

**CITY OF SACRAMENTO
DEPARTMENT OF PLANNING & DEVELOPMENT
ZONING ADMINISTRATOR
1231 I Street, Sacramento, CA 95814**

ACTION OF THE ZONING ADMINISTRATOR

On October 28, 1999, the Zoning Administrator denied permission to locate a bus transfer station located within the Executive Airport Overlay-2 (EA-2) zone for the project known as Z99-125. Findings of Fact for the project are listed on page 3.

Project Information

Request: Zoning Administrator Permission to establish a bus transfer station located within 2,680 square feet of a 14,392 square foot multi-tenant building on 7.87± vacant acres in the General Commercial, Executive Airport Overlay-2 (C-2){EA-2} zone.

Location: 5500 24th Street (D5, Area 3)

Assessor's Parcel Number: 018-0243-020

Applicant: Gonzlez Inc., dba Golden State Transportation (Antonio Gonzalez)
1901 Blake Avenue
Los Angeles, CA 90039

Property Owner: Mervyn L. Silberberg
3700 Sacramento Street
San Francisco, CA 94118

General Plan Designation: Community/Neighborhood Commercial & Offices
Existing Land Use of Site: Commercial Center
Existing Zoning of Site: General Commercial (C-2) {EA-2}

Surrounding Land Use and Zoning:
North: R-1 {EA-2}; Single Family Residential
South: C-2 {EA-2}; Commercial
East: C-2 {EA-2}; Commercial
West: R-1 {EA-2}; Single Family Residential

Property Dimensions: Irregular
Property Area: 1.04± acres
Square Footage of Building:

| | |
|----------------|--------------------|
| Bus Station: | 2,680 square feet |
| Beauty Shop: | 1,072 square feet |
| Vacant: | 4,200 square feet |
| Billiard Hall: | 6,440 square feet |
| Total: | 14,392 square feet |

Height of Building: One Story, 20 feet
Exterior Building Materials: Stucco
Roof Materials: Rolled mineral paper over
Topography: Flat
Street Improvements: Existing
Utilities: Existing

Project Plans: See Exhibits A-D

Previous Files: None

Project Review: The applicant proposes to use 2,680 square feet of a 14,392 square foot building for a bus transfer station. The site is mainly used to switch drivers. There will be one employee and 10 to 15 customers waiting to board the buses. Initially, two buses will arrive at approximately 1:30 a.m. and two more buses will arrive at 3:30 a.m. The applicant anticipates increasing the number of buses to four per stop or eight bus arrivals/departures. Passengers may both embark and disembark at this site as well as get off the bus for a rest stop. Each bus has a 52 person capacity. The site also has other commercial uses with the building that could have a maximum of 23 persons on site at one time and possibly more if the vacant space is leased. There is no actual bus loading spaces identified on the site, the buses use the existing parking lot and block parking spaces.

The site is located within the Executive Airport Overlay-2 zone. According to the Zoning Ordinance uses within the overlay zone are limited and regulated to stricter standards than the actual zoning for the site. A bus transfer station may only be located within the EA-2 zone if the Zoning Administrator approves the application for the use based upon satisfying the following required findings.

The use will not result in any of the following:

- a. Concentration of people greater than 50 persons per acre at any time;
- b. Above-ground storage of flammable or explosive material; or
- c. Any structure with more than two habitual stories or which exceeds 30 feet in height.

The Zoning Administrator requested that the proposed project be reviewed by the Sacramento Area Council of Governments- Airport Land Use Commission staff. Their analysis of the proposed project indicated that the proposed bus transfer station has the potential to result in concentrations of people greater than 50 persons per acre at any time (See Exhibit E).

Action of the Zoning Administrator

The proposed use at this site will have the potential to have a concentration of more than 50 persons per acre at numerous times throughout the operating hours. The Zoning Administrator

denies the request to locate the proposed bus transfer station in the EA-2 zone based on Findings of Fact which follow.

Environmental Determination

This project is denied and therefore an environmental determination is not be required. Should the decision of the Zoning Administrator be overturned, then an appropriate environmental document must be prepared pursuant to California Environmental Quality Act Guidelines.

Findings of Fact:

1. The project is not based upon sound principles of land use in that the proposed bus transfer station exceeds the maximum allowed concentration of 50 persons per acre at any time within the Executive Airport Overlay-2 zone.
2. The project may be detrimental to the public welfare and may result in the creation of a public nuisance in that the proposed use will potentially periodically expose large numbers of persons to potential hazards from being located within an airport approach/departure path.

Joy D. Patterson

Joy D. Patterson
Zoning Administrator

Oct 28, 1999

Date

The decision of the Zoning Administrator may be appealed to the Planning Commission. An appeal must be filed within 10 days of the Zoning Administrator's hearing. If an appeal is not filed, the action of the Zoning Administrator is final.

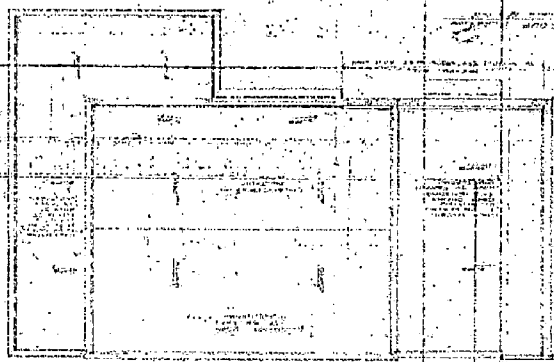
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Applicant

ZA Log Book

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ITEM # 77
PAGE 11

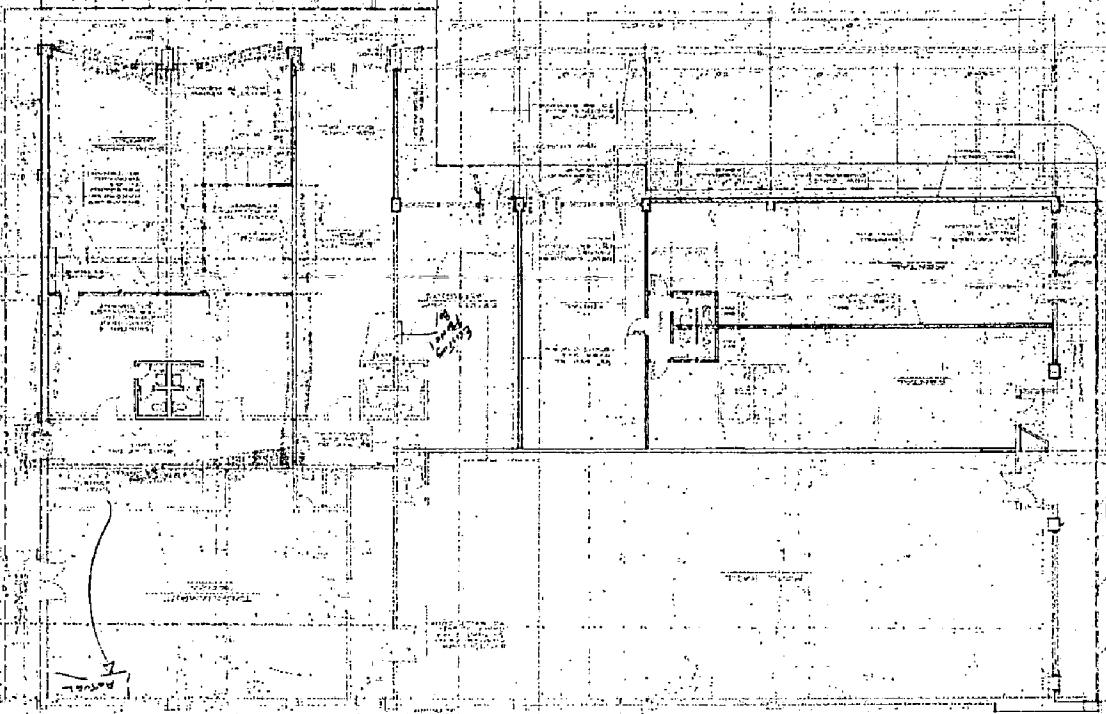


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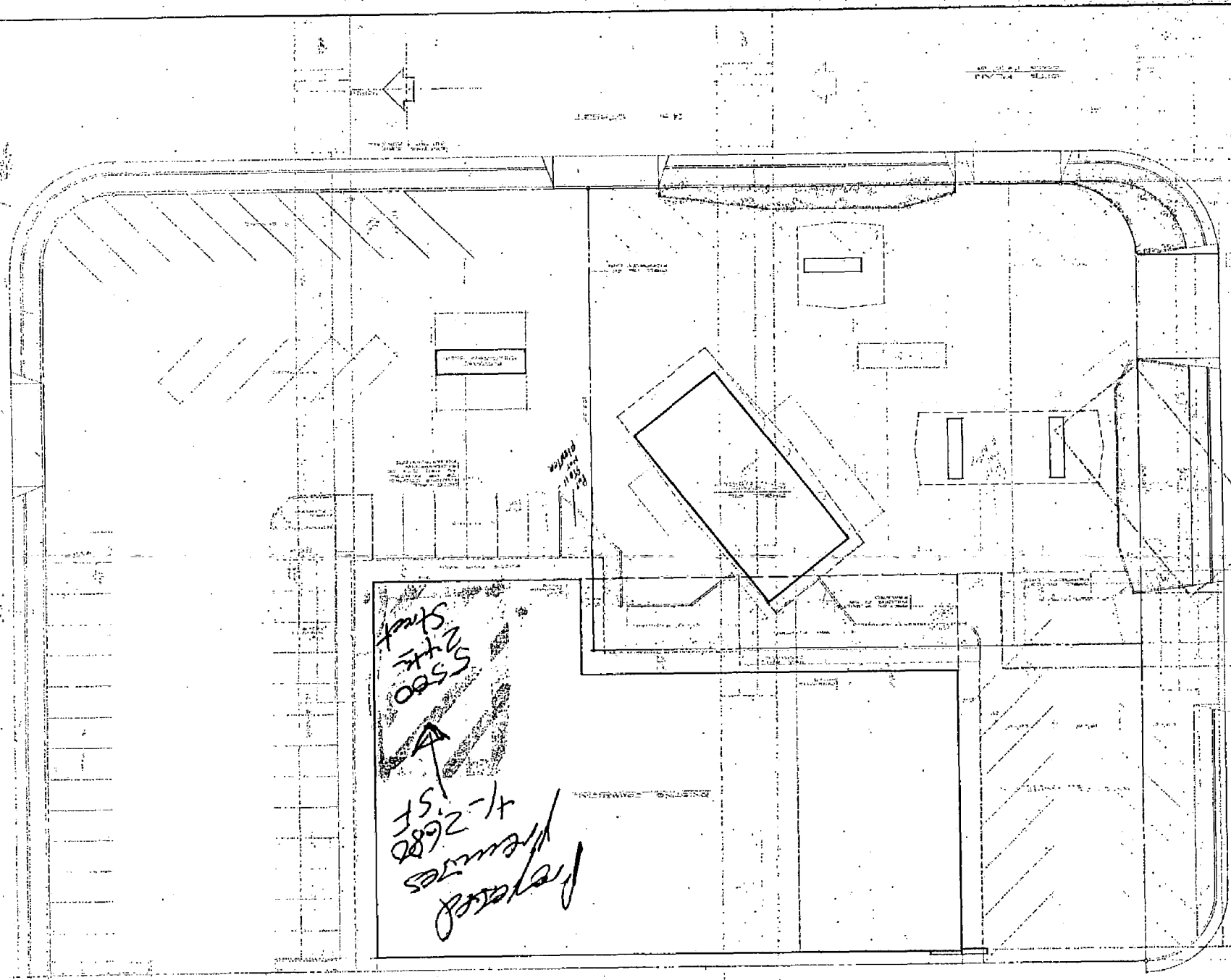


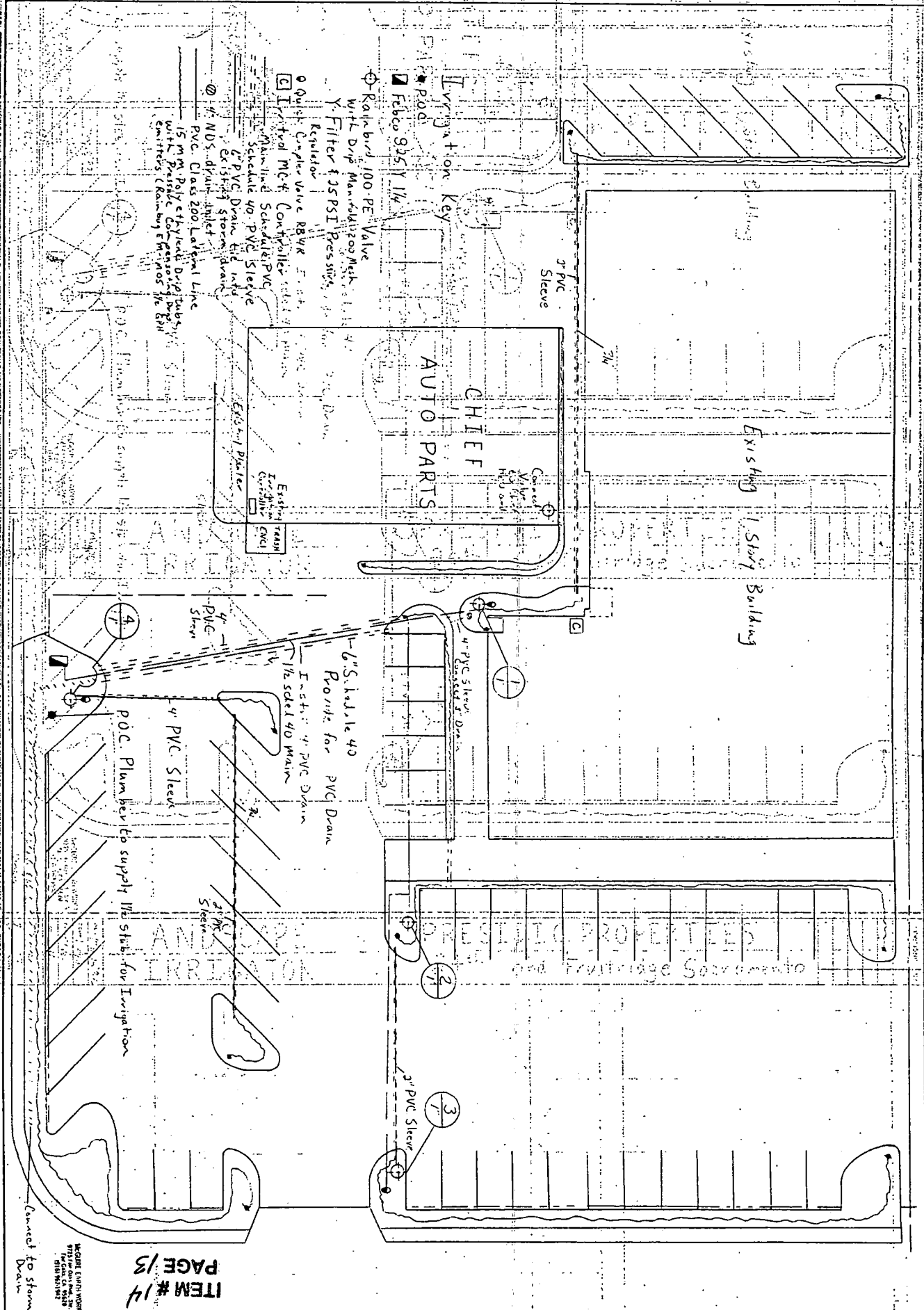
EXHIBIT 11



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- Quick Coupler Valve RBWR 1/2" x 3/4"
- Irrigation MCH: Controller, solenoid, PVC
- Mainline Schedule 40 PVC Slew
- Schedule 40 PVC Slew
- 6" PVC Drain tie in
- Existing storm drain
- 4" NDS drain inlet
- PVC Class 200 Lateral Line
- 15' M on Poly ethylene Drip Tubing with Pressure Compensating Drip Emitters (Rainbow Emitters 7/8 GPH)

ITEM # 14
PAGE 13

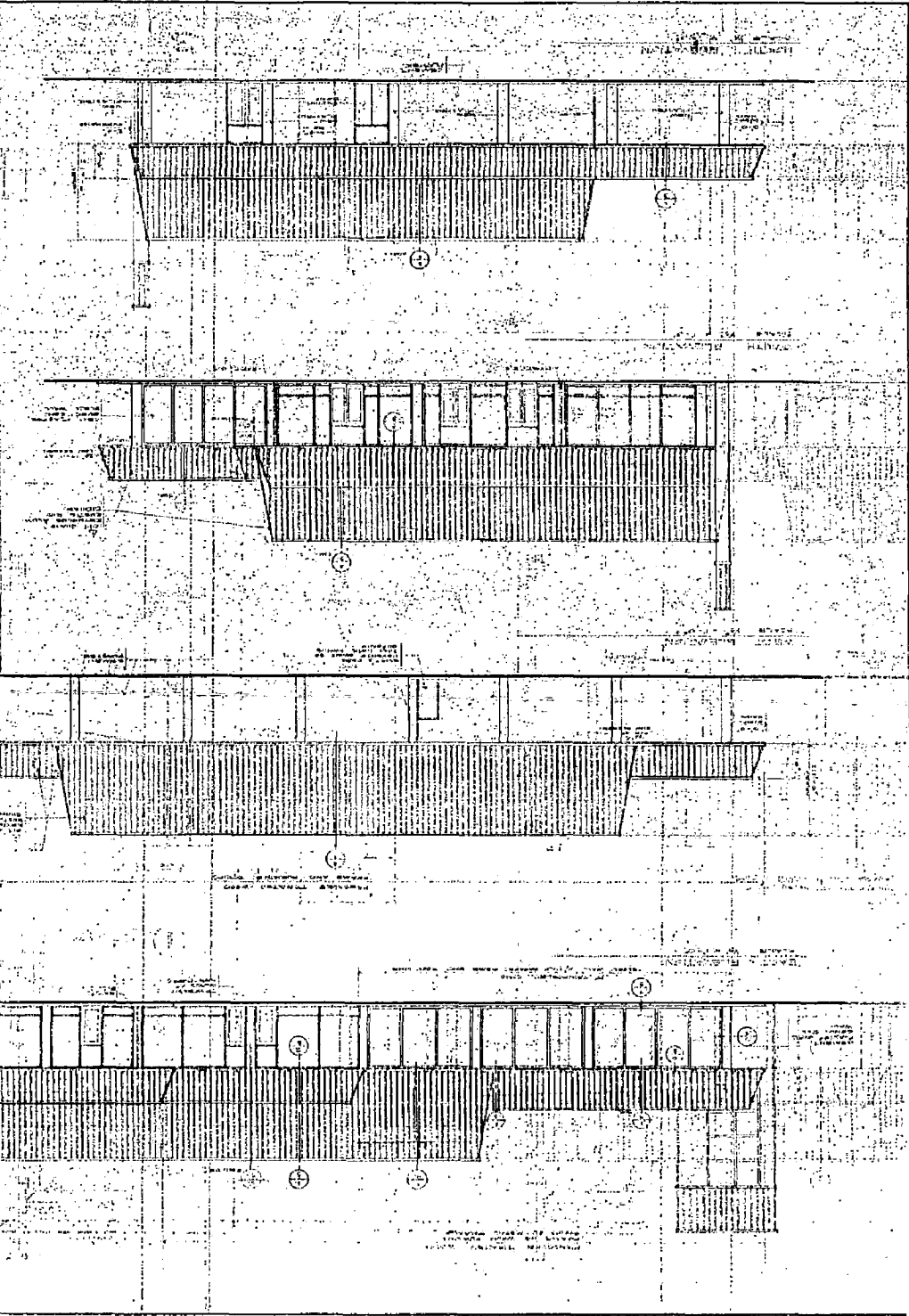
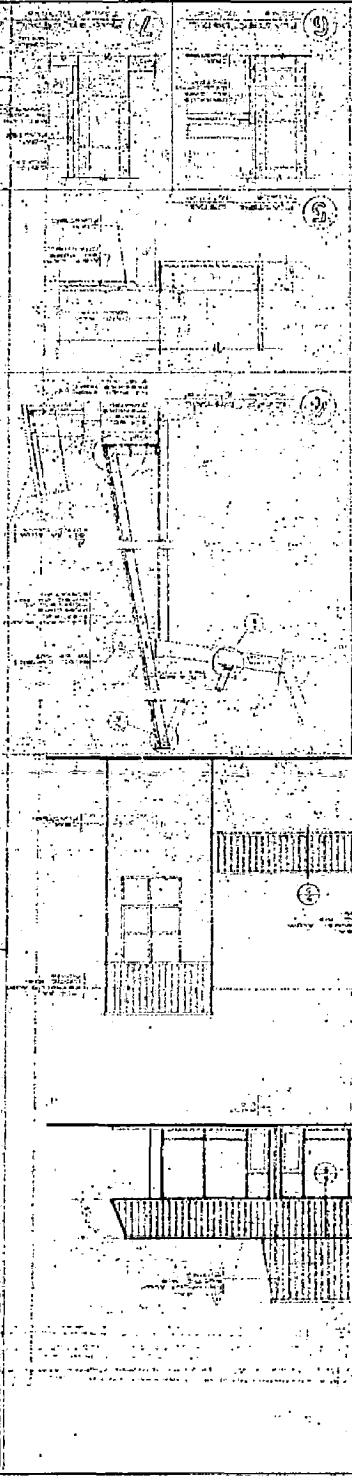
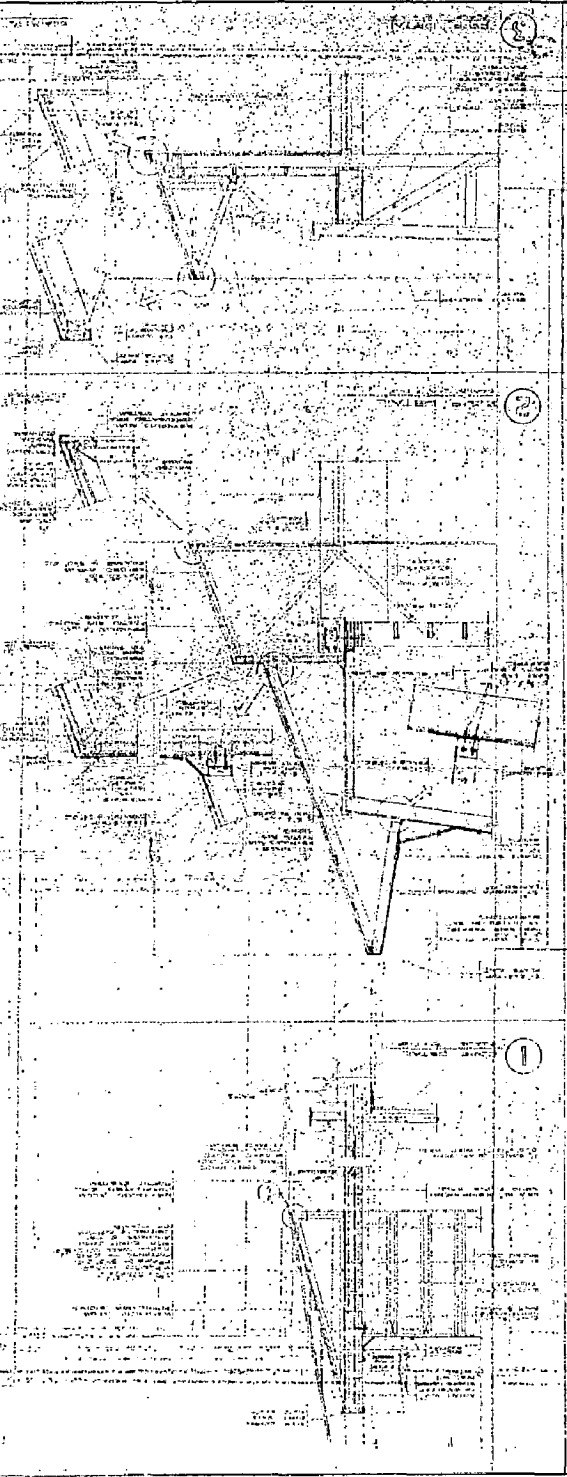
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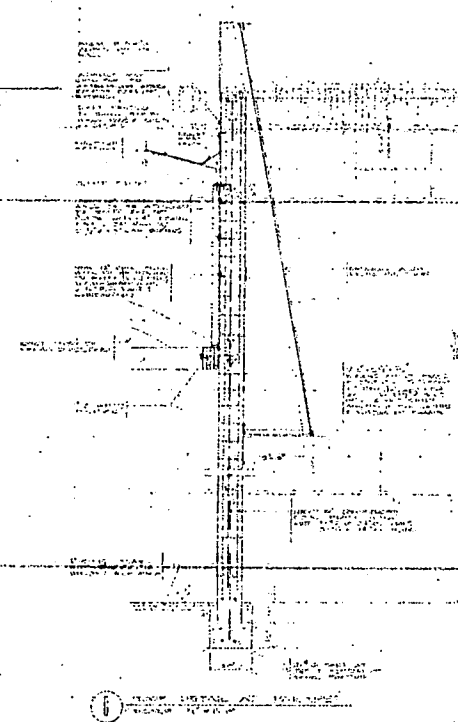
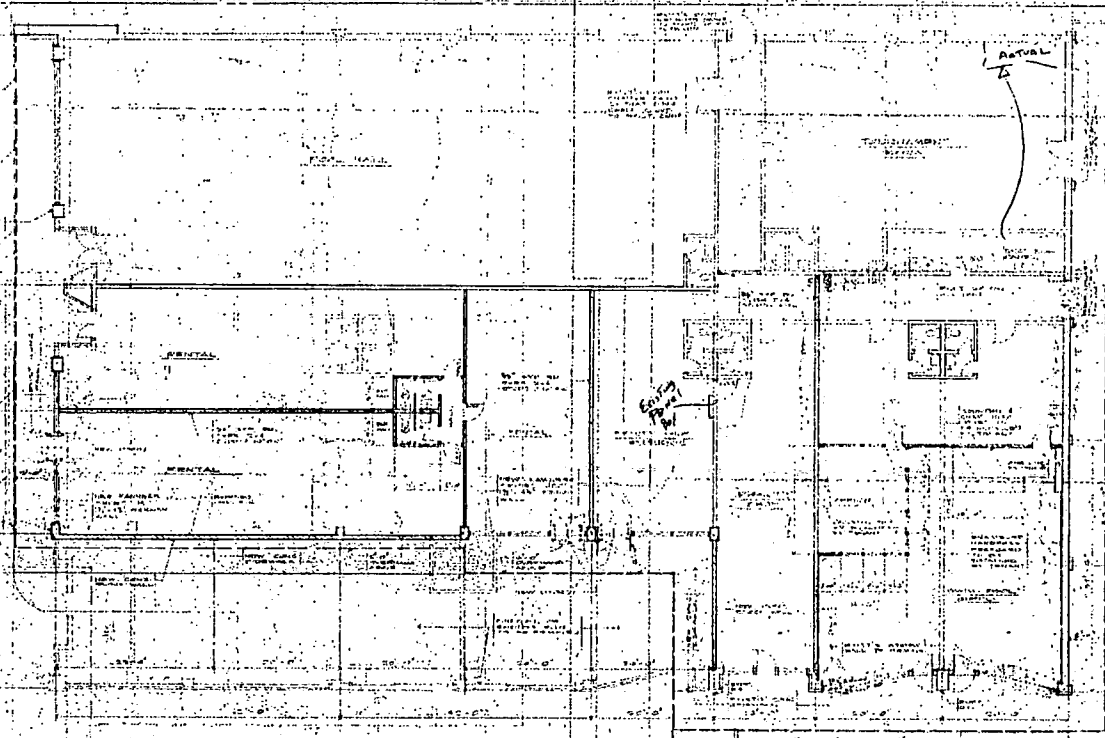
LANDSCAPE IRRIGATION

PRESIDIO PROPERTIES
24th and Fruitridge Sacramento

| | |
|----------|----------------|
| Scale | 1" = 20' |
| Sheet | 64 |
| Level | L ₂ |
| Revision | 3 |

| | |
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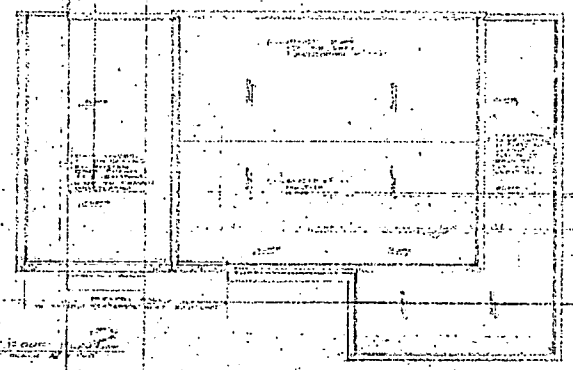
FLOOR PLAN

- LEGEND:
- EXISTING WALLS REMAIN
 - EXISTING WALLS TO BE REMOVED
 - NEW WALL STOP EXISTING WALLS
 - NEW WALLS



P.A. STAIR

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ALU

AIRPORT LAND USE COMMISSION
for Sacramento, Sutter, Yolo & Yuba CountiesITEM # 14
PAGE 163000 S Street, Suite 300
Sacramento, CA 95816-7058TEL 916.457.2264
FAX 916.457.3299
TDD 916.737.1718

October 26, 1999

Sandra L. Yope
Associate Planner
City of Sacramento Planning Division
1231 I Street, Room 200
Sacramento, CA 95814

Dear Ms. Yope:

This letter is in response to your request for an Airport Land Use Commission staff analysis of potential concentrations of people that could result from approval of Project Z99-125 (Zoning Administrator Determination for Bus Transfer Station in the Executive Airport Overlay-2 Zone). I have reviewed the proposed project, and have determined that it has the potential to result in concentrations of people greater than 50 persons per acre at any time. This determination is based upon the following information provided by the applicant:

- Two buses could be on the site at the same time for approximately 15 minutes. There would initially be two arrivals and two departures daily. The applicant indicates that this could double in the future to four buses potentially being on site at any one time.
- Each bus has a maximum occupancy of 52 passengers. There would also be two bus drivers waiting to take over driving responsibilities from the two departing drivers. There would also be one on-site employee.
- The total property is 1.04 gross acres in size.
- The bus facility use would occupy 3,650 square feet: 2,680 of which would be building space and 1,000 of which would be used as a loading area for the buses.
- Other existing occupants in the existing commercial complex include: a 1,072 square foot beauty shop and a 6,440 square foot billiard hall. Additional space, other than the proposed bus facility, is also available for lease.

Two fully-loaded buses on-site at the same time, plus 3 bus facility employees (two bus drivers plus one on-site employee) would amount to 107 people. This does not count additional people who may either be waiting to board the bus at this location, or those who may be waiting to pick up passengers disembarking. 107 people clearly would exceed 50 persons per acre, given that the total bus use would occupy less than 1/3 of the 1.04 acre parcel.


Even assuming that the two buses were only at one-half occupancy, there would be approximately 55 people on-site, also resulting in greater than 50 persons per acre. A single fully-loaded bus, plus 3 bus facility employees (two bus driver 2 plus one on-site employee) would also amount to about 55 people. If four buses were to be on-site at the same time, the

ITEM # 14
PAGE 17

Sandra L. Yope
Page 2

Based on this analysis, the proposed use clearly has the potential to result in concentrations of people greater than 50 persons per acre at any time. If you should have any questions regarding this review, please give me a call at 733-3227.

Sincerely,



DAVID R. BOYER
Associate Planner

DB:tg

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CITY OF SACRAMENTO
ATTACHMENT #3
PLANNING DIVISION

1231 I Street, Room 200
Sacramento, CA 95814

916-264-5959

APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR

Date: November 5, 1999
TO THE PLANNING DIRECTOR:

I do hereby make application to appeal the decision of the Zoning Administrator on
October 28, 1999 for project number Z 99-125
(date)

when a: _____ Special Permit _____ Variance
(check appropriate entitlement) _____ Parcel Merger _____ Lot Line Adjustment

was: _____ XXX Other Zoning Administrator Permission
_____ Granted XXX Denied by the Zoning Administrator.

Property Location: 5500 24th Street, Sacramento, California

Grounds For Appeal: (explain in detail, you may attach additional pages)

See Attachment "A" which explains grounds for appeal,
and by reference is incorporated herein as if stated in
full.

Appellant: Mervyn I. Silberberg Daytime Phone: 415-221-1800

Address: 3700 Sacramento Street, San Francisco, CA 94118

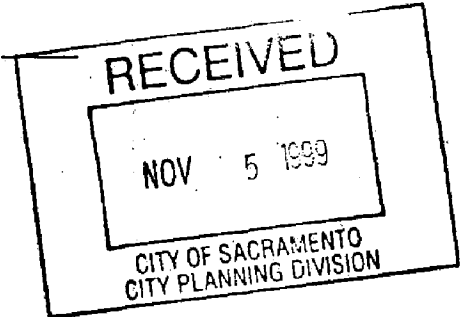
Appellant's Signature: *Mervyn I. Silberberg*

Office Use Only
Filing Fee Received: Applicant (\$500) _____ or Third Party (\$250)
Received By: *Movida May* Date: 11-5-99

Distribute Copies to: Planning Director _____
Zoning Administrator _____
Planning Commission Clerical Support Staff _____
Original & Receipt in File
Will Weistman

za appeal
10/31/99

Z99-125



TO

APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR

PROJECT NUMBER Z99-125

**DENIAL OF REQUESTED PERMISSION IS ABUSE OF DISCRETION
BASED ON ERRONEOUS APPLICATION
OF CITY OF SACRAMENTO EXECUTIVE AIRPORT OVERLAY-2
ZONE ORDINANCE**

As referenced in the Zoning Administrator's Findings, page 3, the Executive Airport Overlay-2 Zone ordinance is the basis for the denial of application. Said ordinance is derived from California Public Utility Code (PU) Section 21670 (et seq.), which states in-part:

"(a) (2) adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports **TO THE EXTENT THAT THESE AREAS ARE NOT ALREADY DEVOTED TO INCOMPATIBLE USES.** [underlining is ours]"

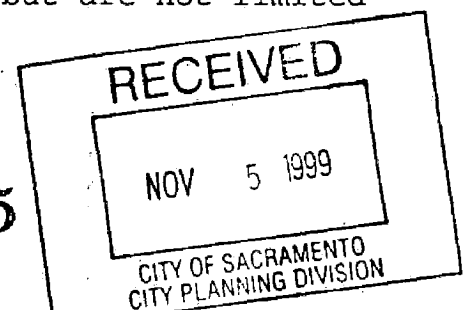
Furthermore: ALUC Handbook (December 1993 page 1-7) states concerning Existing Land Uses:

"ALUCs have no authority over existing land uses regardless of whether uses are incompatible with airport activities" (which is also based on said PU Code 21670 (a) (2). Accordingly, Brentwood Plaza is not subject to ALUC/CLUP or any City of Sacramento Ordinances derived from PU Code Section 21670 et seq. and/or ALUC rules. Zoning Administrator unlawfully denied applicant's request by retroactively applying Overlay Rules to an exempt land use. At the time of adoption and enactment of above said statute, rules and Sacramento Executive Airport Overlay Ordinances, Brentwood Plaza was lawfully in existence licensed to operate a multi-tenant shopping center which in-fact had more than fifty persons per acre at one time. The law does not allow retroactive application of a zoning law as done herein.

**Grandfathered-in Rights
50 PERSONS PER ACRE DENSITY LIMITATION
DOES NOT APPLY TO BRENTWOOD PLAZA SHOPPING CENTER**

Brentwood Plaza's land use as a multi-tenant shopping center was lawful on effective date of the 1982 CLUP and its related ordinances. Current non-conforming uses includes, but are not limited to, having more than 50 persons per acre.

Z99-125



**BRENTWOOD PLAZA'S MULTI-TENANT BUSINESS LICENSE IS A
NONCONFORMING LICENSE WHICH ALLOWS MORE THAN
FIFTY PERSONS PER ACRE**

Brentwood Plaza's business license does not have nor ever did have any 50 person per acre density restrictions. There is only one business license under which Brentwood Plaza operates as a multi-tenant shopping center prior to and ever since the creation of the Overlay Zoning limitations of fifty persons per acre. After the Executive Airport Overlay Zone Ordinances were adopted by the City of Sacramento, Brentwood Plaza's use as shopping center with more than fifty persons per acre became a nonconforming land use with vested-grandfathered-in rights.

A PARTIAL VACANCY DOES NOT FORFEIT NONCONFORMING USE STATUS

A lawful non-conforming use of a multi-tenant building at the time of passage of an ordinance, is extended throughout the entire building, including partial vacancies. If a vacancy in a multi-tenant building arises after passage of a new ordinance, the vacant section enjoys the same dignity as the non-vacant sections of the shopping center. For example: A nonconforming-down-zoned office building (from commercial to residential use) which has one vacancy out of 100 offices does not have to convert a vacant office into a bedroom. The vacant office enjoys the same grandfathered-in commercial rights as the occupied offices.

**IT IS AGAINST THE CONSTITUTIONS OF THE UNITED STATES
AND OF THE STATE OF CALIFORNIA TO APPLY RETROACTIVELY ANY ORDINANCE OR LAW WHICH RESTRICTS OR PROHIBITS A GRANDFATHER-IN NON-CONFORMING LAND USE**

Both The U.S. Constitution and the Constitution of California prohibit a retroactive application of a law or zoning ordinance which eliminates a grandfathered-in nonconforming land use. A grandfathered-in non-conforming use is a land use that was lawful at the passage and/or adoption of an ordinance and its continued use became a nonconforming one. This is the case with Brentwood Plaza which always could have and does have more than fifty persons per acre on its premises at a time. Brentwood Plaza has been continuously used as a non-conforming multi-tenant shopping center which is licensed by the City of Sacramento to do so.

**ZONING ADMINISTRATOR MISAPPLIED THE OVERLAY ORDINANCE
TO AN EXEMPT BUILDING - RESULTING IN AN INVERSE CONDEMNATION**

The findings have resulted in an inverse condemnation of the vacant sections of Brentwood Plaza. Brentwood Plaza's current tenants are a billiard hall and beauty salon which already have more than fifty persons per acre density at anyone time. Applying these findings to the whole multi-tenant shopping center do not allow any use of the vacant areas since such use would exceed the fifty person per acre limitation. This results in a taking of

land and property. The U.S. Constitution and the Constitution of the State of California both prohibit retroactive applications of zoning land use laws and ordinances which will result in an inverse condemnation, which is the case here.

PROJECT NOT "DETRIMENTAL TO THE PUBLIC WELFARE"

In the Findings of Fact, paragraph 2, it incorrectly states that the proposed use will periodically expose large numbers of persons to potential hazards from being in the Airport Zone. There is no basis in fact as required by the mandate of legislation (PU Code 21670, et seq.) to support such a finding.

EXECUTIVE AIRPORT SAFETY ZONES ARE SAFE

Before and since the 1982 CLUP, there has never been any EA-2 zone off-airport aviation accident, which Brentwood Plaza is located in. It cannot possibly get safer. This has been the case since 1933!! NTSB statistics indicate a crash is MORE likely to occur outside of an EA safety zones. More persons are killed on the Safety Zone Area city streets by crime and vehicles than by airplanes falling out of the sky, yet the streets are not closed down.

REQUEST FOR ORAL ARGUMENTS AT A HEARING

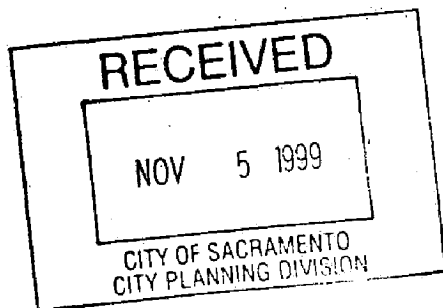
If available, I hereby request oral argument prior to the final decision of this appeal by the Planning Department.

RESERVE RIGHT TO PRODUCE FURTHER INFORMATION

I hereby reserve the right to add further information which becomes available to me during this appeal proceeding.

OVERTURN AND REVERSE THE ERRONEOUS DECISION OF ZONING ADMINISTRATOR

The decision of the Zoning Administrator must be overturned and the request for permission to operate a bus transfer station at Brentwood Plaza be granted.



Z 99 - 125