



REPORT TO PLANNING COMMISSION City of Sacramento

9

915 I Street, Sacramento, CA 95814-2671

PUBLIC HEARING
May 10, 2012

To: Members of the Planning Commission

Subject: Appeal of Determination of Failure to Timely Process Application for the 500 Richards Retail & Office Development (Z11-021)

The applicant is appealing the Planning Director's determination of the applicant's failure to process the project application in a timely manner.

- A. Environmental Determination:** Exempt pursuant to CEQA Guidelines Section 15061(b)(3).
- B. Appeal** of the Planning Director's project denial due to the failure to process the application in a timely manner.

Location/Council District:

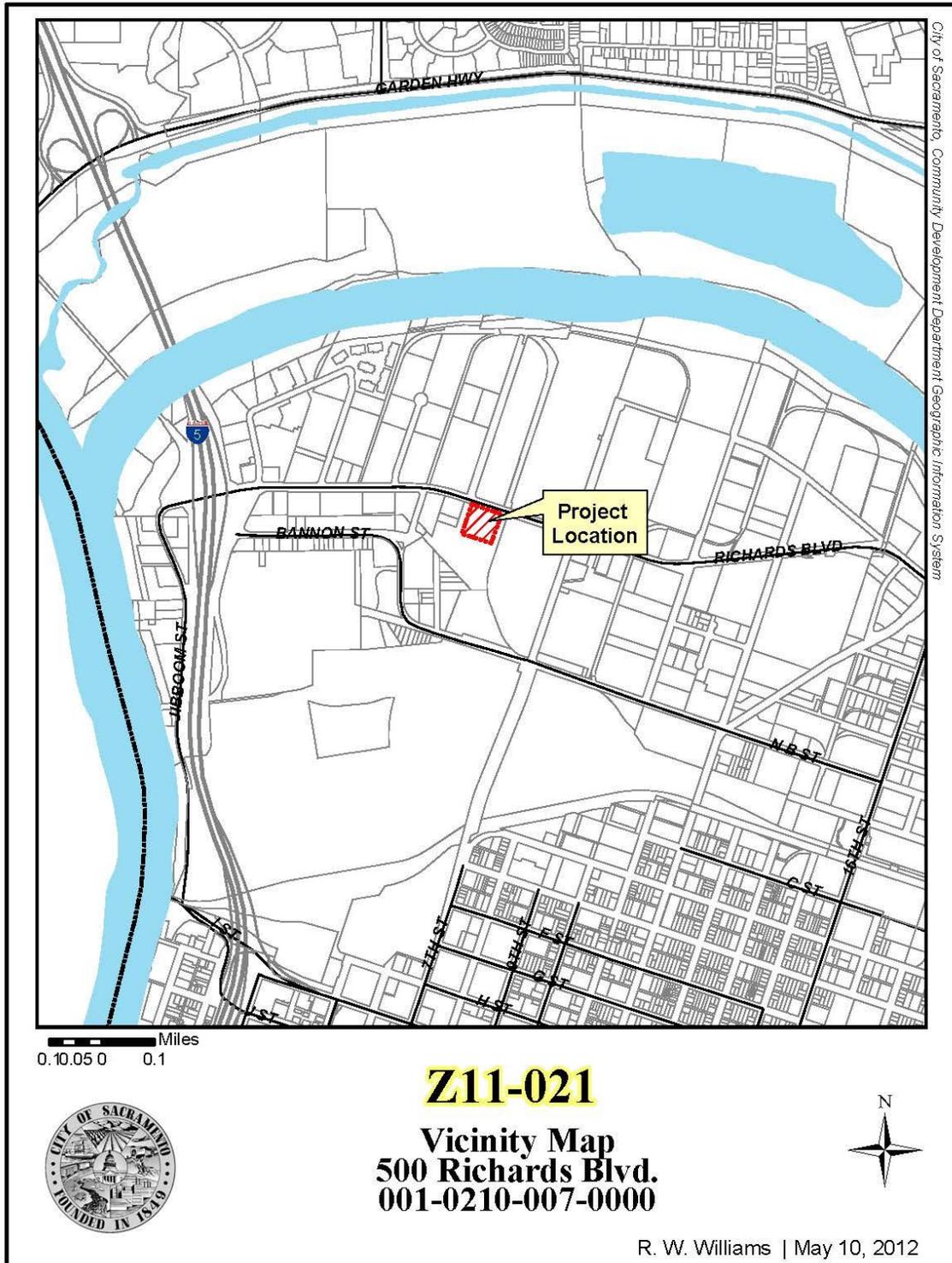
500 Richards Blvd., Sacramento, CA 95811
Assessor's Parcel Number: 001-0210-007-0000
Council District 3

Recommendation: Staff recommends the Commission deny the appeal based on the findings listed in Attachment 1. The Commission has final approval authority over items A and B above. The Commission's decision **may not be appealed** to the City Council, but is subject to call-up. **The project is considered to be controversial.**

Contact: Robert W. Williams, Associate Planner, (916) 808-7686, Sandra Yope, Senior Planner, (916) 808-7158.

Applicant/Appellant: Kevin A. Terry - Envision Development Services, Inc. 1731 Howe Avenue, Suite 652, Sacramento, CA 95825 (916) 446-2500 x204

Owner: Same as applicant/appellant.



Summary: This is an appeal of the Planning Director’s determination that the subject application is not being processed by the applicant in a timely manner and is subject to being denied under Zoning Code section 17.196.030. The sole issue to be considered by the Planning Commission on this appeal is whether the application was being processed in a timely manner. If the appeal is granted, the applicant will be allowed to continue with the application, submit the needed information, and proceed forward for processing and hearing. If the appeal is denied, the application will be deemed denied and will be subject to a one-year restriction on re-submittal of the same application. (See 17.196.030) **The project is considered to be controversial.**

Table 1: Project Information
2030 General Plan designation: Urban Center High (UCNTHIGH)
Existing zoning of site: OB-SPD (Office, River District Special Planning District)
Community Plan Area: Central City
Existing use of site: Industrial – Truck / Transit Terminal
Property area: 2.12 acres

Background Information

Under Zoning Code section 17.196.030, applications for land use entitlements must be processed in a timely manner. If not processed in a timely manner, the planning director may deny the application for “failure to process.” Prior to denying the application, the planning director must notify the applicant of the proposed denial and give the applicant the option to either withdraw the application or appeal the decision to deny “for failure to process.” The processing of an application shall be considered untimely if the applicant does not respond within thirty (30) days to a written request by the planning director for additional information or for payment of additional processing fees, or within such additional time as the director and the applicant may agree to in writing.

In this case, the applicant is proposing to convert an existing 1-story, 19,942 square foot Truck Terminal, into a 2-story, 39,842 square foot retail and office development. The proposal requires a Zoning Administrator Special Permit to expand an existing building over 10,000 square feet in the River District SPD, a Zoning Administrator Special Permit to allow more than 20% of an office building for retail use in the Office Building (OB-SPD) zone in the River District SPD, and Design Review approval to convert and expand an existing warehouse building for commercial mixed uses in the River District SPD.

The application was submitted on March 14, 2011. Required reductions and photographs were submitted on March 21, 2011. The application was assigned to staff on March 29, 2011 and on April 6, 2011 it was routed to other city departments for review and comment.

On June 1, 2011, staff met with the applicant and provided comments from the Planning Division and other city departments. At that meeting, staff provided the applicant a

letter requesting additional information as well as revised project plans (Attachment 2). This letter indicated that staff's ability to appropriately review the project relied on receipt of both the additional information and revised plans. On November 22, 2011, staff met with applicant's representative to go over the list of outstanding items. On January 11 and 23, 2012, staff emailed the applicant, requesting the items again. (Attachment 3)

On January 27, 2012 staff met with the applicant to discuss a concept they had about urban farming on the site. On January 30, 2012 staff emailed the applicant and advised them that the urban farming concept would not be allowed per the zoning code, and again asked them to submit the required information and revised plans. This e-mail indicated that a Failure to Process procedure would be initiated if the required plans were not soon received. (Attachment 4)

On February 14, 2012, the first Failure to Process letter was mailed to the applicant (Attachment 5). This letter specifically gave the applicant thirty days (March 16, 2012) in which to submit the required information and revised plans or the Planning Director would make a determination of the applicant's Failure to Process in a Timely Manner. The required information and revised plans were not received by the deadline.

On March 19, 2012, the second Failure to Process letter was mailed to the applicant (Attachment 6). This letter stated the Planning Director had determined the applicant was not processing the application in a timely manner. It also gave the applicant 15 days to either withdraw the application or to appeal the Planning Director's determination of failure to process. On March 30, 2012, the applicant appealed the Planning Director's determination (Attachment #7). As of the writing of this report, the required information and revised plans have not been received by staff. A letter requesting additional time was submitted by the applicant (Attachment #8).

The sole issue to be considered by the Planning Commission on this appeal is whether the application was being processed in a timely manner. If the appeal is granted, the applicant will be allowed to continue with the application, submit the required information and revised plans, and proceed forward for processing and hearing. If the appeal is denied, the application will be deemed denied and will be subject to a one-year restriction on re-submittal of the same application. (See 17.196.030.)

Public/Neighborhood Outreach and Comments: All property owners within a 300 foot radius of the project site were notified of the public hearing. At the date of the writing of this report, no comments had been received by staff.

Environmental Considerations: The Community Development Department, Environmental Planning Services Division has reviewed this project and determined that it is exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15061(b)(3). CEQA Does not apply to projects which the public agency rejects or disapproves.

The subject project was denied by the Planning Director for failure to process and is now being appealed to City Planning Commission. If the appeal is granted, CEQA review would apply to the application and would be completed prior to any future entitlement hearings for the subject project.

Conclusion: Staff recommends the Commission deny the appeal.

Respectfully submitted by: Robert W. Williams
ROBERT W. WILLIAMS
Associate Planner

Approved by: Sandra Yope
SANDRA YOPE
Senior Planner

Recommendation Approved:

Gregory Bitter
GREGORY BITTER, AICP
Principal Planner

Attachments:

- Pg 6 Attachment 1 - Recommended Findings of Fact
- Pg 7 Attachment 2 – Required Revisions Meeting Letter, June 1, 2011
- Pg 8 Attachment 3 – January 11 and 23 emails
- Pg 9 Attachment 4 – January 30 email
- Pg 10 Attachment 5 – Failure to Process Letter #1, February 15, 2012
- Pg 11 Attachment 6 – Failure to Process Letter #2, March 19, 2012
- Pg 12 Attachment 7 – Appeal of Planning Director, March 30, 2012
- Pg 13 Attachment 8 – Letter from Applicant
- Pg 14 Attachment 9 – Aerial #1
- Pg 15 Attachment 10 – Aerial #2
- Pg 16 Attachment 11 - Zoning Map

Attachment 1

**City Planning Commission Record of Decision
Recommended Findings of Fact
Appeal of Determination of Failure to Timely Process Application for the
500 Richards Retail & Office Development (Z11-021)**

Findings Of Fact

A. Environmental Determination: Exemption

Based on the determination and recommendation of the City's Environmental Planning Services Manager and the oral and documentary evidence received at the hearing on the Project, the Planning Commission finds that the Project is exempt from review under Section 15061(b)(3). CEQA Does not apply to projects which the public agency rejects or disapproves.

The subject project was denied by the Planning Director for failure to process and is now being appealed to City Planning Commission. If the appeal is granted, the subject project would be required to go through the entitlement process for a Planning Commission Plan Review. CEQA would apply to any future entitlements and would be completed prior to any future entitlement hearings for the subject project.

B. The **Appeal of the Planning Director's determination of failure to timely process the project application is denied based on the following Findings of Fact:**

1. The applicant failed to process the application in a timely manner by failing to respond to repeated requests from staff (since June 1, 2011) for plan revisions and additional information. The plan revisions and additional information requested were relevant to the application, and the time given to respond was reasonable and adequate, far exceeding the 30 days standard in Zoning Code section 17.196.030.

Attachment 2 – Required Revisions Meeting Letter, June 1, 2011



COMMUNITY DEVELOPMENT
DEPARTMENT

CITY OF SACRAMENTO
CALIFORNIA

300 RICHARDS BLVD, 3RD FLR
SACRAMENTO, CA
95811-0218

Kevin Terry
Envision Development Services, Inc.
1731 Howe Avenue, Suite 652
Sacramento, CA 95825

SUBJECT: Project Status – Z11-021 (500 Richards Mixed Use Project)

Dear Mr. Terry,

The City of Sacramento Community Development Department, Planning Division, received your Zoning Administrator application for 500 Richards Mixed Use Project (Z11-021) on March 14, 2011. The application and plans were routed to all applicable City departments and agencies. Based upon Planning Staff evaluation and the comments received from other departments and agencies, the following is a summary of comments received by staff **so far** for this application, and revision of the plans is required base upon the comments.

1. Planning:
 - Submitted plans are insufficient for reviewing the project. Provide revised plans that will include but not limited to dimensions, notes, title, etc.
 - Provide site plans for both phases (before and after Richards Boulevard dedication). Submitted plans are incomplete and are lack of the information and confusing. See attached check list for requirements.
 - Provide mezzanine floor plan that will show relationship with the ground floor.
 - Revise floor plans so it will provide interior layout of proposed tenant spaces.
 - Provide material/color boards and the materials be called out on elevations.
 - No existing parking on site (only truck loading and maneuvering areas). Proposed parking lot shall meet the tree shading requirement. Revisit the proposed planters and redesign the parking lot with adequate shade trees.
2. Department of Utilities Department: See attachment for comments.
3. Fire Department: See attachment for comments.
4. Park Planning, Design & Development: See attachment for comments.
5. RT: See attachment for comments.
6. Development Engineering and Finance Division: Not yet received and will forward later.
7. Building Division: Not yet received and will forward later.
8. Solid Waste: Not yet received and will forward later.

The information listed above is very important to our evaluation of your project. Submit the requested information or necessary revisions as soon as possible will help us to continue the processing of your application. When you submit the revision of the project, please remember to include 3 full size sets and one 8 ½ x 11 reduction set of revised plans. Do not hesitate to contact me at (916) 808-1927 if you should have any questions regarding the requested information or the processing of your project.

Sincerely,

Elise Gumm, LEED AP
Associate Planner

Attachment 3 – January 11 and 23 emails

Robert Williams

From: Kevin Terry [kterrylands1@gmail.com]
Sent: Monday, January 23, 2012 03:11 PM
To: Heather Forest
Cc: spdarchitects@gmail.com; jimenez6943@comcast.net
Subject: Re: 500 Richards Blvd - Meeting

Please
Sent from my iPhone

On Jan 23, 2012, at 2:55 PM, Heather Forest <HForest@cityofsacramento.org> wrote:

All,
I need to see forward progress on this project, in the form of revised plans that are to the satisfaction of the information that we have provided to you.
Would you like me to set up an additional meeting to again clarify what we are waiting on, or are you confident that I may receive revised plans within two weeks?
Please let me know so that we can proceed.
Thank you,

Heather Forest

From: Kevin Terry [<mailto:kterrylands1@gmail.com>]
Sent: Monday, January 16, 2012 9:00 PM
To: Heather Forest
Cc: spdarchitects@gmail.com; jimenez6943@comcast.net
Subject: Re: 500 Richards Blvd - Meeting

Tarik,
I hope you are OK. Please let us know what is going on.
Thanks,

On Wed, Jan 11, 2012 at 10:46 PM, Kevin Terry <kterrylands1@gmail.com> wrote:
Tarik, this is a real good question that we all have been asking. Any ideas?
Sent from my iPad

On Jan 11, 2012, at 2:19 PM, Heather Forest <HForest@cityofsacramento.org> wrote:

All,
Do you have any updates for me on this project – as to when I may expect to receive revised plans?
Thank you,

Heather Forest

Attachment 4 – January 30 email

Robert Williams

From: Heather Forest
Sent: Monday, January 30, 2012 01:51 PM
To: Kevin Terry; spdarchitects@gmail.com
Subject: 500 Richards Blvd - Discussion

Kevin & Tarik,

I spoke with two of my supervisors about our meeting last Friday, in which we discussed the possibility of locating a produce growing/harvesting (urban farming) business at 500 Richards Boulevard. Unfortunately, the potential for such a use on the site is not feasible. The site is zoned Office (OB-SPD) and located within the River District Special Planning District, as you are aware. A produce growing/harvesting operation is not an allowed use within the Office zone, regardless of entitlements, meaning Special Permits cannot be granted for such a use. More active uses are appropriate for Richards Boulevard and the harvesting and selling of produce is considered an Agricultural use, passive in all respects.

If you choose to proceed with your current application, a portion of the building may be developed with retail uses and you may propose a retail use, with an incidental produce growing component, but this component must be subordinate to the retail.

I'm sorry that the proposed urban farming business is not appropriate for the 500 Richards Boulevard location.

Please continue with the revisions of the current application as requested. I expect to see revised plans, consistent with what we have requested, within a period of two weeks. Please be aware that I will be using the "Failure to Process" procedure upon the current application if I do not receive revised plans within a timely manner.

Let me know if you have any questions.

Sincerely,

Heather Forest
Associate Planner
City of Sacramento
Community Development Department
300 Richards Boulevard, 3rd Floor
Sacramento, CA 95811
(916) 808-5008
hforest@cityofsacramento.org

Attachment 5 – Failure to Process Letter #1, February 15, 2012



COMMUNITY DEVELOPMENT
DEPARTMENT

CITY OF SACRAMENTO
CALIFORNIA

300 RICHARDS BLVD. 3RD FLR
SACRAMENTO, CA
95811-0218

February 15, 2012

Kevin A. Terry
Envision Development Services, Inc.
1731 Howe Avenue, Suite 652
Sacramento, CA 95825

Subject: Project Status – 500 Richards Boulevard Mixed Use

Dear Mr. Terry,

All applicants for planning entitlements are required to process their applications in a timely manner. The processing of an application is considered untimely if an applicant does not respond within 30 days to staff requests for additional information or payment of additional processing fees. If no response is made within 30 days, or if the response does not provide the requested information or fees, the Planning Director may determine that an application is not being processed in a timely manner, and the applicant will be notified that the application will be denied unless the applicant either withdraws the application or files an appeal of the Planning Director's determination. (See §17.196.030 of the Zoning Code, Title 17 Sacramento City Code (attached).)

Your application for the 500 Richards Boulevard Mixed Use Project (File Number Z11-021) was submitted to the City for processing of Zoning Administrator Special Permits on March 14, 2011. Staff has requested on several occasions, both in writing and on the phone, additional information and revised plans needed to continue the processing of your application. Specifically, the request was for the following: revised site plans, floor plans, and elevations. To date, you have not adequately responded to this request.

Please provide the requested information and/or fees as described above by March 16, 2012. If the information and/or fees are not received by that date, this application (File Number Z11-021) will be referred to the Planning Director for a determination of timely processing under Zoning Code Section 17.196.030.

Please note that an application that is denied for failure to process in a timely manner shall be considered a denial subject to the one year restriction on resubmittal of the application pursuant to Division VII of Title 17 of the City Code.

If you have any questions regarding the processing of your project, please contact my office at 808-5008 or hforest@cityofsacramento.org.

Sincerely,

Heather Forest
Associate Planner

Attachment 6 – Failure to Process Letter #2, March 19, 2012



COMMUNITY DEVELOPMENT
DEPARTMENT

CITY OF SACRAMENTO
CALIFORNIA

300 RICHARDS BLVD. 3RD FLR
SACRAMENTO, CA
95811-0218

March 19, 2012

Kevin A. Terry
Envision Development Services, Inc.
1731 Howe Avenue, Suite 652
Sacramento, CA 95825

Subject: Project Status -- NOTICE OF FAILURE TO PROCESS IN TIMELY MANNER – 500 Richards Boulevard
Mixed Use – File # Z11-021

Dear Mr. Terry,

This letter serves as notice under Section 17.196.030 of the Zoning Code (Title 17 Sacramento City Code) that the Planning Director has determined that the application for the 500 Richards Boulevard Mixed Use project (File Number Z11-021) is not being processed in a timely manner.

You have fifteen (15) days from the date of this letter to notify the City in writing that you either withdraw the application or appeal the Planning Director's determination. If written notice of withdrawal or appeal is not received by the City within fifteen (15) days of the date of this letter, the application shall be considered denied. Written notice of withdrawal or appeal may be delivered either by mail or email, addressed as follows:

Community Development Department
300 Richards Boulevard, 3rd Floor
Sacramento, CA 95811-0218
ATTN: Heather Forest or Robert Williams

Or hforest@cityofsacramento.org or rwilliams@cityofsacramento.org

If you choose to file an appeal, it will be heard by the City Planning Commission. The sole issue to be considered by the Planning Commission on appeal is whether the application was being processed in a timely manner. If the appeal is approved, the application will be referred back to planning staff to continue processing.

Please note that an application that is denied for failure to process in a timely manner shall be considered a denial subject to the one year restriction on resubmittal of the application pursuant to Division VII of Title 17 of the City Code. A copy of my previous letter is attached for your reference.

If you have any questions regarding the processing of your project, please contact my office at (916) (916) 808-5008 or hforest@cityofsacramento.org.

Sincerely,

Heather Forest
Associate Planner

Attachment 7 – Appeal of Planning Director, March 30, 2012



Appeal Decision City of Sacramento Planning Director

Date: 03/21/12

To the Planning Commission:

I do hereby make application to appeal the decision of the City Planning Commission on 03/19/12 (date) (approval date), for project number P Z11-021.

Plan review for Mixed Use Project
 Other _____ for _____

_____ Granted by the City Planning Director
_____ Denied by the City Planning Director

Property Location: 500 Richards Blvd., Sacramento, CA 95811

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

It is my understanding that our architect has been in constant communication / contact with the planning department.

Appellant: Kevin Terry (please print) Daytime Phone: (916) 446-2500

Address: 1731 Howe Avenue, #652, Sacramento, CA 95811

Appellant's Signature: [Handwritten Signature]

Please note that once this application is submitted to the City of Sacramento, your information may be subject to public record. However, please note that the City will not sell your data or information for any purposes.

THIS BOX FOR OFFICE USE ONLY	
Received By: <u>R.W. Williams</u>	Date: <u>Mar 30, 2012</u>
Distribute Copies to: Planning Director <input checked="" type="checkbox"/>	
Zoning Administrator <input checked="" type="checkbox"/>	Original & Receipt in File <input checked="" type="checkbox"/>

Attachment 8 – Letter from Applicant

Fifth & Richards Investor Group, LLC

1731 Howe Avenue, #652, Sacramento, CA 95825
Telephone (916) 446-2500 Fax (916) 446-2511

March 19, 2012

Heather Forest, Associate Planner
City of Sacramento, Community Development Department
300 Richards Blvd., 3rd Floor
Sacramento, CA 95811-0218

cc: Tarik Taha, Space Plus Dimension

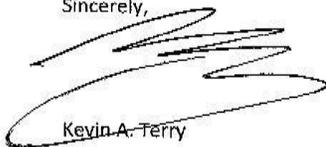
RE: Project t Status – Application Z11-021 for 500 Richards Boulevard Mixed Use

Dear Heather,

We are very sorry that this application has taken so long. Mr. Taha of Space Plus Dimension has indicated to us that he has – and is – in communication with your office about providing the requested attached information. With that being said, we respectfully request that you schedule an appeal hearing where Mr. Taha will present his case.

If for some reason you do not approve the appeal presented by Mr. Taha of Space Plus Dimension, we would like to respectfully request an additional extension in order for us to hire a new architect to completed this application and plans. Thank you for all you cooperation and assistance.

Sincerely,

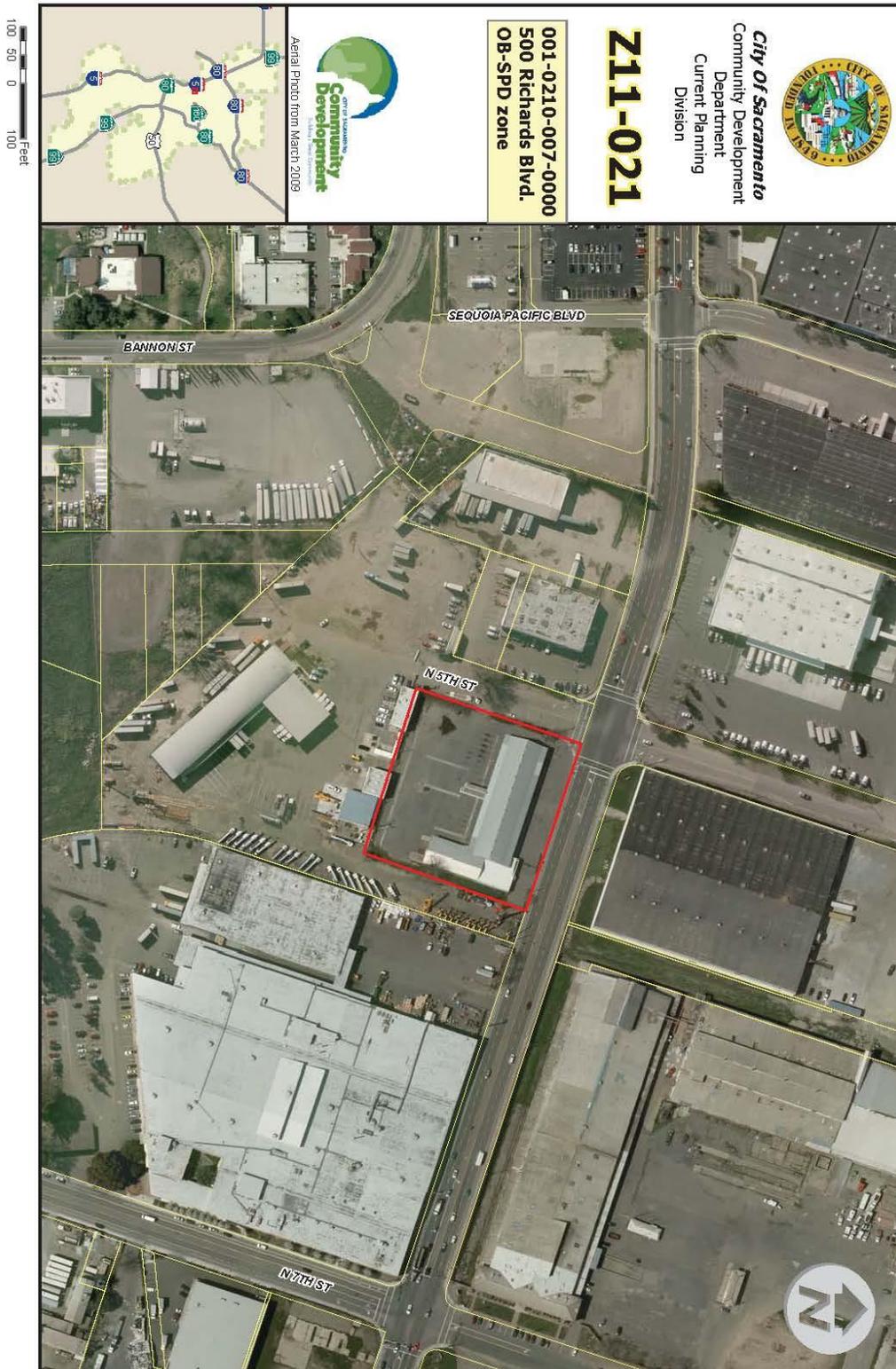


Kevin A. Terry
Managing Member
Fifth & Richards Investor Group, LLC

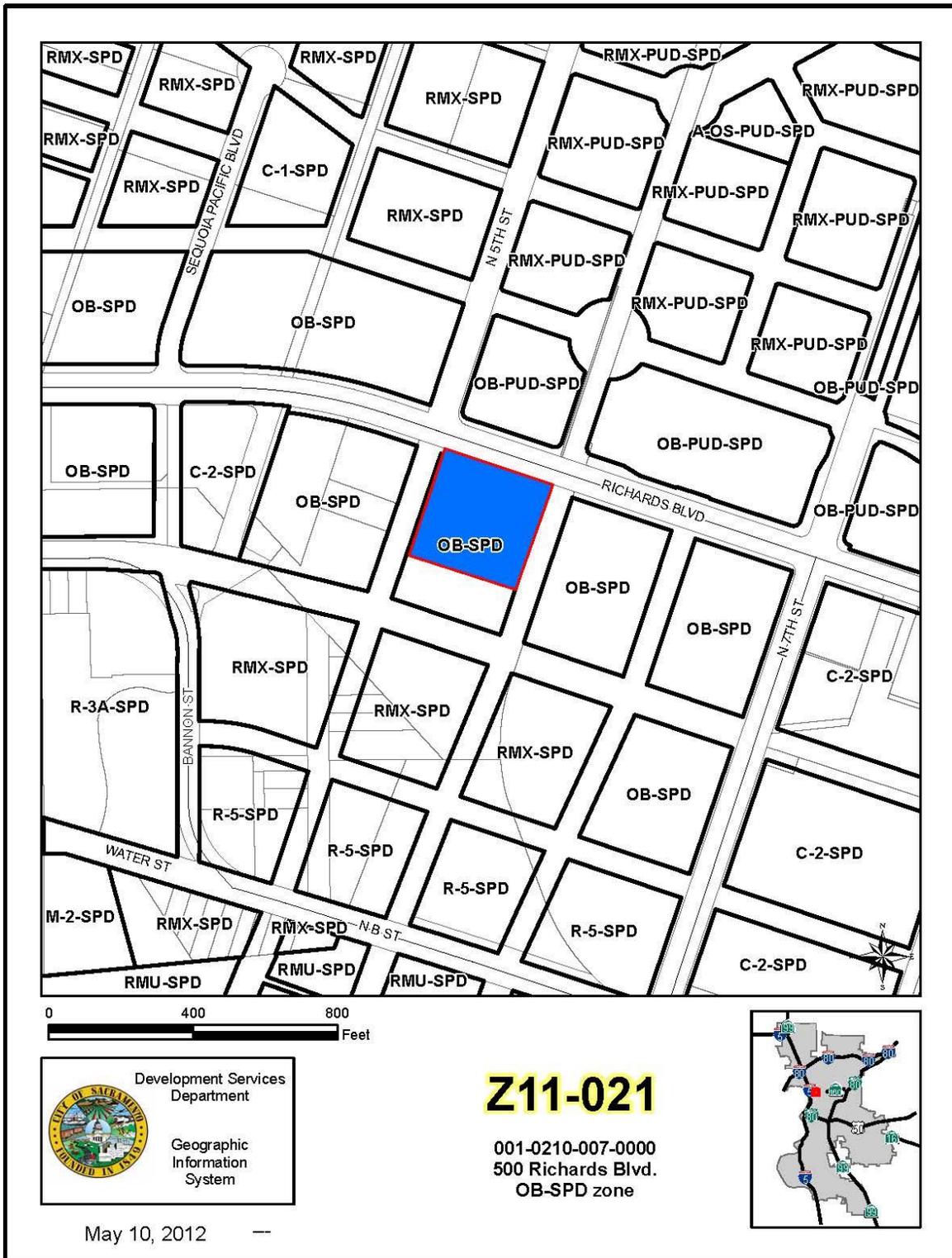
Attachment 9 – Aerial #1



Attachment 10 – Aerial #2



Attachment 11 – Zoning Map



Development Services
Department



Geographic
Information
System

Z11-021

001-0210-007-0000
500 Richards Blvd.
OB-SPD zone

May 10, 2012 —