

<b>Location:</b>	966 81 <sup>st</sup> Avenue
<b>Assessor’s Parcel Number</b>	042 454700100
<b>Proposal:</b>	Appeal of a Determination that the property cannot continue to be used for “General Outdoor Storage Industrial Activity” as a legal non-conforming use based on discontinuance
<b>Applicant:</b>	Neil Johnson
<b>Phone Number:</b>	(949)954-3121
<b>Owner:</b>	HP 966 OAKLAND LLC
<b>Case File Number:</b>	DET250056-A01
<b>Planning Permits Required:</b>	NA
<b>General Plan:</b>	Business Mix
<b>Zoning:</b>	Commercial Industrial Mix– 2 (CIX-2) Zone and S-19 Health and Safety Protection Overlay Zone
<b>Proposed Environmental Determination:</b>	The Zoning Manager Determination is not considered a project under the California Environmental Quality Act (CEQA). Therefore, no Environmental Determination is required.
<b>Historic Status:</b>	No historic rating
<b>City Council District:</b>	7
<b>Status:</b>	Appeal of a Zoning Manager’s Determination
<b>Staff Recommendation</b>	Deny the Appeal and uphold the Zoning Manager’s Determination.
<b>Finality of Decision:</b>	Final (cannot be appealed to the City Council pursuant to Section 17.132.030 of the Planning Code)
<b>For further information:</b>	Contact case Planner <b>Neil Gray</b> at <b>(510) 238-3878</b> or <b>ngray@oaklandca.gov</b> .

**SUMMARY**

On September 29, 2025, Planning staff issued a Determination (DET250056) concluding that the property at 966 81<sup>st</sup> Avenue could not continue to be used for “General Outdoor Storage” activities without first receiving entitlements for that activity. The Determination was based on concluding that the prior legal non-conforming activity at the site had been discontinued due to purposeful abandonment. On October 8, 2025, the current owner appealed this Determination. Staff recommends denying the appeal of the Determination because the abandonment of the activity occurred when all improvements on the site were removed; the activity ceased due to the termination of the lease by AJC construction; and the property owner did not limit their search for new tenants to those who performed a General Outdoor Storage Activity.

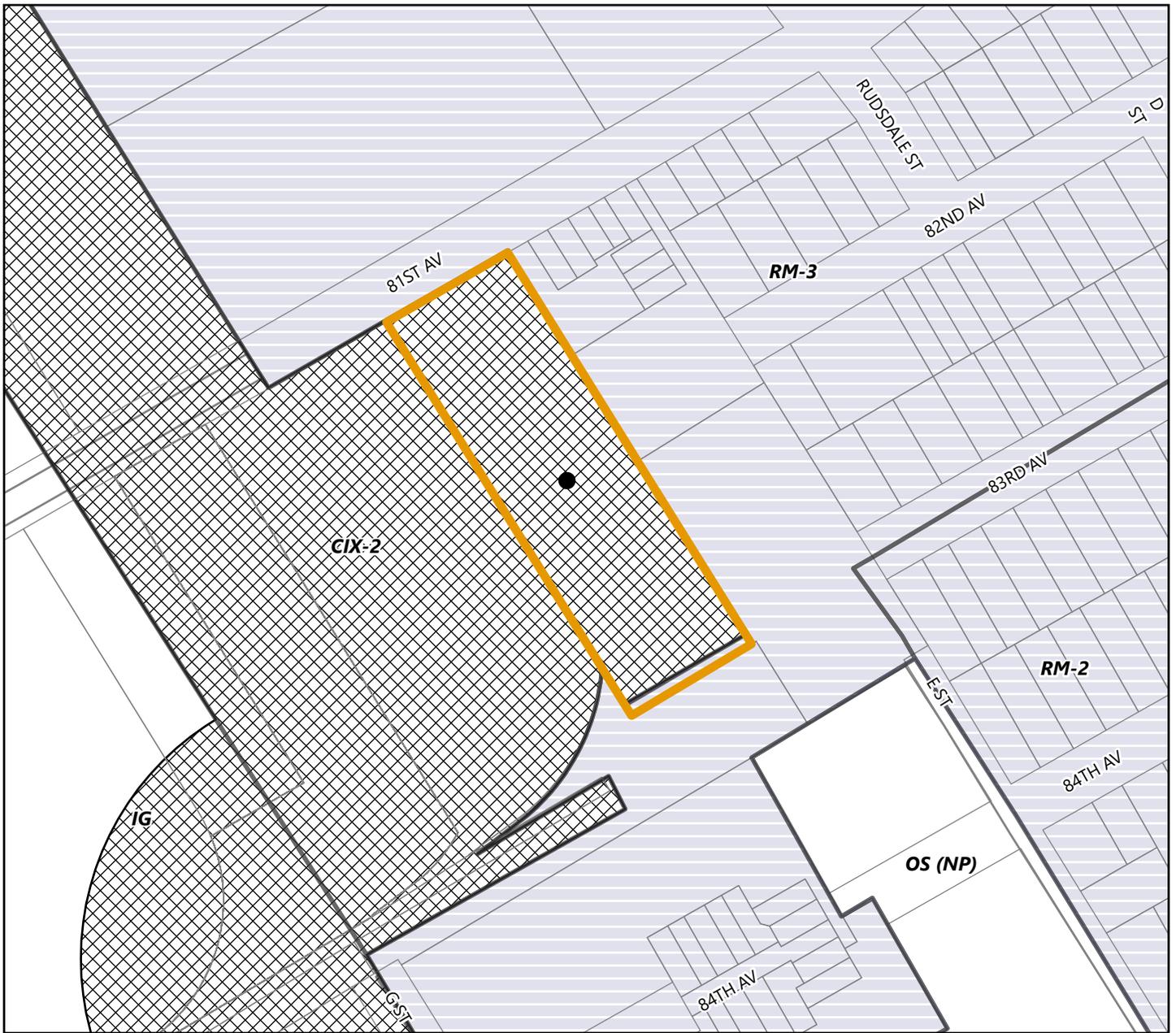
**BACKGROUND**

The subject property is an industrially zoned parcel adjacent to residential zones on three sides. It does not have any entitlements on record with the City of Oakland. Previous activities at the site likely predate now-applicable Conditional Use Permit requirements, as described under the Zoning Analysis, below.

According to information and documentation provided by the Applicant:

- The property has been used for industrial purposes, including trucking and “General Outdoor Storage,” since at least 1963.

# CITY OF OAKLAND PLANNING COMMISSION



Case File: DET250056 - A01  
Applicant:  
Address: 966 81st Ave  
Base Zone(s): CIX-2  
Combining Zone(s): S-19

- AJW Construction purchased the property in 1997.
- Between 2000 and 2022, the site was owned and used by AJW Construction for the storage of construction materials, equipment, vehicles, construction trailers, and accessory portable structures.
- In May 2022, AJW Construction sold the property to the current owner, who subsequently leased it back to AJW.
- In early 2024, AJW Construction gave the current owner notice that it would be terminating its lease at the end of 2024.
- On February 22, 2024, the owners hired Colliers to market the site for sale or for lease.
- The previous outdoor storage activity ceased in December 2024, when AJW Construction terminated its lease on the property.

Colliers specified on the marketing flyer that the property was zoned CIX-2. The current owner entered into negotiations with A&G Transport Inc. According to their website, A&G Transport Inc. is “a family-owned Logistics company with a team of dedicated professionals who have a vast range of expertise & knowledge of the transportation industry.” It has an office address in Oakland at 4700 Coliseum Way.

In March 2025, A&G Transport Inc. applied for a zoning clearance to use the site for Container Storage Industrial Activities. Planning counter staff informed A&G Transport Inc. that the proposal would require obtaining a Conditional Use Permit. According to the appellant, A&G Transport Inc subsequently ended negotiations related to the property.

On June 23, 2025, the appellant requested a Zoning Manager’s Determination stating that the subject property can continue to be used for General Outdoor Storage Industrial Activity as a legal non-conforming activity. On September 29, 2025, staff sent a Determination letter to the appellant stating that: 1) the activity has lost its legal non-conforming status; and 2) the owner of the property would need to apply for and be issued a Conditional Use Permit to reestablish the activity, because General Outdoor Storage is conditionally permitted in the site’s CIX-2 Zone. The current owner appealed this Determination on October 8, 2025. **Attachment A** contains the staff’s Determination letter, and **Attachment B** contains the current owner’s appeal.

**PROPERTY DESCRIPTION**

The subject property is rectangular, approximately 1.71 acres in size, fully paved, and currently vacant. Residential activities border the site to the south and east; and the Acorn Woodland Elementary School and 81st Avenue Branch Library are across the street to the north. Other industrial activities border the site to the west. The subject parcel is also next door to the Tassajara affordable housing community.

**PROJECT DESCRIPTION**

There is no proposed development or activity currently under City submission. The applicant seeks a Determination to permit General Outdoor Storage Industrial Activities at the site by right.

**GENERAL PLAN ANALYSIS**

Land Use and Transportation Element of the General Plan

The property is in the “Business Mix” land use classification in the Land Use and Transportation Element of the General Plan (LUTE). According to the LUTE, the *Business Mix* classification is: “a flexible

economic development zone which strives to accommodate older industries and anticipate new technologies, including both commercial and industrial operations. These areas contain a wide range of business and business serving activities. Different examples of development that fall into this classification include Edgewater Business Park, commercial or other market-supported development on the freeway frontage along I-880, and portions of West Oakland that have historically been very business intensive”.

Notably, the property is adjacent to the General Plan’s “Mixed Housing Type Residential” LUTE classification, which is intended: “to create, maintain, and enhance residential areas typically located near the City’s major arterials and characterized by a mix of single-family homes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate.”

Requiring the granting of a Conditional Use Permit to resume General Outdoor Storage Industrial Activity is both consistent with the regulations in the Planning Code and the following General Plan LUTE policies:

- **Policy I/C4.2 Minimizing Nuisances.** The potential for new or existing industrial or commercial uses, including seaport and airport activities, to create nuisance impacts on surrounding residential land uses should be minimized through appropriate siting and efficient implementation and enforcement of environmental and development controls.
- **Policy N1.6 Reviewing Potential Nuisance Activities.** The City should closely review any proposed new commercial activities that have the potential to create public nuisance or crime problems, and should monitor those that are existing. These may include isolated commercial or industrial establishments located within residential areas, alcoholic beverage sales activities (excluding restaurants), adult entertainment, or other entertainment activities.
- **Policy N5.5 Environmental Justice.** The City is committed to the identification of issues related to the consequences of development on racial, ethnic, and disadvantaged socio-economic groups. The City will encourage active participation of all its communities, and will make efforts to inform and involve groups concerned about environmental justice and representatives of communities most impacted by environmental hazards in the early stages of the planning and development process through notification and two-way communication.

#### Environmental Justice Element of the General Plan

In September 2023, the City of Oakland adopted its first Environmental Justice Element (EJ Element) as part of Phase 1 of the General Plan Update, which constitutes the baseline against which the Race and Equity Impact Assessment for this project is determined. The EJ Element “serves as the foundation for achieving equity and environmental justice when planning for future growth and development in Oakland.” The EJ Element identifies communities that are disproportionately impacted by environmental justice issues and proposes goals, policies, and objectives to reduce the unique or compounded health risks in these communities. It also contains a comprehensive table of actions to achieve those goals and objectives, many of which have already been implemented.

The subject property is within the Fitchburg census tract (4089), identified in the EJ Element as an EJ community in the 79th percentile in terms of pollution burden and in the 90th percentile by composite score.

Requiring the granting of a Conditional Use Permit to resume General Outdoor Storage Industrial Activity is both consistent with the regulations in the Planning Code and the following EJ Element policies:

- **EJ-1.3. Industrial Uses Near Sensitive Land Uses.** Ensure that heavy industrial uses are adequately buffered from residential areas, schools, and other sensitive land uses. In new

developments, require adequate mitigation of air contaminant exposure and vegetative barriers near large stationary and mobile sources of air pollution. Prioritize nature-based mitigation solutions such as vegetative barriers wherever feasible, and align with other greening opportunities such as canopy need, green stormwater infrastructure, and high heat areas to plan for multiple benefits

- **EJ-1.7 Truck-Related Impacts.** For new warehouses and truck-related businesses, reduce impacts from truck loading and delivery including noise/vibration, odors, air pollution, and greenhouse gas emissions.

## ZONING ANALYSIS

The Determination Letter concluded that continuing General Outdoor Storage Industrial Activities without the granting of a Conditional Use Permit is not allowed. This section describes the Zoning Analysis behind this conclusion.

### Zoning Activity Classification

As described in the attached Determination Letter, staff and the applicant agree that the activity previously performed by AJW Construction falls into the “General Outdoor Storage Industrial Activity” (General Outdoor Storage) classification per Oakland Planning Code (OPC) Section 17.10.583.

AJW Construction did regional concrete repair work for PG&E, primarily repairing sidewalks, driveways, and street areas after PG&E made improvements. AJW stored construction vehicles (including large and small trucks), construction equipment (including cement mixers, tractors, backhoes, water trucks, portable generators, and metal places) and construction materials (including components for mixing cement) on-site. AJW also maintained above-ground diesel fuel tanks for vehicle and construction equipment fuel. There was also a construction trailer, and a vehicle and equipment maintenance building on the site until it was demolished in late 2023, and various outdoor storage sheds.

### Site Zoning

The site is zoned Commercial Industrial Mix - 2 (CIX-2) and S-19 Health and Safety Protection Combining Zones. OPC Section 17.73.020 states that General Outdoor Storage is Conditionally Permitted in the CIX-2 Zone when proposed to be located within 600 feet of a residential zone boundary. The S-19 Zone contains special requirements for hazardous materials and is not relevant to this Determination.

General Outdoor Storage is a type of “Truck-Intensive Industrial Activity” defined under OPC Section 17.103.065(A)(2) that is subject to special Conditional Use Permit criteria and additional regulations, including the special regulations regarding nonconforming activities in OPC Chapter 17.114. Truck-Intensive Industrial Activities must demonstrate that truck traffic, truck idling, truck loading, and manufacturing activities associated with the proposal will not adversely affect sensitive receptor locations within 600 feet of the site in terms of air quality, noise, parking, and vibrations. OPC Section 17.103.065(B) includes measures that serve as means for demonstrating compliance.

Permitted Activities in the CIX-2 Zone

The CIX-2 Zone allows a variety of activities by right at 966 81<sup>st</sup> Avenue, including the following:

- Essential Service Civic Activities;
- Nonassembly Cultural Civic Activities;
- Administrative Civic Activities;
- Limited Service Restaurant and Café Commercial Activities;
- Consumer Service Commercial Activities;
- Group Assembly Commercial Activities;
- Personal Instruction and Improvement Services Commercial Activities;
- Administrative Commercial Activities;
- Business, Communication, and Media Service Commercial Activities;
- Broadcasting and Recording Service Commercial Activities;
- Research Service Commercial Activities;
- General Wholesale Sales Commercial Activities;
- Automotive Fee Parking Commercial Activities;
- Custom Manufacturing Industrial Activities;
- Light Manufacturing Industrial Activities;
- Research and Development Industrial Activities; and
- Limited Agriculture Agricultural Activities.

This list indicates that the Zoning Regulations allow a wide variety of activities, by right, on the subject lot. Several other activities are only permitted upon the granting of a Conditional Use Permit to ensure that potential impacts on the neighboring residential zone can be evaluated prior to approval.

***Attachment C*** contains a full list of activity regulations, including limitations, in the CIX-2 Zone.

Nonconforming Activity Analysis

A nonconforming activity is an activity that was established and permitted under prior zoning regulations that would not be permitted or would be conditionally permitted under current regulations. A Conditional Use Permit has been required since at least 2014 for General Outdoor Storage Industrial Activities within the CIX-2 Zone if the property is within 300 feet of a residential zone (later, increased to 600 feet in 2023). (See Ord. No. 13248 C.M.S.) As such, the previously operating General Outdoor Storage activity has been legally nonconforming since at least 2014.

Under OPC Section 17.114.050(D), any Truck-Intensive Industrial Activity may not continue as a legal nonconforming use if there is a discontinuance of active operation “for more than zero (0) days, due to purposeful abandonment.” This language was adopted into the Planning Code in October 2023 as part of implementation of the Oakland Environmental Justice Element and is intended to be stricter than the prior requirement, which stated that a discontinuance of a Trucking and Truck-Related Industrial Activity for less than 90 days could continue operation. The October 2023 Planning Code amendments also added the phrase “purposeful abandonment” to OPC Section 17.114.050(D) to clarify that a temporary and incidental cessation of operations, such as a need to repair the facility or a holiday, would not be a basis for removing the activity’s legal nonconforming status.

The September 29, 2025, Zoning Determination letter concluded that the abandonment of the Truck-Intensive Industrial Activity at the subject site was purposeful for the following reasons:

- The owner of the parcel did not limit their search for new tenants to those who performed a General Outdoor Storage Activity. The broker’s flyer markets the parcel as a vacant, paved lot

(see *Attachment A*) and does not mention limiting the activity to General Outdoor Storage (or any other activity).

- The site is vacant and has been cleared of all materials, including accessory storage structures, allowing it to be used for a variety of activities. Clearing the property and offering it for sale or lease for any activity is inconsistent with limiting future use of the lot to a General Outdoor Storage Activity.

Notably, OPC Section 17.114.050(D) does not state that purposeful abandonment must be by a property owner for an activity to lose legal nonconforming status. Clearly, the activity was purposefully abandoned by AJW Construction when they decided to terminate their lease.

The purpose and intent of the 2023 Planning Code amendments that reduced the 90-day discontinuance standard to zero days was to ensure that when Truck-Intensive Industrial Activities are purposefully abandoned, the potential impacts on neighboring residential uses from such activity (including but not limited to from truck traffic, diesel emissions, loading, noise, and other neighborhood compatibility concerns) can be evaluated prior to any re-establishment of such use. The zero-day abandonment rule in OMC 17.114.050(D) was specifically designed to prevent “placeholder” claims that would indefinitely preserve the right to such activities while they are no longer operating.

Allowing the often-lengthy time during vacancy and speculative marketing to qualify as a legal continued use would undermine the intent of the City’s 2023 ordinance. This is especially true because it is not unusual for the vacancy and speculative marketing period of a site to last significantly longer than 90 days, which is a longer period than allowed under the prior Planning Code standard.

Notably, losing the legal nonconforming status of the activity does not necessarily mean that it cannot be reestablished at the site. The activity would need to comply with the current requirements of the CIX-2 Zone and the Planning Code, including the requirement for a Conditional Use Permit and the meeting of performance standards. Furthermore, there are many permitted activities in the CIX-2 Zone that could operate on the lot by right, as described in the Zoning Analysis Section, above.

## ENVIRONMENTAL DETERMINATION

The Zoning Determination that is the subject of this appeal is exempt from the California Environmental Quality Act (CEQA) because it is not a project under CEQA.

## KEY ISSUES AND IMPACTS

The following briefly summarizes the points raised by the appellant and then provides staff’s response. The appellant’s argument is summarized in **bold**, and staff’s response is provided in *italic*. See *Attachment B* for the full appeal language.

**Appellant Claim: Purposeful Abandonment requires both an intention to abandon and an overt act, or failure to act, that implies the owner does not claim or retain any interest in the right to the nonconforming use. Mere cessation of the use does not itself amount to abandonment.**

*Staff Response: Staff largely agrees with appellant’s summary of the legal standard but disagrees with appellant’s application of the standard to the case at hand.*

*A nonconforming use is a lawful use existing on the enactment date of a zoning restriction and continuing since that time in nonconformance to that zoning restriction. Non-use is not a type of legal*

*nonconforming use, and reuse may be prohibited if a nonconforming use has been voluntarily abandoned. (Hill v. City of Manhattan Beach (1971) 6 Cal.3d 279, 286.) As described in a leading land use treatise, “From the inception of zoning, it has long been recognized that the eventual elimination of a nonconforming use could occur as rapidly as constitutionally permissible by restricting the extension or expansion of a nonconforming use, prohibiting replacement of a nonconforming building if destroyed, and precluding renewal of a nonconforming use after discontinuance.” (CEB California Land Use Practice, Section 8.17.)*

*No reported California land use cases use the phrase “purposeful abandonment” or “purposefully abandon.” The terms “discontinued” and “abandoned” appear frequently. Discontinuance or abandonment of a use is one means by which a legal nonconforming use is regularly lost. The term “discontinued” is often used synonymously with “abandoned”; however, absent contrary language in a local ordinance, cessation of a use alone does not constitute an abandonment.*

*Oakland’s provision including the word “purposeful” in front of abandonment is consistent with this general standard. An intent to abandon a use can be shown directly, such as when the property owner or tenant states or otherwise indicates an intent to put the property to a different use, or it may be inferred from the surrounding circumstances of a particular action. Surrounding circumstances could include statements, overt acts, or the failure to act on the part of the nonconforming user. The duration of non-use may be a factor in determining whether a nonconforming use has been abandoned. The maintenance of the facility, equipment, inventory, and utilities is another indicator of whether there is an intent to abandon the nonconforming use.*

*Appellant cites to two cases in their appeal. These cases state helpful legal principles regarding the loss of legal nonconforming status due to abandonment, but do not otherwise present facts similar to the facts present in this current appeal. The first case, Hansen Brothers Enterprises, Inc. v. Board of Supervisors (1996) 12 Cal.4th 533 relates to a property owner who operated an aggregate mining business. The owner had continuously conducted its aggregate production business but had not actively quarried hillside portions of the property. The County refused to approve a reclamation plan, ruling that plaintiffs needed a CUP based on the hillside quarrying being a separate operation that had lost its legal nonconforming operation. The California Supreme Court ruled that the hillside quarrying operation was not a separate use and that the aggregate business as a total operation had not been discontinued. The second case, Stokes v. Board of Permit Appeals (1997) 52 Cal.App.4th 1348, relates to a purchaser of a vacant building used as a public bathhouse at least several years prior. The City and County of San Francisco determined that the nonconforming use had been abandoned. The owner argued that abandonment could not be premised entirely on non-use. The Court of Appeal held that the length of the vacancy itself served as evidence of an intentional decision by the prior owners to abandon the premises.*

*This appeal does not present similar issues. We are not concerned with a partial abandonment of use, as was argued in Hansen, nor does the City argue that abandonment has been established based on years of non-use. Rather, City staff looked at the actions of the property owner and the prior owner and tenant in removing all improvements on the property, marketing the property for general use, and applying for zoning clearances inconsistent with the previous legal nonconforming use.*

**Appellant Claim: The alleged lack of specificity of marketing materials was not purposeful abandonment. The history of the site’s marketing indicates that the owners engaged in extensive efforts to continue using the property for general outdoor storage.**

*Staff Response: There is no factual dispute between Planning staff and the appellant regarding the current use of the property. All activity has ceased. The prior tenant has left and the site is vacant. The*

*question is whether there were any overt acts that demonstrate an intent to abandon the previous activity. Staff concluded that there was.*

*The marketing materials for the property indicate that the owner was engaging in efforts to put the property to use, but it does not show any indication of an intent to continue a General Outdoor Storage Activity or a legal nonconforming warehousing activity more generally.*

*The advertisement in this case is quite general. It states that the property is available for sale or lease. It describes the property as fully paved and secure, states the size of the lot, and indicates that it has a CIX-2 zoning. It does not provide any description of allowed uses for the property, nor does it describe previous uses at the property. Instead, it essentially directs interested parties to use the hyperlink to review the CIX-2 zoning. Any party reviewing that zoning would see that Outdoor Storage Activities adjacent to residential zones would be a conditionally permitted use. In other words, the advertisement indicates an interest on the part of the property owner for a new party to put the property to any use that an interested party deems appropriate and consistent with the CIX-2 zoning. It does not indicate an intention to continue a prior activity. The applicant's agent has confirmed that the Colliers brochure is the only marketing material for the property.*

*This generalized advertisement is paired with the activities of the property owner and/or prior tenant to strip the property of all structures, improvements, and any other sign of the prior activity. These are overt acts demonstrating an intent to discontinue the prior activity. In particular, the applicant's agent has stated that a construction trailer, vehicle, and equipment maintenance buildings were demolished in late 2023 and various outdoor shed and above-ground diesel fuel tanks may have additionally been removed. The site is currently "paved, clean and free of debris" and secure with a 12-foot-high perimeter block wall and rod iron mechanical gate.*

*Moreover, the property owner as well as interested tenants/purchasers applied for Zoning Clearances for uses that are inconsistent with the definition of Outdoor Storage Activity. These request evidence an intent to abandon the previous outdoor storage activity. A Zoning Clearance is an official affirmation that a business is permitted by Zoning at proposed location. The issuance of a Zoning Clearance from the Planning Bureau is part of the Business Tax Certificate application process and is required to receive a Business Permit per OMC Chapter 15.02. The City's Accela records show at least three parties seeking zoning clearances. A&G Transport sought a zoning clearance (TEMP230581 filed July 2023) for truck yard/truck terminal, and container storage. Provender Partners (which staff understands is associated with the LLC property owner) sought a zoning clearance (TEMP230631 filed August 2023) for EV charging for trucks and automobiles, and SS Trucking sought a zoning clearance (TEMP250290 filed April 2025) for truck, trailer, container storage, small office, and warehouse. None of these proposals are in line with the prior General Outdoor Storage Industrial Activity.*

*While staff believe that each of these zoning clearances indicate an intent to purposely abandon the prior Outdoor Storage Industrial Activity, the request from Provender Partners is particularly persuasive. According to the California Secretary of State business records, Provender Partners is an LLC with Neil Johnson listed as agent. Neil Johnson filed the appeal as agent for appellant HP 966 Oakland LLC. The two LLCs share a principal address. In other words, the current owner filed for a Zoning Clearance with the City to operate the property in a manner that is inconsistent with the no-longer-operating Outdoor Storage Industrial Activity.*

*Staff agree that an advertisement need not use technical planning code terminology to maintain a legal nonconforming use. But, if a property owner wants to continue a certain legal nonconforming activity, one would expect the advertisement to make some effort to describe the prior activity.*

**Appellant Claim:** The Zoning Manager’s Determination in this case is inconsistent with a recent determination issued for the property at 727 Kennedy Street on March 14, 2025, where the Zoning Manager concluded that the owner did not purposefully abandon a legal nonconforming warehouse use, despite it being marketed for multiple years following the termination of a lease. In that case, the tenant vacated the site in 2021 and terminated the lease in October 2023. In January 2024, the owner entered into a listing agreement to sell the property. As of the end of 2024, the site was still vacant. In May of 2025, Planning Staff found no intent to abandon the use.

*Staff Response:* The Zoning Manager assesses determination requests based on the factual circumstances presented with each case. While the issue evaluated in this determination is the same as that evaluated for the determination for the property at 727 Kennedy Street, the factual circumstances are different.

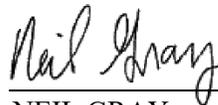
As discussed above, at least two facts present here result in a different outcome. First, the property at 727 Kennedy Street did not have all buildings, improvements, and structures removed from the property. Second, the property at 727 Kennedy Street did not have on file after advertisement zoning clearances that were not consistent with the legal nonconforming use. Third, the property owner’s efforts to market the property at 727 Kennedy Street included a description for the use of the property as an industrial warehouse space, which is consistent with the prior use.

Relevant to this appeal, the Planning Commission is tasked with determining whether, based on the facts presented, the prior legal nonconforming activity present at the property at 966 81<sup>st</sup> Avenue was purposefully abandoned. The Planning Commission need not determine whether the decision for the property at 727 Kennedy Street was correct or incorrect in resolving the current appeal.

**RECOMMENDATIONS:**

Deny the Appeal of the Determination and Affirm Staff’s Environmental Determination.

Prepared by:



NEIL GRAY  
Planner IV

Reviewed by:



ROBERT MERKAMP  
Zoning Manager  
Bureau of Planning

Approved for forwarding to the Planning Commission:



Ed Manasse, Deputy Director  
Bureau of Planning

**ATTACHMENTS:**

- A. September 29, 2025, Planning staff Determination Letter
- B. October 8, 2025, Appeal
- C. CIX-2 Activity Regulations