adjacent residential properties, and as to how the existing residential neighborhood character with compact, local shopping districts along Park Boulevard will be preserved. The City Planning Commission finds that the service station cannot be reopened, nor that any physical work shall be done related to reopening the service station, except for remediation of on- and off-site contamination caused by the former operation of the gas station, and that remediation shall be completed to the satisfaction of Alameda County Environmental Protection Services. This finding does not preclude the applicant from submitting new revised plans to Building Services and that building permits be ready-to-issue.

FINDINGS: Pursuant to Section 2002 of the City of Oakland Zoning Regulations, "The general purposes of the ZONING REGULATIONS are to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare..."

Pursuant to Section 2010 of the City of Oakland Zoning Regulations, "no activities or facilities shall be ... constructed, altered, ... maintained, or otherwise changed, ... except in conformity to the ZONING REGULATIONS."

November 20, 1996

Pursuant to Section 9604(a) of the City of Oakland Zoning Regulations, a Major Variance shall be granted only upon determination that the proposal meets, among other things, the following condition, "That the variance, if granted, will not adversely affect the character, livability, or appropriated development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy."

Pursuant to Section 9607 (Adherence to Approved Plans) of the City of Oakland Zoning Regulations, "A variance shall be subject to the plans and other specified conditions upon the basis of which it was granted."

Pursuant to Section 9902 of the City of Oakland Zoning Regulations, "any use or condition caused or permitted to exist in violation of any of the provisions of the ZONING REGULATIONS shall be and is hereby declared to be a public nuisance and may be summarily abated as such by the City of Oakland."

Based upon the evidence contained in the public record, community testimony, and testimonies by speakers at the October 23rd Commission meeting, the City Planning Commission has determined that the existing on- and off-site contamination at the 4035 Park Boulevard site constitutes a "public nuisance" pursuant to Sections 2002 and 9902 of the Zoning Regulations.

Pursuant to Section 9608 of the City of Oakland Zoning Regulations, "In the event of a violation of any of the provisions of the Zoning Regulations, or in the event of a failure to comply with any prescribed condition of approval,... the City Planning Commission may, after holding a public hearing, revoke any variance." The power to revoke includes the power to abate short of revocation.

The following findings are made to support the Commission's determination that a serious public nuisance exists because of the on- and off-site contamination at 4035 Park Boulevard.

1. The City approved the Major Variance in 1965 because it was able to find that the facility was in compliance with the Purposes of the Zoning Regulations as described in Section 2002, and the Variance conditions of Section 9604(a).
2. To maintain conformity with the Purposes of the Zoning Regulations, an activity that is established pursuant to Section 9604 must continue during the life of that permit to satisfy all of the criteria of Section 9604 which allowed the City Council to originally reverse the City Planning Commission's denial, and grant the approval.

November 20, 1996

3. The activity was approved as a full-service type service station in 1965 and, according to evidence in the record, it operated as a full-service type service station until 1989. In 1989, the facility was damaged and has remained in-operable.
4. The evidence in the record indicates that both the service station site, and several adjacent properties and publicly owned property have been contaminated as a result of the station's operations.
5. Remediation on- and off-site is incomplete. The reopening of the service station prior to the completion of remediation work could complicate remediation efforts on the site.
6. The service station is located in an R-50 Medium-Density Residential community, and is located adjacent to abutting residential dwellings.
7. The "public nuisance" at this site contravene the purposes of the Zoning Regulations as set forth in Section 2002.
8. Without City action on the variance, the public nuisances occurring at this facility may continue to adversely affect residents of abutting properties, the surrounding neighborhood, and public facilities.
9. Contamination was carried from the gas station into the sewer that runs below adjacent residential properties. This toxic contamination poses environmental and human health problems.
10. The evidence indicates that the Alameda County Environmental Protection Agency has received health related complaints from nearby residents approximately three years ago.
11. Because of the cited public nuisances, the activity no longer enhances the successful operation of the surrounding area.
12. The operating characteristics of the facility have been changed from one that operated pursuant to the terms of Zoning Regulations, to one that is a public nuisance, thereby violating Sections 2010 (Conformity with Zoning Regulations Required) and 9604(a) (Variance Findings Required) of the Oakland Zoning Regulations.
13. Because of the extent and duration of the public nuisance (since 1989), the location of the station in a residential neighborhood, the bankruptcy filing of Desert Petroleum (the party currently responsible for the remediation work), and the lack of certainty regarding actual remediation completion

November 20, 1996

date, a compelling public necessity exists that all contamination, on- and off-site, shall be remediated prior to commencement of any work that would allow the reopening of the service station.

14. The soil and groundwater contamination which originate from the site, along with associated problems of petroleum release migrating through the sewer line to adjacent residential properties, including the private yards of residents of Brighton Avenue and Hampel Street, and potential environmental and health problems, individually and collectively, constitute a public nuisance as such is defined by Sections 3479 and 3480 of the California Civil Code.
15. The welfare of residents who live near the subject facility have been and continues to be significantly and negatively impacted by the on- and off-site contamination problems caused by the facility's prior operations.
16. The above findings are based entirely and solely on the nature and scope of the described public nuisance, its impact on the surrounding neighborhood, and the lack of certainty regarding actual completion of the toxic remediation work.
17. Because of the foregoing, a compelling public necessity supports adding the following conditions of approval to the original 1965 Major Variance approval for this facility:
 - (a) Subject to subsection (b) below, all on- and off-site toxic remediation work shall be completed to the satisfaction of the Alameda County Environmental Protection Services, prior to the commencement of any work for the reopening of the service station and prior to the issuance of any City Building permits for the site.
 - (b) That Major Variance VM65-567 shall be reviewed 12-months from this determination or by November 20, 1997, with regards to the progress and completion of the toxic remediation work (on- and off-site) and dependent upon the owner's compliance with these conditions and the state of the toxic remediation work, the Planning Commission, at that time, may allow the reopening of the service station.

The Planning Commission's decision regarding the change in operating characteristics of the service station and its determination that a serious public nuisance exists becomes final ten days from the date of the Commission's decision and

November 20, 1996

determination, unless properly appealed to the City Council.

RECOMMENDATION: 1. Approve the staff report, including all findings and conditions of approval.

ADOPTED BY: City Planning Commission: November 20, 1996 (date) 7 ayes, 0 noes - to approve (vote)

ATTACHMENTS:

- A. Staff report dated October 23, 1996 (VM65-567).
- B. Staff report dated October 9, 1996 and reissued October 23, 1996 (A96-143), including location map, site plan, and elevations.
- C. Canopy demolished without permit dated August 15, 1995 (Verified Code Compliance Complaint).
- D. Felix A. Seidler's letter to Mr. Gabriel agreeing to providing conditions of approval, dated July 13, 1996.

F Z299 2VM65567.ML
2A96143V.ML

TO: City Planning Commission

DATE: October 23, 1996

FROM: Staff

CASE FILE NO.: VM65-567

SUBJECT: Review of compliance with Zoning Regulations, consideration of adding conditions of approval, determination of whether public nuisances exist and consideration of revocation of a Major Variance for a service station at 4035 Park Boulevard in the R-50 Medium Density Residential Zone. (Environmental Determination: Exempt, Section 15261(b), project approval predates CEQA.)

BACKGROUND: At the October 9, 1996 meeting, the Commission considered the Administrative Appeal of a determination made by the Director of City Planning, that submitted plans for a service station at 4035 Park Boulevard in the R-50 Medium Density Residential Zone are consistent with the original approval pursuant to Resolution No. 46278 C.M.S. adopted by the City Council on December 7, 1965 (Case No. A96-143). Based on written and verbal testimonies at the October 9th meeting, the Commission directed that a separate hearing be held on October 23, 1996 to determine whether public nuisances exist at the above site, and consider revocation or modification of the Major Variance. The Commission directed that further research be done into the original 1965 approval. In addition, the Commission continued the hearing in the Administrative appeal (Item 15 on the October 23 agenda).

The September 26, 1996 letter from the County of Alameda Health Care Services regarding the site's soil and groundwater contamination resulting from the 1989 gasoline leakage is attached. (See Attachment A.) According to this report, "the 1989 petroleum release appears to have found its way to the backfill material for the sewer line, then travelled through the sewer line in the yards of the residents of Brighton Ave. and Hampel St., finally pooling in the topographic low point of Brighton Avenue." The letter recommends that an environmental engineer be consulted as to the future problems that may be incurred subject to a future release of petroleum.

Desert Petroleum, Inc., former owner of the service station, is subject to the remediation measures recommended in the Workplan in the reports prepared by Western Geo-Engineers. According to the reports, there is still contamination, and remediation required in the residential area immediately downgradient of the site, in particular, in the vicinity of a residence located at 4032 Brighton Avenue. Cleanup of this site is still in progress.

In response to the Commission's request for further information on the 1965 approval, staff has managed to locate the original Board of Adjustment staff report and minutes. This, plus another copy of the resolution approving the variance and related documents, are attached (see Attachment B).

(See Reverse Side)

ATTACHMENT A

11/20/96

Finally, typical conditions of approval for a service station were provided to the applicant's attorney in response to the Commission's request, to be used in possible discussions with the neighborhood group.

- ATTACHMENTS:**
- A. Letter from Alameda County Health Care Services Agency regarding soil remediation, dated September 26, 1996.
 - B. Board of Adjustments staff report dated October 22, 1965, minutes of October 13, 1965 and October 27, 1965 meetings, Resolution No. 46278. C.M.S. dated December 7, 1965, and related documents.

F-Z300 1A96143T.MLX

TO: Board of Adjustments

October 22, 1965

FROM: Staff

Case No. 55-567

SUBJECT: Major Variance to permit the rebuilding of a non-conforming commercial use in a residential zone.

LOCATION: 4035 Park Boulevard (corner of Hempel)

APPLICANT: Tidewater Oil Company

PRESENT CONDITIONS: R-50 Medium Density Residential Zone property containing an existing service station constructed in about 1931 as a complex of three buildings (ie: lubrication building, office and pump island and comfort station). The station has been a non-conforming use since the zoning ordinance was adopted in 1935.

PROPOSAL: Demolish the old facility and construct a new "suburban" type station.

DISCUSSION: The station as it exists can be continued indefinitely as a non-conforming use, as long as no structural alterations are made. The existing facilities although not modern, are functional and not unattractive. The station has apparently been a good neighbor, as none of the neighbors protested at the hearing before the Board of Adjustments. If the site is cleared, six dwelling units might be constructed there.

In order to approve a Major Variance, the Board is required to make four findings as follows:

1. "That strict compliance with the specified regulations would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations due to unique physical or topographic circumstances or conditions of design;" This finding cannot be made as the site can be continued as it exists or cleared and apartments constructed.
2. "That strict compliance with the regulations would deprive the applicant of privileges enjoined by owners of similarly zoned property;" The other property owners in the area have developed their property with residential facilities in accordance with the zoning regulations.
3. "That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy." Traffic and noise generated by such a use is not in character with the residential zone in which it is located.

ATTACHMENT B

10/23/96

4. "That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations". The operation of this non-conforming use without change is consistent with the zoning regulations as it is assumed that such uses in time will be replaced with conforming uses as the facilities become outdated. For this reason, the granting of a variance to reconstruct this station would be a grant of special privilege and would also be inconsistent with the purposes of the zoning regulations.

If the City were to feel that a commercial use of this site is acceptable perpetually into the future, the proper procedure would be rezoning, and not a major variance.

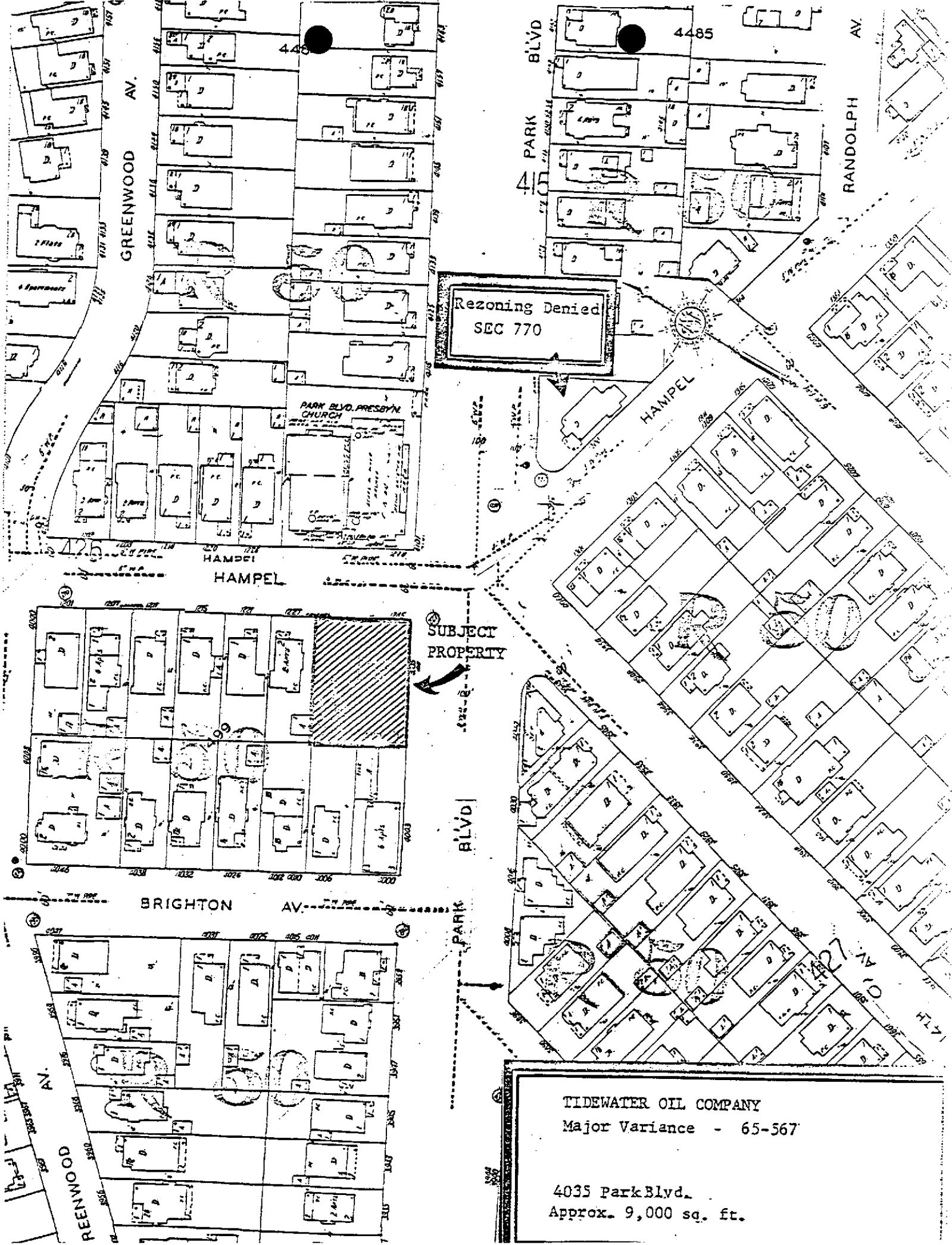
PROTESTS: None.

RECOMMENDATION: Deny this application.

Respectfully submitted,

Norman J. Lind

Norman J. Lind
Director of City Planning



Rezoning Denied
SEC 770

SUBJECT
PROPERTY

TIDEWATER OIL COMPANY
Major Variance - 65-567
4035 Park Blvd.
Approx. 9,000 sq. ft.

RESOLUTION REVERSING DECISION OF THE BOARD OF ADJUSTMENTS DENYING A MAJOR VARIANCE TO DEMOLISH EXISTING AND CONSTRUCT NEW SERVICE STATION AT 4935 PARK BOULEVARD; AND GRANTING SAME, ON CONDITION.

WHEREAS, on or about October 1, 1965, Tidewater Oil Company applied to the Board of Adjustments for a Major Variance to demolish existing and construct new service station at 4935 Park Boulevard, said property being zoned R-50 Medium Density Residential Zone; and

WHEREAS, a notice of public hearing upon said application was duly made and given, and a public hearing thereon was held on the 13th day of October, 1965; and

WHEREAS, on October 27, 1965, the Board of Adjustments denied said application; and

WHEREAS, thereafter, and within the time provided therefor, an appeal was filed from said decision of said Board, and thereafter review of said decision came on for hearing before the City Council; now, therefore, be it

RESOLVED: That the City Council, having heard all of the evidence adduced on behalf of all interested parties, finds and determines that:

(a) Strict compliance with the Zoning Regulations would result in practical difficulties and unnecessary hardship, inconsistent with the purposes of the regulations, due to the unique physical and topographical circumstances and conditions of design.

(b) Strict compliance would deprive the applicant of privileges enjoyed by owners of similarly zoned property.

(c) Subject to the prior approval of the plans by the Planning Commission, the granting of the variance, as applied for, would not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area and would not be detrimental to public welfare or contrary to adopted plans and development policy.

(d) The granting of the variance, as applied for, would not constitute a grant of special privilege, inconsistent with limitations imposed on similarly zoned properties, or inconsistent with the purposes of the Zoning Regulations;

and be it

FURTHER RESOLVED: That the decision of the Board of Adjustments denying a Major Variance to demolish an existing service station, and construct a new one at said location be, and the same hereby is, reversed, and said variance be, and the same hereby is, granted, on condition that the plans be approved by the Planning Commission prior to issuance of a building permit. ✓

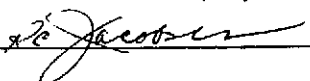
I certify that the foregoing is a full, true and correct copy of a Resolution passed by the City Council of the City of Oakland, Calif.,

DEC 7 1965

on

GLADYS H. MURPHY, City Clerk

Per

 Deputy

OLD BUSINESS

Oct. 27, 1965

- 1. GROSS, Sylvan D. and Jacqueline 65-537

Denial of application for a Major Variance in order to convert a recreation room into an additional dwelling unit in the existing 26-unit apartment building on the property containing 25,876 sq. ft. at 3814-39th Avenue in the R-50 Medium Density Residential Zone.

The staff report recommended denial. Vote on approval: 0 ayes, 3 noes.

- 2. SANDERS, Jeff L. 65-539

Denial of application for a Major Variance in order to construct a building with office space and three dwelling units on the property at 937-62d Street in the M-30 General Industrial Zone.

The staff report recommended denial. Vote on approval: 0 ayes, 3 noes.

- 3. GRAY, Ernest C. 65-553

Denial of application for a Major Variance in order to construct a 6-unit, 3-story apartment building on the property containing 5000 sq. ft. at 3567 Galindo Street, in the R-50 Medium Density Residential Zone.

The staff report recommended denial. Vote on approval: 0 ayes, 3 noes.

- 4. PLEASANT GROVE BAPTIST CHURCH 65-557

Action postponed on application for a Major Variance in order to vary the number of offstreet parking spaces for the proposed church to be constructed on the property at 1124 Adeline Street in the R-70 High Density Residential Zone.

The staff report recommended deferring action. Lind advised: the Redevelopment Agency staff requests that action be set aside to allow them to review with the church the entire proposal. Lind said this appeared to be agreeable to the applicant. The chairman ruled that the matter be postponed.

- 5. TIDEWATER OIL COMPANY 65-567

Denial of application for a Major Variance in order to demolish the existing service station and construct a new service station building on the property at 4035 Park Boulevard (SWC of Park Blvd. and Hempel Street) in the R-50 Medium Density Residential Zone.

The staff report recommended denial. Vote on approval: 0 ayes, 3 noes.

- 6. KNOPF, Gus A. 65-573

Denial of application for a Major Variance in order to add an additional dwelling unit to the existing 3-unit building, making a total of four (4) dwelling units on the property containing 10,000 sq. ft. at 2933 Carmel Street in the R-30 One-Family Residential Zone.

The staff report recommended denial. Vote on approval: 0 ayes, 3 noes.

NEW BUSINESS

- 1. LAPHAM, William 65-583

Denial of Minor Variance

The Director had denied this application and the applicant appealed to the Board. William Lapham, 1433 Leimert, said: the ordinance should allow steps to the ground level on narrow hillside lots, within the side yard area. Vote on approval: 0 ayes, 3 noes.

Mary Herbert
 Mary Herbert
 Secretary

MH:bp

TO: City Planning Commission

DATE: October 9, 1996

FROM: Staff

CASE FILE NO.: A96-143
(VM65-567)

APPELLANT: Glenview Neighborhood Association

SUBJECT: Administrative appeal of a determination by the Director of City Planning that submitted plans for a service station at 4035 Park Boulevard in the R-50 Medium Density Residential Zone are consistent with the original approval pursuant to Resolution No. 46278 C.M.S. adopted by the City Council on December 7, 1965. (Environmental Determination: Exempt, Section 15261(b), project approval predates CEQA; or Section 15268, ministerial project.)

BACKGROUND: In October 1965, Tidewater Oil Company applied for a Major Variance to demolish an existing vacant service station and construct a new one at 4035 Park Boulevard, at the westerly intersection of Park Boulevard and Hampel Street, in the R-50 Medium Density Residential Zone. This Major Variance was denied, and was appealed to the City Council, which approved it by Resolution No. 46278 C.M.S. on December 7, 1965. (See Attachment C.) This new service station was subsequently constructed and still exists, although it has been vacant for a number of years. Mr. Ali Shirazian now proposes to reopen the service station pursuant to the Major Variance granted by the City Council in 1965.

In response to inquiries by Mr. Shirazian, the Zoning Manager wrote a letter dated October 24, 1995 which made the determination that the property, "... may be utilized as a service station, provided that no expansion of the facility occurs without all required city approvals." Based on staff's site visits, complaint records, and information available in City records, it became apparent that the vacant gas station had been modified, e.g., canopy demolished without permit. Consequently, the applicant submitted revised plans to restore the facility to its original condition. On June 25, 1996, the Zoning Manager made a determination that the applicant's revised plans and elevations were consistent with the facility that was originally approved by the City in 1965. (See Attachment D.)

Since March 1996, members of the Glenview Neighborhood Association (GNA) have been carefully reviewing the use of the property and any proposals related to the remediation of contaminated soil on the site and installation of underground fuel tanks. On March 21, 1996, a hold was placed to stop any permits from being issued for any work related to installing a gas station at this site. On July 5, 1996, after reviewing the latest revised plans and elevations submitted by the applicant to the Zoning Division, GNA appealed the Zoning Manager's consistency determination. (See Attachment E.) On August 12, 1996, GNA submitted written requests to the Secretary of the Planning Commission to extend the time limitation on the appeal for a total of 105 days to October 18, 1996. (See Attachment F.) Therefore, the Administrative Appeal was set for the

(See Reverse Side)

(Reissued from

ATTACHMENT B

11/20/96

October 9, 1996

The time extension was requested to allow for negotiation between the applicant, the property owner, and the City of Oakland. Council Member John Russo requested that "... the City of Oakland Real Estate Department research the possibility of acquiring the site for use as a merchant parking lot." The Real Estate Division has not made any further attempts to acquire this site at this time due to major concerns regarding the extent of toxic contamination on this property.

Approximately nine letters of opposition to a service station at this site, and a petition with 19 signatures from merchants supporting a Merchants Parking Lot have been received by staff.

DISCUSSION: One of the concerns raised in the appeal letter is that the set of plans approved by the City Council in 1965 "... are no longer available." Building plans were lost because of the need to move files and plans during the 1989 Loma Prieta earthquake and the 1991 electrical fire in the City offices. However, a prior zoning application denying the operation of a convenience market (VM88-368) contained a copy of the original survey of the site (Proposed and Existing Improvements, Service Station #108 - Park Boulevard & Hampel Street," dated March 13, 1966, by Tidewater Oil Company). A hand-written remark on the survey referenced the Major Variance application of the service station (Case # VM65-567). This site survey is considered accurate. The case file also contained a photo of the service station on the site as it appeared in 1988. Thus, although the original plans of VM65-567 are no longer available, there is sufficient evidence in the record to allow the City to make the determination that the proposed plans and elevations are consistent with the facility as originally approved by the City in 1965.

Staff has also inquired with the City's Fire Prevention Bureau, Code Compliance Division, and the County of Alameda Health Care Services regarding the status and issues raised in the appellant's letter regarding, "... soil and groundwater contamination resulting from gasoline leakage which can be traced to 1989." Permits and recent investigations which occurred at this site are listed and summarized below.

On June 8, 1994, the City of Oakland approved an excavation permit to Desert Petroleum, Inc. (former owner) to remove three fuel tanks and a waste oil tank (with a total fuel tank capacity of 26,000 gallons and 250 gallons, respectively). The tank removal permit was granted by the Fire and Building Departments subject to review and approval by other agencies such as the Bay Area Air Quality Management District (BAAQMD). Staff contacted the BAAQMD's Enforcement Division. According to this division, gasoline dispensing facilities (GDF's) must have a permit to operate from the District. Any projects involving the vapor recovery system at GDF's must be authorized by the District prior to construction. Since this site would involve the replacement and installation of tanks and/or vapor recovery lines, dispenser modification, and the addition of nozzles, this project is subject to the regulations of this District and of any other applicable agencies.

October 9, 1996

On February 1995, the applicant submitted an Underground Tank Installation Plan along with an Underground Storage Tank Permit Application to the Alameda County Health Care Services Agency, Department of Environmental Health. At the writing of this report, these plans are pending approval by the Alameda County Health Care Services Agency.

The Glenview Neighborhood Association (GNA) has reviewed these plans and expressed concern that tanks might be installed without proper remediation of the site. The GNA has submitted a letter regarding the proposed remediation of this site to the Office of Planning and Building including a "Workplan to Further Evaluate Extent of Soil and Water Contamination Associated with Former Desert Petroleum Station #793" dated November 1995. According to recent discussions with a Hazardous Materials Specialist of the Alameda County Health Care Services, reports have been prepared by Western Geo-Engineers for this site, e.g., "Sewer Lateral Investigation Report, Desert Petroleum Station #793, 4035 Park Boulevard, Oakland, CA," dated July 3, 1996, and "Sewer Lateral Investigation Report, 4006 Brighton Avenue, Oakland, CA," dated July 12, 1996. The site is subject to the remediation measures recommended in this report. According to the reports, there is still contamination and remediation required in the residential area immediately downgradient of the site, in particular, in the vicinity of a residence located at 4032 Brighton Avenue. At this time, cleanup of this site is still in progress, with the first priority to begin interim free product remediation. The most recent correspondence regarding this issue is a letter from the Alameda County Health Care Services Agency dated September 26, 1996. (See Attachment G.)

According to records at the Code Compliance Division, the vacant service station site has been cited with several complaints, e.g., branches from a tree, trash, and furniture on the site, doing extensive work such as excavation, etc. On August 1995, a Code Compliance inspector verified that part of the service station's canopy had been demolished without permit. Therefore, on July 1996, "no permits were to be taken in or issued for any work related to the installation of a gas station."

On June 17, 1996, staff conducted a field visit with a Code Enforcement inspector to investigate the site's current conditions and confirm that there had been no recent changes, removal, or additions to the existing facility or site. According to the observations at the site, the facility's canopy had been partially removed. The site is overgrown with weeds. The facility is uninhabited and needs major repair and restoration.

Staff has also recently reviewed records of this property at the City's Fire Prevention Bureau (FPB). Since receiving the Underground Tank Enclosure Plan of 1994, the FPB does not have any new permits for this property on file. Should new permits be required for installation of fuel tanks, the FPB will coordinate its permitting process with the County of Alameda.

FINDINGS: As described above, on June 25, 1996, the Director

October 9, 1996

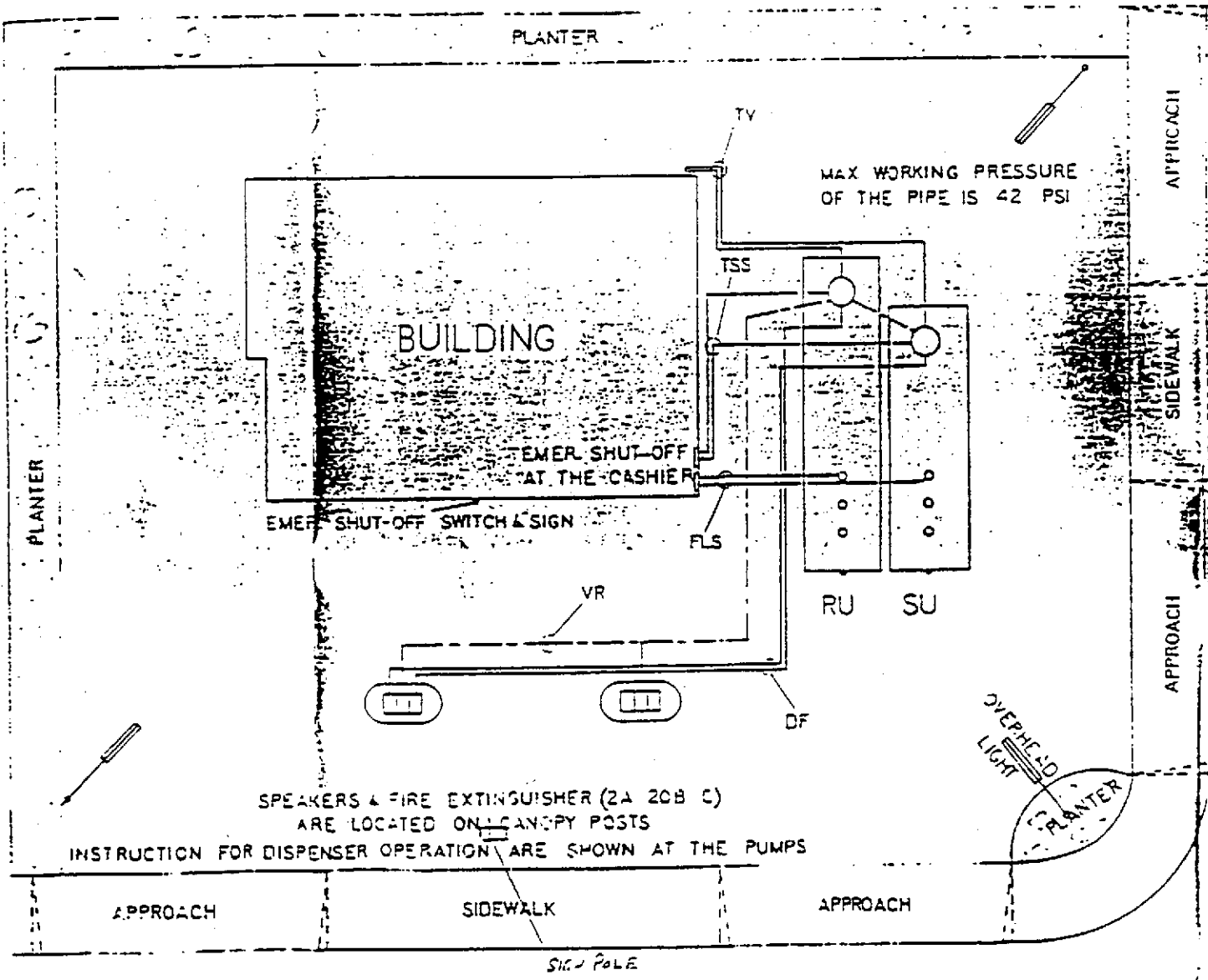
determined that submitted plans to the Office of Planning and Building were consistent with the facility that was approved by the City in 1965 (per Resolution No. 46278 C.M.S.). The determination by the Director was based on whether the proposed plans would restore the facility to what was there before. This determination is a ministerial decision since no discretion is required. The determination does not involve discretionary review or approval of the use or development of the site. Although changes, e.g. removal of canopy and posts, were made without benefit of permits, new zoning approvals are not required since the Major Variance runs with the land. The applicant has agreed to replace the canopy and all other modifications necessary to bring it back to the facility originally approved in 1965.

An administrative appeal of this determination should be directly related to the Director's determination that the revised plans for the service station are consistent with what was approved by the City in 1965. The proposed plans are consistent with the original facility as reconstructed from information available in City files.

The letter appealing this determination has raised several concerns of the Glenview Neighborhood Association and other interested parties. While the neighborhood has raised a number of operating concerns and wishes to restrict or condition the use of the property, the determination letter related solely to a comparison of the physical characteristics of the facility as proposed and approved in 1965. Operational issues and concerns raised in the appeal letter do not relate to the facility's adherence to these approved plans. The appeal should be limited to what was decided by the Director, which solely relates to the facility's adherence to previously approved plans.

- RECOMMENDATIONS:
1. Affirm staff's environmental determination.
 2. Deny the appeal and affirm the Director's determination that the plans are consistent with the facility that was approved by the City in 1965 according to available information in City records.

- ATTACHMENTS:
- A. Location Map
 - B. Partial Plot Plan, Sections and Elevations
 - C. Resolution No. 46278 C.M.S., adopted by the City Council on December 7, 1965
 - D. Director's Determination Letter dated June 25, 1996
 - E. Appellant's Appeal including Letter dated July 5, 1996
 - F. Appellant's Letter requesting continuance of Appeal Hearing dated August 12, 1996
 - G. Letter from Alameda County Health Care Services Agency regarding soil remediation, dated September 26, 1996.



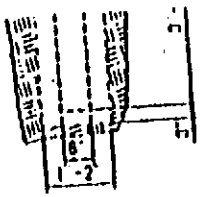
HAMPEL SI

PARK Blvd

7 GUARD POST TYPICAL

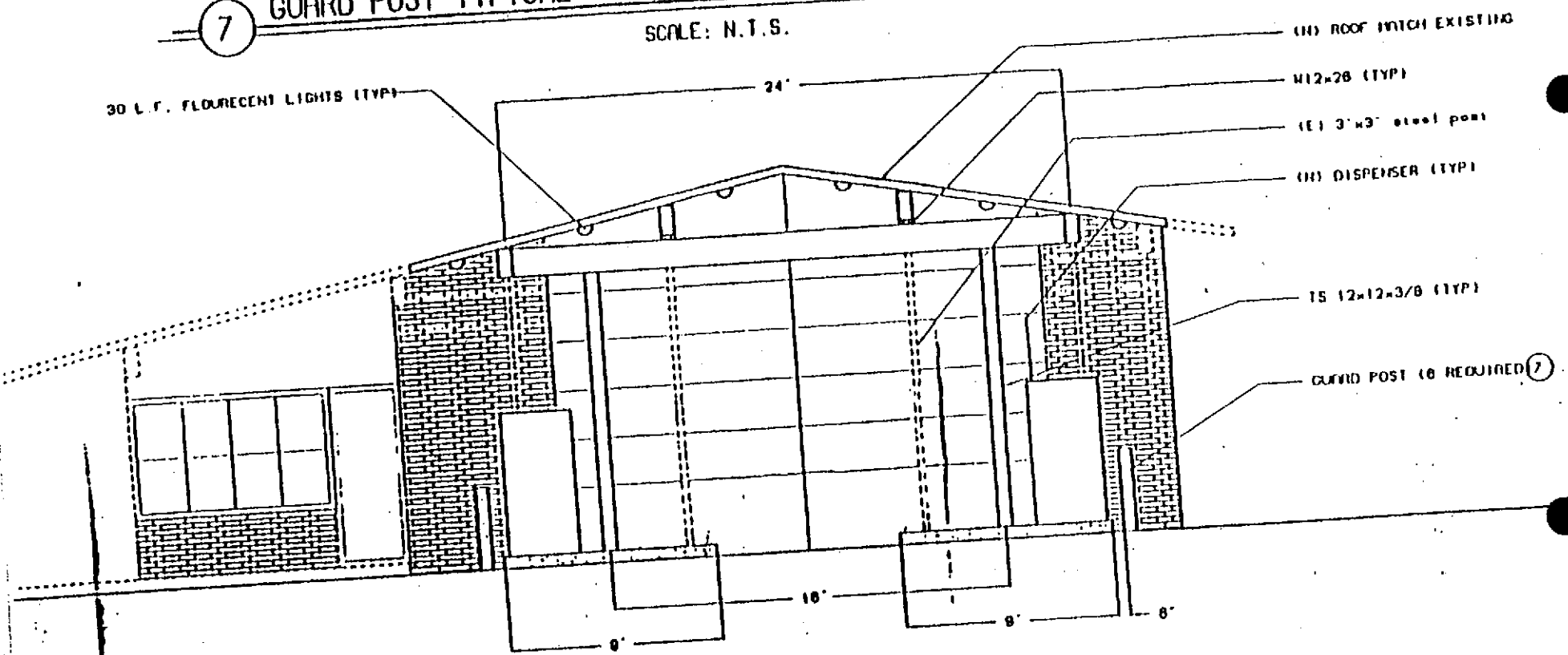
SCALE: N.T.S.

30 L.F. FLOURECENT LIGHTS (TYP)



5 TYPICAL SECTION

SCALE: 1"=20'



(H) ROOF HATCH EXISTING

M12x28 (TYP)

(E) 3"x3" steel post

(H) DISPENSER (TYP)

15 12"x12"x3/8 (TYP)

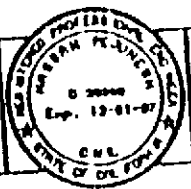
GUARD POST (6 REQUIRED) 7

2 SECTION

SCALE: 1/4"=1'

ND CONSTRUCTION

TELEPHONE: (918) 401-8823

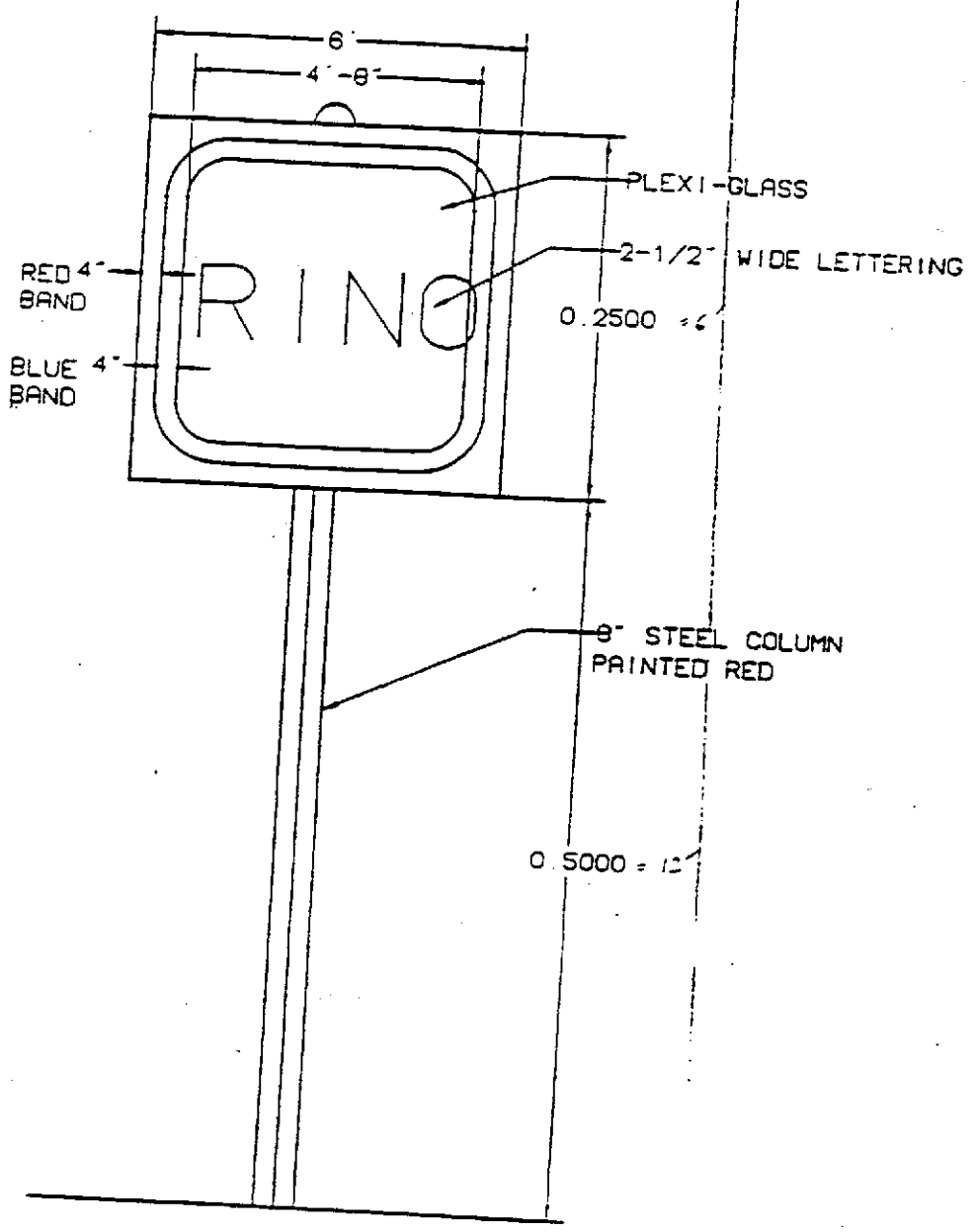


IMPROVEMENT PLANS FOR:
TONY'S EXPRESS
 4035 PARK BLVD. OAKLAND

CALIFORNIA 94602

C-1

FILE NO: ARZ1 SH. C-1 (REVISED 8-2-66)



1

SIGN SECTION

SCALE: 1/2" = 1'

ENVIRONMENTAL
PROTECTION

TO: City Planning Commission REPORT DATE: February 18, 1998

FROM: Staff 88 FEB 18 1998 CASE FILE NO.: VM65-567

SUBJECT: Review of compliance with conditions of approval and consideration of amending conditions of approval of a previously approved Major Variance for a service station at 4035 Park Boulevard in the R-50 Medium Density Residential Zone. (Planning Area: Lower Hills.)

BACKGROUND AND HISTORY: The service station at 4035 Park Boulevard was originally built in 1931. It was reconstructed and operated by Tidewater Oil Co. as a 'full-service' type service station in 1966. The station was then closed in 1989, after the Loma Prieta earthquake, when a faulty piping replacement job released gasoline on the site. Desert Petroleum, Inc. (former property owners) took responsibility to remove the underground inflammable liquid tanks (Certificate No. 9821, June 8, 1994). During subsurface investigations of the site, gasoline was detected in the soil and groundwater. Since 1989, the petroleum-impacted site has remained vacant.

The following summary and sequence of zoning approvals and events, which recapitulate the physical characteristics and operational issues related to the service station site, is provided because they influence the manner in which site-specific soil and groundwater cleanup levels will be implemented protecting human health and the environment.

ZONING APPROVALS APPEALS AND LITIGATION: Sometime during 1995, Mr. Ali Shirazian purchased the site from Desert Petroleum, Inc. Mr. Shirazian then contacted the Zoning Manager Oakland to inquire if the vacant facility could be utilized as a service station. The Zoning Manager determined that revised plans were necessary to determine if the facility would be restored to its original condition. Consequently, Mr. Shirazian submitted revised plans. On October 24, 1995, the Zoning Manager made the determination that the latest submitted revised plans were consistent with the facility approved by the City Council in 1965 (Resolution No. 46278 C.M.S. reversing the denial of a Major Variance, VM65-567).

On July 5, 1996, Mr. Michael Gabriel of the Glenview Neighborhood Association (GNA) appealed the Zoning Manager's consistency determination. A public hearing on the Administrative Appeal (Case Number A96-143) was conducted on October 9, 1996. At the hearing, the Planning Commission directed that a revocation hearing be held to determine whether a public nuisance exists at the site, and to consider revocation or modification of the Major Variance (VM65-567).

88 FEB 18 PM 3:59

(SEE REVERSE SIDE)

ENVIRONMENTAL
PROTECTION

February 18, 1998

The revocation hearing was conducted on October 23, 1996 to review the service station's compliance with the Zoning Regulations, consider adding conditions of approval, determine whether public nuisances exist, and consider revocation of the Major Variance. Alameda County's Hazardous Materials Specialist, Thomas Peacock, testified that of over 800 contaminated sites in Alameda County, the site is one of the County's top ten.

At the November 20, 1996 Planning Commission meeting, based on community testimony and evidence in the record that the site's soil and groundwater contamination did not meet the requirements of State and local health laws, the Planning Commission determined that a public nuisance exists at the site. The Commission also approved the staff report, including all findings and conditions of approval. Moreover, the Planning Commission reserved the right to allow the reopening of the service station subject to its cleanup status, which was scheduled to be reviewed at a 12-months compliance review meeting.

On December 20, 1996, David A. Self, Attorney for Mr. Ali Shirazian, filed an appeal of the Commission's decision to approve the conditions of approval attached to the Major Variance and their decision that a public nuisance exists.

On January 17, 1997, a public hearing was conducted by the City Council on the appeal. Subsequently, on March 18, 1997, the City Council upheld the decision of the City Planning Commission in adding conditions of approval and determining that a serious public nuisance exists. (Resolution No. 73346 C.M.S.).

Mr. Shirazian then filed a lawsuit on the City's determination. At the November 19, 1997 Planning Commission meeting, the City Attorney gave a verbal status report that the 12-months compliance review was postponed pending resolution of the litigation. Subsequently, on February 4, 1998, the City Attorney provided the Commission with a verbal status report of the Court's Order which upheld the determination of the City of Oakland in adding conditions of approval to the Major Variance for the service station. Property owners of the service station site may appeal this decision to the Court of Appeals.

The remaining portion of this report Compliance is to address the status of the site cleanup.

COMPLIANCE REVIEW: As mentioned above, results from investigations of soil and groundwater samples at and surrounding the Desert Petroleum site (4035 Park Boulevard) resulted in the determination that there is on- and off-site contamination. According to investigations, remediation is also required in the residential

February 18, 1998

area immediately downgradient of the site, in particular, along Brighton Avenue. Several studies have been conducted by environmental engineers, e.g., Western Geo-Engineers and SOMA Environmental Engineering, etc. Several meetings have been conducted by the County of Alameda, Environmental Health Services with the former and new property owners, and environmental engineers, soil engineers and toxicologists to discuss the parameters for a risk assessment of the site.

Reimbursement funding has been obtained by Desert Petroleum, Inc. John Rutherford of Desert Petroleum, Inc., had formerly applied to the State Water Resources Control Board (SWRCB) for funding for corrective action to cleanup the site. Based upon the (SWRCB), Division of Clean Water Programs, review of corrective action costs of site cleanup incurred to date, the State Board issued a Letter of Commitment in an amount not to exceed \$100,000. (Underground Storage Tank Cleanup Fund, Claim No. 3274, dated September 25, 1995). The costs incurred for containing and cleaning up the toxins of the site to date is approximately \$250,000.

On January 1997, staff was informed by Cheryl Gordon, California Environmental Programs of the State of California, that the approved State Funding to clean up the site is not transferable to the new property owners of the site, namely, Mr. Shirazian and Mr. Razi. Therefore, subsequent meetings to review and proceed with all active claims for reimbursement for corrective action costs involved both the former and new property owners.

During 1997, further monitoring and investigations of the 'Desert Petroleum site # 793' was conducted to determine on- and off-site contamination, including migration of the free product plume at Brighton Avenue ("Free Product Investigation Report along Brighton Avenue" with "Corrective Action Workplan", WEGE, dated 4/3/97).

On May 6, 1997, the County of Alameda issued a letter to Desert Petroleum acknowledging receipt of reports on groundwater monitoring and sampling, and free product along Brighton Avenue. Concerns regarding the workplan, which involved groundwater injection and recovery, were discussed with Regional Water Quality Control Board (RWQCB). At that time, it was noted that a risk assessment or risk evaluation must be conducted and approved by the County's Environmental Health Services to determine the threat to human health, using three scenarios for the subject site, namely, residential, commercial, and construction scenarios.

The State Water Resources Control Board (SWRCB) requires pre-approval for reimbursement of remediation costs. On September 29, 1997, Steve Marquez of the State Water Resources Control Board issued a pre-approval for corrective action costs for the amount of

February 18, 1998

\$4,200. (Tier II).

On November 5, 1997, a workplan was prepared by Western Geo-Engineers to perform remedial efforts at the site and the surrounding areas (Risk Base Corrective Action --RBCA-- tier II). Due to the topography and land use (residential) of the area affected by dissolved and free phase gasoline plume, screening studies are to be conducted at the service station, a portion of the sewer lateral (northwest of site into rear yards of adjacent residential properties), and Brighton Avenue. In general, the work performed to date includes clean-up of the top portion of the site, excavating the soil, and removing old tanks. Data from the Tier II Risk Assessment conducted downgradient of the site (Brighton Avenue) is still to be evaluated by the City of Oakland, Fire Services Agency.

Subsequently, on November 19, 1997, Desert Petroleum submitted the workplan to perform a RBCA Tier II Risk Assessment for review and approval by Alameda County. On December 5, 1997, Thomas Peacock of the County of Alameda, responded to John Rutherford of Desert Petroleum regarding the County's concerns of the workplan (Tier II Risk Assessment) and that the County "... accepts your workplan...".

On December 12, 1997, the County of Alameda met with John Rutherford of Desert Petroleum, Inc. (former property owner), Ali Shirazian and Toni Razi (new property owners), Mansour Sepher of SOMA Environmental, and George Converse of Western Geo-Engineers (WEGE) to further discuss some concerns regarding the workplan, in particular, the course of corrective action for remediating the site to a Tier II level.

STATUS OF CLEANUP: On January 2, 1998, staff contacted Mr. Thomas Peacock regarding the progress of the toxic remediation work (on- and off-site) proposed for the site. Mr. Peacock stated that he had approved a workplan to perform a Risk Base Corrective Action (RBCA) Tier II, dated November 5, 1997. At that time, he reiterated that the site was among the top ten toxic sites in Alameda County. He also stated that due to the State's Consolidated Uniform Program Agency (CUPA), the Fire Services Agency of the City of Oakland would be administering and overseeing the workplan. At that time, Mr. Peacock suggested that staff contact Mr. Leroy Griffin, Supervisor of Hazardous Materials for the Oakland Office of Emergency Services, Fire services Agency.

Staff has had verbal discussions and meetings on January 12th and February 2nd, 1998 with Mr. Griffin. On January 30, 1998, Mr. Griffin informed staff that he received a copy of the workplan from Mr. Peacock.

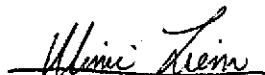
February 18, 1998

Mr. Griffin commented that, "the workplan had not been finalized", and stated that he is waiting for more data and information from the investigations proposed in the workplan. Based on verbal conversations with Mr. Griffin, it appears he still needs to obtain data on the concentrations of electron acceptors and vapor samples (Items 6 and 7, Page 2, Workplan for Tier Two). Once the current groundwater concentrations of the constituents of concern and electron acceptors are determined, the Tier II studies will be performed. According to Mr. Griffin, "The sampling of the soils at this site will determine if conditions are consistent to allow for natural attenuation." Furthermore, the results of the Tier II assessments will provide cost benefit remedial action plans and suggest that no further action is needed for the different studies conducted on the site.

RECOMMENDATION:

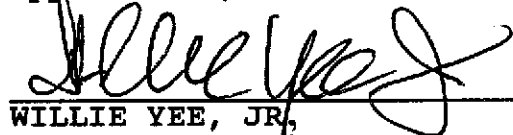
1. Direct staff to continue monitoring implementation of the Tier II Risk Assessment for the site;
2. Pending the results of the Tier II Assessment, including data on groundwater and vapor monitoring, conduct another compliance review in six months.

Prepared by:



MIMI LIEM
Planner II

Approved: ,



WILLIE YEE, JR.
Zoning Administrator

Approved for forwarding to the
City Planning Commission:



ANDREW ALTMAN
Chief of Planning

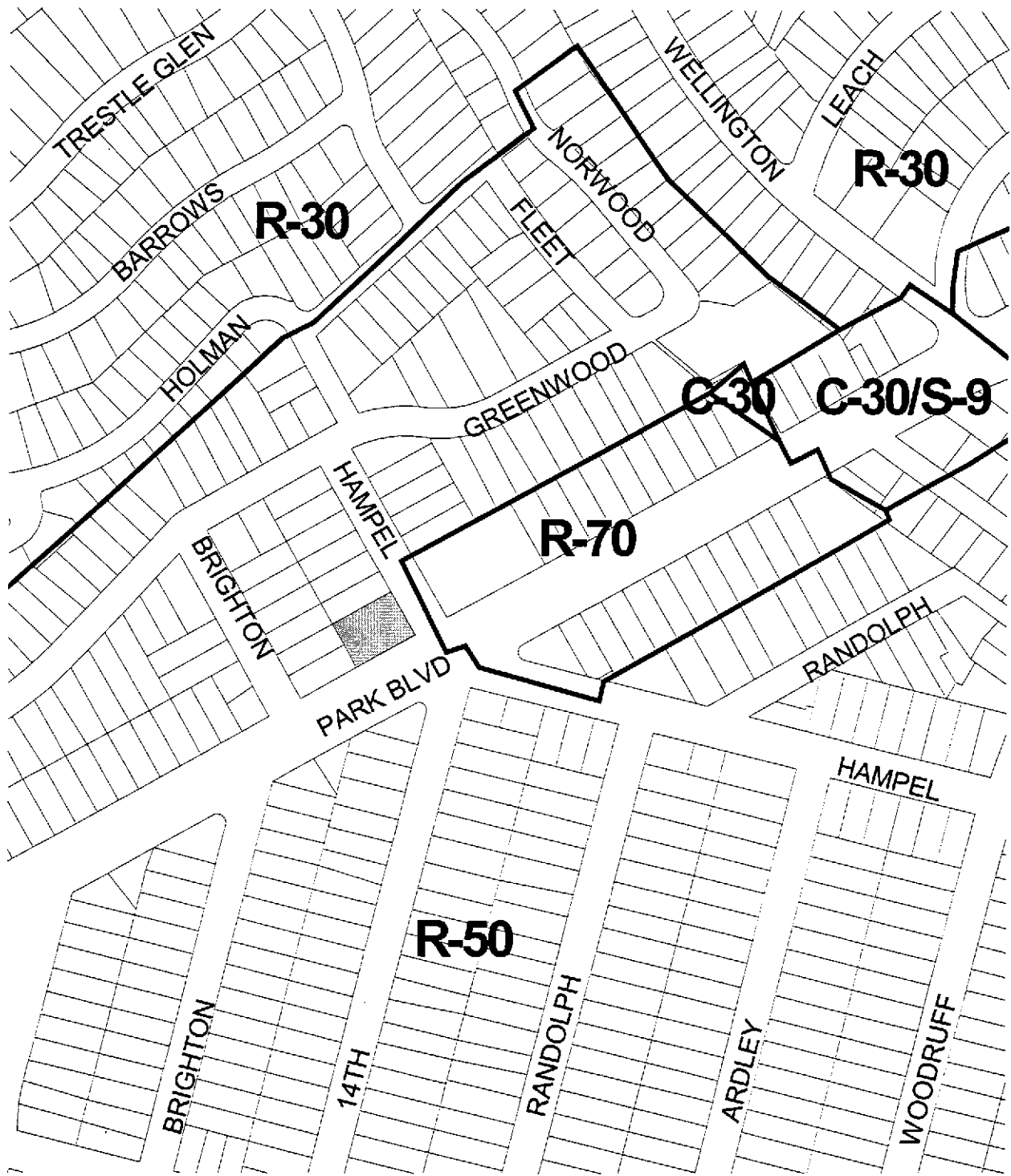
February 18, 1998

ATTACHMENT:

- A. Location Map
- B. Correspondence Letter from Alameda County dated December 5, 1997.
- C. Letter from Desert Petroleum to County of review of workplan dated November 19, 1997.
- D. Workplan for Tier II prepared by WEGE dated November 5, 1997.
- E. Pre-Approval for Corrective Action Costs, Claim No. 3274, dated September 29, 1997.
- F. County's letter to Desert Petroleum of reports dated May 6, 1997.
- G. Underground Storage Tank Cleanup Fund, Claim No. 3274 dated September 25, 1995.
- H. Staff Report dated November 20, 1996.

F-2307 2V65567A.ML

CITY OF OAKLAND PLANNING COMMISSION



Location Map



APPLICANT: City Planning Commission
ADDRESS / LOCATION: 4035 Park Blvc. ZONING DISTRICT: R - 50
CASE FILE NO.: VM 65-567

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



December 5, 1997

STID 1248
Page 1 of 2

John Rutherford
Desert Petroleum Inc.
PO Box 1601
Oxnard, CA 93032

ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION (LOP)
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

RE: Desert Petroleum site #793, 4035 Park Blvd., Oakland, CA 94602

Dear Mr. Rutherford,

This office has received and reviewed a workplan for a Tier II Risk Assessment dated November 19, 1997 and a Pre-Approval of Corrective Action Costs from the Clean-up Fund dated September 29, 1997. Also, you, Mr. Sepehr, Mr. Converse, Mr. Shahnazi, and Mr. Razi met with me yesterday concerning these reports and actions needed to be done regarding the above site. The following are comments concerning these reports and this meeting:

1. In the meeting you requested us to issue a "Directive" for you to accomplish a Tier II risk assessment. While this office may approve workplans we do not direct that a specified approach be used when there may be other approaches that are more desirable. In most cases the most desirable approach is for the contamination to be remediated, naturally or otherwise, rather than for it to be dismissed as not significant. For this reason, we accept your workplan, as written, rather than telling you to do specified work which may not be in your best interests.
2. The last page of the workplan gives a cost breakdown, which is for more than the pre-approval from the Fund. This office also does not operate as a go between regarding approval of costs for specified work. You will have to deal with the Fund on what actions and costs they will approve for reimbursement.
3. The question of operating a gasoline station or a vehicle maintenance shop must be directed to the City of Oakland. As of July 1, 1997, the City of Oakland became the Consolidated Unified Program Agency for laws governing these operations. The County no longer has jurisdiction over underground storage tanks or hazardous materials in the City of Oakland. Any questions should be referred to the LeRoy Greffin of the Fire Department at 238-7759.

The purpose of risk assessment is to develop site-specific soil and groundwater cleanup levels protective of human health and the environment. Again, this office accepts the workplan which you have written. Please call us at least three days before commencing the field work portion of the plan.

ATTACHMENT B
2/18/98

JAN-06-98 TUE 14:18 ID:805-654-8084 TEL NO:805-654-0720 #918 P07
December 5, 1997

STID 1248

page 2 of 2

John Rutherford

If you have any questions or comments, please contact me directly at 510-567-6782.

Sincerely,



Thomas Peacock, Manager
Environmental Protection Division

cc: Tony Razi, 3609 East 14th St., Oakland, CA 94601
Alireza Shirazian, 2 Anchor Dr. # F-386, Emeryville, CA 94608
Mansour Sepehr, SOMA Environmental Engineering, 2680 Bishop Dr., Suite 203, San Ramon, CA 94583
George Converse, WEGE, 1386 E. Beamer St., Woodland CA 95776
Michael Gabriel, Glenview Neighborhood Association, 4200 Park Blvd., Box 111, Oakland, CA 94602
Attn: Shawn Stark, Councilmember Dick Spees' office, City of Oakland, One City Hall Plaza, 2nd Floor, Oakland, CA 94612
Attn: Nicole Brown, Councilmember John Russo's office, City of Oakland, One City Hall Plaza, 2nd Floor, Oakland CA 94612
Leroy Griffin, Oakland Fire Dept., OES, Haz Mat Mgmt Program, 1605 Martin Luther King Jr Dr., Oakland, CA 94612
Joseph Cotton, City of Oakland, Environmental Services, 1333 Broadway, Suite 330A, Oakland, CA 94612
Kevin Graves, RWQCB
Ralph Wheeler, City of Oakland, City Attorney's Office, One City Hall Plaza, Oakland, CA 94612
Steve Marquez, SWRCB, Cleanup Fund
Thomas Peacock/file

je.1248-H

desert petroleum inc.

John Rutherford
Director
Environmental Affairs

5770 ~~3075~~
1248

November 19, 1997

Mr. Thomas Peacock
Alameda County Health Care Services
Environmental Protection Division
1131 Harbor Bay Parkway, Suite 250
Alameda, California 94502-6577

Re: Former Desert Petroleum Property,
4035 Park Blvd., Oakland, California

Dear Mr. Peacock:

Enclosed please find a workplan prepared by our consultant,
Western Geo-Engineers to perform a RBCA Tier Two assessment at
the above referenced site.

We had previously submitted to the State Cleanup Fund a plan for
pre-approval which was a Tier Three assessment. This plan was
not approved due to the costs involved. The Fund has however
approved expenditure for a reduced Tier Two assessment.

Our original submittal to the Fund was based on our understanding
of your staff's suggested request for a Risk Based assessment
made during a meeting at your agency in May 1997 and by letter
correspondence dated May 6, 1997.

We are requesting review and approval of the enclosed workplan
for the assessment. Upon your agency approval we will request
bids for the work and submit to the Fund for pre-approval of the
work as required.

Your review and response to the workplan is appreciated.

Very truly yours,


John Rutherford

cc: George Converse, WEGE

enclosure



CALIF CONTRACTOR # 513857 A CORPORATION
REGISTERED GEOLOGISTS

1386 EAST BEAMER STREET
WOODLAND, CA 95776-6003
FAX (916) 662-0273
(916) 668-5300

November 5, 1997

Mr. John Rutherford
Environmental Compliance
Desert Petroleum, Inc.
P.O. Box 1601
Oxnard, CA 93032
(805) 654-8084 ext. 202
FAX (805) 654-0720

RE: Workplan to perform Risk Base Corrective Action (RBCA) Tier two for petroleum release sites at former Desert Petroleum Station DP 793, 4035 Park Blvd. Oakland, CA 94602.

Dear Mr. Rutherford:

The following workplan has been generated to perform a RBCA Tier Two assessment for your site located at 4035 Park Blvd., Oakland, CA. To further assess the need for additional remedial efforts at this site and the surrounding areas that have been effected by the release from this site, a RBCA Tier Two for petroleum release sites needs to be performed.

Owing to topography and land use (residential) the area effected by the dissolved and free phase gasoline plume the RBCA Tier Two assessments will be divided into three subgroups.

- The station proper.
- The area of the sewer lateral as it leaves the station northwest into the neighboring properties backyards, before exiting at Brighton Avenue.
- And the Brighton Avenue area.

1 COMPONENTS OF WORKPLAN FOR TIER TWO RBCA

The following are the components needed to provide a workplan for performing a Risk Base Corrective Action (RBCA) Tier Two study on Desert Petroleum Service Station 793.

Because of the complex nature of this site and the resulting product and contaminated ground water movement, the site will be divided into three zones and Tier Two screening studies will be performed on each of them.

The Zones are as follows:

- A. Station proper, over excavated area.
- B. Sewer lateral and effected homes.
- C. Street and floating product plume.

ATTACHMENT D

2/18/98

The following data are needed to perform an effective Tier Two RBCA assessment:

1. The Constituents of Concern (COC). In this case the BTEX hydrocarbons.
2. Concentration and distribution of the COC in soil and water.
3. Soil.
 - Moisture content
 - Total organic carbon content
 - Soil type
 - Depth and thickness of capillary fringe
 - Depth to contamination
 - Effective permeability
4. Depths to water.
5. Aquifer parameters, ie. Hydraulic Conductivity, (K) and Gradient.
6. Electron Acceptors,
 - Dissolved Oxygen, O₂
 - Nitrate, NO₃⁻
 - Sulfate, SO₄²⁻
 - Ferrous iron, Fe²⁺. The actual electron acceptor is ferric iron Fe³⁺ but it is insoluble, so the reaction product Fe²⁺ is measured.
7. Additionally because of the overly conservative nature of the vapor transport models, vapor samples are needed.
 - CO₂
 - Methane
 - Total petroleum hydrocarbons as gasoline
 - BTEX/MTBE

Most of the above information has already been obtained through various investigations conducted at or near the site. Only items 6 (the electron acceptors) and 7 (vapor samples), still have to be collected prior to performing the Tier two screening at this site. Additionally, it would be beneficial to have sample points along the sewer lateral and along the free product plume in Brighton Avenue (5 wells) and to conduct a groundwater sampling round when the new wells have been installed, to obtain the latest groundwater hydrocarbon concentrations. The installation of the new wells is shown as an option and would greatly enhance the Tier 2 assessment

In order to collect this information five additional shallow two-inch PVC monitor wells should be placed along the sewer lateral and near Brighton Avenue, see Figure 3. A groundwater monitoring round will be performed prior to the Tier Two Screening, see Appendix A for sampling methods. In addition to the TPHg/MBTEX samples normally collected during a monitor round, electron acceptor samples will be collected in order to determine a base line concentration of these compounds and to determine the site potential for natural attenuation. Owing to the more unstable

nature of these compounds the concentrations of following electron acceptors will be determined in the field using the HACH DR 2000 Spectrophotometer:

1. Dissolved Oxygen, O₂
2. Nitrate, NO₃⁻
3. Sulfate, SO₄²⁻
4. Ferrous iron, Fe²⁺. The actual electron acceptor is ferric iron Fe³⁺ but it is insoluble, so the reaction product Fe²⁺ will be tested for.

Once the electron acceptors and the current groundwater concentrations of the constituents of concern are determined, the tier two studies will be preformed.

Results of the RBCA Tier Two assessments will be used to provide cost benefit remedial action plans and/or suggest that no further action is needed for the different segments studied.

The following enclosed table itemizes the not to exceed costs to fulfill this phase of the ongoing investigation of this site. The information needed to complete the RBCA Tier 2 assessment of the site will be performed concurrent with the next scheduled ¼ groundwater sampling event, which is included in the cost estimate table. Total estimated cost for this next phase, which includes the natural attenuation analysis with RBCA Tier 2 assessment is \$7,500.00, which breaks down as follows:

A. ¼ly Groundwater monitoring	\$2,500.00
B. Natural attenuation study monitoring	\$2,200.00
C. RBCA Tier 2 assessment	\$2,800.00

We feel the additional five monitoring wells are a necessity in achieving a complete Tier 2 assessment and will also access the area of free product for interim free product removal. If the five monitor wells are installed prior to the ¼ly monitoring the sampling and testing of these wells can be performed during the ¼ly monitoring and would only add an additional \$7,850.00 to the investigation.

If you should have any questions regarding this quote and the items necessary to complete the workplan with RBCA Tier II assessment please give me a call at (530) 668-5300.

Sincerely yours,



George L. Converse
Project Geologist



CaVEPA

September 29, 1997



Pete Wilson
Governor

State Water
Resources
Control Board

Division of
Clean Water
Programs

Mailing Address:
P.O. Box 944212
Sacramento, CA
94244-2120

2014 T Street,
Suite 130
Sacramento, CA
95814
(916) 227-0746
FAX (916) 227-4530

World Wide Web
<http://www.swrcb.ca.gov/~cwp/home/fundhome.htm>

Mr. John Rutherford
Desert Petroleum, Inc.
P. O. Box 1601
Oxnard, CA 93032

**PRE-APPROVAL OF CORRECTIVE ACTION COSTS, CLAIM NO. 3274,
SITE ADDRESS: 4035 PARK BLVD, OAKLAND, CA 94602**

I have reviewed your request, received on July 7, 1997, for pre-approval of corrective action costs; I will place these documents in your file for future reference. I have included a copy of the "Cost Pre-Approval Request" form; please use this form in the future for requesting pre-approval of corrective actions costs. Future pre-approvals must be sent to Jim Munch of this office.

With the following provisions, the total cost pre-approved as eligible for reimbursement for completing the risk assessment work approved by the Alameda County EHD (County) in their May 6, 1997 letter, is \$4,200; see the table below for a breakdown of costs. The bids and costs presented by the three bidders appear unreasonable and costs have been reduced to reflect typical Tier II RBCA costs. If your consultant is not agreeable to the pre-approved costs it is recommended that you obtain additional bids and assistance from the Fund. (The total amount approved for payment through Request No. 1 for work at your site that has been directed and approved by the County is \$127,410.)

Be aware that this pre-approval does not constitute a decision on reimbursement: all reasonable and necessary corrective action costs for work directed and approved by the County will be eligible for reimbursement per the terms of your Letter of Commitment at costs consistent with those pre-approved in this letter.

*All future costs for corrective action must be approved in writing by Fund staff.
Future costs for corrective action must meet the requirements of
Article 11, Chapter 16, Underground Storage Tank Regulations.*

COST PRE-APPROVAL BREAKDOWN

Task	Amount Pre-Approved	Comments
Data Evaluation	\$1,200	
Tier II RBCA	\$3,000	If a Tier III RBCA is necessary, County must approve of the scope of work. Fund pre-approval is required for additional costs.
TOTAL PRE-APPROVED	\$4,200	

- The actual costs and scope of work performed must be consistent with the pre-approval for it to remain valid.
- The work products must be acceptable to the County and the Regional Water Quality Control Board.



Our mission is to preserve and enhance the quality of California
ensure their proper allocation and efficient use for the benefit of

ATTACHMENT E
2/18/98

- If a different scope of work becomes necessary, then you must request pre-approval of costs for the new scope of work.
- Although I have pre-approved costs above, please be aware that you will be entering into a private contract; the State of California cannot compel you to sign any specific contract. This letter pre-approves reasonable costs for conducting the risk assessment work approved by the County.

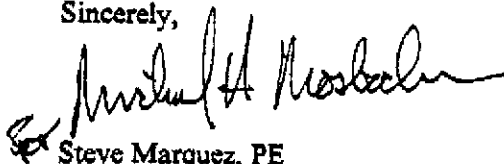
I also want to remind you that the Fund's regulations require that you obtain at least three bids, or a bid waiver from Fund staff, from qualified firms for all necessary corrective action work. The legislation governing the Fund requires that the Fund assist you in procuring contractor and consultant services for corrective action. If you need assistance in contracting for corrective action services, don't hesitate to call me.

Please remember that it is still necessary to submit the actual costs of the work as explained in the Reimbursement Request Instructions to confirm that the costs are consistent with this pre-approval before you will be reimbursed. *To make this easier, insure that your consultant prepares his invoices to match the format of the original estimate, and provides reasonable explanations for any changes made in the scope of work or increases in the costs. When the invoices are submitted you must include copies of all:*

- subcontractor invoices,
- technical reports, when available, and
- applicable correspondence from the County.

Please call if you have any questions; I can be reached at (916) 227-0746.

Sincerely,



Steve Marquez, PE
Technical Review Unit
Underground Storage Tank Cleanup Fund

Enclosure

cc: Mr. Jennifer Eberle
Alameda County EHD
1131 Harbor Bay Pkway, 2nd Flr.
Alameda, CA 94502-6577



ALAMEDA COUNTY
HEALTH CARE SERVICES



AGENCY

DAVID J. KEARS, Agency Director

May 6, 1997
STID 1248
page 1 of 2

ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION (LOP)
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

John Rutherford
Desert Petroleum Inc.
PO Box 1601
Oxnard CA 93032

RE: Desert Petroleum site #793, 4035 Park Blvd., Oakland CA 94602

Dear Mr. Rutherford,

Since my last letter to you, dated 3/4/97, the following documents have been received in this office:

- 1) "First Quarter 1997" groundwater monitoring and sampling report, prepared by Western Geo-Engineers (WEGE), dated 3/20/97; and
- 2) "Free Product Investigation Report Along Brighton Avenue, Oakland, California," with "Corrective Action Workplan," prepared by Western Geo-Engineers (WEGE), dated 4/3/97.

The "Free Product Investigation Report Along Brighton Avenue" report documents results from the 19 soil probe survey (SPS) points along Brighton Avenue conducted in January 1997. These SPS points ran the length of Brighton Ave. from Greenwood Ave. to 4026 Brighton Ave. WEGE reported that the free product was present as a sheen, along a narrow strip along the east side of Brighton Ave., between 5 and 10 feet below ground surface (bgs).

The "Corrective Action Workplan" involves the injection of Tri-Sodium Phosphate (TSP) into wells R3 and R4 on the subject site, with partial groundwater recovery at wells R1 and R2 on the subject site. The remainder of the injected groundwater will continue to migrate along the sewer lateral, and then be recovered at the proposed recovery trenches in Brighton Ave. This workplan also involves the installation of wells along the sewer lateral and along Brighton Ave. to monitor the effects of the infiltration water.

This office has raised some concerns regarding the workplan. WEGE is working to resolve some of these issues. This office will be discussing this workplan with the RWQCB. The RWQCB will also have to approve this workplan, since it involves groundwater injection and recovery.

It should be noted that if this case is to be closed with residual concentrations of contaminants, a risk assessment or risk evaluation must be conducted (and approved by

ATTACHMENT F
2/18/98

May 6, 1997
STID 1248
page 2 of 2
John Rutherford

this office) in order to determine the threat to human health, using a residential scenario for the residential properties, and using a) residential, b) commercial, and c) construction scenarios for the subject site. The selection of groundwater, soil, and vapor data should be discussed with and approved by this office for use in the risk assessment. The purpose of risk assessment is to develop site-specific soil and groundwater cleanup levels protective of human health and the environment.

The new property owners, identified as Tony Razi and Alireza Shirazian, requested a meeting with this agency, via their consultant Mansour Sepehr of SOMA Environmental. A meeting was held on 5/1/97 in this office. Attendees included the new property owners, SOMA, Frank Hamedi of Soil Tech Engineering, Madhulla Logan, myself, and yourself. Our staff toxicologist Madhulla Logan was present to discuss parameters for a risk assessment.

If you have any questions or comments, please contact me directly at 510-567-6761.

Sincerely,



Jennifer Eberle
Hazardous Materials Specialist

cc: Tony Razi, 3609 East 14th St., Oakland CA 94601
Alireza Shirazian, 2 Anchor Dr. # F-386, Emeryville CA 94608
Mansour Sepehr, SOMA Environmental Engineering, 2680 Bishop Dr., Suite 203, San Ramon CA 94583
George Converse, WEGE, 1386 E. Beamer St., Woodland CA 95776
Michael Gabriel, Glenview Neighborhood Association, 4200 Park Blvd., Box 111, Oakland CA 94602
Attn: Shawn Stark, Councilmember Dick Speers' office, City of Oakland, One City Hall Plaza, 2nd Floor, Oakland CA 94612
Attn: Nicole Brown, Councilmember John Russo's office, City of Oakland, One City Hall Plaza, 2nd Floor, Oakland CA 94612
Leroy Griffin, Oakland Fire Dept., OES, Haz Mat Mgmt Program, 1605 Martin Luther King Jr Dr., Oakland CA 94612
Joseph Cotton, City of Oakland, Environmental Services, 1333 Broadway, Suite 330A, Oakland CA 94612
Kevin Graves, RWQCB
Jennifer Eberle/file

je.1248-G

STATE WATER RESOURCES CONTROL BOARD
 DIVISION OF CLEAN WATER PROGRAMS
 2014 T STREET, SUITE 130
 P.O. BOX 944212
 SACRAMENTO, CALIFORNIA 94244-2120
 (916) 227-4307
 (916) 227-4530 (FAX)

RECEIVED SEP 28 1995



SEP 25 1995

John Rutherford
 Desert Petroleum, Inc.
 P.O. Box 1601
 Oxnard, CA 93132

UNDERGROUND STORAGE TANK CLEANUP FUND, CLAIM NO. 003274, FOR SITE ADDRESS: 4035 Park Blvd., Oakland, CA 94602

The State Water Resources Control Board (State Board) takes pleasure in issuing the attached Letter of Commitment in an amount not to exceed \$100,000. This Letter of Commitment is based upon our review of the corrective action costs incurred to date and your application received on January 17, 1992 and may be modified by the State Board in writing by an amended Letter of Commitment.

Read the terms and conditions listed in the Letter of Commitment. The State Board will take steps to withdraw this Letter of Commitment after 90 calendar days from the date of this transmittal letter unless you proceed with due diligence with your cleanup effort. This means that you must take positive, concrete steps to ensure that corrective action is proceeding with all due speed. For example, if you have not started your cleanup effort, you must obtain three bids and sign a contract with one of these bidders within 90 calendar days. If your cleanup effort has already started and was delayed, you must resume the expenditure of funds to ensure that your cleanup is proceeding in an expeditious manner. You are reminded that you must comply with all regulatory agency time schedules and requirements.

This package includes the following:

- A "Reimbursement Request Instructions" package. Retain this package for future reimbursement requests. These instructions must be followed when seeking reimbursement for corrective action costs incurred after January 1, 1988. Included in the instruction package are:
 - Samples of completed Reimbursement Request forms and Spreadsheets.
 - A "Bid Summary Sheet" to list information on bids received.
 - Recommended Minimum Invoice Cost Breakdown.
 - A "Certification of Non-Recovery From Other Sources" which must be returned before any reimbursements can be made.
- "Reimbursement Request" forms which you must use to request reimbursement of costs incurred.
- "Spreadsheet" forms which you must use in conjunction with your Reimbursement Request.
- "Vendor Data Record" (Std. Form 204) which must be completed and returned with your first Reimbursement Request.

YOU MUST SUBMIT A REIMBURSEMENT REQUEST PACKAGE BY December 5, 1995, OR SEND A WRITTEN UPDATE EXPLAINING:

1. Status of cleanup to date.
2. Reason(s) why a reimbursement request has not been submitted.
3. Costs incurred to date for corrective action.
4. Projected date for submitting a reimbursement request.

We constantly review the status of all active claims. If you do not submit a reimbursement request or a written update by the date above, or fail to proceed with due diligence with the cleanup, we will take steps to withdraw your Letter of Commitment.

If you have any questions regarding the Letter of Commitment or the Reimbursement Request package, please contact Cheryl Gordon at (916) 227-4539.

Sincerely,


 Dave Daaner, Manager
 UST Cleanup Fund Program

Exhibits Received at City Planning
 Commission Meeting
 Date 10/23/96 Case No. VM65-567

A96-143

Enclosures

cc: Mr. Steve Morse
 California Regional Water Quality
 Control Board, San Francisco Bay Region
 2101 Webster Street, Suite 500
 Oakland, CA 94612

Ms. Jennifer Eberle
 Alameda County EHD
 1131 Harbor Bay Pkway, 2nd Fl
 Alameda, CA 94502-6577

ATTACHMENT G
 2/18/98

LETTER OF COMMITMENT FOR REIMBURSEMENT OF COSTS

CLAIM NO: 003274

AMENDMENT NO: 0

CLAIMANT: Desert Petroleum, Inc.

CO-PAYEE: William E. Thompson

BALANCE FORWARD: \$0

JOINT CLAIMANT: None

THIS AMOUNT: \$100,000

CLAIMANT ADDRESS: John Rutherford
P.O. Box 1601
Oxnard, CA 93032

NEW BALANCE: \$100,000

TAX ID/SSA NO: 95-2596253 463-24-1359

Subject to availability of funds, the State Water Resources Control Board (SWRCB) agrees to reimburse Desert Petroleum, Inc. (Claimant) for eligible corrective action costs at Desert Petroleum, Inc. #793 4035 Park Blvd., Oakland, CA 94602 (Site). The commitment reflected by this Letter is subject to all of the following terms and conditions:

1. Reimbursement shall not exceed \$100,000 unless this amount is subsequently modified in writing by an amended Letter of Commitment.
2. The obligation to pay any sum under this Letter of Commitment is contingent upon availability of funds. In the event that sufficient funds are not available for reasons beyond the reasonable control of the SWRCB, the SWRCB shall not be obligated to make any disbursements hereunder. If any disbursements otherwise due under this Letter of Commitment are deferred because of unavailability of funds, such disbursements will promptly be made when sufficient funds do become available. Nothing herein shall be construed to provide the Claimant with a right of priority for disbursement over any other claimant who has a similar Letter of Commitment.
3. All costs for which reimbursement is sought must be eligible for reimbursement and the Claimant must be the person entitled to reimbursement thereof.
4. Claimant must at all times be in compliance with all applicable state laws, rules and regulations and with all terms, conditions, and commitments contained in the Claimant's Application and any supporting documents or in any payment requests submitted by the Claimant.
5. No disbursement under this Letter of Commitment will be made except upon receipt of acceptable Standard Form Payment Requests duly executed by or on behalf of the Claimant. All Payment Requests must be executed by the Claimant or a duly authorized representative who has been approved by the Division of Clean Water Programs.
6. Any and all disbursements payable under this Letter of Commitment may be withheld if the Claimant is not in compliance with the provisions of Paragraph 5 above.
7. Neither this Letter of Commitment nor any right thereunder is assignable by the Claimant without the written consent of the SWRCB. In the event of any such assignment, the rights of the assignee shall be subject to all terms and conditions set forth in this Letter of Commitment and the SWRCB's consent.
8. This Letter of Commitment may be withdrawn at any time by the SWRCB if completion of corrective action is not performed with reasonable diligence.

IN WITNESS WHEREOF, this Letter of Commitment has been issued by the SWRCB this 5th day of September, 1995.

STATE WATER RESOURCES CONTROL BOARD

BY 
Manager, Underground Storage Tank Cleanup Fund Program

BY 
Chief, Division Administrative Services

STATE USE:
CALSTARS CODING:
0550-569.02 - 30530

\$ _____



CITY OF OAKLAND



Community and Economic Development Agency

OFFICE OF PLANNING & BUILDING • 1330 BROADWAY • OAKLAND, CALIFORNIA 94612

Administration	238-7200	Building Services	238-3587	Planning	238-3941
Engineering Services	238-2110	Operations	238-3443	Zoning	238-7206

November 20, 1996

Ali Shirazian
2 Anchor Drive, F-386
Emeryville, CA 94608

RE: **CASE FILE NOS. VM65-567 & A96-143 - 4035 Park Boulevard**

Dear Mr. Shirazian:

The City Planning Commission approved a staff report regarding the applications as noted above at the City Planning Commission meeting on: November 20, 1996.

Commission action is indicated below.

The Planning Commission's action to approve Section II of the Staff report, regarding the Administrative Appeal, is final. There is no appeal to the City Council of this decision (Section II, Staff report dated November 20, 1996).

The Planning Commission's action to approve Sections III and IV of the staff report, regarding the change in operating characteristics of the service station (Section III) and its determination that a serious public nuisance exists (Section IV), becomes final ten (10) days from the date of the Commission action unless an appeal to the City Council is filed by: December 2, 1996.

In addition to the Commission's action to approve the findings of Section III that the "change of operating characteristics" from a full-service gas station to a self-service station "...would potentially result in new and different impacts on the surrounding residential uses," the Commission approved the addition of nineteen (19) conditions of approval. These conditions would be attached to the original Major Variance VM95-567, including setting a compliance review of the Major Variance twelve months from the date of the Commission's determination or by November 20, 1997, with regards to the progress and completion of toxic remediation work, and as the Commission amended Condition of Approval No. 19, the Commission may at that time allow the reopening of the service station, "... consider amending the Conditions of Approval, or set a revocation hearing.

An appeal may be made to the City Council, at any time by December 2, 1996 on a form provided by the Community and Economic Development Agency, Zoning Division, and filed at the Zoning Counter with a copy provided to the City Clerk.

If there is an appeal, Council members or citizens may have questions regarding this case. It is therefore advisable that you inquire of the City Clerk, on the above date or as soon thereafter as possible, when the matter is set to be reviewed by the City Council.

(X) Staff report approved with additional required conditions. -
(Vote: 7 ayes, 0 noes - to approve)

Very truly yours,


CHARLES S. BRYANT, Secretary
City Planning Commission

cc: "To All Interested Parties"
Michael Gabriel, Glenview Neighborhood Association
Jonathan C. Breault, Glenview Neighborhood Association
Felix A. Seidler, Reeves, Seidler & Howell
John Douglas Moore, Stone & Moore
Ralph Wheeler, City of Oakland, City Attorney's Office
Thomas Peacock, Alameda County Env. Protection Services
Jennifer Eberle, Alameda County Env. Protection Services
Calvin Wong, Building Services Division
Ray Derania, Housing Conservation
Phil Grubstick, Engineer Services/Permit Processing
Cleve Williams, Parks and Recreation
Thomas Casey, Zoning Counter Supervisor

NOTICE TO ALL PARTIES:

The time within which judicial review must be sought of this decision of the Planning Commission is governed by Section 1094.6 of the Code of Civil Procedure of the State of California. With certain exceptions, the time is ninety (90) days from the date of the decision. If you challenge this application in court, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Community and Economic Development Agency/Zoning at, or prior to, the public hearing.

a96143.ml

TO: City Planning Commission

DATE: November 20, 1996

FROM: Staff

CASE FILE No.: A96-143 and VM65-567

APPELLANT: Glenview Neighborhood Association

SUBJECT: Administrative appeal of a determination by the Director of City Planning that submitted plans for a service station at 4035 Park Boulevard in the R-50 Medium Density Residential Zone are consistent with the original approval pursuant to Resolution No. 46278 C.M.S. adopted by the City Council on December 7, 1965; review of compliance with the Zoning Regulations, consideration of adding conditions of approval, determination of whether public nuisances exist, and consideration of revocation of a Major Variance for the service station. (Environmental Determination: Exempt, Section 15261(b), project approval predates CEQA; or Section 15268, ministerial project.)

I. HISTORY AND BACKGROUND: In 1931, a service station was constructed at 4035 Park Boulevard (southwest corner of Park Boulevard and Hampel Street) "as a complex of three buildings (ie: a lubrication building, office and pump island and comfort station)". The area surrounding the property became R-50 Medium Density Residential Zone when the zoning ordinance was adopted in 1935. In October 1965, Tidewater Oil Company applied for a Major Variance (VM65-567) to demolish the existing service station and construct and operate a new full-service type service station. The variance was denied by the Board of Adjustments. That application was appealed to the City Council. The City Council reversed the decision, and approved the Major Variance pursuant to Resolution No. 46278 C.M.S. on December 7, 1965. On May 18, 1966, the City issued Tidewater Oil Company a Notice of Approval of Application "To reconstruct and operate a service station" (City Manager's Permit No. 42233). The service station closed in 1989 and has not operated since (Attachments A and B).

The service station site at 4035 Park Boulevard has been contaminated since 1989. According to Alameda County Environmental Protection Services letter dated September 26, 1996, "There was a release of gasoline from this site in 1989, reportedly from a faulty piping replacement job. When the station operators failed to take action to cleanup the leak, Desert Petroleum [the prior owner] took responsibility for conducting a subsurface investigation." Based on soil, water and vapor samples collected at and surrounding the site, gasoline was detected in soil and groundwater at the site and in all of the surrounding residential properties which were investigated. Therefore, it has been determined that this contamination, which has been ongoing for over seven years, has also migrated to adjacent sites. Some of the on-

(See Reverse Side)

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site contaminated soil has been removed.

The site was recently purchased by Mr. Ali Shirazian, who desired to reopen the service station. In response to inquiries by Mr. Ali Shirazian, the Zoning Manager wrote a letter dated October 24, 1995, which made the determination that the property, "... may be utilized as a service station, provided that no expansion of the facility occurs without all required City approvals." Based on available city records and field observations by staff, Code Compliance officers, and community members (i.e., members of the Glenview Neighborhood Association (GNA)), it was determined that the original service station had been altered without permit. Consequently, Mr. Shirazian was asked to submit revised plans to the Zoning Manager that would restore the facility to its original condition. On June 25, 1996, based on information available at Building Services, the Zoning Manager made the determination that the latest submitted revised plans and elevations were consistent with the facility that was approved by the City in 1965.

On July 5, 1996, Mr. Michael Gabriel, President of GNA, appealed the Zoning Manager's consistency determination. The Administrative Appeal hearing of the Zoning Manager's determination was set for October 9th and, subsequently, at the request of the appellant, was extended to the October 23, 1996.

II. ADMINISTRATIVE APPEAL: Based upon the evidence contained in the public record, the Commission makes the following findings regarding the administrative appeal:

1. The canopy and a portion of the original roof were demolished without permit (Attachment C).
2. The revised plans do not indicate that the original roofing materials, including tar and white gravel, will be replaced-in-kind.
3. The free-standing monument sign ("Rhino" business identification sign) to be located along the Park Boulevard frontage, and the proposed gas price signs would not maintain the original signage with regards to height, sign shape, design, lettering and content, surface finish, and design character of the original 'Phillips 66' sign.
4. The windows installed on the Park Boulevard facade modified the original facade which was constructed in 1965. Provided the above alterations to the facility's plans are amended to restore the facility to its originally approved design, the latest submitted revised plans and elevations will substantially conform to the building approved and constructed

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5. There is no evidence that the original facility cannot be entirely replicated.
6. If the revised plans are amended so that the items referenced in subparagraphs (1) through (4) above are altered to comport with the original approval, the plans and elevations will substantially conform to what was approved by the City in 1965.
7. Due to a 1989 earthquake and 1991 electrical fire in City offices, the original plans for the full-service type service station for this site are not available.
8. The Commission has relied on information developed from site visits by staff, City files, testimonial and documentary evidence submitted by neighborhood residents, public agencies, and the property owner.
9. The property owner did not produce any plans or photographs of the 1965 service station that contradicted the evidence in the City's files, or that was produced by neighborhood residents regarding the original design of the service station.

The Planning Commission's decision of this Administrative Appeal is final, and there is no appeal to the City Council of this decision.

III. CHANGE OF OPERATING CHARACTERISTICS: Based upon the evidence in the record, the Commission makes the following findings regarding the original and the proposed operating characteristics of the service station:

1. The original service station was approved and operated as a full-service gas station, which provided regular, unleaded and diesel gasoline, and minor automotive repair.
2. The applicant now proposes to operate a self-service station with pump dispensers providing regular-, plus-, and premium-unleaded gasoline.
3. The self-service characteristics could potentially affect traffic flow, automobile stacking, and the rate at which vehicles enter and exit the station.
4. The self-service operation has the potential to increase the number of customers, because of convenience and efficiency factors.

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5. The station fronts on a major collector street and is adjacent to residential facilities.
6. The change is a significant change in the operating characteristics of the service station, and pursuant to Sections 2010 and 9604 et seq. of the Zoning Regulations, the change cannot be done lawfully, unless the change complies with the applicable Zoning sections.
7. The distinct change in operating characteristics would potentially result in new and different impacts (e.g. traffic, increased customer volume, and noise, etc.) on the surrounding residential uses.

On July 13, 1996, Felix A. Seidler of Reeves, Seidler & Howell, attorney for the owner, submitted a letter dated July 13, 1996 with proposed conditions of approval (Attachment D) that have been incorporated into this report.

The Commission finds that the following conditions of approval are reasonably necessary to address the potential impacts of the self-service station:

CONDITIONS OF APPROVAL ATTACHED TO AND MADE PART OF ZONING CASE FILE NO. VM65-567: (Modifications to the Conditions of Approval as directed by the City Planning Commission at the November 20, 1996 meeting are indicated in bold print.)

1. The project shall be operated in accordance with the authorized use described in this staff report, and constructed according to revised plans for a service station that are consistent with the originally approval pursuant to Resolution No. 46278 C.M.S. adopted by the City Council in 1965, and include the required revisions to the roof, freestanding sign, and removal of building windows to make the facility consistent with the original approval; provided further, that the project incorporate the revisions listed below as conditions of approval.
2. That the authorized use of this approval, Automotive Servicing Commercial Activity, is primarily the sale of gasoline and is subject to the regulations of the Bay Area Air Quality Management District (BAAQMD) and other applicable governing agencies; that the operation and maintenance of motor vehicles shall to secondary to the primary use of service station; provided further, that all automotive servicing shall be performed within the building; that no tow services shall be performed to or from this site.

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3. That the hours of operation for the gasoline dispensing facility and fueling trucks shall be limited to 5:00 a.m. to 10:00 p.m., Monday through Sunday, and that minor automotive servicing shall be limited to the same hours, Monday through Saturday. The City Planning Commission may modify these hours after holding a public hearing.
4. That there shall be no open, overnight storage of automobiles, any automotive-related parts, equipment, or storage bins, etc., except within the building.
5. That the owner and/or customers shall not park vehicles on sidewalks or streets and shall not block ingress/egress to the site, except for legal on-street parking of motor vehicles. Parking of vehicles, which were being serviced at the facility, in the public right-of-way shall be prohibited.
6. That the owner or an appointed employee shall request loiterers (anyone that loiters immediately outside the premises for more than ten minutes without any purpose) to leave. Police assistance shall be sought, if the request is not honored.
7. That trash receptacles shall be located in the service station building and at each of the dispenser-islands; that the owner shall sweep, contain, and dispose of any contaminants or discharge from motor vehicles, and litter at the service station, abutting sidewalks and gutters, daily (there shall be no on-site overnight storage of such materials).
8. That on-site surface runoff containing motor vehicle products, paint, solvents, or other contaminants shall not be allowed to be discharged onto adjacent properties, the sidewalk, street or to enter the City storm drain system; that all on-site activities and conditions shall comply with all applicable provisions of the Clean Water Act (1972) as amended by the Water Quality Act of 1987, and City of Oakland Storm Water Management and Controls Ordinance No. 11590 C.M.S.
9. There shall be no outdoor speaker or attendant bell, no exterior vending machines, and no exterior pay phones on the site.
10. The facility's final design, including all exterior design details and the final selection of exterior materials, colors and textures, shall be submitted to and approved by the Director of City Planning prior to the issuance of building permits.

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11. That a landscaping plan, lighting plan, and sign plan, including any building mounted and freestanding signs, shall be submitted for review and approval for consistency with the original approval pursuant to Resolution No. 46278 C.M.S. adopted by the City Council in 1965 to the Director of City Planning, prior to issuance of building permits; that such a landscape plan shall be installed prior to a final building permit inspection; that the landscape plan shall be subject to the City standards for required landscaping and screening per Section 8100 of the Oakland Zoning Regulations, including that all landscaping be permanently maintained in a neat, safe and healthy condition; that signs shall be subject to the Zoning Regulations, Section 7000 General Limitations on Signs, including that no streamers or pennants shall be permitted on the site.
12. The self-service station and its operation are approved pursuant to the Planning Code only, and shall comply with all other applicable codes and requirements imposed by other agencies and City departments.
13. Changes to approved plans shall be subject to review and approval at a new public hearing by the City Planning Commission.
14. The City Planning Commission reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this variance if it is found that the approved activity is violating any of the Conditions of Approval, or the provisions of the Zoning Regulations, or that the operation is causing a public nuisance.
15. Subject to Condition No. 18, all on- and off-site toxic remediation work shall be completed to the satisfaction of the Alameda County Environmental Protection Services, prior to the commencement of any work for the reopening of the service station and prior to the issuance of any City building permits for this site.
16. That any additional uses other than those approved hereby, and as described in this report, shall require a separate application and approval.
17. Prior to issuance of a Certificate of Occupancy, the applicant shall execute and record with Alameda County Recorder's Office a copy of these conditions of approval on a form approved by the Director of City Planning within 30 days of the effective date of this approval. Proof of recordation shall be provided to the Director of City Planning.

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18. That Major Variance VM65-567 shall be reviewed 12-months from this determination or by November 20, 1997, with regards to the progress and completion of the toxic remediation work (on- and off-site) and dependent upon the owner's compliance with these conditions and the state of the toxic remediation work, the Planning Commission, at that time, may allow the reopening of the service station, **consider amending the conditions of approvals, or set a revocation hearing.**
19. This permit shall become effective upon satisfactory compliance with the above conditions. An appeal of the Commission's decision on the "change of operating characteristics" of the self-service station may be taken to the City Council by any interested party within ten calendar days after the date of this determination or by December 2, 1996.

IV. PUBLIC NUISANCE: Based on community testimony and other evidence in the record, soil and groundwater contamination has existed at this site since 1989. Thus, the site has been contaminated for over seven years. On June 8, 1994, the City issued Desert Petroleum Inc. (former property owner) a Permit to Excavate and Install, Repair, or Remove Inflammable Liquid Tanks. The tank removal permit, which was granted by the Fire Services Agency, is subject to review and approval by other agencies such as the Bay Area Air Quality Management District (BAAQMD). On February 1995, Mr. Shirazian (the current property owner), submitted an Underground Tank Installation Plan along with an Underground Storage Tank Permit Application to the Alameda County Health Care Services Agency, Environmental Protection Services. This application is pending approval by the Alameda County Agency.

When members of the Glenview Neighborhood Association reviewed the plans submitted with this application, they were concerned that tanks might be installed prior to proper remediation of the site. Based on letters of correspondence and community testimony, further concern was expressed regarding the possibility that, although soil contamination may have been contained and some of it removed from the site, groundwater contamination remains below the site, and had leaked to adjacent residential properties.

According to community testimony and evidence in the record, the proposed cleanup and remediation activity on- and off-site is not complete. According to a letter from Alameda County Environmental Protection Services, a "Sewer Lateral Investigation Report, Desert Petroleum Station #793, 4035 Park Boulevard, Oakland, CA," prepared by WEGE, dated 7/3/96, was submitted to their agency. Data presented in this report indicate that "... soil and groundwater

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contamination remains below the residential area immediately downgradient of the former DP station." According to this report, "WEGE identified product sheen on groundwater in this area." The document identified that, "The first priority is to remediate the free product. It must be removed 'to the maximum extent practicable' and 'in a manner that minimizes the spread of contamination.'" According to the agency's Hazardous Materials Specialist, Mr. Thomas Peacock, as part of the interim free product remediation work plan, a well would be located at 4032 Brighton Avenue, thereby enabling Environmental Protection Services to determine the thickness of the product, and facilitate its recovery.

At the October 23rd public hearing, the Alameda County Environmental Protection Services's Hazardous Materials Specialist, Mr. Thomas Peacock, testified that this service station site at 4035 Park Boulevard is one of the top ten contaminated sites of over 800 sites in Alameda County. Additional evidence indicated that installation of the new underground storage tanks for reopening of the station could potentially negatively impact toxic remediation work and could make it difficult to identify future on-site toxic releases. Mr. Peacock also testified that a reasonable timeframe for remediation of the site would be three to five years. However, it is currently unknown when remediation of the site will be completed. According to testimonies received at the October 23rd public hearing, the State Water Resources Control Board had issued a "Letter of Commitment" for reimbursing costs to cleanup the site in the amount not to exceed \$100,000. to Desert Petroleum, Inc. (pursuant to Underground Storage Tank Cleanup Fund, Claim No. 003274 dated September 5, 1995).

Testimony was also given at the October 23rd public hearing that Desert Petroleum, Inc. (former owner) has filed for Chapter 11 bankruptcy protection. Therefore, a timeframe to complete remediation, on- and off-site, is difficult to forecast. Moreover it is difficult to forecast when the adverse impacts on adjacent and nearby residential properties will be abated. At this time, Alameda County Environmental Protection Services has not approved a final remediation plan for the Desert Petroleum site at the 4035 Park Boulevard (see Alameda County Environmental Protection Services letter dated August 12, 1996).

According to testimony by Mr. T. Peacock, long term exposure to contaminants could cause illness to humans and could have negative impacts on the environment. If the site remains unremediated of soil and groundwater contaminants, toxins could migrate and contaminate additional areas on adjacent and nearby residential properties. The potential migration of contaminants and secondary effects to human health could, thereby, potentially result in

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adversely affecting the public health and welfare of surrounding residents. Such contamination could also impair property values.

According to Mr. T. Peacock's testimony, the concomitant circumstances of an existing unremediated and contaminated site along with reopening a service station on the site could exacerbate the remediation plans and work plan proposed for this site. Therefore, in accordance with the Zoning Regulation's objectives to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare, and to achieve the proposals of Oakland's General Plan, it is important that the City of Oakland shall ensure that if a new service station operation were to commence, such an operation will not impede further remediation efforts on this site. Moreover, it is important to ensure that the current contamination, on- and off-site, be remediated prior to the reopening of the service station. The City Planning Commission, therefore, finds that the on- and off-site contamination constitutes a serious public nuisance and, that, because the station is adjacent to a residential community and is located on a major collector street, a compelling public necessity requires that the public nuisance be abated.

Therefore, the City Planning Commission finds that further evaluation of the contamination situation is required. Moreover, that further investigation of the activities on the site is mandatory in terms of how future land uses would coexist with and promote the livability of existing adjacent residential properties, and as to how the existing residential neighborhood character with compact, local shopping districts along Park Boulevard will be preserved. The City Planning Commission finds that the service station cannot be reopened, nor that any physical work shall be done related to reopening the service station, except for remediation of on- and off-site contamination caused by the former operation of the gas station, and that remediation shall be completed to the satisfaction of Alameda County Environmental Protection Services. This finding does not preclude the applicant from submitting new revised plans to Building Services and that building permits be ready-to-issue.

FINDINGS: Pursuant to Section 2002 of the City of Oakland Zoning Regulations, "The general purposes of the ZONING REGULATIONS are to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare..."

Pursuant to Section 2010 of the City of Oakland Zoning Regulations, "no activities or facilities shall be ... constructed, altered, ... maintained, or otherwise changed, ... except in conformity to the ZONING REGULATIONS."

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Pursuant to Section 9604(a) of the City of Oakland Zoning Regulations, a Major Variance shall be granted only upon determination that the proposal meets, among other things, the following condition, "That the variance, if granted, will not adversely affect the character, livability, or appropriated development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy."

Pursuant to Section 9607 (Adherence to Approved Plans) of the City of Oakland Zoning Regulations, "A variance shall be subject to the plans and other specified conditions upon the basis of which it was granted."

Pursuant to Section 9902 of the City of Oakland Zoning Regulations, "any use or condition caused or permitted to exist in violation of any of the provisions of the ZONING REGULATIONS shall be and is hereby declared to be a public nuisance and may be summarily abated as such by the City of Oakland."

Based upon the evidence contained in the public record, community testimony, and testimonies by speakers at the October 23rd Commission meeting, the City Planning Commission has determined that the existing on- and off-site contamination at the 4035 Park Boulevard site constitutes a "public nuisance" pursuant to Sections 2002 and 9902 of the Zoning Regulations.

Pursuant to Section 9608 of the City of Oakland Zoning Regulations, "In the event of a violation of any of the provisions of the Zoning Regulations, or in the event of a failure to comply with any prescribed condition of approval, ... the City Planning Commission may, after holding a public hearing, revoke any variance." The power to revoke includes the power to abate short of revocation.

The following findings are made to support the Commission's determination that a serious public nuisance exists because of the on- and off-site contamination at 4035 Park Boulevard.

1. The City approved the Major Variance in 1965 because it was able to find that the facility was in compliance with the Purposes of the Zoning Regulations as described in Section 2002, and the Variance conditions of Section 9604(a).
2. To maintain conformity with the Purposes of the Zoning Regulations, an activity that is established pursuant to Section 9604 must continue during the life of that permit to satisfy all of the criteria of Section 9604 which allowed the City Council to originally reverse the City Planning Commission's denial, and grant the approval.

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3. The activity was approved as a full-service type service station in 1965 and, according to evidence in the record, it operated as a full-service type service station until 1989. In 1989, the facility was damaged and has remained in-operable.
4. The evidence in the record indicates that both the service station site, and several adjacent properties and publicly owned property have been contaminated as a result of the station's operations.
5. Remediation on- and off-site is incomplete. The reopening of the service station prior to the completion of remediation work could complicate remediation efforts on the site.
6. The service station is located in an R-50 Medium-Density Residential community, and is located adjacent to abutting residential dwellings.
7. The "public nuisance" at this site contravene the purposes of the Zoning Regulations as set forth in Section 2002.
8. Without City action on the variance, the public nuisances occurring at this facility may continue to adversely affect residents of abutting properties, the surrounding neighborhood, and public facilities.
9. Contamination was carried from the gas station into the sewer that runs below adjacent residential properties. This toxic contamination poses environmental and human health problems.
10. The evidence indicates that the Alameda County Environmental Protection Agency has received health related complaints from nearby residents approximately three years ago.
11. Because of the cited public nuisances, the activity no longer enhances the successful operation of the surrounding area.
12. The operating characteristics of the facility have been changed from one that operated pursuant to the terms of Zoning Regulations, to one that is a public nuisance, thereby violating Sections 2010 (Conformity with Zoning Regulations Required) and 9604(a) (Variance Findings Required) of the Oakland Zoning Regulations.
13. Because of the extent and duration of the public nuisance (since 1989), the location of the station in a residential neighborhood, the bankruptcy filing of Desert Petroleum (the party currently responsible for the remediation work), and the lack of certainty regarding actual remediation completion

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date, a compelling public necessity exists that all contamination, on- and off-site, shall be remediated prior to commencement of any work that would allow the reopening of the service station.

14. The soil and groundwater contamination which originate from the site, along with associated problems of petroleum release migrating through the sewer line to adjacent residential properties, including the private yards of residents of Brighton Avenue and Hampel Street, and potential environmental and health problems, individually and collectively, constitute a public nuisance as such is defined by Sections 3479 and 3480 of the California Civil Code.
15. The welfare of residents who live near the subject facility have been and continues to be significantly and negatively impacted by the on- and off-site contamination problems caused by the facility's prior operations.
16. The above findings are based entirely and solely on the nature and scope of the described public nuisance, its impact on the surrounding neighborhood, and the lack of certainty regarding actual completion of the toxic remediation work.
17. Because of the foregoing, a compelling public necessity supports adding the following conditions of approval to the original 1965 Major Variance approval for this facility:
 - (a) Subject to subsection (b) below, all on- and off-site toxic remediation work shall be completed to the satisfaction of the Alameda County Environmental Protection Services, prior to the commencement of any work for the reopening of the service station and prior to the issuance of any City Building permits for the site.
 - (b) That Major Variance VM65-567 shall be reviewed 12-months from this determination or by November 20, 1997, with regards to the progress and completion of the toxic remediation work (on- and off-site) and dependent upon the owner's compliance with these conditions and the state of the toxic remediation work, the Planning Commission, at that time, may allow the reopening of the service station.

The Planning Commission's decision regarding the change in operating characteristics of the service station and its determination that a serious public nuisance exists becomes final ten days from the date of the Commission's decision and

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determination, unless properly appealed to the City Council.

RECOMMENDATION: 1. Approve the staff report, including all findings and conditions of approval.

ADOPTED BY: City Planning Commission: November 20, 1996 (date) 7 ayes, 0 noes - to approve (vote)

ATTACHMENTS:

- A. Staff report dated October 23, 1996 (VM65-567).
- B. Staff report dated October 9, 1996 and reissued October 23, 1996 (A96-143), including location map, site plan, and elevations.
- C. Canopy demolished without permit dated August 15, 1995 (Verified Code Compliance Complaint).
- D. Felix A. Seidler's letter to Mr. Gabriel agreeing to providing conditions of approval, dated July 13, 1996.

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TO: City Planning Commission

DATE: November 20, 1996

FROM: Staff

CASE FILE No.: A96-143 and VM65-567

APPELLANT: Glenview Neighborhood Association

SUBJECT: Administrative appeal of a determination by the Director of City Planning that submitted plans for a service station at 4035 Park Boulevard in the R-50 Medium Density Residential Zone are consistent with the original approval pursuant to Resolution No. 46278 C.M.S. adopted by the City Council on December 7, 1965; review of compliance with the Zoning Regulations, consideration of adding conditions of approval, determination of whether public nuisances exist, and consideration of revocation of a Major Variance for the service station. (Environmental Determination: Exempt, Section 15261(b), project approval predates CEQA; or Section 15268, ministerial project.)

I. HISTORY AND BACKGROUND: In 1931, a service station was constructed at 4035 Park Boulevard (southwest corner of Park Boulevard and Hampel Street) "as a complex of three buildings (ie: a lubrication building, office and pump island and comfort station)". The area surrounding the property became R-50 Medium Density Residential Zone when the zoning ordinance was adopted in 1935. In October 1965, Tidewater Oil Company applied for a Major Variance (VM65-567) to demolish the existing service station and construct and operate a new full-service type service station. The variance was denied by the Board of Adjustments. That application was appealed to the City Council. The City Council reversed the decision, and approved the Major Variance pursuant to Resolution No. 46278 C.M.S. on December 7, 1965. On May 18, 1966, the City issued Tidewater Oil Company a Notice of Approval of Application "To reconstruct and operate a service station" (City Manager's Permit No. 42233). The service station closed in 1989 and has not operated since (Attachments A and B).

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(See Reverse Side)

ATTACHMENT H

2/18/98

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The site was recently purchased by Mr. Ali Shirazian, who desired to reopen the service station. In response to inquiries by Mr. Ali Shirazian, the Zoning Manager wrote a letter dated October 24, 1995, which made the determination that the property, "... may be utilized as a service station, provided that no expansion of the facility occurs without all required City approvals." Based on available city records and field observations by staff, Code Compliance officers, and community members (i.e., members of the Glenview Neighborhood Association (GNA)), it was determined that the original service station had been altered without permit. Consequently, Mr. Shirazian was asked to submit revised plans to the Zoning Manager that would restore the facility to its original condition. On June 25, 1996, based on information available at Building Services, the Zoning Manager made the determination that the latest submitted revised plans and elevations were consistent with the facility that was approved by the City in 1965.

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II. ADMINISTRATIVE APPEAL: Based upon the evidence contained in the public record, the Commission makes the following findings regarding the administrative appeal:

1. The canopy and a portion of the original roof were demolished without permit (Attachment C).
2. The revised plans do not indicate that the original roofing materials, including tar and white gravel, will be replaced-in-kind.
3. The free-standing monument sign ("Rhino" business identification sign) to be located along the Park Boulevard frontage, and the proposed gas price signs would not maintain the original signage with regards to height, sign shape, design, lettering and content, surface finish, and design character of the original 'Phillips 66' sign.
4. The windows installed on the Park Boulevard facade modified the original facade which was constructed in 1965. Provided the above alterations to the facility's plans are amended to restore the facility to its originally approved design, the latest submitted revised plans and elevations will substantially conform to the building approved and constructed

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in 1965.

5. There is no evidence that the original facility cannot be entirely replicated.
6. If the revised plans are amended so that the items referenced in subparagraphs (1) through (4) above are altered to comport with the original approval, the plans and elevations will substantially conform to what was approved by the City in 1965.
7. Due to a 1989 earthquake and 1991 electrical fire in City offices, the original plans for the full-service type service station for this site are not available.
8. The Commission has relied on information developed from site visits by staff, City files, testimonial and documentary evidence submitted by neighborhood residents, public agencies, and the property owner.
9. The property owner did not produce any plans or photographs of the 1965 service station that contradicted the evidence in the City's files, or that was produced by neighborhood residents regarding the original design of the service station.

The Planning Commission's decision of this Administrative Appeal is final, and there is no appeal to the City Council of this decision.

III. CHANGE OF OPERATING CHARACTERISTICS: Based upon the evidence in the record, the Commission makes the following findings regarding the original and the proposed operating characteristics of the service station:

1. The original service station was approved and operated as a full-service gas station, which provided regular, unleaded and diesel gasoline, and minor automotive repair.
2. The applicant now proposes to operate a self-service station with pump dispensers providing regular-, plus-, and premium-unleaded gasoline.
3. The self-service characteristics could potentially affect traffic flow, automobile stacking, and the rate at which vehicles enter and exit the station.
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6. The change is a significant change in the operating characteristics of the service station, and pursuant to Sections 2010 and 9604 et seq. of the Zoning Regulations, the change cannot be done lawfully, unless the change complies with the applicable Zoning sections.
7. The distinct change in operating characteristics would potentially result in new and different impacts (e.g. traffic, increased customer volume, and noise, etc.) on the surrounding residential uses.

On July 13, 1996, Felix A. Seidler of Reeves, Seidler & Howell, attorney for the owner, submitted a letter dated July 13, 1996 with proposed conditions of approval (Attachment D) that have been incorporated into this report.

The Commission finds that the following conditions of approval are reasonably necessary to address the potential impacts of the self-service station:

CONDITIONS OF APPROVAL ATTACHED TO AND MADE PART OF ZONING CASE FILE NO. VM65-567: (Modifications to the Conditions of Approval as directed by the City Planning Commission at the **November 20, 1996** meeting are indicated in **bold print**.)

1. The project shall be operated in accordance with the authorized use described in this staff report, and constructed according to revised plans for a service station that are consistent with the originally approval pursuant to Resolution No. 46278 C.M.S. adopted by the City Council in 1965, and include the required revisions to the roof, freestanding sign, and removal of building windows to make the facility consistent with the original approval; provided further, that the project incorporate the revisions listed below as conditions of approval.
2. That the authorized use of this approval, Automotive Servicing Commercial Activity, is primarily the sale of gasoline and is subject to the regulations of the Bay Area Air Quality Management District (BAAQMD) and other applicable governing agencies; that the operation and maintenance of motor vehicles shall to secondary to the primary use of service station; provided further, that all automotive servicing shall be performed within the building; that no tow services shall be performed to or from this site.

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3. That the hours of operation for the gasoline dispensing facility and fueling trucks shall be limited to 5:00 a.m. to 10:00 p.m., Monday through Sunday, and that minor automotive servicing shall be limited to the same hours, Monday through Saturday. The City Planning Commission may modify these hours after holding a public hearing.
4. That there shall be no open, overnight storage of automobiles, any automotive-related parts, equipment, or storage bins, etc., except within the building.
5. That the owner and/or customers shall not park vehicles on sidewalks or streets and shall not block ingress/egress to the site, except for legal on-street parking of motor vehicles. Parking of vehicles, which were being serviced at the facility, in the public right-of-way shall be prohibited.
6. That the owner or an appointed employee shall request loiterers (anyone that loiters immediately outside the premises for more than ten minutes without any purpose) to leave. Police assistance shall be sought, if the request is not honored.
7. That trash receptacles shall be located in the service station building and at each of the dispenser-islands; that the owner shall sweep, contain, and dispose of any contaminants or discharge from motor vehicles, and litter at the service station, abutting sidewalks and gutters, daily (there shall be no on-site overnight storage of such materials).
8. That on-site surface runoff containing motor vehicle products, paint, solvents, or other contaminants shall not be allowed to be discharged onto adjacent properties, the sidewalk, street or to enter the City storm drain system; that all on-site activities and conditions shall comply with all applicable provisions of the Clean Water Act (1972) as amended by the Water Quality Act of 1987, and City of Oakland Storm Water Management and Controls Ordinance No. 11590 C.M.S.
9. There shall be no outdoor speaker or attendant bell, no exterior vending machines, and no exterior pay phones on the site.
10. The facility's final design, including all exterior design details and the final selection of exterior materials, colors and textures, shall be submitted to and approved by the Director of City Planning prior to the issuance of building permits.

11. That a landscaping plan, lighting plan, and sign plan, including any building mounted and freestanding signs, shall be submitted for review and approval for consistency with the original approval pursuant to Resolution No. 46278 C.M.S. adopted by the City Council in 1965 to the Director of City Planning, prior to issuance of building permits; that such a landscape plan shall be installed prior to a final building permit inspection; that the landscape plan shall be subject to the City standards for required landscaping and screening per Section 8100 of the Oakland Zoning Regulations, including that all landscaping be permanently maintained in a neat, safe and healthy condition; that signs shall be subject to the Zoning Regulations, Section 7000 General Limitations on Signs, including that no streamers or pennants shall be permitted on the site.
12. The self-service station and its operation are approved pursuant to the Planning Code only, and shall comply with all other applicable codes and requirements imposed by other agencies and City departments.
13. Changes to approved plans shall be subject to review and approval at a new public hearing by the City Planning Commission.
14. The City Planning Commission reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this variance if it is found that the approved activity is violating any of the Conditions of Approval, or the provisions of the Zoning Regulations, or that the operation is causing a public nuisance.
15. Subject to Condition No. 18, all on- and off-site toxic remediation work shall be completed to the satisfaction of the Alameda County Environmental Protection Services, prior to the commencement of any work for the reopening of the service station and prior to the issuance of any City building permits for this site.
16. That any additional uses other than those approved hereby, and as described in this report, shall require a separate application and approval.
17. Prior to issuance of a Certificate of Occupancy, the applicant shall execute and record with Alameda County Recorder's Office a copy of these conditions of approval on a form approved by the Director of City Planning within 30 days of the effective date of this approval. Proof of recordation shall be provided to the Director of City Planning.

November 20, 1996

18. That Major Variance VM65-567 shall be reviewed 12-months from this determination or by November 20, 1997, with regards to the progress and completion of the toxic remediation work (on- and off-site) and dependent upon the owner's compliance with these conditions and the state of the toxic remediation work, the Planning Commission, at that time, may allow the reopening of the service station, **consider amending the conditions of approvals, or set a revocation hearing.**
19. This permit shall become effective upon satisfactory compliance with the above conditions. An appeal of the Commission's decision on the "change of operating characteristics" of the self-service station may be taken to the City Council by any interested party within ten calendar days after the date of this determination or by December 2, 1996.

IV. PUBLIC NUISANCE: Based on community testimony and other evidence in the record, soil and groundwater contamination has existed at this site since 1989. Thus, the site has been contaminated for over seven years. On June 8, 1994, the City issued Desert Petroleum Inc. (former property owner) a Permit to Excavate and Install, Repair, or Remove Inflammable Liquid Tanks. The tank removal permit, which was granted by the Fire Services Agency, is subject to review and approval by other agencies such as the Bay Area Air Quality Management District (BAAQMD). On February 1995, Mr. Shirazian (the current property owner), submitted an Underground Tank Installation Plan along with an Underground Storage Tank Permit Application to the Alameda County Health Care Services Agency, Environmental Protection Services. This application is pending approval by the Alameda County Agency.

When members of the Glenview Neighborhood Association reviewed the plans submitted with this application, they were concerned that tanks might be installed prior to proper remediation of the site. Based on letters of correspondence and community testimony, further concern was expressed regarding the possibility that, although soil contamination may have been contained and some of it removed from the site, groundwater contamination remains below the site, and had leaked to adjacent residential properties.

According to community testimony and evidence in the record, the proposed cleanup and remediation activity on- and off-site is not complete. According to a letter from Alameda County Environmental Protection Services, a "Sewer Lateral Investigation Report, Desert Petroleum Station #793, 4035 Park Boulevard, Oakland, CA," prepared by WEGE, dated 7/3/96, was submitted to their agency. Data presented in this report indicate that "... soil and groundwater

November 20, 1996

contamination remains below the residential area immediately downgradient of the former DP station." According to this report, "WEGE identified product sheen on groundwater in this area." The document identified that, "The first priority is to remediate the free product. It must be removed 'to the maximum extent practicable' and 'in a manner that minimizes the spread of contamination.'" According to the agency's Hazardous Materials Specialist, Mr. Thomas Peacock, as part of the interim free product remediation work plan, a well would be located at 4032 Brighton Avenue, thereby enabling Environmental Protection Services to determine the thickness of the product, and facilitate its recovery.

At the October 23rd public hearing, the Alameda County Environmental Protection Services's Hazardous Materials Specialist, Mr. Thomas Peacock, testified that this service station site at 4035 Park Boulevard is one of the top ten contaminated sites of over 800 sites in Alameda County. Additional evidence indicated that installation of the new underground storage tanks for reopening of the station could potentially negatively impact toxic remediation work and could make it difficult to identify future on-site toxic releases. Mr. Peacock also testified that a reasonable timeframe for remediation of the site would be three to five years. However, it is currently unknown when remediation of the site will be completed. According to testimonies received at the October 23rd public hearing, the State Water Resources Control Board had issued a "Letter of Commitment" for reimbursing costs to cleanup the site in the amount not to exceed \$100,000. to Desert Petroleum, Inc. (pursuant to Underground Storage Tank Cleanup Fund, Claim No. 003274 dated September 5, 1995).

Testimony was also given at the October 23rd public hearing that Desert Petroleum, Inc. (former owner) has filed for Chapter 11 bankruptcy protection. Therefore, a timeframe to complete remediation, on- and off-site, is difficult to forecast. Moreover it is difficult to forecast when the adverse impacts on adjacent and nearby residential properties will be abated. At this time, Alameda County Environmental Protection Services has not approved a final remediation plan for the Desert Petroleum site at the 4035 Park Boulevard (see Alameda County Environmental Protection Services letter dated August 12, 1996).

According to testimony by Mr. T. Peacock, long term exposure to contaminants could cause illness to humans and could have negative impacts on the environment. If the site remains unremediated of soil and groundwater contaminants, toxins could migrate and contaminate additional areas on adjacent and nearby residential properties. The potential migration of contaminants and secondary effects to human health could, thereby, potentially result in

November 20, 1996

adversely affecting the public health and welfare of surrounding residents. Such contamination could also impair property values.

According to Mr. T. Peacock's testimony, the concomitant circumstances of an existing unremediated and contaminated site along with reopening a service station on the site could exacerbate the remediation plans and work plan proposed for this site. Therefore, in accordance with the Zoning Regulation's objectives to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare, and to achieve the proposals of Oakland's General Plan, it is important that the City of Oakland shall ensure that if a new service station operation were to commence, such an operation will not impede further remediation efforts on this site. Moreover, it is important to ensure that the current contamination, on- and off-site, be remediated prior to the reopening of the service station. The City Planning Commission, therefore, finds that the on- and off-site contamination constitutes a serious public nuisance and, that, because the station is adjacent to a residential community and is located on a major collector street, a compelling public necessity requires that the public nuisance be abated.

Therefore, the City Planning Commission finds that further evaluation of the contamination situation is required. Moreover, that further investigation of the activities on the site is mandatory in terms of how future land uses would coexist with and promote the livability of existing adjacent residential properties, and as to how the existing residential neighborhood character with compact, local shopping districts along Park Boulevard will be preserved. The City Planning Commission finds that the service station cannot be reopened, nor that any physical work shall be done related to reopening the service station, except for remediation of on- and off-site contamination caused by the former operation of the gas station, and that remediation shall be completed to the satisfaction of Alameda County Environmental Protection Services. This finding does not preclude the applicant from submitting new revised plans to Building Services and that building permits be ready-to-issue.

FINDINGS: Pursuant to Section 2002 of the City of Oakland Zoning Regulations, "The general purposes of the ZONING REGULATIONS are to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare..."

Pursuant to Section 2010 of the City of Oakland Zoning Regulations, "no activities or facilities shall be ... constructed, altered, ... maintained, or otherwise changed, ... except in conformity to the ZONING REGULATIONS."

November 20, 1996

Pursuant to Section 9604(a) of the City of Oakland Zoning Regulations, a Major Variance shall be granted only upon determination that the proposal meets, among other things, the following condition, "That the variance, if granted, will not adversely affect the character, livability, or appropriated development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy."

Pursuant to Section 9607 (Adherence to Approved Plans) of the City of Oakland Zoning Regulations, "A variance shall be subject to the plans and other specified conditions upon the basis of which it was granted."

Pursuant to Section 9902 of the City of Oakland Zoning Regulations, "any use or condition caused or permitted to exist in violation of any of the provisions of the ZONING REGULATIONS shall be and is hereby declared to be a public nuisance and may be summarily abated as such by the City of Oakland."

Based upon the evidence contained in the public record, community testimony, and testimonies by speakers at the October 23rd Commission meeting, the City Planning Commission has determined that the existing on- and off-site contamination at the 4035 Park Boulevard site constitutes a "public nuisance" pursuant to Sections 2002 and 9902 of the Zoning Regulations.

Pursuant to Section 9608 of the City of Oakland Zoning Regulations, "In the event of a violation of any of the provisions of the Zoning Regulations, or in the event of a failure to comply with any prescribed condition of approval,... the City Planning Commission may, after holding a public hearing, revoke any variance." The power to revoke includes the power to abate short of revocation.

The following findings are made to support the Commission's determination that a serious public nuisance exists because of the on- and off-site contamination at 4035 Park Boulevard.

1. The City approved the Major Variance in 1965 because it was able to find that the facility was in compliance with the Purposes of the Zoning Regulations as described in Section 2002, and the Variance conditions of Section 9604(a).
2. To maintain conformity with the Purposes of the Zoning Regulations, an activity that is established pursuant to Section 9604 must continue during the life of that permit to satisfy all of the criteria of Section 9604 which allowed the City Council to originally reverse the City Planning Commission's denial, and grant the approval.

November 20, 1996

3. The activity was approved as a full-service type service station in 1965 and, according to evidence in the record, it operated as a full-service type service station until 1989. In 1989, the facility was damaged and has remained in-operable.
4. The evidence in the record indicates that both the service station site, and several adjacent properties and publicly owned property have been contaminated as a result of the station's operations.
5. Remediation on- and off-site is incomplete. The reopening of the service station prior to the completion of remediation work could complicate remediation efforts on the site.
6. The service station is located in an R-50 Medium-Density Residential community, and is located adjacent to abutting residential dwellings.
7. The "public nuisance" at this site contravene the purposes of the Zoning Regulations as set forth in Section 2002.
8. Without City action on the variance, the public nuisances occurring at this facility may continue to adversely affect residents of abutting properties, the surrounding neighborhood, and public facilities.
9. Contamination was carried from the gas station into the sewer that runs below adjacent residential properties. This toxic contamination poses environmental and human health problems.
10. The evidence indicates that the Alameda County Environmental Protection Agency has received health related complaints from nearby residents approximately three years ago.
11. Because of the cited public nuisances, the activity no longer enhances the successful operation of the surrounding area.
12. The operating characteristics of the facility have been changed from one that operated pursuant to the terms of Zoning Regulations, to one that is a public nuisance, thereby violating Sections 2010 (Conformity with Zoning Regulations Required) and 9604(a) (Variance Findings Required) of the Oakland Zoning Regulations.
13. Because of the extent and duration of the public nuisance (since 1989), the location of the station in a residential neighborhood, the bankruptcy filing of Desert Petroleum (the party currently responsible for the remediation work), and the lack of certainty regarding actual remediation completion

November 20, 1996

date, a compelling public necessity exists that all contamination, on- and off-site, shall be remediated prior to commencement of any work that would allow the reopening of the service station.

14. The soil and groundwater contamination which originate from the site, along with associated problems of petroleum release migrating through the sewer line to adjacent residential properties, including the private yards of residents of Brighton Avenue and Hampel Street, and potential environmental and health problems, individually and collectively, constitute a public nuisance as such is defined by Sections 3479 and 3480 of the California Civil Code.
15. The welfare of residents who live near the subject facility have been and continues to be significantly and negatively impacted by the on- and off-site contamination problems caused by the facility's prior operations.
16. The above findings are based entirely and solely on the nature and scope of the described public nuisance, its impact on the surrounding neighborhood, and the lack of certainty regarding actual completion of the toxic remediation work.
17. Because of the foregoing, a compelling public necessity supports adding the following conditions of approval to the original 1965 Major Variance approval for this facility:
 - (a) Subject to subsection (b) below, all on- and off-site toxic remediation work shall be completed to the satisfaction of the Alameda County Environmental Protection Services, prior to the commencement of any work for the reopening of the service station and prior to the issuance of any City Building permits for the site.
 - (b) That Major Variance VM65-567 shall be reviewed 12-months from this determination or by November 20, 1997, with regards to the progress and completion of the toxic remediation work (on- and off-site) and dependent upon the owner's compliance with these conditions and the state of the toxic remediation work, the Planning Commission, at that time, may allow the reopening of the service station.

The Planning Commission's decision regarding the change in operating characteristics of the service station and its determination that a serious public nuisance exists becomes final ten days from the date of the Commission's decision and

November 20, 1996

determination, unless properly appealed to the City Council.

RECOMMENDATION: 1. Approve the staff report, including all findings and conditions of approval.

ADOPTED BY: City Planning Commission: November 20, 1996 (date) 7 ayes, 0 noes - to approve (vote)

ATTACHMENTS:

- A. Staff report dated October 23, 1996 (VM65-567).
- B. Staff report dated October 9, 1996 and reissued October 23, 1996 (A96-143), including location map, site plan, and elevations.
- C. Canopy demolished without permit dated August 15, 1995 (Verified Code Compliance Complaint).
- D. Felix A. Seidler's letter to Mr. Gabriel agreeing to providing conditions of approval, dated July 13, 1996.

F Z299 2VM65567.ML
2A96143V.ML

TO: City Planning Commission

DATE: October 23, 1996

FROM: Staff

CASE FILE NO.: WM65-567

SUBJECT: Review of compliance with Zoning Regulations, consideration of adding conditions of approval, determination of whether public nuisances exist and consideration of revocation of a Major Variance for a service station at 4035 Park Boulevard in the R-50 Medium Density Residential Zone. (Environmental Determination: Exempt, Section 15261(b), project approval predates CEQA.)

BACKGROUND: At the October 9, 1996 meeting, the Commission considered the Administrative Appeal of a determination made by the Director of City Planning, that submitted plans for a service station at 4035 Park Boulevard in the R-50 Medium Density Residential Zone are consistent with the original approval pursuant to Resolution No. 46278 C.M.S. adopted by the City Council on December 7, 1965 (Case No. A96-143). Based on written and verbal testimonies at the October 9th meeting, the Commission directed that a separate hearing be held on October 23, 1996 to determine whether public nuisances exist at the above site, and consider revocation or modification of the Major Variance. The Commission directed that further research be done into the original 1965 approval. In addition, the Commission continued the hearing in the Administrative appeal (Item 15 on the October 23 agenda).

The September 26, 1996 letter from the County of Alameda Health Care Services regarding the site's soil and groundwater contamination resulting from the 1989 gasoline leakage is attached. (See Attachment A.) According to this report, "the 1989 petroleum release appears to have found its way to the backfill material for the sewer line, then travelled through the sewer line in the yards of the residents of Brighton Ave. and Hampel St., finally pooling in the topographic low point of Brighton Avenue." The letter recommends that an environmental engineer be consulted as to the future problems that may be incurred subject to a future release of petroleum.

Desert Petroleum, Inc., former owner of the service station, is subject to the remediation measures recommended in the Workplan in the reports prepared by Western Geo-Engineers. According to the reports, there is still contamination, and remediation required in the residential area immediately downgradient of the site, in particular, in the vicinity of a residence located at 4032 Brighton Avenue. Cleanup of this site is still in progress.

In response to the Commission's request for further information on the 1965 approval, staff has managed to locate the original Board of Adjustment staff report and minutes. This, plus another copy of the resolution approving the variance and related documents, are attached (see Attachment B).

(See Reverse Side)

ATTACHMENT A

11/20/96



September 26, 1996
LOP STD 12-8
page 1 of 2

Alameda County
Environmental Protection Services
1131 Harbor Bay Parkway, Room 260
Alameda CA 94602-6877
CC4580

Mr. Charles Bryant
Secretary to City of Oakland
Planning Commission
1330 Broadway, 2nd Floor
Oakland CA 94612

RE: Case Number #A96-143, former Desert Petroleum site #793, 4035 Park Blvd., Oakland
CA 94602

Dear Mr. Bryant:

This letter is to inform you of the history and various issues associated with this site, from the point of view of the regulatory agency charged with oversight of remedial activities.

There was a release of gasoline from this site in 1989, reportedly due to a faulty piping replacement job. When the station operators failed to take action to cleanup the leak, Desert Petroleum took responsibility for conducting a subsurface investigation. Several groundwater monitoring wells were installed both on- and off-site. Vapor extraction was employed as a remedial measure for two years. Desert Petroleum reportedly declared Chapter 11 bankruptcy in 1992. The underground storage tanks (USTs) were removed in 1994, followed by the excavation and removal of approximately 1,100 cubic yards of contaminated soil from the site.

A subsurface investigation was conducted on the residential area earlier this year. A total of 23 soil probe survey test holes were drilled. Vapor, soil, and water samples were collected. Gasoline was detected in soil and groundwater in all of the properties investigated. Based on this study, a remediation workplan was requested by letter from this office dated 8/12/96. The workplan is forthcoming. In addition, air monitoring was reportedly conducted on the residences within the last week; results are also forthcoming. It is unknown how long it will take to fully remediate these properties, and issue a final case closure letter. This case has been ongoing for seven years already. This is not wholly unusual in this type of situation.

We understand that there is a new application for a new gasoline service station at this location. If there were a release of petroleum from the new USTs, it would likely follow the same migration pathway as the previous 1989 release. The 1989 petroleum release appears to have found its way to the backfill material for the sewer line, then travelled through the sewer line in the yards of the residents of Brighton Ave. and Hampel St., finally pooling in the topographic low point of Brighton Ave. A future release of petroleum would likely follow the same migration route.

ATTACHMENT A
10/23/96

TO: Board of Adjustments

October 22, 1988

FROM: Staff

Case No. 88-367

SUBJECT: Major Variance to permit the rebuilding of a non-conforming commercial use in a residential zone.

LOCATION: 4035 Park Boulevard (corner of Hampel)

APPLICANT: Midwater Oil Company

PRESENT CONDITIONS: 3-10 Medium Density Residential Zone property containing an existing service station constructed in about 1931 as a complex of three buildings (i.e. inspection building, office and pump island and comfort station). The station has been a non-conforming use since the zoning ordinance was adopted in 1983.

PROPOSAL: Demolish the old facility and construct a new "suburban" type station.

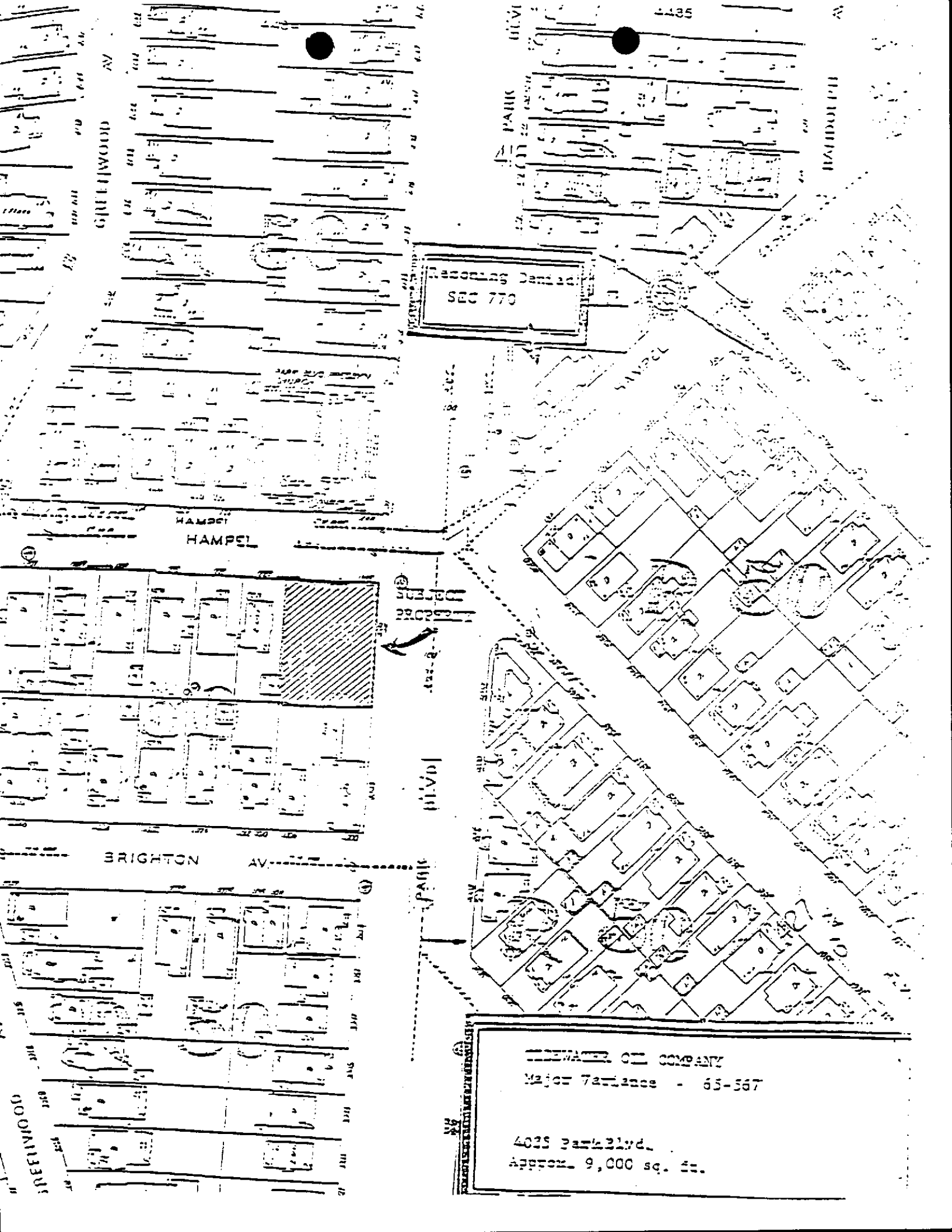
DISCUSSION: The station as it exists can be continued indefinitely as a non-conforming use, as long as no structural alterations are made. The existing facilities although not modern, are functional and not unattractive. The station has apparently been a good neighbor, as none of the neighbors protested at the hearing before the Board of Adjustments. If the site is cleared, six dwelling units might be constructed there.

In order to approve a Major Variance, the Board is required to make four findings as follows:

1. "That strict compliance with the specified regulations would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations due to unique physical or topographic circumstances or conditions of design;" This finding cannot be made as the site can be continued as it exists or cleared and apartments constructed.
2. "That strict compliance with the regulations would deprive the applicants of privileges enjoyed by owners of similarly zoned property;" The other property owners in the area have developed their property with residential facilities in accordance with the zoning regulations.
3. "That the variance, if granted, will not adversely affect the character, livability, or appropriate development of adjoining properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy." Traffic and noise generated by such a use is not in character with the residential zone, in which it is located.

ATTACHMENT B

10/23/96



RECORDS DEPT.
SEC 770

INDIAN OIL COMPANY
Major Variance - 65-567
4025 Park Blvd.
Approx. 9,000 sq. ft.

GREENWOOD AV

PARK

HAMPCL

HAMPCL

BRIGHTON AV

PARK BLVD

GREENWOOD

Oct 27, 1965

1. GROSS, Sylvia D. 65-537
Denial of application for a Major Variance in order to convert a recreation room into an additional dwelling unit in the existing 26-unit apartment building on the property containing 15,876 sq. ft. at 3814-3820 Avenue in the R-50 Medium Density Residential Zone.

The staff report recommended denial. Vote on approval: 0 ayes, 3 noes.

2. SANDERS, Jeff L. 65-539
Denial of application for a Major Variance in order to construct a building with office space and three dwelling units on the property at 977-62d Street in the M-30 General Industrial Zone.

The staff report recommended denial. Vote on approval: 0 ayes, 3 noes.

3. GRAY, Ernest C. 65-553
Denial of application for a Major Variance in order to construct a 6-unit, 3-story apartment building on the property containing 5000 sq. ft. at 3567 Galindo Street, in the R-50 Medium Density Residential Zone.

The staff report recommended denial. Vote on approval: 0 ayes, 3 noes.

4. PLEASANT GROVE BAPTIST CHURCH 65-557
Action postponed on application for a Major Variance in order to vary the number of off-street parking spaces for the proposed church to be constructed on the property at 113d Adeline Street in the R-70 High Density Residential Zone.

The staff report recommended deferring action. Lind advised: the Redevelopment Agency staff requests that action be set aside to allow them to review with the church the entire proposal. Lind said this appeared to be agreeable to the applicant. The chairman ruled that the matter be postponed.

5. TIDEWATER OIL COMPANY 65-567
Denial of application for a Major Variance in order to demolish the existing service station and construct a new service station building on the property at 4035 Park Boulevard (SWC of Park Blvd. and Hampel Street) in the R-50 Medium Density Residential Zone.

The staff report recommended denial. Vote on approval: 0 ayes; 3 noes;

6. KNOPI, Gus A. 65-573
Denial of application for a Major Variance in order to add an additional dwelling unit to the existing 3-unit building, making a total of four (4) dwelling units on the property containing 10,000 sq. ft. at 2933 Carmel Street in the R-30 Coor-Family Residential Zone.

The staff report recommended denial. Vote on approval: 0 ayes; 3 noes.

NEW BUSINESS

1. LAPHAM, William 65-583 Denial of Minor Variance

The Director had denied this application and the applicant appealed to the Board: William Lapham, 1433 Leimert, said: the ordinance should allow steps to the ground level on narrow hillside lots, within the side yard area. Vote on approval: 0 ayes; 3 noes.

Marc Herbert
 Marc Herbert
 Secretary

MH1bp

CLAKLAND CITY COUNCIL
RESOLUTION NO. 16278 C.M.S.

VM65-567

INTRODUCED BY COUNCILMAN _____

RESOLUTION REVERSING DECISION OF THE BOARD OF ADJUSTMENTS DENYING A MAJOR VARIANCE TO DEMOLISH EXISTING AND CONSTRUCT NEW SERVICE STATION AT 4035 PARK BOULEVARD; AND GRANTING SAME, ON COMPULSION.

WHEREAS, on or about October 1, 1963, Tidewater Oil Company applied to the Board of Adjustments for a Major Variance to demolish existing and construct new service station at 4035 Park Boulevard, said property being zoned R-30 Medium Density Residential Zone; and

WHEREAS, a notice of public hearing upon said application was duly made and given, and a public hearing thereon was held on the 13th day of October, 1963; and

WHEREAS, on October 27, 1963, the Board of Adjustments denied said application; and

WHEREAS, thereafter, and within the time provided therefor, an appeal was filed from said decision of said Board, and thereafter review of said decision came on for hearing before the City Council; now, therefore, be it

RESOLVED: That the City Council, having heard all of the evidence adduced on behalf of all interested parties, finds and determines that:

(a) Strict compliance with the Zoning Regulations would result in practical difficulties and unnecessary hardship, inconsistent with the purposes of the regulations, due to the unique physical and topographical circumstances and conditions of design.

(b) Strict compliance would deprive the applicant of privileges enjoyed by owners of similarly zoned property.

(c) Subject to the prior approval of the plans by the Planning Commission, the granting of the variance, as applied for, would not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area and would not be detrimental to public welfare or contrary to adopted plans and development policy.

(d) The granting of the variance, as applied for, would not constitute a grant of special privilege, inconsistent with limitations imposed on similarly zoned properties, or inconsistent with the purposes of the Zoning Regulations;

CITY OF OAKLAND
CITY HALL
OAKLAND, CALIFORNIA 94612
OFFICE OF CITY MANAGER
970-1301
MAY 12, 1996

RECEIVED BY
CITY CLERK
CITY HALL
OAKLAND, CALIFORNIA 94612

NOTICE OF APPROVAL OF APPLICATION OF

RENEWAL OF LICENSE

1. Licensee's Name

Under the name of TELEVISION 222 COMPANY

In accordance with the provisions of existing city ordinances, approved provided:
1. The application with City Council Building Department may also be approved by
the Planning Commission prior to issuance of a building permit.
2. The applicant shall apply to the Planning Department for review
and the work shall be performed in accordance with the requirements of the Oakland
Building Code, related ordinances and plans approved by Building Department and
the Council.

Name address of licensee is 11111 Street - San Francisco

This Notice of Approval does not constitute a license. All other permits and licenses are
obtained. Please contact the Department indicated by X below for a license and/or permit.
X Bureau of Permits and Licenses, 9th Floor, City Hall
Planning Inspection Department, 11th Floor, City Hall
Other

City Clerk
License Bureau
970-1301
Building Department

City Manager
970-1301

October 9, 1996

The time extension was requested to allow for negotiation between the applicant, the property owner, and the City of Oakland. Council Member John Russo requested that "... the City of Oakland Real Estate Department research the possibility of acquiring the site for use as a merchant parking lot." The Real Estate Division has not made any further attempts to acquire this site at this time due to major concerns regarding the extent of toxic contamination on this property.

Approximately nine letters of opposition to a service station at this site, and a petition with 19 signatures from merchants supporting a Merchants Parking Lot have been received by staff.

DISCUSSION: One of the concerns raised in the appeal letter is that the set of plans approved by the City Council in 1965 "... are no longer available." Building plans were lost because of the need to move files and plans during the 1989 Loma Prieta earthquake and the 1991 electrical fire in the City offices. However, a prior zoning application denying the operation of a convenience market (VM88-368) contained a copy of the original survey of the site (Proposed and Existing Improvements, Service Station #108 - Park Boulevard & Hampel Street," dated March 13, 1966, by Tidewater Oil Company). A hand-written remark on the survey referenced the Major Variance application of the service station (Case # VM65-567). This site survey is considered accurate. The case file also contained a photo of the service station on the site as it appeared in 1988. Thus, although the original plans of VM65-567 are no longer available, there is sufficient evidence in the record to allow the City to make the determination that the proposed plans and elevations are consistent with the facility as originally approved by the City in 1965.

Staff has also inquired with the City's Fire Prevention Bureau, Code Compliance Division, and the County of Alameda Health Care Services regarding the status and issues raised in the appellant's letter regarding, "... soil and groundwater contamination resulting from gasoline leakage which can be traced to 1989." Permits and recent investigations which occurred at this site are listed and summarized below.

On June 8, 1994, the City of Oakland approved an excavation permit to Desert Petroleum, Inc. (former owner) to remove three fuel tanks and a waste oil tank (with a total fuel tank capacity of 26,000 gallons and 250 gallons, respectively). The tank removal permit was granted by the Fire and Building Departments subject to review and approval by other agencies such as the Bay Area Air Quality Management District (BAAQMD). Staff contacted the BAAQMD's Enforcement Division. According to this division, gasoline dispensing facilities (GDF's) must have a permit to operate from the District. Any projects involving the vapor recovery system at GDF's must be authorized by the District prior to construction. Since this site would involve the replacement and installation of tanks and/or vapor recovery lines, dispenser modification, and the addition of nozzles, this project is subject to the regulations of this District and of any other applicable agencies.

October 9, 1996

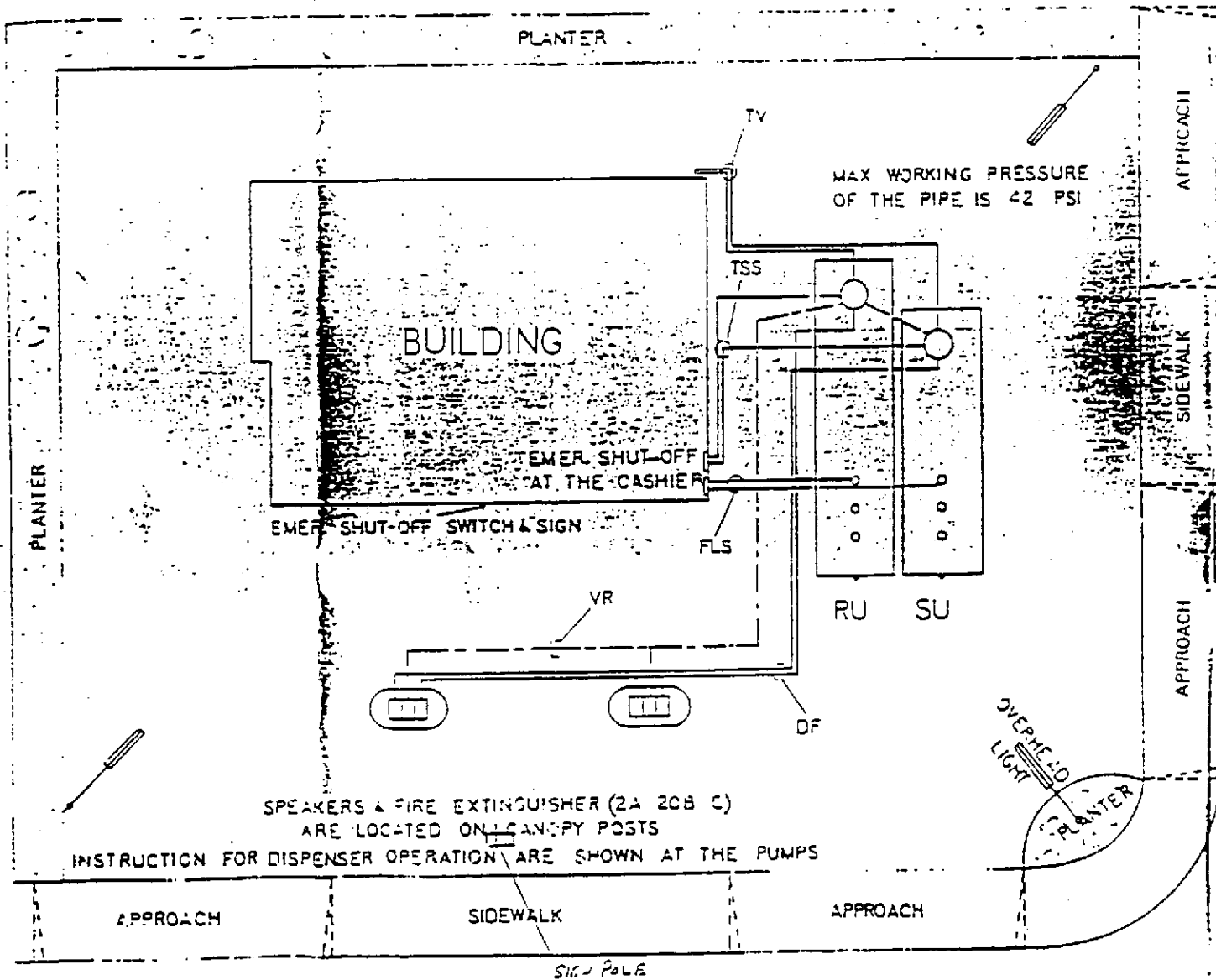
determined that submitted plans to the Office of Planning and Building were consistent with the facility that was approved by the City in 1965 (per Resolution No. 46278 C.M.S.). The determination by the Director was based on whether the proposed plans would restore the facility to what was there before. This determination is a ministerial decision since no discretion is required. The determination does not involve discretionary review or approval of the use or development of the site. Although changes, e.g. removal of canopy and posts, were made without benefit of permits, new zoning approvals are not required since the Major Variance runs with the land. The applicant has agreed to replace the canopy and all other modifications necessary to bring it back to the facility originally approved in 1965.

An administrative appeal of this determination should be directly related to the Director's determination that the revised plans for the service station are consistent with what was approved by the City in 1965. The proposed plans are consistent with the original facility as reconstructed from information available in City files.

The letter appealing this determination has raised several concerns of the Glenview Neighborhood Association and other interested parties. While the neighborhood has raised a number of operating concerns and wishes to restrict or condition the use of the property, the determination letter related solely to a comparison of the physical characteristics of the facility as proposed and approved in 1965. Operational issues and concerns raised in the appeal letter do not relate to the facility's adherence to these approved plans. The appeal should be limited to what was decided by the Director, which solely relates to the facility's adherence to previously approved plans.

- RECOMMENDATIONS:**
1. Affirm staff's environmental determination.
 2. Deny the appeal and affirm the Director's determination that the plans are consistent with the facility that was approved by the City in 1965 according to available information in City records.

- ATTACHMENTS:**
- A. Location Map
 - B. Partial Plot Plan, Sections and Elevations
 - C. Resolution No. 46278 C.M.S., adopted by the City Council on December 7, 1965
 - D. Director's Determination Letter dated June 25, 1996
 - E. Appellant's Appeal including Letter dated July 5, 1996
 - F. Appellant's Letter requesting continuance of Appeal Hearing dated August 12, 1996
 - G. Letter from Alameda County Health Care Services Agency regarding soil remediation, dated September 26, 1996.

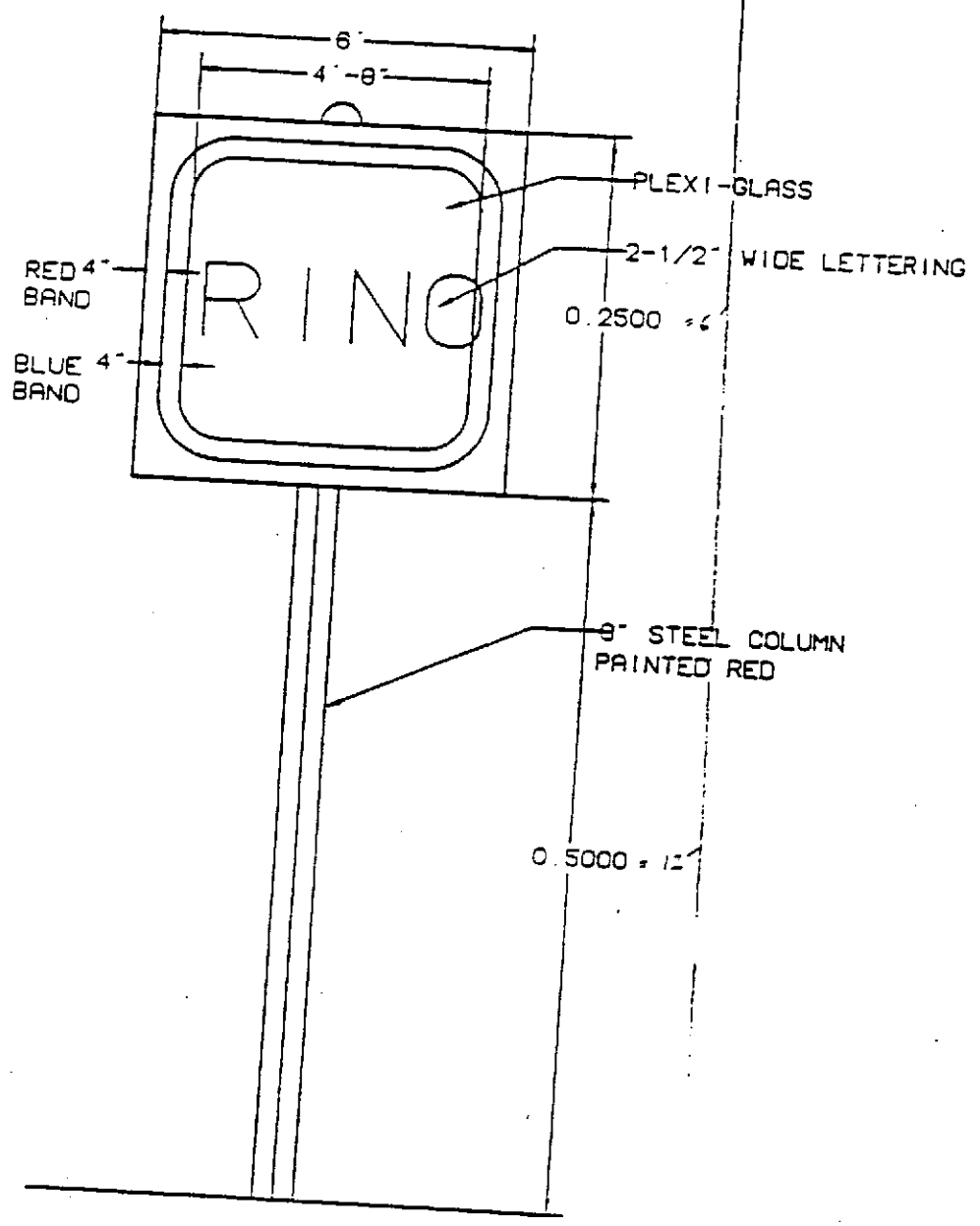


HAMPEL ST

PARK Blvd

ATTACHMENT B

10/9/96



1

SIGN SECTION

SCALE: 1/2" = 1'

and be it

FURTHER RESOLVED: That the decision of the Board of Adjustments denying a Major Variance to demolish an existing service station, and construct a new one at said location be, and the same hereby is, reversed, and said variance be, and the same hereby is, granted, on condition that the plans be approved by the Planning Commission prior to issuance of a building permit.

IN COUNCIL, OAKLAND, CALIF.,

DEC 7 1955

19

PASSED BY THE FOLLOWING VOTE:

ROSE,

AYES- FROM, CATALVO, MAGUIRE, MAROVICH, ~~ROSE~~, OSBORNE, READING, RILEY
AND ^{WILL} PRESIDENT ~~WOLFE~~ *Wagner - 8*

NOES- *none*


ABSENT *Houlahan - 1*

ATTEST:

W. H. ...
CITY CLERK AND CLERK OF THE COUNCIL

ATTEST:

W. H. ...
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, CALIF.

MEETING.	CITY OF OAKLAND  APPLICATION UNDER THE ZONING REGULATIONS-PLANNING CODE
Of _____	
Date _____	
Time _____	
Place _____	

PLEASE PRINT OR TYPE

ADMINISTRATION DETERMINATION, INTERPRETATION, AND APPEAL

1. Name of Applicant: Michael Gabriel - Glenview Neighborhood Assn.
 2. Address or location of property: 4035 Park Blvd.
 3. Attached are: letter

4. Action requested:
 Interpretation of the zoning regulations in the following respects:
Planning staff review of submitted plans
 Determination under the zoning regulations as to the following matters:
VM 65-567

5. Land uses affected by this application:
 Existing activities _____
 Proposed activities _____
 Existing facilities _____
 Proposed facilities _____

6. Additional remarks: See attached letter

7. I certify that I am the applicant named herein and that the information given above and on any submission herewith is in all respects true and accurate to the best of my knowledge and belief.

I further certify that I am the owner or purchaser (or option holder) of the property involved in this application, or the lessee or agent duly authorized by the owners to make this submission.

I acknowledge receipt of a copy of the "General Information and Procedures for Zoning Applications."

Signature: Michael Gabriel I am the Owner
 Lessee (include written authority)
 Purchaser (include copy of contract)
 Agent (include written authority)
 Address: 3945 Greenwood Ave.
Oakland CA 94602
 Telephone No. 482-3128
 X BNA president

Owner's Name: All Snirkation (if other than applicant)

Owner's Address and Telephone: 23 #6 Circle Dr.
Tiburon CA 94920

DEPARTMENTAL USE ONLY

Date Submitted: 7/5/86 Case No. A96-143
 Zone: R-50 Census Tract: _____ Sanborn Sheet: _____
 Tract: _____ Related Cases: _____
 Fee Paid: _____ Receipt No. _____ By: [Signature]

Mr. Willie Yee, Jr.

July 5, 1996

page 2

Pending Contamination Case

A case is still pending at this site with the Alameda County Health Care Services Agency regarding remediation (see attached A) of serious soil and groundwater contamination resulting from gasoline leakage which can be traced to 1989. County staff has given provisional approval to a proposed clean-up workplan which, to date, has not been completed. I have also shared concerns regarding operations with a Oakland Fire Department Sr. Hazardous Materials Inspector. These concerns include the unloading of fuel, the removal of other hazardous materials, and storage of flammable liquids, particularly given the proximity to adjoining residential uses.

Conciusion

Conditions in the area surrounding the site have changed significantly since the 1965 variance approval. Traffic on Park Blvd. is of a much greater volume, and there is now a multi-unit senior housing facility less than one block away. It is now common place for extremely long dual tanker trucks to deliver fuel which, given the small site configuration and location of the pumps, may require that trucks stick-out onto Park Blvd. or Hampel St. causing an obvious safety hazard.

Gasoline sales operations at the site have had a history of failure. In addition to gasoline sales, independent operators in the past have had to rely heavily on auto repair, auto body work, towing services, vending machines, cigarette sales, and a variety of other efforts well beyond that which would be considered collateral to the gasoline sales approved under the 1965 variance. The negative impact on the neighborhood is the result of a business activity that is no longer viable or safe on this small site. This site is consistent in size with adjoining residential lots and only a use allowed in the R-50 zone would be appropriate. Attached please find a partial list of concerns based on years of neighbors living with this incompatible use (see attached B).

Notwithstanding the serious and yet unresolved environmental contamination, the granting of the 1965 variance and its subsequent abuse has resulted in an adverse impact on adjoining properties and the area in general. Recent modifications, proposed changes, and the potential for an increased negative impact on the surrounding neighborhood, warrant a review by the City Planning Commission and as such this appeal is submitted.

Sincerely,



Michael Gabriel
President, GNA

JONATHAN C. BREAUT
3944 Glen Park Road
Oakland, CA 94602-1203

August 12, 1996

Mr. Charles Bryant
Secretary to the Oakland Planning Commission
1330 Broadway
Oakland, Ca. 94612

Re: Case VM 65-567 4035 park Blvd.

Dear Mr. Bryant,

This is to formally convey to you in writing the content of the discussion you and I had on the telephone on Friday afternoon, August 9, 1996. I have discussed this with Mr. Michael Gabriel, President of the Glenview Neighborhood Association, and he will contact you regarding this matter too.

We the appellants in the above referenced matter wish to extend the sixty day time limit under Section 9102 of the Oakland Zoning Regulations for an additional forty-five days. This would extend our time limitation on the appeal to a total of one hundred-fifty days from the date of the appeal which was July 5, 1996.

The reason for the extension is to allow sufficient time for a legitimate negotiation to take place between Mr. Ali Shirazian, owner of record of the 4035 Park Boulevard property, and the City of Oakland. Mr. Shirazian has expressed a willingness to sell the property to the City for the purpose of developing a merchant's parking lot to service the Glenview Shopping District.

Thank you very much.

Sincerely,



Jonathan C. Breaut
Glenview Neighborhood Assn. Member
531-0567

cc: Mike Gabriel
Councilmember John Russo
Councilmember Dick Speas

ATTACHMENT F

10/9/96



September 26, 1996
LOP STID 1248
page 1 of 2

Mr. Charles Bryant
Secretary to City of Oakland
Planning Commission
1330 Broadway, 2nd Floor
Oakland CA 94612

RE: Case Number #A96-143, former Desert Petroleum site #793, 4035 Park Blvd., Oakland
CA 94602

Dear Mr. Bryant,

This letter is to inform you of the history and various issues associated with this site, from the point of view of the regulatory agency charged with oversight of remedial activities.

There was a release of gasoline from this site in 1989, reportedly due to a faulty piping replacement job. When the station operators failed to take action to cleanup the leak, Desert Petroleum took responsibility for conducting a subsurface investigation. Several groundwater monitoring wells were installed both on- and off-site. Vapor extraction was employed as a remedial measure for two years. Desert Petroleum reportedly declared Chapter 11 bankruptcy in 1992. The underground storage tanks (USTs) were removed in 1994, followed by the excavation and removal of approximately 1,100 cubic yards of contaminated soil from the site.

A subsurface investigation was conducted on the residential area earlier this year. A total of 23 soil probe survey test holes were drilled. Vapor, soil, and water samples were collected. Gasoline was detected in soil and groundwater in all of the properties investigated. Based on this study, a remediation workplan was requested by letter from this office dated 8/12/96. The workplan is forthcoming. In addition, air monitoring was reportedly conducted on the residences within the last week; results are also forthcoming. It is unknown how long it will take to fully remediate these properties, and issue a final case closure letter. This case has been ongoing for seven years already. This is not wholly unusual in this type of situation.

We understand that there is a new application for a new gasoline service station at this location. If there were a release of petroleum from the new USTs, it would likely follow the same migration pathway as the previous 1989 release. The 1989 petroleum release appears to have found its way to the backfill material for the sewer line, then travelled through the sewer line in the yards of the residents of Brighton Ave. and Hampel St., finally pooling in the topographic low point of Brighton Ave. A future release of petroleum would likely follow the same migration route.

ATTACHMENT G
10/9/96

504

Descr: GAS STATION CANOPY DEMOLISHED W/O PERMIT. CONFIRMED BY ENG SVCS 8/15.
EXC/GRADING (130 YARDS) W/O PERMIT; OB950186 (OBSTRUCT) ISS 08/03/95.
Notice: EXCAVATION/GRADING W/O PERMIT COMPLAINT REFERRED TO ENG-SVCS.
Owner: DESERT PETROLEUM INC
Address: P O BOX 1601 OXNARD CA
Agent: Tel: 93032

Complainant: MICHAEL GABRIEL;PRES,NBRHOOD ASSOC.482-3128 Tel: (510)273-4074
Complainant Response Requested? (Y/N): Y Response: Ltr/Tel/Oth:

* Violation Types*	Current	Station*	Dist	Last Actn	Date	By	Dispositn
OBC 41		CE-INSP	02			V	08/15/95

F1=Hlp F3=Ext F24=Com ENTER=Next Selection Bottom

03-14 SA MW KS IM II S1 OAK1 KB

PTS305 UPDATE/QUERY COMPLAINT DISPOSITION 7/23/96 10:22:31

Complaint#: 9504929 Type: OBC 41 Filed: 08/15/95
Address: 4035 PARK BL Suite: Parcel: 024 -0533-007-00
Descr: GAS STATION CANOPY DEMOLISHED W/O PERMIT. CONFIRMED BY ENG SVCS 8/15.
EXC/GRADING (130 YARDS) W/O PERMIT; OB950186 (OBSTRUCT) ISS 08/03/95.
Disposition* V Station* CE-INSP Dist: 02 Last Inspect:

Mr. Willie Yee
July 13, 1996
Page two

4. No public telephone is planned. the office telephone service will not be available to the public.

5. Gasoline sales will be the primary focus.

6. Lubrication will be done inside the building. We anticipate minor repairs also will be done in the bays, however, there may be instances when some repair work might be done outside. Operationally, this is undesirable and will be avoided.

Street parking will not be used. The sidewalks will not be obstructed by cars or anything else.

The sidewalks as well as the rest of the site will be kept free of greas, oil and other contaminants. The operators are well aware of their obligation to avoid and contain toxics and hazardous materials.

While it may be impossible to avoid occasional overnight parking on the site, it is to be avoided since it is operationally undesirable as well as having inherent risks.

No outdoor storage is contemplated. An appropriate waste container will be used for ordinary waste and trash. Wastes which require special handling will be secured inside the building and removed by appropriate contractors.

Streamers or pennants have not been considered. The operators will agree not to use such devices.

No towing service is contemplated. The operators believe the site is unsuitable for much of the typical work which towed vehicles require.

Exterior lighting will be arranged to minimize its effect on nearby properties. We trust the City will approve any architectural changes or variations necessary to accommodate this interest.

7. The operators will neither permit nor tolerate loitering.

8. No speakers or bells are contemplated.

9. A neat site with prompt and safe waste disposal is an operational requirement. Proper disposal of waste, recycling and containment of toxics and hazardous materials are major priorities in the service station industry and well understood by the operators.

- - - - - cont'd.