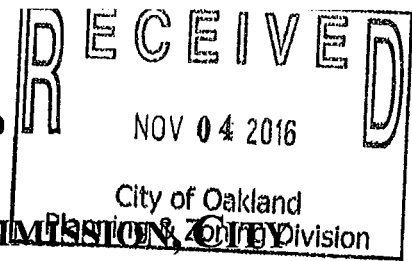


FOR DECISION TO PLANNING COMMISSION, CITY DIVISION
COUNCIL OR HEARING OFFICER



PROJECT INFORMATION

Case No. of Appealed Project: PLN16092
Project Address of Appealed Project: 605 9th Street
Assigned Case Planner/City Staff: Michael Bradley

APPELLANT INFORMATION:

Printed Name: Bryan Wenter Phone Number: (925) 935-9400
Mailing Address: 1331 N. California Blvd. Alternate Contact Number: _____
City/Zip Code Walnut Creek 94598 Representing: Bill Phva et al
Email: bryan.wenter@msvlegal.com

An appeal is hereby submitted on:

AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)

YOU MUST INDICATE ALL THAT APPLY:

- Approving an application on an Administrative Decision
- Denying an application for an Administrative Decision
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify) _____

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
- Design Review (OPC Sec. 17.136.080)
- Small Project Design Review (OPC Sec. 17.136.130)
- Minor Conditional Use Permit (OPC Sec. 17.134.060)
- Minor Variance (OPC Sec. 17.148.060)
- Tentative Parcel Map (OMC Section 16.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
- Creek Protection Permit (OMC Sec. 13.16.450)
- Creek Determination (OMC Sec. 13.16.460)
- City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
- Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)
- Other (please specify) _____

(Continued on reverse)

(Continued)

- A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)** Granting an application to: OR Denying an application to:

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) _____

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

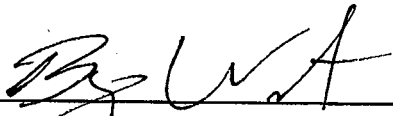
The appeal is based on the following: *(Attach additional sheets as needed.)*

Please see attached letter dated November 4, 2016.

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.*

(Continued on reverse)

(Continued)



Signature of Appellant or Representative of
Appealing Organization

11/4/16

Date

TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE

APPEAL FEE: \$ _____

Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.

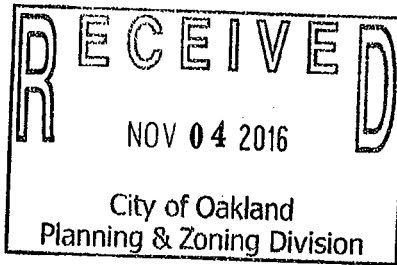
Date/Time Received Stamp Below:

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Cashier's Receipt Stamp Below:



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November 4, 2016

VIA HAND DELIVERY

Adhi Nagraj, Chair
Planning Commission
City of Oakland
250 Frank H. Ogawa Plaza Ste. 3315
Oakland, CA 94612

Michael Bradley, Planner II
City of Oakland
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

**Re: Case File No. PLN16092; 605 9th Street; APN: 001-0211-006-00
Public Records Act Request**

Dear Chair Nagraj and Mr. Bradley:

This law firm represents Liang Hoi Phua (aka Bill Phua), Linli Lee, Lee Chin Phmah, Lee Chye "Eddie" Phmah, and Wei Keng "Joel" Phmah in opposition to the above-referenced development project to demolish an existing one-story commercial building at the intersection of 9th Street and Jefferson Street—on the site of a former gas station—and replace it with an eight-story residential development with 25 dwelling units ("Project"). Mr. Phua owns the one-story commercial building at 821 Jefferson Street, immediately adjacent to the Project site, and the Phmah's own the Oakland Flower Market that operates in the building.

As you know, the Zoning Manager approved the Project on October 25, 2016. While Mr. Phua and the Phmahs do not generally object to the redevelopment of the underutilized and blighted Project site, they do object to this particular Project's stark incompatibility with their adjacent building and business, its incompatibility with existing residential development at the other corners of 9th and Jefferson and the neighborhood in general, and its noncompliance with the General Plan, Oakland Specific Plan, and Oakland Planning Code. My clients also object to the lack of disclosure regarding contamination that is highly likely on the site given its prior gas station use and that will be disturbed during the construction process and the related failure to ensure the Project complies with the California Environmental Quality Act ("CEQA") and the CEQA Guidelines., Cal. Pub. Res. Code § 21000 et seq. and 14 Cal. Code Regs. § 15000 et seq. The Zoning Manager's approval of the Project in the face of these issues was an error or abuse of discretion, and it is not supported by the evidence in the record. See Planning Code § 17.132.020.

For the foregoing reasons, and as explained in more detail below, we respectfully request the Planning Commission grant the appeal and deny the Project. At a

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minimum, however, the Project should be revised to meet applicable land use and zoning requirements. In particular, the building should be no more than five stories in height, which would be consistent with existing development at the intersection of 9th and Jefferson and begin to respect my clients' adjacent commercial one-story building and the business that operates there, and it should be set back above 55 feet in the manner Planning Code requires. Moreover, the Project is not eligible for an exemption from CEQA, even if revised, and it must instead be analyzed in an Initial Study and either a Mitigated Negative Declaration ("MND") or an Environmental Impact Report ("EIR"). Such analysis must fully disclose the Project's potentially significant environmental effects, including the contaminants that may exist in the soil of the Project site from petroleum leakage and spills, and provide appropriate mitigation measures to reduce potentially significant effects to a less-than-significant level and ensure the health and safety of Project workers, sensitive receptors, and potential future residents.

My clients also request that the City produce relevant documents pursuant to the California Public Records Act, pursuant to Gov't Code section 6250 et seq., as set forth in Attachment A to this appeal letter.

THE PROJECT IS INCONSISTENT WITH THE GENERAL PLAN AND FORTHCOMING DOWNTOWN OAKLAND SPECIFIC PLAN

The Planning Commission must deny the Project because it is inconsistent with the General Plan and the forthcoming Downtown Oakland Specific Plan.

Local general plans are the "constitution for future development," *Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531, 540 (1990), and as such they are located at the top of "the hierarchy of local government law regulating land use," *DeVita v. County of Napa*, 9 Cal.4th 763, 773 (1995). Development projects must be "compatible with the objectives, policies, general land uses, and programs specified in" the general plan or any applicable, officially adopted specific plan. Gov't Code § 66473.5.

The consistency doctrine has been described as "the linchpin of California's land use and development laws; it is the principle which infuse[s] the concept of planned growth with the force of law." *Corona-Norco Unified School Dist. v. City of Corona*, 17 Cal.App.4th 985, 994 (1993). The general rule is that a project is consistent with the general plan "if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." However, a public entity's flexibility in interpreting its own general plan is not limitless, and "[a] project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear." *Endangered Habitats League, Inc. v. County of Orange*, 131 Cal.App.4th 777, 782 (2005); *Families Unafraid to Uphold Rural etc. County v. Board of Supervisors*, 62 Cal.App.4th 1332, 1342 (1998). Inconsistency with even a single policy can be enough to scuttle a project. *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino*, 155 Cal.App.3d 738, 753 (1984).

The Project cannot be approved because it is inconsistent with numerous applicable General Plan policies, including the following:

Land Use and Transportation Element

Policy I/C4.1 (Protecting Existing Activities) – Existing industrial, residential, and commercial activities and areas which are consistent with long term land use plans for the City should be protected from the intrusion of potentially incompatible land uses.

Policy D1.4 (Planning for Old Oakland) – Old Oakland should be respected and promoted as a significant historic resource and character-defining element, with Washington Street as its core. Residential development in Old Oakland should be of mixed housing type, with ground-floor retail where feasible.

Policy D2.1 (Enhancing the Downtown) – Downtown development should be visually interesting, harmonize with its surroundings, respect and enhance important views in and of the downtown, respect the character, history, and pedestrian-orientation of the downtown, and contribute to an attractive skyline.

Policy D4.2 (Fostering a Positive Business Climate) – A positive business climate which encourages attraction of new businesses and retention and expansion of existing businesses in downtown Oakland should be fostered, promoting Oakland's locational (transportation) advantages and other amenities.

Policy D10.5 (Designing Housing) – Housing in the downtown should be safe and attractive, or high quality design, and respect the downtown's distinct neighborhoods and its history.

Policy D10.6 (Creating Infill Housing) – Infill housing that respects surrounding development and the streetscape should be encouraged in the downtown to strengthen or create distinct districts.

Policy D11.1 (Promoting Mixed-Use Development) – Mixed use developments should be encouraged in the downtown for such purposes as to promote its diverse character, provide for needed goods and services, support local art and culture, and give incentive to reuse existing vacant or underutilized structures.

Policy N11.3 (Requiring Strict Compliance with Variance Criteria) – As variances are exceptions to the adopted regulations and undermine those regulations when approved in large numbers, they should not be granted lightly and without strict compliance with defined conditions, including evidence that hardship will be caused by unique physical or topographical constraints and the owner will be deprived or privileges enjoyed by similar properties, as well as the fact that the variance will not adversely affect the surrounding area nor will it grant special privilege to the property.

Noise Element

Policy 3 – Reduce the community's exposure to noise by minimizing the noise levels that are received by Oakland residents and others in the City. (This policy addresses the reception of noise whereas Policy 2 addresses the generation of noise.)

Safety Element

Policy HM-1 – Minimize the potential risks to human and environmental health and safety associated with the past and present use, handling, storage and disposal of hazardous materials.

Policy HM-2 – Reduce the public's exposure to toxic air contaminants through appropriate land use and transportation strategies.

The Zoning Manager's findings do not address any of these applicable policies. Moreover, the County cannot comply with the plain language of the many policies that new infill development respect, or be compatible with, existing development—which is fundamental, mandatory, and clear—if it approves the Project because the Project's eight-story height, in this neighborhood, is inherently incompatible with my clients' one-story building and with the neighborhood in general. A Project that is seven stories higher than my client's adjacent one-story commercial building, and three stories higher than the existing five-story buildings at each corner of the intersection, cannot be deemed consistent with these applicable General Plan policies.

To implement the City's vision for mixed-use development within its commercial corridors, Policy D1.4 calls for mixed-use development in this area, with ground floor retail if feasible. Contrary to the policy, however, the Project calls for a purely residential building, with no evidence in the record to support the conclusion that ground floor retail is not feasible. In addition, and contrary to the requirements of the Noise Element, the findings say nothing about either the construction noise the Project will generate or about the noise future residents of the Project will receive from Interstate 880, which is approximately two blocks from the Project site.

Incredibly, despite the Safety Element's express recognition of the issues and risks of leaking underground storage tanks ("USTs"),¹ the Zoning Manager approved the Project with no analysis of the likely contamination that likely exists on this former gas station site. In fact, the Zoning Manager approved the Project and declared it exempt from CEQA, despite the known risks of contaminated sites, because it is not on the CalEPA's Cortese List. There has been no discussion or analysis of how the Project will minimize the potential risks to human and environmental health and safety associated with the past and present use, handling, storage, and disposal of

¹ See, e.g., Safety Element at pp. 73 and 82.

hazardous materials or of how it will reduce the public's exposure to toxic air contaminants through appropriate land use and transportation strategies, and the City cannot conclude that these policies are satisfied when there is no evidence in the record to indicate a Project site that historically housed a gas station is not contaminated.

We also note that the Project would violate applicable provisions of the forthcoming Downtown Oakland Specific Plan, including Key Recommendations A, B, and F for Old Oakland:

- A. Transform 9th Street to include context sensitive infill and safer street design.
- B. Fill in vacant or underutilized lots with scale-appropriate buildings that contribute to the public realm of the street.
- F. Respect the scale and character of the neighborhood with new construction and rehabilitations of small warehouses, apartment buildings, and single-family homes.

As the foregoing provisions indicate, a consistent theme for Old Oakland is ensuring that new development is compatible with existing development. Like the General Plan, the Specific Plan repeatedly addresses this concern, calling for

- "appropriately-scaled new infill";
- "Respecting the existing ... buildings, new development can complement the character of Old Oakland";
- "Respect the scale and character of the neighborhood with new construction and rehabilitations of small warehouses, apartment buildings, and single-family homes"; and
- "New infill buildings in the neighborhood should be context-sensitive and of an appropriate scale and character. Implementing design guidelines for new development in this historic part of Downtown can help to ensure that new buildings fit in with the surrounding scale and context."

The proposed eight-story Project is not appropriately scaled and in character with the neighborhood but rather in stark contrast to it. At a minimum, the Project should be revised so that it is no taller than the five-story buildings that already frame the intersection of 9th and Jefferson.

For the foregoing reasons, we respectfully request the Planning Commission to deny the Project. At a minimum, however, the Planning Commission should substantially revise the Project to ensure that it satisfies existing policies that require it to be compatible with existing development and the neighborhood.

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THE FINDINGS ARE LEGALLY INADEQUATE

State law requires that adjudicative land use decisions such as this must be supported by findings and that the findings be supported by evidence. To be legally adequate, findings must "bridge the analytic gap between the raw evidence and ultimate decision or order." See California Code of Civil Procedure section 1094.5; *Topanga Association for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506 (1974).

Instead of connecting the dots between the required findings and the decision, the Zoning Manager's findings are alternately conclusory or belied by the evidence. For example, the Residential Design Review Criteria call for new development that is "well related to the surrounding area in their setting, scale, bulk, height, materials, and textures." The findings adequately address the proposed Project's materials and textures but gloss over the relationship of the Project in its setting, scale, bulk, and height to the surrounding area. In fact, the findings assert that the Project does not "over mass" the other corner buildings, but they do not explain how this can possibly be so. The findings do not describe the height of the other corner buildings and how the Project's height compares with those existing buildings. Moreover, the findings do not even purport to assert that the Project will not "over mass" my clients' adjacent one-story commercial building, presumably because no such assertion could feasibly be made.

The findings also casually assert that "[e]ven if the project were to build at five or six stories to match the other corner sites the same perceived bulk and scale would exist thus the additional height does not create impacts on the neighboring buildings." The findings do not explain how the scale and height of an eight-story building is well related to existing five-story development at the other corners of the 9th and Jefferson intersection, and they say nothing about how such a tall building will relate well with my clients' adjacent one-story commercial building.

The General Use Permit Findings contain similar requirements, calling for "the location, size, design, and operating characteristics of the proposed development [to] be compatible with, and [to] not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density" Instead of addressing these requirements and attempting to explain how the tallest building at the 9th and Jefferson intersection could be compatible with and not adversely affect abutting properties such as my clients' one-story commercial building and the neighborhood, which presently has buildings no taller than five stories in height, the findings simply recite the required considerations without explanation.

Finally, the Minor Variance Findings simply cannot be made. General Plan Policy N11.3 requires strict compliance with variance criteria, and as applicable here those criteria state that a minor variance can only be granted if

- "strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance";
- "strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulations";
- "the variance ... will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area"; and
- "the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zone properties or inconsistent with the purposes of the zoning regulations."

In order to allow this overly tall Project in the neighborhood, the Zoning Manager improperly granted a minor variance from the setbacks normally required above 55 feet pursuant to Chapter 17.58 of the Planning Code. As the Zoning Manager appropriately noted, those setback requirements exist to reduce impacts to neighboring development. Nevertheless, the Zoning Manager somehow found that such a nonconforming side yard setback will be consistent with surrounding development. To the contrary, existing development is not set back because it appears not to exceed 55 feet. Thus, as a matter of fact, the Project as proposed is inconsistent with neighboring development. Accordingly, the findings required to grant a minor variance have not been and cannot be made; the solution, instead, is to revise the Project by reducing its height so that it does not require special treatment relative to surrounding properties.

Such conclusory, and even inaccurate, findings do not meet the minimum standards set forth in Topanga and are insufficient to approve this project. See, e.g., *Honey Springs Homeowners Ass'n. v. Board of Supervisors*, 157 Cal.App.3d 1122, 1151 (1984) (a finding that is made "perfunctorily" and "without discussion or deliberation and thus does not show the ... analytical route from evidence to finding will be struck down"); *California Aviation Council v. City of Ceres*, 9 Cal.App.4th 1384, 1395 (1992) (conclusory findings that were not "fact specific" were held to fall "far short of the mark").

A CATEGORICAL EXEMPTION IS INAPPROPRIATE

Under CEQA's well-established standards, an agency is required to prepare an EIR, whenever substantial evidence in the record supports a "fair argument" that a project may have a significant effect on the environment. *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68, 75, 82 (1974); *Quail Botanical Gardens Found. Inc. v. City of Encinitas*, 29 Cal.App.4th 1597, 1602 (1994); *Friends of "B" Street v. City of Hayward*, 106 Cal.App.3d 988, 1002 (1980).

Where a lead agency is tasked with determining whether an exception applies, published judicial opinions have held that a court should review the lead agency's

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decision under the non-deferential "fair argument" standard. See, e.g., *Voices for Rural Living v. El Dorado Irrigation District*, 209 Cal.App.4th 1096 (2013); *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego*, 139 Cal.App.4th 249 (2006). Under the "fair argument" standard, a categorical exemption does not apply where there is a fair argument, based on substantial evidence, that the project will have significant environmental impacts. In other words, if credible evidence shows that a project may cause a significant effect on the environment, the lead agency cannot make use of the exemption.

In other words, if a non-exempt project may cause a significant effect on the environment, the lead agency must prepare an EIR. Pub. Res. Code §§ 21100, 21151; 14 Cal. Code Regs. § 15064(a)(1)(f)(1). An EIR may be avoided only if the lead agency properly finds no substantial evidence in the initial study or elsewhere in the record that the project may significantly affect the environment.

A project "may" have a significant effect on the environment if there is a "reasonable possibility" that it will result in a significant impact. *No Oil, Inc.*, supra, 13 Cal.3d at 83, n.16; *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 309 (1988). A "significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." Pub. Res. Code § 21068; 14 Cal. Code Regs. § 15382. If any aspect of the project may result in a significant environmental impact, an EIR must be prepared even if the overall effect of the project is beneficial. 14 Cal. Code Regs. § 15063(b)(1); *County Sanitation Dist. No. 2 v. County of Kern*, 127 Cal.App.4th 1544, 1580 (2005).

As is evident from the above-cited legal authorities, CEQA sets a "low threshold" for EIR preparation (*Pocket Protectors v. City of Sacramento*, 124 Cal.App.4th 903, 928 (2004); *Bowman v. City of Berkeley*, 122 Cal.App.4th 572, 580 (2004); see also, *Sundstrom v. County of Mendocino*, supra, 202 Cal.App.3d at 310), such that if any substantial evidence supports the requisite "fair argument" that a project may have a significant environmental effect, the lead agency must prepare an EIR – even if it is also presented with other substantial evidence indicating that the project will have no significant effect. *No Oil, Inc. v. City of Los Angeles*, supra, 13 Cal.3d at 85; *Brentwood Association for No Drilling, Inc. v. City of Los Angeles*, 134 Cal.App.3d 491, 503-504 (1982); *Friends of "B" Street*, supra, 106 Cal.App.3d at 1002; 14 Cal. Code Regs. § 15064(f)(1).

Under the "fair argument" test, the lead agency may not weigh the competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environment impact, but must direct the preparation of an EIR to resolve the issue. See, e.g., *Friends of "B" Street*, supra, 106 Cal.App.3d at 1002; *Architectural Heritage Association v. County of Monterey*, 122 Cal.App.4th 1095, 1109, 1122 (2004).

"Substantial evidence" is evidence that has ponderable legal significance, i.e., evidence that is reasonable, credible and of solid value (*Stanislaus Audubon*

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Society, Inc. v. County of Stanislaus, 33 Cal.App.4th 144, 152 (1995); *Newman v. State Personnel Board*, 10 Cal.App.4th 41, 47 (1992); *Pennell v. Pond Union School Dist.*, 29 Cal.App.3d 832, 837 (1973)), and has been defined in the CEQA context as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." 14 Cal. Code Regs. § 15384(a); see also, Pub. Res. Code §§ 21080(e), 21082.2(c); 14 Cal. Code Regs. § 15064(f)(5). "Substantial evidence" is defined by the CEQA Guidelines to include "facts, reasonable assumptions predicated on facts, and expert opinion supported by facts." 14 Cal. Code Regs. § 15384(a); see id. at § 15064(f)(5).

Even if an EIR is not necessary, a CEQA document must be recirculated when it is "so fundamentally and basically inadequate and conclusory in nature" that public comment is essentially a meaningless exercise, or substantial revisions otherwise are required. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 6 Cal.4th 1112 (1993); 14 Cal. Code Regs. § 15073.5.

In this case, there is a wealth of substantial evidence demonstrating that the proposed Project would have significant and adverse impacts on the environment, as well as unique or unusual circumstances. First, for the reasons set forth above, the Project is inconsistent with the General Plan and the forthcoming Specific Plan, and for that reason alone the Project is ineligible for an exemption from CEQA. In addition, as also set forth above, the Zoning Manager's findings inadequately address the policies cited in support of the exemption, and they ignore other relevant policies without any citation, much less discussion.

Moreover, the mere fact that the Project site is not on the 'Cortese List does not support the conclusion that the Project is or should be exempt from CEQA. Rather, the fact that the Project site formerly housed a gas station that operated from approximately 1933 to 1955 is unusual and environmentally problematic. And the City's apparent reluctance to review an environmental site assessment and include it in the record now (which document City staff acknowledge the Project applicant has already prepared), rather than until after the Project is approved and on the eve of construction, with no environmental review or documentation, is deeply troubling.

Because of the known dangers and likelihood of leaking USTs the United States Environmental Protection Agency has a robust regulatory program to address this environmental and public health concern. As noted on the US EPA's website,² until the mid-1980s most USTs were made of bare steel, which is likely to corrode over time and allow UST contents such as petroleum to leak into the environment. In addition, overfills during product deliveries and leaks from piping connecting the USTs to dispenser pumps may have caused significant subsurface soil and groundwater contamination. In many instances, prior owners and operators simply

² <https://www.epa.gov/ust>.

abandoned USTs in place, sometimes filling them with water, sand, or concrete. It is also not unusual to encounter abandoned USTs that still contain fuel.

Contamination at former gasoline stations typically includes volatile organic compounds ("VOCs") and semi-volatile organic compounds ("SVOCs"). According to the EPA, the health effects of VOCs may include eye, nose, and throat irritation, headaches, loss of coordination, and nausea, damage to liver, kidney, and central nervous system, and cancer.

Lead is a common contaminant at sites used as a gasoline station between the 1920s and 1970s. While soil contaminated with petroleum is generally a nonhazardous waste, elevated concentrations of lead may make the contaminated soil a hazardous waste. In addition, chemicals present in soil and groundwater may volatilize and move up through the soil column into overlying buildings, contaminating indoor air. According to the EPA, one such type of vapor intrusion is petroleum vapor intrusion ("PVI"), in which vapors from petroleum hydrocarbons such as gasoline or diesel fuel enter a building. The intrusion of contaminant vapors into indoor spaces is of concern due to potential threats to safety (e.g., explosive concentrations of petroleum vapors or methane) and possible adverse health effects from inhalation exposure to toxic chemicals.

Project construction will disturb the chemicals existing in the soil and expose receptors in existing residences and nearby buildings to the risks of such on-site contamination.

In addition to the high likelihood of existing site contamination due to a leaking underground storage tank or petroleum spills, the proposed Project would result in the demolition of a building that was constructed prior to 1980, which may contain asbestos and/or lead, a hazardous contaminant.

The Project would also result in future short-term air quality impacts associated with construction activities, including grading, operation of equipment, and demolition of existing building and related facilities. Such construction activities are a source of fugitive dust (also known as PM10 and PM2.5) emissions that may have a substantial temporary impact on local air quality.

Project construction would also result in short-term construction-related noise at nearby noise sensitive land uses. Construction activities have a short and temporary duration, lasting from a few days to a period of several months or longer.

Groundborne noise as well as other types of construction related noise impacts may occur during the initial site preparation, which can create the highest levels of noise. Generally, site preparation has the shortest duration of all construction phases. Activities that would occur during this phase include earthmoving and soils compaction, and demolition of existing building and related facilities. High groundborne noise levels and other miscellaneous noise levels can occur during this

phase by the operation of heavy-duty trucks, backhoes, and other heavy-duty construction equipment.

Noise from Project construction activities would be generated by the following sources, among others: (1) the transport of workers and equipment to and from construction site; (2) truck trips transporting cut/fill; and (3) noise related to active construction equipment. These noise sources can be a nuisance to local residents and businesses or unbearable to sensitive receptors.

Project construction can also generate varying degrees of groundborne vibration, depending on the construction procedure and the construction equipment used. Operation of construction equipment generates vibrations that spread through the ground and diminish in amplitude with distance from the source. The effect of the construction on buildings located in the vicinity, including especially adjacent buildings such as our clients' building, often varies depending on soil type, ground strata, and construction characteristics of the receiver buildings. The results from vibration can range from no perceptible effects at the lowest vibration levels, to low rumbling sounds and perceptible vibration at moderate levels, to slight damage at the highest levels. These likely effects are particularly acute with respect to adjacent structures.

The types of construction vibration impacts include human annoyance and building damage. Human annoyance occurs when construction vibration rises significantly above the threshold of human perception for extended periods of time. Building damage can be cosmetic or structural, depending on the factors referenced above.

We also note that even though the Zoning Manager has concluded traffic impacts of the Project would not be significant—without citation to any identified evidence in the record—the City should conduct a traffic study to determine the cumulative effects of the Project. The City must analyze cumulative impacts whenever a proposed project's individual impacts have the potential to combine with related impacts from other projects to compound environmental harm. The CEQA Guidelines define "cumulative impacts" as "two or more individual effects which, when considered together, are considerable or . . . compound or increase other environmental impacts." CEQA Guidelines § 15355. If even a tiny portion of a cumulative impact is caused by the proposed Project, the City must analyze it. The ultimate goal of this analysis is to determine whether the proposed Project's incremental contribution is "cumulatively considerable" and thus significant. CEQA Guidelines § 15130(a).

Finally, we note that the effects of shadows and shading by one building upon another can be either positive or negative depending upon the site-specific circumstances of the properties involved. A potential benefit of shadows and shading for adjacent structures may be a cooling effect gained during warm weather. However, negative consequences of shadows and shading include the loss of natural light for passive or active solar energy applications or the loss of

warming influences during cool weather. Factors influencing the relative impact of such effects are site-specific and include differences in terrain elevation between involved properties, the height and bulk of structures, the time of year, the duration of shading in a day, and the sensitivity of adjacent land uses to loss of sunlight. Given the proposed height of the Project, which is seven stories taller than my clients' adjacent one-story commercial building, and three stories taller than the residential buildings at the other three corners of 9th and Jefferson, the City should analyze these issues in a shadow or shading study.

The foregoing constitutes a fair argument, supported by substantial evidence, that the Project may have a significant effect on the environment and on the health of potential future residents of the Project. Furthermore, there is no substantial evidence in the record to conclude that such effects may not occur. Thus, as lead agency for purposes of CEQA, the City must review prepare an Initial Study and either a Mitigated Negative Declaration or an Environmental Impact Report, in order to approve this Project. See, e.g., *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296 (1988).

UNUSUAL CIRCUMSTANCES EXIST

The proposed CEQA exemption is also not justified because "exceptions" to the exemption apply. In particular, the CEQA Guidelines preclude use of an exemption "where there is a reasonable possibility the project will have a significant impact on the environment due to unusual circumstances." CEQA Guidelines §15300.2(a)(c)(d). Unusual circumstances exist here given the Project site's former use as a gas station and given the excess building height proposed at this corner of 9th and Jefferson relative to the existing five-story buildings at that intersection. Thus, even if the City could properly exempt the Project under the Class 32 infill exemption—which it cannot do for the reasons stated above—the Project cannot be determined exempt from CEQA because unusual circumstances exist.

The unusual circumstances are further highlighted in the comment letters of others, including Hugh K. Phares, III, Liang Hoi Phua, Lee Chin Phmah, Chris Roberts, and Guy Sussman, and we hereby incorporate those comments as if fully set forth in this letter.

CONCLUSION

For the foregoing reasons, we respectfully request the Planning Commission to grant the appeal, and thereby deny the Project, because it is incompatible with existing nearby development and the neighborhood in general and it does not comply with the General Plan, Oakland Specific Plan, and Oakland Planning Code. At a minimum, however, the Project should be revised to meet applicable land use and zoning requirements, and it must instead be analyzed in an Initial Study and either an MND or an EIR. Such analysis must fully disclose the Project's potentially significant environmental effects, including the contaminants that may

Adhi Nagraj, Chair
Planning Commission
Michael Bradley, Planner II
City of Oakland
November 4, 2016
Page 13

exist in the soil of the Project site and appropriate mitigation measures to ensure the health and safety of Project workers, sensitive receptors, and potential future residents.

Sincerely,

MILLER STARR REGALIA

A handwritten signature in black ink, appearing to read 'Bryan W. Wenter', is written over the printed name.

Bryan W. Wenter, AICP

BWW:1ak
Attachment
cc: Clients

Adhi Nagraj, Chair
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ATTACHMENT A

Pursuant to the Public Records Act and all applicable law, my clients hereby formally request that the City make available for inspection and copying the following public records that are within its possession, custody, or control: all "writings" (as defined in California Evidence Code § 250) that comprise, constitute, or relate to all of the following:

- The Project's construction schedule (i.e., years, months, days per week, hours), equipment, techniques, and impacts.
- ADA parking requirements for the Project and how they are addressed in the Project plans.
- CEQA review or studies for any aspect of the Project or potential environmental effect of the Project, including but not limited to aesthetics, air quality, biological resources, cultural resources, geology/soils, greenhouse gas emissions, hazards & hazardous materials, hydrology/water quality, land use planning, noise, public services, transportation/traffic, utilities/service systems, and mandatory findings of significance.
- The former gas station use of the Project site, including any records relating to underground storage tanks and their use, maintenance, and removal, any reported leakage from such underground storage tanks, and any petroleum-related contamination of or from the Project site.
- The City's record retention policies.

With regard to all of the requested documents, the public records we seek include all writings, regardless of physical form or characteristics, prepared, kept, owned, or used by City, and any writings sent to, received by, sent from, and/or exchanged by the City, its staff members, consultants, board or council members, directors, managers, and/or other agents, whether such records are on a publicly owned or privately owned computer or electronic device and whether on a publicly owned and maintained or privately owned and maintained account.

"Records" should be broadly construed to include any handwriting, typewriting, electronic mail, text message, voicemail, printing, photostatting, photography, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds or symbols or any combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

"City" should be broadly construed to include any council, board, commission, department, committee, official, officer, council member, commissioner, employee, agent, or representative of the City.

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This request reasonably describes identifiable public records or information to be produced from those public records. If the City contends it is unable to comply with this request because the City believes the request is not sufficiently focused, then pursuant to California Government Code section 6253.1(a), we request that the City (1) assist us in identifying the records and information that are responsive to our request and/or to the purpose of our request, (2) describe the information technology and physical location in which the records exist, and (3) provide us with suggestions for overcoming any practical basis for denying access to the records or information we are seeking.

Under Government Code section 6253(b), we ask that the City make the records promptly available for inspection and copying. This is a matter of some urgency to my clients given the pendency of their appeal to the Planning Commission.

We do not believe any provision of law exempts the records from disclosure. However, if the City determines that a portion of the records we have requested is exempt from disclosure, Government Code section 6253(a) requires segregation and deletion of those materials so that the remainder of the records may be promptly released. Article I, § 3(b)(2) of the California Constitution requires a broad construction of any statute, court rule, or other authority intended to further the people's right of access and a narrow construction of any statute, court rule, or other authority if it limits the right of access. If the City determines that an express provision of law exempts from disclosure all or a portion of the records requested, Government Code section 6253(c) requires the City to promptly notify us of that determination and the reasons for it with 10 days from receipt of this request. In addition, Government Code section 6253(d) prohibits the use of the 10-day period or any other provision of the PRA to delay or obstruct the inspection or copying of public records.

For any responsive public record kept in electronic format, we request that an electronic copy of the document be produced in that format, pursuant to Government Code section 6253.9.

Please notify us by phone or email when any portion of the documents is ready, and we will arrange for its pick up by courier. Also, please notify us regarding the reasonable copying costs, and we will promptly send payment.

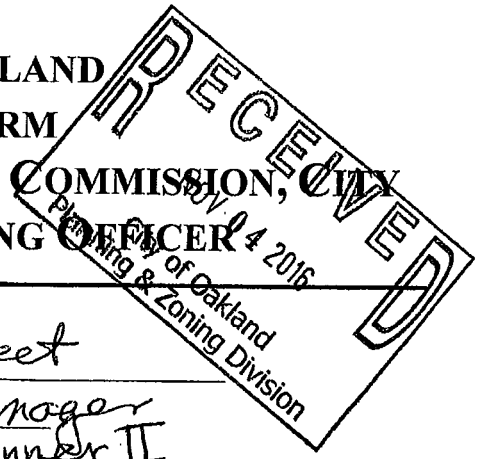
If documents are voluminous, then please indicate in your response the approximate volume of documents responsive to this request, and the location, dates, and times upon which inspection will be allowed. If you can provide documents in response to one or more of the above requests sooner than for others, please so indicate, and we will arrange for their pick up as such documents become available.

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If you have any questions or concerns, or need additional information to comply with this request, please contact the undersigned at your earliest convenience. Thank you in advance for your prompt attention to this request.



**CITY OF OAKLAND
APPEAL FORM
FOR DECISION TO PLANNING COMMISSION, CITY
COUNCIL OR HEARING OFFICER**



PROJECT INFORMATION

Case No. of Appealed Project: PLN 16092
 Project Address of Appealed Project: 605 9th Street
 Assigned Case Planner/City Staff: Scott Miller Zoning Manager
and Michael Bradley, Planner II

APPELLANT INFORMATION:

Printed Name: Christopher J. Roberts Phone Number: 510-891-0413
 Mailing Address: 555 10th St. No. 426 Alternate Contact Number: _____
 City/Zip Code Oakland Representing: Self
 Email: chris.oaklandca@gmail.com

An appeal is hereby submitted on:

- AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)**

YOU MUST INDICATE ALL THAT APPLY:

- Approving an application on an Administrative Decision
- Denying an application for an Administrative Decision
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify) _____

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
- Design Review (OPC Sec. 17.136.080)
- Small Project Design Review (OPC Sec. 17.136.130)
- Minor Conditional Use Permit (OPC Sec. 17.134.060)
- Minor Variance (OPC Sec. 17.148.060)
- Tentative Parcel Map (OMC Section 16.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
- Creek Protection Permit (OMC Sec. 13.16.450)
- Creek Determination (OMC Sec. 13.16.460)
- City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
- Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)
- Other (please specify) _____

(Continued on reverse)

(Continued)

- A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)** Granting an application to: **OR** Denying an application to:

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) Minor Conditional Use Permit

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

The appeal is based on the following: *(Attach additional sheets as needed.)*

Please see attached letter.

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.*

(Continued on reverse)

(Continued)

Christopher J. Robert
Signature of Appellant or Representative of
Appealing Organization

11/4 / 2016
Date

TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE

APPEAL FEE: \$ _____

Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.

Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:

Christopher J. Roberts

**555 10th Street No. 426
Oakland, California 94607**

**Re: Case File No. PLN 16092
605-9th Street (APN 001-0211-006-000)
Appeal of the Zoning Manager's Approval of Application (Decision)
(Page 1 of 6 pages)**

November 4, 2016 (By Hand Delivery)

To Members of the Planning Commission:

I submit this Appeal as an affected neighbor and also for the many neighboring residents who strongly oppose the granting of the approval of the application in this case.

This Appeal is in three general sections as set forth below. The proposed reduction in parking spaces from 25 to 23 is not a subject of this Appeal.

The Zoning Manager's decisions are not supported by any relevant evidence and includes errors and an abuse of discretion. The findings are not supported by the facts of this case.

- 1) Staff has failed to do any realistic design review and I request that this matter be referred to the Planning Commission's Design Review Committee. The applicant's current design was simply accepted "as is" and is not compatible with any of the buildings on the block, surrounding area or Downtown Oakland. It looks like a oversized budget motel in Fremont, San Jose, or Fresno.**

The future of Downtown Oakland deserves so much better!

- 2) The granting of the requested Minor Variance and the first Minor Conditional Use Permit are not supported by the findings and are not necessary for quality development on this site. The granting of the variance and conditional use permit would also negatively impact the neighboring properties including any mid rise building(s) that may be built in the future in this area.**

3) The project, located on property which was once occupied by a gas station, must be subject to CEQA review because, due to unusual circumstances, there is a reasonable possibility that the proposed activity will have significant effects on the environment.

1) Design

The proposed building is not well related to the surrounding area in setting, scale, bulk, materials and textures. The facade design should be compatible with the majority of the other structures on this block and in the immediate area, yet it is not. Also, it should add to the visual interest and distinction to the community, but it utterly fails to do so.

There is no need or proper justification for the approval of the requested height, bulk and setback variance and minor conditional use permit for this project. The building simply does not need to be eight stories high. Staff has erroneously ignored the design review requirements in the Zoning Regulations and instead has put undue weight upon housing considerations

I have lived in the Old Town Square condominium at 555 10th Street for the past 18 years. My building occupies its full block, is four-stories in height and is located directly across from the corner of 9th and Jefferson Streets. The design of the proposed building is wholly inappropriate for its location. It looks like an oversized motel built in Fremont, Hayward, San Jose or Fresno. It is totally out of character within its downtown Old Oakland area. It should be fully redesigned and reduced in height.

The general styles of mid-rise buildings in Downtown Oakland contain a podium level design, a middle portion and a significant roof cornice and usually some detailed trim designs. The proposed building contains no such design elements and instead presents the street with a mono design from top to bottom. The two rear portions of the building are nearly entirely blank walls, and directly face the nearby freeway. The overall bulk and size of the building effectively is that of a large out-of-place rectangular box.

In contrast, the facade of the existing full block-sized Market Square six-story building (585 9th Street), facing directly across Jefferson Street, contains arched windows and a cornice trim at the roof line. The proposed building does not share any of the design

elements in Old Town Square, such as its four-story height, large distinct gables, compatible window treatments and significant setbacks from the sidewalks.

Also, the existing block, except for the Jefferson Street frontages, contains only small residential buildings, nearly all of which were constructed in the nineteenth century and up until about 1925. The commercial buildings on the block are no more than two-stories in height and there is only one residential building that even reaches three stories. Any good design review should require a smaller scale building, and thus I recommend that the design of the new building be limited to four stories in height.

This area at the outer edge of the Old Oakland neighborhood is unique and staff should not have compared this project with those located at 14th and Broadway. To do so is in error and arbitrary. Using such a comparison demonstrates that no valid design review has taken place.

Overall, the design is totally out of character with this important downtown location. It certainly does not enhance the existing neighborhood, which has a well defined and vibrant urban design context including both new and older buildings. The project appearance does not reflect any of the architecture in its area. For a better neighborhood, and for downtown as a whole, the building deserves a renewed Design Review.

2) Minor Variance and Conditional Use Permit

The approved design will not preserve or protect any neighborhood characteristics. The allowed increase in height by a full 19 feet over the required 85 feet level is not supported by evidence in this matter and appears to be arbitrary.

While the property is zoned for an 85 foot height limit the submitted plans instead show a total height of 104 feet. The submitted drawing in the applicant's submission shows a first level that is fully 15 ft. in height, followed upward with another seven stories at 10 ft. each, totaling 85 ft. But the drawings also show the structure having an additional 11 ft. on top, for a total of 96 ft. Finally, the building is again topped with an 8 ft. elevator shaft, bringing the total height to 104 ft. This alone should be unacceptable to the City, as the building height is limited by zoning regulations to a total of no more than 85 ft. It appears that any request for such excessive height should be also addressed by the requested Design Committee. Also, these two upper portions contain no real design elements but for adding to the bulky motel appearance of the building.

The height of the building also presents other problems. Given the lower height of the nearby buildings the proposed building will appear fortress-like and will stick out like a sore thumb. The nearly blank rear walls will be clearly visible to all from the I-980 freeway and present a horrible image of our downtown to all who drive by.

It's not just local neighbors, walkers-by and drivers who will continually see and be overshadowed by it. The project unnecessarily blocks out the views of many residents including those at 585 9th, 901 Jefferson and 555 10th Streets, as well as at other downtown locations.

The Minor Variance for the additional height is not an effective design solution for a building that should be no more than 85 feet. Additionally, it does affect the development of neighboring properties. At its heart, the decision shows no reason as why this setback, and related height use permit, would not be granted the owners of neighboring properties. Using the reasons cited for granting a permit setback and height variance for the applicant, it certainly appears that these would be approved for all properties on the block. Yet, to do so would be to totally ignore the substance and meaning of the 85 ft zoning regulations for this block.

3) Exception to CEQA Exemption

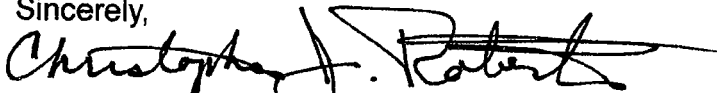
Please see Attachment "A" to this Appeal

Summary

I strongly recommend that the Commission refer this case to its Design Review Committee for an independent and in depth review of the design, should reject the variance and conditional use permit at issue herein, and comply with the applicable CEQA requirements for the reasons set forth in Attachment "A".

Due to the issues raised and the negative impact that this proposed project, and any similar projects would have on the surrounding area, I am also requesting the Planning Commission to immediately begin to take actions to put a moratorium on new building permits for any construction in excess of forty feet (40'0") for the block bounded by 9th, 8th, and Jefferson Streets and Martin Luther King Way.

Sincerely,



Christopher J. Roberts

555 10th Street, No. 426

Oakland, California 94607 phone 510 891-0413

Attachment A

3. Appeal of Class 32 Categorical CEQA Exemption

I respectfully assert that use of a Class 32 categorical exemption under CEQA (California Environmental Quality Act) is abuse of discretion and error by the City wherein the project qualifies for an exception to the exemption.

Background

An exemption to CEQA may be used if it is determined the project will have no significant effect on the environment **UNLESS** there are unusual circumstances in which case a categorical exemption shall not be used.

The City relies on several State lists of contaminated sites to make a decision on exempting a project from CEQA review.

This case is an unusual circumstance because there is a reasonable possibility that activity will have a significant effect on the environment even though it is not on any State list.

History

A gas station existed on the site from approximately 1936 until 1953. See attached photograph (source: Oakland Public Library). It is apparent that underground storage tanks supplied gasoline to dispensers at the east end of the site and auto repair and service activity took place on hydraulic lifts at the west end of the site. City directories and telephone books also document the existence of this gas station, using the address 829 Jefferson Street, which did business as Larry S. Eckles gas station, Erland Gust gas station, and Jefferson Super Service. There is no documentation that demonstrates that the underground tanks were removed.

Unusual Circumstances

The City's decision that the project is exempt did not consider unusual circumstances. CEQA guidelines 15332 and 15183 categorically exempt a project from CEQA review unless there is a reasonable possibility that activity will have a significant effect on the environment due to unusual circumstances. The City abused its discretionary authority when it ignored unusual circumstances.

Unusual Circumstances

The City relies on many lists for its permitting process. The most important list is the State's Cortese List. This list was created in the "Cortese" statute enacted in 1985. But this and **all** State lists were created after the gas station closed. This is an unusual circumstance which makes it not possible for the site to be on any list. The California EPA website states, "Because this statute was enacted over twenty years ago, ... in some cases, the information to be included in the Cortese List does not exist...". This list was created some two decades **AFTER** the gas station closed. It is therefore impossible for this site to be on this or **any** other State list.

Attachment A, continued

Reasonable Possibility Activity Will Have Significant Effect on the Environment

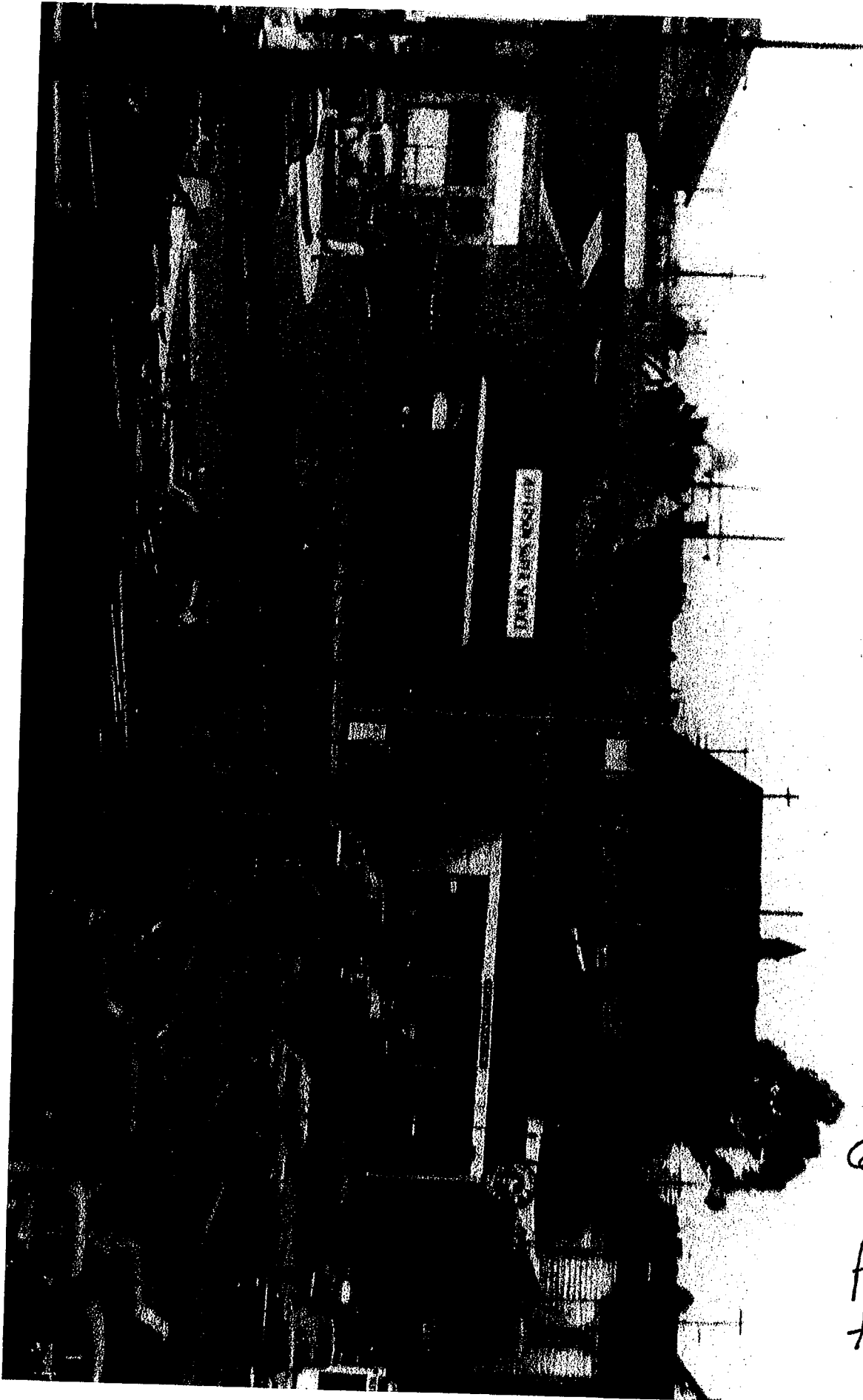
Due to the use of underground storage tanks at the east end of the site and auto service and repair activity taking place the west end of the site, there is a reasonable possibility that the ground is still contaminated with gasoline, motor oil, and solvents containing volatile organic compounds (VOCs) used in auto repair activity and that the underground gasoline tanks are still in place.

Significant Effects on the Environment

- VOCs may be liberated into the atmosphere during construction which endanger workers, shoppers, pedestrians and residents living in three neighboring multi-story residential structures located on the corners directly opposite the proposed project (approximately 375 units or 500 to 700 persons).
- Explosive danger and ground contamination from old leaking gasoline tanks during construction.
- Migration of dangerous toxic compounds (including VOC's) into the water table and Bay.
- Danger that toxic materials may remain undiscovered even after the project is complete unless a CEQA review is required.

CEQA Trigger

Unless the City can now demonstrate that the site is environmentally safe, including that the underground gasoline tanks were removed and the VOC contaminated west section of the site is clean, a CEQA review must be triggered. This is due to a reasonable possibility that activity will have a significant effect on the environment.



No. PLN 1609:
605 9th St.

Attachment
to Appeal