

1849 Mission Ridge
Santa Barbara
California 93103
(805) 965-2385

RECEIVED

JUL 21 2008

CITY CLERK'S OFFICE
SANTA BARBARA, CA

21 July 2008
City Clerk's Office
735 Anacapa Street
P.O. Box 1990
Santa Barbara, CA
93102-1990

(805) 564-5309

Subject: Appeal
101-E Victoria St.
(MST 2006-00758)

Re: Manning Commission
action 10 July 2008

At the request of Mr. & Mrs Rolf Kowal I am filing this appeal. They are the owners of 1316 Anacapa which is adjacent to the subject property.

My clients have concerns with the approved plans showing Garage Exhaust fumes being directed towards their residence from the subterranean garage. Furthermore, the access to and from the underground parking is directly adjacent to their driveway and represents a ~~and~~ danger to them and their tenants.

Additional concerns will be enumerated in my correspondence with the City when a hearing date has been set.

Sincerely

enclosure: Check 3453 in the amount of \$ 360⁰⁰

RECEIVED

Virginia Rehling
1305 Anacapa Street
Santa Barbara CA 93101

JUL 21 2008
8:45pm
CITY CLERK'S OFFICE
SANTA BARBARA, CA

Re: 101 E. Victoria Street
MST2006-00758

To the Mayor Blum and the City Councilors:

Thank you for the opportunity to bring this project to the City Council. I have been deeply impressed with the conscientious approach that the City Council has taken to the built environment of our city in recent hearings, and I have complete faith that whether or not the Council agrees with me, it will reach its decision with the future of Santa Barbara in its heart.

Technically speaking, this is an appeal of the actions taken by the Planning Commission regarding the above-referenced project on July 10, 2008. Unfortunately the text of the Resolution that the Planning Commission passed is not yet available and so in fairness I assume there will be no objection if I supplement this statement of appeal within a reasonable time after the Planning Commission makes the text of the resolution available.

Grounds for Appeal No. 1

This project doesn't fit with this block of Anacapa Street

This project is in El Pueblo Viejo and I request that the City Council view this proposed project from the Anacapa Street side, in the context of my own home across the street (see Exhibit A attached hereto), and the historic cottage next door to the project at 1316 Anacapa Street (see Exhibit B). I have attached as Exhibit C the architect's drawing of the Anacapa Street elevation which approximates the view from my home. Note that this drawing also includes the outline of the 1316 Anacapa Street cottage, which I have confirmed through city records was built in 1870 and is by far the oldest structure on the block. To dramatize the way this project will loom over 1316 Anacapa Street, I have also attached as Exhibit D the same drawing but with a photo of 1316 Anacapa inserted into the outline drawn by the architect.

Grounds for Appeal No. 2

An initial study must be performed in accordance with CEQA.

This site is an active toxic site¹ with cleanup in progress pursuant to a corrective action plan² and addendum thereto.³ I incorporate by reference into my appeal the corrective action plan and addendum.

In Attachment 1 to the corrective action plan addendum, the Santa Barbara County Fire Department has mandated that "remediation shall continue until a deed notification and/or deed restriction is not needed."

The most recent site assessment report containing maps of the underground contamination is dated April 24, 2007.⁴ Less detailed (but more recent quarterly reports on the cleanup progress are dated July 2, 2008⁵ and July 10, 2008.⁶

I believe the contamination of this site merits an initial study before approval of this project. Members of the Planning Commission stated as a reason for reversing their requirement of a deeper garage their concern about the marginal additional environmental impact. However, the City has deemed that this project is exempt from all environmental review pursuant to the categorical exception for in-fill projects.

¹ Voluminous documents relating to this site may be found at:
http://geotracker.swrcb.ca.gov/profile_report.asp?global_id=T0608344098 (click on "sitemaps/documents").

² The Corrective Action Plan may be downloaded at:
http://geotracker.swrcb.ca.gov/esi/uploads/geo_report/1835162103/T0608344098.PDF

³ The Addendum to the Corrective Action plan may be downloaded at:
http://geotracker.swrcb.ca.gov/esi/uploads/geo_report/7496870279/T0608344098.PDF

⁴ See http://geotracker.swrcb.ca.gov/esi/uploads/geo_report/5312866032/T0608344098.PDF

⁵ See http://geotracker.swrcb.ca.gov/esi/uploads/geo_report/4520676136/T0608344098.PDF

⁶ See http://geotracker.swrcb.ca.gov/esi/uploads/geo_report/2112473011/T0608344098.PDF

However, the categorical exemption cited, 14 Cal. Code Regs. § 15332 does not apply, and if they City does not require an initial study for this project it will have failed to proceed in a manner required by law. As the Court of Appeal explained in *Communities for a Better Environment v. California Resource Agency*, 103 Cal. App. 4th 98 (2002), this exemption is strictly limited to projects that do not require variances or modifications from applicable zoning rules and regulations. The court found that this exemption is not overly broad only because the exemption applies only to projects that meet the “comprehensive environmentally protective conditions” listed in section 15332, including the requirement that the project as proposed must comply with “all applicable zoning designations and regulations”

In the city’s view, this categorical exemption applies to projects needing variances or modifications, unless the city refuses to grant the requested modification.

But this interpretation is illogical because no project that is denied the requested modifications can be built. It cannot be the meaning of the “consistent with all applicable zoning” requirement that it only requires an initial study for those projects that can’t be built.

Further, due to the uncertainty surrounding the proposed excavation of a site in which contaminated groundwater is as little as 57 feet below the surface, this project is also not exempt, because under section 15300.2c, a project otherwise is not exempt when there is a reasonable possibility that it could cause environmental harm

Grounds for Appeal No. 3

This proposed project does not qualify for the square footage awarded as “Economic Development Project” under Measure E.

SBMC 28.87.300(B)(3) provides a bank of additional square footage that may be awarded to a project if it is deemed and “Economic Development Project.” Only a handful of projects have been deemed to qualify and thus nearly 400,000 square feet of commercial square footage remains to be awarded pursuant to the ordinance. See Exhibit E attached hereto. The ordinance requires two steps: first the project must promote economic growth. Second:

An Economic Development Project should also accomplish one or more of the following:

- a. Support diversity and balance in the local or regional economy by establishing or expanding businesses or industries in sectors which currently do not exist on the South Coast or are present only in a limited manner; or
- b. Provide new recreational, educational, or cultural opportunities for City residents and visitors; or
- c. Provide products or services which are currently not available or are in limited supply either locally or regionally.

SBMC 28.87.300(B)(3)

Since almost any building conceivable promotes economic growth in some way, the important part of the analysis is the second part, and I believe the City has neglected to analyze properly this project under the second part. When the City Council granted its preliminary approval of the designation, it did not analyze the project under the second part. Neither did the Planning Commission.

The owners have admitted this project ^{Does not} ~~do~~ meet these criteria, by asserting that the units will be marketed to and purchased by Santa Barbara business people. No claim has been made that this project will bring a new industry or business to town, or that the tenants/owners in the building will provide products or services "not available or in limited supply either locally or regionally".

I submit that if this relaxed standard for Economic Development Square footage is allowed to stand, the floodgates will truly be opened for the remaining 400,000 square feet in this bank.

Grounds for Appeal No. 4

The parking requirement should not be waived

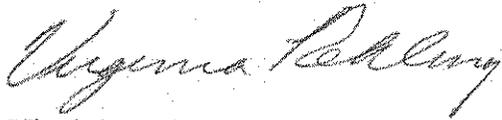
SBMC § 28.92.110 provides that the Planning Commission may grant a modification of the parking requirement only when so doing "will not cause an increase in the demand for parking space or loading space in the immediate

area." I respectfully submit that the Planning Commission erred in finding that this project, with 37 parking spaces for 50 units, will not cause an increased demand for parking or loading space in the immediate area.

Grounds for Appeal No. 5
(See Exhibit F)

I hereby incorporate by reference as grounds for appeal the document attached as Exhibit F, my May 21, 2008 letter to the Planning Commission.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Virginia Rehling".

Virginia Rehling

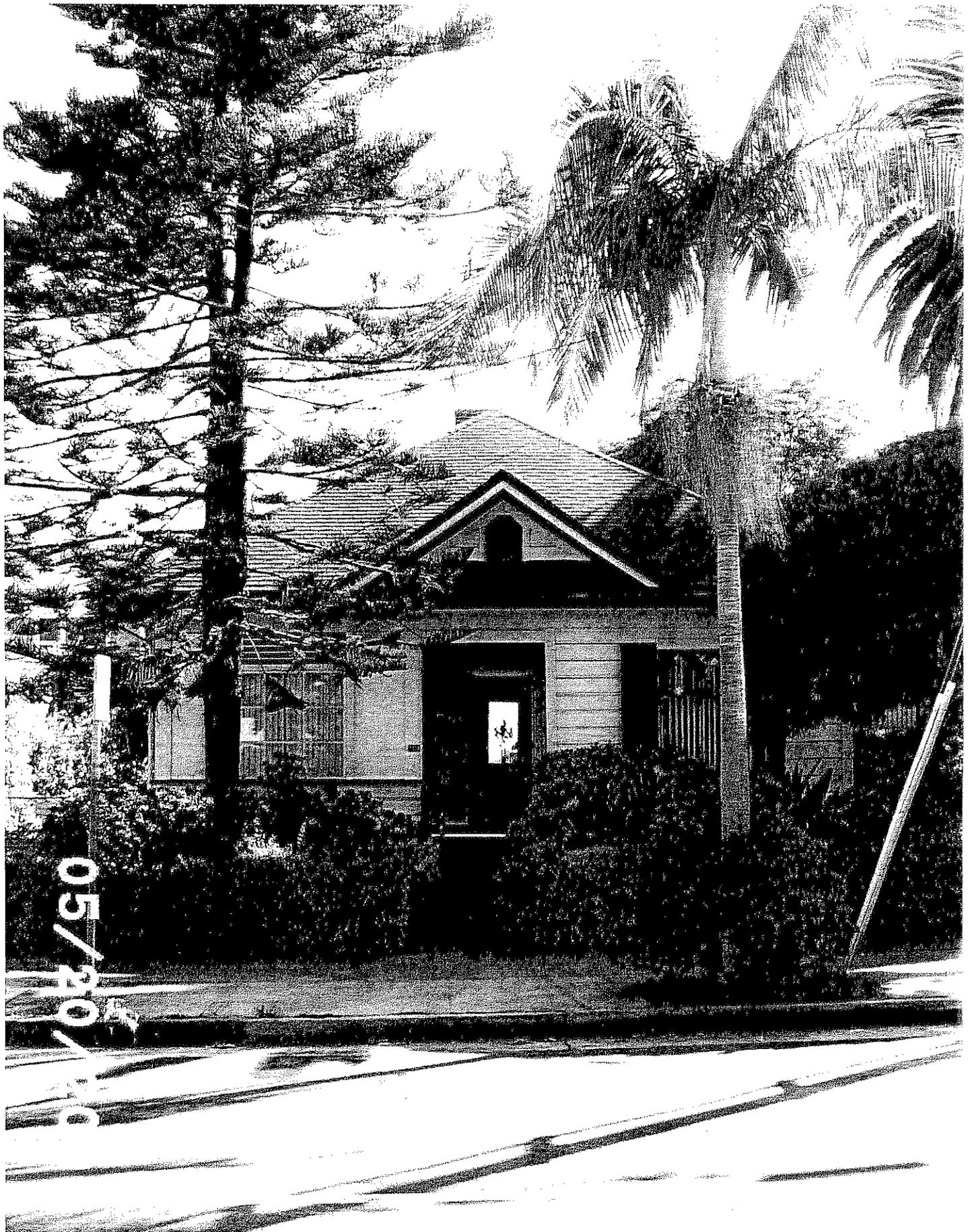
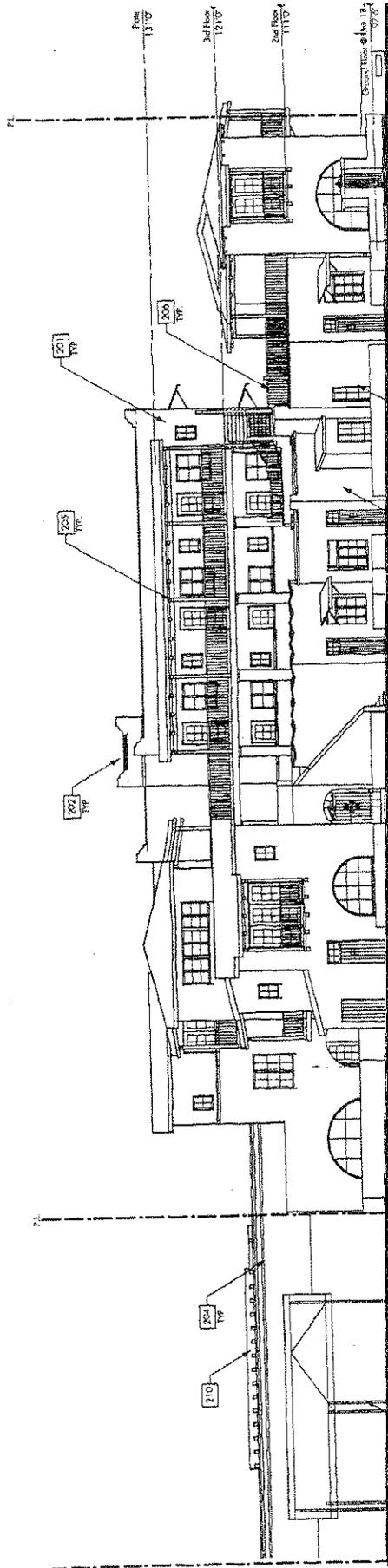


EXHIBIT A

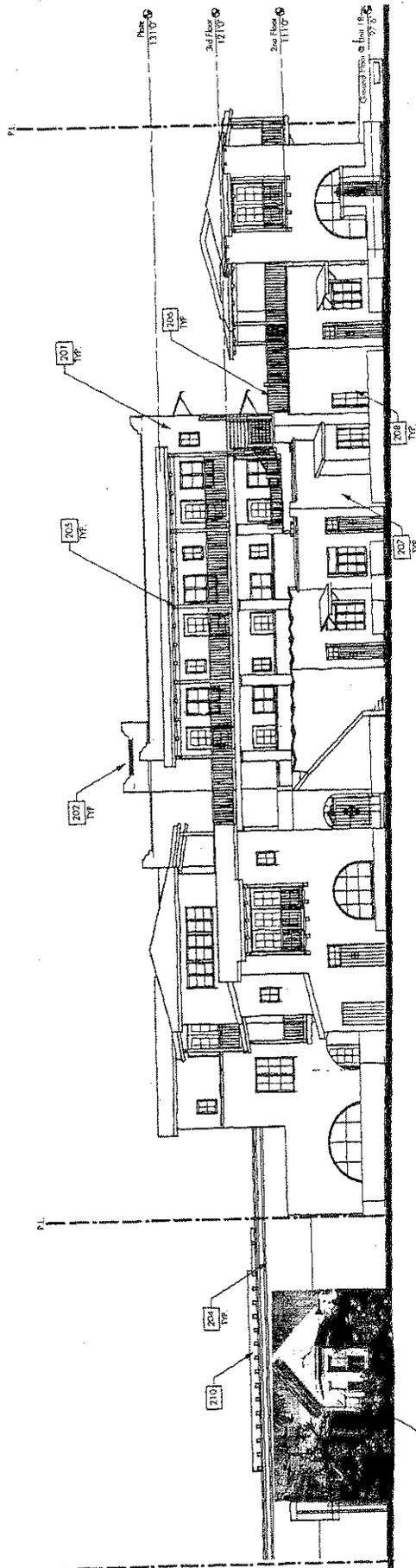


EXHIBIT B



West Elevation (Anacapa St.)

Existing Building South Entry
Reference foreground



West Elevation (Anacapa St.)

Scale: 1" = 10' H

ATTACHMENT 3

PROJECTS WITH PRELIMINARY OR FINAL
ECONOMIC DEVELOPMENT DESIGNATIONS

PROJECT/ADDRESS	PRELIM. DESIG. (SQ. FT.)	FINAL DESIG. (SQ. FT.)	STATUS/ COMMENT
Gateway Project (Miravant) 6100 Hollister Avenue MST97-00715		80,000	Approved 5/28/2000
Architectural Millworks 815 Quinientos Street MST97-00320		15,000	C of O 1/20/2004
Penfield and Smith 111 E Victoria St MST2002-00243		7,905	BP 2/11/2005
Software.com 630-634 Anacapa Street MST97-00520	26,493		Withdrawn
Alliance Manufacturing Software 1035 Chapala Street MST98-00051	30,257		Withdrawn
Fielding Institute 4151 Foothill Road MST2001-00840	22,499		Expired 4/23/2005
Airport Mobile Structure 500 Fowler Rd MST2002-00265		720	Approved 6/20/02
Cottage Hospital 320 W Pueblo St MST2003-00152		182,541	Under Construction
Granada Theatre 1216 State St MST2004-00005		13,360	Approved 3/23/04
SUBTOTALS	0*	299,526	SUBTOTALS
ALLOCATED TO DATE: 299,526 SQFT*			
REMAINING UNALLOCATED: 398,484 SQFT			

04-30-08

*Does not include SF from Software.Com or Alliance, which have been withdrawn

Virginia Rehling
1305 Anacapa Street
Santa Barbara CA 93101
May 21, 2008

To: Santa Barbara Planning Commission

Re: 101 E. Victoria Street
MST2006-00758

Dear Planning Commissioners,

I believe that this proposed project should be rejected or revised. I hope the following comments will be helpful in your consideration of this application.

**THE SEVERE ENVIRONMENTAL CONTAMINATION OF THIS
SITE REQUIRES EVALUATION NOW, BEFORE
PLANNING COMMISSION APPROVAL**

- Thousands of pages of documentation relating to the environmental contamination of this site are collected at http://geotracker.swrcb.ca.gov/reports/luft.asp?global_id=T0608344098. In particular, the work plans, site assessment reports, and corrective action plans can be found at http://geotracker.swrcb.ca.gov/reports/electronic_submittals.asp?global_id=T0608344098&sub_type=GEO_REPORT.
- On October 4, 2006, Thomas M. Rejzek of the Santa Barbara County Fire Department wrote a letter indicating that 101 E. Victoria Street was potentially subject to a "deed notification and/or deed restriction" due to the environmental contamination of the property, because even after the planned cleanup activities, including Soil Vapor Extraction, "the site would likely not be cleaned up to target cleanup goals." Mr. Rejzek further wrote that the contamination extends into "the City of Santa

Barbara's right-of-way." I have attached a copy of Mr. Rejzek's October 4, 2006 letter.

- Mr. Rejzek also indicated in his October 4, 2006 letter that the owner of 101 E. Victoria had been made of aware of the likelihood that the property could be encumbered with "a deed notification or deed restriction," and "the owner of the property has stated that this is not acceptable." According to Mr. Rejzek, because the contamination extends into the City's right-of-way, if the cleanup effort fails to adequately remove the contamination, "agreement from the City to place a deed notification or deed restriction on the property" will be required.
- As a result of this problem, Mr. Rejzek ordered that "remediation shall continue until a deed notification and/or deed restriction is not needed."
- On December 22, 2006, the present application # MST2006-000758 was filed by the present owners.¹
- I have attached samples of the numerous maps posted on the Fire Department web site, indicating the location and extent of the soil and groundwater contamination at the site.
- I have also attached a letter written on January 18, 2008,² from Mr. Rejzek of the County Fire Department to Kathleen Kennedy of the Planning Department, regarding what will be required in order to build an underground garage at this site. Mr. Rejzek stated that "mitigation measures *shall be included in the building design* to prevent migration of vapors into the building or parking structure." (my emphasis).

¹ As used in this letter "the owners" includes representatives of the owners who have communicated with city planners and city commissions on behalf of the owners.

² This letter is incorrectly dated January 18, 2007. It was apparently actually sent on January 18, 2008.

- The city environmental analyst has determined that the owners do not have to do even an initial study for this site.
- Mr. Rejzek also stated in his January 18, 2008, letter to Ms. Kennedy that "hazardous waste levels of soluble lead were detected at the site during the site investigation" and "this material must be handled appropriately and disposed of properly during grading operations."
- Last week, on May 16, 2008, the Fire Department sent a letter requesting immediate action on 1,2-dichloroethane (EDC) contamination detected during routine testing. I have attached a copy of the letter dated May 16, 2008.
- Because the Planning staff has not required the owners to submit an initial environmental report, the environmental risk and potential environmental impact from this project have not properly been considered. I believe it would be reckless to approve this proposal now, with the mere proviso that the Planning Commission's approval is subject to the toxic waste cleanup being completed. The County Fire Department documents cast doubt on whether that will even be possible. The Fire Department has ordered that "remediation shall continue until a deed notification and/or deed restriction is not needed." In this situation, at the very least an initial study is warranted.
- The Planning Commission therefore should overrule the staff's determination that no environmental study at all is needed for this application. It should request an initial study to obtain actual facts indicating whether the staff's *assumption* that it is safe to proceed is actually warranted, *before* granting approval to this project.
- In particular, since it has been mandated that "mitigation measures shall be included in the building design," those

design elements are clearly within the purview of the Planning Commission and should be evaluated as part of the approval process.

- Furthermore, the environmental documents relating to the toxic waste hazard indicate that this site has been polluting the aquifer under the site as well as the soil. The process of excavating the deep foundation for the underground garage could potentially release a mass of toxins into the aquifer. In light of these troubling environmental documents, at the very least the risk should be evaluated pre-approval, rather than just making the approval conditional and hoping it will turn out alright.
- I do not know if the environmental analyst was even aware of the October 4, 2006, January 18, 2008 and May 18, 2008 letters when the analyst decided that the project should be "exempt from further environmental review." If the environmental analyst was not aware of this information, it is possible that the analyst would reach a different conclusion upon review of these letters as well as the materials available on the above-listed web site.
- It may turn out that the project does not require a full environmental impact report (EIR), but I do believe, in light of these letters and other documents, that no environmental analyst could reasonably conclude that the risk of significant air quality impacts or significant impacts on water quality from this project can be assumed away *on faith alone*, with no further investigation whatsoever required, not even an initial study.
- If a developer can come to Santa Barbara and purchase a property with environmental problems this severe, and then gain approval for a dense development on the site (with an underground garage to boot), all without even having to do an initial study, I believe that developer could be forgiven for bragging about that accomplishment.

- I realize it is not the role of the Planning Commission to second guess the investment decisions of developers, but assuming that the owners intend to fully disclose the extent of the ongoing contamination of the property to prospective unit owners and tenants, I personally wonder whether these units will be as marketable as the developers claim.
- Even apart from the environmental contamination, the owners should still not be entitled to the exemption from all environmental review. As discussed in the staff report, an exemption from all environmental review is only proper if a proposed project is in compliance with "all applicable general plan policies as well as with applicable zoning designation and regulations." That is not true here, as I will discuss regarding the parking requirements.
- However, the staff report concludes that since the staff recommends that the parking waiver should be granted, the project therefore *does* comply with all applicable regulations and is exempt from submitting an initial report. Isn't the parking waiver decision for the Commission to make, not the staff? The staff puts the Commission in the difficult position of being handed the parking waiver as a *fait accompli*, because if the Commission rejects the staff's recommendation to approve the waiver, an environmental review will be triggered. (Of course environmental review is warranted for this project regardless, for the reasons just discussed regarding the serious contamination of this site).
- There is also a circular logic in the staff's analysis. Under the ordinance, if a project needs a variance, it is not exempt from environmental review. But now along comes the staff to assert that since in their opinion the variance should be granted, no study is required after all. This seems to thwart the purpose of the ordinance that requires environmental review for projects needing variances or exemptions from regulations.

- The lack of formal environmental standards for this project represents a lost opportunity to safeguard the City's environment in other ways, if the project is approved. For example, the excavation of the underground garage will apparently require the removal of many tons of toxic dirt. That effort will require a great many trucks to be loaded with the dirt and driven through the city. Shouldn't the plan for that be considered now, instead of just delegated to the transportation department for post-approval supervision? Shouldn't these truck trips be considered as a factor in whether the project should be approved? Since the staff has recommended exempting the project from all environmental review, neither the Planning Commission nor the public have data with which to make an informed decision.
- Also, given the close proximity of our homes to the site, could these trucks, and all construction equipment at the site such as backhoes, etc., be required to be newer, minimum diesel exhaust vehicles, which would subject us to less pollution during construction?
- Finally, while the owners have indicated that the project "has been designed to attain a LEED Silver rating", why not obtain a *commitment* to obtain the LEED certification, as a condition of approval of the project? Alternatively, the Commission should at least obtain further documentation from the owners so it can evaluate this claim.

THE SIZE, BULK & SCALE ARE TOO MUCH FOR THIS BLOCK

- Several years ago, Penfield & Smith was able to gain approval for the large development at 109-111 East Victoria Street. I believe that the size of the resulting building conflicts with the spirit of the El Pueblo Viejo district and has not been a positive addition to Santa Barbara. Penfield & Smith was able to build that building by obtaining the same types of exemptions and bonuses that the 101 E. Victoria owners are asking for now, such as relief from the parking requirement and the award of additional square footage as an Economic Development Project. The 101 E. Victoria owners have pointed to the Penfield & Smith building as a model for how the process should work for their project. And the 101 E. Victoria owners are using some of the same arguments that worked for Penfield & Smith, to the detriment of El Pueblo Viejo and Santa Barbara.
- Anacapa Street is residential North of this block. A drive South down Anacapa from Mission is a parade of beautiful homes, followed by a school, park and church. The two blocks between E. Sola and E. Victoria are transitional, with a mix of homes and low-rise commercial and retail.
- This project will make that transition abrupt. A lovely historic cottage (built in 1872 according to the owner of that property) abuts the proposed development, as do the beautiful condominiums nestled into Arlington Court. Directly across the street from the proposed development is my own small home at 1305 Anacapa Street. This project does not fit on this half-residential block. I do not understand how a person could stand on Anacapa Street, look at my home, and look at the home next door to this project, and then conclude that this project is compatible in "size, bulk and scale."
- Although it is not as tall as several projects designed by the same architect, this project is actually 41 feet tall at the highest point, the elevator tower. And even at 34 feet, the third story

proper is still incompatible with the cottages adjacent and across the street. The owners should at least be required to provide shadow diagrams to determine the shadows that will be cast upon neighboring residences, and if they have privately submitted such diagrams they should be made available to the public for consideration prior to any Planning Commission decision.

THE PROJECT PROVIDES INADEQUATE PARKING AND THAT SHOULD NOT BE EXCUSED BY THE PLANNING COMMISSION

- This proposal is for a 3-story building containing 50 offices, which will be sold to investors as condominiums, to be occupied by the investors themselves, or leased by the investors to tenants.
- The owners only intend to provide 37 parking spaces for the 50 condominiums. They need permission from the Planning Commission to do this because under the rules, 50 spaces are required. Additionally, at least three existing parking spaces on Anacapa Street will be eliminated. (The garage will have 45 spaces but 8 are permanently reserved for the use of Penfield & Smith, leaving a net of 35 spaces).
- The next block down South down Anacapa Street from this project is within the Central Business District, and for good reason, it is purely commercial. If this project were located on *that* block it would be allowed to have only 37 parking spaces. But it's not. It's located on my block, which at least half residential, and therefore properly subject to a stricter parking requirement.
- The owners have argued that since this project is *close* to the other zone it should not be held to the stricter standard for the zone it is actually in. But Anacapa is purely residential *until* this block, and then even this block is still *half* residential. That is

why there is a stricter parking requirement on this block, and why the parking requirement should not be waived to allow a building this size to be built on this block without providing the required parking.

- I believe that the line enclosing the Central Business District was not drawn on East Victoria Street arbitrarily or randomly. It was not an accident; it is not "just a line." The adjacent block is in the Central Business District and is 0% residences. My block is 50% residences. It was a reasonable decision to draw the line where it is, and if there is a zoning proposal in the future to extend the Central Business District to include these transitional blocks between East Victoria and East Sola, I believe such a change would be vigorously opposed by the many residents of these two blocks.
- The owners also argue that they should not have to provide the required parking because this block is nearby the new Granada garage. However, with 50 units having only 37 parking spaces, and many of those 50 units having more than one employee and/or a constant stream of clients, customers, and other visitors, I believe this building will cause additional traffic circling these blocks, looking for a free space before resorting to the garage if unsuccessful. Furthermore, the garage was built by the public, and what the owners request is tantamount to being given 13 of the Granada garage spaces as gift.
- As the owners have predicted, some of these offices will not be 9-5 operations. So unlike a traditional office building, any parking, traffic or noise problems will extend to all hours.
- The owners hired a consultant to submit a parking study. The parking consultant submitted a study concluding that 37 spaces are sufficient for this 50 unit building. The planning staff has accepted that conclusion. However, the consultant's report indicates that it applied the standard for *general office space* in its analysis. I believe that is not the correct standard for this

project. As the owners have asserted, their project is unlike a typical office project. These tiny offices will be more densely populated and more intensively used than the equivalent square footage in a general office building. Many of the units will operate as *de facto* retail or service establishments with visits from clients and customers, causing even more divergence from the “general office” category. The Planning Commission should request that the applicant’s consultant, or the staff, provide a more appropriate benchmark be used for this project, and the Commission should also apply a common-sense test to this project. 37 spaces for 50 units in this project seems wrong, because it is.

- The Planning Commission should decline the owners’ request to waive the parking requirement, and it should request that the owners submit a design in which the square footage of the project matches the parking. Instead of being 50 units, a revised project might contain, for example, 37 units. Wouldn’t 37 units for 37 parking spaces be better?
- What the owners have asked for is to “double-dip” – they request nearly a 50% increase in the allowable size of the project, from 11,900 to 17,607 square feet, but they don’t want to provide the additional parking required for the additional square footage. What is the city getting in return? If the Commission is inclined to grant both the additional square footage *and* the parking waiver for that increment, it would be more fair to the public, who paid for the Granada garage, to require a buy-in equal to the per-space cost of the garage. However, nothing like that has been offered. The owners’ insist, and the staff agrees, that it is appropriate to award the extra space, free of the parking requirement, without any compensation to the city in return. That would constitute a subsidy to these owners, borne by the public who built the garage, and especially by the neighbors of this property who will be personally impacted by the inadequate parking provided by the owners of this project.

**THE GARAGE ENTRANCE AND LOADING ZONE
SHOULD BE MOVED TO EAST VICTORIA STREET
AS PREVIOUSLY SUGGESTED BY MEMBERS
OF THE COMMISSION**

- Members of the Planning Commission recommended that the garage entrance and truck loading area should be moved to the East Victoria Street side of the property, away from the residences and traffic on Anacapa Street. However, the Planning Commission staff now agrees with the owners that the garage entrance/exit and loading area can be on Anacapa Street. Not only will this impact the Anacapa Street residences directly, but the comings-and-goings from the garage, along with a stream of deliveries on Anacapa Street, will be dangerous and cause traffic problems for everyone who travels on Anacapa Street.
- There is far more traffic flowing South on Anacapa Street than flowing West on East Victoria. On May 19, 2008 my son and I compared the traffic coming South down Anacapa Street with the traffic coming West on East Victoria, from 5:00 p.m. to 6:00 p.m. During that one-hour, 658 cars came down Anacapa Street, while only 182 cars came West on East Victoria.
- On the morning of May 20, we repeated the count from 8:00 a.m. to 8:50 a.m. During that 50-minute period, 535 cars came down Anacapa Street, while only 82 cars came West on East Victoria.
- In addition to the far greater *number* of cars traveling on Anacapa Street, the traffic coming down Anacapa Street appears to move at significantly *higher speeds* than the traffic heading West on East Victoria, compounding the increased risk of the driveway on Anacapa.

- As previously discussed regarding the inadequate parking issue, the in-and-out from the garage, along with the parking and double-parking of delivery vehicles, will be dangerous as cars speeding down Anacapa encounter these new obstacles. These significant new traffic problems on Anacapa Street would not occur if the entrance and loading zone were on East Victoria.
- When the Granada garage opened, it was discovered that Anacapa Street is more sensitive than anyone realized to increases in traffic load and to sudden slowdowns at garage entrances. The Commission should apply that lesson to this proposal.
- An aggravating factor of having the garage on Anacapa Street is that the 8 spaces reserved for Penfield & Smith are expected to be used by their survey trucks, not passenger cars. That will make the problems I have described even worse. The trucks will come and go at odd hours due to their extensive use. This will extend the hours of garage use, but will not free up any spaces during the middle of the day because Penfield & Smith's spaces will have to be reserved, or their 8 space quota would be meaningless.
- There are no residences on that block of East Victoria. Putting the garage entrance and loading zone there will reduce the impact the building will otherwise have on the homes on Anacapa Street. The entrance would be closer to the corner, but that could be addressed by making use of the easement already obtained from 109 E. Victoria. And at any rate, this factor is vastly outweighed by the reduced number of cars on East Victoria, and by the reduced speed of that traffic. If the exit from the garage onto East Victoria were made right-turn-only, it could be even safer.
- Moving the garage entrance to East Victoria would also eliminate the nuisance to residences that will be created if an

exit buzzer or alarm is installed at the garage exit. Underground garages were until recently rare in Santa Barbara, but now they are proliferating. Many residents do not realize that underground garages are often set up to trigger a loud buzzing or ringing warning alarm to herald the appearance of each exiting car. If the entrance is not moved to East Victoria, this noise would be extremely disturbing to the residences on Anacapa Street, especially at night when the neighborhood becomes very quiet.

**THIS PROPOSAL DOES NOT QUALIFY FOR
A COMMUNITY DEVELOPMENT DESIGNATION
UNDER THE PLAIN LANGUAGE OF THE ORDINANCE**

- Because a liberal amount of Economic Development square footage remains available for allocation under the Economic Development exception to Measure E, the owners have put forth an interpretation of the exception that conflicts with the plain language of the ordinance, and unfortunately, the City Council recently accepted that misinterpretation in giving tentative approval to the owners' request for tentative designation as an Economic Development Project. I believe the Planning Commission should review the plain language of the exception and carefully consider how it is that this project is eligible.
- The exception to Measure E for Economic Development Projects is explicitly limited to developments that will provide space for businesses or industries "in sectors which currently do not exist on the South Coast or are present only in a limited manner," or which "provide products or services which are currently not available or are in limited supply either locally or regionally."³ The owners have not addressed these

³ There is also a third way for a project to qualify that is inapplicable here: a building that provides "new recreational, educational, or cultural opportunities for City residents and visitors."

requirements at all. Instead of supplying evidence about the businesses or industries the project will house, as required by the ordinance, the owners simply assert that their *building* is unique and will fill an “unmet need” for small offices. That is irrelevant. The ordinance requires that the *occupants* be businesses fitting the above criteria. Thus, to qualify as an Economic Development Project under the plain language of the ordinance, the owners must show, and the Planning Commission and City Council must find, that the building will provide space for businesses or industries that provide products or services “which are currently not available or in limited supply” or which operate “in sectors which currently do not exist on the South Coast or are present only in a limited manner.” The owners’ assertion that *their building* is a unique product or service is completely unresponsive to the requirements of the ordinance.

- Unfortunately, this misapplication of the ordinance appears to have gained currency on both the City Council and the Planning Commission. If the prevailing interpretation of the ordinance were to be challenged in court, however, I believe the plain language would be held to override this strained interpretation. The focus of the Economic Development Project exception is on the businesses and industries that will occupy the proposed premises. Whether or not the building itself is unique or expects to lease out (or sell out) is not a relevant consideration.
- For example, a proper use of the Economic Development Project designation would be for a building designed to bring a new industry to Santa Barbara. In such a case, the approval of the project should include appropriate conditions to spell out the understanding as to the business or industry which the proposed building will support.
- Here, the owners have made no claims about what businesses or industries will occupy these units, other than the obvious fact that they will be small businesses. No claim has been made

that small businesses “currently do not exist on the South Coast or are present only in a limited manner.” No argument has been made that the owners and tenants occupying these 50 units will be providing products or services “which are currently not available or in limited supply.” In fact, the owners have asserted that they anticipate that all or nearly all the units will be occupied by local residents; this conflicts with the notion of attracting new businesses or industries to the area.

- Furthermore, given this property’s location two blocks from the courthouse, I believe it is safe to predict that many of the units will be purchased or rented by lawyers. And as far as I know, no one is claiming that lawyers “do not exist on the South Coast or are present only in a limited manner,” or that lawyers “are currently not available or in limited supply.” Economic Development Projects as defined by the ordinance are restricted to projects that will house particular classes of businesses or industries. A simple claim that one’s *building* is unique or fills a niche demand for small offices does not address that requirement at all.
- The Planning Commission should deny the requested designation as an Economic Development project unless and until the owners comply with the ordinance by demonstrating how this project will house businesses that “do not exist on the South Coast or are present only in a limited manner,” or that “are currently not available or in limited supply.”

**REGARDLESS OF ANY BYLAW TO THE CONTRARY,
THIS PROJECT APPEARS TO INVITE RESIDENTIAL USE**

- 50 offices is extremely dense for a building this size. As a result the offices will be quite small (294 to 333 square feet each). Some of the units will certainly be purchased by businesses for their own use, but the Planning Commission should consider that a significant number of the units will likely

be purchased for investment purposes, by investors who will then need to rent to tenants. The current owners of the property will be out of the picture once the units are sold. The Planning Commission should consider the complications that will result when unit owners compete with each other to rent out their units.

- A tenant wishing to use a unit as live/work space may be willing to pay more than a tenant who just wants an office for less intensive use. Since investor/owners will of course seek to make the best possible return, if the building makes it easy for tenants to live there (regardless of the fact that is not technically allowed), these units will be more marketable to investors because investors will anticipate enhanced rentability of the units.
- This proposed project dedicates a remarkably large space to a shower and locker facility, approximately 1500 square feet. It is wise to encourage bicycling, but given the actual incidence of bicycle commuting in Santa Barbara, I believe the extensive shower facilities serve the additional purpose of making it possible for tenants to live in the units, notwithstanding the rules against that. The design, location and size of the complex will make that policing that prohibition impossible as a practical matter. In practice, it will just not be feasible to prevent or detect tenants living in the units, especially since the investor/owners will have an incentive to look the other way.
- In addition to tenants who may effectively live in the building, the structure of this project also invites owners and tenants to view their units as pied-a-terres, for occasional or not-so-occasional overnight use, by themselves or by out-of-town guests. Again, the large shower-and-lockers area facilitates this use of the property.

**BECAUSE OF LOCAL PROBLEMS WITH
HOMELESSNESS AND CRIME, THE ATTRACTIVE,
OPEN CORNER ENTRANCE IN THE PROPOSED DESIGN IS
LIKELY TO BE CONVERTED TO A SECURE GATE OR DOOR**

- Living across the street from this project, I have had problems with people sleeping within my front garden, shielded by the hedge. The proposed design has a narrow "courtyard" that seems more like a maze of narrow spaces between the units. These spaces would provide numerous places to sleep overnight without being seen from the street. If this complex will have various open entrances around it, there will be no way to prevent camping by homeless people at night, other than by hiring security. But if the complex is enclosed to prevent this activity, then the attractive open entrance on the corner of East Victoria and Anacapa is doomed to evolve into something more secure but far less attractive. It is truly unfortunate that the problem of homelessness is one that must now be considered in building design, but I believe that is a reality that should be acknowledged in this instance.

- Similarly, Santa Barbara is blessed with a moderate crime rate, but if the complex is to be accessible via various paseos, with unit entrances that are accessible from within the interior "courtyard" area, but not visible from the street, this may invite burglary and other property crimes. This too may be a factor in turning the attractive open entrance into a locked checkpoint.

- And if the building must control access, this will probably also mean that the underground garage must be secured. If that is accomplished with a roll-up or other secure gate, this may add to the nighttime noise issue for the neighboring residences, at least if the entrance to the garage remains on Anacapa.

**THIS DESIGN PROVIDES NO SETBACK
AND INSUFFICIENT LANDSCAPING
ON ANACAPA STREET**

- While it is true that no setback is required for first floor units, in an application such as this one, where the owners are asking for significant additional square footage and parking concessions from the city, it would be appropriate to request a setback to allow more landscaping on Anacapa Street in return for what is being given away.

- I believe that despite the assurances in the plan documents, the postage-stamp sized landscaping elements on Anacapa Street will probably not be implemented as envisioned. In the current design there is a tree directly in front of the every window on Anacapa Street, filling in the angled space between each unit. To block the view of Anacapa Street from all the windows for these units would adversely impact their marketability. Therefore I believe that if this project is built, the inevitable result will be that anyone coming down Anacapa Street will be faced with building-and-windows right up to the sidewalk, with at best a low bush or planter each tiny space between the angled windows.

Thank you for your consideration of my concerns about this project. I sincerely hope the Planning Commission will at least request further study of the problems with this proposal, which seems to have changed so little since the unfavorable comments received at the only concept review a year ago.

Sincerely,

VIRGINIA REHLING

enclosures



Fire Department

"Serving the community since 1926"

4410 Cathedral Oaks Road
Santa Barbara, California 93110-1042
(805) 681-5500 FAX (805) 681-5563

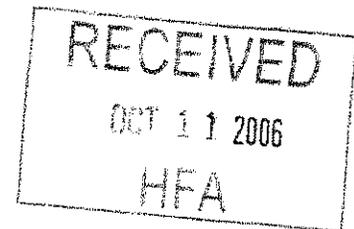
John M. Scherrei
Fire Chief

October 4, 2006

Mr. Daniel Carrier
Chevron Environmental Management Company
P. O. Box 2292
145 South State College Boulevard
Brea, CA 92822-2292

Dear Mr. Carrier:

SUBJECT: Former Chevron Station No. 20-6699
101 E. Victoria Street, Santa Barbara, California
LUFT Site #90099



The Santa Barbara County Fire Department, Fire Prevention Division (FPD), Leaking Underground Fuel Tank (LUFT) Program, has reviewed the following documents prepared by your consultant, Holguin, Fahan & Associates: *Site Assessment Report (Report)*, dated July 20, 2006 and *Corrective Action Plan (CAP)*, dated July 21, 2006. The *Report* summarized the drilling and sampling of three soil borings (B-9 through B-11) and the installation of one nested vadose zone well (V-1A/B). Based upon site assessment activities, the *CAP* proposed to use vapor extraction to treat the vadose zone contamination and natural attenuation to treat the groundwater contamination. After careful review, FPD has the following comments and directives:

- (1) The *Report* suggests that because the Total Petroleum Hydrocarbons as gasoline (TPHg) contamination found in soil in offsite boring B-9 (5,560 mg/kg) is greater than that for onsite well MW-8 (2,700 mg/kg), the contamination in B-9 is potentially related to a former service station southeast of the site. However, boring B-9 is located approximately 10 feet from the former tanks and the concentration of TPHg in that boring is less than the TPHg concentration found in onsite boring V-1 (7,900 mg/kg). FPD requires the submittal of a workplan by **November 3, 2006** for the delineation of soil contamination southeast and southwest of B-9.
- (2) FPD approves the proposed cleanup levels for soil and groundwater.
- (3) FPD approves the use of Soil Vapor Extraction to remediate the contaminants in the vadose zone at the site vicinity. However, as shown in Figure 12, the projected radius of influence in the two proposed vapor extraction wells will not effectively remediate the known plume, let alone the undelineated offsite contamination. FPD requires additional wells be proposed that will effectively remediate both the onsite and offsite contamination based upon the known contamination at this time. Please submit a revised map to FPD by **October 20, 2006**.

Additional wells may need to be added to the system once the offsite contamination has been fully assessed.

- (4) Begin permitting of the vapor extraction system with the appropriate agencies immediately.
- (5) Because the extent of offsite contamination has not been delineated, the treatment system shall be scalable to include additional extraction wells, as needed.
- (6) HFA has proposed to operate the treatment system for three months. FPD does not concur with operating the treatment system for an arbitrary amount of time. FPD will require confirmation soil samples prior to the shutdown of the treatment system. Based upon the results, additional wells may be required to target areas not affected by the system.
- (7) The CAP suggested that while the potential risk at the site would be reduced during remediation, the site would likely not be cleaned up to the target cleanup goals. This would likely result in either a deed notification or deed restriction. The owner of the property has stated that this is not acceptable. Additionally, as contamination is present within the City of Santa Barbara's right-of-way, cleanup to less than the target goals would require agreement from the City to place a deed notification or deed restriction on their property. Therefore, remediation shall continue until a deed notification and/or deed restriction is not needed.
- (8) FPD does not approve the use of natural attenuation for the remediation of groundwater. The station was closed in 1955. Fifty one years later, contaminants in groundwater are as follows: TPHg is four time its action level; benzene is 29 times its Maximum Contaminant Level (MCL); and EDC is 32 times its MCL. Therefore, active remediation at this site is required. Submit a Corrective Action Plan to FPD by November 3, 2006 for the active remediation of groundwater.

If you have any questions regarding the aforementioned, please do not hesitate to call me at 805-686-8176. Correspondence relating to this matter should be addressed to FPD at 195 West Highway 249, Suite 102, Buellton, CA 93427 or via facsimile at 805-686-8183.

Sincerely,



Thomas M. Rejzek
Professional Geologist #6461
Certified Hydrogeologist #601
SMU/LUFT Program

pc: Todd McFarland, HFA ✓
Mark Matranga, UST Cleanup Fund
John Mijares, RWQCB
Eric Schott, 101 East Victoria Partnership
Steve Campbell, CampbellGeo
Stephen Macintosh, City of Santa Barbara

09-06 90099.doc

EXHIBIT F



Fire Department

"Serving the community since 1926"

4410 Cathedral Oaks Road
Santa Barbara, CA 93110-1042
(805) 681-5500 FAX (805) 681-5563

John M. Scherrei
Fire Chief

January 18, 2007

Ms. Kathleen Kennedy
City of Santa Barbara Planning Department
630 Garden Street
Santa Barbara, CA 93101

Dear Ms. Kennedy:

SUBJECT: Former Chevron Station No. 20-6699
101 E. Victoria Street, Santa Barbara, California
LUFT Site #90099

The Santa Barbara County Fire Department, Fire Prevention Division (FPD), Leaking Underground Fuel Tank (LUFT) Program has reviewed the DART Routing Form dated December 19, 2007 for the above referenced site. It is FPD's understanding that the demolition of the existing building and the construction of a three story office complex with underground parking is proposed for the site. FPD has the following comments regarding this project:

- The site is an active LUFT site with ongoing soil and groundwater remediation.
- Hazardous waste levels of soluble lead were detected at the site during the site investigation. This material must be handled appropriately and disposed of properly during grading operations. In addition, it is possible that during site grading operations, unknown soil contamination may be encountered. Therefore, FPD requires a soils management plan for the site. If soil exhibiting any field indications of contamination is encountered during any phase of redevelopment, then work shall be stopped immediately and FPD notified.
- If the soil vapor extraction system has not completed soil remediation at the site prior to the beginning of construction activities, then the soil vapor extraction system shall be reinstalled as soon as possible (either during or after the completion of construction activities).
- Groundwater under the site is contaminated with several volatile organic compounds. Should groundwater remediation not be complete before the beginning of construction activities, then the groundwater monitoring wells within the building footprint shall be properly abandoned and then reinstalled as soon as possible (either during or after the completion of construction activities) under FPD permit.
- Due to the presence of volatile organic compounds in the soil vapor and groundwater at the site, mitigation measures shall be included in the building design to prevent migration of these vapors into the building or parking structure in accordance with the Department of

101 E. Victoria Street Letter
Page 2 of 2
January 18, 2007

Toxic Substance Control's Guidance for Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air (12/5/2004, revised 2/7/2005).

If you have any questions regarding the aforementioned, please do not hesitate to call me at 805-686-8176. Correspondence relating to this matter should be addressed to FPD at 195 West Highway 246, Buellton, CA 93427 or via facsimile at 805-686-8183.

Sincerely,



Thomas M. Rejzek
Professional Geologist #6461
Certified Hydrogeologist #601
SMU/LUFT Program

pc: Mr. Todd McFarland, HFA
Mr. John Frary, Chevron
Mr. Mark Matranga, UST Cleanup Fund
Mr. John Mijares, RWQCB
101 E. Victoria Street, LP

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EXHIBIT F



Fire Department

"Serving the community since 1926"

4410 Cathedral Oaks Road
Santa Barbara, CA 93110-1042
(805) 681-5500 FAX (805) 681-5563

John M. Scherrei
Fire Chief

May 16, 2008

Mr. Ben Terry
Chevron Environmental Management Company
P. O. Box 1069
San Luis Obispo, CA 93406

Dear Mr. Terry:

SUBJECT: Former Chevron Station No. 20-6699
101 E. Victoria Street, Santa Barbara, California
LUFT Site #90099

The Santa Barbara County Fire Department, Fire Prevention Division (FPD) Leaking Underground Fuel Tank (LUFT) Program has reviewed the site file for the above referenced site. Groundwater data indicates that 1,2-dichloroethane (EDC) has been present in groundwater samples and may be present in the soil vapor extracted from the site. By May 30, 2008, influent and effluent vapor samples shall be collected from the vapor extraction system and analyzed for EDC. Please report these results to FPD immediately upon receipt.

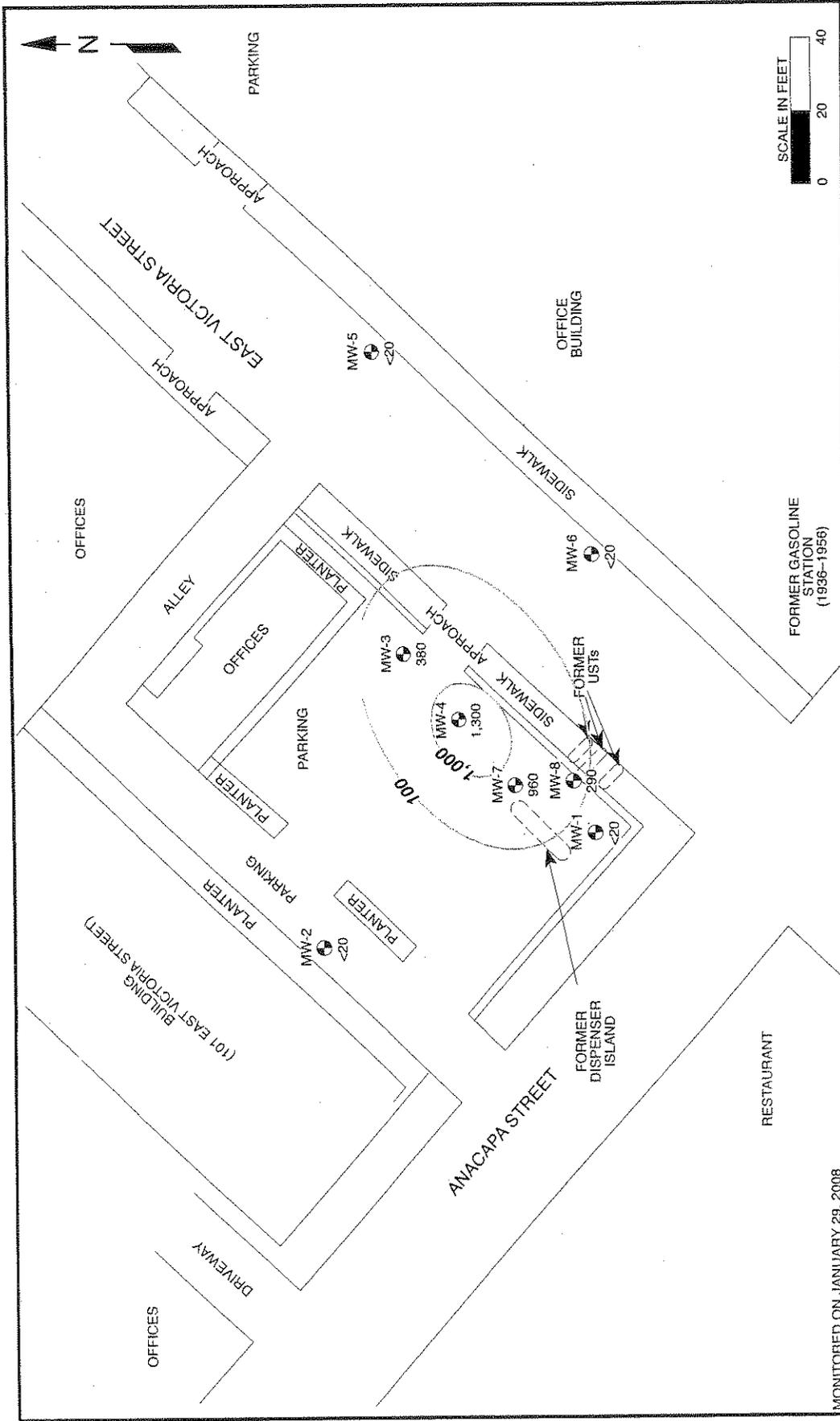
If you have any questions regarding the aforementioned, please do not hesitate to call me at (805) 686-8176. Written correspondence relating to this matter should be sent to FPD at 195 West Highway 246, Buellton, CA 93427 or via facsimile to (805) 686-8183.

Sincerely,

Thomas M. Rejzek
Professional Geologist #6461
Certified Hydrogeologist #601
SMU/LUFT Program

pc: Mr. Todd McFarland, HFA
Mr. Mark Matranga, UST Cleanup Fund
Mr. John Mijares, RWQCB
101 E. Victoria Street, LP

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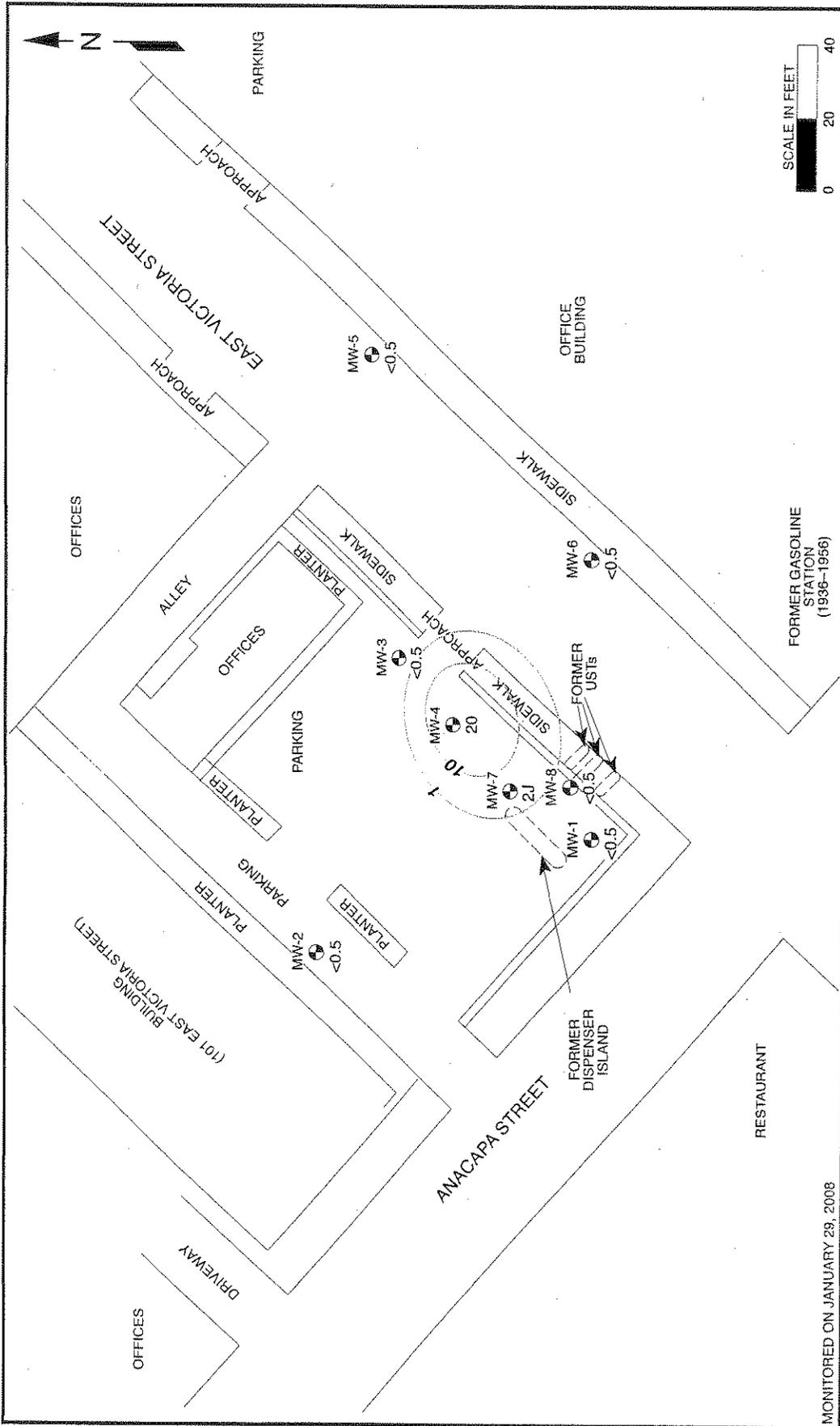
MONITORED ON JANUARY 29, 2008

CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY	
FORMER SERVICE STATION #20-6699 101 EAST VICTORIA STREET SANTA BARBARA, CALIFORNIA	
FIGURE 3 - TPH AS GASOLINE CONCENTRATIONS IN GROUNDWATER FOR FIRST QUARTER 2008	
HOLGUIN, FAHAN & ASSOCIATES, INC.	

LEGEND

- GROUNDWATER MONITORING WELL
- TPH AS GASOLINE CONCENTRATION IN GROUNDWATER (µg/l)
- CONTOUR OF TPH AS GASOLINE CONCENTRATIONS IN GROUNDWATER (µg/l)

REVISION DATE: FEBRUARY 27, 2008: TQ

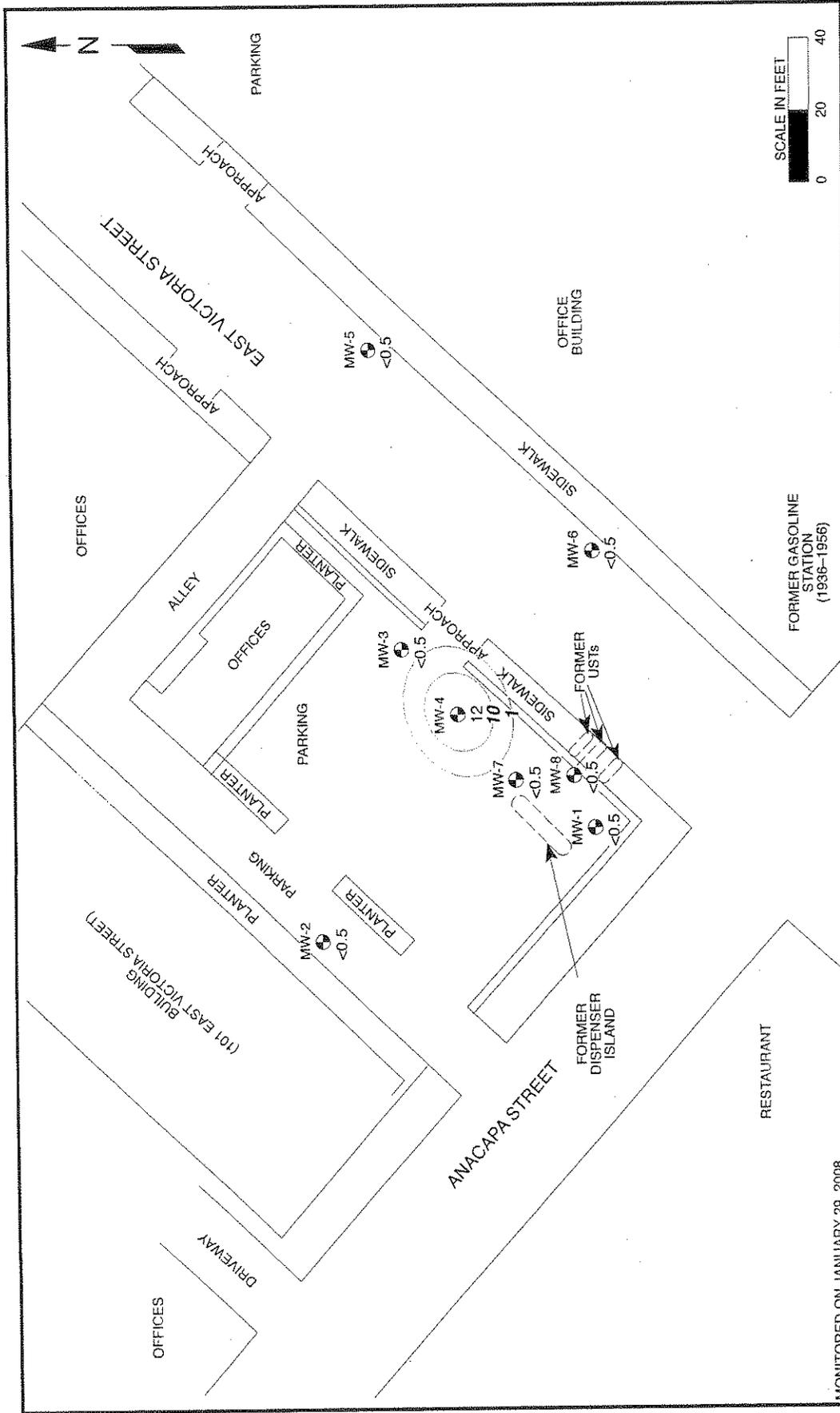


MONITORED ON JANUARY 29, 2008

CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY	
<p>FORMER SERVICE STATION #20-6699 101 EAST VICTORIA STREET SANTA BARBARA, CALIFORNIA</p> <p>FIGURE 4 - BENZENE CONCENTRATIONS IN GROUNDWATER FOR FIRST QUARTER 2008</p> <p>HOLGUIN, FAHAN & ASSOCIATES, INC.</p>	<p>LEGEND</p> <ul style="list-style-type: none"> ● GROUNDWATER MONITORING WELL # BENZENE CONCENTRATION IN GROUNDWATER (µg/l) 1..... CONTOUR OF BENZENE CONCENTRATIONS IN GROUNDWATER (µg/l)

REVISION DATE: FEBRUARY 27, 2008: TQ

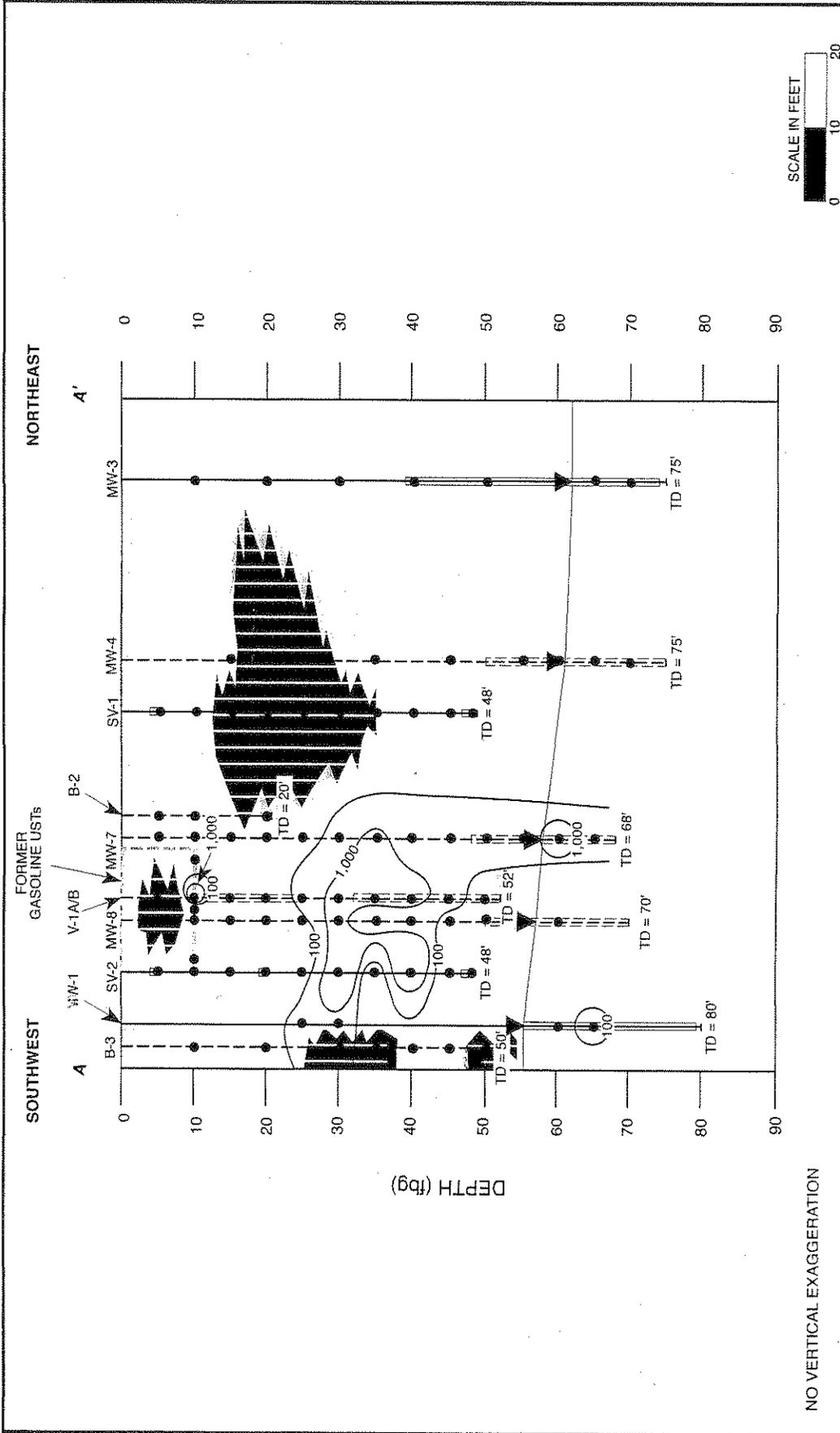
EXHIBIT F



MONITORED ON JANUARY 29, 2008		LEGEND	CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY
●	GROUNDWATER MONITORING WELL		FORMER SERVICE STATION #20-6699 101 EAST VICTORIA STREET SANTA BARBARA, CALIFORNIA
#	EDC CONCENTRATION IN GROUNDWATER (µg/l)		FIGURE 5 - EDC CONCENTRATIONS IN GROUNDWATER FOR FIRST QUARTER 2008
-1-	CONTOUR OF EDC CONCENTRATIONS IN GROUNDWATER (µg/l)		HOLGUIN, FAHAN & ASSOCIATES, INC.

REVISION DATE: FEBRUARY 27, 2008; TO

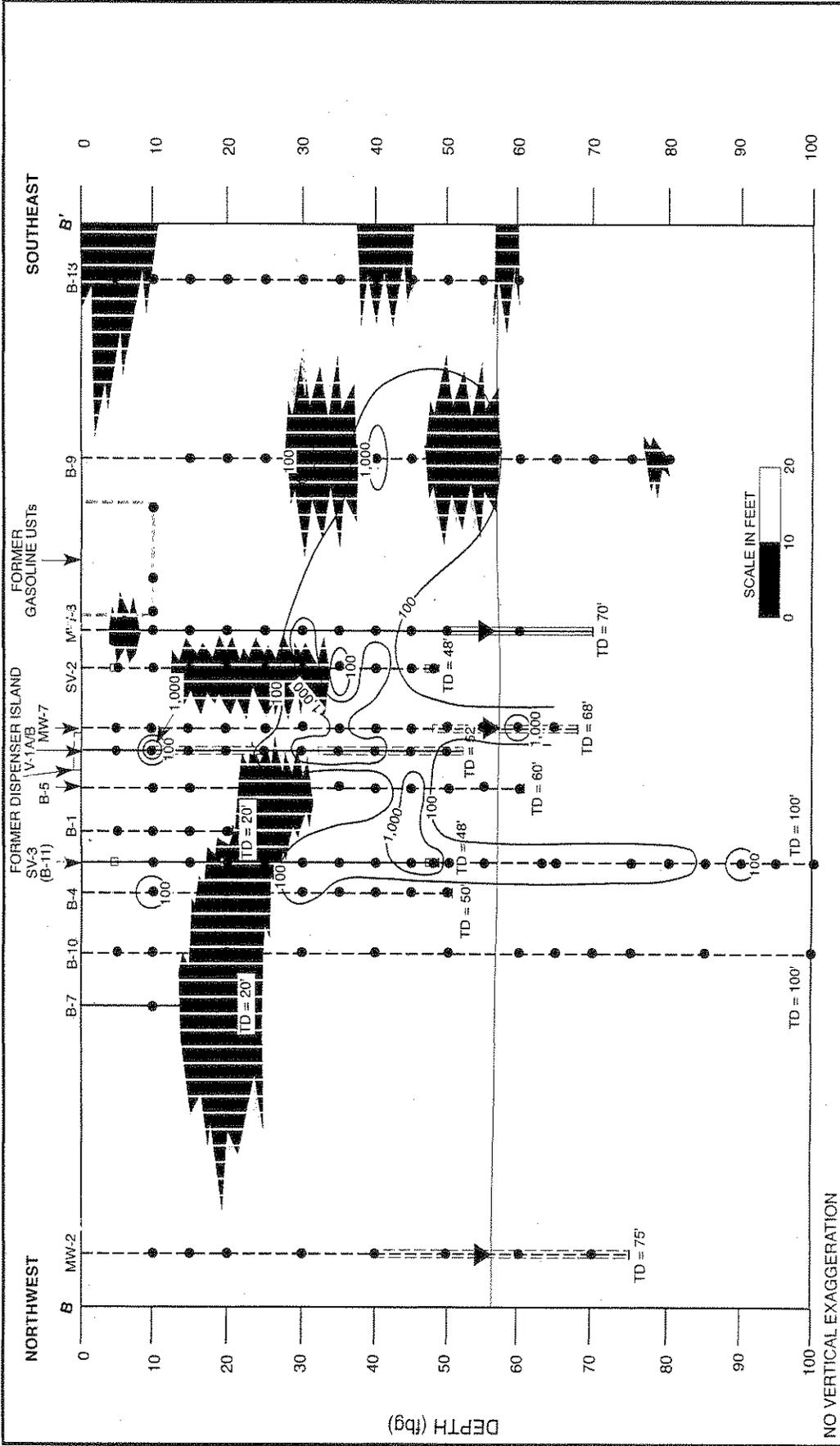
EXHIBIT F



<p>LEGEND</p> <ul style="list-style-type: none"> MW-1 ← BORING/MONITORING WELL DESIGNATION ← BORING/MONITORING WELL (DASHED WHERE PROJECTED) ← PERFORATED WELL INTERVAL ← SOIL SAMPLE LOCATION ← DEPTH TO GROUNDWATER (MEASURED ON 2/13/06) ← DEPTH OF MONITORING WELL ← TOTAL BORING DEPTH 	<p>CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY</p> <p>FORMER SERVICE STATION #20-6699 101 EAST VICTORIA STREET SANTA BARBARA, CALIFORNIA</p> <p>FIGURE 9 - GEOLOGIC CROSS-SECTION A-A'</p> <p>HOLGUIN, FAHAN & ASSOCIATES, INC.</p>
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REVISION DATE: JULY 21, 2006: AMH

EXHIBIT F



<p>LEGEND</p> <ul style="list-style-type: none"> MW-1 BORING/MONITORING WELL DESIGNATION. BORING/MONITORING WELL (DASHED WHERE PROJECTED) PERFORATED WELL INTERVAL SOIL SAMPLE LOCATION DEPTH TO GROUNDWATER (MEASURED ON 2/13/06) 100' CONTOUR OF TPH AS GASOLINE/EFH CONCENTRATIONS ABOVE FPD TD = X' TOTAL BORING DEPTH 		<p>CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY</p> <p>FORMER SERVICE STATION #20-6699 101 EAST VICTORIA STREET SANTA BARBARA, CALIFORNIA</p> <p>FIGURE 10 - GEOLOGIC CROSS-SECTION B-B'</p> <p>HOLGUIN, FAHAN & ASSOCIATES, INC.</p>
<p>REVISION DATE: APRIL 17, 2007: CAG</p>		