

ENVIRONMENTAL  
PROTECTION  
98 SEP 30 AM 9:50

**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 ~~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)

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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



**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**

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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.

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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

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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

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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* Charles S. Bryant  
MIMI LIEM  
Planner II

Approved:

Willie Yee  
WILLIE YEE, JR.  
Zoning Administrator

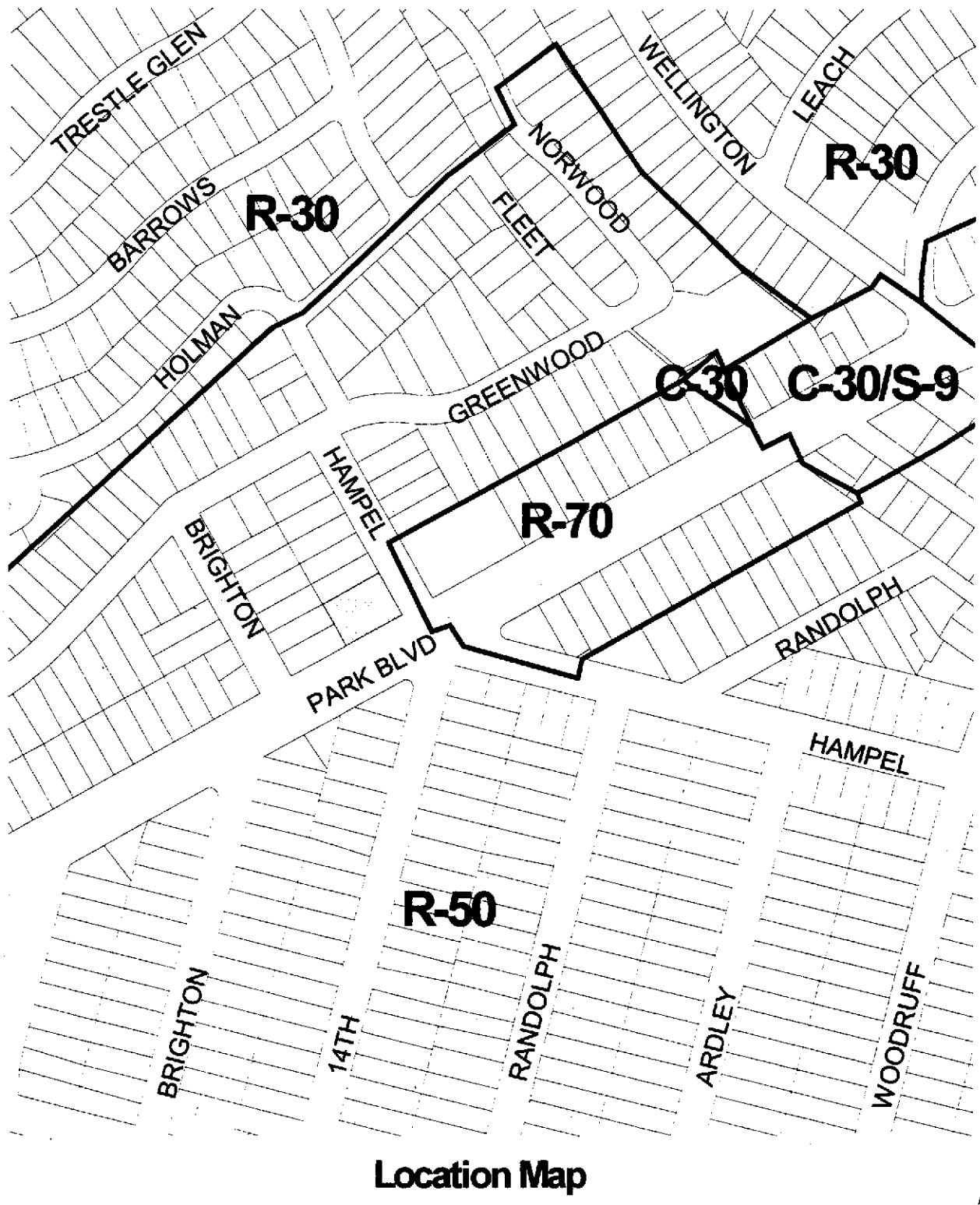
Approved for forwarding to the  
City Planning Commission:

*for* Charles S. Bryant  
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.

# 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**

3/18/98

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

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# desert petroleum inc.

John Rutherford  
Director  
Environmental Affairs

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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.

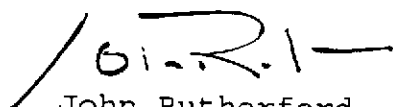
We had previously submitted to the State Cleanup Fund a plan for pre-approval which was a Tier Three assessment. This plan was not approved due to the costs involved. The Fund has however approved expenditure for a reduced Tier Two assessment.

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 Brighten 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**

3/18/98

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, O<sub>2</sub>
  - Nitrate, NO<sub>3</sub><sup>-</sup>
  - Sulfate, SO<sub>4</sub><sup>2-</sup>
  - Ferrous iron, Fe<sup>2+</sup>. The actual electron acceptor is ferric iron Fe<sup>3+</sup> but it is insoluble, so the reaction product Fe<sup>2+</sup> is measured.
7. Additionally because of the overly conservative nature of the vapor transport models, vapor samples are needed.
  - CO<sub>2</sub>
  - 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, O<sub>2</sub>
2. Nitrate, NO<sub>3</sub><sup>-</sup>
3. Sulfate, SO<sub>4</sub><sup>2-</sup>
4. Ferrous iron, Fe<sup>2+</sup>. The actual electron acceptor is ferric iron Fe<sup>3+</sup> but it is insoluble, so the reaction product Fe<sup>2+</sup> 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 performed.

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**

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>

September 29, 1997

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



Pete Wilson  
Governor

**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.
<b>TOTAL PRE-APPROVED</b>	<b>\$4,200</b>	

- 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 Califor.  
ensure their proper allocation and efficient use for the benefit of

**ATTACHMENT E**

3/18/98

- 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.

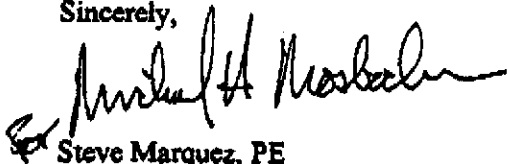
I also want to remind you that the Fund's regulations require that you obtain at least three bids, or a bid waiver from Fund staff, from qualified firms for all necessary corrective action work. The legislation governing the Fund requires that the Fund assist you in procuring contractor and consultant 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**

3/18/98

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 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  
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: 4036 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 Deaner, Manager  
 UST Cleanup Fund Program

Enclosures

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

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

A96-143

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

**ATTACHMENT G**  
 3/18/98

LETTER OF COMMITMENT FOR REIMBURSEMENT OF COSTS

CLAIM NO: 003274

AMENDMENT NO: 0

CLAIMANT: Desert Petroleum, Inc.

BALANCE FORWARD: \$0

CO-PAYEE: William E. Thompson

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

\$ \_\_\_\_\_

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

November 20, 1996

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.

November 20, 1996

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.

November 20, 1996

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

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.: 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. 46273 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 25, 1996  
LOP STD 1048  
page 1 of 2

Alameda County  
Environmental Protection Services  
1180 Harbor Bay Parkway, Room 250  
Alameda CA 94501-6577  
CC4530

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 3/12/96. 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 Hampe! 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 21, 1963

FROM: Staff

Case No. 53-567

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: Tidewater Oil Company

PRESENT CONDITIONS: R-10 Medium Density Residential Zone property containing an existing service station constructed in about 1931 as a complex of three buildings (i.e. lubrication building, office and pump island and customer service). The station has been a non-conforming use since the zoning ordinance was adopted in 1955.

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

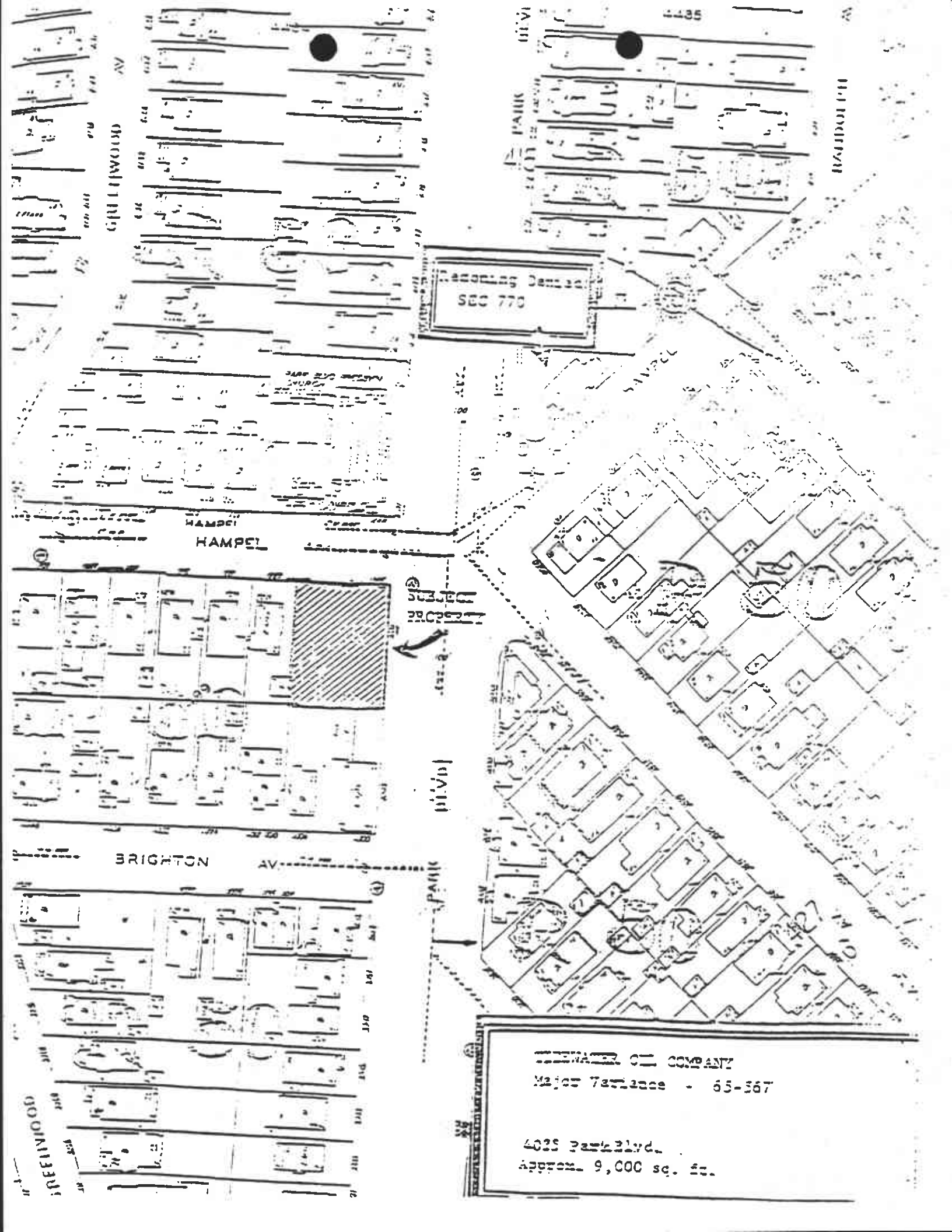
DISCUSSION: The station as it exists can be continued indefinitely as a non-conforming use, as long as no structural alterations are made. The existing facilities although not modern, are functional and not unattractive. The station has apparently been a good neighbor, as none of the neighbors protested 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 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



GULLWOOD AV

PARK

HAMPDEN

SEC 770

HAMPDEN

4025 Park Blvd

BRIGHTON AV

PARK

GREENWOOD

WATERMAN OIL COMPANY  
Major Tankage - 65-367

4025 Park Blvd.  
Approx. 9,000 sq. ft.

Oct 27, 1965

MEMORANDUM

1. GROSS, Sylvia 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 36-unit apartment building on the property containing 25,870 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 off-street parking spaces for the proposed church to be constructed on the property at 112d 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 4033 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 Co-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.

Mare Herbert  
Mare Herbert  
Secretary

MH1bp



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

VM65-507

INTRODUCED BY COUNCILMAN \_\_\_\_\_

**RESOLUTION REVERSING DECISION OF THE BOARD OF ADJUSTMENTS DENYING A MAJOR VARIANCE TO DEMOLISH EXISTING AND CONSTRUCT NEW SERVICE STATION AT 4025 PARK BOULEVARD; AND GRANTING SAME, ON CONDITION.**

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 4025 Park Boulevard, said property being zoned R-70 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 privileges, inconsistent with limitations imposed on similarly zoned properties, or inconsistent with the purposes of the Zoning Regulations;



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

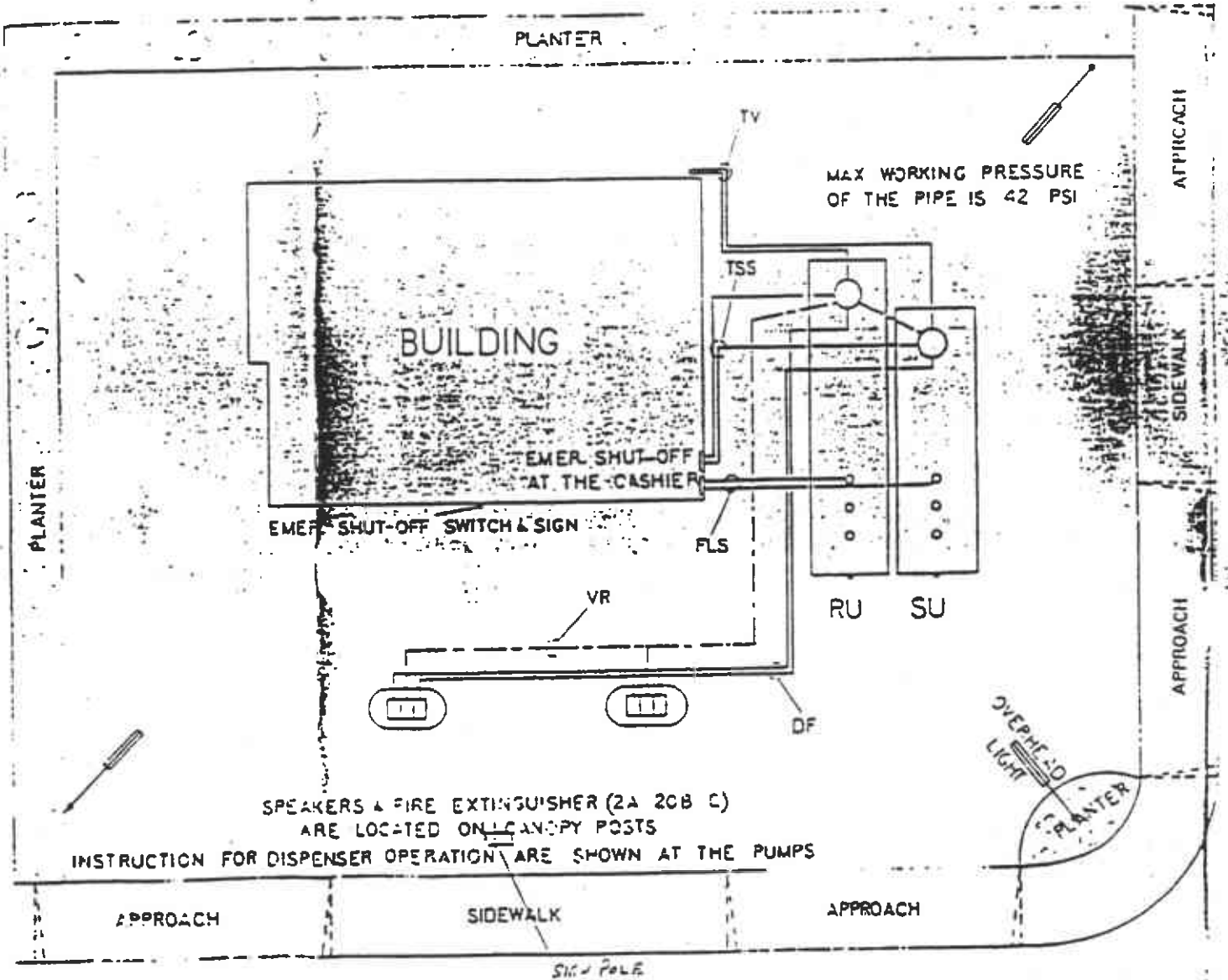
determined that submitted plans to the Office of Planning and Building were consistent with the facility that was approved by the City in 1965 (per Resolution No. 46278 C.M.S.). The determination by the Director was based on whether the proposed plans would restore the facility to what was there before. 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.

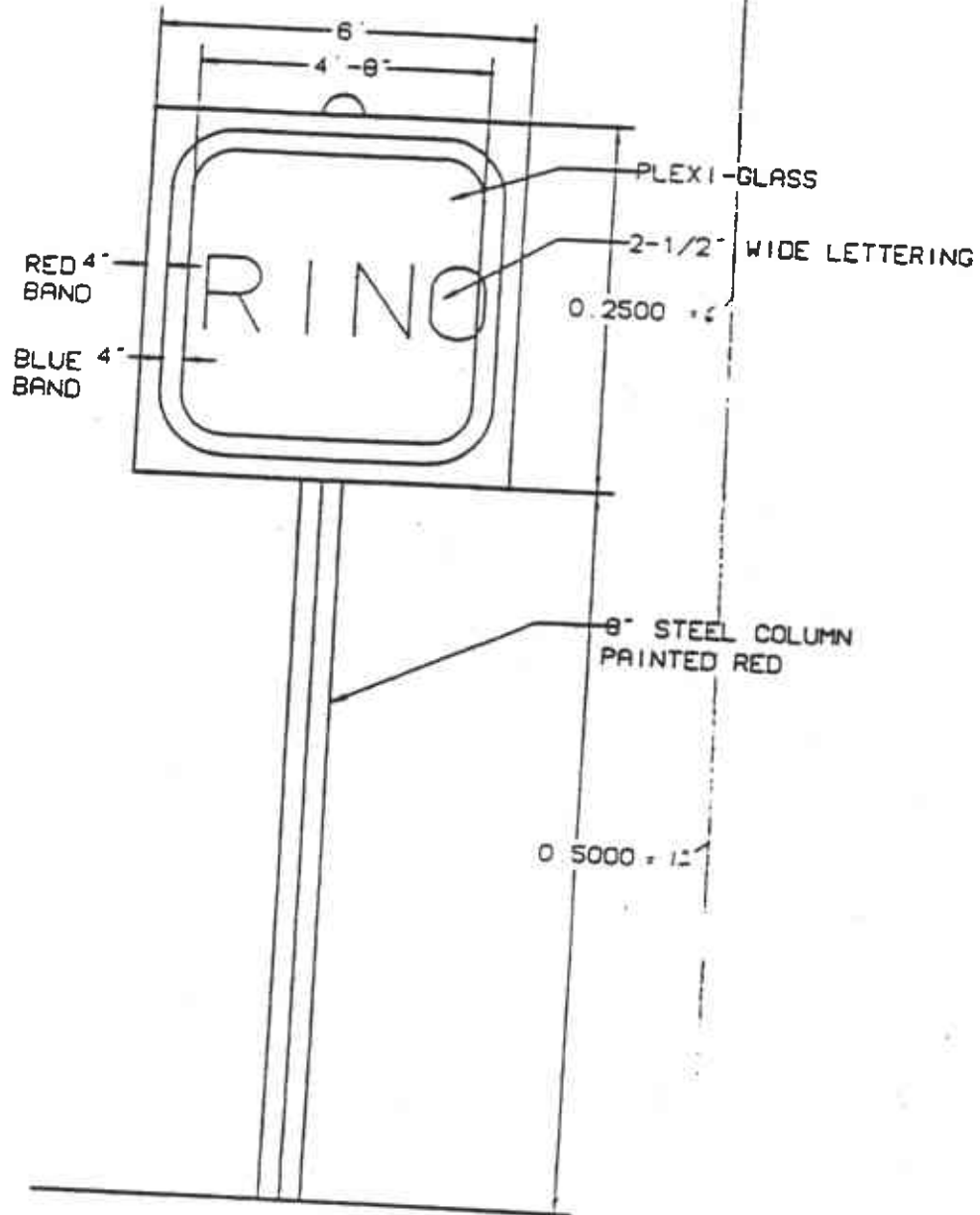
- ATTACHMENTS:**
- A. Location Map
  - B. Partial Plot Plan, Sections and Elevations
  - C. Resolution No. 46278 C.M.S., adopted by the City Council on December 7, 1965
  - D. Director's Determination Letter dated June 25, 1996
  - E. Appellant's Appeal including Letter dated July 5, 1996
  - F. Appellant's 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.



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 1965 19\_\_

PASSED BY THE FOLLOWING VOTE:


AYES- ~~BROM, CRTALVO, MAGGERRA, MAROVICH, ROSE, OSBORNE, READING, RILEA~~  
AND <sup>WILL</sup> PRESIDENT ~~WOLLMAN~~ *Maggerra - 8*

NOES- *none*

ABSENT *Houlahan - 1*

ATTEST: *[Signature]*  
CITY CLERK AND CLERK OF THE COUNCIL OF THE CITY OF OAKLAND, CALIF.

ATTEST: *[Signature]*  
CITY CLERK AND CLERK OF THE COUNCIL OF THE CITY OF OAKLAND, CALIF.

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

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:  
UM 65-507

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)
  - ONA president

Address: 3945 Glenwood Ave.

Oakland CA 94612

Telephone No. 482 3128

Owner's Name: Alli Smirkzien (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: R50 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.

Conclusion

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 Garnei  
President, GNA

JONATHAN C. BREULT  
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 M 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-five 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. Breult  
Glenview Neighborhood Assn. Member  
531-0567

cc: Mike Gabriel  
Councilmember John Russo  
Councilmember Dick Spoor

**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

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. Gasline 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.

02-09-1998 02:39PM FROM CEIA CODE COMPLIANCE

TO 95310567 P.01

City of Oakland  
Community and Economic Development Agency  
Code Compliance Division  
1330 Broadway - 6th Floor  
Oakland, California 94612

ESCROW NUMBER  
DATE 02/09/98  
PAGE 1 OF 2

2384730

CITY OF OAKLAND  
OAKLAND, CA  
OAKLAND, CA

94612

DEMAND FOR PAYMENT

Parcel Number: 024 0533-007-00  
Property Address: 4035 PARK BL  
Oakland, California

The following is a detail of charges on the subject property for which you requested our Demand For Payment:

Document	Doc	Date	Lien#	Invoice#	Description	\$ Amount
97242194	09/17/97	L003355	I0004663	CLEAN/BOARD-UP CONTRACT	560.00	
97242194	09/17/97	L003355	I0004663	CLEAN/BOARD-UP ADMIN.	350.00	
97242194	09/17/97	L003355	I0004663	CLEAN/BOARD-UP CONTRACT	960.00	
97242194	09/17/97	L003355	I0004663	CLEAN/BOARD-UP ADMIN.	350.00	
97242194	09/17/97	L003355	I0004893	LIEN - PLACE	225.00	
97242194	09/17/97	L003355	I0004893	LIEN - DEMAND/RELEASE	225.00	
		L003355		*INTEREST 146 DAYS @\$.73	106.50	
		COMPLAINT#9702293		**SUBTOTAL LIEN# L003355	2,776.50	

TOTAL AMOUNT DUE: \$2,776.58

Please add \$.73 per day for additional days from the above date.

To ensure timely and accurate processing of your payment, please make your check payable to "City of Oakland". Please mail the check to:

City of Oakland  
Community and Economic Development Agency  
1330 Broadway - 6th floor  
Oakland, California 94612  
Attention: Code Compliance Accounting

Upon receipt of your payment, Releases of Lien will be forwarded to you for recordation.

This demand covers all fees and penalties (recorded and unrecorded) assessed to the referenced property, and not transferred to the Alameda County Secured Tax rolls, as of the date of this demand. The property owner is liable for all items assessed against the property prior to the recorded property transfer date.

Delinquent Liens are added, as special assessments, to the Alameda County secured tax roll each year in August. To avoid double payment of liens listed above that subsequently may be added to the tax roll, please consult our office for the status of the items on outstanding demands after July 31st.

We are unable to process your request for a demand for payment for the following liens:

Document	Doc	Date	Lien#	Invoice#	Description	\$ Amount
TOTAL AMOUNT TRANSFERRED:						\$.

These liens have been transferred to the Alameda County Secured Tax rolls

ESCROW NUMBER

DATE 02/09/98

PAGE 2 OF 2

>>> CONTINUED FROM PREVIOUS PAGE <<<

and are listed as a special assessment on the property tax bill. In order to release the above liens you must pay the special assessment(s) to the Alameda County Tax Collector, and then provide our office with proof of payment. Upon receipt of proof of payment our office will prepare a Release of Lien and forward it to you for recording with the Alameda County Recorder's Office.

The Alameda County Tax Collector's Office is located at 1221 Oak Street, Oakland, California 94612. They can be contacted at the following numbers:

Current Year Property Tax Information (510)272-6925  
Prior Year Property Tax Information (510)272-6820

Should you have any questions, please contact our office at (510)238-3974.

Sincerely,

*Marianne Barvel*  
Code Compliance Accounting

# 1.0 INTRODUCTION

## Overview of RBCA Process

This manual provides practical guidelines for implementation of Tier 2 of the Risk-Based Corrective Action (RBCA) planning process, as described in ASTM E-1739 "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites." The RBCA process represents a streamlined approach for assessment and response to subsurface contamination associated with hydrocarbon releases. RBCA integrates EPA risk assessment practices with traditional site investigation and remedy selection activities in order to determine cost-effective measures for protection of human health and environmental resources.

Under this integrated approach, petroleum release sites are characterized in terms of *sources*, *transport mechanisms*, and *receptors* (see Figure 1). Remedial measures are then applied as needed to prevent human or environmental exposure to harmful levels of site constituents. Such risk-based corrective action can be achieved by addressing any step in the exposure process: i) removing or treating the source, ii) interrupting contaminant transport mechanisms, or iii) controlling activities at the point of exposure.

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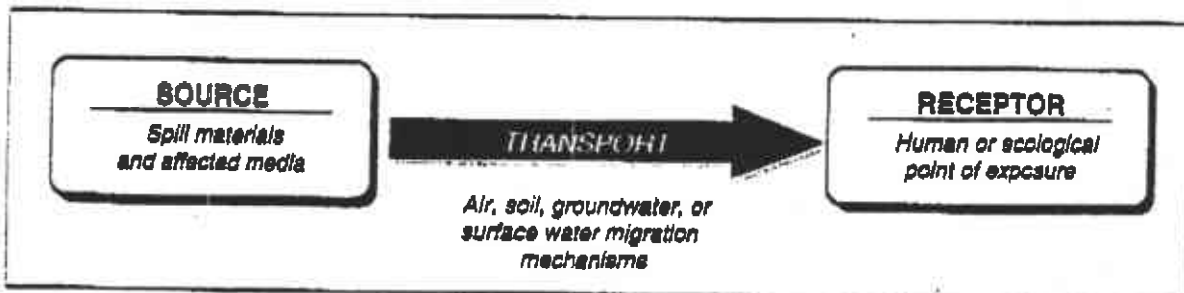


FIGURE 1. CONCEPTUAL EXPOSURE MODEL

Under RBCA, risk management strategies are developed and implemented in accordance with the process flowchart shown on Figure 2. As shown, based upon available site information, a site classification step is completed to characterize the relative magnitude and immediacy of site risks and prescribe immediate response actions (Step 2 on Figure 2). After any *acute* or near-term hazards have been properly addressed, risk-based cleanup standards are developed to protect against potential *chronic* health or environmental impacts associated with long-term exposure to low levels of contaminants (Steps 3 - 7 on Figure 2). To achieve the final risk management goals, the remedial action program may involve i) source removal/treatment, ii) containment measures, iii) institutional controls, or iv) some combination thereof. Further discussion of the underlying concepts of the RBCA process, as well as the specific tasks involved in site classification and development of risk-based remediation goals, is provided below.

### HAZARD CHARACTERIZATION AND RESPONSE UNDER RBCA

Release of petroleum products or other chemical substances can result in an *acute* (i.e., immediate) or a *chronic* (i.e., long-term) hazard to life or health. In general, chronic hazards are associated with long-term exposure to relatively low levels of site constituents, whereas acute hazards involve high concentrations sufficient to pose an immediate risk of fire, explosion, or health impairment. The presence of an acute hazard can be ascertained based on established threshold criteria (e.g., lower explosive limit, vapor IDLH). However, chronic health effects are not immediately evident and



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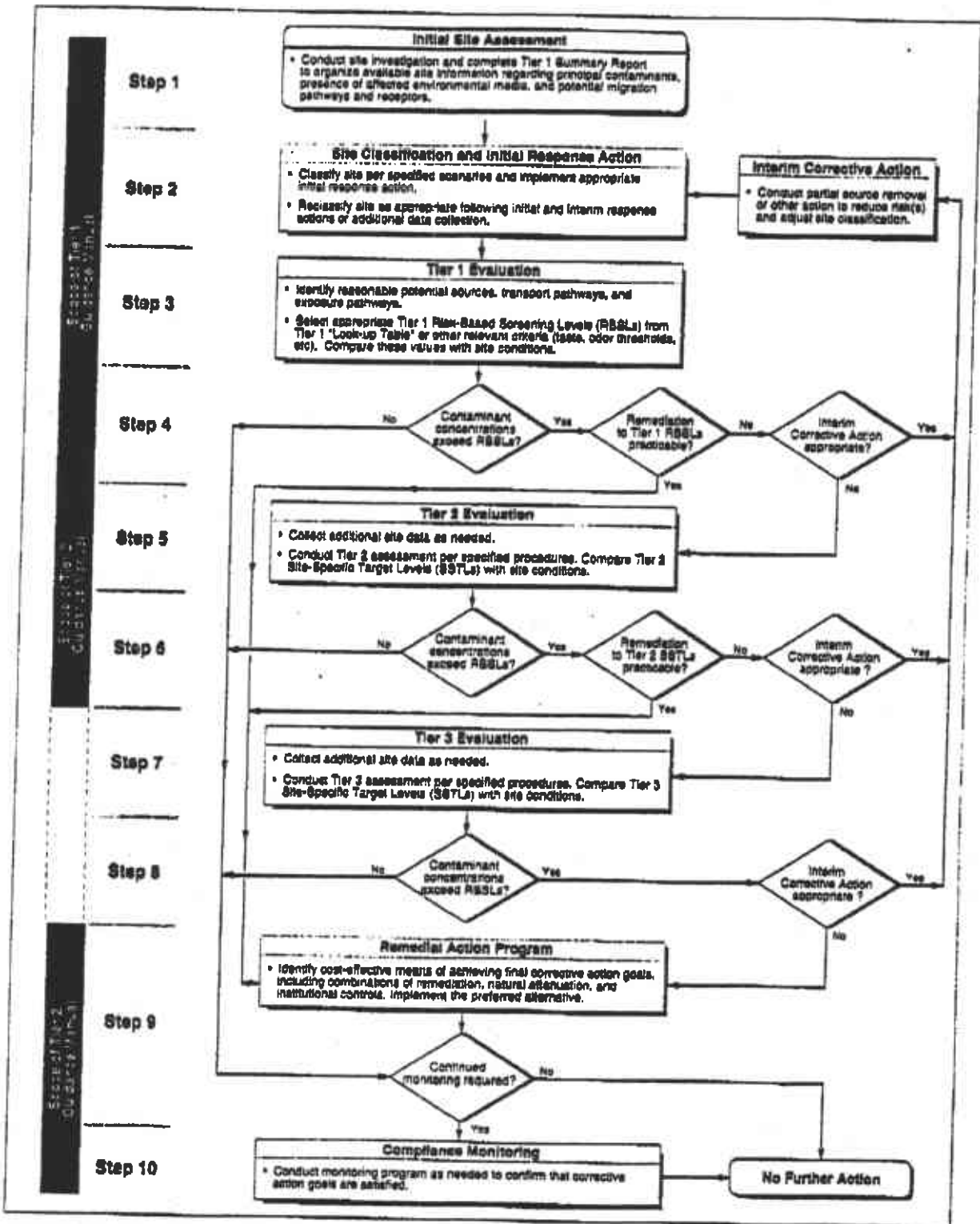


FIGURE 2. ASTM RISK-BASED CORRECTIVE ACTION (RBCA) FLOWCHART

therefore require a more careful evaluation of long-term, future exposure patterns in order to establish appropriate site cleanup standards.

Consistent with EPA risk assessment protocol, the RBCA Tier 1, 2, and 3 evaluations address source zone cleanup standards that will protect against *chronic* health or environmental impacts, i.e., carcinogenic or toxic effects caused by long-term exposure to low levels of contaminants. Such analysis is appropriate only after any and all acute hazards associated with the site have been identified and properly controlled. For this purpose, the RBCA evaluation process requires site classification and implementation of appropriate interim response actions (see Step 2 on Figure 2) prior to analysis of media cleanup standards. Types of acute hazards to be addressed in the site classification-response phase include explosive vapor levels, utility impacts, or the presence of free-phase hydrocarbon liquid on ground surface or surface water. In addition, interim stabilization measures may be applied to prevent incidence of near-term chronic impacts.

Following completion of Steps 1 through 4 of the RBCA process (see Figure 2), the procedures outlined in this manual can be used to define site-specific soil and groundwater cleanup levels necessary to protect against future health impacts. The general sequence of hazard characterization and response under RBCA is illustrated on Figure 3. As shown, in some applications, other non-health-based criteria may prove important in establishing final site cleanup goals. For example, aesthetic considerations (i.e., odor, appearance, taste) may affect the future use of a property or resource even after constituent concentrations have been reduced to levels posing no further health concern. Such criteria are not addressed in the Tier 2 SSTL calculation procedures outlined in this manual. However, where appropriate, the user may choose to apply such criteria as an upperbound limit on the calculated health-based standard.

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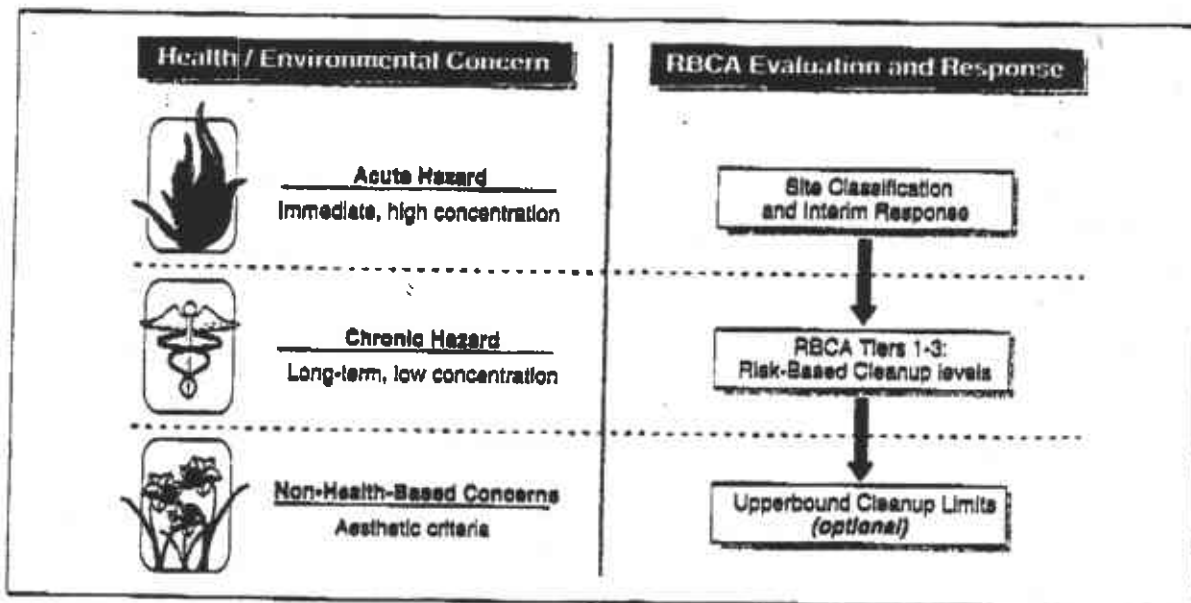


FIGURE 3. HAZARD CHARACTERIZATION AND RESPONSE UNDER RBCA

**RBCA SITE CLASSIFICATION**

Under the RBCA planning process, sites are first classified with regard to the current magnitude and immediacy of human health and environmental risks. Appropriate emergency actions are then implemented without delay to address acute hazards or near-term impacts. Under the classification scheme outlined in ASTM E-1739, applicable exposure scenarios are reviewed to match the site with one of the four qualitative risk categories indicated on Table 1. For each classification, an appropriate response action is prescribed to effectively manage potential site hazards as the site evaluation and

remediation process proceeds. As shown on Table 1, remedial actions are expedited at near-term, high-risk sites, while interim monitoring systems are required for long-term, low-risk sites. This initial site classification represents a "snapshot" in time, addressing hazards associated with current site conditions and land use. By means of this preliminary classification step, resources can be strategically allocated to those sites posing the greatest risks in the immediate future. Detailed discussion of the site classification and response process is provided in ASTM E-1739 and the accompanying RBCA Tier 1 Guidance Manual (see References 1 and 2 in Section 5.0 of this manual).

**TABLE 1. RBCA SITE CLASSIFICATIONS AND RESPONSE ACTIONS**

CURRENT HAZARD	SITE CLASSIFICATION	INITIAL RESPONSE ACTION
ACUTE	■ Class 1: Immediate Threat	⇒ Abate Release
CHRONIC	■ Class 2: Near-Term Threat (0-2 years)	⇒ Monitor/Remediate
	■ Class 3: Future Threat (>2 years)	⇒ Monitor/Investigate
AESTHETIC	■ Class 4: No Current Demonstrable Risk	⇒ Monitor Only

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**TIERED EVALUATION OF RISK-BASED STANDARDS**

To address chronic human health or environmental hazards, site remediation requirements are evaluated on the basis of risk-based soil and groundwater cleanup goals, developed in accordance with U.S. EPA risk assessment guidelines. To provide for economical use at both small and large facilities, the RBCA process has been designed to match the site evaluation effort to the relative risk or complexity of each site. For this purpose, a tiered approach is employed for determination of risk-based cleanup goals, involving increasingly sophisticated levels of data collection and analysis (see Figure 4). Upon completion of each sequential tier, the user reviews the results to determine whether further data collection and evaluation is warranted. For purpose of efficiency, the site investigation proceeds in a *just-in-time* approach, providing the immediate data needs of each tier. The principal steps and decisions involved in this process are indicated on the RBCA flowchart (Figure 2). The scope of Tiers 1, 2, and 3 are as follows:

• **Tier 1: Generic Screening-Level Corrective Action Goals**

Tier 1 of the RBCA process involves comparison of site constituent concentrations to generic Risk-Based Screening Levels (RBSLs) to determine whether further evaluation is required. RBSL values are derived from standard exposure equations and reasonable maximum exposure (RME) estimates per U.S. EPA guidelines. As shown on Figure 4, RBSL concentration limits are designed to be protective of human health even if exposure occurs directly within the on-site area of affected soil or groundwater (i.e., the "source zone").

If Tier 1 limits are not exceeded, the user may proceed directly to compliance monitoring and/or no further action (see Figure 2). However, if these generic screening levels are exceeded, the affected media may be addressed by i) remediating to the generic Tier 1 limits, if practicable, ii) conducting a Tier 2 evaluation to develop site-specific remediation goals, or iii) implementing an interim action to abate risk "hot spots." In general, the Tier 1 evaluation serves to identify sites requiring no further action. For most sites exceeding Tier 1 limits, a Tier 2 analysis will provide a more cost-efficient basis for evaluation of appropriate remedial measures.

**Tier 2: Site-Specific Corrective Action Goals**

Under Tier 2, **Site-Specific Target Levels (SSTLs)** for soil and groundwater cleanup goals are determined on the basis of **site-specific information** and/or **points of exposure**. Simple analytical models are employed in conjunction with additional site data to calculate Tier 2 SSTL values in a manner consistent with EPA-recommended practices. Modeling and calculation procedures are streamlined so as to represent a minor incremental effort relative to Tier 1.

Both the Tier 1 RBSL and Tier 2 SSTL values represent concentration limits for constituents within the source zone. However, SSTLs differ from RBSLs in three significant ways: i) **site-specific data** are used to calculate risk-based cleanup goals, ii) **human exposure** to affected media may be assumed to occur not at the source zone, but at a separate "point of exposure" (POE), and iii) the **effects of natural attenuation** of constituent concentrations during lateral transport from the source to an off-site POE may be considered in the SSTL calculation (see Figure 4).

If site constituent concentrations exceed SSTL values, subsequent actions may involve i) remediation to site-specific Tier 2 cleanup goals, ii) further evaluation per Tier 3 of the RBCA process, or iii) interim response measures targeted at principal risk sources (see Step 6 on Figure 2).

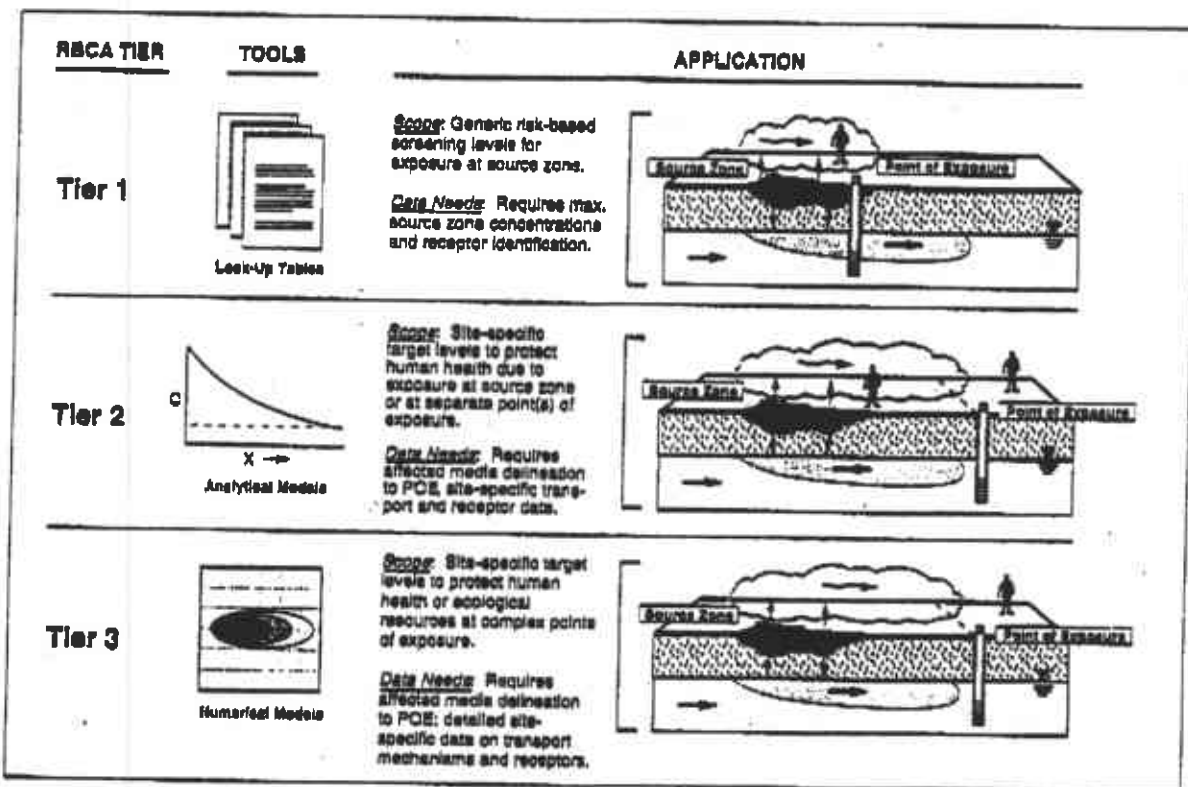


FIGURE 4. OVERVIEW OF TIERED PROCESS FOR CLEANUP GOAL CALCULATION

**Tier 3: Site-Specific Corrective Action Goals**

If Tier 2 results are judged inappropriate or impracticable, a Tier 3 evaluation can be conducted to refine the Tier 2 corrective action goals on the basis of a more complex risk and exposure assessment, involving more detailed site information, probabilistic data analysis, and/or numerical fate and transport modeling. Such a Tier 3 evaluation will typically entail significant additional data and expense relative to Tiers 1 and 2 and should therefore be reserved for highly complex, cost-significant sites. Tier 3 analyses may be warranted at sites for which Tier 2 modeling methods are non-conservative or detailed ecological impact assessments are required. Similar to Tier 2, the Tier 3

evaluation provides source zone cleanup levels designed to protect against health or environmental impacts at a site-specific POE (see Figure 4).

The tiered evaluation process concludes upon derivation of applicable and practicable remediation standards. It should be noted that the soil and groundwater remediation standards developed under Tiers 1, 2, and 3 are equally protective of human health and the environment, based on applicable target risks and exposure criteria (see Figure 5). However, with each tier upgrade, the degree of uncertainty and conservatism involved in the cleanup standard calculation is reduced based upon a more detailed characterization of actual site conditions. As indicated on the RBCA process flowchart (Figure 2), the user reviews the results of each tier to determine if further evaluation is necessary. In management terms, the expense of the tier upgrade must be warranted by the site complexity and/or the potential remediation cost. Further discussion of the RBCA tiered evaluation process is provided in References 1 and 2 (see Section 5.0). Procedures for development of site-specific cleanup goals per Tier 2 of the RBCA process are addressed in Sections 2.0 - 4.0 of this manual.

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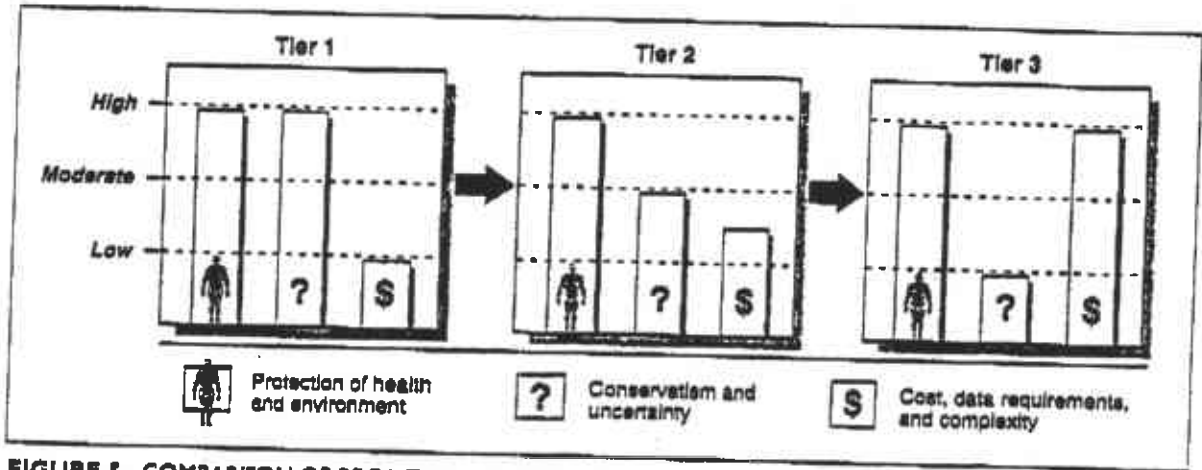


FIGURE 5. COMPARISON OF RBCA TIER 1, 2, AND 3 EVALUATIONS

### SITE REMEDIATION AND COMPLIANCE MONITORING

Following development of risk-based cleanup standards, the final steps of the RBCA process involve implementation of i) a remedial action program to achieve the specified risk protection goals and ii) a compliance monitoring program to confirm satisfactory completion of the remedy (see Steps 9 and 10 on Figure 2). If source media concentrations do not exceed the applicable risk-based cleanup standards, the corrective action program may proceed directly to compliance monitoring to confirm safe conditions prior to designating the site for "no further action." Otherwise, a remedial action program must be developed and implemented to meet the specified risk management objectives.

The remedial action program must provide cost-effective protection of public health and the environment. For this purpose, available remediation technologies should be evaluated in terms of their relative performance and life-cycle cost to identify the optimal risk management program for a given site. The goal of the risk-based corrective action program is to minimize risk by preventing exposure to harmful levels of site constituents. The remedial action program should therefore be targeted toward those exposure pathways found to exceed acceptable risk levels in the Tier 1-3 evaluation (e.g., pathways for which COC concentrations exceed applicable SSSL values). As noted above, risk reduction can be achieved by addressing any step on the exposure process: i) removing or treating the source, ii) interrupting contaminant transport mechanisms, and/or iii) controlling activities at the point of exposure. General guidelines for development and implementation of an effective exposure control strategy are discussed in Section 4.0 of this manual.



A compliance monitoring program is implemented as the last step of the RBCA planning process (see Step 10 on Figure 2) to verify that site constituent concentrations are at levels less than or equal to the levels required for protection of applicable receptors. For this purpose, compliance monitoring (or *verification sampling*) typically involves sampling at one or more locations on an established schedule to identify either i) an exceedance of a risk-based concentration limit or ii) a change of condition (e.g., change of land use, failure of engineering control) that might invalidate the basis for remedy selection. If, upon completion of the compliance monitoring period, compliance with applicable risk management goals is confirmed, no further action is required at the site. Practical guidelines for design of a compliance monitoring program are outlined in Section 4.0 of this manual.

## Scope of the Tier 2 Guidance Manual

This manual provides step-by-step instructions for implementation of a Tier 2 evaluation, following completion of the Tier 1 analysis. Detailed instructions for an initial site assessment, site classification, and Tier 1 evaluation (Steps 1 - 4 on Figure 2) are provided in the Tier 1 RBCA Guidance Manual (see Reference 2). This Tier 2 manual complements the Tier 1 guide by detailing Tier 2 data needs and calculation procedures and by addressing the remedial action and compliance monitoring phases of the RBCA planning process (see Figure 2).

Section 2.0 of this manual provides an overview of the data requirements and general calculation steps involved in development of Tier 2 remediation standards, known as Site-Specific Target Levels (SSTLs). In Section 3.0, specific instructions are presented for calculation of Tier 2 SSTL values and assessment of Tier 2 results to determine the need for a Tier 3 evaluation, corresponding to Steps 5 and 6 of the overall RBCA planning process (see Figure 2). In addition, Section 4.0 of this manual provides general guidelines for remedy implementation and compliance monitoring, corresponding to Steps 9 and 10 of the RBCA process.

Procedures for evaluation of fate and transport processes are outlined in Section 3.0 and Appendix A of this manual. The user may complete the necessary Tier 2 calculations using any appropriate fate and transport model. However, for convenience, a RBCA spreadsheet software package, programmed to calculate baseline risk levels and SSTL values based on site-specific input data, is provided for optional use in Appendix A of this manual. In addition, Tier 1 and Tier 2 Summary Report worksheets are provided to aid the user in documenting site information and results in a standardized format (see Appendix B). In Sections 3.0 and 4.0, brief instructions regarding use of these RBCA spreadsheet and worksheet tools are provided following each step of the Tier 2 evaluation and remedy selection process.

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