

February 24, 2023

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Via electronic filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
February 24, 2023
Part of
Public Record

Re: *Baylands Development, Inc. – Verified Petition for Declaratory Order-
STB Docket No. FD 36660*

Dear Ms. Brown:

Please find attached the Baylands Development, Inc. – Verified Petition for Declaratory Order. I have also arranged for payment of the \$1400 filing fee through the link provided on the Board's website.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Ayelet Hirschhorn

cc: Jeffrey H. Lowenthal
Dana Andreoli
Kenneth S. Katzoff
Robert R. Riggs
Stephen G. Preonas
Craig V. Richardson
Raymond Fung

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**BEFORE THE
TRANSPORTATION BOARD**

STB DOCKET NO. FD 36660

**BAYLANDS DEVELOPMENT, INC. –
VERIFIED PETITION FOR DECLARATORY ORDER**

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Dated: February 24, 2023

[CONTAINS COLOR IMAGES]

**BEFORE THE
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**BAYLANDS DEVELOPMENT, INC. –
VERIFIED PETITION FOR DECLARATORY ORDER**

I. INTRODUCTION

Baylands Development, Inc., a non-carrier California limited liability company (“Baylands”), requests that the Board find that a stub-ended segment of long disused railroad right-of-way located on properties it is redeveloping in San Francisco and San Mateo Counties, California (the “Spur”), has been abandoned or is hereby abandoned for rail purposes because it is no longer needed as part of the interstate rail network. Baylands is filing this Petition to determine whether their long anticipated residential and commercial redevelopment of former railroad property will be obstructed by a fiction that the Spur is still needed for common carrier rail service.

The Spur, which was formerly part of the Southern Pacific Railroad’s (“Southern Pacific”) defunct Bayshore Yard, has not been operational as a rail line in decades and its remaining track and rail infrastructure were taken out a decade ago. The only properties that the Spur can serve and over which it lies were sold for redevelopment over 30 years ago. Municipally approved redevelopment plans also make clear that there is no present or future need for rail service there. Yet the obstructionist actions of one of the Spur’s alleged easement owners, a non-railroad real estate developer with no demonstrated interest in using the Spur for common carrier rail operations, raises the possibility that the Spur remains subject to the Board’s

jurisdiction, jeopardizing its redevelopment plans, affordable housing and transit-oriented development opportunities and preempting municipal authority to plan and regulate the site. The Board should declare the Spur abandoned and remove uncertainty regarding the preemptive effect of the Board's jurisdiction and the specter of common carrier service to ensure local government-approved and community-supported plans for much-needed development can proceed.

II. BACKGROUND

A. Description and Rail History of the Spur as Part of the Bayshore Yard

The Spur consists of a 30-foot wide, approximately 2,000-foot long right-of-way located partially in the City and County of San Francisco, zip code 94134, and partially in the City of Brisbane, San Mateo County, zip code 94005. The Spur, which was once part of the Southern Pacific's now defunct Bayshore Yard, is connected to the Peninsula Corridor (formerly known as Southern Pacific's Bayshore Cutoff) that runs north-south between San Francisco and San Jose, at Bayshore Station near the San Francisco/San Mateo County border line. A map of the Spur and its relationship to the Peninsula Corridor, the properties involved in this matter and surrounds is attached as **Exhibit A**.

Southern Pacific's Bayshore Yard was once a major rail yard, operating between the 1910's and the 1980's. See Carey & Co. Inc Architecture, Visitacion Valley Redevelopment EIR, Historic Resources Technical Report, 39 (Apr. 29, 2008) ("EIR"), an excerpt of which is attached as **Exhibit B**; United States Department of Interior, National Park Service, Registration Form, Southern Pacific Railroad Bayshore Roundhouse (2010) ("NRHP"), an excerpt of which is attached as **Exhibit C**. The Spur constituted a segment of one of the many tracks in the Bayshore

Yard. In addition to accessing various maintenance and repair facilities, historical documents indicate that the Spur once also led to track on several properties adjacent to the Bayshore Yard, including the Schlage Lock manufacturing facility on Bayshore Yard's northern edge within the City and County of San Francisco and several properties directly west of the Bayshore Yard across Bayshore Boulevard in the City of San Francisco and in Daly City, San Mateo County. *See* Interstate Commerce Commission, Valuation Department, Station Map Bayshore (1950, last updated 1992), **Exhibit D**.

In 1979, Southern Pacific decided to close Bayshore Yard, and the Yard was phased out and its facilities were dismantled over the next several years. EIR p. 39, **Exhibit B**; NRHP at Section 8, p. 7, **Exhibit C**. The Schlage Lock buildings and most other buildings on the Bayshore Yard site have since been demolished, and practically all of the Bayshore Yard's track, infrastructure, and connections to adjacent properties on the west side of the Peninsula Corridor were removed years ago. *Id.* Any remaining tracks or rail-related infrastructure were removed from the Spur nearly 10 years ago. *See* Verified Statement of Greg Vilkin ¶7, attached as **Exhibit E**. A Bayshore Boulevard crossing that previously linked the Bayshore Yard to adjacent properties in Daly City was closed in 2002, according to U.S. Department of Transportation records, and the crossing infrastructure was subsequently removed. *Id.* ¶9; United States Department of Transportation Crossing Inventory Form for DOT Crossing number 754801B ("US DOT Crossing Inventory Form"), attached as **Exhibit F**.

The adjacent Peninsula Corridor is now owned by the Peninsula Corridor Joint Powers Board ("Joint Powers Board"), which acquired it from Southern Pacific and who operates non-jurisdictional passenger commuter rail service over it. *See Peninsula Corridor Joint Powers*

Bd.—Acquis. Exemption—S. Pac. Transp. Co., FD 31980, 57 Fed. Reg. 2113 (ICC served Jan. 17, 1992). The Union Pacific Railroad Company (“UP”), successor to the Southern Pacific, is authorized to operate common carrier freight service over the Peninsula Corridor. *S. Pac. Transp. Co.—Trackage Rights Exemption—Peninsula Corridor Joint Powers Bd.*, FD 31983, 57 Fed. Reg. 2114 (ICC served Jan. 17, 1992). UP has testified in state court proceedings that it is not aware of recent use of the Spur for railroad purposes, does not know the last time that any rail, or railroad related equipment was located on the Spur and did not produce any records of the UP’s use of the Spur. Appellant’s Opening Brief, at 12, *Visitacion Inv., LLC v. 424 Jessie Historic Props.*, No. A163550 (Cal. Ct. App. Filed Jan. 24, 2022) (“Visitacion Appeal Brief”), attached as **Exhibit G**.

B. Redevelopment Plans for the Bayshore Yard

In 1989 and 1990, Southern Pacific sold the Bayshore Yard site to the predecessors in interest of the property’s current owners, Visitacion Investment, LLC (“Visitacion”), and Sunquest Properties, Inc. (“Sunquest”). Verified Statement of Greg Vilkin ¶5, **Exhibit E**. Visitacion owns the portion of the Bayshore Yard site situated in the City and County of San Francisco, as well as the adjacent old Schlage Lock Factory property, also in the City and County of San Francisco (the “Visitacion Property”). Sunquest owns the portion of the Bayshore Yard site situated in San Mateo County (the “Sunquest Property”). *Id.* ¶3. The Spur traverses over portions of both the Visitacion Property and the Sunquest Property, as indicated in the map attached as **Exhibit A**.

Visitacion and Sunquest have hired Baylands to develop their respective properties in a fully coordinated manner. Verified Statement of Greg Vilkin ¶3, **Exhibit E**. The current

redevelopment plans for the Visitacion Property and the Sunquest Property have been advancing for over 20 years in conjunction with the City of San Francisco (“San Francisco”), the City of Brisbane (“Brisbane”) and the residents and businesses of the surrounding communities to plan for the remediation and redevelopment of the former Bayshore Yard and its neighboring properties. *Id.* ¶11-12. For the Visitacion Property, this effort culminated in 2014 when San Francisco approved a resolution (a) adopting changes to the San Francisco’s planning code, zoning map, and general plan and (b) creating the Visitacion Valley/Schlage Lock Special Use District (“Special Use District”), guided by the Visitacion Valley/Schlage Lock Design for Development (“Visitacion Design”) and associated streetscape master plan, infrastructure plan, and transportation demand management plan. San Francisco Planning Department, Planning Commission Approval Packet, Visitacion Valley/Schlage Lock (2014), available at: <https://commissions.sfplanning.org/cpcpackets/2006.1308EMTZ.pdf> (“Visitacion Approval Packet”), excerpts of which are attached as **Exhibit H**; San Francisco Planning Code Section 249.45, available at https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_planning/0-0-0-21314. *See also* City of San Francisco Planning Department, Visitacion Valley/Schlage Lock Plan, <https://sfplanning.org/visitacion-valleyschlage-lock-plan> (visited Dec. 29, 2022). Excerpts from the Visitacion Design are attached as **Exhibit I**.

In keeping with the Special Use District purpose and San Francisco's approved resolution, the Visitacion Design calls for mixed use residential and commercial development with park and public spaces, vehicular streets connecting the Visitacion Property to the broader road network, as well as pedestrian access to the nearby Bayshore Caltrain commuter rail station. With respect to residential development, the Visitacion Design calls for the creation of 1,679

new residential units on the Visitacion Property, to be developed in phases. Visitacion Design at 21, **Exhibit I**. Fifteen percent of these, or approximately 251 units, will qualify as affordable housing under the San Francisco's regulations, and all of the new market-rate units are expected to be affordable to middle income families based on the prevailing market affordability of the neighborhood. Visitacion Approval Packet, Executive Summary at 1, **Exhibit H**. The Visitacion Design does not provide for any rail service over the Spur or for any properties that could be served by freight rail, and Visitacion has no plans to seek rail service for its property. Verified Statement of Greg Vilkin ¶¶13-14, **Exhibit E**. Accommodating the Spur and the possibility of future rail service would reduce the number of residential units by 100, resulting in a negative impact of \$10 million to Baylands. *Id.* ¶24.

With respect to the Sunquest Property, Baylands has also participated in an extensive consultation and review process with Brisbane, resulting in a proposal for redevelopment of the Sunquest Property for commercial and some residential purposes. *Id.* ¶13. As a result of this process, Brisbane's General Plan provides for commercial and residential development over the portion of the former Bayshore Yard site owned by Sunquest abutting the Visitacion Property and over which the Spur also lies. *See id.* ¶13; City of Brisbane General Plan, <https://www.brisbaneca.org/cd/page/general-plan> (accessed Feb. 21, 2023), an excerpt of which is attached as **Exhibit J**. Neither rail service nor access to freight rail is contemplated for the Sunquest Property development.

C. Southern Pacific's Reservation of Easements

At the time it conveyed the Bayshore Yard site in 1989 and 1990, Southern Pacific reserved for itself certain easements in the Spur. Verified Statement of Greg Vilkin ¶5,

Exhibit E. For the section of Bayshore Yard located in San Francisco, Southern Pacific reserved an easement entitled the “Drill & Spur Track Easement” (“Visitation Track Easement”), and an easement for an adjacent vehicular access road (“Access Road”), entitled the “Access Roadway Easement” (“Road Easement”).¹ *Id* ¶6. These easements, which are attached as **Exhibit K**, were reserved to Southern Pacific for the “right to own operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities.”

For the corresponding portion of the Spur located in the Brisbane, Southern Pacific reserved a Drill and Spur Track Easement and a Drill Track Connection Easement (together the “Sunquest Track Easement”).² Verified Statement of Greg Vilkin ¶5, **Exhibit E**. A copy of the Sunquest Track Easement is attached as **Exhibit L**. The Sunquest Track Easement begins at the San Francisco/San Mateo County line and terminates on Sunquest’s property at the border with Bayshore Boulevard where, according to US DOT documentation, the grade crossing that was closed in 2002 was previously located. *See* Map, **Exhibit A**.

D. Sale of the Visitation Track Easement and Access Road Easement to JHP.

In 2015, after Southern Pacific merged with UP, UP sold to Mr. Patrick McNerney a fee interest in two small parcels, 2201 Bayshore Boulevard and 220 Tunnel Avenue (the “JHP Property”), the Visitation Track Easement and the adjacent Road Easement. Verified Statement of Greg Vilkin ¶15, **Exhibit E**. The JHP Property, which is identified in the map attached as

¹ The instrument reserving the Visitation Easement to Southern Pacific, titled “Railroad Easement”, contained three “Schedules” including the “Drill & Spur Track Easement”, the “Access Roadway Easement”, and a “Railroad Main Line Easement”, the last of which encompassed the Peninsula Corridor and is not subject to dispute in this proceeding. The deed reserving these easements to Southern Pacific was subsequently corrected by a “Deed Correcting Description of Rail Easement recorded on August 22, 1991”. However, the correction did not alter the relevant language setting forth the legal terms and railroad purpose of these easements.

² *See supra*, n.1., The Sunquest Easement was also titled “Railroad Easement”. However, the Sunquest Easement contains a Drill Track Connection Easement and no Road Easement.

Exhibit A, abuts the Peninsula Corridor and the northern and eastern borders of the Visitacion Property. The JHP Property physically connects with the Access Road but not the Spur. *See* Map, **Exhibit A**. Accordingly, JHP cannot use the Spur or the Visitacion Track Easement to serve the JHP Property. Verified Statement of Greg Vilkin ¶19, **Exhibit E**.

UP sold the above property aware that Mr. McNerney intended to develop the JHP Property for residential housing and not for railroad purposes and did not discuss rail service to the JHP Property or Visitacion Property. Visitacion Appeal Brief at 11, **Exhibit G**. UP did not sell the Sunquest Track Easement. However, UP has previously sold other “excess” railroad property to McNerney in San Francisco for non-railroad redevelopment. *Id.*

In 2016, Mr. McNerney subsequently conveyed the Visitacion Track Easement, Road Easement and the JHP Property to 424 Jessie Historic Properties, a California limited liability company specializing in residential and commercial redevelopment of property in the San Francisco area (“JHP”). *See id.* at 13. Mr. McNerney is the registered agent of JHP and remains involved as a principal of JHP. California Secretary of State, Business Search, <https://bizfileonline.sos.ca.gov/search/business>, search “424 Jessie Historic Properties” (accessed Dec. 29, 2022). Neither Mr. McNerney nor JHP has developed any property for railroad purposes. Visitacion Appeal Brief at 13, **Exhibit G**.

E. JHP’s Use of and Plans for the Spur

None of the activities conducted or plans made by Mr. McNerney or JHP since either acquired the Visitacion Track Easement indicate an intent to use the Spur for common carrier rail service. *See* Verified Statement Greg Vilkin ¶¶19-21, **Exhibit E**. There has been no discernable use of the Spur, the JHP Property is not accessible via the Spur, and JHP does not require the

Spur to be served from the Peninsula Corridor. *Id.* ¶¶19-20. Moreover, JHP’s plans for the JHP Property do not reflect an intent to use the Spur for common carrier purposes. Mr. McNerney’s and JHP’s proposed plans indicate that their interest in the Visitacion Track Easement is for a non-railroad redevelopment opportunity, not for common carrier operations. *Id.* ¶21. In 2015, after acquiring the JHP Property, Mr. McNerney’s company, Martin Building Company, submitted an application for the JHP Property which stated it was related to, but not a part of, the Visitacion Valley/Schlage Lock Plan. Application for Preliminary Project, Case No. 2015-006509PPA, Assessment at 12 of 24 (“McNerney Application”), available at <https://sfplanninggis.org/PIM/>, search for 5087004 (accessed Nov. 18, 2022), excerpts attached as **Exhibit M**. The McNerney Application proposed two residential buildings of a total of 200 residential units covering the vast majority of the JHP Property’s footprint. *Id.* The McNerney Application fails to demonstrate any rail purpose. *See id.* Moreover, the McNerney Application does not conform to the Visitacion Design, which calls for the JHP Property to be used as public open space. Visitacion Design at 22, **Exhibit I**.

Finally, the Access Road was never used for rail purposes or to access the Spur. Visitacion Appeal Brief at 14-15, **Exhibit G**. The Access Road has been solely used to access the JHP Property by vehicle including, for a very brief (less than three month) period of time, was licensed to Proven Management, Inc. (“Proven”) for Proven to use the JHP Property as a parking lot for Proven employee vehicles when Proven’s employees were performing work for the Joint Power Board’s Peninsula Corridor Electrification Project. Visitacion Appeal Brief at 20, **Exhibit G**; Verified Statement Greg Vilkin ¶19, **Exhibit E**.

F. JHP's Obstruction of the Visitacion Design and State Court Case

The approved Visitacion Design cannot move forward, and its development goals and public benefits cannot be realized, if a jurisdictional rail line must be preserved through the middle of the Visitacion Property. Verified Statement of Greg Vilkin ¶24, **Exhibit E**. When Visitacion attempted to address whether the Visitacion Track Easement and Road Easement is still valid, JHP leveraged its alleged remaining easement interest in the Spur to derail the Visitacion Design and extract concessions for its own development. *Id.* ¶22. Notwithstanding San Francisco's approval of the Visitacion Design and longstanding disuse of the Visitacion Track Easement and Road Easement for any rail-related purpose, JHP asserted in state court that the Spur is not abandoned. Visitacion Appeal Brief at 18, **Exhibit G**. In so doing, JHP has raised the possibility that the Spur continues to be subject to the Board's jurisdiction, despite every indication that it has been abandoned for federal regulatory purposes. *See* Greg Vilkin ¶22, **Exhibit E**.

In 2019, as part of its efforts to resolve JHP's obstruction of the Visitacion Design, Visitacion initiated a quiet title action in state court seeking a determination that the Visitacion Track Easement and Road Easement were abandoned under state law. *Id.* ¶23. The scope of the suit focused primarily on the rights associated with the Access Road for vehicular access to the JHP Property and the possibility of using the Spur for communications utilities. *Id.* In the state court proceedings, JHP argued that Proven's 2019 license agreement with JHP constituted rail service because Proven needed the JHP Property to access the Peninsula Corridor. Visitacion Appeal Brief at 53, **Exhibit G**. However, the JHP Property was only used for parking, none of Proven's work was actually performed on the JHP Property or the Spur, *id.* at 18, and, in any

event, Proven's work was for non-jurisdictional commuter rail operations *Id.* at 17; *Peninsula Corridor Joint Powers Board—Petition for Declaratory Order*, FD 35929, slip op. at 3 (STB served July 2, 2015) (electrification project not subject to the Board's jurisdiction). JHP has not cited any rail-related activity and Baylands is not aware of any use or expected use of the Spur for common carrier transportation purposes. Verified Statement of Greg Vilkin, ¶20, **Exhibit E**.

In 2021, the San Francisco County Superior Court determined that JHP had not abandoned the Visitacion Track Easement or Road Easement under state law because of JHP's ability and interest in using them for communications lines and facilities and for vehicular access purposes. *Visitacion Inv., LLC v. 424 Jessie Historic Props., LLC*, No. CGC-19-579667, at 2-4 (Super. Ct., July 15, 2021) ("*Visitacion Investment*"). In support of its decision, the Court cited non-jurisdictional activities, such as maintaining communications lines and facilities, and the license for vehicular access purposes, that, to the Court, indicated an intent to maintain an easement interest under state law. Visitacion is appealing that decision. *Visitacion Inv., LLC v. 424 Jessie Historic Props., LLC*, No. A163550 (Cal. Ct. App., Cmpt. Filed Jan. 1, 2022). Although question of the Board's jurisdiction over the Spur was not raised in the state court proceeding, and neither the California state nor appellate court can rule on the scope of the Board's jurisdiction, the state court's determination that the Visitacion Track Easement has not been abandoned under state law raises the possibility that, absent clarification from the Board, the Spur remains subject to the Board's jurisdiction and could be used in the future for common carrier operations.

III. ARGUMENT

A. The Board Should Determine that the Spur Was Previously Excepted Track Subject to the Board's Jurisdiction and Was Abandoned.

The Spur's history and current and future use demonstrate that, although the Spur was once subject to the Board's jurisdiction as excepted track, the actions of the entities owning and controlling the Spur do not exhibit a fixed and continuing intent to use it for common carrier rail service to the public. Accordingly, the Board should declare that Spur has been abandoned for common carrier purposes and is no longer subject to the preemptive scope of the Board's jurisdiction.

1. The Spur Was Previously Excepted Track.

The available documentation indicates that the Spur was historically once subject to the Board's jurisdiction as excepted track. Indeed, the Board has exclusive jurisdiction over transportation by rail carrier, including the rail lines over which common carrier rail service is provided, 49 U.S.C. § 10501(a). Its jurisdiction covers track such as spur and sidetracks that are connected to the interstate rail network. *Cedarapids, Inc. v. Chi., Cent. & Pac. R.R. Co.*, 265 F. Supp. 2d 1005, 1013 (N.D. Iowa 2003). Here, the location of the Spur and historical documentation indicate that the Spur was part of the Bayshore Yard, a common carrier rail yard that Southern Pacific deactivated in the 1980's. The Peninsula Corridor, which was later sold to the Peninsula Joint Powers Board, remains in-service and would be undisturbed by the Board's determination.

Although the Board has exclusive jurisdiction over transportation by rail carrier, the Board does not have licensing authority over the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, 49 U.S.C.

§ 10906. *See United Transp. Union-Ill. Legislative Bd. v. Surface Transp. Bd.*, 183 F.3d 606, 612 (7th Cir. 1999). There is no statutory definition for “spur track” or any of the other types of track excepted under 49 U.S.C. § 10906 from the Board’s regulatory procedures. *Oakland Global Rail Enter. —Pet. for Declaratory Order*, FD 36168, slip op. at 8 (STB Served Mar. 15, 2019) (“OGRE”). To determine whether a rail line is excepted under 49 U.S.C. § 10906, the Board evaluates the facts on a case-by-case basis and “analyzes the track’s intended use, physical characteristics, and relationship to the rail system.” *Id.*

The factors for determining excepted track indicate that the Spur was historically excepted track, rather than main line track. Available historical documents indicate that the Spur was used as ancillary yard track as part of Southern Pacific’s Bayshore Yard and to serve several adjacent properties. It does not appear that there were any stations on the Spur’s track. The Spur is 2,000 feet in length, shorter than the average length of a freight train,³ and is stub-ended. The Spur accesses only two properties—Visitacion’s and Sunquest’s—and was not built or used to extend into new territory or reach new markets. Historically, only customers adjacent to the Bayshore Yard were or could be served via the Spur, and now only Visitacion and Sunquest are served by the Spur. The Spur does not appear to have been specifically identified as mainline track in licensing proceedings before the Board or its predecessor. *See, e.g., Peninsula Corridor Joint Powers Board Notice of Exempt Acquisition*, FD 31980, at Exhibit A (ICC received Dec. 20, 1991) (map indicating acquisition of Peninsula Corridor by Caltrain).

³ See U.S. Government Accountability Office, *Rail Safety: Freight Trains Are Getting Longer, and Additional Information Is Needed to Assess Their Impact*, GAO-19-443, 11 (2019), <https://www.gao.gov/assets/gao-19-443.pdf>.

These facts prove that the Spur was historically jurisdictional track excepted from the Board's regulatory procedures, including the Board's abandonment procedures under 49 U.S.C. § 10906. Where, as here, an interested third party other than the operating railroad seeks a determination regarding abandonment of excepted track, a declaratory order finding that the Spur was excepted track and abandoned is appropriate. *NewVista Property Holdings, LLC—Adverse Abandonment of the Ironton Branch—In Utah County, Utah*, AB 1241, slip op. at 2 (STB served June 24, 2016) ("*NewVista I*").⁴

2. The Spur Has Been Abandoned.

The documentation reflects that the Spur has been abandoned. To determine whether excepted track has been abandoned, the Board must evaluate whether, in considering the totality of circumstances, the carrier has exhibited a fixed and continuing intent to hold out to provide common carrier rail service to the public on the track. *Pinelawn Cemetery—Petition for Declaratory Order*, FD 35684, slip op. at 10-11 (STB served Apr. 21, 2015). The Board may determine that a spur is abandoned because it is not needed as part of the interstate rail network. *NewVista Property Holdings, LLC—Petition for Declaratory Order*, FD 36040, slip op. at 2 (STB served Mar. 17, 2017) ("*NewVista II*"). In instances such as this involving excepted track, a determination regarding abandonment rests on a case-by-case evaluation of all the facts and circumstances to determine the line owner's intent to abandon. *Pinelawn Cemetery*, slip op. at 10. See also *Maryland Transit Administration – Abandonment Exemption – In Somerset County*,

⁴ In the case of regulated track, the Board's procedures allow for an interested third party to initiate abandonment of a line through an "adverse abandonment" proceeding. *New York Cross Harbor R.R. v. STB*, 374 F.3d 1177, 1180 n.4 (D.C. Cir. 2004) ("*Cross Harbor*"). However, because the Board's abandonment procedures do not apply to excepted track, an interested third party may not seek abandonment through an adverse abandonment proceeding. *NewVista I*, slip op. at 2. Instead, a party must seek a declaratory order from the Board determining that the excepted track is no longer needed for the interstate rail system and is therefore abandoned. *Id.* Accordingly, Baylands' request is properly presented before the Board.

MD, AB 590 (Sub-No. 1X), slip op. at 3 (STB served May 14, 2015) (“*MTA*”) (discussing same standard for track abandoned prior to institution of the Board’s notice of consummation of abandonment proceedings). To determine intent, the Board assesses both the owner’s stated intentions and the various physical acts taken that might carry out that intent, such as cessation of operations, cancellation of tariffs, the length of time there had been no rail service, efforts to maintain the line, salvage of the track and track materials, and relinquishment of control over the right of way. *Id.*

Here, considering the entirety of circumstances, the Board should determine that the Spur was abandoned because the actions and statements of the Spur’s owners indicate an intent to abandon the Spur, including the fact that: (1) the Spur is part of a long-defunct rail yard and has not been used for any rail-related service in decades; (2) the Spur could only be used to provide common carrier service to the Visitacion Property or the Sunquest Property, whose owners are pursuing long-anticipated non-rail redevelopment plans developed with extensive community input and approval from the relevant municipalities; (3) the Visitacion Track Easement is purportedly owned by JHP, a non-railroad entity who (other than in litigation) has exhibited no interest in using the Spur for purposes related to common carrier service; (4) the Spur is not needed to serve the JHP Property, which lies adjacent to the Peninsula Corridor; and (5) the Spur, in fact, cannot be used to serve the JHP Property because the two are not physically connected.

The Spur was part of the Bayshore Yard, which was decommissioned in the 1980s, over 40 years ago. *See MTA*, slip op. at 4 (track unused since the 1980s indicating abandonment). The Southern Pacific ceased operations on the Spur decades ago and all the track has been removed.

Id. slip op. at 4 (salvaging of track indicating abandonment). Southern Pacific then sold off the properties and easement interests underlying the Spur to entities, including ultimately Visitacion, Sunquest, and JHP, who have not, and do not intend to, conduct any rail service or rail maintenance activities during their ownership. *Id.* slip op. at 4 (lack of rail activities subsequent to acquisition indicating abandonment). The surrounding areas have been redeveloped in a manner such that there will be no future requests for rail service and future rail service on the Visitacion Property, the Sunquest Property or the JHP Property is inconsistent with San Francisco and the Brisbane's approved plans for the area. The Visitacion Track Easement, as sold to JHP, cannot be used as part of the railyard that it historically was a part of, does not connect to the JHP Property and it does not extend to other properties.

The fact that UP sold the Visitacion Track Easement a non-carrier evidences clear actions and intent to abandon the Spur for common carrier rail purposes. UP sold those easements to maximize the value of its property interests and in recognition of the potential value of non-railroad uses associated with the Spur. The state court proceedings indicate that vehicular access to the JHP Property and potential utility easement rights are the real value of the easements. These uses, while potentially valuable, do not indicate an intent to preserve the Spur for common carrier operations.⁵

⁵ Although the scope of the Board's jurisdiction over transportation by rail carrier is broad and encompasses activities such as communications utilities and service vehicle access, the Board does not retain jurisdiction over these activities where they are completely detached from any common carrier rail activity, as is the case here. See *Denver & Rio Grande Ry. Historical Foundation—Petition for Declaratory Order*, FD 35496 (STB served Aug. 18, 2014).

JHP has not taken any steps towards maintaining or reinstituting rail service or infrastructure on the JHP Property or the Spur,⁶ and, in fact, has done exactly the opposite by proposing redevelopment of the JHP Property. JHP's redevelopment plans clearly indicate that it does not intend to maintain the possibility of rail service on the Spur. Furthermore, the McNerney Application indicates that the property is as a development unassociated with common carrier service. For all intents and purposes, the Spur has been abandoned and the Board should clarify such to settle the uncertainty regarding the regulatory status of the Spur.

B. The Public Interest Supports a Board Determination that the Spur Is Abandoned.

Even if the Spur was somehow not previously abandoned, the Board should now determine that it is hereby abandoned because it is no longer needed for the interstate rail system. Such a determination would make way for San Francisco's plans to mitigate its significant housing shortage, promote transit-oriented development, and provide other public benefits derived from urban redevelopment on the Visitacion Property and the Sunquest Property. Excepted track that is subject to the Board's jurisdiction but not its licensing procedures "can be removed from the Board's jurisdiction upon a showing it is no longer needed for the interstate rail system." *NewVista II*, slip op. at 2. The longstanding disuse of the Spur for rail-related activities, the lack of any chance of a prospective shipper served by the Spur or use as yard track, the Spur's physical characteristics and relationship to the JHP Property and Peninsula Corridor,

⁶ In the state court litigation, JHP cited raised its grant of a license to Proven, a construction contractor performing electrification work for Caltrain on the Peninsula Corridor, for use of the Access Road in support of rail-related use of the Spur, see Visitacion Appellate Brief at 53-55, **Exhibit G**. However, this activity does not constitute a rail-related activity subject to the Board's jurisdiction. The Board previously expressly held that the electrification project is outside of its jurisdiction. *Peninsula Corridor Joint Powers Board*, FD 35929, slip op. at 3. Moreover, the Spur was not used by Proven, does not even connect to the JHP Property, and the Access Road is not necessary to access either the JHP Property or the Peninsula Corridor. In any event, Bayland's development of the Visitacion Property will not eliminate vehicular access to the JHP Property, which also abuts Blanken Avenue to the north. Verified Statement of Greg Vilkin ¶¶18-19.

its sale to JHP, a non-carrier, and the redevelopment plans proposed by Baylands, approved by San Francisco, and relied on by the McNerney Application, all clearly support such a determination.

The Spur, which was previously part of a long-defunct rail yard that has not seen rail activity in decades and is not currently used at all for railroad purposes and there are no realistic plans for it to be used for such. The Spur is completely bereft of any rail track or functional rail-related infrastructure. Rail connections to properties outside the old Bayshore Yard that were previously served by the Spur decades ago no longer exists, and, in any event, the changing character of the local economy and redevelopment of the area according to applicable approved municipal plans precludes shippers who desire rail service from locating there. Nor is it likely that the Spur would ever be used for yard or other ancillary activities, given that the Spur is too short to accommodate modern freight trains and is not appropriately located for such purposes. If there was a need for such activities, the Spur track would have been maintained and UP would not have sold off easements to a non-carrier with plans to redevelop it in a manner inconsistent with rail service.

Finally, even if the time, money, and resources were expended to re-install rail track and infrastructure on the Spur, there would be no shippers to serve, as the Spur is stub-ended and could only be used to serve the Visitacion Property or the Sunquest Property. As made clear by development proposals and San Francisco's approved resolution, these properties have no rail service in their future. The Visitacion Design, which is the product of extensive consultation with the local community, reflects the local public interest prerogatives. These prerogatives include the transformation of currently unused, well-located land to address the area's extremely high

need for housing. The McNerney Application itself also envisions use of the JHP Property for residential purposes, inconsistent with rail service. Even if JHP were considering use of Spur for rail purposes, it is difficult to comprehend what those activities would constitute, given its size, shape and location, and relationship to the JHP Property. The Spur does not connect to the JHP Property and there is no way for the JHP Property to be served directly by the Spur. These facts suggest that the JHP Property's real value, combined with the Spur, is merely rent-seeking in relation to Baylands' own development.

The redevelopment of the former Bayshore Yard is a response to San Francisco's unprecedented housing crisis. Visitacion Appellate Brief at 2, **Exhibit G**.⁷ Baylands' development plans on the Visitacion Property include the provision of 15% of the housing, or approximately 251 units, to be affordable in compliance with the San Francisco's affordable housing requirements, and pricing for all of the units will be in keeping with the cost of housing in the surrounding area. While by no means solving San Francisco's housing crisis, it is one small but important step in that direction. Moreover, this new housing will be ideally located adjacent to Caltrain's Bayshore Station, making it accessible by commuter rail to dozens of other stations along the Peninsula Corridor from San Francisco to San Jose and further via connections to other passenger rail and public transportation services. This sort of transit-oriented development is entirely in line with local, state, and federal public policy, including policy guiding the Board's decisions on efficient use of national rail infrastructure and increased use of energy efficient rail public transportation to reduce reliance on private automobile use, which

⁷ See also City of San Francisco Planning Department, San Francisco Housing Needs and Trends Report (2018), available at: https://default.sfplanning.org/publications_reports/Housing-Needs-and-Trends-Report-2018-ExecutiveSummary.pdf.

contributes disproportionately to climate change and poor air quality. *See* 49 U.S.C. §§ 10101(4), (8), (14).

C. A Declaratory Order is Necessary to Clarify the Preemptive Effect of the Board's Jurisdiction Over the Spur.

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. The Board has, in the past, acted to clarify whether track is needed as part of the interstate rail network. *NewVista II*, slip op. at 2. It should likewise clarify the scope of its jurisdiction here, where the preemptive effect of the Board's jurisdiction and the fiction of future common carrier service interferes with the development of much-needed housing on a property that has long since stopped being used for common carrier rail service and for which there is no foreseeable need for rail service. Indeed, the only purpose for the Board's ongoing jurisdiction over the Spur is to further the insincere efforts of a non-railroad developer—JHP and its principal Mr. McNerney—to hamper Bayland's legitimate use of its own property and approved plans for the area.

The harm to Baylands is clear. Absent a determination that Board does not have jurisdiction over the Spur and that the Spur is abandoned, Baylands cannot proceed with the approved Visitacion Design because the Spur could be reactivated without any further regulatory approval or scrutiny and any activities, construction, or operations affected by potential rail reactivation would likely be shielded from state and local regulatory processes.

A determination by the Board would also clarify the regulatory status of the Spur. Baylands has been unable to find documentation for the Spur in the Board's or Interstate Commerce Commission's records, creating uncertainty regarding its regulatory status. A Board decision on its jurisdiction over the Spur would clarify whether San Francisco and Baylands

must plan for potential common carrier-related operations on the Spur and whether state and local laws, including city zoning and planning regulations, environmental requirements, and state property and condemnation laws, are preempted. Conversely, if the Board clarifies that the Spur is not subject to its jurisdiction, Baylands could proceed with its development knowing that state and local requirements, laws, and processes, such as participation in public notice and comment on land use changes and permits, are not preempted. Likewise, San Francisco could pursue the Visitacion Design and adhere to its planning code and zoning laws, including potentially asserting condemnation powers for public purposes.

The state court proceedings between Visitacion and JHP should not prevent the Board from granting this Petition. The question here before the Board involves the regulatory status of the Spur⁸ and whether local plans and land use laws required for the Visitacion Design are preempted by the Board's jurisdiction. The state court case, on the other hand, involves state law property issues, including determinations of non-jurisdictional rights for vehicular access and utility rights, that are not part of common carrier rail service.⁹ A state court decision would not terminate the Board's jurisdiction over the Spur if the Board determined that the Spur were still needed as part of the interstate rail network. *See Thompson v. Texas Mexican R. Co.*, 328 U.S. 134, 147 (1946). Likewise, the Board's declaratory order determining the scope of its jurisdiction over the Spur would not affect state property rights for the Visitacion Track Easement and Road

⁸ While Baylands believes that the use of a vehicular roadway is clearly beyond the scope of the Board's jurisdiction, Baylands requests that the Board address the status of the Access Road if it believes it is necessary to do so.

⁹ Baylands agrees with Visitacion's position in the state court that, pursuant to the express terms of the Visitacion Track Easement and Road Easement, JHP's interest in and ownership of the Visitacion Track Easement and Road Easement is extinguished because the deed granting the easements to JHP was contingent upon continued railroad use.

Easement. *Visitacion Investment*. See also *OGRE*, slip op. at 6. Accordingly, the Board can and should exercise its authority to rule on regulatory abandonment and its jurisdiction over the Spur.¹⁰

IV. CONCLUSION

Baylands respectfully requests that this Board declare that the Spur (a) was previously excepted jurisdictional track that has already been abandoned based on the intent of its owner and former operator, and is, therefore, no longer subject to the Board's jurisdiction, and (b) is hereby abandoned for common carrier purposes because it is no longer needed as part of the interstate rail network.

Respectfully submitted,



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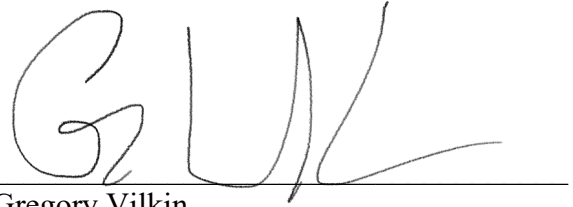
Counsel for Baylands Development, Inc.

Dated: February 24, 2023

¹⁰ Baylands believes that the Board can and should decide whether the Spur was or is abandoned and whether it has jurisdiction over the Spur independent of the state court litigation. In the event the Board disagrees, Baylands respectfully requests that the Board grant this Petition and hold these proceedings in abeyance pending the outcome of the state court litigation. The Board's policy regarding expeditious handling and resolution of all proceedings supports such a decision, see 49 U.S.C. §§ 10101(2) and (15), as doing so will avoid requiring Baylands or another party to open new proceedings at a future date to settle the same question.

VERIFICATION AND CERTIFICATION

I, Gregory Vilkin, Chief Executive Officer, Baylands Development Inc., verify under penalty of perjury that the facts recited in the foregoing Verified Petition for Declaratory Order are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to very these facts stated herein.

A handwritten signature in black ink, appearing to read 'GVIL', is written over a horizontal line.

Gregory Vilkin
Chief Executive Officer
Baylands Development, Inc.
2201 Bayshore Blvd.
San Francisco, CA 94134

Dated: February 23, 2023

**Before the
Surface Transportation Board
Washington, D.C.
FD 36660**

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February 2023, I have caused a copy of the foregoing Verified Petition for Declaratory Order to be served upon the following individuals via first class mail, postage prepaid:

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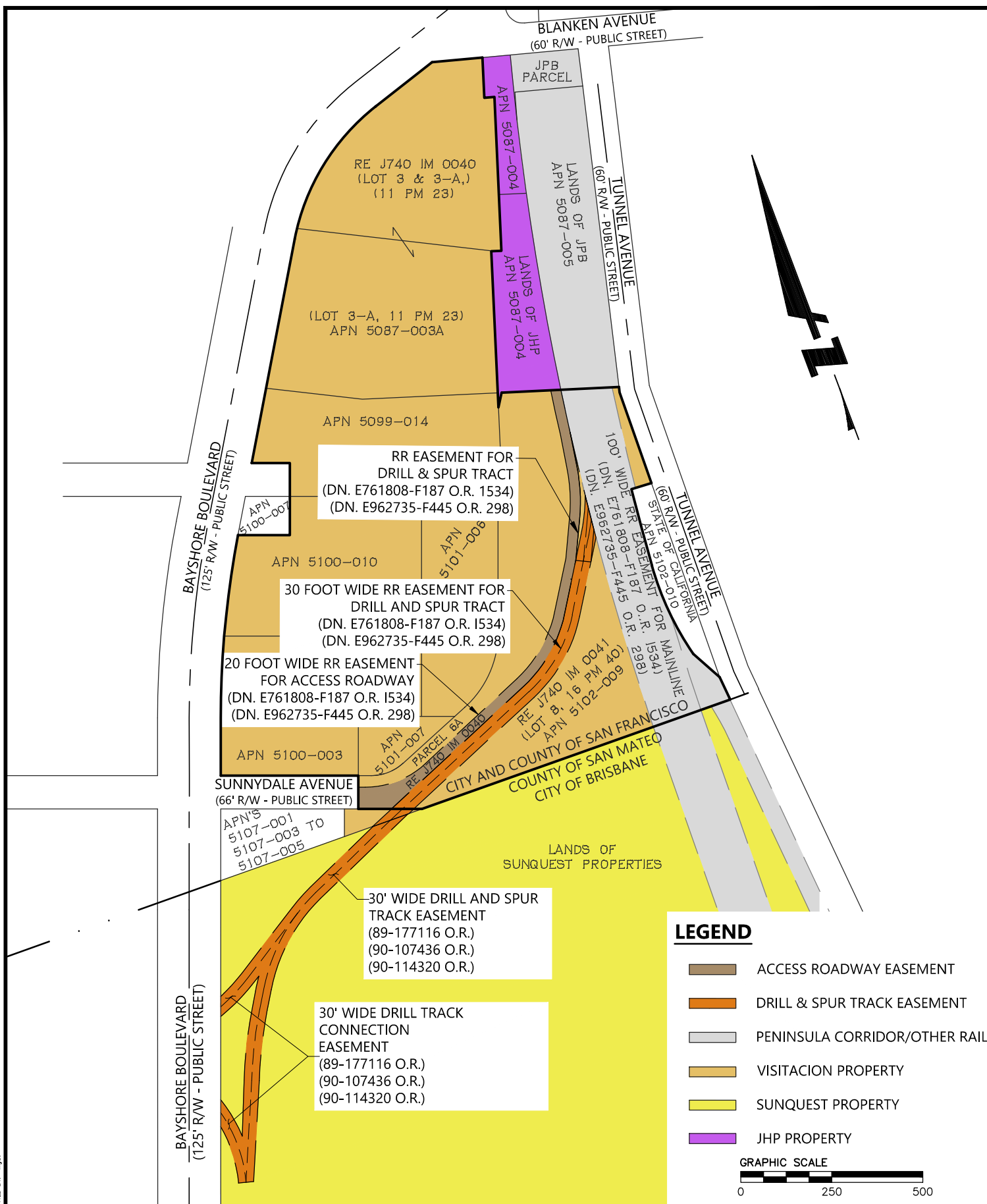
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Dated February 24, 2023

EXHIBIT A

Map of Spur and Surrounding Areas

DRAWING NAME: J:\Supt\070000\MapInfo\Exhibit\2022-12 Property Exhibit\2022-02-03 Property_Exhibit - Single Sheet.dwg
PLOT DATE: 02-03-23
PLOTTER: B7: mpt



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SUBJECT **EXHIBIT - DRILL AND SPUR TRACK
EASEMENTS**

JOB NO. **20190615-52**

BY **SGM**

APPR. **SGM**

DATE **02/03/2023**

1 OF 1

ATTACHMENT A-1

Verified Statement of Howard Pearce Regarding Map

**BEFORE THE
TRANSPORTATION BOARD**

STB DOCKET NO. FD 36660

BAYLANDS DEVELOPMENT, INC. – PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT OF HOWARD PEARCE

1. I am Howard Pearce, Director of Infrastructure/Environmental & Civil Engineering of the Baylands Development Inc., a California corporation (“Baylands”). I have held this position since November 1, 2008. I received registration from the State of California as a Civil Engineer in 1982, and I am registered in California as a Land Surveyor since 1994. Part of my responsibilities at Baylands is overseeing the surveying of properties and the production of maps indicating property ownership.
2. Through my role at Baylands, I am familiar with the layout of the properties that are the subject of these proceedings and their relationship with the surrounding area. Furthermore, I have reviewed the relevant property conveyance documents and am familiar with the history of acquisition and ownership of the properties relevant to this proceeding.
3. In preparation for these proceedings I was asked to oversee the creation of a map based on official conveyance documents in Bayland’s possession depicting the location and physical relationship between following properties pertinent to these proceedings: (1) property owned by Visitacion Investments, LLC (“Visitacion”); (2) property owned by Sunquest Properties, Inc. (“Sunquest”); (3) property owned in fee interest by 424 Jessie Historic Properties, LLC (“JHP”); (4) easements allegedly owned by JHP over Visitacion’s property , identified in the relevant conveyance documents as the Drill and Spur Track Easement and the Access Roadway Easement; (5) easements owned by the

Union Pacific Railroad Company (“UP”) over Sunquest’s property, identified on the relevant conveyance documents as the Drill and Spur Track Easement and the Drill Track Connection Easement; (6) the Peninsula Corridor mainline over which UP and Caltrain provide rail service; and (7) the surrounding road network bounding all these properties. The resulting map is attached as **Exhibit A** of Bayland’s Petition, to which this Verified Statement is attached. I verify that to the best of my knowledge this map is an accurate representation of the relationship between these properties and features.

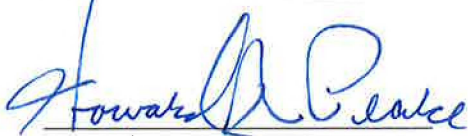
4. As depicted in the map attached as **Exhibit A** to the Petition, Visitacion owns the parcels of property comprising the “Visitacion Property” located on the site of the former Southern Pacific Transportation Company’s (“Southern Pacific”) Bayshore Yard and the site of the former Schlage Lock Factory property, both of which are located in the City and County of San Francisco. The southernmost boundary of the Visitacion Property is also the boundary between the City and County of San Francisco and the City of Brisbane, San Mateo County.
5. As depicted in the map attached as **Exhibit A** to the Petition, Sunquest owns the parcels of property comprising the “Sunquest Property” located on the site of the former Southern Pacific Transportation Company’s Bayshore Yard located in the City of Brisbane, San Mateo County. The northern boundary of the Sunquest Property abuts the Visitacion Property and is also the boundary between the City and County of San Francisco and the City of Brisbane, San Mateo County.
6. The Drill & Spur Track Easements and the Drill Track Connection Easement (together the “Spur”) that Southern Pacific reserved from its grant of Bayshore Yard property are depicted in the map attached as **Exhibit A**. The Spur extends south beyond the southernmost boundary of the Visitacion Property and terminates on the Sunquest Property.

7. Southern Pacific also reserved an Access Roadway Easement (“Access Road”) from its grant of the Bayshore Yard property. The Access Road provides vehicular access over the Visitacion property only, between the JHP Property and the public road network via Sunnydale Avenue. The Access Road ends at the endpoint of Sunnydale Avenue. The JHP Property also abuts Blanken Avenue to the north and could be accessed through Blanken Avenue with additional investment in the JHP property.
8. The Spur does not physically connect to the JHP Property, and instead connects with the Peninsula Corridor directly from the Visitacion Property. Accordingly, it is neither necessary nor even possible for the JHP Property to be served via the Spur.

I, Howard Pearce, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Statement in support of Bayland's Petition for Declaratory Order.

Executed on February 15, 2023.

A handwritten signature in blue ink, appearing to read "Howard Pearce", is written over a horizontal line.

Howard Pearce
Director, Infrastructure/Environmental & Civil Engineering
Baylands Development Inc.
2201 Bayshore Boulevard
San Francisco, CA 94134

EXHIBIT B

Carey & Co. Inc Architecture, Visitacion Valley Redevelopment EIR, Historic Resources Technical Report



CAREY & CO. INC.
ARCHITECTURE

Visitacion Valley Redevelopment EIR
San Francisco, California

Historic Resources Technical Report
April 29, 2008



Prepared by:
Carey & Co., Inc.
San Francisco, California

Prepared for:
Wagstaff and Associates

TABLE OF CONTENTS

INTRODUCTION.....	1
METHODOLOGY.....	1
SUMMARY OF APE SURVEY FINDINGS.....	3
I. HISTORIC CONTEXT	4
II. PROPERTY DESCRIPTIONS AND HISTORIC RESOURCE EVALUATIONS – BAYSHORE BOULEVARD AND LELAND AVENUE.....	14
III. PROPERTY DESCRIPTIONS AND HISTORIC RESOURCE EVALUATIONS – SCHLAGE LOCK SITE	32
IV. IMPACTS AND MITIGATIONS	41
V. REFERENCES.....	48

found to embody distinctive characteristics of a type, period, or method of construction, and certainly do not represent the work of a master or possesses high artistic values. Further, these resources do not appear to have the potential to yield information important to the prehistory or history of the local area, California, or the nation and therefore cannot be considered historic resources for CEQA purposes.

Structures built after 1967:

In general, buildings less than 40 years old can be considered historic resources only if they constitute an exceptional achievement in architecture or engineering, or are of otherwise exceptional importance. In Carey & Co.'s professional opinion, none of the buildings in the project area built since 1967 could be considered architecturally exceptional, and thus none can yet be considered historic resources.

III. PROPERTY DESCRIPTIONS AND HISTORIC RESOURCE EVALUATIONS – SCHLAGE LOCK SITE

Construction History – Schlage Lock Factory

The former Schlage Lock Factory is located in the Visitacion Valley neighborhood on a site bounded by Arleta Avenue to the north, Tunnel Avenue to the east, the county line to the south, and Bayshore Boulevard to the west. The collection of industrial and administrative buildings, while still extant, has not functioned as a lock factory since the plant was vacated in 1999. Prior to the Schlage Lock Company's establishing its Visitacion Valley headquarters, a portion of the site, mainly an area at the site's eastern edge, was used by the Southern Pacific Company.

Although the earliest documentation of the Schlage Lock Factory on Sanborn maps and City of San Francisco building permits dates to the 1940s, historic photos indicate that the original office and administration building at 2201 Bayshore Boulevard (Old Office Building), as well as the main production plant (Plant 1) with the sawtooth roof, were constructed in the 1920s. Architect and engineer William P. Day and associate architect H. M. Michelsen designed these two buildings. Historic photos of the dedication and flag-raising ceremony at the opening of the Schlage Lock Company show the Old Office Building and the main production plant in 1926 on Bayshore Boulevard between Blanken and Raymond Avenues. The production plant was built in 1925, prior to the construction of the office building in 1926.⁷⁰ The location chosen was strategic for several reasons. Land was readily available in what was still largely a pastoral setting, while several burgeoning industrial areas – including Potrero Point and the central waterfront to the north and Hunter's Point to the south – were close by. Most important, the newly laid Bayshore Cutoff commuter line connecting the valley to downtown San Francisco linked the area to the city core, and the Schlage factory and offices faced what was anticipated to become a major automobile highway within the next few years.⁷¹

The Old Office Building and the main production plant (Plant 1) were constructed on the initial piece of land bought by the Schlage Company and are indicated on Sanborn maps dating to 1950. This 2.5-acre piece of land (roughly city lot numbers 5087-003), acquired from Bodinson Manufacturing by 1925, was bounded by Bayshore Boulevard to the west, Southern Pacific Railroad to the east, Blanken Avenue

⁷⁰ Danforth, 11.

⁷¹ Danforth, 11. This most likely refers to U.S. Highway 101 along Bayshore Boulevard.

to the north, and Leland Avenue to the south. Also according to these Sanborn maps, Bodinson still occupied property along Bayshore Boulevard between Leland and Visitacion Avenues.

Schlage had expanded its facilities by the early 1940s, with the addition of a varnishing and lacquering factory building located on Bayshore Boulevard at the intersection of Visitacion Avenue. Designed by architect Alfred F. Roller, this reinforced concrete structure was constructed in a similar fashion as the first warehouse designed by Day & Michelsen with a redwood ceiling and skylights. Warehouse additions (Plant 1X, Plant 2) continued south along Bayshore Boulevard, and by 1950 the entire block of Bayshore Boulevard between Visitacion and Sunnydale Avenues had been acquired and developed by the Schlage Lock Company.

Schlage Lock expanded its reputation in the 1960s as the sole lock provider for some of the most high-profile buildings in the United States, including the Pan American Building in New York City and the Bank of America world headquarters in San Francisco. To accommodate a growing business, the company built its new office building on Bayshore Boulevard at the intersection of Leland Avenue in 1974. At this time, the Old Office Building at Blanken Avenue assumed mainly payroll functions and company-wide administration functions were transferred to a new three-story office building (New Office Building). Throughout the 1960s and 1970s, the buildings on the Schlage Lock Factory site underwent various interior alterations to accommodate the needs of the facility and its employees. Alterations included office partition removal, relocation and installation, existing wall modifications; seismic retrofit; and demolition of warehouse space for new office construction.

The only documented instance of demolition on the Schlage Lock Factory site was the removal of a 6,000-square-foot rectangular warehouse addition to Plant 1 in September 1974 when the lot was taken over by the railroad.⁷²

Construction History – Southern Pacific Railroad Buildings

Southern Pacific constructed a train tunnel in 1904⁷³ and various buildings to the east of what would become Schlage's complex. The Bodinson Manufacturing Company, a steel manufacturing factory for custom mining machinery, entered the area in 1924 after purchasing the land from the Crocker Estate Co. Bodinson Manufacturing acquired most of the land west of the Southern Pacific Railroad that would later be purchased by the Schlage Lock Company.⁷⁴ The land is now owned by Sunquest/Universal Paragon.

A few Southern Pacific Railroad Company structures remain along the eastern boundary of the Schlage Lock site (Buildings J, K, L, M, and N). As the oldest buildings on the Schlage Lock site, these simple wood structures functioned as railroad worker accommodations and pump car storage. These retain a high degree of integrity with original wood siding, doors, and windows. According to Sanborn maps, Buildings K and L were iron-clad, wood-framed shed storage buildings for pump cars. Building J is also a wood-framed building, and served the Southern Pacific Railroad (SPRR) as an office building. Farther south of these buildings was Building M, a corrugated iron structure noted on Sanborn maps as a one-

⁷² San Francisco Building Permit #439635.

⁷³ Signor.

⁷⁴ Danforth, 11.

story structure belonging to the SPRR. Building N, also known as 200 Sunnydale Avenue, lies at the southernmost edge of the Schlage Lock site and is noted on Sanborn maps as a one-story iron-clad office structure serving the SPRR. Today, all of these structures are owned by Sunquest/Universal Paragon.

Historic Resources Evaluation – Schlage Lock Site

The Schlage Lock site is located east of the Leland Avenue/Bayshore Boulevard survey area. The site is actually composed of two adjacent subareas, the Schlage Lock Factory Historic Site and the Southern Pacific Railroad Historic Site. As described below, Carey & Co. believes that both sites are eligible for listing in the National Register of Historic Places. Given their spatial continuity and common industrial history, Carey & Co. recommends that the two historic sites be treated as a single Schlage Lock Historic Site.

The buildings on the proposed Schlage Lock Historic Site have not been surveyed previously, except for the Old Office Building (Building A) which was recognized in the 1976 Architectural Quality Survey with a summary rating of 3.⁷⁵ The following Historic Resource Evaluation of the Schlage Lock site includes separate analyses for the proposed Schlage Lock Factory Historic Site and the proposed Southern Pacific Railroad Historic Site.⁷⁶

Statement of Significance for Schlage Lock Factory Historic Site

The proposed Schlage Lock Factory Historic Site derives its overall significance as the historic headquarters of the Schlage Lock Factory, nationally renowned for its revolutionary breakthroughs in lock-making. As such, it appears to be eligible as a historic site at the local and national levels according to the criteria listed by the California Register of Historical Resources and the National Register of Historic Places. These define a historic site as “the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure.” The proposed Schlage Lock Factory Historic Site qualifies as a historic site because it fulfills Criterion A of the National Register of Historic Resources as having made significant contributions to the broad patterns of our history.

The proposed Schlage Lock Factory Historic Site also qualifies under Criterion B of the National Register of Historic Places because of its association with inventor Walter Schlage (1882-1946). The first buildings, Building A and B, were commissioned by Schlage, after whom the Schlage Lock Company was named. Trained in mechanics and engineering, Schlage had begun experimenting with lock devices and created his first patent for a door lock in 1909. When he formed a partnership with Charles Kendrick in 1926, Schlage had allied himself with one of San Francisco’s most prominent businessmen and manufacturers. In 1940, Schlage was honored with the Modern Pioneer Award which recognized outstanding American inventors.⁷⁷ After Schlage’s death in 1946, Kendrick continued to play an integral part in directing management of the company.

⁷⁵ See footnote 67 above, regarding the San Francisco Planning Department inventory. Summary ratings of 3 or higher represent approximately the top 2 percent of all of San Francisco’s buildings in terms of architectural importance.

⁷⁶ *San Francisco Preservation Bulletin No. 16: CEQA Review Procedures for Historic Resources.*

⁷⁷ See company website, <http://www.schlage.com>.

In addition to being the location of the historic Schlage Lock Factory, the individual buildings on the site are also significant for their associations with some of San Francisco's most prominent twentieth-century architects, fulfilling Criterion C of the National Register of Historic Places. These architects include William P. Day and Alfred F. Roller. Analysis of the company's history and the development of the site have established the Period of Significance for the site as beginning in 1926, when its first buildings were constructed, and continuing until 1950, when construction of factory facilities was considered "complete" under the Schlage Lock Company's ownership. During its operation, the company provided locks to buildings throughout the nation. Some of its most important commissions included the Bank of America Headquarters Building in downtown San Francisco and the Pan American Building in New York City. In 1974, the Schlage Lock Company was bought by Ingersoll-Rand as a subsidiary of their Door Hardware Group. Under this new ownership, the collection of industrial and administrative buildings on the former Schlage site continued operation until 1999.

Schlage Lock Factory machinery remnants are located in Plant 1 and Plant 2. These rare pieces of industrial equipment qualify the site under Criterion D of the National Register of Historic Places, because of their ability to yield information important to industrial history.

There are a total of eight buildings on the proposed Schlage Lock Factory Historic Site. Of the eight buildings, seven of them have construction dates within the Period of Significance and thus appear eligible as contributory resources to the site. The New Office Building is the only non-contributory resource to the site.

Building A – Old Office Building

This one-story building is rectangular in plan and sits over a daylight basement. The Spanish Colonial-style building is clad in stucco and has a clay-tile side-gable roof. The primary façade, facing the intersection of Bayshore Boulevard and Blanken Avenue, is symmetrically composed with a central projecting gabled entry vestibule. Round arched multi-pane steel sash awning windows are located at the first-story level. The basement level exhibits fixed, multi-pane, steel sash windows. The main entrance has access via a flight of brick stairs under a round arched opening that is surrounded by decorative voussoirs in the form of a lancet arch. The interior of the building retains original security vaults and wood details including flooring, wall paneling, and post-to-post stair balustrades.

Building A, constructed in 1926, is a contributing resource to the proposed Schlage Lock Factory Historic Site. As one of the first buildings to be constructed on the site commissioned by Walter Schlage, it housed the main administrative and executive functions of the business from 1926 to 1974. The Spanish Colonial Revival architectural styling was designed by prominent San Francisco architect and engineer, William P. Day, and represents an important shift in Day's career from the ornate and eclectic designs of his earlier commercial and institutional buildings to a modernized and more simplistic design aesthetic intended for industrial functions. The building retains a high level of integrity with no significant alterations. The original clay tile roofing is one of the most notable features of the building. Other character-defining features on the interior include original wooden stair balustrades, wood flooring, and metal vaults.

Building B – Plant 1

This two-story concrete building, complex in plan, is located south of the Old Office Building. Its roof exhibits a sawtooth design and is constructed of a redwood ceiling supported by metal girders. Steel sash, multi-pane, awning windows are located throughout the building. The upper portion of the west elevation exhibits steel sash, multi-pane hopper windows. The interior of the building still retains original machinery, including a boiler that is encased in a brick and metal structure at the east elevation with access via a large rolling metal door. The east elevation has brick walls and stucco sawtooth roof parapets.

Plant 1, constructed in 1926, is a contributing resource to the proposed Schlage Lock Factory Historic Site. Plant 1 was the first warehouse building to be built for the Schlage Lock Factory. According to Sanborn maps, the building is noted as a one-story, large warehouse with a series of rooms that included the shipping department, assembling department, machinery shop, finished products warehouse, and a die and tool division. This building was also designed by William P. Day. Like Building A, Plant 1 represents a shift in Day's style from the eclectic to the modern. One of the most distinctive characteristics of the building is its sawtooth roof. Though the interior is in poor condition, it retains its original redwood ceiling, skylights, and steel trusswork. A large boiler, housed in a wood-framed cage with rolling wooden doors, is located at the building's east elevation and was known to have been serviced only by in-house Schlage mechanics. The building retains a high level of integrity because of minimal alterations or additions.

Building C – Plant 1, Ancillary Building

This one-story structure, rectangular in plan, is located on the east side of Bayshore Boulevard between Arleta and Raymond avenues. There are two main entrances into the building located on the east and south elevations. The building has a flat roof and steel sash, multi-pane awning windows. An overhang wraps around the southeast corner of the building; on the east elevation, the overhang has a curved edge. A metal sliding window is located at the south elevation. The building sits on a platform that is supported by concrete and steel columns.

According to Sanborn maps, Plant 1's ancillary building was constructed as a one-story over basement, steel reinforced concrete office building with four door openings. The only major alteration to the building was made to the stairs. The original set of stairs leading up to the main entrance leading up from the west was replaced by a new set of stairs with metal railing leading up from the east. Otherwise, the building retains a good level of integrity.

Building D – Plant IX

This two-story concrete structure is located to the east of the main office building (New Office Building) and is connected at its north elevation to the main production warehouse (Plant 1), and at its west elevation to Plant 2. The interior has earthquake retrofit bracing. A concrete ramp is located in the interior of the building at the north end. Steel sash multi-pane awning windows are located at the upper portions of the east and west elevations. A metal railing lines the perimeter of the roof.

This industrial building is noted on Sanborn maps as a two-story, concrete building, with a tool and die shop on the first floor, offices at the second floor, and parking on the roof. The most notable feature of the interior is the concrete ramp used by forklifts at the northern end of the warehouse. The building

also has shuffleboard and volleyball courts, and a kitchen. The design of the warehouse most resembles the parts delivery warehouse (Plant 3X) with its concrete grid-patterned roof. The building has a number of interior additions, particularly office partitions installed in the 1960s, but its overall condition and integrity are good.

Building F – Plant 2

This one-story, steel reinforced, concrete structure is located at the northeast corner of the intersection at Bayshore Boulevard and Visitacion Avenue. It is connected to the warehouse complex at its eastern and southern elevations. It has steel sash, multi-pane, awning and fixed windows and a redwood ceiling with multiple skylights. The southwest corner of the building is curved. The roof is flat and clad with a gravel membrane.

This industrial building, constructed c. 1947, is a significant resource to the proposed Schlage Lock Factory Historic Site, as it historically functioned as the varnishing and lacquering warehouse and later the plating shop. This building was also designed by William P. Day and his associate H. M. Michelsen, the same architects who designed the main production plant (Plant 1). Its design is in keeping with the original warehouse space in Plant 1. Some slight differences from Plant 1 include the arrangement of the redwood beams in the ceiling, and the wooden instead of steel supporting columns. Noted on Sanborn maps to have historically served as the varnishing and lacquering warehouse, the building was also known as the department for manufacturing primus keys as well as housing the plant's air compressor, which was custom-made and assembled just for the Schlage factory. From the exterior, the warehouse is distinguished by its curved corner at the corner of Visitacion Avenue and Bayshore Boulevard. There is no evidence of major alterations or additions, and the building retains a high level of integrity.

Building G – Plant 3

This one-story concrete structure is located on the east side of Bayshore Boulevard between Visitacion and Sunnysdale Avenues. The interior of the building exhibits a redwood ceiling supported by metal girders. The east and west façades have steel sash, multi-pane, awning windows. Offices are located on the interior of the building at the southeast wall.

This industrial building was constructed in 1950 and designed by successful San Francisco architect Alfred F. Roller, with engineer H. J. Brunnier. According to 1964 Sanborn maps, the building historically functioned as the shipping and assembly department and was originally connected at its south end to Building H through openings in the partition wall. A large ramp is currently located at the center of the south wall that leads into Plant 3X. Roller and Brunnier maintained a design approach similar to the previous warehouses designed by William P. Day and H. M. Michelsen, employing redwood beams and metal trusses in the ceiling and alternating between wood and steel supporting columns. The building is in fair condition but retains a high level of structural integrity.

Building H – Plant 3X

This two-story concrete structure, rectangular in plan, is located at the northeast corner of the intersection at Bayshore Boulevard and Sunnysdale Avenue. It is connected to the rest of the complex at its north elevation. Metal awning windows are found at the south elevation. Metal roll-up doors are located at the south end of the east elevation. Although a distinct entity, it was constructed in conjunction with Plant 3 to the north.

This industrial building was constructed in 1950 and designed by successful San Francisco architect Alfred F. Roller, with engineer H. J. Brunnier. It is noted on Sanborn maps as a two-story concrete warehouse building with a projecting metal awning on its east elevation. It was originally connected to Plant 3 to the north via openings in the partition wall. Remnants of railroad tracks leading into the building are visible near the south wall of the interior, as this building functioned as the main delivery dock, receiving freight from railroad trains. It also functioned as the main point of entry and exit into the Schlage Lock Factory. This part of the warehouse is in good condition with no major alterations or additions.

Building I – Plant IX, Ancillary Building

This one-story freestanding structure is located east of the receiving and shipping plant (Plant 1X). It is constructed with a corrugated metal gable roof and corrugated metal siding. There are no eaves at the gabled ends. A round vent is located at the gable face on the south elevation. The building has access through a pair of corrugated metal doors at its north elevation.

This structure, most likely constructed around the same time as the erection of the shipping and receiving plant (Plant 1X) c. 1950, historically functioned as a carpenters' workshop for the factory. It is noted on Sanborn maps as a one-room metal clad warehouse structure and exhibits no alterations or additions. Although it served ancillary functions to Schlage's primary production and manufacturing activities, it nonetheless was important to the factory's ongoing operation.

Building E – New Office Building

This three-story office building, rectangular in plan, is located on the east side of Bayshore Boulevard at Leland Avenue. The main entrance for the Schlage complex and the building is aligned with Leland Avenue and has a large overhang. The ground floor held meeting conference rooms and the upper two stories held administrative offices. A courtyard is located at the east elevation. Employee parking is located on the roof, with access via a ramp at the northwest corner of the building. The main Bayshore façade is a concrete grid with brick veneer panels flanked by fixed, metal framed windows. It is connected to neighboring buildings via bridges located at the north and east elevations.

Constructed in 1974, this office building is the newest building on the site. The building retains its integrity with minor office partitions added to the interior. Although designed by prominent San Francisco architects Hertzka & Knowles, it does not fall within the Period of Significance (1926-1950) for the proposed Schlage Lock Factory Historic Site and does not meet any National Register criterion. Although main administrative functions were transferred here from the Old Office Building when Ingersoll Rand had bought the Schlage Lock Company in 1974, these operations were not under Schlage Lock Company's ownership. It has thus been determined that this office building is a non-contributing resource to the proposed Schlage Lock Factory Historic Site.

Statement of Significance for Southern Pacific Railroad Historic Site

The Southern Pacific Railroad Company was one of the most powerful and prominent of American railroad companies in the nineteenth and twentieth centuries. Founded in 1865 by Sacramento businessmen, with the aim to construct a line between San Francisco and San Diego, Southern Pacific merged with the Central Pacific Railroad Company in 1870, expanding the reach of the western portion of the Transcontinental Railroad. In 1881, the western portion of the Southern Pacific Railroad

Company merged with the Atchison Topeka and Santa Fe Railroad Company to become the second transcontinental railroad. In 1904, the Southern Pacific Railroad Company began filling in land along the bay and building a tunnel, still extant, at the corner of Blanken and Tunnel avenues. Southern Pacific provided commuter service to Visitacion Valley on the line called the “Bayshore Cutoff,” which was known as the most important access route to the San Francisco Peninsula.⁷⁸

The creation of the cutoff was the product of massive efforts to fill, level, and dig through the land in order to connect the burgeoning industrial factory district of the South Bay to the heart of the city and thereby spur development. In 1907, the cutoff was complete and gave Southern Pacific trains a quick and more direct route into San Francisco. Shop facilities for repairing cars and locomotives were constructed along the cutoff. A freight yard was established adjacent to the tracks and was noted as the major classification yard for the San Francisco terminal.

Freight traffic in the Bay Area experienced a gradual decline in the 1970s, and by 1979 the Bayshore freight yard began moving yard activity to South San Francisco. In 1996, Southern Pacific Railroad Company was bought out by Union Pacific Railroad. The former lots belonging to Southern Pacific are currently under the ownership of Universal Paragon, and the buildings are now occupied by various commercial organizations.

Adjacent to the Schlage Lock Factory Historic Site are five buildings, three of which served the Southern Pacific Railroad Company since approximately 1906. These structures derive their significance from being associated with the historic railroad company. As they all shared a similar function in serving the Bayshore Cutoff line, they appear to be eligible as a historic site at the local and national levels according to Criterion 1 of the California Register of Historic Resources and Criterion A of the National Register of Historic Places. These define a historic site as “the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure.” The Period of Significance for the site extends from 1906, when the first tracks were laid in the area, to 1920, when the 17-stall Bayshore roundhouse and supporting car repair and locomotive shops were completed for the freight yard. As such, three of the five buildings are considered contributory resources to the proposed Southern Pacific Railroad Historic Site. The metal buildings (Building M and Building N) at the site’s south end are considered non-contributory resources to the historic site.

Building J –Workers Dining Hall

This one-story structure, rectangular in plan, exhibits a gabled roof clad in asphalt shingles, wood horizontal shiplap siding, and two over two, wood double-hung windows with vertical muntins and lambs tongues. The interior retains its original redwood flooring. The building appears to be in overall good condition.

This wood-frame building is noted on Sanborn maps as an office building for the Southern Pacific Railroad Company. It is also known to have functioned historically as a dining hall for railroad workers.

⁷⁸ Steele, 264.

The building retains a high degree of integrity, with its original windows, siding, and interior redwood flooring.

Building K – Storage

This wood-frame structure, rectangular in plan, has a gable roof and wood, horizontal, shiplap siding. Two sets of wood double doors are constructed of vertical beams and cross-braced. The interior ceiling exhibits a wood truss system. The building appears to be in fair condition.

Noted on Sanborn maps as one of three wood-frame buildings in the area, the construction of this storage building suggests that it also dates to c. 1906 when Southern Pacific Railroad Company had begun laying tracks for the Bayshore Cutoff. Like the two smaller wood-frame buildings (Building L), Building K historically functioned as a storage building as well, serving the Southern Pacific Railroad's maintenance workers.

Building L – Sheds/Pump Car Storage

Two wood-frame buildings are partially encased at their west elevations within a single corrugated metal structure. The metal structure has a corrugated metal flat roof and sliding doors. Both buildings have corrugated metal clad gable roofs. One structure is clad with wood shiplap siding, the other is of vertical wood siding. One of the structures is missing its front door. The other retains its wood door.

These two small, wood-frame buildings were originally free-standing structures, noted on Sanborn maps as having been covered in metal cladding. This is not the same metal cladding as the current metal structure surrounding the buildings. Historically they functioned as storage spaces for the pump car vehicles that were used as transport in the maintenance of the railroad tracks. Because these structures are partly sheltered from the elements by metal siding, they retain a high level of integrity and are both in good condition.

Building M – Southern Pacific Railroad Building

This one-story rectangular building is located west of Tunnel Avenue and south of Visitacion Avenue next to the Schlage Lock Factory Historic Site. Clad with vertical sheets of metal, its roof is gabled with standing seam metal cladding and surrounded by wide fascia. Small metal fixed windows are located throughout the building under the eaves.

This metal clad building is first documented in 1964 Sanborn maps as belonging to the Southern Pacific Railroad Company. Although its historical function is unknown, it presumably served the same office/storage function as the other railroad buildings belonging to the Bayshore Cutoff freight yard. The building is in fair condition with broken and boarded windows, metal corrosion and graffiti throughout the exterior. There is no evidence of additions or alterations. The building is less than 50 years old and is not considered to be a contributory resource to the Southern Pacific Railroad Historic Site.

Building N – Southern Pacific Railroad Building

This one-story rectangular building exhibits a broad gabled roof and is clad in corrugated metal. The entrance is located on the north elevation and is covered by a projected overhang. A metal fixed storefront window assembly surrounds the metal-framed double-door entrance. Other metal windows on the north elevation are boarded up. At the south elevation, various windows and wooden doors have

metal screens. A number of wood post and metal shed roofed additions are found west of the doorways. The building appears to be in fair condition.

This large metal clad building is first documented in 1964 Sanborn maps as having belonged to the Southern Pacific Railroad Company. It served the railroad company as offices for the Bayshore freight yard. The shed additions made to the building have not made significant changes to the building's integrity. The building is less than 50 years old and is not considered to be a contributory resource to the Southern Pacific Railroad Historic Site.

IV. IMPACTS AND MITIGATIONS

This section evaluates potential impacts to historic resources that could occur as a result of the Redevelopment Plan and identifies appropriate programmatic mitigation measures.

California Environmental Quality Act

When a proposed project may adversely affect a historical resource, the California Environmental Quality Act (CEQA) requires a city or county to carefully consider the possible impacts before proceeding (Public Resources Code Sections 21084 and 21084.1). CEQA equates a substantial adverse change in the significance of a historical resource with a significant effect on the environment (Section 21084.1). The Act explicitly prohibits the use of a categorical exemption within the CEQA Guidelines for projects which may cause such a change (Section 21084).

A "substantial adverse change" is defined as "physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired." Further, that the "significance of an historic resource is materially impaired when a project "demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for inclusion in the California Register of Historical Resources;" or "demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources..." or demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA."

CEQA effectively requires preparation of a mitigated Negative Declaration or an EIR whenever a project may adversely impact historic resources. Current CEQA law provides that an EIR must be prepared whenever it can be fairly argued, on the basis of substantial evidence in the administrative record, that a project may have a significant effect on a historical resource (Guidelines Section 15064). A mitigated Negative Declaration may be used where all potentially significant effects can be mitigated to a level of insignificance (Section 21080). For example, a mitigated Negative Declaration may be adopted for a project which meets the Secretary of Interior's Standards for Rehabilitation and local historic preservation regulations, and so will not adversely affect the resource.

EXHIBIT C

**U.S. Department of Interior, National Park Service,
Registration Form, Southern Pacific Railroad Bayshore
Roundhouse (2010)**

United States Department of the Interior
National Park Service

National Register of Historic Places
Registration Form

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in *How to Complete the National Register of Historic Places Registration Form* (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If any item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

RECEIVED 2280

OMB No. 1024-0018

FEB 19 2010

NAT. REGISTER OF HISTORIC PLACES
NATIONAL PARK SERVICE

1. Name of Property

historic name Southern Pacific Railroad Bayshore Roundhouse

other names/site number N/A

2. Location

street & number Junction of Industrial Way and Bayshore Avenue

☐ not for publication N/A

city or town Brisbane

☐ vicinity N/A

state California

code CA

county San Mateo

code 081

zip code 94005

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act of 1986, as amended, I hereby certify that this ☒ nomination ☐ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property ☒ meets ☐ does not meet the National Register Criteria. I recommend that this property be considered significant ☐ nationally ☒ statewide ☒ locally. (☐ See continuation sheet for additional comments.)

Michael Wayne Anderson
Signature of certifying official/Title

18 FEB 2010
Date

California Office of Historic Preservation
State or Federal agency and bureau

In my opinion, the property ☐ meets ☐ does not meet the National Register criteria. (☐ See continuation sheet for additional comments.)

Signature of commenting or other official

Date

State or Federal agency and bureau

4. National Park Service Certification

I hereby certify that this property is:

☒ entered in the National Register

☐ See continuation sheet.

☐ determined eligible for the
National Register

☐ See continuation sheet.

☐ determined not eligible for the
National Register

☐ removed from the National
Register

☐ other (explain): _____

Signature of the Keeper

Date of Action

3/26/2010

United States Department of the Interior
National Park Service

National Register of Historic Places Continuation Sheet

Southern Pacific Railroad Bayshore Roundhouse, San Mateo, CA

Section number 8 Page 1

Narrative Statement of Significance:

The former Southern Pacific Railroad roundhouse at Bayshore and its functionally related turntable are significant under National Register of Historic Places Criterion C (Design/Construction) for embodying “the distinctive characteristics of a type, period, or method of construction,” of a Southern Pacific Railroad brick roundhouse of the late 19th and early 20th centuries. As an early 20th century transportation building, it is significant on the local/regional level in the areas of Transportation and Architecture. Developed in response to the need to service and repair locomotives during the steam era, roundhouses typically had circular footprints with tracks that were arranged radially leading to separate stalls. Roundhouses often had turntables to position locomotives into individual stalls. Although there were non-roundhouse designs, the roundhouse form was a compact solution to service steam locomotives that were generally designed to run in the forward direction with only limited ability to back up. It is the only extant railroad roundhouse of the many that once existed in California during the era of steam locomotives. It is eligible for listing as an example of a distinctive railroad support facility. The period of significance is 1910-1957. This period coincides with the date the roundhouse was completed (1910) to the year when steam locomotives were last serviced in the roundhouse (1957).

Historic Context:

Native American Period

The site of the Bayshore roundhouse and rail yard was once part of San Francisco Bay. The Bayshore roundhouse and yard were constructed on man-made land on what one had been a shallow cove at the end of Visitacion Valley, located on the border between San Francisco and San Mateo counties. Native Americans lived along San Francisco bay from the mid-peninsula to San Francisco.¹ The Yelamu tribe lived in the area of San Francisco and the villages of Amuctac and Tubsinte were located in Visitacion Valley.²

Spanish/Mexican Period

Spanish colonization of the San Francisco peninsula began when over 200 Spanish colonists arrived in June 1776 to build a fort (the Presidio of San Francisco) and mission, (San Francisco de Asis, commonly known as Mission Dolores) using Native Americans as a workforce. A nearby pueblo or town, Yerba Buena (the future San Francisco), was also established. Mexico achieved independence from Spain in 1821 and the Mexican Congress secularized the mission

United States Department of the Interior
National Park Service

National Register of Historic Places
Continuation Sheet

Southern Pacific Railroad Bayshore Roundhouse, San Mateo, CA

Section number 8 Page 2

lands in 1833, making large tracts available to petitioners requesting ranch land from the government.³ Jacob Lesse took possession of a 9,500 acres land grant in 1841 called *Rancho Canada de Guadalupe la Visitacion y Rodeo Viejo* which included three valleys: *La Visitacion Rodeo Viejo* and *Canada de Guadalupe*. The grant included portions of the future the cities of San Francisco, Daly City, and Brisbane. He transferred the Visitacion Valley rancho to Robert Ridley for lands in Sonoma in 1845.

American Period

When the United States took control of California after Mexican-American War (1846-1848), many titles to Mexican land grants were contested. In time, major land owners in Visitacion Valley included Francois Pioche and Henry Schwerin who both established plant nurseries in Visitacion Valley. Visitacion Valley generally runs east to west along the boundary of San Francisco and San Mateo counties.

The area also witnessed vegetable farms in the late 1800s.⁴ Most of the farmers in Visitacion Valley were Italian immigrants from Genoa, who also worked the outlying areas in Mission Valley, Noe Valley, Hayes Valley, Ocean View, Bayview, and Lake Merced. Entire families and hired hands cultivated ten-acre plots with water pumped by windmills. The produce was loaded into horse-drawn wagon in the early morning hours and driven to the Colombo Market,⁵ a vegetable exchange established in 1876 at Davis and Front streets, the "greatest vegetable market in the world."⁶ After the turn of the 20th century, farming became less attractive and the land was more valuable as home sites.⁷ While some farms survived in Visitacion Valley until the 1940s,⁸ and some nurseries until the 1960s, the transformation of agricultural land into residential tracts was almost complete by World War II.

Most of the Bayshore yard including the roundhouse lies in the City of Brisbane, immediately south of San Francisco. Until Brisbane incorporated in 1961, the rail yard was located in an incorporated part of San Mateo County. The town of Brisbane lies on San Bruno Mountain, south of the yard and physically separated by hills. Brisbane was subdivided for the first time in 1908 but no streets or utilities were installed and the area remained limited to a few roadhouses near the old county road (today's Bayshore Boulevard) and pastures. Growth was slow until the 1930s when more than 400 houses were built on the hill sides on 25 foot wide lots between 1929 and 1933. By 1942, the population was about 3,000 and it increased to 4,000 by 1960.⁹

United States Department of the Interior
National Park Service

National Register of Historic Places Continuation Sheet

Southern Pacific Railroad Bayshore Roundhouse, San Mateo, CA

Section number 8 Page 3

Southern Pacific History

The Southern Pacific Railroad had significant impact on the West, the state of California, and the San Francisco Bay Area. Many believe that the Southern Pacific had a baneful effect on the state's economic development because of its monopolistic practices, dominance of shipping rates, land holdings, and political clout. A more recent view sees the Southern Pacific as more aligned with the public welfare and as "a major force in shaping agricultural, industrial, commercial, and urban growth and modernization."¹⁰ In any case, the Southern Pacific impacts were far reaching in the settlement and development of California in the 19th and early 20th century.

The antecedents of the Southern Pacific began in 1861 when railroad engineer Theodore Judah convinced Collis P. Huntington, Leland Stanford, Charles Crockett and Mark Hopkins, to build the western leg of the transcontinental railroad over the Sierra Nevada Mountains with the creation of the Central Pacific Railroad. After Judah's death in 1863, the Big Four, as they later became known, would subsequently run an ever expanding railroad enterprise for several decades though a complex arrangement of many companies and subsidiaries.¹¹

At about the time of Judah's death, another railroad was completed running between San Francisco and San Jose. In 1864, the San Francisco and San Jose Railroad (SF&SJ) began running trains from San Jose to San Bruno along the present day Caltrain route. At San Bruno, the line curved west to avoid the San Bruno Mountain and entered San Francisco near Lake Merced. The steam trains ran through San Francisco neighborhoods to a terminal at 25th and Valencia Streets.¹² The backers of the SF&SJ railroad also attempted to build a transcontinental line but they hoped to go several hundred miles south and then turn east around the Sierra Nevada Mountains. They renamed their railroad the Southern Pacific. The Big Four acquired this railroad in 1870, kept the name, and rapidly pushed it south to Los Angeles (1876), Tucson (1880), El Paso (1881), and finally New Orleans (1883).¹³

By the 1890s, C.P. Huntington was the last survivor of the Big Four and the Southern Pacific (SP) was one of the largest transportation companies in the world with oceanic steamships, ferries, interurban trains, and 8,000 miles of track.¹⁴ In 1901, Edward H. Harriman, who had acquired the Union Pacific Railroad in 1897, assumed financial control of the Southern Pacific after Huntington's death. Harriman unified the Union Pacific and Southern Pacific railroads under a single management. Acknowledged at the time as "the most competent railroad man in the world," Harriman rehabilitated the Union Pacific railroad and was determined to rehabilitate the Southern Pacific by reducing curvature, lowering grades, and improving the rolling stock.¹⁵

United States Department of the Interior
National Park Service

National Register of Historic Places Continuation Sheet

Southern Pacific Railroad Bayshore Roundhouse, San Mateo, CA

Section number 8 Page 4

Creation of the Bayshore Yard and Roundhouse 1904-1908

During the next eight years (1901-1909), Harriman spent \$247 million on the Southern Pacific Railroad, twenty times more than was spent in the previous eight years.¹⁶ As part of a campaign to rehabilitate and modernize the Southern Pacific and other railroads under his control, Harriman built new sidings, expanded block signals, laid millions of tons of ballast, installed heavier rail, built stronger bridges, and bought real estate for new terminals. He also completed three, multimillion dollar projects: the Lucin Cutoff across the Great Salt Lake in Utah (opened 1904), the Montavlo cut-off south of Santa Barbara (opened 1904), and the Bayshore cut-off (opened 1907).¹⁷ The Bayshore yard contains the roundhouse subject to this nomination.

The Bayshore Cut-off involved rerouting the line east from San Bruno and then north along the bay. This new route avoided the narrow right of way, sharp curves, steep grades and San Franciscans' bitter opposition to trains running through their backyards of the original route.¹⁸ The Bayshore route required filling the bay at several places, boring five tunnels, and building a long trestle, but it increased capacity and reduced operating costs.¹⁹

As part of the project, the cove at Visitation Valley was filled in with tailings from the tunnels. More than 200 acres were reclaimed from the bay to make room for the railroad right of way and for the construction of a major marshalling yard with extensive maintenance facilities. This yard would supplant the cramped San Francisco machine shops at 16th Street and the car repair and roundhouse at Mariposa Street (Mission Bay). The new yard, called Bayshore, was 8,400 feet long and included a roundhouse, machine shop, car shops, and a hump²⁰ for making up train consists, the second to be built on the Pacific coast.²¹

Bayshore was one of several yards and roundhouses that were located along the route from San Francisco to Santa Barbara. This route was administered by the Southern Pacific's Coast Division. Coast Division roundhouses were located at Mission Bay (San Francisco), Bayshore, San Jose, Watsonville Junction, San Luis Obispo, and Santa Barbara. The Mission Bay, San Jose, and Santa Barbara facilities primarily provided light service while Bayshore and San Luis Obispo conducted heavier repairs. During the 1920s, the Manager of Development for the Southern Pacific Railroad claimed that the Bayshore yard held the distinction for maintaining nearly all the 179 locomotives operated by the Coast Division.²² This implies a heavy utilization of the Bayshore roundhouse. The Southern Pacific used the Bayshore yard for major railcar rehabilitation and locomotive maintenance from 1914 to 1983.²³

United States Department of the Interior
National Park Service

National Register of Historic Places Continuation Sheet

Southern Pacific Railroad Bayshore Roundhouse, San Mateo, CA

Section number 8 Page 5

Bayshore Yard

The roundhouse was one of many buildings and structures constructed at the Bayshore yard. The bulk of the construction took place from 1907 through 1920, although additions were made in later years. The roundhouse was under construction from about 1908 and was completed by the end of 1910, making it the first, or one of first, buildings built in the yard and the only one still extant.²⁴ The freight car repair shop was operating by November 1917 and the passenger shops were expected to open in December.²⁵

By 1920, the yard contained a freight car repair shop, passenger coach repair shop, machine shop, store, and two 150-ton track scales. Under construction was a tank and boiler shop.²⁶ In 1921, Bayshore yard's repair and heavy locomotive repair shops were handling 42,000 cars a month on 64 outbound and inbound tracks and 21 repair tracks. By the mid twenties, the yard employed 1,196 employees who earned an average of \$164.31 month.²⁷ Some of these workers were apprentices, men aged 16-21, who took instruction on becoming railroad mechanics in one of eleven trades. Enrollment was open and,

Preference is given to the sons of employees but any willing ambitious young man between 16 and 21 who can read and write and understands ordinary arithmetic will receive consideration...²⁸

Although apprenticeships were limited to males, during the first World War 100,000 women worked in the nation's railroads, which were operating under the temporary control of the federal government through the United States Railroad Administration. Apparently, no women were employed in the Bayshore yard during WWI, although women were employed elsewhere during the war by the Southern Pacific.²⁹

Many skilled workers were employed at a roundhouse including boilermakers, machinists, sheet metal fabricators, painters, carpenters, blacksmiths, and pipefitters. Unskilled or semi-skilled workers were wipers (who cleaned the locomotives), oilers, ash-pit men, and hostlers (who drove the engines into the roundhouse). Boilermakers repaired or cleaned boiler tubes, a dirty and dangerous occupation, and they received some of the highest wages, \$2.94 for a 10-hour day in 1874 on the Sante Fe Railroad, for example. Machinists were paid slightly more \$3.02/day for their skills fabricating metal parts of the locomotives. Railroad engineers were highest paid at \$3.55/day.³⁰

United States Department of the Interior
National Park Service

National Register of Historic Places
Continuation Sheet

Southern Pacific Railroad Bayshore Roundhouse, San Mateo, CA

Section number 8 Page 6

The challenging life of a roundhouse foreman on the Southern Pacific was chronicled in 1920:

The roundhouse foreman, to a certain extent, must be familiar with all of the trades in connection with the upkeep of the locomotive. He must be conversant with all of the rules as required by the Federal and State laws and regulations governing the upkeep and care of locomotive, boilers and tender and stationary plants. He must know the engineers' and firemen's agreements and rules that govern shop crafts. He must also be temperamentally fitted to the job, for his patience is sometimes tested to the limit. In addition to this he must be something of a diplomat...He must have a good stiff backbone, and if he has a hide like an armadillo so much the better, for he is the shock-absorber and the target of most of the slings and arrows of criticism directed at his department...it is the roundhouse foreman's good judgment to a great extent that keeps the trains moving."³¹

The Bayshore yard served one of the business segments on the entire Southern Pacific (SP) system. During the 1920s, Bayshore handled 22 million gross tons per mile, making it SP's heaviest traveled stretch of track.³² While the 1930s saw a fall off in traffic, the line again became the heaviest on the SP system during World War II with 46.5 million gross tons per mile in 1943. Little has been recorded about activities at the yard during the war. It is known that special blackout hoods to shield headlights, signal lights, and markers from enemy planes were fabricated in Bayshore Yard for use during WWII.³³ Women were employed during the war at Bayshore as were workers from Mexico.³⁴

After the war, diesel powered locomotives supplanted and then replaced steam powered locomotives across the country including the Southern Pacific. Diesel freight engines were introduced by SP in 1948 and diesel switchers entered service on Coast Division in 1950. Steam locomotives were phased out on the Coast line during mid 1950s and the last use of steam engines was on the San Francisco Peninsula commuter service on January 22, 1957.³⁵

Diesel engines require considerably less maintenance than steam engines and roundhouses were largely obsolete by the late 1950s with the end of steam.³⁶ Southern Pacific's steam facilities were quickly closed: the Santa Barbara roundhouse closed in 1956; steam facilities at San Luis Obispo and Watsonville Junction closed in 1957; and the Mission Bay roundhouse was closed in 1960. None of these roundhouses are extant. In 1957, Bayshore became a graveyard for steam engines waiting to be scrapped.³⁷

The Bayshore yard declined as San Francisco became less important as a freight terminal after WWII. The Western and Coast divisions were combined in 1964 with Oakland becoming the

United States Department of the Interior
National Park Service

National Register of Historic Places Continuation Sheet

Southern Pacific Railroad Bayshore Roundhouse, San Mateo, CA

Section number 8 Page 7

hub of operations in the Bay Area. Further consolidations occurred along the line during the 1960s with closing of Santa Barbara and San Luis Obispo yards.³⁸ In the spring of 1979, Bayshore yard was phased out and facilities were dismantled over next several years.³⁹ One of the last demolitions occurred in 2000 when a permit was issued by the City of Brisbane for the demolition of seven structures containing about 3,000 square feet and identified as "the old firehouse and abandoned buildings and fragment walls."⁴⁰ The only buildings that currently remain are the roundhouse, the adjacent former tank and boiler shop (rented by the Lazzari Fuel Company), and two or three wood, one-story buildings at the northern end of the yard. The roundhouse suffered a fire on September 1, 2001 which burned about one half of the roof.⁴¹

The Significance of the Railroad Roundhouse Property Type

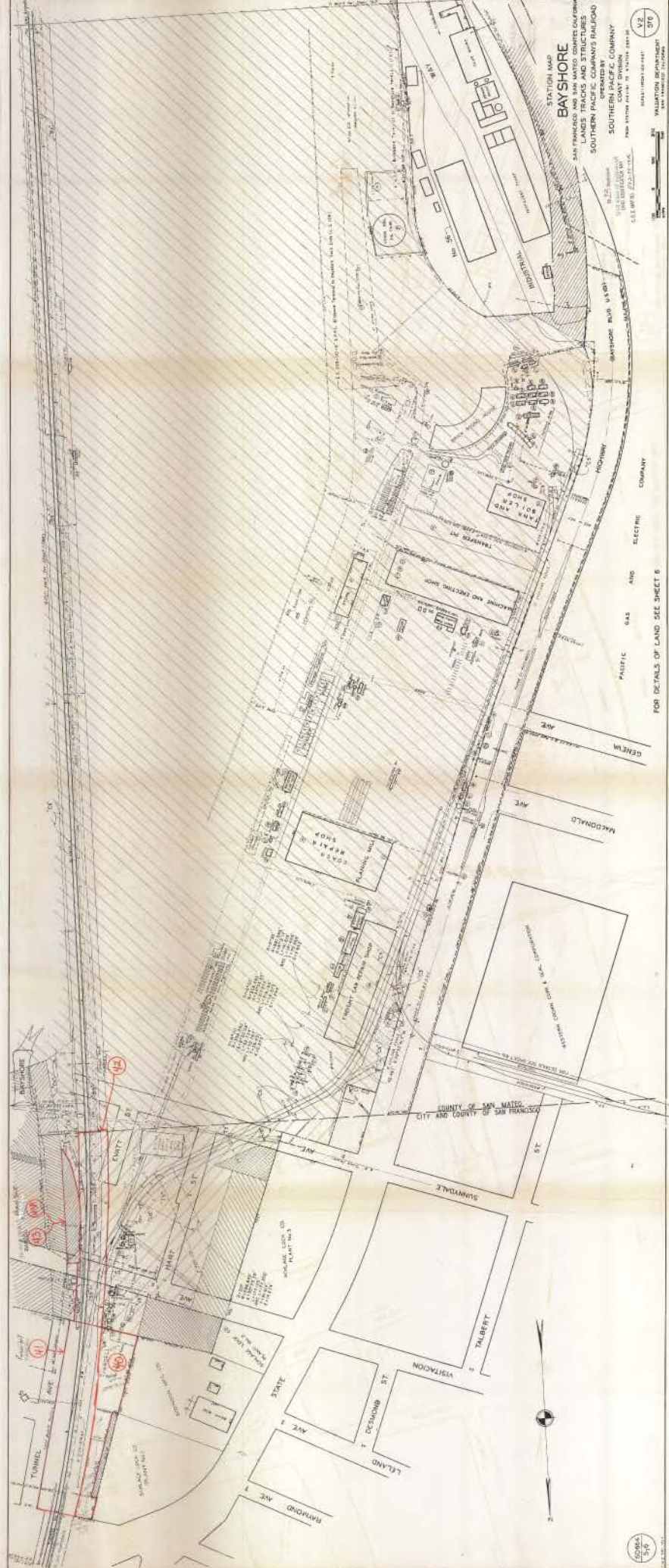
The Bayshore roundhouse is the only surviving roundhouse built by Southern Pacific in California. It embodies the distinctive characteristics of the type, period, and method of construction used in roundhouses of the steam era in the early 20th century. It is also the only surviving roundhouse of any railroad in California, not counting a few small or specialized railroads.⁴² The City of Brisbane lists the roundhouse as a historic resource.⁴³

During the steam era, locomotives required constant maintenance and most of this work took place in roundhouses where engines were serviced and repaired between runs.⁴⁴ The basic roundhouse structure was a building with a circular footprint. Railroad tracks were arranged radially. Each track led to a separate bay or "stall." Stalls could be used for storage, light service, or heavy service, depending on the setup of the roundhouse. The roundhouse was a compact solution to the need to house steam locomotives that were generally designed to run in the forward direction with only a limited ability to back up. Although commonly called a roundhouse, completely circular roundhouses appear to have been rare in the west. Instead, roundhouses were built in semi-circular designs in varying degrees. The circle was often completed with a number of outdoor tracks, as is the case with the Bayshore roundhouse.⁴⁵ Even though it was never built out to its intended 40 stalls, the Bayshore roundhouse was one of the larger roundhouses in California.

An integral feature of most roundhouses was its turntable, a device for positioning locomotives so they could enter a stall for servicing.⁴⁶ Turntables were the most compact solution to the problem of re-orienting locomotives. A rotating bridge structure, or "turntable," pivoted about the center of a circular pit with masonry walls, in this case concrete. This rotating structure allowed for access to all of the tracks within the roundhouse. The bridge structure would be positioned to allow a locomotive to access the turntable deck from the entrance track. The

EXHIBIT D

**Interstate Commerce Commission, Valuation Department,
Station Map Bayshore**



STATION MAP
BAY SHORE
SAN FRANCISCO AND SAN MATEO COUNTIES CALIFORNIA
SOUTHERN PACIFIC COMPANY'S RAILROAD
OPERATED BY
SOUTHERN PACIFIC COMPANY
FROM STATION MAP TO STATION MAP
SCALE 1" = 100' 1" = 100' 1" = 100'

V2
576

FOR DETAILS OF LAND SEE SHEET 6

V2
576

EXHIBIT E

Verified Statement of Gregory Vilkin

**BEFORE THE
TRANSPORTATION BOARD**

STB DOCKET NO. FD 36660

BAYLANDS DEVELOPMENT, INC. – PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT OF GREGORY VILKIN

1. I am Gregory Vilkin, Chief Executive Officer (“CEO”) of the Baylands Development Inc., a California corporation (“Baylands”). I have held this position since 2018. Prior to 2018, I served as president of several other real estate development companies dating back to 1990 and have been in the real estate industry since 1982.
2. Baylands is a non-affiliated fee manager and developer hired by Visitacion Investment, LLC (“Visitacion”) and Sunquest Properties, Inc. (“Sunquest”), both of which are also California limited liability companies. Baylands, Visitacion, and Sunquest are non-railroad real estate development companies.
3. As described in greater detail below, Visitacion and Sunquest own adjoining property on the site of the former Southern Pacific Transportation Company’s (“Southern Pacific”) Bayshore Yard. Visitacion’s property (the “Visitacion Property”) is located in the City and County of San Francisco. Sunquest’s property (the “Sunquest Property”) is located in the City of Brisbane, San Mateo County. Both properties abut an abandoned railroad Spur and are burdened by the associated easements purportedly remaining on the spur. A map of the spur and the associated easements are depicted in the map attached as **Exhibit A** to the Petition. Visitacion and Sunquest have hired Baylands to develop their respective properties in a fully coordinated manner.
4. In my capacity as CEO of Baylands I am familiar with the layout of the Visitacion Property and the Sunquest Properties, their current use and development status, the proposed

development plans for both properties and their relationship with the surrounding area. Furthermore, I have reviewed the relevant conveyance documents for these properties and am familiar with their history of acquisition. Based on my position and review of relevant documentation, I am also familiar with Visitacion's and Sunquest's plans for development of the properties owned by them, and of the engagement with governmental bodies and processes to date in implementing those plans. Furthermore, in my position as Baylands CEO, I am familiar with the recent disputes with Mr. Patrick McNerney and the relevant companies associated with him, 424 Jessie Historic Properties ("JHP") and Martin Building Company, regarding purported ownership of easements over the properties owned by Visitacion and the development adjacent to the Visitacion property that Mr. McNerney and his affiliated entities have proposed. I make the following statements based on this knowledge in support of this Petition for Declaratory Order ("Petition").

5. In 1989 and 1990, Southern Pacific sold the Bayshore Yard site to the predecessors in interest to the current owners, Visitacion, and Sunquest. At the time of this conveyance, Southern Pacific reserved a "Rail Easement" consisting of "Schedules": a "Railroad Main Line" easement and a "Drill and Spur Track Easement" for the portion of the spur track located across Visitacion's property and a Drill and Spur Track Easement and a Drill Track Connection Easement for the portion of the spur track located across Sunquest's property (together the "Spur"). The Spur is depicted in the map attached as **Exhibit A**. The Spur extends south beyond the southernmost boundary of the Visitacion Property and terminates on the Sunquest Property.
6. Southern Pacific also reserved an "Access Roadway Easement" for a vehicular access road across Visitacion's property ("Access Road"). The Access Road ends at the endpoint of Sunnydale Avenue and is depicted in the map attached as Exhibit A. The Access Road has always been used for only vehicular purposes and did not have track on it.

7. There are no tracks or rail-related infrastructure remaining within the Spur. Historical aerial photographs of the Visitacion Property, attached as **Attachment 1** to this Verified Statement, indicate that the last of the tracks on the Spur were completely removed nearly a decade ago.
8. There are no rail-served tenants on the Visitacion Property or the Sunquest Property, the only properties that can be served via the Spur, and there has not been any rail service or other freight rail related activities conducted on the Spur for many years. The Schlage Lock buildings and most other buildings on the Bayshore Yard site have been demolished and practically all of the entire Bayshore Yard's track, infrastructure, and connections to adjacent properties were removed years ago.
9. A review of publicly available historical aerial and street images, attached as **Attachment 1**, indicate that previously there was a grade crossing connecting the Spur to track and properties on the other side of Bayshore Boulevard, but that all of the rail-related grade crossing infrastructure was completely removed nearly 10 years ago.
10. In 2009, the City of San Francisco ("City") approved an application by Visitacion and Baylands to redevelop the Visitacion Property. In 2014, the City approved the "Visitacion Design", which revised elements of the proposal for the Visitacion Property, and enacted changes to the City's planning and zoning code in conformance with this approval. Excerpts from the Visitacion Design are attached as **Exhibit I** to the Petition.
11. Similar to the original proposal, the Visitacion Design proposes use of the site for mixed use residential and commercial development with park and public spaces, vehicular streets connecting the Visitacion Property to the broader road network, as well as pedestrian access to the nearby Bayshore Caltrain commuter rail station. The Visitacion Design proposes the construction of 1,679 new residential units on the Visitacion Property, to be developed in phases. Fifteen percent of these, or 251 units, will qualify as affordable housing under the

City's regulations, while all of the new market-rate units are expected to be affordable to middle income families based on the prevailing market affordability of the neighborhood.

12. As documented in the City's packet documenting approval of the Visitacion Design, excerpts of which are attached at **Exhibit I**, Visitacion, Baylands, and their affiliates have worked with the City and residents and businesses of the surrounding communities for over 20 years to plan for the remediation and redevelopment of the former Bayshore Yard and neighboring properties.
13. Likewise, Baylands has also participated in an extensive consultation and review process with the adjacent City of Brisbane for development of the portion of the old Bayshore Yard within the County of San Mateo owned by Sunquest. Baylands has submitted for consideration a proposal for redevelopment of the Sunquest property for commercial and residential purposes. As a result of this process, the City of Brisbane's General Plan provides for commercial and residential development over the portion of the former Bayshore Yard site abutting the Visitacion Property.¹ The redevelopment plans for the Sunquest Property are consistent with the Visitacion Design for the adjacent Visitacion Property.
14. Bayland's work and the Visitacion Design reflect that there are no current or future plans to seek rail service for the Visitacion Property or the Sunquest Property, no plans to develop these respective properties for rail purposes and not intent to accommodate tenants who would need or want rail service. Such uses would be contrary to the Visitacion Design as approved by the City and the proposals for the Sunquest property.
15. Property records indicate that, in 2015, the Union Pacific Railroad Company ("UP"), successors in interest to Southern Pacific, sold the portion of the Drill and Spur Tract Easement and the Access Road Easement on the Visitacion property to Mr. Patrick

¹ The City of Brisbane's General Plan can be found here: <https://www.brisbaneca.org/cd/page/general-plan>.

McNerney. In the same transaction, UP also sold two properties, located at 2201 Bayshore Boulevard and 220 Tunnel Avenue (collectively, the “JHP Property”) to Mr. Patrick McNerney. Property records indicate that, in 2016, Mr. McNerney conveyed the JHP Property and the easements on the Visitacion property to JHP.

16. UP did not sell the portion of the Drill and Spur Tract Easement or the Drill Track Connection Easement on the Sunquest property and retains ownership of those easements.
17. UP also retained the Railroad Main Line easement, which now constitutes part of the Peninsula Corridor and is not at issue in this proceeding or is affected by it.
18. The Access Road provides vehicular access over the Visitacion Property between the JHP Property and the public road network via Sunnydale Avenue. The JHP Property also abuts Blanken Avenue to the north and could be accessed from Blanken Avenue with additional investment in the property.
19. The Spur does not physically connect to the JHP Property, and instead connects with the Peninsula Corridor directly from the Visitacion Property. Accordingly, it is neither necessary nor even possible for the JHP Property to be served via the Spur.
20. Other than a three-month period in 2019 when Proven Management, Inc. used the Access Road to park its vehicles on the JHP Property while working for the Peninsula Corridor Electrification Project, I am not aware of any use of the Access Road since Mr. McNerney acquired them from UP in 2015.
21. I understand that, in 2016, Mr. McNerney submitted an application (the “McNerney Application”) seeking to redevelop the JHP Property as high density residential housing. I have reviewed the McNerney Application, and it is not consistent with use of the JHP Property for rail purposes. The McNerney Application is also inconsistent or with the Visitacion Design, which calls for that area to be used as a public park space. To my knowledge, the McNerney Application has not been approved.

22. Notwithstanding the City's approval of the Visitacion Design and no current use or current or future need for rail service to the Visitacion Property, JHP has asserted its ownership in its alleged easements for a portion of the Spur and for the Access Road. When Baylands and Visitacion attempted to resolve the matter with JHP, JHP only exhibited an intent to leverage the easements to derail the Visitacion Design and extract concessions for its own development proposal on the JHP Property.
23. In 2019, Visitacion initiated a quiet title action in the San Francisco County Superior Court ("Superior Court") seeking a determination that the easements on the Visitacion property for the Spur and Access Road were abandoned. The scope of the suit focused primarily on use of the rights associated with the easement for vehicular access to the JHP Property and the possibility of use of the Drill and Spur Track Easement for communications utilities. The Superior Court denied Visitacion's quiet title action, a decision that Visitacion is appealing.
24. The Superior Court's decision has now raised the possibility of common carrier service on the Spur. Any common carrier service on the Spur, or even the possibility of such service, would prevent the redevelopment plans of the Visitacion Property and the Sunquest Property as envisioned and proposed. Planning for reactivation and common carrier activities on the Spur would require significant alteration of these redevelopment plans, including reduction in 100 residential housing units, resulting in a negative impact of \$10 million to Baylands. This impact would not only undermine the goal of providing affordable housing to the area but would also reduce sellable square footage and, therefore, adversely impact the current financial strategy and feasibility of the project. Additionally, planning for preservation of the Spur as an active (or potentially active) common carrier rail line would undermine the character and urban design of the redevelopment, which

would adversely impact local community benefits and Bayland's ability to market its constructed units.

25. Mr. McNerney and JHP have represented in the Superior Court proceedings their continued use of the easements for vehicular access and prospective utility use. Under the Visitacion Design, access to JHP's property adjacent to the Peninsula Corridor will be improved, as the street grid layout of the surrounding neighborhood will be extended into the Visitacion Property. JHP's property will have direct street access once the Visitacion Design is completed.

I, Gregory Vilkin, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Statement in support of Baylands' Petition for Declaratory Order.

Executed on February 21, 2023.

Greg Vilkin

Greg Vilkin (Feb 21, 2023 17:41 PST)

Gregory Vilkin
CEO, Baylands Development Inc.
2201 Bayshore Blvd
San Francisco, CA 94134

EXHIBIT E, ATTACHMENT 1

Aerial Photographs of Former Bayshore Yard

Bayshore
Spur and Crossing
February 2004
(Source: Google Earth)

Bayshore Blvd

Residual grade
crossing
infrastructure

Residual track
infrastructure

Google Earth

Image U.S. Geological Survey



Bayshore
Spur and Crossing
June 2011
(Source: Google Earth)

Bayshore Blvd

Residual grade
crossing
infrastructure

No residual
track
infrastructure

Google Earth



Bayshore
Spur and Crossing
February 2014
(Source: Google Earth)

No residual grade
crossing
infrastructure

No residual
track
infrastructure

Google Earth



EXHIBIT F

**U.S. Department of Transportation Crossing Inventory
Form for DOT Crossing Number 754801B**

U. S. DOT CROSSING INVENTORY FORM

DEPARTMENT OF TRANSPORTATION

FEDERAL RAILROAD ADMINISTRATION

OMB No. 2130-0017

Instructions for the initial reporting of the following types of new or previously unreported crossings: For public highway-rail grade crossings, complete the entire inventory Form. For private highway-rail grade crossings, complete the Header, Parts I and II, and the Submission Information section. For public pathway grade crossings (including pedestrian station grade crossings), complete the Header, Parts I and II, and the Submission Information section. For Private pathway grade crossings, complete the Header, Parts I and II, and the Submission Information section. For grade-separated highway-rail or pathway crossings (including pedestrian station crossings), complete the Header, Part I, and the Submission Information section. For changes to existing data, complete the Header, Part I Items 1-3, and the Submission Information section, in addition to the updated data fields. Note: For private crossings only, Part I Item 20 and Part III Item 2.K. are required unless otherwise noted. An asterisk * denotes an optional field.

A. Revision Date (MM/DD/YYYY) 11 / 13 / 2002	B. Reporting Agency ☒ Railroad ☐ Transit ☐ State ☐ Other	C. Reason for Update (Select only one) ☐ Change in Data ☐ Re-Open ☐ New Crossing ☐ Date Change Only ☒ Closed ☐ Change in Primary Operating RR ☐ No Train Traffic ☐ Admin. Correction ☐ Quiet Zone Update	D. DOT Crossing Inventory Number 754801B
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Part I: Location and Classification Information

1. Primary Operating Railroad Union Pacific Railroad Company [UP]		2. State CALIFORNIA		3. County SAN MATEO	
4. City / Municipality ☒ In DALY CITY ☐ Near		5. Street/Road Name & Block Number BAYSHORE BLVD (Street/Road Name) * (Block Number)		6. Highway Type & No. CITY	
7. Do Other Railroads Operate a Separate Track at Crossing? ☐ Yes ☒ No If Yes, Specify RR			8. Do Other Railroads Operate Over Your Track at Crossing? ☐ Yes ☒ No If Yes, Specify RR		
9. Railroad Division or Region ☐ None WESTERN		10. Railroad Subdivision or District ☐ None SAN FRANCISCO		11. Branch or Line Name ☐ None COAST ROUTE	
12. RR Milepost 0005.35 (prefix) (nnnn.nnn) (suffix)					
13. Line Segment * E-5.35-C		14. Nearest RR Timetable Station * BAYSHORE		15. Parent RR (if applicable) ☐ N/A	
16. Crossing Owner (if applicable) ☐ N/A					
17. Crossing Type ☒ Public ☐ Private		18. Crossing Purpose ☒ Highway ☐ Pathway, Ped. ☐ Station, Ped.		19. Crossing Position ☒ At Grade ☐ RR Under ☐ RR Over	
20. Public Access (if Private Crossing) ☐ Yes ☐ No		21. Type of Train ☐ Freight ☐ Intercity Passenger ☐ Commuter		☐ Transit ☐ Shared Use Transit ☐ Tourist/Other	
22. Average Passenger Train Count Per Day ☐ Less Than One Per Day ☐ Number Per Day 0					
23. Type of Land Use ☐ Open Space ☐ Farm ☐ Residential ☐ Commercial ☒ Industrial ☐ Institutional ☐ Recreational ☐ RR Yard					
24. Is there an Adjacent Crossing with a Separate Number? ☐ Yes ☐ No If Yes, Provide Crossing Number			25. Quiet Zone (FRA provided) ☒ No ☐ 24 Hr ☐ Partial ☐ Chicago Excused Date Established		
26. HSR Corridor ID ☐ N/A		27. Latitude in decimal degrees (WGS84 std: nn.nnnnnnn) 37.6851010		28. Longitude in decimal degrees (WGS84 std: -nnn.nnnnnnn) -122.4656980	
				29. Lat/Long Source ☐ Actual ☐ Estimated	
30.A. Railroad Use *			31.A. State Use *		
30.B. Railroad Use *			31.B. State Use *		
30.C. Railroad Use *			31.C. State Use *		
30.D. Railroad Use *			31.D. State Use *		
32.A. Narrative (Railroad Use) *			32.B. Narrative (State Use) *		
33. Emergency Notification Telephone No. (posted) 800-848-8715		34. Railroad Contact (Telephone No.)		35. State Contact (Telephone No.) 213-576-7078	

Part II: Railroad Information

1. Estimated Number of Daily Train Movements				
1.A. Total Day Thru Trains (6 AM to 6 PM) 0	1.B. Total Night Thru Trains (6 PM to 6 AM) 0	1.C. Total Switching Trains 4	1.D. Total Transit Trains	1.E. Check if Less Than One Movement Per Day ☐ How many trains per week?
2. Year of Train Count Data (YYYY)		3. Speed of Train at Crossing 3.A. Maximum Timetable Speed (mph) 10 3.B. Typical Speed Range Over Crossing (mph) From 1 to 5		
4. Type and Count of Tracks Main 0 Siding Yard Transit Industry				
5. Train Detection (Main Track only) ☐ Constant Warning Time ☐ Motion Detection ☐ AFO ☐ PTC ☒ DC ☐ Other ☐ None				
6. Is Track Signaled? ☐ Yes ☒ No		7.A. Event Recorder ☐ Yes ☐ No		7.B. Remote Health Monitoring ☐ Yes ☐ No

U. S. DOT CROSSING INVENTORY FORM

A. Revision Date (MM/DD/YYYY) 11/13/2002		PAGE 2		D. Crossing Inventory Number (7 char.) 754801B	
Part III: Highway or Pathway Traffic Control Device Information					
1. Are there Signs or Signals? ☒ Yes ☐ No		2. Types of Passive Traffic Control Devices associated with the Crossing			
2.A. Crossbuck Assemblies (count) 0		2.B. STOP Signs (R1-1) (count) 0	2.C. YIELD Signs (R1-2) (count)	2.D. Advance Warning Signs (Check all that apply; include count) ☒ None ☐ W10-1 ☐ W10-3 ☐ W10-11 ☐ W10-2 ☐ W10-4 ☐ W10-12	
2.E. Low Ground Clearance Sign (W10-5) ☐ Yes (count _____) ☐ No		2.F. Pavement Markings ☒ Stop Lines ☐ Dynamic Envelope ☒ RR Xing Symbols ☐ None		2.G. Channelization Devices/Medians ☐ All Approaches ☐ Median ☐ One Approach ☐ None	
2.H. EXEMPT Sign (R15-3) ☐ Yes ☐ No		2.I. ENS Sign (I-13) Displayed ☐ Yes ☐ No		2.J. Other MUTCD Signs ☐ Yes ☒ No Specify Type _____ Count _____ Specify Type _____ Count _____ Specify Type _____ Count _____	
2.K. Private Crossing Signs (if private) ☐ Yes ☐ No		2.L. LED Enhanced Signs (List types)			
3. Types of Train Activated Warning Devices at the Grade Crossing (specify count of each device for all that apply)					
3.A. Gate Arms (count) Roadway 0 Pedestrian _____		3.B. Gate Configuration ☐ 2 Quad ☐ Full (Barrier) Resistance ☐ 3 Quad ☐ Median Gates ☐ 4 Quad		3.C. Cantilevered (or Bridged) Flashing Light Structures (count) Over Traffic Lane 2 ☐ Incandescent Not Over Traffic Lane 0 ☐ LED	
3.D. Mast Mounted Flashing Lights (count of masts) 4 ☐ Incandescent ☐ LED ☐ Back Lights Included ☐ Side Lights Included		3.E. Total Count of Flashing Light Pairs 0		3.F. Installation Date of Current Active Warning Devices: (MM/YYYY) ____/____/____ ☐ Not Required	
3.G. Wayside Horn ☐ Yes Installed on (MM/YYYY) ____/____/____ ☐ No		3.H. Highway Traffic Signals Controlling Crossing ☐ Yes ☒ No		3.I. Bells (count) 4	
3.J. Non-Train Active Warning ☐ Flagging/Flagman ☐ Manually Operated Signals ☐ Watchman ☐ Floodlighting ☐ None				3.K. Other Flashing Lights or Warning Devices Count 0 Specify type _____	
4.A. Does nearby Hwy Intersection have Traffic Signals? ☐ Yes ☐ No		4.B. Hwy Traffic Signal Interconnection ☐ Not Interconnected ☐ For Traffic Signals ☐ For Warning Signs		4.C. Hwy Traffic Signal Preemption ☐ Simultaneous ☐ Advance	
5. Highway Traffic Pre-Signals ☐ Yes ☐ No Storage Distance * _____ Stop Line Distance * _____		6. Highway Monitoring Devices (Check all that apply) ☐ Yes - Photo/Video Recording ☐ Yes - Vehicle Presence Detection ☐ None			
Part IV: Physical Characteristics					
1. Traffic Lanes Crossing Railroad ☐ One-way Traffic ☐ Two-way Traffic Number of Lanes 6 ☐ Divided Traffic		2. Is Roadway/Pathway Paved? ☒ Yes ☐ No		3. Does Track Run Down a Street? ☐ Yes ☒ No	
4. Is Crossing Illuminated? (Street lights within approx. 50 feet from nearest rail) ☐ Yes ☐ No		5. Crossing Surface (on Main Track, multiple types allowed) Installation Date * (MM/YYYY) ____/____/____ Width * _____ Length * _____ ☐ 1 Timber ☒ 2 Asphalt ☐ 3 Asphalt and Timber ☐ 4 Concrete ☐ 5 Concrete and Rubber ☐ 6 Rubber ☐ 7 Metal ☐ 8 Unconsolidated ☐ 9 Composite ☐ 10 Other (specify) _____			
6. Intersecting Roadway within 500 feet? ☐ Yes ☒ No If Yes, Approximate Distance (feet) _____		7. Smallest Crossing Angle ☐ 0° - 29° ☒ 30° - 59° ☐ 60° - 90°		8. Is Commercial Power Available? * ☒ Yes ☐ No	
Part V: Public Highway Information					
1. Highway System ☐ (01) Interstate Highway System ☒ (02) Other Nat Hwy System (NHS) ☐ (03) Federal AID, Not NHS ☐ (08) Non-Federal Aid		2. Functional Classification of Road at Crossing ☐ (0) Rural ☒ (1) Urban ☐ (1) Interstate ☐ (5) Major Collector ☐ (2) Other Freeways and Expressways ☒ (3) Other Principal Arterial ☐ (6) Minor Collector ☐ (4) Minor Arterial ☐ (7) Local		3. Is Crossing on State Highway System? ☐ Yes ☒ No 5. Linear Referencing System (LRS Route ID) * _____ 6. LRS Milepost * _____	
7. Annual Average Daily Traffic (AADT) Year 1989 AADT 022000		8. Estimated Percent Trucks 10 %		9. Regularly Used by School Buses? ☐ Yes ☒ No Average Number per Day 0	
10. Emergency Services Route ☐ Yes ☐ No					
Submission Information - This information is used for administrative purposes and is not available on the public website.					
Submitted by _____ Organization _____ Phone _____ Date _____ Public reporting burden for this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. According to the Paperwork Reduction Act of 1995, a federal agency may not conduct or sponsor, and a person is not required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number for information collection is 2130-0017. Send comments regarding this burden estimate or any other aspect of this collection, including for reducing this burden to: Information Collection Officer, Federal Railroad Administration, 1200 New Jersey Ave. SE, MS-25 Washington, DC 20590.					

U. S. DOT CROSSING INVENTORY FORM

DEPARTMENT OF TRANSPORTATION

FEDERAL RAILROAD ADMINISTRATION

OMB No. 2130-0017

Instructions for the initial reporting of the following types of new or previously unreported crossings: For public highway-rail grade crossings, complete the entire inventory Form. For private highway-rail grade crossings, complete the Header, Parts I and II, and the Submission Information section. For public pathway grade crossings (including pedestrian station grade crossings), complete the Header, Parts I and II, and the Submission Information section. For Private pathway grade crossings, complete the Header, Parts I and II, and the Submission Information section. For grade-separated highway-rail or pathway crossings (including pedestrian station crossings), complete the Header, Part I, and the Submission Information section. For changes to existing data, complete the Header, Part I Items 1-3, and the Submission Information section, in addition to the updated data fields. Note: For private crossings only, Part I Item 20 and Part III Item 2.K. are required unless otherwise noted. An asterisk * denotes an optional field.

A. Revision Date (MM/DD/YYYY) 01 / 01 / 1989	B. Reporting Agency ☐ Railroad ☐ Transit ☒ State ☐ Other	C. Reason for Update (Select only one) ☒ Change in Data ☐ New Crossing ☐ Closed ☐ Re-Open ☐ Date Change Only ☐ Change in Primary Operating RR ☐ No Train Traffic ☐ Quiet Zone Update ☐ Admin. Correction	D. DOT Crossing Inventory Number 754801B
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Part I: Location and Classification Information

1. Primary Operating Railroad Union Pacific Railroad Company [UP]		2. State CALIFORNIA		3. County SAN MATEO	
4. City / Municipality ☒ In DALY CITY ☐ Near		5. Street/Road Name & Block Number BAYSHORE BLVD (Street/Road Name) * (Block Number)		6. Highway Type & No. CITY	
7. Do Other Railroads Operate a Separate Track at Crossing? ☐ Yes ☒ No If Yes, Specify RR			8. Do Other Railroads Operate Over Your Track at Crossing? ☐ Yes ☒ No If Yes, Specify RR		
9. Railroad Division or Region ☐ None WESTERN		10. Railroad Subdivision or District ☐ None SAN FRANCISCO		11. Branch or Line Name ☐ None COAST ROUTE	
12. RR Milepost 0005.35 (prefix) (nnnn.nnn) (suffix)					
13. Line Segment * E-5.35-C		14. Nearest RR Timetable Station * BAYSHORE		15. Parent RR (if applicable) ☐ N/A	
16. Crossing Owner (if applicable) ☐ N/A					
17. Crossing Type ☒ Public ☐ Private		18. Crossing Purpose ☒ Highway ☐ Pathway, Ped. ☐ Station, Ped.		19. Crossing Position ☒ At Grade ☐ RR Under ☐ RR Over	
20. Public Access (if Private Crossing) ☐ Yes ☒ No		21. Type of Train ☐ Freight ☐ Transit ☐ Intercity Passenger ☐ Shared Use Transit ☐ Commuter ☐ Tourist/Other		22. Average Passenger Train Count Per Day ☐ Less Than One Per Day ☐ Number Per Day 0	
23. Type of Land Use ☐ Open Space ☐ Farm ☐ Residential ☐ Commercial ☒ Industrial ☐ Institutional ☐ Recreational ☐ RR Yard					
24. Is there an Adjacent Crossing with a Separate Number? ☐ Yes ☐ No If Yes, Provide Crossing Number			25. Quiet Zone (FRA provided) ☒ No ☐ 24 Hr ☐ Partial ☐ Chicago Excused Date Established		
26. HSR Corridor ID ☐ N/A		27. Latitude in decimal degrees (WGS84 std: nn.nnnnnnn) 37.6851010		28. Longitude in decimal degrees (WGS84 std: -nnn.nnnnnnn) -122.4656980	
				29. Lat/Long Source ☐ Actual ☐ Estimated	
30.A. Railroad Use *			31.A. State Use *		
30.B. Railroad Use *			31.B. State Use *		
30.C. Railroad Use *			31.C. State Use *		
30.D. Railroad Use *			31.D. State Use *		
32.A. Narrative (Railroad Use) *			32.B. Narrative (State Use) *		
33. Emergency Notification Telephone No. (posted) 800-848-8715		34. Railroad Contact (Telephone No.)		35. State Contact (Telephone No.)	

Part II: Railroad Information

1. Estimated Number of Daily Train Movements				
1.A. Total Day Thru Trains (6 AM to 6 PM) 0	1.B. Total Night Thru Trains (6 PM to 6 AM) 0	1.C. Total Switching Trains 4	1.D. Total Transit Trains	1.E. Check if Less Than One Movement Per Day ☐ How many trains per week?
2. Year of Train Count Data (YYYY)		3. Speed of Train at Crossing 3.A. Maximum Timetable Speed (mph) 10 3.B. Typical Speed Range Over Crossing (mph) From 1 to 5		
4. Type and Count of Tracks Main 0 Siding Yard Transit Industry				
5. Train Detection (Main Track only) ☐ Constant Warning Time ☐ Motion Detection ☐ AFO ☐ PTC ☒ DC ☐ Other ☐ None				
6. Is Track Signaled? ☐ Yes ☒ No		7.A. Event Recorder ☐ Yes ☐ No		7.B. Remote Health Monitoring ☐ Yes ☐ No

U. S. DOT CROSSING INVENTORY FORM

A. Revision Date (MM/DD/YYYY) 01/01/1989		PAGE 2		D. Crossing Inventory Number (7 char.) 754801B	
Part III: Highway or Pathway Traffic Control Device Information					
1. Are there Signs or Signals? ☒ Yes ☐ No		2. Types of Passive Traffic Control Devices associated with the Crossing			
2.A. Crossbuck Assemblies (count) 0		2.B. STOP Signs (R1-1) (count) 0	2.C. YIELD Signs (R1-2) (count)	2.D. Advance Warning Signs (Check all that apply; include count) ☒ None ☐ W10-1 ☐ W10-3 ☐ W10-11 ☐ W10-2 ☐ W10-4 ☐ W10-12	
2.E. Low Ground Clearance Sign (W10-5) ☐ Yes (count _____) ☐ No		2.F. Pavement Markings ☒ Stop Lines ☐ Dynamic Envelope ☒ RR Xing Symbols ☐ None		2.G. Channelization Devices/Medians ☐ All Approaches ☐ Median ☐ One Approach ☐ None	
				2.H. EXEMPT Sign (R15-3) ☐ Yes ☐ No	
				2.I. ENS Sign (I-13) Displayed ☐ Yes ☐ No	
2.J. Other MUTCD Signs ☐ Yes ☒ No Specify Type _____ Count _____ Specify Type _____ Count _____ Specify Type _____ Count _____		2.K. Private Crossing Signs (if private) ☐ Yes ☐ No		2.L. LED Enhanced Signs (List types)	
3. Types of Train Activated Warning Devices at the Grade Crossing (specify count of each device for all that apply)					
3.A. Gate Arms (count) Roadway 0 Pedestrian _____	3.B. Gate Configuration ☐ 2 Quad ☐ Full (Barrier) ☐ 3 Quad Resistance ☐ 4 Quad Median Gates	3.C. Cantilevered (or Bridged) Flashing Light Structures (count) Over Traffic Lane 2 ☐ Incandescent Not Over Traffic Lane 0 ☐ LED		3.D. Mast Mounted Flashing Lights (count of masts) 4 ☐ Incandescent ☐ LED ☐ Back Lights Included ☐ Side Lights Included	3.E. Total Count of Flashing Light Pairs 0
3.F. Installation Date of Current Active Warning Devices: (MM/YYYY) ____/____/____ ☐ Not Required		3.G. Wayside Horn ☐ Yes Installed on (MM/YYYY) ____/____/____ ☐ No		3.H. Highway Traffic Signals Controlling Crossing ☐ Yes ☒ No	3.I. Bells (count) 4
3.J. Non-Train Active Warning ☐ Flagging/Flagman ☐ Manually Operated Signals ☐ Watchman ☐ Floodlighting ☐ None				3.K. Other Flashing Lights or Warning Devices Count 0 Specify type _____	
4.A. Does nearby Hwy Intersection have Traffic Signals? ☐ Yes ☐ No	4.B. Hwy Traffic Signal Interconnection ☐ Not Interconnected ☐ For Traffic Signals ☐ For Warning Signs	4.C. Hwy Traffic Signal Preemption ☐ Simultaneous ☐ Advance	5. Highway Traffic Pre-Signals ☐ Yes ☐ No Storage Distance * _____ Stop Line Distance * _____	6. Highway Monitoring Devices (Check all that apply) ☐ Yes - Photo/Video Recording ☐ Yes - Vehicle Presence Detection ☐ None	
Part IV: Physical Characteristics					
1. Traffic Lanes Crossing Railroad ☐ One-way Traffic ☐ Two-way Traffic Number of Lanes 6 ☐ Divided Traffic		2. Is Roadway/Pathway Paved? ☒ Yes ☐ No		3. Does Track Run Down a Street? ☐ Yes ☒ No	4. Is Crossing Illuminated? (Street lights within approx. 50 feet from nearest rail) ☐ Yes ☐ No
5. Crossing Surface (on Main Track, multiple types allowed) Installation Date * (MM/YYYY) ____/____/____ Width * _____ Length * _____ ☐ 1 Timber ☒ 2 Asphalt ☐ 3 Asphalt and Timber ☐ 4 Concrete ☐ 5 Concrete and Rubber ☐ 6 Rubber ☐ 7 Metal ☐ 8 Unconsolidated ☐ 9 Composite ☐ 10 Other (specify) _____					
6. Intersecting Roadway within 500 feet? ☐ Yes ☒ No If Yes, Approximate Distance (feet) _____			7. Smallest Crossing Angle ☐ 0° - 29° ☒ 30° - 59° ☐ 60° - 90°		8. Is Commercial Power Available? * ☒ Yes ☐ No
Part V: Public Highway Information					
1. Highway System ☐ (01) Interstate Highway System ☒ (02) Other Nat Hwy System (NHS) ☐ (03) Federal AID, Not NHS ☐ (08) Non-Federal Aid		2. Functional Classification of Road at Crossing ☐ (0) Rural ☒ (1) Urban ☐ (1) Interstate ☐ (5) Major Collector ☐ (2) Other Freeways and Expressways ☒ (3) Other Principal Arterial ☐ (6) Minor Collector ☐ (4) Minor Arterial ☐ (7) Local		3. Is Crossing on State Highway System? ☐ Yes ☒ No	4. Highway Speed Limit _____ MPH ☐ Posted ☐ Statutory
				5. Linear Referencing System (LRS Route ID) *	
				6. LRS Milepost *	
7. Annual Average Daily Traffic (AADT) Year 1989 AADT 022000		8. Estimated Percent Trucks 10 %	9. Regularly Used by School Buses? ☐ Yes ☒ No Average Number per Day 0		10. Emergency Services Route ☐ Yes ☐ No
Submission Information - This information is used for administrative purposes and is not available on the public website.					
Submitted by _____ Organization _____ Phone _____ Date _____					
Public reporting burden for this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. According to the Paperwork Reduction Act of 1995, a federal agency may not conduct or sponsor, and a person is not required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number for information collection is 2130-0017. Send comments regarding this burden estimate or any other aspect of this collection, including for reducing this burden to: Information Collection Officer, Federal Railroad Administration, 1200 New Jersey Ave. SE, MS-25 Washington, DC 20590.					

U. S. DOT CROSSING INVENTORY FORM

DEPARTMENT OF TRANSPORTATION

FEDERAL RAILROAD ADMINISTRATION

OMB No. 2130-0017

Instructions for the initial reporting of the following types of new or previously unreported crossings: For public highway-rail grade crossings, complete the entire inventory Form. For private highway-rail grade crossings, complete the Header, Parts I and II, and the Submission Information section. For public pathway grade crossings (including pedestrian station grade crossings), complete the Header, Parts I and II, and the Submission Information section. For Private pathway grade crossings, complete the Header, Parts I and II, and the Submission Information section. For grade-separated highway-rail or pathway crossings (including pedestrian station crossings), complete the Header, Part I, and the Submission Information section. For changes to existing data, complete the Header, Part I Items 1-3, and the Submission Information section, in addition to the updated data fields. Note: For private crossings only, Part I Item 20 and Part III Item 2.K. are required unless otherwise noted. An asterisk * denotes an optional field.

A. Revision Date (MM/DD/YYYY) 03 / 28 / 1988	B. Reporting Agency ☒ Railroad ☐ Transit ☐ State ☐ Other	C. Reason for Update (Select only one) ☒ Change in Data ☐ New Crossing ☐ Closed ☐ Re-Open ☐ Date Change Only ☐ Change in Primary Operating RR ☐ No Train Traffic ☐ Quiet Zone Update ☐ Admin. Correction	D. DOT Crossing Inventory Number 754801B
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Part I: Location and Classification Information

1. Primary Operating Railroad Southern Pacific Transportation Company [SP]		2. State CALIFORNIA		3. County SAN MATEO	
4. City / Municipality ☒ In DALY CITY ☐ Near		5. Street/Road Name & Block Number BAYSHORE BLVD (Street/Road Name) * (Block Number)		6. Highway Type & No. CITY	
7. Do Other Railroads Operate a Separate Track at Crossing? ☐ Yes ☒ No If Yes, Specify RR			8. Do Other Railroads Operate Over Your Track at Crossing? ☐ Yes ☒ No If Yes, Specify RR		
9. Railroad Division or Region ☐ None WESTERN		10. Railroad Subdivision or District ☐ None SAN FRANCISCO		11. Branch or Line Name ☐ None COAST ROUTE	
12. RR Milepost 0005.35 (prefix) (nnnn.nnn) (suffix)					
13. Line Segment * E-5.35-C		14. Nearest RR Timetable Station * BAYSHORE		15. Parent RR (if applicable) ☐ N/A	
16. Crossing Owner (if applicable) ☐ N/A					
17. Crossing Type ☒ Public ☐ Private		18. Crossing Purpose ☒ Highway ☐ Pathway, Ped. ☐ Station, Ped.		19. Crossing Position ☒ At Grade ☐ RR Under ☐ RR Over	
20. Public Access (if Private Crossing) ☐ Yes ☒ No		21. Type of Train ☐ Freight ☐ Intercity Passenger ☐ Commuter		☐ Transit ☐ Shared Use Transit ☐ Tourist/Other	
22. Average Passenger Train Count Per Day ☐ Less Than One Per Day ☐ Number Per Day 0					
23. Type of Land Use ☐ Open Space ☐ Farm ☐ Residential ☐ Commercial ☒ Industrial ☐ Institutional ☐ Recreational ☐ RR Yard					
24. Is there an Adjacent Crossing with a Separate Number? ☐ Yes ☐ No If Yes, Provide Crossing Number			25. Quiet Zone (FRA provided) ☐ No ☐ 24 Hr ☐ Partial ☐ Chicago Excused Date Established		
26. HSR Corridor ID ☐ N/A		27. Latitude in decimal degrees (WGS84 std: nn.nnnnnnn)		28. Longitude in decimal degrees (WGS84 std: -nnn.nnnnnnn)	
29. Lat/Long Source ☐ Actual ☐ Estimated					
30.A. Railroad Use *			31.A. State Use *		
30.B. Railroad Use *			31.B. State Use *		
30.C. Railroad Use *			31.C. State Use *		
30.D. Railroad Use *			31.D. State Use *		
32.A. Narrative (Railroad Use) *			32.B. Narrative (State Use) *		
33. Emergency Notification Telephone No. (posted)		34. Railroad Contact (Telephone No.)		35. State Contact (Telephone No.)	

Part II: Railroad Information

1. Estimated Number of Daily Train Movements				
1.A. Total Day Thru Trains (6 AM to 6 PM) 0	1.B. Total Night Thru Trains (6 PM to 6 AM) 0	1.C. Total Switching Trains 4	1.D. Total Transit Trains	1.E. Check if Less Than One Movement Per Day ☐ How many trains per week?
2. Year of Train Count Data (YYYY)		3. Speed of Train at Crossing 3.A. Maximum Timetable Speed (mph) 10 3.B. Typical Speed Range Over Crossing (mph) From 1 to 5		
4. Type and Count of Tracks Main 0 Siding Yard Transit Industry				
5. Train Detection (Main Track only) ☐ Constant Warning Time ☐ Motion Detection ☐ AFO ☐ PTC ☒ DC ☐ Other ☐ None				
6. Is Track Signaled? ☐ Yes ☒ No		7.A. Event Recorder ☐ Yes ☐ No		7.B. Remote Health Monitoring ☐ Yes ☐ No

U. S. DOT CROSSING INVENTORY FORM

A. Revision Date (MM/DD/YYYY) 03/28/1988		PAGE 2		D. Crossing Inventory Number (7 char.) 754801B	
Part III: Highway or Pathway Traffic Control Device Information					
1. Are there Signs or Signals?	2. Types of Passive Traffic Control Devices associated with the Crossing				
☒ Yes ☐ No	2.A. Crossbuck Assemblies (count) 0	2.B. STOP Signs (R1-1) (count) 0	2.C. YIELD Signs (R1-2) (count)	2.D. Advance Warning Signs (Check all that apply; include count) ☒ None ☐ W10-1 _____ ☐ W10-3 _____ ☐ W10-11 _____ ☐ W10-2 _____ ☐ W10-4 _____ ☐ W10-12 _____	
2.E. Low Ground Clearance Sign (W10-5) ☐ Yes (count _____) ☐ No		2.F. Pavement Markings ☒ Stop Lines ☐ Dynamic Envelope ☒ RR Xing Symbols ☐ None		2.G. Channelization Devices/Medians ☐ All Approaches ☐ Median ☐ One Approach ☐ None	
				2.H. EXEMPT Sign (R15-3) ☐ Yes ☐ No	
				2.I. ENS Sign (I-13) Displayed ☐ Yes ☐ No	
2.J. Other MUTCD Signs ☐ Yes ☒ No Specify Type _____ Count _____ Specify Type _____ Count _____ Specify Type _____ Count _____			2.K. Private Crossing Signs (if private) ☐ Yes ☐ No		2.L. LED Enhanced Signs (List types)
3. Types of Train Activated Warning Devices at the Grade Crossing (specify count of each device for all that apply)					
3.A. Gate Arms (count) Roadway 0 Pedestrian _____	3.B. Gate Configuration ☐ 2 Quad ☐ Full (Barrier) Resistance ☐ 3 Quad ☐ Median Gates ☐ 4 Quad	3.C. Cantilevered (or Bridged) Flashing Light Structures (count) Over Traffic Lane 2 ☐ Incandescent Not Over Traffic Lane 0 ☐ LED		3.D. Mast Mounted Flashing Lights (count of masts) 4 ☐ Incandescent ☐ LED ☐ Back Lights Included ☐ Side Lights Included	3.E. Total Count of Flashing Light Pairs 0
3.F. Installation Date of Current Active Warning Devices: (MM/YYYY) _____/_____/_____ ☐ Not Required		3.G. Wayside Horn ☐ Yes Installed on (MM/YYYY) ____/____/_____ ☐ No		3.H. Highway Traffic Signals Controlling Crossing ☐ Yes ☒ No	3.I. Bells (count) 4
3.J. Non-Train Active Warning ☐ Flagging/Flagman ☐ Manually Operated Signals ☐ Watchman ☐ Floodlighting ☐ None				3.K. Other Flashing Lights or Warning Devices Count 0 Specify type _____	
4.A. Does nearby Hwy Intersection have Traffic Signals? ☐ Yes ☐ No	4.B. Hwy Traffic Signal Interconnection ☐ Not Interconnected ☐ For Traffic Signals ☐ For Warning Signs	4.C. Hwy Traffic Signal Preemption ☐ Simultaneous ☐ Advance	5. Highway Traffic Pre-Signals ☐ Yes ☐ No Storage Distance * _____ Stop Line Distance * _____	6. Highway Monitoring Devices (Check all that apply) ☐ Yes - Photo/Video Recording ☐ Yes - Vehicle Presence Detection ☐ None	
Part IV: Physical Characteristics					
1. Traffic Lanes Crossing Railroad Number of Lanes 6 ☐ One-way Traffic ☐ Two-way Traffic ☐ Divided Traffic		2. Is Roadway/Pathway Paved? ☒ Yes ☐ No		3. Does Track Run Down a Street? ☐ Yes ☒ No	4. Is Crossing Illuminated? (Street lights within approx. 50 feet from nearest rail) ☐ Yes ☐ No
5. Crossing Surface (on Main Track, multiple types allowed) Installation Date * (MM/YYYY) ____/____/____ Width * _____ Length * _____ ☐ 1 Timber ☒ 2 Asphalt ☐ 3 Asphalt and Timber ☐ 4 Concrete ☐ 5 Concrete and Rubber ☐ 6 Rubber ☐ 7 Metal ☐ 8 Unconsolidated ☐ 9 Composite ☐ 10 Other (specify) _____					
6. Intersecting Roadway within 500 feet? ☐ Yes ☒ No If Yes, Approximate Distance (feet) _____			7. Smallest Crossing Angle ☐ 0° - 29° ☒ 30° - 59° ☐ 60° - 90°		8. Is Commercial Power Available? * ☒ Yes ☐ No
Part V: Public Highway Information					
1. Highway System ☐ (01) Interstate Highway System ☒ (02) Other Nat Hwy System (NHS) ☐ (03) Federal AID, Not NHS ☐ (08) Non-Federal Aid		2. Functional Classification of Road at Crossing ☐ (0) Rural ☒ (1) Urban ☐ (1) Interstate ☐ (5) Major Collector ☐ (2) Other Freeways and Expressways ☒ (3) Other Principal Arterial ☐ (6) Minor Collector ☐ (4) Minor Arterial ☐ (7) Local		3. Is Crossing on State Highway System? ☐ Yes ☒ No	4. Highway Speed Limit ____ MPH ☐ Posted ☐ Statutory
				5. Linear Referencing System (LRS Route ID) *	
				6. LRS Milepost *	
7. Annual Average Daily Traffic (AADT) Year _____ AADT 018000		8. Estimated Percent Trucks 10 _____ %	9. Regularly Used by School Buses? ☐ Yes ☒ No Average Number per Day 0		10. Emergency Services Route ☐ Yes ☐ No
Submission Information - This information is used for administrative purposes and is not available on the public website.					
Submitted by _____ Organization _____ Phone _____ Date _____					
Public reporting burden for this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. According to the Paperwork Reduction Act of 1995, a federal agency may not conduct or sponsor, and a person is not required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number for information collection is 2130-0017. Send comments regarding this burden estimate or any other aspect of this collection, including for reducing this burden to: Information Collection Officer, Federal Railroad Administration, 1200 New Jersey Ave. SE, MS-25 Washington, DC 20590.					

U. S. DOT CROSSING INVENTORY FORM

DEPARTMENT OF TRANSPORTATION

FEDERAL RAILROAD ADMINISTRATION

OMB No. 2130-0017

Instructions for the initial reporting of the following types of new or previously unreported crossings: For public highway-rail grade crossings, complete the entire inventory Form. For private highway-rail grade crossings, complete the Header, Parts I and II, and the Submission Information section. For public pathway grade crossings (including pedestrian station grade crossings), complete the Header, Parts I and II, and the Submission Information section. For Private pathway grade crossings, complete the Header, Parts I and II, and the Submission Information section. For grade-separated highway-rail or pathway crossings (including pedestrian station crossings), complete the Header, Part I, and the Submission Information section. For changes to existing data, complete the Header, Part I Items 1-3, and the Submission Information section, in addition to the updated data fields. Note: For private crossings only, Part I Item 20 and Part III Item 2.K. are required unless otherwise noted. An asterisk * denotes an optional field.

A. Revision Date (MM/DD/YYYY) 01 / 01 / 1970	B. Reporting Agency ☒ Railroad ☐ Transit ☐ State ☐ Other	C. Reason for Update (Select only one) ☐ Change in Data ☐ Re-Open ☒ New Crossing ☐ Date Change Only ☐ Closed ☐ Change in Primary Operating RR ☐ No Train Traffic ☐ Admin. Correction ☐ Quiet Zone Update	D. DOT Crossing Inventory Number 754801B
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Part I: Location and Classification Information

1. Primary Operating Railroad Southern Pacific Transportation Company [SP]		2. State CALIFORNIA		3. County SAN MATEO	
4. City / Municipality ☒ In DALY CITY ☐ Near		5. Street/Road Name & Block Number BAYSHORE BLVD (Street/Road Name) * (Block Number)		6. Highway Type & No. CITY	
7. Do Other Railroads Operate a Separate Track at Crossing? ☐ Yes ☒ No If Yes, Specify RR			8. Do Other Railroads Operate Over Your Track at Crossing? ☐ Yes ☒ No If Yes, Specify RR		
9. Railroad Division or Region ☐ None WESTERN		10. Railroad Subdivision or District ☐ None SAN FRANCISCO		11. Branch or Line Name ☐ None COAST ROUTE	
12. RR Milepost 0005.35 (prefix) (nnnn.nnn) (suffix)					
13. Line Segment * E-5.35-C		14. Nearest RR Timetable Station * BAYSHORE		15. Parent RR (if applicable) ☐ N/A	
16. Crossing Owner (if applicable) ☐ N/A					
17. Crossing Type ☒ Public ☐ Private		18. Crossing Purpose ☒ Highway ☐ Pathway, Ped. ☐ Station, Ped.		19. Crossing Position ☒ At Grade ☐ RR Under ☐ RR Over	
20. Public Access (if Private Crossing) ☐ Yes ☐ No		21. Type of Train ☐ Freight ☐ Intercity Passenger ☐ Commuter		☐ Transit ☐ Shared Use Transit ☐ Tourist/Other	
22. Average Passenger Train Count Per Day ☐ Less Than One Per Day ☐ Number Per Day 0					
23. Type of Land Use ☐ Open Space ☐ Farm ☐ Residential ☐ Commercial ☒ Industrial ☐ Institutional ☐ Recreational ☐ RR Yard					
24. Is there an Adjacent Crossing with a Separate Number? ☐ Yes ☐ No If Yes, Provide Crossing Number			25. Quiet Zone (FRA provided) ☐ No ☐ 24 Hr ☐ Partial ☐ Chicago Excused Date Established		
26. HSR Corridor ID ☐ N/A		27. Latitude in decimal degrees (WGS84 std: nn.nnnnnnn)		28. Longitude in decimal degrees (WGS84 std: -nnn.nnnnnnn)	
29. Lat/Long Source ☐ Actual ☐ Estimated					
30.A. Railroad Use *			31.A. State Use *		
30.B. Railroad Use *			31.B. State Use *		
30.C. Railroad Use *			31.C. State Use *		
30.D. Railroad Use *			31.D. State Use *		
32.A. Narrative (Railroad Use) *			32.B. Narrative (State Use) *		
33. Emergency Notification Telephone No. (posted)		34. Railroad Contact (Telephone No.)		35. State Contact (Telephone No.)	

Part II: Railroad Information

1. Estimated Number of Daily Train Movements				
1.A. Total Day Thru Trains (6 AM to 6 PM) 0	1.B. Total Night Thru Trains (6 PM to 6 AM) 0	1.C. Total Switching Trains 4	1.D. Total Transit Trains	1.E. Check if Less Than One Movement Per Day ☐ How many trains per week?
2. Year of Train Count Data (YYYY)		3. Speed of Train at Crossing 3.A. Maximum Timetable Speed (mph) 15 3.B. Typical Speed Range Over Crossing (mph) From 1 to 5		
4. Type and Count of Tracks Main 0 Siding Yard Transit Industry				
5. Train Detection (Main Track only) ☐ Constant Warning Time ☐ Motion Detection ☐ AFO ☐ PTC ☒ DC ☐ Other ☐ None				
6. Is Track Signaled? ☐ Yes ☒ No		7.A. Event Recorder ☐ Yes ☐ No		7.B. Remote Health Monitoring ☐ Yes ☐ No

U. S. DOT CROSSING INVENTORY FORM

A. Revision Date (MM/DD/YYYY) 01/01/1970		PAGE 2		D. Crossing Inventory Number (7 char.) 754801B	
Part III: Highway or Pathway Traffic Control Device Information					
1. Are there Signs or Signals? ☒ Yes ☐ No		2. Types of Passive Traffic Control Devices associated with the Crossing			
2.A. Crossbuck Assemblies (count) 0		2.B. STOP Signs (R1-1) (count) 0	2.C. YIELD Signs (R1-2) (count)	2.D. Advance Warning Signs (Check all that apply; include count) ☒ None ☐ W10-1 ☐ W10-3 ☐ W10-11 ☐ W10-2 ☐ W10-4 ☐ W10-12	
2.E. Low Ground Clearance Sign (W10-5) ☐ Yes (count _____) ☐ No		2.F. Pavement Markings ☒ Stop Lines ☐ Dynamic Envelope ☒ RR Xing Symbols ☐ None		2.G. Channelization Devices/Medians ☐ All Approaches ☐ Median ☐ One Approach ☐ None	
2.H. EXEMPT Sign (R15-3) ☐ Yes ☐ No		2.I. ENS Sign (I-13) Displayed ☐ Yes ☐ No		2.J. Other MUTCD Signs ☐ Yes ☒ No Specify Type _____ Count _____ Specify Type _____ Count _____ Specify Type _____ Count _____	
2.K. Private Crossing Signs (if private) ☐ Yes ☐ No		2.L. LED Enhanced Signs (List types)			
3. Types of Train Activated Warning Devices at the Grade Crossing (specify count of each device for all that apply)					
3.A. Gate Arms (count) Roadway 0 Pedestrian _____		3.B. Gate Configuration ☐ 2 Quad ☐ Full (Barrier) Resistance ☐ 3 Quad ☐ Median Gates ☐ 4 Quad		3.C. Cantilevered (or Bridged) Flashing Light Structures (count) Over Traffic Lane 2 ☐ Incandescent Not Over Traffic Lane 0 ☐ LED	
3.D. Mast Mounted Flashing Lights (count of masts) 4 ☐ Incandescent ☐ LED ☐ Back Lights Included ☐ Side Lights Included		3.E. Total Count of Flashing Light Pairs 0		3.F. Installation Date of Current Active Warning Devices: (MM/YYYY) ____/____/____ ☐ Not Required	
3.G. Wayside Horn ☐ Yes ☐ No Installed on (MM/YYYY) ____/____/____ ☐ No		3.H. Highway Traffic Signals Controlling Crossing ☐ Yes ☒ No		3.I. Bells (count) 4	
3.J. Non-Train Active Warning ☐ Flagging/Flagman ☐ Manually Operated Signals ☐ Watchman ☐ Floodlighting ☐ None				3.K. Other Flashing Lights or Warning Devices Count 0 Specify type _____	
4.A. Does nearby Hwy Intersection have Traffic Signals? ☐ Yes ☐ No		4.B. Hwy Traffic Signal Interconnection ☐ Not Interconnected ☐ For Traffic Signals ☐ For Warning Signs		4.C. Hwy Traffic Signal Preemption ☐ Simultaneous ☐ Advance	
5. Highway Traffic Pre-Signals ☐ Yes ☐ No Storage Distance * _____ Stop Line Distance * _____		6. Highway Monitoring Devices (Check all that apply) ☐ Yes - Photo/Video Recording ☐ Yes - Vehicle Presence Detection ☐ None			
Part IV: Physical Characteristics					
1. Traffic Lanes Crossing Railroad ☐ One-way Traffic ☐ Two-way Traffic Number of Lanes 6 ☐ Divided Traffic		2. Is Roadway/Pathway Paved? ☒ Yes ☐ No		3. Does Track Run Down a Street? ☐ Yes ☒ No	
4. Is Crossing Illuminated? (Street lights within approx. 50 feet from nearest rail) ☐ Yes ☐ No		5. Crossing Surface (on Main Track, multiple types allowed) Installation Date * (MM/YYYY) ____/____/____ Width * _____ Length * _____ ☐ 1 Timber ☒ 2 Asphalt ☐ 3 Asphalt and Timber ☐ 4 Concrete ☐ 5 Concrete and Rubber ☐ 6 Rubber ☐ 7 Metal ☐ 8 Unconsolidated ☐ 9 Composite ☐ 10 Other (specify) _____			
6. Intersecting Roadway within 500 feet? ☐ Yes ☒ No If Yes, Approximate Distance (feet) _____		7. Smallest Crossing Angle ☐ 0° - 29° ☒ 30° - 59° ☐ 60° - 90°		8. Is Commercial Power Available? * ☒ Yes ☐ No	
Part V: Public Highway Information					
1. Highway System ☐ (01) Interstate Highway System ☒ (02) Other Nat Hwy System (NHS) ☐ (03) Federal AID, Not NHS ☐ (08) Non-Federal Aid		2. Functional Classification of Road at Crossing ☐ (0) Rural ☒ (1) Urban ☐ (1) Interstate ☐ (5) Major Collector ☐ (2) Other Freeways and Expressways ☒ (3) Other Principal Arterial ☐ (6) Minor Collector ☐ (4) Minor Arterial ☐ (7) Local		3. Is Crossing on State Highway System? ☐ Yes ☒ No	
4. Highway Speed Limit _____ MPH ☐ Posted ☐ Statutory		5. Linear Referencing System (LRS Route ID) *			
6. LRS Milepost *		7. Annual Average Daily Traffic (AADT) Year _____ AADT 018000			
8. Estimated Percent Trucks 10 %		9. Regularly Used by School Buses? ☐ Yes ☒ No Average Number per Day 0		10. Emergency Services Route ☐ Yes ☐ No	
Submission Information - This information is used for administrative purposes and is not available on the public website.					
Submitted by _____ Organization _____ Phone _____ Date _____ Public reporting burden for this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. According to the Paperwork Reduction Act of 1995, a federal agency may not conduct or sponsor, and a person is not required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number for information collection is 2130-0017. Send comments regarding this burden estimate or any other aspect of this collection, including for reducing this burden to: Information Collection Officer, Federal Railroad Administration, 1200 New Jersey Ave. SE, MS-25 Washington, DC 20590.					

EXHIBIT G

**Appellant's Opening Brief Visitacion Investment, LLC v.
424 Jessie Historic Properties, Case No. A163550
(Cal. Ct. App. 1st Dist. filed Jan. 24, 2022)**

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

VISITCATION INVESTMENT, LLC	)	Case No. A163550
	)	
	)	San Francisco Superior Court
Plaintiff and Appellant,	)	Case No. CGC-19579667
	)	
vs.	)	Trial Judge:
	)	
	)	Hon. Vedica Puri
424 JESSIE HISTORIC	)	
PROPERTIES, LLC,	)	
	)	
	)	
Defendant and Respondent.	)	
	)	
	)	

Appeal from the Judgment Entered by the San Francisco County Superior
Court, August 23, 2021 before the Hon. Judge Vedica Puri

APPELLANT'S OPENING BRIEF

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COURT OF APPEAL FIRST APPELLATE DISTRICT, DIVISION TWO	COURT OF APPEAL CASE NUMBER: A163550
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 245334 NAME: Stephen G. Preonas FIRM NAME: Katzoff & Riggs LLP STREET ADDRESS: 1500 Park Avenue, Suite 300 CITY: Emeryville STATE: CA ZIP CODE: 94608 TELEPHONE NO.: 510-597-1990 FAX NO.: 510-597-0295 E-MAIL ADDRESS: spreonas@katzoffriggs.com ATTORNEY FOR (name): Plaintiff VISITACION INVESTMENT, LLC	SUPERIOR COURT CASE NUMBER: CGC-19579667
APPELLANT/ VISITACION INVESTMENT, LLC PETITIONER: RESPONDENT/ REAL PARTY IN INTEREST: 424 JESSIE HISTORIC PROPERTIES LLC	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(Check one): ☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (name): Appellant VISITACION INVESTMENT, LLC

2. a. ☐ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. ☒ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) Universal Paragon Corporation	Affiliated entity of Appellant
(2) Baylands Development Corporation	Affiliated entity of Appellant
(3) Greg Vilkin	CEO of Appellant
(4) Pamela Chen	Manager of Appellant
(5) Denn Hu	Chairman of Universal Paragon Corporation

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: January 24, 2022

Stephen G. Preonas
 (TYPE OR PRINT NAME)

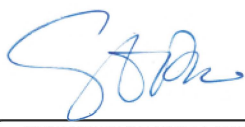

 (SIGNATURE OF APPELLANT OR ATTORNEY)

TABLE OF CONTENTS

STATEMENT OF APPEALABILITY	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	1
STATEMENT OF THE CASE	6
A. Background on the Parties, the Properties and the Subject Railroad Easement.....	6
B. UP Transfers the “Excess” JHP Property to Respondent’s Predecessor and Principal for Redevelopment.....	9
C. UP Cannot Recall Any Railroad Use of the Railroad Easement and Has No Records of Any UP Equipment, Railroad Ties or Communication Lines in the Easement.....	12
D. Respondent Obtains the JHP Property, Pursues a Residential Redevelopment Project and Seeks to Leverage the Existence of the Railroad Easement in the Chain of Title to Derail the Visitacion Project and Extract Concessions from the City to Rezone the JHP Property.....	13
E. Any <i>Bona Fide</i> Railroad Use of the JHP Property or the Railroad Easement Terminated Long Ago and All Railroad Equipment, Including Any Related Communications Equipment, Was Removed by 2008 At the Latest	14
F. After Respondent Refuses to Acknowledge the Abandonment of the Railroad Easement as Required by the Instrument, Appellant Files This Action and the Court Grants Respondent’s MSJ.....	18
ARGUMENT.....	24
A. The Court’s Review of the Trial Court’s Ruling in This Case is De Novo	24
B. The Trial Court Erred in Finding That, as a Matter of Law, the Parties to the Railroad Easement Intended to Create Access	

Rights for Communication Lines That Exist Independently From Any Railroad Use	26
1. The Trial Court Erred in Invoking the Preference to Avoid Creating Surplusage in a Manner Which Defeats the Most Fundamental Rule of Contract Interpretation, Which Is to Ascertain the Intention of the Parties Based Upon the Entire Document	28
2. The Trial Court Erred in Unreasonably Emphasizing Certain Hypothetical Extrinsic Evidence to Support Its Interpretation of the Railroad Easement Over Other More Reliable Extrinsic Evidence Contradicting This Interpretation	35
3. The Trial Court Erred in Treating the Legal Opinion of UP Stated in the Deposition of Its PMK, That it Did Not Intend to Abandon the Railroad Easement, as Evidence of Pre-Dispute Conduct That Courts May Use When Appropriate to Aid Their Interpretation of Ambiguous Instruments	39
C. The Trial Court Erred in Adopting an Incorrect Legal Definition of Abandonment as Requiring a Formal Relinquishment of an Easement by Way of Quitclaim Deed. .	42
D. The Trial Court Erred in Failing to Recognize Substantial Evidence That Raised Triable Issues of Fact as to the Intention to Abandon the Railroad Easement.	45
E. The Trial Court Erred in Finding as Undisputed, Facts Which Purportedly Negated Any Intention to Abandon the Easement, Where the Alleged Facts Relied Upon Are Not Only Disputed But Also Were Contradicted by Evidence Submitted by Appellant	49
1. The Trial Court Order Erroneously Concluded That UP's Marketing of the JHP Property Negated a Finding of Intention to Abandon.	50

2.	The Trial Court Erroneously Concluded That It Was Undisputed That the Parties Intended the Temporary License to Confirm the Railroad Easement.	51
3.	The Trial Court Erroneously Concluded That It Was Undisputed That Proven Used the Railroad Easement for a <i>Bona Fide</i> Railroad Use.	53
4.	The Trial Court Erroneously Concluded That the JHP Property Would be Landlocked Without the Railroad Easement.	55
F.	The Trial Court Erred in Overruling the Objections to Krantz’s Testimony as to the Legal Definition of Abandonment and His Self-Serving Conclusions of Law That UP Did Not Intend to Abandon the Easement.	56
CONCLUSION.....		58
CERTIFICATE OF WORD COUNT		60

TABLE OF AUTHORITIES

Cases

<i>Biescar v. Czechoslovak-Patronat</i> (1956) 145 Cal. App. 2d 133	30
<i>Biljac Associates v. First Interstate Bank</i> (1990) 218 Cal.App. 3d 1410..25, 57	
<i>City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.</i> (1998) 68 Cal. App. 4 th 445.....	31
<i>Cottonwood Duplexes, LLC v. Barlow</i> (2012) 210 Cal. App. 4th 1501	49
<i>Demps v. San Francisco Housing Authority</i> (2007) 149 Cal. App. 4th 564	25, 57
<i>Flanagan v. San Marcos Silk Co.</i> (1951) 106 Cal. App. 2d 458	48
<i>Freeman v. Monarch Life Ins. Co.</i> (1956) 138 Cal. App. 2d 702	30
<i>Hamilton v. Ferguson</i> (1938) 26 Cal. App. 2d 390	32
<i>Harris v. Klure</i> (1962) 205 Cal. App. 2d 574	30
<i>Home Real Estate Co. v. Los Angeles Pacific Co.</i> (1912) 163 Cal. 710....	48, 53
<i>Kraemer v. Kraemer</i> (1959) 167 Cal. App. 2d 291	33
<i>Lloyds of London v. Superior Court (Powerline Oil Co., Inc.)</i> (2001) 24 Cal.4th 945	24
<i>Los Angeles v. Savage</i> (1958) 165 Cal. App. 2d 1	32, 36
<i>Ocean Shore Railroad Co. v. Doelger (“Doelger II”)</i> (1960) 179 Cal.App.2d 222	42, 45, 50
<i>Paddock v. Vasquez</i> (1953) 122 Cal. App. 2d 396	32
<i>Reese v. Borghi</i> (1965) 216 Cal. App.2d 324	55
<i>Reid v. Google, Inc.</i> (2010) 50 Cal. 4 th 512.....	25
<i>Saelzer v. Advanced Group 400</i> (2001) 25 Cal.4th 763.....	24
<i>Santa Clara County Local Transportation Authority v. Guardino</i> (1995) 11 Cal.4th 220	21, 26, 28
<i>Slavich v. Hamilton</i> (1927) 201 Cal. 299	32, 36
<i>Sunset Sec. Co. v. Coward McCann, Inc.</i> (1957), 47 Cal. 2d. 907	31
<i>United States Liability Ins. Co. v. Haidinger-Hayes, Inc.</i> (1968) 263 Cal. App. 2d 531	30

<i>Williams v. Saga Enterprises</i> (1990) 225 Cal. App. 2d 142	25
---	----

Statutes

CCP § 170.6.....	19
Civ. Code § 1069	23, 26
Civil Code § 1636.....	34
Civil Code § 1641.....	28, 29, 31, 32
Civil Code § 1650.....	30, 34
Code of Civil Procedure § 904.1(a)(1).....	1

Rules

California Rules of Court, Rule 8.104.....	1
--	---

STATEMENT OF APPEALABILITY

This appeal is from a final judgment of the trial court in favor of the Respondent entered following an order granting Respondent summary judgment. Such judgment being final as to the parties herein, the appeal is authorized by Code of Civil Procedure § 904.1(a)(1). Judgment as to Respondent was entered on August 23, 2021. (9 JA 2343.) The Notice of Appeal from the judgment was filed on August 31, 2021. (9 JA 2374.) The appeal is timely pursuant to California Rules of Court, Rule 8.104.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case involves a recurring issue of great historical importance: the aftermath of the abandonment of an urban railroad easement to permit useful redevelopment for housing. The posture of the case requires review de novo by this Court of the trial court's determination of that issue, which, on summary judgment, was purely based on a ruling of law.

Southern Pacific Transportation Company ("SPRR"), which later merged with Union Pacific Railroad (the two railroad companies are collectively abbreviated herein as "UP"), reserved the subject railroad easement ("the Railroad Easement") in 1990 when it sold the

property located at 222 Tunnel Avenue, San Francisco (APN 5102-009) (the “Former RR Property”) to the predecessor of Plaintiff and Appellant Visitacion Investment, LLC’s (“Appellant”).

The same predecessor of Appellant acquired other adjacent property, most of which was formerly the home of the Schlage Lock Factory, that was then transferred to Appellant along with the Former RR Property (herein referred to collectively as “the Visitacion Property”).

With the approval of the City of San Francisco (“the City”), Appellant is developing its Visitacion Property, including the Former RR Property, with one of the largest residential developments in the City, consisting of approximately 1,679 housing units, to help alleviate the housing crisis in the southeast section of the City (“the Visitacion Project”).

In 2015, the predecessor and principal¹ of defendant and respondent 424 Jessie Historic Properties, LLC (“Respondent”) purchased from UP a narrow tract adjacent to the main rail line, and the

¹ UP initially transferred the JHP Property to Respondent’s principal and owner Patrick McNerney, who then transferred it to Respondent.

Former RR Property, known as 2201 Bay Shore Boulevard (APN 5087-004) and 220 Tunnel Avenue (APN 5087-005) (“the JHP Property.”)²

Respondent obtained the JHP Property for redevelopment and not for any railroad use. There is no rail line anywhere on JHP Property, nor has there been any such rail line for decades. The JHP Property does not connect to the adjacent UP mainline railroad.

The Railroad Easement was intended to provide a right of way for railroad tracks. However, this use was long ago abandoned. The railroad ties formerly located in the easement have been removed. The entire Visitacion Project is now planned for residential development that has nothing to do with the railroad. Likewise, Respondent is pursuing redevelopment of the JHP Property for non-railroad use.

Prior to the filing of this lawsuit Respondent seized on the Railroad Easement not for anything dealing with a *bona fide* railroad, but to interfere with the Visitacion Project in the hope of a financial windfall and to extract an agreement from the City to rezone Respondent’s JHP Property to allow for a higher density and more lucrative development.

² The orientation of the properties and the location of the Railroad Easement are set forth in the maps and photographs located at 4 JA 1100 – 1115.)

Appellant then filed this lawsuit seeking to quiet title in the Railroad Easement based upon its abandonment. Appellant and Respondent filed cross-motions for summary judgment (“the MSJs”), with Appellant alleging that, as a matter of law, Respondent and UP had abandoned the easement, and Respondent alleging, as a matter of law, that they had not.

After the filing of the MSJs, Respondent moved to disqualify Judge Charles F. Haines, the regular law and motion judge for the San Francisco Real Property Law Department 501³ pursuant to CCP § 170.6. (4 JA 1139.)

The trial court then reassigned the MSJs from the specialized real property department to Department 203, the Hon. Vedica Puri presiding. The trial court then granted Respondent’s MSJ pursuant to its July 15, 2021 Order that also held Appellant’s MSJ to be moot (“the MSJ Order”). (9 JA 2328.)

³ San Francisco Superior Court has designated Department 501 as a specialized court hearing all pre-trial matters “for Civil cases arising out of ownership of real property, possession of real property, acquisition of real property, and damage to real property (except construction defect cases).” (<https://www.sfsuperiorcourt.org/divisions/civil/real-property-court>)

The following errors led the trial court to deny Appellant's motion for summary judgment, and to instead grant summary judgment in favor of Respondent.

1. The trial court erred in holding, as a matter of law, that the parties to the Railroad Easement unambiguously intended to create a separate and distinct easement for communication lines which exists independently of any associated railroad use.

2. The trial court erred in invoking a preference, to avoid surplusage in an instrument where possible, in a manner that is contrary to the most fundamental rule of contract interpretation, which is to ascertain the parties' intention based upon the entire document.

3. The trial court erred in emphasizing certain hypothetical extrinsic evidence to support its interpretation of the Railroad Easement, particularly where other more reliable and non-hypothetical extrinsic evidence contradicted this interpretation.

4. The trial court erred in treating the legal opinion of UP's employee, to the effect that UP did not intend to abandon the easement, as evidence of pre-dispute conduct that courts may use to aid their interpretation of ambiguous instruments.

5. The trial court erred in adopting an incorrect legal definition of abandonment as requiring a formal relinquishment of an easement by way of quitclaim deed.

6. The trial court erred in failing to recognize substantial evidence which raised triable issues of fact as to the intent to abandon the Railroad Easement.

7. The trial court erred in finding that undisputed facts negated any intention to abandon the easement as matter of law, where such purported facts were in fact disputed and where contrary evidence to contradict them was in the record.

8. The trial court erred in overruling Appellant's objections to the testimony of UP's PMK which was not based on his personal knowledge and which expressed legal conclusions within the province of the court regarding the meaning of the easement and the intention to abandon.

STATEMENT OF THE CASE

A. Background on the Parties, the Properties and the Subject Railroad Easement

Appellant is an affiliate of Universal Paragon Corporation ("UPC"), formerly known as Tuntex (U.S.A.) Inc. ("Tuntex"). Pursuant to an August 10, 1990 grant deed ("the 1990 UP Deed")

Tuntex first purchased the Former RR Property from UP in 1990. (1 JA 22 – 39.) Tuntex later purchased the former Schlage Lock Factory adjacent to the Former RR Property, that combined to form the Visitacion Property, that consists of ten contiguous parcels located in the Visitacion Valley neighborhood of San Francisco.

Visitacion is now developing the Visitacion Project on the entire Visitacion Property. (1 JA 10 – 14.)

When UP transferred the Former RR Property to Tuntex, UP retained what is now the JHP Property. (1 JA 13, 22 – 39, 155 – 156.) For much of its recorded history UP leased the JHP Property to the Schlage Lock Company pursuant to a long-term lease of approximately 50 years. Under this lease Schlage used the JHP Property and what is now the Visitacion Property to support its manufacturing operations, and not for any railroad use. (5 JA 1246 – 1247 at 121:14 – 122:10.) At one point UP maintained a freight claims office adjacent to the Railroad Easement, but that building has been removed. (5 JA 1249 – 1250, 1267 – 1268.)

As the Grantor under the 1990 UP Deed UP reserved for itself the Railroad Easement over the Former RR Property. (1 JA 22 – 39.)

At this time UP retained what is now the JHP Property and needed the Railroad Easement to support railroad operations there.

The title of the deed is “Form of Railroad Easement.” It specifies the following particular purpose:

... to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment.

The deed identifies the lands subject to the Railroad Easement by the following “Schedules”:

- Schedule 1 – a 22 foot x 22.8 foot “Signal Cabinet Area” adjacent to the spur.
- Schedule 2 – a Drill & Spur Track Easement – over a 30 foot wide strip.
- Schedule 3 – an Access Roadway Easement – over 0.519 acre to service the spur track.

(1 JA 22 – 39.)

The deed further states that the 30-foot strip, the access roadway, and the signal cabinet area described by the three “Schedules” are

adjacent to one another and refers to all of them collectively as a single “Railroad Easement.”⁴

The Railroad Easement was intended to provide a right of way for railroad lines including a spur line. However, this spur line has long since been abandoned. The tracks formerly located in the easement have been removed. (3 JA 826 – 827, 838, 863 – 864; 4 JA 1018 – 1021, 1097 – 1098, 1106 – 1115.)

B. UP Transfers the “Excess” JHP Property to Respondent’s Predecessor and Principal for Redevelopment

Patrick McNerney, the predecessor of Respondent and its owner and principal, purchased the JHP Property adjacent to the rail mainline and the Former RR Property from UP in 2015. (1 JA 74 – 82.) McNerney purchased the JHP Property pursuant to a quitclaim deed (“the 2015 Quitclaim Deed”). (1 JA 59 – 73.)

When McNerney visited the area described in the Railroad Easement prior to his purchase of the JHP Property, there were no improvements in it except two old and deteriorating sheds that have

⁴ The original 1990 UP Deed attached as Exhibit 1 to Appellant’s Complaint was later amended by a 1991 Correction deed attached as Exhibit 2 to the Complaint that corrected an error in the metes and bounds descriptions in the documents but did not alter the relevant language setting forth the legal terms and railroad purpose of the Railroad Easement. (1 JA 40 – 58.)

since been removed. (3 JA 826 – 827, 838, 863 – 864, 4 JA 1018 – 1021.)

UP conveyed the JHP Property to McNerney only after it determined this property was an “excess” property no longer needed to support its railroad operations. UP maintains a real estate sales division dedicated to selling off “excess” or “surplus non-operating railroad real estate.” (5 JA 1212 – 1213, 1222, 1224 – 1225; Deposition of Robert Krantz PMK of UP (“Krantz Depo.”), 50:4 – 50:6, 79:9 – 79:18, 80:11 – 80:14.)

One of the important functions of this real estate sales division is to maximize the sales value of the excess properties. (5 JA 1232 at 93:2 – 93:10.) It is the general practice of UP to “convey out” its excess properties by way of a quitclaim deed transferring only the interest the grantor has at the time the conveyance. (5 JA 1224 at 79:6 – 79:10.)

In the 2015 Quitclaim Deed UP did not promise anything, other than to give up its own rights, and did not offer any express or implied warranties regarding the continued existence of the Railroad Easement. (1 JA 59 – 73.)

Approval of UP’s quitclaim of its interest in the Railroad Easement required extensive internal discussions to confirm that it no

longer needed the easement to support its railroad operations. This included obtaining the approval of twelve different internal departments. (5 JA 1244 – 1245 at 117:15 – 118:9, 119:4 – 119:13.)

When UP sold the JHP Property to McNerney, UP was aware that McNerney intended to develop the JHP Property for residential housing and not for railroad purposes. Prior to the transfer of the JHP Property to McNerney, UP had previously transferred another “excess” railroad property to McNerney in San Francisco, for redevelopment for non-railroad purposes. (5 JA 1225 – 1226 at 80:25 – 81:4, 81:18 – 82:7.) Prior to UP quitclaiming its interest in the Railroad Easement to McNerney it had no discussions with Appellant or Respondent regarding its use for railroad purposes. (5 JA 1233 – 1234 at 94:11 – 95:16.)

The 2015 Quitclaim Deed specifically excluded any easement over the mainline railroad running along the Bay Area Peninsula described in the 1990 UP Deed reserving the Railroad Easement as Schedule 1, Parcel No. 1 to the “Mainline Easement.” Instead, it affirmatively required McNerney to install a fence or other barrier to bar access from the JHP Property to UP’s mainline railroad right of way. (1 JA 59 – 73.)

The 2015 Quitclaim Deed also excluded Schedule 2, Parcel No. 1 of the Railroad Easement containing an existing active railroad spur used by UP and Schedule 3, Parcel No. 1 containing a roadway access along the east side of the mainline right-of-way. (1 JA 59 – 73, 5 JA 1228 at 87:5 – 87:9, 87:19 – 87:25, 5 JA 1340 – 1341, 1344 – 1346.)

The 2015 Quitclaim Deed stated the unmistakable railroad purpose of Schedule 1, Parcel No. 2 of the Railroad Easement, denominating it as a “(Signal Cabinet Area).” A signal cabinet or signal box is a piece of railroad equipment that has no use outside of a railroad use. (5 JA 1257 – 1259 at 139:22 – 141:10.)

C. UP Cannot Recall Any Railroad Use of the Railroad Easement and Has No Records of Any UP Equipment, Railroad Ties or Communication Lines in the Easement

UP was not aware of any historical use of the Railroad Easement for railroad purposes and did not produce any records of UP’s use of the easement in response to a subpoena calling for their production. UP was not aware of last time that any rail, or railroad related equipment, was in the Railroad Easement. (5 JA 1229 – 1231, 1273 – 1281.)

The same is true of any communication equipment in the Railroad Easement. UP was not aware of any such equipment, could not recall ever seeing such equipment in the Railroad Easement, and

could not locate any records of such equipment. UP formerly maintained railroad tracks in the Railroad Easement, but they were removed long ago. (5 JA 1237.) UP does not have any record of the presence of any of the types of rail and railroad related equipment in the Railroad Easement described in the 1990 UP Deed, including communications lines, telephone equipment, television equipment or related equipment. (5 JA 1239 – 1241.)

D. Respondent Obtains the JHP Property, Pursues a Residential Redevelopment Project and Seeks to Leverage the Existence of the Railroad Easement in the Chain of Title to Derail the Visitacion Project and Extract Concessions from the City to Rezone the JHP Property

On September 20, 2016, McNerney transferred the JHP Property to Respondent. (1 JA 75 – 82.) McNerney remains involved as a principal of Respondent. Both McNerney and JHP are real estate developers who are contemplating residential and commercial redevelopment of the JHP Property. They have no experience, ownership, or development interest in trains or commercial rail or telecommunications. McNerney has developed four other former railroad properties in the City. None of them were devoted to any form of railroad use. (1 JA 83 – 134; 3 JA 818 – 821, 827 – 830, 836, 839, 841, 861, 865 – 866, 868; 4 JA 887 – 1016, 1022 – 1047.)

Respondent has also created a plan for a residential real estate development project entitled “Blanken Avenue” on the JHP Property (“the JHP Project”). On May 8, 2015, in connection with the Respondent’s proposed development of the JHP Property, Respondent submitted a Preliminary Project Assessment application for the Blanken Avenue project to the San Francisco Planning Department. (“the 2015 JHP PPA Application”). The 2015 JHP PPA Application proposed a project consisting of two new residential buildings with a total of 205 dwelling units. (1 JA 83 – 117.)

In connection with the development of the JHP Property Respondent sought to leverage the existence of the Railroad Easement in the chain of title to derail the Visitacion Project and extract a concession from the City to agree to rezone the JHP Property to support greater density. (4 JA 1071.)

E. Any *Bona Fide* Railroad Use of the JHP Property or the Railroad Easement Terminated Long Ago and All Railroad Equipment, Including Any Related Communications Equipment, Was Removed by 2008 At the Latest

No rail line is currently situated on the JHP Property. The JHP Property does not connect to the adjacent UP mainline railroad. Any former use by UP of the rail spur that was the subject of the Railroad Easement ceased. By 2008 at the latest, all of the tracks were removed.

Since then, the Railroad Easement has never been used for any railroad-related uses. (3 JA 825 – 826, 838, 863 – 864; 4 JA 1084 – 1085, 1097 – 1098, 1106 – 1115.)

There are currently no rail or railroad-related equipment or facilities in the Railroad Easement. Nor are any communications lines or facilities located there. (3 JA 825 – 826, 838, 863 – 864; 4 JA 1017 – 1021, 1097 – 1098, 1106 – 1115.)

In connection with the development of the Visitacion Project, on or about March 2, 2016, Appellant entered into a Temporary License Agreement with McNerney, as the then-owner of the JHP Property, to provide access to the JHP Property (“the Temporary License”). (2 JA 341 – 363.) The purpose of the Temporary License was to provide Appellant access to the JHP Property in connection with the construction of a retaining wall along the boundary line of the Properties. (5 JA 1341 – 1342.)

At the time of the Temporary License, both Visitacion and McNerney were discussing the joint development of their respective properties. McNerney was considering developing buildings on the JHP Property that would be accessed via a new street to be constructed along the retaining wall on the eastern boundary of the JHP Property

(Street A.) This is still a viable option for access to the JHP Property, and it is one which Appellant has consistently offered to Respondent to support its development goals on the JHP Property. (*Id.*)

In entering into the Temporary License, Appellant and Respondent did not intend to alter the rights of the parties regarding the Railroad Easements, including the right of Appellant to seek to quiet title in them or to enforce the requirement in the 1990 UP Deed that Respondent quitclaim its interest in the easement upon abandonment. (*Id.*) Section 1 of the Temporary License explicitly states that it “does not amend or waive any rights of the parties under the RR Easements” including the right of Appellant to seek to quiet title in them based upon their non-use and abandonment. Section 14 of the license prohibits either party from recording the document. (2 JA 341 – 363.)

Since McNerney’s purchase of the JHP Property in 2015, the only other use of the JHP Property (aside from studies related to future residential development) is a license agreement for entry that was granted to a contractor called Proven Management, Inc. (“Proven”). Proven used the JHP Property as a parking lot for employee vehicles that had nothing to do with any railroad or the Railroad Easement.

Proven did so for less than three months in exchange for a fee of \$15,000. (3 JA 833 – 834; 4 JA 1049 – 1056, 1098.)

Proven does not currently license the JHP Property to support railroad construction work and never did. Rather, Proven’s short term license of the JHP Property involved the parking of personal vehicles on the JHP Property, and not any railroad use. Proven used the JHP Property for less than three months pursuant to a February 18, 2019 License Agreement for Entry and Use of Surface Property (“the JHP-Proven License Agreement”). Proven used the JHP Property in connection with its work for the Peninsula Corridor Joint Powers Board that owns and operates Caltrain (“the JPB”) along its right of way across the broader Bay Area Peninsula (“the Caltrain Right of Way”). The work Proven performed for the JPB was in connection with a broader regional Peninsula Corridor Electrification Project pursued by the JPB to electrify the Caltrain rails across the Peninsula (“the Electrification Project”). (5 JA 1283 – 1299.)

Proven used the JHP Property for parking light vehicles (cars and pickup trucks) that were either owned by Proven or that were the personal vehicles for Proven’s workers and subcontractors. Proven did not perform any construction on the JHP Property, whether related to

the Electrification Project, or otherwise. During the term of the JHP-Proven License Agreement Proven did not access the Caltrain Right of Way from the JHP Property. (*Id.*)

During the term of the JHP License Agreement, Proven workers and subcontractors accessed the JHP Property to park their vehicles by using an unpaved road across the Visitacion Property that was *outside* the Railroad Easement. (*Id.*) Other than for this ingress and egress, Proven, and its workers and subcontractors, did not use the Visitacion Property in connection with the JPB Project. Proven, and its workers and subcontractors, did not use the Visitacion Property to operate, maintain, repair or otherwise use any railroad equipment, spur track, or switching station. (*Id.*)

F. After Respondent Refuses to Acknowledge the Abandonment of the Railroad Easement as Required by the Instrument, Appellant Files This Action and the Court Grants Respondent's MSJ

In September of 2019, pursuant to the 1990 UP Deed, Appellant requested Respondent quitclaim the easement, as required by the deed upon its abandonment. When Respondent refused to do so, Appellant filed this action. (1 JA 17.)

After the parties filed the MSJs Respondent filed a CCP § 170.6 motion to disqualify the Hon. Judge Charles F. Haines, the regular law

and motion judge for Dept. 501, of the San Francisco Superior Court, a specialized department that is assigned to hear all matters arising out of ownership of real property, possession of real property, acquisition of real property, and damage to real property. (4 JA 1139.) The MSJs were then rescheduled for hearing in Department 210, the Hon. Judge Vedica Puri presiding.

At the hearing the trial court announced its tentative ruling from the bench and described the easement as “perpetual.” (Reporter’s Transcript (RT), 5:19.) The trial court then zeroed in on a single clause within the lengthy Railroad Easement that related to communications lines and facilities of “every kind and nature” stating that the trial court’s emphasis “is obviously added by the Court.” The trial court further stated that Appellant’s proposed construction of the entirety of the Railroad Easement “would render that emphasized language mere surplusage.” (RT 6:4 – 6:9.)

The trial court then cited at length the testimony of Robert Krantz, a UP executive who was not even with UP at the time of the 1990 UP Deed and who had no role in the transaction.⁵ The trial court

⁵ Appellant objected to the testimony of Krantz as lacking a foundation of personal knowledge as to the subject matter and intention of UP at the time it reserved in itself the Railroad Easement. (9 JA 2328.) The

emphasized UP's own internal process for the abandonment of easements explained by Krantz stating that, "he's the guy that can talk about what the intent was, what the process was if there was going to be an abandonment, because there is a process. And he knows it very well." The court then determined that "there is no evidence that, that process was engaged in. In fact, the evidence is to the contrary that, that process was not engaged in. There are many departments that have to sign off." (RT 7:8 – 7:16.)

The Court then emphasized and found that it was an undisputed fact that Respondent's property "would be effectively landlocked without that access" and then cited again to the testimony of Krantz. (RT 8:10 – 8:16.)

The trial court then stated its view that Appellant "reads the purpose of the easement just too narrowly when you look at the context of the easement itself and the properties and what they were being used for." (RT 8:17 – 8:20.)

In supporting this interpretation of the easement the trial court afforded great weight to the testimony of the Krantz under the rule in

trial court overruled this objection, which under the circumstances was reversible error, as discussed *infra*.

Southern Cal. Edison Company v. Superior Court (“*Southern Cal. Edison*”) (1995) 37 Cal.App.4th 839, 851 “that in construing the terms of a contract, the construction given it by the acts and conduct of the parties with knowledge of its terms, and before any controversy has arisen to its meaning, is admissible on the issue of the parties’ intent.” (RT 8:17 – 9:6.)

The trial court then issued its MSJ Order. (9 JA 2328.) In the MSJ Order the trial court again focused on the isolated phrase “of every kind and nature” and cited the rule against surplusage under *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 234. (9 JA 2328.)

On the basis of this interpretation the trial court determined that the Railroad Easement was not ambiguous and set forth its conclusion that “the express language of the Easement controls” and that “a plain reading of this instrument” is that it “supports defendant’s position.” (JA 2329.)

Despite the finding that the plain language of the instrument controlled, the order then stated that extrinsic evidence that the railroad “was also in the data communications business, even if tangentially”

had “proved dispositive.” (9 JA 2330.) In particular, the order cited following extrinsic evidence from the Krantz Depo.:

- 70:17 – 71:12 – Confirming generally that in 1990 UP had a subsidiary that was “interested in” the “fiber optic business” (6 JA 1753.); and
- 72:4 – 24 – Consisting of Krantz’s testimony as to his legal opinion that the “right to have these communication fiber optic lines within the easement areas ... was separate and apart from the rail lines.” (6 JA 1755.)

Thus, the only extrinsic evidence that the trial court included in the MSJ Order to aid its interpretation of the Railroad Easement, (despite the contradictory holding it was unambiguous) consisted of the legal conclusions of the grantor who reserved this easement in itself and the very general testimony that UP once owned a subsidiary involved in telecommunications.⁶

In concluding its interpretation of the “express language” of the Railroad Easement, the MSJ Order suggested, in citing to Civ. Code § 1069 (ambiguity construed in favor of grantor where easement

⁶ Krantz testified that when UP acquired SP in 1995 it did not include in the purchase SP’s separate telecommunications subsidiary and that SP retained this subsidiary. (7 JA 1868 at 99:20 – 99:25.)

reserved), that the “plain reading” of the instrument may result in ambiguity regarding the purpose of the easement. (9 JA 2330.)

The MSJ Order then held that Respondent had not abandoned the Railroad Easement based upon its conclusion, after its review of this record, that there “is no such evidence” of any intention to abandon. (9 JA 2331.) The MSJ Order further stated that the following “evidence reflects the opposite”: (1) the railroad actively marketed the property; (2) plaintiff confirmed the easement when it entered into the Temporary License Agreement; (3) the JHP Property was licensed to Proven for a railroad use; and (4) that the JHP Property would be “effectively landlocked” without the easement. (9 JA 2331.)

Lastly, the MSJ Order overruled Appellant’s objections to Krantz testifying as to the legal conclusion that UP did not intend to abandon the Railroad Easement, stating that Krantz, “was competent to testify regarding the railroad’s custom and practice with respect to abandoning easements.” The order further stated that Krantz could do so because Appellant “relied upon Mr. Krantz’s testimony” in briefing the MSJs. (9 JA 2332.)

ARGUMENT

A. The Court's Review of the Trial Court's Ruling in This Case is De Novo

An appeal of a summary judgment is subject to de novo review to determine whether triable issues of material fact exist. (*Lloyds of London v. Superior Court (Powerline Oil Co., Inc.)* (2001) 24 Cal.4th 945, 972.) The appellate Court independently examines the record to determine whether triable issues of material fact exist. (*Saelzer v. Advanced Group 400* (2001) 25 Cal.4th 763, 767.)

In performing this de novo review, the Court views the evidence in a light favorable to the losing parties and liberally construing their evidentiary submissions while strictly scrutinizing the prevailing parties' own showing and resolving any evidentiary doubts or ambiguities in favor of the losing party. (*Id.* at pp. 768 – 769.)

This Court should review the rulings on the evidentiary objections de novo. The trial court overruled Appellant's objections to much of the evidence it relied upon in granting the summary judgment.

There is a split of authority on the issue, but Appellant believes that the better reasoned standard for review of evidentiary objections in connection with an MSJ, is a de novo review, as opposed to abuse of

discretion, particularly when no record has been made as to the lower Court's reasoning.

In *Biljac Associates v. First Interstate Bank* (1990) 218 Cal. App. 3d 1410, 1419, this Court held that because appellate review of a summary judgment determination was de novo, "the parties remain[ed] free to press their admissibility arguments on appeal, the same as they did in the trial Court." In accord, see *Williams v. Saga Enterprises* (1990) 225 Cal. App. 2d 142, 149.

Biljac was later disapproved by this Court in *Demps v. San Francisco Housing Authority* (2007) 149 Cal. App. 4th 564, 566. Subsequently, however, in *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512, 535, the Supreme Court, after a lengthy discussion on the subject, seemingly implicitly concurred with a de novo review by an appellate Court, but expressly stated that "we need not decide generally whether a trial Court's rulings on evidentiary objections based on papers alone in summary judgment proceedings are reviewed for abuse of discretion or reviewed de novo."

Absent an express ruling on the issue, Appellant submits that this Court should look to the implicit guidance provided by the Supreme Court in *Reid* and apply a de novo standard. However, regardless of

the standard, the trial court's ruling which placed controlling weight on testimony of a witness who lacked any personal knowledge and who merely expressed legal conclusions within the province of the court was reversible error.

B. The Trial Court Erred in Finding That, as a Matter of Law, the Parties to the Railroad Easement Intended to Create Access Rights for Communication Lines That Exist Independently From Any Railroad Use

The trial court erred by ruling that the subject Railroad Easement created a distinct and separate easement which provided UP with the power to maintain communications lines and facilities in the absence of any associated railroad use of the easement. (9 JA 2329.)

The MSJ Order itself contradicts the conclusion that the instrument is not ambiguous, when it cites to extrinsic evidence aiding the trial court in its construction and when it applies Civ. Code § 1069, which deals with a situation where there “is an ambiguity in the reservation.” (9 JA 2330.)

Likewise, the trial court's application of the legislative rule of construction to avoid surplusage under *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 234, confirms the ambiguity of the agreement. This is because, as stated by the Supreme Court in this case, the rule is settled that “when statutory

language is plain and unambiguous there is no need for construction and courts should not indulge in it.” (*Id.* at p. 233.)

The trial court’s reliance on *Southern Cal. Edison, supra* at the hearing on the MSJs also demonstrates that the trial court considered “the construction given it by the acts and conduct of the parties ... before any controversy has arisen to its meaning, [a]s admissible on the issue of the parties’ intent.” (RT 8:17 – 9:6.)

Plainly, the trial court considered extrinsic evidence and rules of construction to determine the intention of the parties regarding the ambiguous Railroad Easement. There is no legal or logical basis to resort to such considerations if the instrument were unambiguous as to its scope and purpose, as the MSJ Order erroneously held. The trial court thus erred in considering such evidence and rules of construction, while simultaneously holding, as a matter of law, that the instrument was not reasonably susceptible to Appellant’s proffered interpretation.

The trial court then compounded this error by improperly disregarding extrinsic evidence raising a triable issue of fact as to the intention of the parties regarding the scope and purpose of the easement. These errors require reversal.

1. The Trial Court Erred in Invoking the Preference to Avoid Creating Surplusage in a Manner Which Defeats the Most Fundamental Rule of Contract Interpretation, Which Is to Ascertain the Intention of the Parties Based Upon the Entire Document

The MSJ Order and the comments of the trial court at the hearing clearly demonstrate that the trial court applied rules of construction which a court may only employ where an instrument is ambiguous. The trial court then inappropriately employed a rule of construction to avoid creating surplusage. Its reasoning was solely a conclusion of law, which this Court can and should review de novo.

The trial court failed to apply important limitations to the doctrine regarding surplusage set forth by the Supreme Court in *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal. 4th 220, 234. Furthermore, the trial court erred by overemphasizing this rule of construction to the exclusion of other more fundamental rules of contract interpretation.

Under *Guardino*, the preference of Civil Code § 1641 to “give effect to every part” of an instrument “is not absolute, like all such rules.” Thus, the preference “will only be applied if it results in *reasonable* reading of the legislation.” Where “uncertainty arises in a question of statutory interpretation, consideration must be given to the

consequences that will flow from a particular interpretation.” Furthermore, in applying such a rule of construction, courts must be mindful of the presumption supporting the rule of construction that “the Legislature intended reasonable results consistent with its expressed purpose, not absurd consequences.” (*Id.* at pp. 233 – 234.)

Here, the rule of construction embraced by the trial court leads to the absurd consequence in which the Railroad Easement, which has never been used for stand-alone telecommunications purposes, which is clearly denominated as a “Form of Railroad Easement,” and which contains extensive language relating to rail crossings and other specialize railroad uses, is transformed into a separate stand-alone easement for “telecommunications” that is entirely unrelated to any railroad use. It is undisputed that there is no evidence at all of the presence of any telecommunications equipment in the Railroad Easement at any time.

The trial court further erred in relying on Civil Code § 1641 to the exclusion of other controlling language in the instrument itself, to the exclusion of controlling circumstances, and by failing to observe the following important limitations on this rule:

- A contract should not be twisted out of its normal meaning and made to say what quite clearly it does not say in order to give a single word meaning. (*Freeman v. Monarch Life Ins. Co.* (1956) 138 Cal. App. 2d 702, 704.)
- Detached contractual provisions, standing alone, are not determinative of questions of interpretation, except when viewed in relation to the contract as entirety or where they precisely answer the query involved. (*Biescar v. Czechoslovak-Patronat* (1956) 145 Cal. App. 2d 133, 143);
- “Particular clauses of a contract are subordinate to its general intent.” (Civil Code § 1650.)
- Under the “main purpose rule” the general intent of a contract prevails over particular clauses. (*United States Liability Ins. Co. v. Haidinger-Hayes, Inc.* (1968) 263 Cal. App. 2d 531.)
- The court must favor an interpretation that gives effect to the apparent main purpose of the contract over the rules of construction to avoid surplusage. (*Harris v. Klure* (1962) 205 Cal. App. 2d 574, 575.)
- The meaning of words in a contract is to be determined, not from consideration of words alone, but from reading of the entire

contract. (*Sunset Sec. Co. v. Coward McCann, Inc.* (1957), 47 Cal. 2d. 907, 911.)

More generally, the “surplusage” doctrine does not negate the obligation of the court to ascertain the intention of the parties by construing the contract as a whole, with the various individual provisions interpreted together so as to give effect to all, if reasonably possible or practicable.⁷ Courts must interpret contractual language in a manner which gives force and effect to every provision, and not in a way which renders some clauses nugatory, inoperative, or meaningless. The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. The mutual intention is determined by the words used in the agreement, as well as extrinsic evidence of such objective matters as: (1) the surrounding circumstances under which the parties negotiated or entered into the contract; (2) the object, nature, and subject matter of the contract; and (3) the subsequent acts and conduct of the parties. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal. App. 4th 445, 474.)

⁷ This rule of construction to avoid surplusage that the trial court employed is codified in Civil Code § 1641 which states: “The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.”

The important limitations on the rule of construction (against surplusage) that the trial court failed to observe apply to cases interpreting deeds.

Even though the court must construe an isolated clause in a deed, the intention of grantors must be gathered from consideration of entire instrument of conveyance. (Civil Code § 1641; *Slavich v. Hamilton* (1927) 201 Cal. 299; *Paddock v. Vasquez* (1953) 122 Cal. App. 2d 396, 399.) The intention of parties to a deed is to be derived by consideration of the instrument as whole rather than of detached clauses, giving due regard to every provision, clause and word, whether of grant, description, qualification or explanation, and viewing it in light of circumstances surrounding its execution. (*Los Angeles v. Savage* (1958) 165 Cal. App. 2d 1, 5.)

Hamilton v. Ferguson (1938) 26 Cal. App. 2d 390, 395 demonstrates the proper application of these rules to interpret a deed that the trial court failed observe with respect to the Railroad Easement. In this quiet title action the Court affirmed the decision of the trial court to interpret a conveyance as granting an easement, as opposed to a fee interest. The Court cautioned against isolating a particular clause to arrive at the meaning of a deed. It stated: “this does not mean that a

portion only of a written instrument, although it is clear and explicit, may be selected as furnishing conclusive evidence of the intention of the parties.”

Likewise, in *Kraemer v. Kraemer* (1959) 167 Cal. App. 2d 291, 304 the Court construed uncertain language of a deed that was susceptible of either one of two constructions by evaluating the circumstances surrounding its execution and the subsequent conduct of the parties.

Here, the trial court improperly emphasized the phrase “of every kind and nature” as expanding the “rail and railroad related” *purpose* of the communications lines and facilities to entirely non-railroad related uses. This is not a fair reading of the instrument as a whole in light of all of the facts and circumstances.

The far more reasonable, and correct, interpretation of the entirety of the instrument, is that the right to maintain “communication lines and facilities” relates to “railroad and railroad related” communications line and facilities, not independent communications lines. The plain import of the phrase “of every kind and nature” was to authorize any *type* of equipment within the easement, not to broadly

expand the ***purpose*** of the easement to any conceivable commercial use. (1 JA 22 – 39.)

The language immediately following this clause, that the trial court did not emphasize, explicitly reinforces this interpretation by listing the ***type*** of equipment (“telephone, telegraph, television and fiber optic lines and related equipment”) to which the phrase “of every kind and nature” refers.

The trial court thus improperly fixated on the application of the rule to avoid surplusage as to a singular phrase (“of every kind and nature”) that led to an absurd result. This conclusion required the trial court to disregard the entirety of the instrument indicating the unmistakable railroad purpose of the document, in violation of the fundamental goal of contract interpretation, to ascertain the intention of the parties. (Civil Code § 1636 (the fundamental canon of construction which is applicable to contracts generally is the ascertainment of the intention of the parties).)

This trial court’s interpretation also violated the main purpose rule. (Civ. Code § 1650.) The main purpose of the Railroad Easement reserved by UP was to create an easement for railroad purposes. The parties entered the contract to support continued railroad operations by

UP on the JHP Property. The instrument is clearly denominated a “Form of Railroad Easement” and contains extensive language related to railroad operations, including provisions dealing with rail crossings which make no sense in the absence of a railroad. Ironically, the trial court’s construction of the instrument to broadly encompass non-railroad uses would itself violate the very rule of construction it employed by rendering this language mere surplusage.

Under the apposite authority, the trial court thus erred in elevating the rule of construction to avoid surplusage above the clear intention of the main purpose of the easement and the rule to construe the instrument as a whole. The trial court thus erred, as a matter of law, in finding that the Railroad Easement unambiguously created rights to maintain communications lines unrelated to any railroad use and in the total absence of a railroad.

2. The Trial Court Erred in Unreasonably Emphasizing Certain Hypothetical Extrinsic Evidence to Support Its Interpretation of the Railroad Easement Over Other More Reliable Extrinsic Evidence Contradicting This Interpretation

After erroneously finding the express language of the Railroad Easement controlling in the MSJ Order, the trial court compounded this error of law by unreasonably emphasizing certain extrinsic evidence to

support its interpretation over other more fundamentally reliable extrinsic evidence contradicting this interpretation. This extrinsic evidence raises a triable issue of fact as to the intention of the parties in entering the Railroad Easement.

Where a grant of easement is ambiguous, the primary extrinsic evidence that courts use to interpret the instrument is the “conduct of the parties and the practical construction placed on it by them.” (*Los Angeles v. Savage* (1958) 165 Cal. App. 2d 1, 7.) In *Savage*, a grantor of deed reserved in itself an easement (for any lawful purpose that would not interfere with the power lines above the easement). After the Court held that the scope of the easement was ambiguous, it upheld a use limitation that prohibited the grantor from erecting locked fencing on all sides of the subject land. The trial court reasoned that the extrinsic evidence of the “conduct of the parties and the practical construction placed on it by them” afforded the most reliable means of ascertaining their intention. (*Id.*)

As further stated in *Slavich v. Hamilton* (1927) 201 Cal. 299, 305 “it is well settled that a deed or contract indefinite in terms may be made definite and certain by the practical construction of the parties to it.”

Here, the most reliable evidence of the parties' intention, their subsequent conduct and practical construction of the easement, contradicts the trial court's interpretation. Neither UP nor JHP used the Railroad Easement for any telecommunications use. There is no record of any telecommunications equipment in the Railroad Easement, let alone telecommunications equipment separate and distinct from any railroad equipment. (5 JA 1229 – 1231, 1239 – 1241, 1273 – 1281.)

When UP sold the JHP Property to McNerney in 2015 UP confirmed there was no “fiber optic impacting the sale of the property.” UP did not reserve an easement for any fiber optic line at this time. Had there been any communications use of the JHP Property impacting the 2015 sale, UP's custom and practice would have been to “reserve an easement for the fiber optic line” which it did not. (7 JA 1870 at 161:17 – 161:21.)

While the trial court disregarded the most reliable extrinsic evidence to interpret the Railroad Easement, it incorrectly emphasized a purely hypothetical use of the easement for which there was no evidence. The MSJ Order emphasized that UP's former ownership of a telecommunications subsidiary supported the trial court's interpretation of the instrument. (9 JA 2330.) The trial court thus

emphasized its conjecture as to how UP might have considered using the easement, but in fact never did, as far as the evidence shows, so consider it, over extrinsic evidence of the actual use by the parties.

In doing so, the trial court ignored the most reliable extrinsic evidence, the parties' conduct in which neither UP nor JHP used the Railroad Easement for any non-railroad telecommunications use. This extrinsic evidence raised a triable issue of fact that Appellant's proffered interpretation regarding the scope of the Railroad Easement was correct.

The trial court thus erred in finding that the alleged extrinsic evidence of hypothetical use of the easement by a one-time subsidiary of UP "proves dispositive" to interpret the ambiguous Railroad Easement as a matter of law. (9 JA 2330.) Contrary to the holding of *Slavich*, the trial court erred in failing to consider the "acts of the parties in full accord with their intention." (*Id.* at p. 305.)

Under the apposite authority, if the Railroad Easement is indeed ambiguous, then the most reliable available extrinsic evidence, the pre-dispute conduct of the parties, raised a triable issue of fact. The trial court improperly disregarded this admissible extrinsic evidence on the basis of inadmissible evidence and speculative considerations.

The failure of the trial court to consider the history of use the Railroad Easement, a history that is entirely devoid of any evidence of telecommunications use that was not ancillary to railroad use, was error. The evidence of the history of use of the Railroad Easement raised a triable issue of fact as to whether the parties intended the right to maintain telecommunications equipment to be ancillary to a *bona fide* railroad use.

3. The Trial Court Erred in Treating the Legal Opinion of UP Stated in the Deposition of Its PMK, That it Did Not Intend to Abandon the Railroad Easement, as Evidence of Pre-Dispute Conduct That Courts May Use When Appropriate to Aid Their Interpretation of Ambiguous Instruments

The trial court erred in construing the deposition testimony of UP's PMK (that UP did not intend to abandon the easement) as conduct arising before the controversy has arisen that a court may consider in its interpretation of an ambiguous instrument. In doing so, the trial court grossly misapplied *Southern Cal. Edison, supra*.

The holding of *Southern Cal. Edison* demonstrates how far afield the trial court strayed when it applied the rule of construction based upon pre-dispute course of performance to the post-dispute legal opinion expressed by Krantz at his deposition. In that case, the "extrinsic evidence" relied upon by the trial court in construing the

contract “consisted principally of written statements [real party in interest and party to the contract] Energy Development and its president, William Adams, made to potential investors” regarding its proffered interpretation of the rate periods in the long-term wide turbine energy purchase contract. (*Id.* at p. 850.) Critically, these investor communications predated the parties’ dispute regarding the meaning of applicable periods of the contract.

The deposition testimony of Krantz cited by the trial court demonstrates its mistaken application of the rule of *Southern Cal. Edison*. The MSJ Order cited to Krantz’s deposition at pages 46, line 3, to 48, line 18; page 49, line 8 to 15, and page 54, lines 12 to 25.” (9 JA 2331.) This testimony relates to post-dispute discussions between Appellant’s representatives and Krantz regarding the Railroad Easement in which Krantz takes the legal position that UP must retain the easement. (6 JA 1735 – 1742.)

The MSJ Order further emphasized the Krantz deposition, at pages 47, line 14, to 48, line 11, Page 59, line 24, to page 60, line 16, Page 61, lines 17 through 20 and page 116, line 16, through page 118, line 3. (9 JA 2331.) This testimony consists of Krantz’s legal conclusion that UP had not terminated the easement based upon his own

mistaken understanding of the law of abandonment. (6 JA 1735 – 1745, 1767 – 1769.)

More generally, *Southern Cal. Edison* simply does not support the decision of the trial court to grant summary judgment on the issue of contract interpretation here. In *Southern Cal. Edison*, the reviewing court reversed the decision of the trial court to grant summary adjudication on the declaratory relief action to determine the meaning of the ambiguous contract. (*Id.* at p. 854.) The Court based this reversal upon its finding that “[t]here is a conflict in evidence” regarding the parties’ competing interpretations of the contract. (*Id.* at p. 852.) Based upon this contradictory extrinsic evidence the Court concluded that “there are triable issues of fact to be decided before the court can determine if [the] interpretation urged by Energy Development is reasonable.” (*Id.* at p. 853.)

The trial court thus misapplied the very authority that it purported to rely on, by deeming Krantz’s post controversy legal opinion (that UP did not intend to abandon the Railroad Easement) as the equivalent of the pre-controversy course of performance that is a potential aid in the construction of the Railroad Easement under *Southern Cal. Edison*.

This misapplication is a matter of law which was dispositive to the trial court's rulings, and constitutes reversible error.

C. The Trial Court Erred in Adopting an Incorrect Legal Definition of Abandonment as Requiring a Formal Relinquishment of an Easement by Way of Quitclaim Deed

The trial court erred when it failed to apply the established rules for abandonment and adopted an erroneous legal definition proffered by a UP employee.

It is well-settled that “abandonment cannot be overcome by courtroom declarations of unexercised intent.” (*Ocean Shore Railroad Co. v. Doelger* (“*Doelger II*”) (1960) 179 Cal.App.2d 222, 235.)

Despite acknowledging this authority, the trial court shockingly announced that it would accept UP's purported legal definition of abandonment. The trial court reasoned that because Krantz was “one of the key guys” (in the court's words), “he understood very well what ‘abandonment’ meant.” (RT 9:22 – 9:25.) The trial court then explicitly adopted Krantz's definition of abandonment, assuming that his testimony could automatically establish the lack of “intent to abandon” as a matter of law. “[S]o the question was asked, what do you understand abandonment to be, and he explained it, and it was essentially the same thing as the legal concept.” (RT 10:2 – 10:5.)

In the MSJ Order, the trial court then cited Krantz’s testimony to incorrectly equate the legal definition of abandonment with a formal quitclaim of the easements. It quoted his statement that, “[W]e would not quitclaim those easements until something was, there would be a resolution from an access standpoint.” (6 JA 1737 at 48:8 – 48:11; 9 JA 2331.)

The trial court’s citation to page 59, line 24, to page 60, line 16 of the Krantz Depo. demonstrates beyond peradventure its confusion between an *express extinguishment* of the Railroad Easement and the *conduct meeting the legal requirements of abandonment even in the absence of express extinguishment*, which in the context of railroad easements has been recognized in case law for over a century. (9 JA 2331.) It thus ended its inquiry with its citation to the testimony of Krantz (who was not even involved in the original transaction) that UP was not “willing to abandon, terminate, give up, relinquish those easements.” (6 JA 1743 – 1744.)

On Page 61, lines 17 through 20, also cited by the trial court, Krantz recites his own 2014 notes that were made *after* he met with Howard Pearce of Appellant to discuss the disputed rights of the parties under the Railroad Easement. This testimony consists of his naked

legal conclusion that the Railroad Easement was “not abandoned.” (6 JA 1745; 9 JA 2331.)

The trial court’s citation to Page 116, line 16, through page 118, line 3 of the Krantz Depo. sets forth Krantz’s contention that abandonment is the equivalent of voluntary relinquishment, stating “we do not abandon any easements until we determine – in our sole and absolute discretion whether or not we are willing to terminate the easements. They are not abandoned until we take specific action meaning a quitclaim.” (6 JA 1767 – 1769; 9 JA 2331.) This citation sets forth Krantz’s legal conclusion that an easement is not abandoned unless it is pursuant to a written agreement. This of course is an issue of law for the court, not an interested witness, to determine.

The trial court further confirmed its agreement with Krantz’s incorrect legal position (that abandonment required the consent of the easement holder) stating that “And the last citation, pages 116 to 118, this was where Mr. Krantz explained in detail the different departments that would have been required to have signed off on any kind of abandonment before that procedure could have happened.” (RT 9:17 – 9:21; 6 JA 1767 – 1769; 9 JA 2331.)

The conclusion of the trial court that abandonment requires the owner of the dominant estate to agree to the abandonment is a gross misstatement of the law. Indeed, the entire doctrine of common law abandonment of railroad easements would not exist if it required that the easement holder must consent to the abandonment by way of executing a written quitclaim deed.

The obvious error of the trial court in defining the legal concept of abandonment as one requiring a formal written relinquishment of an easement by way of a quitclaim deed requires this Court to reverse the grant of summary judgment.

D. The Trial Court Erred in Failing to Recognize Substantial Evidence That Raised Triable Issues of Fact as to the Intention to Abandon the Railroad Easement

The trial court erred in concluding broadly that Appellant had provided “no such evidence” of intention to abandon. (9 JA 2331.) The trial court did so despite correctly citing to *Ocean Shore Railroad Co. v. Doelger* (“*Doelger II*”) (1960) 179 Cal.App.2d 222, 231 which states the following factors demonstrating intention to abandon: (1) removal of tracks; (2) non-use for railroad purposes; (3) ownership by non-railroad; and (4) physical alteration.

Here, there was substantial evidence on the record of all of these elements.

One, it was undisputed on the record that there are no longer any railroad tracks or equipment of any kind anywhere in the Railroad Easement. Any tracks that had been in the easement were removed not later than 2008. (3 JA 825 – 825, 838, 863 – 864; 4 JA 1084 – 1085; 1097 – 1098, 1106 – 1115.). This is the primary factor the trial court should have considered in determining the intent to abandon a railroad easement.

Two, there was substantial evidence on the record demonstrating non-use for railroad purposes. UP, the only *bona fide* railroad involved with either of the Properties, decided it no longer needed the JHP Property or the Railroad Easement to support its railroad operations. UP did so after twelve separate internal committees confirmed the Railroad Easement was no longer needed for rail use. (5 JA 1243 – 1245 at 117:15 – 118:9, 119:4 – 119:13.)

Three, it is undisputed that UP transferred the JHP Property to McNerney for the purpose of real estate development. McNerney bought and sold different railroad properties in the City to develop them

for non-railroad use. Respondent is not and has never been a railroad.
(5 JA 1225 – 1227 at 80:25 – 81:4, 81:18 – 82:7.)

Four, there was substantial evidence of a physical alteration of the JHP Property and the Railroad Easement aimed to discontinue any railroad use. When UP transferred the JHP Property to McNerney in 2015 by way of the 2015 Quitclaim Deed it eliminated the following elements of the Railroad Easement reserved in the 1990 UP Deed that supported rail operations by UP: (1) the mainline right of way from the grant; (2) Schedule 2, Parcel No. 1 of the Railroad Easement containing an existing active railroad spur used by UP; and (3) Schedule 3, Parcel No. 1 containing a roadway access along the east side of the mainline right-of-way. Lastly, the 2015 Quitclaim deed included a fence covenant requiring the grantee to erect a fence to prevent the grantee from accessing the mainline right-of-way. (1 JA 59 – 73; 5 JA 1228 at 87:5 – 87:9, 87:19 – 87:25; 5 JA 1340 – 1341, 1344 – 1346.)

Thus, the MSJ Order erroneously concluded at there was “no such evidence” of intention to abandon. Indeed, under *Doelger II* there was substantial evidence of all of the indicia of intention to abandon.

The other authority cited in the MSJ Order further illustrates how the trial court erred in finding there was no evidence on the record raising a triable issue of fact as to intention to abandon.

Home Real Estate Co. v. Los Angeles Pacific Co. (“*Home Real Estate*”) (1912) 163 Cal. 710, 714 held that long-continued nonuser is some evidence of an intent to abandon. In this case the California Supreme Court upheld a finding of abandonment of railroad easement as supported by substantial evidence. Here, as in *Home Real Estate*, the intermittent use of the subject easement for uses unrelated to a “general railroad business” did not preclude a finding of abandonment. (*Id.* at p. 715.)

Flanagan v. San Marcos Silk Co. (1951) 106 Cal. App. 2d 458, 463, as cited in the MSJ Order, likewise held that non-user constituted some evidence of intent to abandon. Here, as in *Flanagan*, there was undisputed evidence that any *bona fide* railroad use of the easement had been discontinued and that the tracks had been removed. Under this authority, while long non-use “does not of itself constitute an abandonment” it is nonetheless “a circumstance for the jury to consider in determining the question of whether there was an abandonment.” (*Id.*)

The trial court compounded its error in misconstruing the above authority by citing to the misleading and inapposite case of *Cottonwood Duplexes, LLC v. Barlow* (2012) 210 Cal. App. 4th 1501, 1509. This case held that the owner of the servient estate could not terminate a deeded easement based upon its own needs, in the absence of any intention to abandon. This case is inapposite here, where there is substantial evidence of intention to abandon, including at a minimum, the long period of non-use and the removal of tracks from the easement.

Appellant submitted substantial evidence raising a triable issue of fact as to the intention to abandon. The broad finding of the trial court that there was “no such evidence” of intention to abandon constitutes reversible error. (9 JA 2331.)

E. The Trial Court Erred in Finding as Undisputed, Facts Which Purportedly Negated Any Intention to Abandon the Easement, Where the Alleged Facts Relied Upon Are Not Only Disputed But Also Were Contradicted by Evidence Submitted by Appellant

The trial court erred in finding that the following four facts conclusively “reflect[] the opposite” of intention to abandon as a matter of law: (1) the railroad marketed the property; (2) Appellant confirmed the Railroad Easement by way of the Temporary License; (3) Proven

used the Railroad Easement for a bona fide railroad use and (4) the JHP Property would be landlocked without the easement. (9 JA 2331.)

The first of these facts, actually *supports* a finding of abandonment. The other three facts were disputed with and contradicted by substantial evidence. The court erred thus erred, as a matter of law, in finding that these facts, as a matter of law, negated any intention to abandon the Railroad Easement.

1. The Trial Court Order Erroneously Concluded That UP's Marketing of the JHP Property Negated a Finding of Intention to Abandon.

Contrary to what is asserted in the MSJ Order, the marketing of the JHP Property for sale by UP to a non-railroad does not reflect the opposite of any intention to abandon. Rather, the liquidation of excess railroad property by a railroad is circumstantial evidence of an intention to abandon. (*Ocean Shore Railroad Co. v. Doelger* ("Doelger II") (1960) 179 Cal.App.2d 222, 233 (liquidation of property by railroad to non-railroad constitutes indicia of relinquishment of railroad purpose).)

The trial court erred as a matter of law in holding that this evidence "reflects the opposite" of an intention to abandon.

2. The Trial Court Erroneously Concluded That It Was Undisputed That the Parties Intended the Temporary License to Confirm the Railroad Easement

The trial court erred in finding that the undisputed intent of the parties to the Temporary License to confirm the Railroad Easement, negated any intent to abandon the Railroad Easement.

Substantial evidence on the record raises a triable issue of fact as to the intention of the parties to the Temporary License. This same evidence contradicts the erroneous conclusion of the trial court that the Temporary License altered the parties' legal rights regarding the Railroad Easement.

The language of the Temporary License itself raises triable issue of fact as to whether the parties intended this agreement to "confirm" the Railroad Easement.

Section 1 of the agreement explicitly states that the Temporary License, "does not amend or waive any rights of the parties under the RR Easements." (5 JA 1437.) The agreement also prohibited the parties from recording the document. This language raises a triable issue of fact as to whether the parties in intended the Temporary License to "confirm" the easement.

Other evidence also raises a triable issue of fact as to the intention of the Temporary License. Howard Pearce of Appellant confirmed that the simple purpose of the agreement was to permit Appellant to construct a retaining wall on the Visitacion Property. (5 JA 1341 – 42, ¶ 9.)

In addition, the parties entered this agreement *after* the onset of their dispute regarding the relocation and/or release of the Railroad Easement in the context of the residential development of their respective properties. The reference to the Railroad Easement in the agreement simply acknowledged that the easement was in the chain of title when the parties were attempting to resolve their dispute regarding the release of the easement.

The language of the agreement, and the evidence supporting its limited purpose, indicates that the parties did not desire the document to alter the record of title relating to the easement or otherwise alter their legal rights regarding the easement.

At a bare minimum, this evidence raises a triable issue of fact as to the intention of the parties regarding the purpose of this agreement. The trial court thus erred in construing this agreement as having “confirmed” the Railroad Easement, as a matter of law.

3. The Trial Court Erroneously Concluded That It Was Undisputed That Proven Used the Railroad Easement for a *Bona Fide* Railroad Use

The trial court likewise erred in finding that it was undisputed that Proven used the Railroad Easement for any railroad purpose. Appellant provided substantial evidence raising triable issues of fact regarding: (1) the nature of Proven's limited use of the JHP Property to park vehicles; (2) whether Proven ever used the Railroad Easement at all; and (3) whether such use was a *bona fide* railroad use.

In particular, the President of Proven confirmed that: (1) its workers never even used the Railroad Easement to access the JHP Property; (2) Proven's use of the JHP Property was not a railroad use, but involved only parking of light trucks and vehicles of employees; (3) the area of the Visitacion Property that Proven used to access the JHP Property was *outside* of the Railroad Easement; and (4) Proven did not use the Railroad Easement for any purpose. (5 JA 1283 – 1297.)

Furthermore, the trial court erred in finding that Proven's short term parking of vehicles on the JHP Property constituted a *bona fide* railroad use. Under *Home Real Estate Co.*, *supra*, 163 Cal. at p. 714, the intermittent use of the subject easement for uses unrelated to a

“general railroad business” did not preclude a finding of abandonment.
(*Id.* at p. 715.)

In reaching this conclusion in *Home Real Estate Co.*, the California Supreme Court narrowly construed the use of an easement for “a general railroad business.” The court held that this language meant “the carriage of passengers or freight for the public generally.” In upholding the finding that the railroad intended to abandon the easement, the court ruled that even evidence of intermittent private freight use “of oil and lumber” did not negate the intention to abandon.
(*Id.* at p. 715.)

Here, the limited use of the JHP Property by Proven to park automobiles did not involve any use of the Railroad Easement. It is thus much farther removed from the legitimate railroad use found insufficient to prevent abandonment in *Home Real Estate*. Because the California Supreme Court in that case held that the actual, intermittent use of the rail for private freight by railroad cars did not negate an intent to abandon the easement, this Court must likewise find that the Proven use of the JHP Property to park automobiles was not a *bona fide* railroad use. At minimum, this evidence raises a triable issue of fact as to the nature of Proven’s use of the Railroad Easement and JHP Property.

Once again, the trial court based its decision upon a fact it found undisputed and that negated any intention to abandon, which was in fact disputed and also contradicted by evidence.

4. The Trial Court Erroneously Concluded That the JHP Property Would be Landlocked Without the Railroad Easement

The trial court likewise erred in finding that it was undisputed that the JHP Property would be landlocked in the absence of the Railroad Easement. There was substantial evidence raising a triable issue of fact as to this issue.

California courts most frequently consider whether a property is “landlocked” for the purpose of easement rights in cases involving an easement by necessity. No such easement is at issue here. The case law uniformly holds that courts must strictly construe the term “landlocked” to apply only where “the claimed way constitutes the only access to the [] property.” (*Reese v. Borghi* (1965) 216 Cal. App.2d 324, 332 (property held not landlocked where it abuts public road).)

Here, it is undisputed that the JHP Property abuts a public street, Blanken Avenue. Respondent itself submitted an application for the residential development of the JHP Property that showed elevations

abutting Blanken Avenue and titled the proposed project “Blanken Avenue.” (1 JA 94; 4 JA 1023 – 1043.)

Furthermore, McNerney declared under oath that the access via the Railroad Easement was not a strict necessity (because the JHP Property was not otherwise landlocked) but because this access was “the most economically feasible.” (5 JA 1403 at ¶ 13.)

Beyond just raising a triable issue of fact, this evidence contradicts the erroneous conclusion of the trial court that the JHP Property was landlocked. Indeed, when pressed on this specific issue at the hearing on the MSJs, Respondent conceded that “it can be a triable issue of fact.” (RT 29:9 – 29:15.)

Once again, the trial court erroneously relied on a fact it erroneously characterized as undisputed, to rule that there was no intent to abandon. The trial court then further erred by failing to apply the strict definition of “landlocked” under the apposite authority.

F. The Trial Court Erred in Overruling the Objections to Krantz’s Testimony as to the Legal Definition of Abandonment and His Self-Serving Conclusions of Law That UP Did Not Intend to Abandon the Easement

The trial court erred in overruling Appellant’s objections to evidence. As discussed above, this Court should review the rulings on the evidentiary objections de novo. (*Biljac Associates v. First*

Interstate Bank (1990) 218 Cal. App. 3d 1410, 1419; *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512, 535; *contra, Demps v. San Francisco Housing Authority* (2007) 149 Cal. App. 4th 564, 566.) But again, under any review standard, the trial court's ruling was an abuse of discretion and clear error.

The trial court failed to provide express rulings on Appellants written objections and to the objections made during the Krantz deposition. These objections pertained to clearly inadmissible evidence, and should have been sustained. For example, the trial court failed to sustain Appellant's Objection No. 3 to McNerney's declaration that Respondent did not abandon the Railroad Easement. (5 JA 1351.) Of course, such conclusions regarding a legal issue in controversy is inadmissible. Likewise, the trial court failed to sustain the clearly meritorious Objection No. 5 to McNerney's declaration as to the legal effect of the Temporary License. (5 JA 1352.)

As to the testimony of Krantz at his deposition, Appellant objected on the record at the deposition to questions calling for his legal conclusion as to the scope of the easement and the legal definition of abandonment. (6 JA 1781 lines 12 – 13, 1783, line 3.) Appellant

restated these objections at the hearing on the MSJs. (RT 11:10 – 11:14, 21:19 – 22:22.)

The trial court erred in finding that Krantz could testify as to the legal definition of abandonment. In overruling this objection the trial court stated that Appellant “extensively relied on Mr. Krantz’s testimony” in its briefing. The fact that Appellant may have cited to Krantz’s deposition in its briefing has absolutely no bearing on the merits of its specific objections to his testimony.

CONCLUSION

The Court should reverse the judgment of the trial court and direct that summary judgment be entered in favor of Appellant and against Respondent. In the alternative, the case should be remanded to the Superior Court for resolution of disputes of factual issues bearing on extrinsic evidence needed to interpret the Railroad Easement and to determine whether the Railroad Easement was abandoned.

Dated: January 24, 2022

KATZOFF & RIGGS LLP

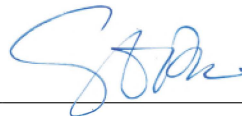
By: 

Stephen G. Preonas

Counsel for Appellant
VISITACION INVESTMENT, LLC

CERTIFICATE OF WORD COUNT

The undersigned appellate counsel for Appellant hereby certifies that according to the word processing program used to produce this brief, the word count is approximately 11,510 words, not including tables.



Stephen G. Preonas

PROOF OF SERVICE

I, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen (18) years and not a party to the within action or proceeding. I am employed in the County of Alameda, State of California. My business address is 1500 Park Avenue, Suite 300, Emeryville, CA 94608. I am familiar with the regular mail collection and processing practices of Katzoff & Riggs for correspondence deposited for mailing with the United States Postal Service. On the date set forth below, I caused to be served the following document(s):

APPELLANT'S OPENING BRIEF AND JOINT APPENDIX

addressed to each such addressee respectively as follows:

Jeffrey H. Lowenthal Dana Andreoli STEYER LOWENTHAL LLP 235 Pine Street, 15th Floor San Francisco, California 94104 Telephone: (415) 421-3400 Facsimile: (415) 421-2234 jlowenthal@steyerlaw.com dandreoli@steyerlaw.com	Hon. Vedica Puri San Francisco Superior Court Dept. 203 400 McAllister Street, San Francisco, CA 94102 (Via U.S. Mail only) CA Supreme Ct. - Via Truefiling
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I then served the addressee(s) in the following manner:

[x] **VIA E-MAIL** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury, under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on January 24, 2022, at Los Angeles, California.


MEGAN ZERGA

EXHIBIT H

**Excerpts from San Francisco Planning Department,
Planning Commission Approval Packet, Visitacion
Valley/Schlage Lock (2014)**



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Initiation of Planning Code, Zoning Map, and General Plan Amendments HEARING DATE: MAY 8, 2014

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Date: May 1, 2014
Case No.: **2006.1308EMTZ**
Project Address: **Visitacion Valley/Schlage Lock**
Zoning: M-1
Proposed Zoning: Visitacion Valley Special Use District
Height/Bulk: 40-X & 55-X
Block/Lot No.'s: **AB 5066B** / 003, 004, 004a, 005, 006, 007, 008, 009; **AB 5087**/003, 003a, 004, 005; **AB 5099**/014; **AB 5100**/ 002, 003,007,010 **AB 5101**/006, 007; **AB 5102** / 009, 010; **AB 5107**/001, 003, 004, 005; **AB 6233**/048, 055; **AB 6248**/002, 045; **AB 6249**/001, 002, 002A, 016, 017, 018, 019, 020, 021, 022, 023, 024, 025, 026, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036; **AB 6308**/001, 001a, 001d, 002, 002b, 003; **6309B**/001, 002, 018.
Staff Contact: Claudia Flores – (415) 558-6473 Claudia.Flores@sfgov.org
Reviewed by: Joshua Switzky – (415) 558-6815 Joshua.Switzky@sfgov.org
Recommendation: **Initiate Amendments to the General Plan.**

INTRODUCTION

The Planning Department, in collaboration with the Office of Economic and Workforce Development, and several other City agencies, presents the amendments and updates to the *Visitacion Valley / Schlage Lock Development Project*. This represents the culmination of many years of collaboration with Universal Paragon Corporation, the property owner and project sponsor, as well as with Visitacion Valley residents, business owners, workers and stakeholders, towards a plan for reuse of the long-vacant Schlage Lock site into a vibrant, transit-oriented mixed use development that will be model of sustainability. The plan calls for the creation of 1,679 new residential units, a mid-sized grocery store, and other ground floor neighborhood retail on the Schlage site. Of particular note is that in addition to the 15% affordable housing requirement, all of the market-rate units developed on the site are also expected to be affordable to middle income families based on the prevailing market affordability of the neighborhood. It also includes three new neighborhood parks of different sizes, the extension of the Visitacion Valley street grid throughout the Schlage Lock property, and integrates the commercial backbone of the community, Leland Avenue, into the site.

The draft Resolution and action before the Planning Commission is for initiation of amendments to the General Plan. The Initiation Package is intended to provide the Commission with all the documentation necessary to initiate the necessary amendments to implement the Visitacion Valley / Schlage Lock Development Program. Initiation does not involve a decision on the substance of the amendments; it

merely begins the required notice period, after which the Commission may hold a hearing and take action on the proposed amendments and related actions.

The proposed General Plan Amendments pertaining to this initiation hearing are part of a larger package of changes that will be presented to the Planning Commission for approval at a future public hearing. At such hearing, the Planning Commission will consider the General Plan amendments as well as related Planning Code and Zoning Map Amendments, the Development Agreement, the Design for Development, the Open Space and Streetscape Master Plan as well as an Infrastructure Master Plan and a Transportation Demand Management Plan. The Mayor and Supervisor Cohen introduced the related components to the Board of Supervisors on Tuesday, April 29 2014. No initiation action is required for the other actions related to approving the project, ; any actions related to CEQA will follow at the time of approvals.

REQUIRED COMMISSION ACTIONS AT THIS HEARING

The following actions are requested from the Commission at this hearing:

- 1) Approve resolution initiating amendments to the General Plan.** By formally initiating the process of making amendments to the General Plan the Commission directs staff to begin a required 20-day notice period and to calendar an approval hearing after the required 20-day period has run. Notice of the approval hearing will be published in the newspaper and mailed to residents and property owners within 300 feet of all exterior boundaries of the planning area, as required by section 306.3 of the Planning Code. Please note that by initiating these amendments today, the Commission does not make any decision regarding the substance of the proposals. It retains full rights to accept, reject or modify any and all parts of the proposed ordinance and the Visitacion Valley / Schlage Lock proposals at such future hearing.
- 2) Calendar the proposed hearing date for approval and adoption.** Staff proposes that the date for final approval and adoption of amendments and related actions be set for June 5, 2014, as a regular calendar item. The project requires presentations at several City Commissions, Committees and Boards and it is critical the project meets this date.
- 3) Review the requested future commission actions.** In order to develop the Schlage Lock site and plan for other improvements to the Visitacion Valley neighborhood, the Planning Commission will be asked to consider a number of actions at the hearing on June 5th. Requested future actions that the Planning Commission must consider are described further at the end of this case report.

PROJECT BACKGROUND

The Schlage Lock Company operated from the 1920's to 1974 and it was one of the City's largest employers. The Ingersoll Rand Corporation acquired the Schlage Lock Company in 1974 and operated the plant until 1999, when it closed down the plant and relocated manufacturing operations. The 20 acre site has been vacant since 1999. After Home Depot proposed to develop a retail store on the vacant Schlage site in 2000– a proposal that met with community opposition - the Board of Supervisors imposed interim zoning controls, sponsored by then Supervisor Sophie Maxwell, on the site to encourage the long-term planning of the site. Residents of Visitacion Valley then partnered with City

agencies and the Universal Paragon Corporation to develop a plan for the reuse and revitalization of this critical site in their community. Several years of analysis and an extensive community planning process concluded in 2009 with the adoption of a Redevelopment Plan, zoning changes and a detailed Design for Development to guide change on the site. Since City adoption of the Plan, the former Visitacion Valley Citizens Advisory Committee (CAC) had continued to meet to discuss and comment on various aspects of the Plan's implementation and to provide comments to the project sponsor as it continued to implement the plans for the Schlage Lock site.

However, the demise of Redevelopment Agency in early 2012, and the loss of public funding that accompanied it, required reopening the plans for the site. City staff, along with the project sponsor, re-initiated efforts to move transformation of Schlage forward beginning with a community meeting on October 13th 2012. The Planning Department partnered with the Mayor's Office of Economic and Workforce Development and the community to evaluate the project's feasibility, to look at tools which can help move the project forward, and to make the necessary legislative changes to foster the site's transformation. The proposed amendments to the 2009 documents and the new Development Agreement are the results of that effort.

Project Location / Present Use

The Visitacion Valley/Schlage Lock site is located in the southeast quadrant of San Francisco, immediately north of the San Francisco / San Mateo County Line and the City of Brisbane in San Mateo County. To the west of the Special Use District, are McLaren Park, the Sunnyvale HOPE-SF site and the Excelsior and Crocker Amazon districts; to the east of the site lie Highway 101, Little Hollywood, Executive Park, Candlestick and Bayview Hunters Point neighborhoods; and the Bayshore Caltrain station lies near the Southeast corner of the site. The 20-acre site is currently zoned M-1 (Industrial) District and 40-X Height and Bulk Districts. Demolition of the Schlage factory buildings has taken place. With the exception of the old office building and plaza at Bayshore Boulevard and Blanken Avenue, the site is currently vacant. Since 2009 the entire site has undergone active groundwater and soil vapor remediation due to its former industrial use.

The Special Use District (SUD) includes two zones: Zone 1, composed of the Schlage Lock industrial site, located at the southern border of San Francisco where Bayshore Boulevard converges with Tunnel Avenue; and Zone 2, composed of the segments of the west side of Bayshore Boulevard and the existing Leland Avenue adjacent to the Schlage Lock site.



PROPOSAL: AMENDMENTS TO THE ADOPTED 2009 PLAN & IMPLEMENTING DOCUMENTS

The proposed Amendments would:

(1) **Amend the Planning Code** (introduced by the Mayor and the Board) to:

- Update Planning Code Section 249.45 - the "Visitacion Valley/Schlage Lock Special Use District, which would:
 - o allow for the development of 1,679 housing units and up to 46,700 square feet of new retail;
 - o establish key controls that supersede the underlying zoning such as parking, and prohibiting and allowing certain uses;
 - o establish that development in the SUD is regulated by the *Visitacion Valley/Schlage Lock Design for Development* document and the *Open Space and Streetscape Master Plan* as adopted and periodically amended by the Planning Commission, except for those controls specifically enumerated in the SUD;
 - o establish a process for phase and project design review, approval and the consideration of modifications to the controls of the SUD and the *Design for Development Controls and Guidelines*, including public notification and hearings; and
 - o sunset the 2009 Redevelopment Plan

(2) **Amend the Zoning Maps** (introduced by the Mayor and the Board) as follows:

- Amend Z10 to designate the new Mixed Use General (MUG) zoning for Zone 2 (the Schlage Lock site) of the project site; and
- Amend Zoning Map HT10 to reclassify the height limits within the project site according to the proposed project.

(3) **Amend the General Plan** as follows

- Urban Design Element map - Urban Design Guidelines for Height of Buildings (Map 4) and Urban Design Guidelines for Bulk of Buildings (Map 5) to reference the Visitacion Valley/Schlage Lock Special Use District replacing the references to the 2009 Redevelopment Area Plan;
- Commerce and Industry Element maps - Generalized Commercial and Industrial Land Use Plan (Map 1), Generalized Commercial & Industrial Density Plan (Map 2), Residential Service Areas of Neighborhood Commercial Districts and Uses (Map 4), and Generalized Neighborhood Commercial Land Use and Density Plan (Map 5) to replacing the references to the 2009 Redevelopment Area Plan and instead reference the Visitacion Valley/Schlage Lock Special Use District.
- Transportation Element map - Vehicular Street Map (Map 6) to replace references to the Redevelopment Area Plan and instead reference the Special Use District.

The Visitacion Valley/Schlage Lock Project also necessitates approval by the Planning Commission and the Board of Supervisors of a Development Agreement, accompanied by and implemented through four additional documents to guide future development at the Schlage site: *the Visitacion Valley/Schlage Lock Design for Development*, *the Visitacion Valley/Schlage Lock Open Space and Streetscape Master Plan*, *the Visitacion Valley/Schlage Lock Infrastructure Plan*, and a *Transportation Demand Management Plan*.

- **The Design for Development (D4D)** provides a design framework for transforming the Schlage Lock site into a walkable neighborhood and for creating strong connections to the existing Visitacion Valley community. It prescribes controls for land use and urban design controls and guidelines for open spaces, streets, blocks and individual buildings. The design guidelines also apply to Zone 2 of the SUD.
- **The Open Space and Streetscape Master Plan** establishes schematic designs for new parks, open space and streets on the Schlage Lock site. It includes material palettes, as well as planting, lighting, stormwater, public art and furnishing plans.
- **The Infrastructure Plan** establishes an outline for anticipated site-wide improvements to all street and public rights-of-way, underground utilities, and grading.
- **The Transportation Demand Management Plan** provides a combination of land use, infrastructure improvements, and supporting programs to increase the likelihood of shifting transportation modes away from driving alone. It includes measures which mitigate environmental impacts and additional measures pursuant to the Development Agreement..
- **The Development Agreement** establishes the terms and responsibilities for the development of the Schlage Lock Site and provision of community benefits.

The project proposes to construct up to 1,679 new residential units, provide new commercial and retail services, provide new open spaces, new infrastructure an within the development site to be built in a phases. New buildings on the site would range in height from 57 feet to 86 feet.

As envisioned and planned in the original Plan, neighborhood-serving retail would be constructed as part of the proposed Project and concentrated near the extension of Leland Avenue and close to Bayshore, along which the T-Third rail line runs. Each block surrounds or is within ¼ mile of a planned open space. A new grocery store, new streets, infrastructure and other amenities (e.g. sustainable features, pedestrian improvements.) would also be provided on the Project Site. Infrastructure improvements would include the installation of sustainable features, such storm water management. The project sponsor is required to provide two publicly accessible open spaces. A third park, on an adjacent site owned by the Peninsula Corridor Joint Powers Board (Caltrain), is also planned. In addition to these new parks, the Project would provide significant additional open space in the form of private or semi-private open space areas such as outdoor courtyards, roof decks, and balconies.

As noted, the documents before the Commission are not a new Plan or wholesale revisions. The amendments build on the existing 2009 plans to ensure feasibility while maintaining livability to make sure that the 20-acre site is revitalized comprehensively. The site plan and guiding documents have been revised in the following ways:

ISSUE	CHANGE
Increased heights	From 45'-85' to 55'-86'.
Increased density	From 1,250 units to 1,679 units.
Modified parks location	See map exhibit 4 – to accommodate a phase 1

Reduced commercial square footage	Reduced from 105,000 square feet to 46,700 square feet.
Updated design controls and building standards	Amended to account for new location of parks and taller heights on the site, as well refined design controls, such as required ground floor frontages, setbacks and massing breaks to deliver high-quality urban design and livability while ensuring project feasibility
Adjusted parking	Increased parking allowance on the grocery use to ensure its success; and flexibility to provide car-share on-street or near key uses such as transit nodes and retail.
Proposed new zoning	Proposed to rezone to Mixed Use General zoning from industrial/M-1 to make the zoning consistent with the planned uses for a mixed-use, primarily housing development. Proposed review process for formula retail, including public review, to attract anchor retail tenants; and to support the success of new retail and of the existing Leland neighborhood-commercial corridor.
Proposed review processes and ongoing community participation	Proposed process for phase and project design review, approval, and consideration of modifications to the controls of the SUD and the <i>Design for Development Controls and Guidelines</i> including public notification and hearings. Ongoing community input and participation through: • pre- and post-application meetings in Visitacion Valley for phase applications; • pre-application meetings in Visitacion Valley and notification/comment period for building permits; • annual meeting in Visitacion Valley to program impact fees and for project sponsor to deliver progress report. • post-application meeting for design review of two parks, to demonstrate incorporation of community feedback into park designs
Completed related documents / actions	• General Plan, Planning Code and Zoning Map Amendments • Development Agreement • Transportation Demand Management Plan • Final Open Space and Streetscape Master Plan • Final Infrastructure Master Plan • Revised Design for Development document

Key Terms of the Development Agreement

The Project is being reviewed for approval through a Development Agreement (DA) by and between the City and County of San Francisco and Visitacion Valley LLC. The Development Agreement is a contract between the City and the Developer that provides greater security and flexibility to both the City and Developer, and results in greater public benefits in exchange for certainty. Development Agreements are typically used for large-scale projects with substantial infrastructure investment and multi-phase build outs. The draft Development Agreement is attached and a detailed summary of the DA will be distributed to the Commission under separate cover. A list of key provisions is below:

- 15 year term
- Vested right to develop for the term of the DA
- Requirement to commence Phase 1 within a specified time period
- Requirement that Phase 1 include a full-service grocery store
- Requirement that Developer provide the following key community benefits
 - o 15% Inclusionary Housing with most or all on-site (100% of housing on this site, including the market-rate units, is expected to be affordable to middle income families based on the prevailing market affordability of the neighborhood.)
 - o Parks
 - o New streets and sidewalks designed to a high standard, including pedestrian connectivity from the Visitacion Valley neighborhood to the Bayshore Caltrain station.
 - o Complete restoration of the Historic Office Building on the site with at least 25% of space devoted to community-oriented uses
 - o Payment of Visitacion Valley Community Facilities and Infrastructure Fee
 - o Payment of a "Transportation Fee Obligation" on all uses (notably residential) not currently subject to the Transportation Development Impact Fee (TIDF).
- In recognition of the loss of almost \$50 million in tax increment subsidy to the project with the demise of Redevelopment, the DA includes the following forms of public subsidy to the project:
 - o \$2.9 million in-kind credit on Visitacion Valley Community Facilities and Infrastructure Fee, in recognition that the project is providing open space and restoring the historic Office Building

- o \$5.3 million in-kind credit against the Transportation Fee Obligation in recognition that the project is providing a variety of major improvements to the street and pedestrian network
- o Acquisition by the Department of Recreation and Parks of one or two of the project's open spaces (still under negotiation).
- o \$1.5 million in Transportation support funding subsidy from MTA
- o \$2 million in Proposition K funds from the Transportation Authority

ENVIRONMENTAL REVIEW

The proposed resolution to initiate amendments to the General Plan has been determined not to be a project under the California Environmental Quality Act (CEQA) Section 15378(b)(5) of the CEQA Guidelines.

On December 18, 2008, the Planning Commission and the former San Francisco Redevelopment Commission certified the Final Environmental Impact Report (FEIR) for the Project. At that time the Commission adopted CEQA findings and mitigations. As a result of the changes to the site plan, an Addendum was prepared to analyze the potential impacts. The Addendum concludes that, since certification of the FEIR, no changes have occurred in the proposed project or in the circumstances under which the project would be implemented that would cause new significant impacts or a substantial increase in the severity of impacts identified and analyzed in the FEIR, and that no new information has emerged that would materially change the analyses or conclusions set forth in the EIR. The Modified Project would not necessitate implementation of additional or considerably different mitigation measures than those identified in the FEIR. All necessary CEQA findings and documents will be available in the Department's case reports for hearings where action on the project will be taken.

HEARING NOTIFICATION REQUIREMENTS (FOR PROPOSED APPROVALS HEARING)

On or after June 5th 2014, the Planning Commission will take an action to recommend approval to the Board on the proposed amendments. Below are the notification requirements for such action:

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Classified News Ad	20 days	May 15	May 14	22 days
Posted Notice	N/A	N/A	N/A	N/A
Mailed Notice	10 days	June 24	May 14	22 days

PUBLIC OUTREACH & ENGAGEMENT

The 2014 revisions to the *Design for Development* are the result of an extensive public engagement process. A series of focused public workshops was held between October 2012 and March 2014. In addition to four public workshops attended by residents, business owners and members of the public,

the process included periodic open meetings with an Advisory Body – a group of former CAC members serving in an advisory role and helping to facilitate the transition in accordance with the original Redevelopment Area vision. Planning Department staff led the public process in collaboration with staff from the Office of Economic Development, and the project sponsor. Other City departments also participated in the public meetings. A list of the topics of the four major public meetings is provided below.

- Meeting 1: Post-Redevelopment Update, Community Priorities, Phase 1 Goals – October 12, 2012
- Meeting 2: Potential Funding Strategies & Site Plan Changes - January 12, 2013
- Meeting 3: Final Site Plan Revisions & Leland Greenway Programming - May 18, 2013
- Meeting 4: Development Agreement Overview - March 22, 2014

It should be noted that public engagement will continue. Implementation of the specific phases of development and public improvements are subject to additional community review, including pre-application and post-application meetings, official notification, annual meetings by the City to program the impact fees collected, and annual progress reports by the developer as specified by the Special Use District and described in the DA and D4D.

BASIS FOR RECOMMENDATION

The Department believes the Commission should initiate the amendments to the Planning Code, Zoning Maps and General Plan necessary to implement the Visitacion Valley/Schlage Lock Project so that the project may move forward after many years of planning, and so that it may recommend approval or disapproval of the Ordinances to the Board of Supervisors at a future hearing.

RECOMMENDATION:	Approval to Initiate the General Plan Amendments
------------------------	---

Exhibits:

- Exhibit 1 - Draft Initiation Resolution
- Exhibit 2 - Draft Ordinance to Amend the General Plan
- Exhibit 3 - Draft Mayor and Board Resolution Urging the Planning Commission to Initiate and Consider Amendments to the General Plan
- Exhibit 4 - Revised Park locations map
- Exhibit 5 - Draft Ordinance to Approve Development Agreement
- Exhibit 6 - Development Agreement
- Exhibit 7 - Draft Ordinance to Amend the Planning Code and the Zoning Map
- Exhibit 8 - Visitacion Valley/Schlage Lock Design for Development
- Exhibit 9 - Visitacion Valley/Schlage Lock Open Space and Streetscape Master Plan
- Exhibit 10 - Visitacion Valley/Schlage Lock Infrastructure Plan (*forthcoming*)
- Exhibit 11 - Visitacion Valley/Schlage Lock Transportation Demand Management Plan (included as Exhibit J to the Development Agreement)



SAN FRANCISCO PLANNING DEPARTMENT

DRAFT Planning Commission Resolution

HEARING DATE: MAY 8, 2014

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Date: May 1, 2014
Case No.: **2006.1308EMTZ**
Project Address: **Visitacion Valley/Schlage Lock**
Zoning: MUG
Proposed Zoning: Visitacion Valley Special Use District
Height/Bulk: 45-X to 86-X
Block/Lot No.'s: **AB 5066B** / 003, 004, 004a, 005, 006, 007, 008, 009; **AB 5087**/003, 003a, 004, 005; **AB 5099**/014; **AB 5100**/ 002, 003,007,010 **AB 5101**/006, 007; **AB 5102** / 009, 010; **AB 5107**/001, 003, 004, 005; **AB 6233**/048, 055; **AB 6248**/002, 045; **AB 6249**/001, 002, 002A, 016, 017, 018, 019, 020, 021, 022, 023, 024, 025, 026, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036; **AB 6308**/001, 001a, 001d, 002, 002b, 003; **6309B**/001, 002, 018.
Staff Contact: Claudia Flores – (415) 558-6473 Claudia.Flores@sfgov.org
Reviewed by: Joshua Switzky – (415) 558-6815 Joshua.Switzky@sfgov.org
Recommendation: **Initiate Amendments to the General Plan**

INITIATING AMENDMENTS TO THE GENERAL PLAN IN ORDER TO AMEND VARIOUS MAPS OF THE COMMERCE AND INDUSTRY ELEMENT, TRANSPORTATION ELEMENT, URBAN DESIGN ELEMENT, AND THE LAND USE INDEX OF THE GENERAL PLAN TO ADD REFERENCES TO THE SCHLAGE LOCK SPECIAL USE DISTRICT.

The Schlage Lock Company operated from the 1920's to 1974 and it was one of the City's largest employers. The Ingersoll Rand Corporation acquired the Schlage Lock Company in 1974 and operated the plant until 1999, when it closed down the plant and relocated manufacturing operations. The 20 acre site has been vacant since 1999. After Home Depot proposed to develop a retail store on the vacant Schlage site in 2000– a proposal that met with community opposition-- residents of Visitacion Valley partnered with City agencies and the project sponsor and owner, Universal Paragon Corporation (also known as Visitacion Development, LLC), to develop a plan for the reuse and revitalization of this critical site in their community. Several years of analysis and an extensive community planning process concluded in 2009 with the adoption of a Redevelopment Plan, zoning changes and a detailed Design for Development to guide change on the site. Since City adoption of the Plan, the former Visitacion Valley Citizens Advisory Committee (CAC) met to discuss and comment on various aspects of the Plan's implementation and to provide comments to the project sponsor as it continued to implement the plans for the Schlage Lock site.

However, the demise of Redevelopment Agency in early 2012, and the loss of public funding that accompanied it, required reopening the plans for the site. City staff, along with the project sponsor, re-

initiated efforts to move development of the Schlage Lock site forward beginning with a community meeting on October 13th 2012. The Planning Department partnered with the Mayor's Office of Economic and Workforce Development and the community to evaluate the project's feasibility; to look at tools to help move the project forward; and to make the necessary legislative changes to facilitate the site's transformation. The proposed amendments to the 2009 documents and the new Development Agreement are the results of that effort.

The proposed General Plan Amendments pertaining to this Resolution are part of a larger package of changes that will be presented to the Planning Commission for action at a duly noticed public hearing to be scheduled after this Initiation hearing. At such hearing, the Planning Commission will consider approving the General Plan amendments as well as related Planning Code and Zoning Map Amendments, the Development Agreement, the Design for Development, the Open Space and Streetscape Master Plan as well an Infrastructure Master Plan and a Transportation Demand Management Plan. The Mayor and Supervisor Cohen introduced the related components to the Board of Supervisors on Tuesday, April 29 2014.

PREAMBLE

WHEREAS, the property encompassing the Schlage Lock Development Project includes approximately 20 acres of privately-owned land at the southeastern corner of San Francisco, generally bounded to the north by Blanken Avenue, to the east by Tunnel Avenue, to the west by Bayshore Boulevard, and to the south by the San Francisco / San Mateo County line, and the city of Brisbane; and

WHEREAS, the Project Sponsor (Visitacion Development, LLC) seeks to transform the existing vacant site of the former Schlage Lock factory into a pedestrian-focused, vibrant mixed-use residential development; and

WHEREAS, the Project Sponsor is seeking to build up to 1,679 dwelling-units, up from 1,250 under the 2009 plan; and up to 46,700 square feet of new retail, which is 58,300 square feet less than under the 2009 plan; and

WHEREAS, the Schlage Lock Development Project seeks to create new neighborhood-serving amenities such as a grocery store, additional retail, new streets, pedestrian improvements and infrastructure; provide new parks/open space; and incorporate sustainable and green features throughout the Site; and

WHEREAS, other key changes to the approved project in 2009 include an increase in heights to accommodate the additional units; a reconfiguration of the location of the parks; a change to the underlying zoning; updates to controls and design guidelines to address site changes; and sunsetting the 2009 Redevelopment Plan; and

WHEREAS, the current zoning does not accommodate the site-specific goals of the Schlage Lock Development Project, a master-plan now under single ownership, specifically the changes to permitted heights, and density; and

WHEREAS, the proposed Ordinance is intended to implement the Schlage Lock Development Project by modifying General Plan maps and the Land Use Index to reflect the amended project; and

WHEREAS, the Visitacion Valley/Schlage Lock Development Project will be considered for approval by Planning Commission and the Board of Supervisors through a Development Agreement by and between the City and County of San Francisco and Visitacion Development LLC; and

WHEREAS, the Planning Commission (hereinafter "Commission") recommended approval of the 2009 Visitacion Valley/Schlage Lock Redevelopment Plan, Design for Development and related project documents at a regularly scheduled hearing on December, 2008 to the Board of Supervisors; and

WHEREAS, the Planning Commission and the former the former San Francisco Redevelopment Commission certified the Final Environmental Impact Report (FEIR) for the Project on December 18, 2008. and adopted CEQA findings, including a statement of overriding considerations, and adopted a Mitigation Monitoring and Reporting Program; and

WHEREAS, the modifications to the proposed project were revised and analyzed in an Addendum to the FEIR prepared by the Planning Department and referred to as the "Modified Project." The Addendum findings are that since certification of the FEIR, no changes have occurred in the proposed project or in the circumstances under which the project would be implemented that would cause new significant impacts or a substantial increase in the severity of impacts identified and analyzed in the FEIR, and that no new information has emerged that would materially change the analyses or conclusions set forth in the EIR. Therefore, that the Modified Project would not necessitate implementation of additional or considerably different mitigation measures than those identified in the FEIR; and

WHEREAS, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider initiating this General Plan amendments ordinance on May 8, 2014; and

WHEREAS, this Resolution to initiate amendments to the General Plan has been determined not to be a project under the California Environmental Quality Act Section 15378(b)(5); and

WHEREAS, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Planning Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

NOW THEREFORE BE IT RESOLVED, that pursuant to Planning Code Section 302(b), the Planning Commission Adopts a Resolution to Initiate amendments to the General Plan;

AND BE IT FURTHER RESOLVED, that pursuant to Planning Code Section 306.3, the Planning Commission authorizes the Department to provide appropriate notice for a public hearing to consider the above referenced General Plan amendments contained in the draft Ordinance, approved as to form by the

Resolution No. _____
Hearing Date: May 8, 2014

Case No.: 2006.1308EMTZ
Visitacion Valley/Schlage Lock

City Attorney in **Exhibit 2**, and related project actions introduced by the Board of Supervisors and the Mayor, to be considered at a publicly noticed hearing on or after June 4, 2014.

I hereby certify that the foregoing Resolution was ADOPTED by the San Francisco Planning Commission on May 8, 2014.

Jonas Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

EXHIBIT I

Excerpts from Visitation Document for Design



Visitation Valley/ Schlage Lock

DESIGN FOR DEVELOPMENT

2014 DRAFT FOR ADOPTION



SAN FRANCISCO
PLANNING
DEPARTMENT

Visitacion Valley/ Schlage Lock

DESIGN FOR DEVELOPMENT

2014 DRAFT AMENDMENT

San Francisco Planning Department
May 8, 2014

The Visitacion Valley/Schlage Lock Design for Development (D4D) document provides a design framework for transforming the Schlage Lock site into a walkable neighborhood and for creating strong connections to the existing Visitacion Valley community. This document includes design controls for development on the Schlage Lock Site, as well as design guidelines for the Schlage Lock site and nearby segments of Leland Avenue and Bayshore Boulevard.

The D4D document works in concert with several related implementation documents and requirements, including the following:

Development Agreement between the City of San Francisco and Visitacion Valley Development, LLC, establishes the terms and responsibilities for the development of the Schlage Lock Site and provision of community benefits.

Open Space and Streetscape Master Plan establishes schematic designs for new parks, open space and streets on the Schlage Lock site. It includes material palettes, as well as planting, lighting, stormwater, public art and furnishing plans.

Infrastructure Master Plan defines the infrastructure improvements required to construct the Schlage Lock Site, including environmental remediation, grading, water and sewer systems, stormwater management, and street improvements.

Transportation Demand Management Plan provides a combination of land use, infrastructure improvements, and supporting programs to increase the likelihood of shifting transportation modes away from driving alone. It includes measures which mitigate environmental impacts and additional measures pursuant to the Development Agreement.

Special Use District in the Planning Code includes additional building standards and development procedures to those included in the D4D.

CONTENTS

PART I: VISION, GOALS AND FRAMEWORK	2
Introduction & Project Background	2
Goals For The Schlage Lock Site	8
Existing Conditions	9
Urban Design Framework	20
PART II: DEVELOPMENT CONTROLS & GUIDELINES	34
LAND USE	36
BUILDING FORM	38
Building Height	38
Density	40
Massing	40
Setbacks	46
Retail Entrances	46
Residential Entrances	48
Facade Design	49
Roof Design	51
Private Open Space	51
Lighting	54
Signage	55
Visual Screens and Sound Buffers	55
SUSTAINABLE SITE DEVELOPMENT	56
TRANSPORTATION, PARKING, & LOADING	57
Transportation Demand Management	57
Off-Street Parking Requirements	58
Off-Street Loading	58
Curb Cuts / Driveways and Garage Doors	58
PUBLIC REALM - STREETS, BLOCKS AND OPEN SPACE	59
Street Grid / Block Layout	59
Street and Pathway Design	59
Public Open Space	64
APPENDIX	67

FIGURES

Figure 1-1 Visitacion Valley/Schlage Lock Special Use District (SUD) Area	4
Figure 1-2 SUD Area and Surrounding Neighborhoods	9
Figure 1-3 Existing Circulation Conditions	12
Figure 1-4 Remediation on the Schlage Lock Site	15
Figure 1-5 Land Use Context	16
Figure 1-6 Projects Underway in the Plan Vicinity	18
Figure 1-7 Urban Design Concept Plan	23
Figure 1-8 Development and Heights of Schlage Lock Site	24
Figure 1-9 Pedestrian Connections	27
Figure 1-10 Open Space Plan	29
Figure 2-1 Special Use District (SUD) Area	35
Figure 2-2 Required Ground Floor Frontages	37
Figure 2-3 Height Map	39
Figure 2-4 Heights, Concept View from South	41
Figure 2-5 Concept Sketch, View from South	43
Figure 2-6 Required Setbacks	45
Figure 2-7 Required Open Space	53
Figure 2-8 Circulation Map	61
Figure 2-9 Bayshore Boulevard and Leland Avenue Intersection Concept Plan	62
Figure 2-10 Leland Avenue Section at Leland Park	62
Figure 2-11 Street A, cross section between Block 2 and Block 10	64



VISION, GOALS & FRAMEWORK

INTRODUCTION & PROJECT BACKGROUND

Project Background

Community interest in redeveloping the long-dormant Schlage Lock site has been growing since the factory's closure in 1999. Active efforts for change began in earnest in 2000, catalyzed by a proposal for a Home Depot on the site. The proposal met with community opposition. The Board of Supervisors imposed interim zoning controls on the site to prevent construction of a large retail use and to encourage the long-term planning of the site. Supervisor Sophie Maxwell sponsored several workshops in 2001 to begin a conversation about the future of the site, including clean-up of contamination remaining from its industrial past. In partnership, the Planning Department, San Francisco Planning and Urban Research (SPUR) and the Visitacion Valley Planning Alliance applied for a Metropolitan Transportation Commission's Transportation for Livable Cities grant to hold a second series of workshops to establish a vision for the Schlage Lock site. The result was the "Visitacion Valley/Schlage Lock Community Planning Workshop, a Strategic Concept Plan and Workshop Summary," (*Strategic Concept Plan*) published in July 2002, which called for site redevelopment that protects community health, creates housing opportunities, and provides neighborhood-serving retail, community services and open space.



In 2005, Supervisor Maxwell, the Planning Department, and the Office of Economic and Workforce Development began a new community design process to refine the site plans for the Schlage Lock site, develop permanent land use and development controls, and to initiate a Redevelopment Survey Area for Visitacion Valley. The Board of Supervisors designated Visitacion Valley as a Redevelopment Survey Area by Resolution No. 424-05 on June 07, 2005. Building upon the 2001 workshops, the Strategic Concept Plan and the 2004 public workshop series related to streetscape improvements on Leland Avenue raised awareness of the natural and built environment of Visitacion Valley and its watershed. What began as a project with the fundamental goal of protecting people's health evolved into the broader objective of revitalizing one of the City's historically overlooked neighborhoods into a model of sustainable design and redevelopment.

Based on input from members of the public and the Visitacion Valley Citizens' Advisory Committee (CAC) made up of volunteers representing homeowners, residents, businesses and local organizations, the City effort culminated in the 2009 Visitacion Valley Redevelopment Plan. An earlier draft of this Design for Development (D4D) document was a companion to the Redevelopment Plan.

When California eliminated its Redevelopment Agencies in February 2012, the City of San Francisco initiated new efforts to achieve the Redevelopment Plan's goals in the face of reduced public funding. The Planning Department, Office of Community Investment and Infrastructure (the Successor Agency to the Redevelopment Agency), and Office of Economic and Workforce Development partnered with the owner/project sponsor Universal Paragon Corporation (UPC) and the community to transform the Schlage Lock site. The partnership evaluated the Project's feasibility



FIGURE 1-1
Visitacion Valley/Schlage Lock
Special Use District
(SUD) Area



ity and additional tools to improve the site without the Redevelopment Agency's funding mechanisms.

After two years, four community workshops, and several meetings and resolutions of the Visitacion Valley/Schlage Lock Advisory Body (made up of members of the former CAC), the renewed effort culminated in a Development Agreement (DA) with the project sponsor, a new Special Use District in the Planning Code, an Open Space and Streetscape Master Plan (OSSMP), and this Design for Development document to guide building design and urban form.

Project Area

The Visitacion Valley/Schlage Lock Special Use District (herein referred to as the "Special Use District") includes the vacant, former Schlage Lock industrial site, adjacent vacant parcels formerly used for Southern Pacific railroad operations, and existing properties fronting on Bayshore Boulevard and the Visitacion Valley neighborhood's commercial corridor of Leland Avenue.

The Special Use District (SUD) area shown in Figure 1-1, includes two Development Districts designated as Zone 1 and Zone 2. Zone 1 (the "Site") has been environmentally mitigated and will be significantly redeveloped. It includes the Schlage Lock and former Southern Pacific Railroad sites. Zone 2 contains the properties along Bayshore Boulevard west of the Schlage site and properties along Leland Avenue from the Schlage Lock Site in the east to the Visitacion Valley Library and Rutland Street in the west.

- **Recology Site Master Plan:** Recology owns and operates a waste transfer and recycling facility east and of the Schlage Lock site, across the Caltrain right-of-way. The 45-acre site straddles the San Mateo-San Francisco County line, and forms the northeast corner of the Baylands, although it is not included in the project sponsor-sponsored Baylands proposal. The proposal would replace outdated buildings and utilities with a green, LEED-certified resource recovery and maintenance facilities, administrative offices and supporting operations buildings. Recycling and waste transfer facilities would be located further South and Southeast of their current location.
- **San Francisco-San Mateo Bi-County Study:** The Bi-County Transportation Study is a multi-agency effort that identifies priority projects and funding for the southeastern corner of San Francisco County and northeastern corner of San Mateo County. The growth in this area will transform what are now mainly industrial or under-utilized lands into mixed-use developments that could exceed 15,000 additional housing units and 14 million square feet of new employment uses, including the Schlage and some of the aforementioned projects. Recommendations include re-configurations of the US101 interchange and Bayshore Caltrain, as well as a BRT line, T-Third light rail extension and bicycle-pedestrian connections.
- **Visitacion Valley Green Nodes – Green Infrastructure Project:** The SFPUC is in process of developing eight major green infrastructure projects in San Francisco, one in each of the city's watersheds, as part of Phase I of the City's Sewer System Improvement Program. These projects will demonstrate on-site stormwater management technologies and provide additional community benefits. Feasibility analyses on streets in the larger Sunnydale watershed are underway, with a number of promising corridors from a stormwater management perspective - including the possibility of a green street project on the lower part of Sunnydale Boulevard or the upper part of Leland Avenue.
- **8X Transit Effectiveness Project Improvements:** SFMTA's Transit Effectiveness Project (TEP), which aims to improve transit reliability, travel times, and customer experience, has identified Muni's 8X Bayshore Express bus line as part of its proposed Rapid Network. The 8X Bayshore Express route carries more than 23,000 daily customers on an average weekday.

URBAN DESIGN FRAMEWORK

The overall vision for the redevelopment of the Project Area is for a vibrant, mixed-use community including retail, residential uses, and open space. New mixed use development will continue Leland Avenue's retail energy into the Schlage site, and a range of housing opportunities will bring new residents to the neighborhood, increasing safety and street activity. Visitacion Valley's east/west streets will be extended across Bayshore Boulevard into the Schlage Lock site and integrate the site with the larger Visitacion Valley neighborhood.

New development in both zones will help connect the Schlage Lock site with the Visitacion Valley neighborhood. Streetscape and open space improvements will provide better vehicular and pedestrian connections between the Schlage site and the Visitacion Valley neighborhood. Sunnydale Avenue, Visitacion Avenue, Raymond Avenue and Leland Avenue, the commercial backbone of the community, will be extended east to the Schlage Lock site. Blanken Avenue will be redesigned to provide a safer pedestrian connection to Little Hollywood and Executive Park. Two new parks will be created on the south side of Blanken Avenue west of Tunnel Avenue that will also improve the linkages from the site to Little Hollywood.

Figure 1-6 illustrates the urban design framework for the Project Area. The sections that follow provide an overview of the major concepts guiding the overall urban design of the Project Area, including key concepts related to land use, circulation, open space and sustainability. Please note that future improvements and individual buildings provided through Site development will depend on project feasibility, design review and project approval.

Land Use

The revitalization and regeneration of the Visitacion Valley neighborhood requires an active mix made up of commercial uses to support the community's needs and stimulate economic development; an influx of new residential activity to provide "eyes on the street" and bring new life to the area; and a range of open spaces and community places to bring the entire community together. Specifically, development within the Schlage Lock site (Zone 1) will contain a mid-sized grocery store, ground floor retail at specific locations, and up to 1679 dwelling units of various sizes and affordability levels throughout the site (see concept plan in Figure 1-6.)

Land uses along Bayshore Boulevard and Leland Avenue (Zone 2) will generally be ground floor commercial, including retail and small business service uses, with residential uses above the first story, consistent with the current development pattern in Zone 2. In order to be consistent with new development on the east side of Bayshore Boulevard in Zone 1 and accommodate 12 and (preferably) 15 foot-tall ground floor commercial uses, the 2009 plan made a change to the City's Zoning Map to increase the permitted height on parcels fronting the west side of Bayshore Boulevard from 40 feet to 55 feet. This will allow for more flexibility in the ground floor retail spaces without diminishing the amount of housing above.

The primary land uses and their general locations within the two zones are described below:

1. **Residential Use:** Residential units will be located above ground floor commercial development along most of the extension of Leland Avenue, and portions of Sunnydale Avenue in Zone 1, as well as above ground floor commercial along Bayshore and Leland Avenue in Zone 2. Within Zone 1, residential



Residential and active uses will line Leland Park



Retail uses will continue along Leland Avenue



Open spaces will be connected throughout the new development



A rendering of a mid-rise podium building on the Schlage site.

units will also be constructed on the Schlage Lock property along Raymond Avenue, Visitacion Avenue, Sunnydale Avenue, and on the remaining properties fronting Blanken Park, Leland Greenway and the Schlage Greenway.

2. **Retail: Neighborhood Commercial Businesses and Personal Services:**

The plan calls for a mid-sized (15,000 – 30,000 sq. ft.) grocery store to be developed on the Schlage Lock site, as part of a mixed-use development on the southeast side of the Leland and Bayshore intersection, as shown in Block 1 on Figure 1-6. Ground floor commercial uses, including retail and neighborhood-serving office uses will also be included as part of mixed use development along Leland Avenue in both Zone 1 and 2. Within Zone 1, also along Leland Avenue, flexibly designed spaces (referred to as “flex space”, and further defined in Appendix A, Glossary of Terms) will allow for retail, small business and office-service uses, or for small-scale workplaces uses such as artisan, design or small industry with quasi-retail sales. The flex spaces will be designed to be appropriate for retail, nonresidential and residential uses. Flex space will offer the opportunity for connections with living units above, to offer the potential of true live-work activity.

3. **Institutional:** The Old Office Building will be renovated and re-adapted to office, institutional, and/or community uses that benefit the neighborhood.

4. **Public Open Spaces – Parks, Streets and Pathways:** New open spaces, including two to three parks will be created on the Schlage Lock site and possibly on an adjacent parcel. The new parks will be developed to be a part of the already existing open space network that includes the Visitacion Valley Greenway, the Visitacion Valley Community Center, Visitacion Valley Playground, Little Hollywood Park, and other parks located some distance away, including Kellogg-Velasco Minipark, Herz Playground and McLaren Park. These parks and plazas shall be designed in concert with a network of street and pathways, including the revitalized Leland Avenue and its extension into the Schlage Lock site, to create pleasant pedestrian connections between all open space components.

5. **Parking and other Accessory Uses:** Development at the site will support the City’s Transit First Policy. Surface parking lots are prohibited. Accessory off-street parking, particularly visitor parking, will be allowed but limited to encourage transit use and walking. Such accessory off-street parking shall be located below grade or screened in buildings so that it is not visible from the street. As described in the Development Agreement, the City shall establish a parking management program which controls street parking throughout the site and to discourages parking by off-site users for long periods of time.

FIGURE 1-7
Urban Design Concept Plan

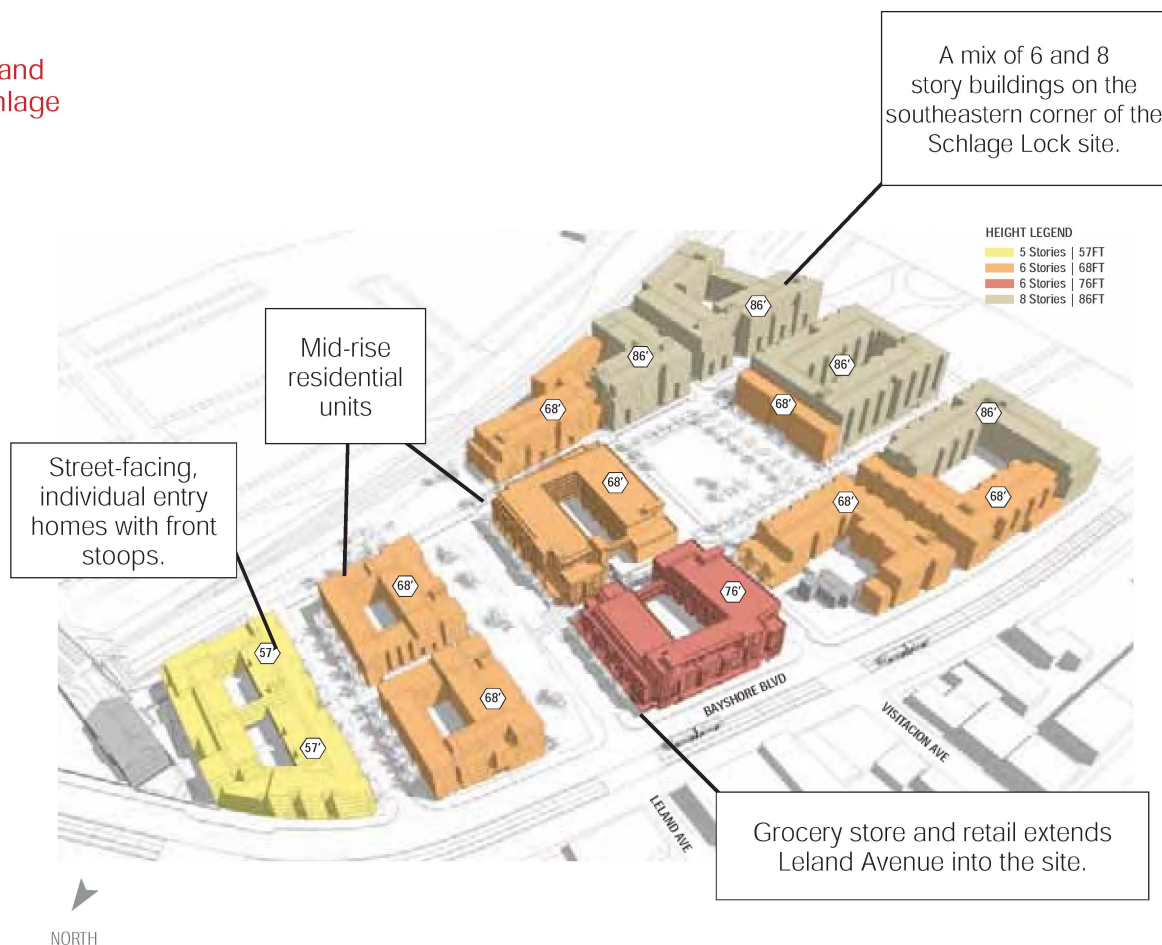


- Mixed-Use (Ground Floor Retail)
- Potential Ground Floor Retail
- Residential

- Old Office Building
- Public Open Space

- General Circulation
- Publicly Accessible, Privately-Owned Pedestrian Ways

FIGURE 1-8
Development and
Heights of Schlage
Lock Site



Built Form

The Site's mixed-use development will contain both retail/residential buildings, and stand-alone residential. Housing on the Site will be primarily low- and mid-rise multifamily podium construction, with grand multi-unit entrances marking major thoroughfares, and ground-floor walk-up, townhome-style units lining key residential street frontages. Podium buildings constructed on long north/south blocks will have frequent breaks, variation and articulation in their facades to reduce the apparent building mass and bulk. All buildings will contribute to an active public realm with engaging architecture, doors and windows on all street facades. A variety of design features will shape the urban form of buildings on the site, including building setbacks and setbacks; window bays, building recesses, and special corner treatments; and varied roof lines to provide visual interest, consistent with building forms in other San Francisco neighborhoods.

One of the core recommendations from the community was that the architecture and the massing of the buildings be articulated – that building heights setback over the Site to provide visual interest and provide opportunities to create one or more visual landmarks that will act as reference points for the neighborhood. To achieve this, as well as to establish densities consistent with a transit village, the Design for Develop-



The Sawtooth Building on the site.

ment designates the location of building forms that range in height up to a maximum of eight stories. These building forms will enable construction of up to 1679 units, with greater intensities in the southern portion of the site and lower intensities in the northern portion of the site adjacent to the Little Hollywood and Visitation Valley residential areas. The location of different building heights is described further below.

- Buildings that range from 4-5 stories are recommended in the area north of Raymond Avenue. Building facades will be articulated and offer visual variety to create a pleasant edge for pedestrian circulation.
- 6 story mixed-use buildings, some with ground floor retail, will line the extension of Leland Avenue.
- 6-8 story buildings are proposed along Bayshore south of Leland Avenue, with particular emphasis at the corner of Sunnydale Avenue at Bayshore Boulevard, to establish a “Gateway” entrance to the neighborhood from the south. Buildings constructed at this intersection should incorporate prominent design features to enhance a feeling of arrival.
- 6-8 story mid-rise buildings are proposed in the southeastern residential portion of the site. Buildings will be oriented to take advantage of views to Visitation Park.

Historic Commemoration

The Old Office Building, located at the northern tip of the site on Bayshore and Blanken, has been identified by the Historic Resource Evaluation as a contributing historic resource. It will be rehabilitated and at least 25% of it will be dedicated to community use.

Several other buildings, including Plant 1 (the Sawtooth Building), were identified by the community and the Historic Resource Evaluation as important resources that contribute to the district. But DTSC informed the City that the operations and conditions of the buildings involved such a significant use of hazardous material that a thorough soil investigation and excavation under the buildings would be necessary. In order to find all the sources of contamination and remove them prior to development or inhabitation, DTSC stated that the investigation would require



Pedestrian improvements
along Bayshore Boulevard,
and throughout the site.

demolition of all other buildings to complete the remedial action process, and make the site safe for human habitation. Accordingly, those buildings have been demolished and environmental remediation has proceeded.

The Historic Resource Evaluation identified several mitigation measures, which were built upon and augmented by the Visitacion Valley CAC Historic Resources Sub-Committee as well as through input by the Historic Preservation Commission (formerly the Landmarks Preservation Advisory Board). Mitigation measures have been completed, including the commemoration of the former factory and railroad buildings on the Site in architectural drawings, photographs, written history, and recorded interviews with employees and neighbors. The records are compiled in the Schlage Lock Factory & Southern Pacific Railroad Buildings Historic American Building Survey (HABS) Documentation prepared in 2009. Significant historic features, such as building components or machinery, were also reclaimed. The salvaged materials and objects will be incorporated into new construction, streetscape and park designs where possible. The salvaged historic features can also be used off-site at locations such as the Roundhouse in Brisbane or the Caltrain/future multi-modal station.

Commemoration of the Site will occur in a number of ways: through a physical history collection, using items from former workers (such as salvaged signage); via an

educational component, including the use of oral history created from interviews with employees and neighbors and creation of a history web site; and, using historic features in exhibits or public displays through new items commissioned by artists as commemorative work.

Transportation and Circulation

The aim of the plan is to seamlessly connect the Schlage site to the Visitacion Valley neighborhood, and to encourage walking and use of public transit as the primary travel modes for neighborhood residents and visitors. The Design for Development establishes a new street grid on the Schlage Lock site, connecting the site to the existing Visitacion Valley neighborhood to the West and the future Brisbane Baylands Development to the South. The project will extend Leland Avenue, as the primary entrance and retail spine of the development, across Bayshore Boulevard. Raymond, Visitacion and Sunnydale Avenues will also continue east across Bayshore Boulevard to the project site. The street grid system will be designed and constructed to safely encourage walking, cycling and use of public transit for neighborhood residents and visitors, while meeting the needs for vehicular access to retail and housing. Pedestrian paths will be required through large development blocks providing shorter paths of travel and breaking up the massing of new building. The new streets and pedestrian paths will incorporate a variety of streetscape design elements, including consistent planting of street trees and other landscape material, pedestrian-scale lighting and street furniture similar to Leland Avenue west of Bayshore.



Strategies to slow traffic from the US 101 off-ramp include rumble strips, speed limit signs, and radar information signs.

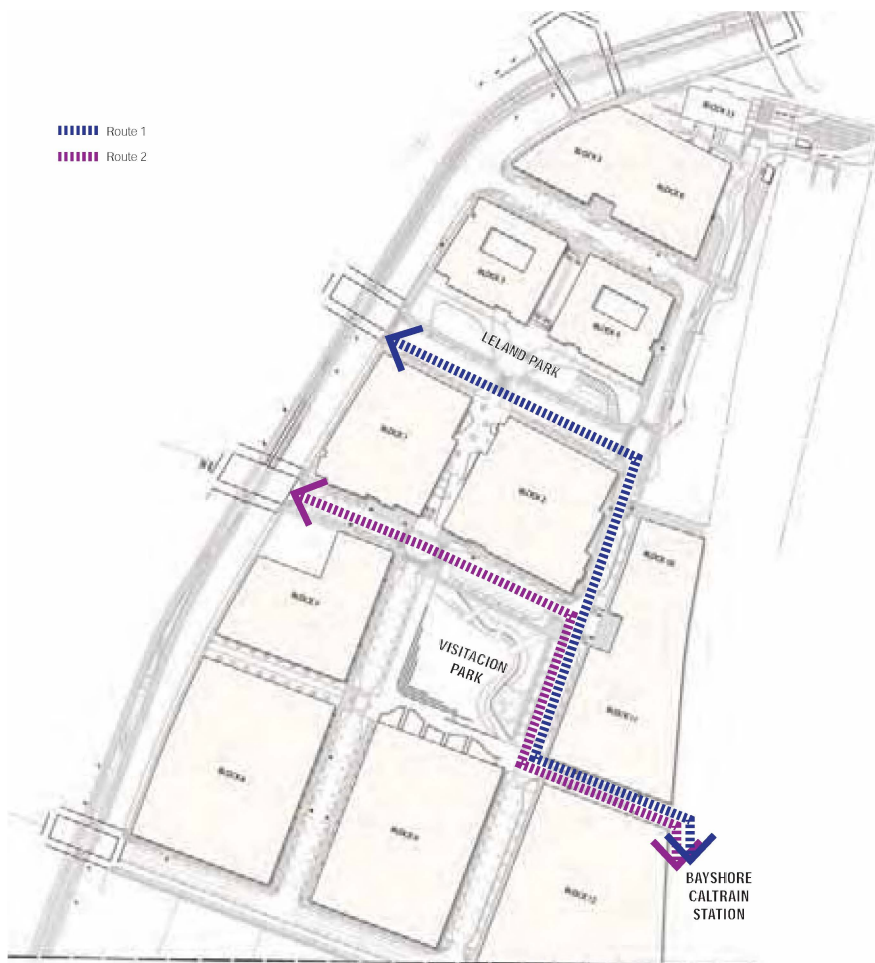


FIGURE 1-9
Pedestrian Connections

Short-term and a long term pedestrian connections will link the T-Third Muni line to the Caltrain station.

Careful consideration will be given to the design of streets where they terminate at the Caltrain railroad right-of-way on the Eastern edge of the Schlage Site. They will provide open space and overlooks to Little Hollywood and beyond. Where the terminus is marked by buildings, the building design should provide a strong visual termination and provide a visual landmark. Should vehicular connections be required to provide access to underground parking or to provide necessary turnarounds, adequate space will be provided for vehicular turning movements where the street terminates; the street will not end abruptly at the property line shared with the railroad.

Over the course of plan buildout, the project sponsor will be required to implement and/or contribute to identified local and regional transportation improvements necessary to mitigate project impacts and adequately serve the area. Specific mitigations required in the EIR include:

- Modifications to intersections along Bayshore Boulevard in order to improve vehicular access and pedestrian safety in the neighborhood without negatively impacting the Muni T-Third Street light rail line operations.
- Transportation Demand Management plan to reduce the amount of auto use and auto ownership rates, and thereby reduce traffic impacts.

The Development Agreement and the Visitacion Valley/Schlage Lock Open Space and Streetscape Master Plan include additional streetscape requirements within and adjacent to the site. They include:

- Traffic calming strategies, such as sidewalk bulb extensions at the major east-west crossings along Bayshore Boulevard, to slow traffic from the US 101 off-ramp and improve safety of pedestrians when crossing Bayshore Boulevard.
- In the Project's first phase, a complete pedestrian connection between Bayshore Boulevard and the Caltrain Bayshore station.

Transportation improvements will be completed before occupancy of certain development phases to stay on pace with demand created by new development.

In addition, the Planning Department will continue to participate, in partnership with the Office of Economic and Workforce Development, the San Francisco Transportation Authority and several other jurisdictions on both sides of the San Francisco/San Mateo county line in the implementation of the Bi-County Transportation Study or an equivalent successor plan. The Study addresses project priorities, schedules, and funding strategies to accommodate anticipated cumulative developments in the southeast San Francisco/Brisbane/Daly City area. These inter-jurisdictional improvement priorities include the Geneva-Harney BRT, the Geneva Avenue extension, the planned Geneva-Candlestick U. S. 101 interchange reconfiguration, and additional improvements to the Bayshore Intermodal Station and station area.

FIGURE 1-10
Open Space Plan



Public Open Space

The OSSMP establishes an open space system on the Schlage Lock site that will augment the resources available to Visitacion Valley residents and visitors. The neighborhood's existing open space resources include the Visitacion Valley Greenway and a number of small neighborhood-serving open spaces in the immediate vicinity, McLaren Park located to the west and the Brisbane Baylands in San Mateo County to the south.

The project will include a minimum of two neighborhood parks: a linear park along the Leland Avenue extension ("Leland Greenway"); and a neighborhood park at the southern portion of the site, ("Visitacion Park"). The Open Space and Streetscape Master Plan also includes design for a possible third community open space on adjacent parcels owned by Peninsula Corridor Joint Powers Board (JPB) and Union Pacific Railroad (UPRR) at the northernmost point of the Site (for the purposes of this document, referred to as "Blanken Park", approximately 1/2 acre). In addition,

A rendering of Blanken Park, showing how the park could be used for Community Gardens.



A rendering of Leland Greenway.



the open space network will include pedestrian-friendly landscaped streets and new pedestrian pathways, greenways and mews to connect the new open spaces through the site to the surrounding neighborhood.

The design and programming of the open spaces should be inclusive to allow for maximum flexibility to serve the largest number of users. The parks will include a variety of open space design features, including active and passive landscape spaces, water features, and a variety of recreational program elements. Parks will incorporate sustainable design features, such as pervious paving, bioswales, trees and other vegetation used to assist in slowing and filter stormwater to reduce rainfall runoff. The new parks will be open to all members of the public, similar to other public parks in the City.

Community members gave significant feedback about park design and facilities for each park site at community workshops, CAC meetings and Advisory Body meetings. That feedback was used as a starting point for park design, and was built upon during a required public design and community involvement process to draft the Open Space and Streetscape Master Plan for the site. Specific park designs and proposed park improvements will follow this plan, in conjunction with the design review process specified in the Visitacion Valley-Schlage Lock Special Use District and the Development Agreement with the City.

- **Leland Greenway:** Leland Greenway, 0.73 acres in size, is located to the north of the extension of Leland Avenue. It will include a paved seating area, with a focal public art element, and street furnishings that may be enjoyed by shoppers from the nearby retail anchor, shops or cafe. The central portion of the park includes steps and ramps that slope down from Blocks 3 and 4 toward Leland Avenue and can serve as an urban plaza connected to the retail activity of Leland Avenue or a venue for public gathering and events. The park will also feature a row of trees, topography and art elements designed to protect users from westerly winds. The eastern end of the Leland Greenway will include a play area for children and an adjacent seating area sheltered by a trellis. The trellis is proposed as highly perforated metal panels planted with vines to protect from the wind while allowing views within and through the park.

The ground floor uses around Leland Greenway change from retail in the west to the residential to the east. The specific amenities recommended for the Greenway include a wind sculptural element, trees, a plaza, terraced stairs, a play area, trellis with seating area, and a barbell-shaped multi-use lawn area with picnic tables and benches.

- **Visitacion Park:** This neighborhood park is located in the southeast portion of the Site, bordered by residential streets and an east/west pedestrian pathway on its south boundary. The park site is just over one acre in size; it includes both softscapes and hardscapes. The park may include a BBQ area, picnic tables, a tot lot and seating areas for caregivers. Other features may include



Permeable sidewalk features allow for stormwater to infiltrate



An example of a green roof

flower gardens, public art, a rain garden and a multi-use lawn. Monthly or weekly events, such as an open-air farmer's market, may also help to activate the park and encourage park use. Street closure could be permitted for special neighborhood celebrations, street fairs and similar events.

- **Blanken Park:** "Blanken Park," is designed around the historic office building at the northernmost part of the site. The park grounds will be at the highest point of the development, offering views to the Baylands to the south, the San Bruno Mountains, and the surrounding neighborhoods. The park may offer community gardens – "Little Hollywood Gardens" – with a sustainable agriculture component, as an expansion of the Visitacion Valley Greenway Community Garden and/or other community recreation opportunities. The park will provide pedestrian connections between Little Hollywood and Visitacion Valley, as well as to new streets within the Schlage site; and at a minimum a pedestrian connection shall extend above the railroad tunnel. As this land is partially owned by JPB and UPRR, park development will rely on subsequent negotiations with that entity.

Site Sustainability

The Site already meets the basic criteria for a sustainable urban development: it is adjacent to a lively neighborhood commercial street and provides needed community housing in a walkable, dense, yet livable setting well-served by public transit. Contaminated soils and groundwater have been remediated as required by the California Department of Toxic Substances Control (DTSC), per the Remedial Action Plan.

The community made sustainability a primary goal of the site and neighborhood redevelopment. They have recognized the inherent opportunities in planning at the site scale to create an eco-friendly model of green urban development. Sustainable development practices will be required through the San Francisco Building Code and other City environmental legislation. The project will utilize reclaimed material throughout the site where feasible. Other sustainable elements include:

- The parks and streetscape elements will be designed to collect, treat, and utilize rainwater for irrigation if appropriate, thereby reducing demands for fresh water use, recharging groundwater and reducing stormwater flows to City sewers. Excess (clean) rainwater may flow by gravity to the larger, sustainable watershed system of the Brisbane Baylands, and ultimately to the Baylands lagoon and wetlands south of the site where feasible.
- Where feasible, new building roofs will be used creatively for open spaces, as "green roofs" that can assist in energy efficiency and stormwater management, and for the installation of photovoltaic solar cells and other technologies.
- A stormwater management plan will be established to retain and use rainfall on-site, reducing demand for potable water and reducing the need for water runoff treatment, as well as creating wildlife habitat, providing open space, and contributing to the character of a "green" built environment.

- Stormwater management strategies will extend beyond the Site to create a continuous, watershed-base flow route. A restored river corridor is envisioned for Visitacion Creek, a long-term goal which will require an inter-jurisdictional relationship between the City and County of San Francisco and the City of Brisbane in San Mateo County.

To achieve an even greater level of sustainability, the project sponsor will conduct an assessment of potential site-wide sustainable strategies in energy, water and other on-site infrastructure systems.

Community Health

The Eastern Neighborhoods Community Health Impact Assessment (ENCHIA) was initiated in 2004 by the San Francisco Department of Public Health in response to land use planning underway in the Eastern Neighborhoods, with the goals of advancing the consideration of health in land use planning and identifying ways that development could promote health. It created a “health impact assessment” process for assessing new developments, including criteria such as sufficient housing; public transit, schools, parks, and public spaces; safe routes for pedestrians and bicyclists; meaningful and productive employment; unpolluted air, soil, and water; and cooperation, trust, and civic participation. Many aspects of this D4D document and the site plan are influenced by health impact assessments.

The Design for Development document promotes community health in a number of ways. Site clean-up is critical to the community’s health, thus toxic issues have already been remedied on the Schlage site. Pedestrian safety will be increased through careful street, intersection and project design; personal safety will be enhanced by the positive economic climate; and revitalization will incite greater retail activity and new jobs, more engagement of the community, and more eyes on the street. Other elements of the plan contributing to community health include:

- a pedestrian-oriented environment that encourages walking;
- development that supports alternative modes of transportation;
- a significant amount of new affordable, as well as market-rate, housing;
- a range of housing affordable to low-income households;
- easy access to public resources such as parks,
- transit and neighborhood-serving retail;
- sustainable building practices in buildings and ecological infrastructure design
- attraction of new businesses and the provision of assistance to the private sector,

The implementing agencies of the plan will continue efforts with the Department of Public Health to assess the impacts of the development as it occurs and to promote health at the neighborhood level.

FIGURE 2-4
Heights, Concept View from South



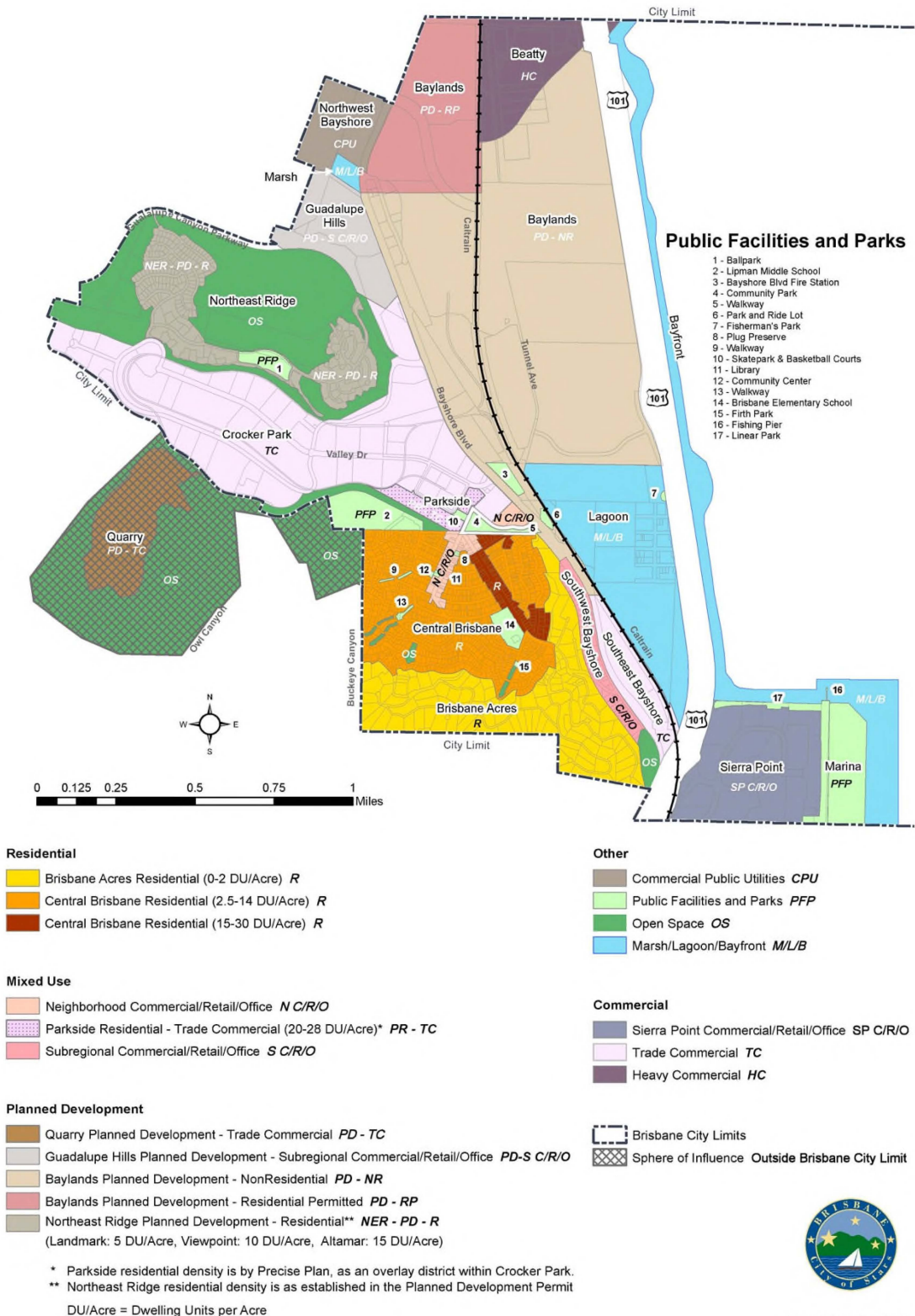
FIGURE 2-5
Concept Sketch, View from South



EXHIBIT J

City of Brisbane General Plan

Figure LU - 1: Land Use Diagram



September 5, 2019

EXHIBIT K

**“Drill & Spur Track Easement” and “Access Roadway
Easement” for Visitacion Property**

20159K01686300014
San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC 2015-K016863-00
Acct 5002-Old Republic Title Company
Thursday, FEB 05, 2015 11:46:49
Ttl Pd\$13,939.00 Nbr-0005097538
okc/RE/1-14

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Patrick McNerney
14 Mint Plaza, Fifth Floor
San Francisco, CA 94103

Mail Tax Statements to:

Patrick McNerney
14 Mint Plaza, Fifth Floor
San Francisco, CA 94103

✓
✓
CRL
0227015427DP
BK 5087, lots 4 & 5
2201 Bayshore Blvd.

Space Above Line for Recorder's Use Only

(1567-58)

DOCUMENTARY TRANSFER TAX \$ 13,875.00

XX Computed on the full value of the property conveyed

___ Computed on the full value less liens and
encumbrances remaining at the time of sale

___ Not a sale (Rev. & Tax. Code Section 11927(a))

Signature of Declarant or Agent Determining Tax

QUITCLAIM DEED

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (formerly known as Southern Pacific Transportation Company, a Delaware corporation), Grantor, in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto **PATRICK McNERNEY**, an individual, as his sole and separate property, Grantee, whose address is 14 Mint Plaza, Fifth Floor, San Francisco, California 94103 and unto his heirs and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (hereinafter the "Property") situated in the City and County of San Francisco, State of California, identified and more particularly described as "Fee Parcel" in **Exhibit A**, hereto attached and hereby made a part hereof, together with any and all of Grantor's right, title and interest in and to portions of that certain Form of Railroad Easement reserved by Southern Pacific Transportation Company in that certain Grant Deed dated August 1, 1990, and recorded on August 10, 1990 in the Official Records of San Francisco County, California, as Instrument No. E761808, as modified by that certain Deed Correcting Description of Rail Easement dated July 23, 1991, and recorded on August 22, 1991 in the Official Records of San Francisco County, California, identified and more particularly described as "Schedule 1", "Schedule 2" and "Schedule 3" in the attached **Exhibit A** ("Railroad Easement").

EXCEPTING FROM THIS QUITCLAIM AND RESERVING UNTO GRANTOR, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered underlying the Property, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of the Property, or to interfere with the use thereof by Grantee, its successors or assigns.

Except as may be otherwise provided in a written assignment or other written agreement between Grantor and Grantee, Grantor reserves all income (including, without limitation, rentals, license fees and royalties) from any existing license and other existing rights to use the Property and renewals thereof granted by Grantor or Grantor's predecessors in interest. Grantee agrees that if Grantee receives any such income, Grantee will promptly forward the income to Grantor.

Covenants.

The Property is quitclaimed by Grantor subject to the following covenants, conditions and restrictions which Grantee by the acceptance of this Deed covenants for itself, its successors and assigns, faithfully to keep, observe and perform:

Fence Covenant. Grantee, at its sole cost and expense, shall install, within ninety (90) days after the recording of this Deed, and thereafter maintain fencing or other barriers to prevent access to or encroachment on the railroad right-of-way of Grantor adjacent to the easterly boundary of the Property. The fencing or barrier must be of a design and type satisfactory to Grantor, and in compliance with applicable building codes. Grantee shall submit the plans for the fencing or barrier construction to:

Union Pacific Railroad Company
Assistant Vice President-Real Estate (Folder No. 1567-58)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

for review and approval. Grantor shall complete such review and make appropriate response to Grantee within twenty (20) days after receipt of such plans by Grantor. Grantor shall not unreasonably withhold its approval of such plans. Such approval does not constitute a guarantee or warranty that such plans comply with applicable governmental laws, rules, regulations or ordinances, or that the fence as constructed will be structurally sound.

Railroad Proximity Covenant.

(a) Grantee acknowledges that the property abutting the easterly boundary line of the Property is dedicated and used for railroad purposes, that railroad operations may create noise, vibrations, emissions, fumes and odors twenty-four (24) hours a day, and that the amount, nature and intensity of railroad operations may increase or change (collectively, the

"Permitted Effects"). Grantee accepts the Property subject to the existence of the Permitted Effects. By acceptance of the Property, Grantee agrees that, at Grantee's sole cost and expense, as part of the development of the Property, Grantee shall design and install and/or construct and thereafter maintain improvements to reduce or limit the Permitted Effects and to comply with all governmental requirements, if any, which may be imposed as a condition to the development and use of the Property because of the Permitted Effects.

(b) Grantee shall not, and hereby waives all rights to, (i) institute legal proceedings against Grantor to reduce or lessen the Permitted Effects, and (ii) directly or indirectly participate in petition drives, lobbying efforts or other activities seeking the enactment of federal, state or local laws or ordinances to reduce or lessen the Permitted Effects. Any party breaching such covenant shall reimburse Grantor for all costs incurred by Grantor to comply with any such orders, laws or ordinances, including, without limitation, attorney fees and court costs.

(c) If Grantee sells or leases all or any portion of the Property, Grantee shall require all purchasers and tenants to acknowledge the location of the railroad operations abutting the Property and the existence of the Permitted Effects, and to agree in writing, for the benefit of Grantor, to comply with the above covenants.

Covenants To Run With Land. The foregoing covenants, conditions and restrictions shall run with the Property, the burdens of which will be binding on the successors and assigns of Grantee, and the benefits of which will inure to the successors and assigns of Grantor. A breach of the foregoing covenants, conditions and restrictions, or the continuance thereof, may, at the option of Grantor, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

Environmental.

"As Is" Sale. Grantee acknowledges and agrees that the Property and the Railroad Easement have been sold and quitclaimed to and accepted by Grantee in an "as is" condition with all faults, and that the Property and the property over which the Railroad Easement is located ("Railroad Easement Area") have been used for, among other things, railroad operating right-of-way and for other commercial or industrial purposes. Grantor does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property, Railroad Easement Area or Railroad Easement or any of such related matters; in particular, but without limitation, Grantor makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, Railroad Easement Area or Railroad Easement, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters (including but not limited to the existence of Hazardous Materials, in, on, under or emanating to or from the Property), compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements (collectively, "Condition of the Property"). Grantee acknowledges and agrees that the Property and Railroad Easement have been sold and quitclaimed on the basis of Grantee's own

investigation of the physical and environmental conditions of the Property and Railroad Easement Area, including the subsurface conditions and Grantee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. For purposes of this Deed, "Hazardous Materials" means any flammable or explosive materials, petroleum or petroleum products, oil, crude oil, natural gas or synthetic gas usable for fuel, radioactive materials, asbestos, hazardous waste or substances or toxic waste or substances, including, without limitation, any substances now or hereafter defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "toxic materials" or "toxic substances" under any applicable federal, state or local law or regulation now or hereafter in effect.

Release. GRANTEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES GRANTOR, GRANTOR'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON ACTING ON BEHALF OF GRANTOR, OF AND FROM ANY CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH GRANTEE NOW HAS OR WHICH GRANTEE MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE CONDITION OF THE PROPERTY OR RAILROAD EASEMENT AREA, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY AND RAILROAD EASEMENT AREA (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY AND RAILROAD EASEMENT AREA BY ANY HAZARDOUS MATERIALS), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS. WITH RESPECT TO THE FOREGOING RELEASE, GRANTEE EXPRESSLY WAIVES THE BENEFITS AND PROTECTIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, WHICH READS AS FOLLOWS:

1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Indemnity. FROM AND AFTER CLOSING, GRANTEE SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND

EXPENSES, INCLUDING ATTORNEY'S FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER, ADJACENT OR EMANATING FROM OR TO THE PROPERTY BY ANY HAZARDOUS MATERIALS), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

General Allocation of Environmental Responsibility. With respect to any existing or future presence of Hazardous Materials in, under or emanating to or from the Property or Railroad Easement Area, Grantee, at no cost to Grantor, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or which may otherwise be necessary to make the Property or Railroad Easement Area suitable for Grantee's use of the Property or Railroad Easement Area.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed as of the 21st day of January, 2015.

Attest:

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

Barbara Holder
Assistant Secretary

By: Tommy Love
Title: Assistant Vice President - Real Estate

(Seal)

Grantee hereby accepts this Quitclaim Deed and agrees for himself, his heirs and assigns, to be bound by the covenants set forth herein.

Dated this 2ND ~~January~~ ^{FEBRUARY} day of ~~January~~, 2015.


PATRICK McNERNEY

0

STATE OF NEBRASKA)

) SS.

COUNTY OF DOUGLAS)

On January 21, 2015, before me, GREGG H. LARSEN, Notary Public
and County and State, personally appeared TONY K. LOVE

TONY K. LOVE

Assistant Vice President – Real Estate

 **GENERAL NOTARY - State of Nebraska**
GREGG A. LARSEN
My Comm. Exp. Aug. 28, 2016

Ben Adan
Notary Public

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

0

STATE OF CALIFORNIA)

) ss.

COUNTY OF _____

2nd February

On this day of January, 2015, before me, June Y Williams,

Notary Public, personally appeared PATRICK McNERNEY, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

June Y Williams
Notary Public

(Seal)



Union Pacific Railroad Company

San Francisco County, California

Exhibit "A"

FEE PARCEL

THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SAN FRANCISCO, CITY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF PARCEL 4 AND 5 AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT NO. 4; THENCE ALONG THE NORTHERLY LINE OF SAID LOT NO. 4 SOUTH 74°37'31" EAST (SHOWN AS "SOUTH 75°48'30" EAST" ON SAID PARCEL MAP) 55.07 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADIALLY FROM THE EXISTING CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO); THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 15°18'45" WEST, HAVING A RADIUS OF 5785.096 FEET, THROUGH A CENTRAL ANGLE OF 1°17'04" AN ARC DISTANCE OF 129.70 FEET TO THE WESTERLY LINE OF SAID LOT NO. 5; THENCE CONTINUING SOUTHERLY ALONG SAID CONCENTRIC LINE THROUGH A CENTRAL ANGLE OF 5°21'01" AN ARC DISTANCE OF 540.10 FEET TO THE SOUTHERLY LINE OF SAID LOT NO. 5; THENCE ALONG SAID SOUTHERLY LINE OF SAID LOT NO. 5 NORTH 72°09'01" WEST (SHOWN AS "NORTH 73°20' WEST" ON SAID PARCEL MAP) 117.46 FEET TO SOUTHEASTERLY LINE OF SAID LOT NO. 4; THENCE ALONG SAID SOUTHEASTERLY LINE SOUTH 32°17'13" WEST 29.95 FEET; THENCE NORTH 17°58'59" EAST (SHOWN AS "SOUTH 16°48'00" WEST" ON SAID PARCEL MAP) 309.26 FEET; THENCE SOUTH 71°57'37" EAST 19.979 FEET; THENCE NORTH 17°58'59" EAST 304.33 FEET; THENCE NORTH 74°37'31" WEST 20.00 FEET; THENCE NORTH 17°58'59" EAST 80.00 FEET TO THE POINT OF BEGINNING.

PORTION OF ASSESSOR'S LOTS 004 AND 005, BLOCK 5087

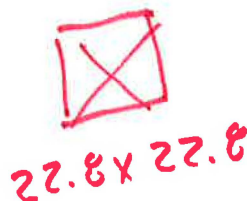
SCHEDULE 1

(MAIN LINE EASTMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)




22.8 x 22.8

PARCEL NO. 2: (SIGNAL CABINET AREA)

COMMENCING AT THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE HAVING A DISTANCE OF 109.964 FEET AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, AND 5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY; THENCE SOUTH 17°58'59" WEST ALONG SAID COURSE, 3.2 FEET TO A CHAIN LINK FENCE; THENCE SOUTH 32°17'13" WEST ALONG SAID FENCE, 21.6 FEET TO A FENCE POST; THENCE SOUTH 17°42'55" WEST, CONTINUING ALONG SAID FENCE, 100.2 FEET TO ANOTHER FENCE POST; THENCE SOUTH 69°17'37" EAST, CONTINUING ALONG SAID FENCE, 117.3 FEET TO ANOTHER FENCE POST; THENCE NORTH 9°22'01" EAST, CONTINUING ALONG SAID FENCE, 2.0 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN TO BE DESCRIBED; THENCE CONTINUING NORTH 9°22'01" EAST ALONG SAID FENCE, 22.0 FEET; THENCE SOUTH 80°37'59" EAST, LEAVING SAID FENCE, 22.8 FEET; THENCE SOUTH 9°22'01" WEST 22.0 FEET; THENCE NORTH 80°37'59" WEST 22.8 FEET TO THE TRUE POINT OF BEGINNING.

SCHEDULE 2
(DRILL & SPUR TRACK EASEMENT)

THOSE CERTAIN PARCELS OR STRIPS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED)

TO LUMBER YARD

PARCEL NO. 2: (DRILL AND SPUR TRACK AREA)

TO BAYSHORE

A STRIP OF LAND, 30 FEET WIDE LYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REEL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT TA POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTH 15°19'08" WEST ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, 88.81 FEET TO A POINT IN THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099 & 5101, SAN FRANCISCO, CALIFORNIA," AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, LAST SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 68.75 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8, LAST SAID POINT BEING TRUE POINT OF BEGINNING OF

THE LINE HEREIN TO BE DESCRIBED; THENCE SOUTHERLY AND SOUTHWESTERLY AND SOUTHERLY CONTINUING ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 3.62 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10", AN ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; SOUTH 32°19'44" WEST, TANGENT TO THE LAST SAID CURVE AT LAST SAID POINT, 161.72 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 286.483 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 177.35 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 544.20 FEET.

EXCEPTING THEREFROM THAT PORTION LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADially FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

ALSO, EXCEPTING THEREFROM THAT PORTION LYING WITHIN SAID COUNTY OF SAN MATEO.

PARCEL NO. 3: (DRILL AND SPUR TRACK AREA)

A STRIP OF LAND, 30 FEET WIDE, LAYING EQUALLY 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEASTERLY CORNER OF THE 0.411 ACRE PARCEL OF LAND DESCRIBED IN DEED DATED JUNE 13, 1985, FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY TO STATE OF CALIFORNIA, RECORDED JUNE 26, 1985, AS INSTRUMENT D660213, REAL D867, PAGE 591, OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTH 6°33'34" WEST 309.26 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY (WHICH TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE) AND WHICH CROSSES THE COMMON COUNTY LINE BETWEEN THE COUNTY OF SAN FRANCISCO AND THE COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY ALONG SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: SOUTH 15°19'08" WEST 92.43 FEET TO A POINT; SOUTHERLY ON A CURVE TO THE RIGHT, TANGENT TO SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 3564.239 FEET, A CENTRAL ANGLE OF 0°22'10" AND ARC DISTANCE OF 22.99 FEET TO A POINT; SOUTH 15°41'18" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 152.89 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°38'26", AN ARC DISTANCE OF 111.02 FEET TO A POINT; AND SOUTH 32°19'44" WEST, TANGENT TO LAST SAID CURVE AT

LAST SAID POINT, 53.00 FEET TO A POINT IN THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY (WHICH TRACK DIVERGES NORTHERLY FROM SAID CENTER LINE OF SAID COMPANY'S DRILL TRACK) AND THE TRUE POINT OF BEGINNING OF THE LINE HEREIN TO BE DESCRIBED; THENCE NORTHERLY ALONG SAID CENTER OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S SPUR TRACK RIGHT OF WAY, THE COURSES AND CURVATURES THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 81.00 FEET TO A POINT; NORTHERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 382.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 110.76 FEET TO A POINT; AND NORTH 9°22'01" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 109.53 FEET.

EXCEPTING THEREFROM THAT PORTION OF THE ABOVE DESCRIBED 30 FOOT WIDE STRIP OF LAND, HEREIN ABOVE DESCRIBED IN "PARCEL NO. 3, LYING EASTERLY OF AND COINCIDENT WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADially FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO).

SCHEDULE 3
(ACCESS ROADWAY EASEMENT)

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (NOT INCLUDED) *ON EAST SIDE OF TRACK*

PARCEL NO. 2: (ROADWAY AREA)

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF LOT NO. 8, AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A PORTION OF ASSESSOR'S BLOCK 5087, 5099, & 5101, SAN FRANCISCO, CALIFORNIA", AS PER MAP FILED JULY 16, 1980, IN BOOK 16 OF PARCEL MAPS, PAGE 40, RECORDS OF SAID COUNTY, WITH A LINE CONCENTRIC WITH AND DISTANT 75.00 FEET WESTERLY, MEASURED RADially FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK (SAN JOSE - SAN FRANCISCO), SAID POINT BEING DISTANT NORTH 72°09'01" WEST ALONG SAID NORTHERLY LINE, 115.29 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT NO. 8; THENCE SOUTHERLY ALONG SAID CONCENTRIC LINE, ON A CURVE TO THE LEFT, TANGENT TO SAID CURVE AT LAST SAID POINT BEARS SOUTH 8°40'41" WEST, HAVING A RADIUS OF 5785.096 FEET, A CENTRAL ANGLE OF 0°51'24", AN ARC DISTANCE OF 86.50 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADially FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK (WHICH LIES WESTERLY OF AND WHICH DIVERGES NORTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK AND WHICH DRILL TRACK LIES WESTERLY OF AND WHICH DIVERGES SOUTHERLY, SOUTHWESTERLY, AND SOUTHERLY FROM THE CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S EASTBOUND MAIN TRACK (SAN FRANCISCO - SAN JOSE), AND WHICH SAID DRILL TRACK CROSSES THE COMMON COUNTY LINE BETWEEN COUNTY OF SAN FRANCISCO AND COUNTY OF SAN MATEO AT A POINT DISTANT SOUTH 88°58'58" EAST ALONG SAID COUNTY LINE, 237.36 FEET FROM ITS INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT 105.67 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY LINE OF BAYSHORE BOULEVARD); THENCE SOUTHERLY AND SOUTHWESTERLY ALONG SAID PARALLEL AND

CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 9°22'01" WEST 67.82 FEET TO A POINT; SOUTHERLY AND SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 367.245 FEET, A CENTRAL ANGLE OF 16°36'08", AN ARC DISTANCE OF 106.41 FEET TO A POINT; AND SOUTH 25°58'09" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 80.17 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 15.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE SOUTHWESTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: SOUTH 32°19'44" WEST 107.88 FEET TO A POINT; SOUTHWESTERLY ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 271.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 168.08 FEET TO A POINT; AND SOUTH 67°45'14" WEST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 356.47 FEET TO THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SUNNYDALE AVENUE, 66 FEET WIDE; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTH 69°24'23" WEST ALONG SAID PROLONGATION, 65.40 FEET TO A POINT IN THE MOST WESTERLY LINE OF SAID LOT NO. 8, LAST SAID POINT BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID MAP HAVING A DISTANCE OF "66.00"; THENCE NORTH 20°35'37" EAST ALONG LAST SAID WESTERLY LINE, 43.00 FEET TO A LINE PARALLEL WITH AND DISTANT 10.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY PROLONGATION OF THE CENTER LINE OF SAID SUNNYDALE AVENUE; THENCE SOUTH 69°24'23" EAST ALONG LAST SAID PROLONGATION, 13.70 FEET TO A POINT; THENCE EASTERLY AND NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 175.00 FEET, A CENTRAL ANGLE OF 42°50'23", AN ARC DISTANCE OF 130.85 FEET TO A POINT IN A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S DRILL TRACK; THENCE NORTHEASTERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 67°45'14" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 246.15 FEET TO A POINT; NORTHEASTERLY ON A CURVE TO THE LEFT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 251.843 FEET, A CENTRAL ANGLE OF 35°25'30", AN ARC DISTANCE OF 155.71 FEET TO A POINT; AND NORTH 32°19'44" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 106.77 FEET TO A LINE PARALLEL AND CONCENTRIC WITH AND DISTANT 35.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES AND RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S TAIL TRACK; THENCE NORTHERLY ALONG LAST SAID PARALLEL AND CONCENTRIC LINE, THE COURSES AND CURVATURE THEREOF AS FOLLOWS: NORTH 25°58'09" EAST 79.06 FEET TO A POINT; NORTHEASTERLY AND NORTHERLY ON A CURVE TO THE LEFT TANGENT TO LAST SAID CURVE AT LAST SAID POINT IS LAST DESCRIBED COURSE, HAVING A RADIUS OF 347.245 FEET, A CENTRAL ANGLE OF 16°36'08", AND ARC DISTANCE OF 100.62 FEET TO A POINT; AND NORTH 9°22'01" EAST, TANGENT TO LAST SAID CURVE AT LAST SAID POINT, 67.27 FEET TO A POINT IN A LINE CONCENTRIC WITH AND DISTANT 95.00 FEET WESTERLY, MEASURED RADIALLY FROM SAID CENTER LINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTBOUND MAIN TRACK; THENCE LEAVING LAST SAID PARALLEL AND CONCENTRIC LINE, NORTHERLY ALONG LAST SAID CONCENTRIC LINE, ON A CURVE TO THE RIGHT, TANGENT TO LAST SAID CURVE AT LAST SAID POINT BEARS NORTH 7°49'17" EAST, HAVING A RADIUS OF 5805.096 FEET, A CENTRAL ANGLE OF 0°53'19", AN ARC DISTANCE OF 90.03 FEET TO SAID NORTHERLY LINE OF SAID LOT NO. 8; THENCE SOUTH 72°09'01" EAST ALONG LAST SAID NORTHERLY LINE, 20.26 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.519 OF AN ACRE, MORE OR LESS.

INGRESS/EGRESS AREA

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THAT PORTION OF PARCEL 4, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS SHOWN ON THAT CERTAIN "PARCEL MAP" FILED JULY 16, 1980 IN BOOK 16 OF PARCEL MAPS AT PAGE 40, IN THE OFFICE OF THE COUNTY RECORDERS OF THE CITY AND COUNTY OF SAN FRANCISCO, LYING SOUTHERLY OF THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF LOT NO. 7 OF SAID PARCEL MAP.

Union Pacific Railroad Co.
Real Estate Department
Omaha, NE

LD 0156758
January 16, 2015

EXHIBIT L

**“Drill and Spur Track Easement” and a “Drill Track
Connection Easement” for Sunquest Property**

FORWARD TAX STATEMENTS TO,
AND WHEN RECORDED MAIL TO

Name **OYSTER POINT PROPERTIES, INC.,**
Suite 1503
Street Address **12 South First Street**
San Jose, California 95113
City State Zip **Attention: Stephen C.H. Lin, Ph.D.**
10-700675 / 510314

Ticor
Ticor Insurance Company
RECORDED DEC 29 P 3:30

WARREN SLOAN, RECORDER
SAN MATEO COUNTY
OFFICIAL RECORDS

SPACE ABOVE THIS LINE FOR RECORDER'S USE
DOCUMENTARY TRANSFER TAX SHOWN ON SEPARATE STATEMENT ATTACHED HERETO, PURSUANT TO
☐ COMPUTED ON FULL VALUE OF PROPERTY CONVEYED, OR **SECTION 11932, R & T CODE, AND SAN MATEO COUNTY**
☐ COMPUTED ON FULL VALUE LESS LIENS & ENCUMBRANCES **ORDINANCE CODE SECTION 2920.**
☐ RELEVANT THEREON AT TIME OF SALE

[Signature] **Ticor Title Ins. Co., Escrow Agent**
Signature of declarant or agent delivering tax -- from escrow **GRANT DEED**

Transfer Tax Declared and Paid Pursuant to
Sect. 2920 of Ord. 1897 amended by Ord. 1892

FOR VALUE RECEIVED, Southern Pacific Transportation Company ("Grantor"), a Delaware corporation, grants to Oyster Point Properties, Inc., a California corporation ("Grantee") all this certain real property, located in the City of Brisbane, San Mateo County, State of California, and as more particularly described in Exhibit A, attached hereto and by this reference incorporated herein (the "Property");

TOGETHER WITH all rights and easements appurtenant thereto;

SUBJECT TO a lien to secure payment of current taxes and assessments and all easements, rights of way, covenants, conditions and restrictions, leases and other exceptions to title which are of record; and

EXCEPTING AND RESERVING unto Grantor that certain Form of Railroad Easement as more particularly described in Exhibit B, attached hereto and by this reference incorporated herein.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed this 28 day of December, 1989.

*Successor by Merger to Southern Pacific Company, a Delaware Corporation, which acquired title to portions of the herein described property as Southern Pacific Company, a Kentucky Corporation,

"Grantor"

SOUTHERN PACIFIC
TRANSPORTATION COMPANY
a Delaware corporation

By: *[Signature]*

Its: *[Signature]*

City of Brisbane

A.P.#772-018-001
772-018-002
772-018-003
772-018-006
772-018-008
772-018-018

Attest: *[Signature]*

Its: *[Signature]*

Secretary

09177116

STATE OF CALIFORNIA }
City and County of San Francisco }

On the 22nd day of December in the year One Thousand Nine Hundred and Eighty Nine

before me, JAMES W. WATT, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared

(Notary Public Seal)

S. D. Steel

personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Vice President and T. M. O'Donnell personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Secretary of the Corporation that executed the within instrument and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors
WITNESS my hand and official seal.



Corporation

My Commission Expires August 9, 1991

James W. Watt
Notary Public in and for the City and County of San Francisco, State of California.

83177316

EXHIBIT "A"

All that certain real property in the City of Brisbane, County of San Mateo, State of California, described as follows:

PARCEL ONE:

Beginning at a point on the Northerly boundary line of the County of San Mateo, said point being distant thereon North 89 degrees 49' 30" East 1135.15 feet from a monument, said monument being distant South 89 degrees 49' 30" West 6.38 feet from the intersection of said Northerly boundary line of the County of San Mateo with the Easterly line of Bayshore Highway; thence from said point of beginning South 50 degrees 42' 29" East a distance of 245 feet, more or less to a point in the meander line of ordinary high tide of San Francisco Bay between Stations 13 and 14, as surveyed by G.F. Allardt in December 1870 and January 1871, and as shown on Map No. 1 of Salt Marsh and tide lands, situate in the County of San Mateo, prepared by order of the Board of Tide Land Commissioners by G.F. Allardt and approved by said board, August 14, 1871; thence along said meander line the following two courses: South 74 degrees 30' West 90 feet, more or less to said station 14 and South 55 degrees 15' West 71.28 feet to a point in the Easterly line of Tide Lot 7 as shown on said Map No. 1 of Salt Marsh and tide lands; thence Southerly along said Easterly line of Tide Lot 7 and the Easterly line of Tide Lots 10, 23 and 26 all in Section 3, Township 3 South, Range 5 West, M.D.B. & M. as said tide lots are shown on said map, a distance of 4,870 feet, more or less, to a point in said meander line between Stations 45 and 46; thence along said meander line the following courses and distances; South 74 degrees 15' East 160 feet, more or less, to said Station 46, South 55 degrees East 135.06 feet to Station 47, South 67 degrees East 50 feet, more or less, to the Northerly line of Tide Lot 6 in Section 10, Township 3 South, Range 5 West, M.D.B. & M. as shown on said Map No. 1 of Salt Marsh and tide lands; thence Easterly along the Northerly line of said Tide Lot 6, 350 feet, more or less, to the Northeastern corner thereof; thence Southerly along the Easterly line of said Tide Lot 6, the Southerly prolongation thereof and the Easterly line of Tide Lot 6-1/2 as shown on said Map No. 1 of Salt Marsh and tide lands 1320 feet to the Southeastern corner of said tide Lot 6-1/2; thence Westerly along the Southerly line of said Tide Lot 6-1/2, 450 feet, more or less, to a

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point on the Northeasterly line of that certain parcel of land described in deed from Southern Pacific Company, a Delaware corporation, to Kinsdale Investment Company, Inc., A California corporation, dated November 10, 1960 and recorded December 9, 1960 in Book 3904 Official Records of San Mateo, page 304 (14307-T); thence Northwesterly along said Northeasterly line along the arc of a curve to the left, said curve having a radius of 271.84 feet, an arc distance of 160 feet, more or less, to a point in the Northerly line of land described in last said deed; thence South 67 degrees 35' 50" West along last said Northerly line 32.34 feet to a point in the Southwesterly line of land described in the deed from Crocker Estate Company to Southern Pacific Railroad Company dated April 13, 1904 and recorded May 5, 1904 in Book 106 of Deeds, page 567, Records of San Mateo County; thence North 33 degrees 48' 40" West along last said Southwesterly line 1753 feet, more or less, to a point in the Southeasterly line of that certain parcel of land described as Parcel 2 in the Deed from Southern Pacific Company to Pacific Bone Coal and Fertilizing, A Corporation, dated October 4, 1929 and recorded November 13, 1929 in Book 436 Official Records of San Mateo County, page 458 (48302-B); thence North 68 degrees 29' East along last said Southeasterly line 124.2 feet to the Northeasterly line of land described in last said deed; thence North 21 degrees 31' West along last said Northeasterly line 1077.89 feet, more or less, to the most Southerly corner of that certain parcel of land described as Parcel 2 in the Deed from Robert G. Tuck, et al, to Southern Pacific Transportation Company, a Delaware Corporation, dated March 20, 1973 and recorded April 13, 1973 in Book 6363 Official Records of San Mateo County, page 639 (22597-AG); thence along the Southwesterly line of said Parcel 2 in last said deed North 29 degrees 00' West 53.49 feet to the Northeasterly line of Industrial Way, as said street is shown on the map entitled "Brisbane Industrial Park, Brisbane, California San Mateo County", which map was filed in the Office of the Recorder of the County of San Mateo, State of California on October 10, 1969 in Book 70 of Maps at pages 16 and 17; thence along said Northeasterly line of Industrial Way from a tangent that bears North 0 degree 21' 14" West along the arc of a curve to the left with a radius of 50 feet, a central angle of 20 degrees 01' 16", an arc distance of 17.47 feet; thence tangent to the preceding curve North 20 degrees 22' 30" West 262.51 feet; thence leaving said Northeasterly line of Industrial Way North 59 degrees 37' 30" East 5.00 feet to a point of the Easterly line of Block 2, as said block is shown on the map of Brisbane Industrial Park above mentioned; thence along said Easterly line North 1 degree 10' East 161.44 feet and North 8 degrees 45' West 15 feet to the most Southeasterly corner of that certain triangular parcel of land described as Parcel 1 in the deed from Southern Transportation Company, a Delaware corporation, to Robert G. Tuck, et al, dated March 8, 1973 and recorded April 13, 1973 in Book 6363 Official Records of San Mateo County, page 644 (22599-AG); thence along the Southeasterly and Northeasterly boundary lines of said Parcel 1 North 65 degrees 03' 51" East 3.00 feet and North 24 degrees 56' 09"

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West 10.34 feet to the Easterly line of said Block 2 in said Brisbane Industrial Park; thence along said Easterly line North 8 degrees 45' West 14.96 feet and Northeasterly along the arc of a tangent curve to the right, said curve having a radius of 467.56 feet and a central angle of 5 degrees 54' 54", an arc distance of 48.27 feet to the most Southerly corner of that certain triangular parcel of land described as Parcel 2 in the above mentioned deed to Robert G. Tuck, et al, (22599-AG); thence the Southeasterly and Northeasterly boundary lines of said Parcel 2 North 65 degrees 03' 51" East 6.00 feet and North 24 degrees 56' 09" West 14.11 feet to the Easterly line of said Block 2 in said Brisbane Industrial Park; thence along said Easterly line along the arc of curve to the right, said curve having a radius of 457.56 feet and a central angle of 2 degrees 07' 23", an arc distance of 17.32 feet, tangent to the preceding curve, North 1 degree 10' East 354.68 feet, along the arc of a tangent curve to the left, said curve having a radius of 449.56 feet and a central angle of 59 degrees 09' 20", an arc distance of 464.15 feet and North 88 degrees 50' West 49.61 feet to the most Easterly corner of that certain triangular parcel of land described as Parcel 3 in the above mentioned deed to Robert G. Tuck, et al, (22599-AG); thence leaving said Easterly line and along the Northeasterly and Northwesterly boundary lines of said Parcel 3 Northwesterly along the arc of a curve to the left, said curve having a radius of 374.72 feet and a central angle of 5 degrees 27' 58", an arc distance of 35.75 feet and South 73 degrees 21' 07" West 85.87 feet to a point on the general Northerly boundary line of said Brisbane Industrial Park; thence along said general Northerly boundary line North 88 degrees 50' West 10.64 feet to an angle point in said Northerly boundary line and North 54 degrees 46' 23" West 189.72 feet to the most Easterly corner of that certain triangular parcel of land described as Parcel 1 in the above mentioned deed to Southern Pacific Transportation Company (22597-AG); thence along the Southerly boundary line of said Parcel 1 in last said deed South 89 degrees 55' 03" West 51.39 feet to a point in the Southeasterly line of Bayshore Boulevard (formerly State Highway Route 68, San Bruno Road and Milliken Street); thence along said Southeasterly line of Bayshore Boulevard as follows: Northerly on the arc of a curve to the right with a radius of 1337.50 feet, an arc distance of 535 feet, more or less, to a point opposite station 22+64.95 B.C. of said highway, North 23 degrees 31' 30" East 467.92 feet to a point opposite Station 17+97.93 E.C. of said highway Northerly on a curve to the left with a radius of 5062.50 feet, an arc distance of 12.58 feet, Northeasterly 280 feet to a point in the Easterly prolongation of the Southerly line of Walbridge Street, Northerly 66.00 feet to a point in the Easterly prolongation of the Northerly line of Walbridge Street and Northeasterly 1367.52 feet to a point distant Southwesterly 224.42 feet measured along said Southeasterly line of Bayshore Boulevard, from the Southwesterly line of Sunnyvale Avenue (formerly Tobin Street); thence Southeasterly leaving last said Southeasterly line and parallel with and distant 224.42 feet Southwesterly, measured at right angles, from said

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Southwesterly line of Sunnyvale Avenue, 105.67 feet to a point in a line parallel with and distant 105.67 feet Southeasterly, measured at right angles, from said Southeasterly line of Bayshore Boulevard; thence Northeasterly along last said parallel line 125 feet, more or less, to a point in said Northerly boundary line of the County of San Mateo; thence North 89 degrees 49' 30" East, along last said Northerly boundary line, 1010 feet, more or less, to the point of beginning.

Excepting therefrom that portion of said property lying below a depth of five hundred (500) feet under the lands described in Parcels 1 and 2 of the Deed from Robert G. Tuck, et al, to Southern Pacific Transportation Company, a Delaware corporation, dated March 20, 1973 and recorded April 13, 1973 in Book 6363 Official Records of San Mateo County, page 639 (22597-AG), as measured vertically from the contour of the surface of said Parcels 1 and 2.

Also excepting therefrom any portion thereof lying within the lines of Industrial Way as shown on the map of Brisbane Industrial Park above referred to.

PARCEL TWO:

Beginning at a point on the Northerly boundary line of the County of San Mateo, said point being distant thereon North 89 degrees 49' 30" East 1135.15 feet from a monument, said monument being distant South 89 degrees 49' 30" West 6.38 feet from the intersection of said Northerly boundary line of the County of San Mateo with the Easterly line of Bayshore Highway; thence from said point of beginning South 5 degrees 42' 29" East a distance of 245 feet, more or less, to a point in the meander line of ordinary high tide of San Francisco Bay between Stations 13 and 14, as surveyed by G.F. Allardt in December 1870 and January 1871, and as shown on Map No. 1 of Salt Marsh and tide lands, situate in the County of San Mateo, prepared by order of the Board of Tide Land Commissioners by G. F. Allardt and approved by said board, August 14, 1871, last said point being the true point of beginning of the lands described herein; thence from said true point of beginning along said meander line the following two courses: South 74 degrees 30' West 90 feet, more or less, to said Station 14 and South 55 degrees 15' West 71.28 feet to a point in the Easterly line of Tide Lot 7 as shown on said Map No. 1 of Salt Marsh and tide lands; thence Southerly along said Easterly line of Tide Lot 7 and the Easterly line of Tide Lots 10, 23 and 26 all in Section 3, Township 3 South, Range 5 West, M.D.B. & M. as said tide lots are shown on said map, a distance of 4870 feet, more or less, to a point in said meander line between Stations 45 and 46; thence along said meander line the following courses and distances: South 74 degrees 15' East 160 feet, more or less, to said Station 46, South 55 degrees East 135.06 feet to Station 47, South 67 degrees East 50 feet, more or less, to the Northerly line of Tide Lot 6 in Section 10, Township 3 South, Range 5 West, M.D.B. & M. as shown on

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said Map No. 1 of Salt Marsh and tide lands; thence Easterly along the Northerly line of said Tide Lot 5, 350 feet, more or less, to the Northeasterly corner thereof; thence Southerly along the Easterly line of said Tide Lot 6, the Southerly prolongation thereof and the Easterly line of Tide Lot 6-1/2 as shown on said Map No. 1 of Salt Marsh and tide lands 1320 feet to the Southeasterly corner of said Tide Lot 6-1/2; thence Westerly along the Southerly line of said Tide Lot 6-1/2, 450 feet, more or less, to a point on the Northeasterly line of that certain parcel of land described in deed from Southern Pacific Company, a Delaware Company, to Kinsdale Investment Company, Inc., A California Corporation, dated November 10, 1960 and recorded December 9, 1960 in Book 3904 Official Records of San Mateo County, page 304 (14307-T); thence Southeasterly along said Northeasterly line along the arc of a curve to the right, said curve having a radius of 271.84 feet, an arc distance of 11.45 feet, more or less, to the Northerly terminus of the course having a bearing and distance of North 32 degrees 51' 56" West 8.93 feet in said deed; thence South 32 degrees 51' 56" East 8.93 feet and South 24 degrees 41' 40" East 464.21 feet to the Southeasterly corner of said parcel; thence along the Southeasterly line of said parcel, South 56 degrees 11' 20" West 107.65 feet to the Southwesterly corner of said parcel, said Southwesterly corner being a point on the Southwesterly line of the 100 foot wide strip of land first described in the deed from Crocker Estate Company to Southern Pacific Company, dated March 26, 1908 in Book 144 of Deeds at page 549; thence along said Southwesterly line South 33 degrees 48' 40" East 274.06 feet, more or less, to the North line of the Guadalupe Canal as shown on Map No. 1 of Salt Marsh and tide land above referred to; thence Easterly along said North line 2,505 feet, more or less, to the Southwesterly corner of the parcel of land described as Parcel 1 in deed from Southern Pacific Company, a Delaware corporation, to the State of California, dated February 14, 1956 and recorded January 6, 1958 in Book 3328 Official Records of San Mateo, page 652 (8407-Q); thence along the Westerly line of last said parcel North 10 degrees 09' 20" West 5050.94 feet to the Northwesterly corner thereof, said corner being also the Southerly corner of the parcel of land described as Parcel 2 in the last mentioned deed; thence along the Westerly line of said Parcel 2 North 10 degrees 09' 20" West 1939.81 feet to a point in Southerly line of the parcel of land described as Parcel II in the Deed from N. Hansen Co. Ltd., A California Corporation, to the State of California, dated March 15, 1944 and recorded May 22, 1944 in Book 1113 Official Records of San Mateo County, page 377 (13802-F); thence along the Southerly line of said Parcel II North 73 degrees 51' 02" West 145 feet, more or less, to the Southerly line of the parcel of land described as Parcel No. 4 in the Deed from Southern Pacific Transportation Company, a Delaware corporation, to the City of Brisbane, a municipal corporation, dated October 1, 1975 and recorded November 17, 1975 in Book 6985 Official Records of San Mateo County, page 264 (12339-AJ); thence along the Southerly line of said Parcel No. 4 South 73 degrees 49' 30" West 383.78 feet, Westerly on the arc of a tangent curve to the right,

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said curve having a radius of 542 feet and a central angle of 16 degrees 00' 00" an arc distance of 151.35 feet, South 89 degrees 49' 30" West 160.00 feet, North 0 degree 10' 30" West 12.00 feet and South 89 degrees 49' 30" West 70.00 feet, more or less, to the Easterly line of the parcel of land described in Exhibit "A" to deed from Southern Pacific Transportation Company, a Delaware corporation, to Rolando Lumber Company, Inc., A California Corporation, dated April 25, 1978 and recorded May 9, 1978 in Reel 7742 Official Records of San Mateo County, Image 32 (64108-AM); thence along said Easterly line and the southerly prolongation thereof South 8 degrees 30' 00" East 1070.34 feet to the Southeasterly corner of the parcel of land described in deed from Southern Pacific Company, a Delaware corporation, to Esta A. Jones, an individual doing business as Jones Hardwood Plywood Company, dated November 12, 1948 and recorded January 12, 1949 in Book 1612 Official Records of San Mateo County, page 524 (71234-H); thence along the Southerly line of last said parcel South 84 degrees 17' 31" West 366.46 feet to the Northeasterly corner of the parcel of land described in the deed from Southern Pacific Company, A Corporation, to Richard J. Hoelger and Margaret P. Hoelger, Husband and Wife, As Community Property, dated January 26, 1966 and recorded January 27, 1966 in Book 5103 Official Records of San Mateo County, page 3 (33204-Z); thence along the Easterly and Southerly boundary lines of last said parcel South 5 degrees 42' 29" East 575.00 feet and South 84 degrees 17' 31" West 420.00 feet; thence along the Westerly line of last said parcel and the Northerly prolongation thereof North 5 degrees 42' 29" West 2103.19 feet to the true point of beginning.

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Being Tide Lots 20, 21, 22, 27, 28 and 29 and portion of Tide Lots 4, 5, 6, 11, 12, 13, 14, 19 and 30 in Section 3 and Tide Lands Lots 4, 5, 12, 13 and 14 and portion of Tide Lands Lots 2, 3, 11 and 15 in Section 10, all in Township 3 South, Range 5 West, Mount Diablo Base and Meridian, according to the Official Plat thereof, as shown on Map No. 1 of Salt Marsh and tide lands above referred to.

Excepting therefrom that certain parcel of land described in the Deed from Southern Pacific Company, a Delaware corporation, to Bayshore Sanitary District dated March 1, 1961 and recorded January 14, 1963 in Book 4370 Official Records of San Mateo County, page 129 (51014-Y).

Also excepting therefrom the parcel of land described as Parcel 1 in the deed from Southern Pacific Transportation Company to City of Brisbane, dated October 1, 1975, recorded November 17, 1975 in Book 6985 Official Records of San Mateo County, page 263 (12339-AT).

Also excepting therefrom those certain parcels of land described as Parcels I and II in Exhibit "A" to deed from Southern Pacific Transportation Company, a Delaware corporation, to City of Brisbane, a municipal corporation, dated December 5, 1980 and recorded December 29,

1980 in Reel 8018 Official Records of San Mateo County, Image 1950 (28515-AR).

Also excepting therefrom that certain parcel of land described in the deed from Southern Pacific Transportation Company, a Delaware corporation, to City of Brisbane, a municipal corporation, dated September 24, 1982 and recorded November 1, 1982 under Instrument No. 82093805, Official Records of San Mateo County.

PARCEL THREE:

Tide land Block 19, portion of Tide Land Blocks 2, 18 and 31, and portion of "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", 4th and 5th Street, as said Blocks and Streets are shown on the map entitled "Map of Tide Lands Blocks Nos. 18, 19, 31 of 59.82 acres & No. 2 of 14.40 acres in Sections 10 & 15 of Townships 3 South Range 5 West Mt. Diablo Meridian", which map was filed in the Office of the Recorder of the County of San Mateo, State of California on October 25, 1883 in Book "B" of Maps at page 41, and a copy entered in Book 1 of Maps at page 35 (commonly called "Campbell Tract") and a portion of fractional tide lands Lots 20 and 30 in Section 10, Township 3 South, Range 5 West, as said lots are shown on Map No. 1 of Salt Marsh and tide lands situate in the County of San Mateo, prepared by order of the Board of Tide Land Commissioners by G.F. Allardt and approved by said Board August 14, 1871, more particularly described as a whole as follows:

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Beginning the intersection of the centerline of "E" Street with the Easterly boundary line of the subdivision as shown on the map first above referred to; thence from said point of beginning Westerly along said centerline 330 feet to the intersection thereof with the centerline of 5th Street as shown on the said map; thence Northerly along said centerline of 5th Street 264 feet to the intersection with the centerline of "D" Street as shown on said map; thence Westerly along said centerline of "D" Street 330 feet to a point on the dividing line between tide land Blocks 18 and 19 as shown on said map; thence Northerly along dividing line 1024 feet to the Northeasterly corner of said tide land Block 19; thence Westerly along the northerly line of said Block 19 and the Westerly prolongation thereof, said prolongation being the Northerly line of tide land Lot 20 above referred to, 1320 feet to the Northwesterly corner of said Lot 20; thence Southerly along Westerly line of said Lot 20; 599.28 feet to a point in the meander line of ordinary high tide as shown on Map No. 1 of Salt Marsh and tide lands above referred to, said point being North 33 degrees 45' 110.88 feet to Station 75 of the Survey of said lands; thence along said meander line South 33 degrees 45' East 110.88 feet to said Station 75, South 76 degrees 00' East 182.16 feet to Station 76, South 50 degrees 30' East 145.2 feet to Station 77, South 10 degrees 30' East 122.1 feet to Station 78, South 54 degrees 30' East 136.62 feet to

Station 79, South 72 degrees 15' East 198.00 feet to Station 80, South 35 degrees 00' East 56.1 feet to Station 81, South 6 degrees 30' West 171.5 feet to Station 82, South 12 degrees 30' East 158.4 feet to Station 83, South 34 degrees 00' East 132.00 feet to Station 84, and South 9 degrees 00' East 132.00 feet to Station 85, which last said station lies on the Northeasterly line of the lands described in the deed from Southern Pacific Company, a Delaware corporation, to Van Waters & Rogers, Inc., A Corporation, dated August 2, 1960 and recorded September 2, 1960 in Book 3854 Official Records of San Mateo County, page 129 (87866-S); thence along said Northeasterly line South 33 degrees 43' 15" East 1270 feet, more or less, to the Southerly terminus of the course having a distance of 1519.55 feet in said deed; thence continuing along Northeasterly line South 33 degrees 17' 04" East 235.94 feet, South 30 degrees 39' 02" East 229.71 feet and Southeasterly on the arc of a curve to the right, having a radius of 2511.60 feet and a central angle of 11 degrees 57' 54", an arc distance of 524.49 to the Southeasterly corner of last said lands; thence Northerly in a direct line to an angle point in the Westerly boundary line of the lands described in Parcel 5 of the Director's Deed from the State of California to the State of Brisbane, a municipal corporation, dated May 24, 1968 and recorded October 14, 1968 in Book 5543 Official Records of San Mateo County, page 665 (82637-AB), said angle point being at the Southeasterly terminus of the line having a bearing of North 0 degree 09' 01" East and a length of 2165.95 feet; thence along said Westerly line North 0 degree 09' 01" East 2030 feet, more or less, to the point of beginning.

Excepting therefrom so much thereof as lies within the lands described in Parcel No. 2 of the Deed from Southern Pacific Company, A Corporation, to the State of California dated February 15, 1934 and recorded March 8, 1934 in Book 617 Official Records of San Mateo County, page 402 (38180-C).

PARCEL FOUR:

Lots 151, 152, 153, 154, 155, and 156, Block 18, that portion of the Southerly 1/2 of "C" Street lying contiguous to said Lots 151 through 156, and that portion of the Westerly 1/2 of 5th Street lying contiguous to said Lot 156, as said lots and block and streets are shown on that certain map entitled "Map of Tide Land Blocks Nos. 18, 19, 21 of 59.22 acres & No. 2 of 14.40 acres in Sections 10 & 15 of Township 3, South Range 5 West Mt. Diablo Meridian", which map was filed in the Office of the Recorder of the County of San Mateo, State of California on October 25, 1883 in Book "B" of Maps at page 41, and a copy entered in Book 1 of Maps at page 35.

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PARCEL FIVE:

Tide Land Lots 6, 7, 8, 9, 10, 22, 23 and 24 in Section 2, Tide Land Lots 1, 3, 14, 15, 16, 17, 18, 19, 31 and 32 in Section 3, Tide Land Lots 1, 2 and 16 in Section 10 and Tide Land Lot 10 in Section 11, Township 3 South, Range 5 West, Mount Diablo Base and Meridian, according to the Official Plat thereof, as shown on Map No. 1 of Salt Marsh and tide lands situate in the County of San Mateo, State of California, prepared by order of the Board of Tide Land Commissioners under the authority and in accordance with the provisions of an act entitled "An Act Supplementary to and Amendatory of an Act Entitled 'An Act to Survey and Dispose of Certain Salt Marsh and Tide Land Belonging to the State of California', approved March Thirtieth Eighteen Hundred and Sixty Eight", approved April 1st, 1870.

Excepting therefrom:

A. That portion thereof lying Southwesterly of the Northeasterly line of the parcels of land described in the deeds from Southern Pacific Company, A Corporation, to State of California, dated February 14, 1956, recorded January 8, 1958 in Book 3328 Official Records of San Mateo County, page 652 (84017-Q) and dated January 15, 1954, recorded January 6, 1958 in Book 3328 Official Records of San Mateo County, page 660 (84008-Q) (Bayshore Freeway).

B. That portion of tide land Lots 3 and 14 in Section 3 described in the deed from Southern Pacific Company, a Delaware Corporation, to the City and County of San Francisco, dated November 3, 1959, recorded April 19, 1960 in Book 3781 Official Records of San Mateo County, page 598 (47539-S).

C. That portion of tide land Lot 3 in Section 3 described in the deed from Southern Pacific Transportation Company, a Delaware Corporation, to City and County of San Francisco, a Municipal Corporation, dated July 26, 1989, recorded August 2, 1989, Instrument No. 89100562, San Mateo County Records.

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EXHIBIT "B"

FORM OF RAILROAD EASEMENT

"Grantor excepts from the Property hereby conveyed and reserves unto itself, its successors and assigns:

A perpetual, exclusive easement in, on, under, over and through the locations described in Schedule 1 (Railroad Easement - Main Line) attached hereto, and depicted on Schedule 2 & 2A (Railroad Easement - Spur Lines) in which areas Grantor (and its lessees, sublessees, licensees, successors or assigns) shall have the right to own, operate, maintain, repair, lease, license, and/or remove existing and/or future railroad, rail and railroad related equipment and facilities and communications lines and facilities of every kind and nature including but not limited to all existing facilities, telephone, telegraph, television and fiber optic lines and related equipment. All improvements presently existing on or hereafter constructed on the easement area, if owned by Grantor, shall remain the personal property of the Grantor and its successors and assigns. Upon abandonment or termination of the easement, or any portion thereof, Grantor shall be obligated to execute and deliver to Grantee or its successors and assigns an instrument in form and substance satisfactory to Grantee, or its successors and assigns, relinquishing the easement described in this paragraph. Grantor shall defend, indemnify and hold Grantee, its successors and assignees, harmless from and against any liability, damage, cost or expense arising from or in connection with Grantor's use of the property covered by the easement reserved herein.

Notwithstanding the exclusive nature of such easement, Grantor shall permit Grantee, its successors and assigns, (a) such rights of passage on, over, and under such easement area for such public or private streets and rights of way ("Rail Crossings") as Grantee may require to provide reasonable access to any improvements located on the Property, and (b) the right to construct (i) improvements over said easement commencing at a minimum height of thirty-five (35) feet above top of rail and (ii) structural support improvements and other improvements reasonably related to a railroad depot within the easement area ("Improvements"), in all cases subject to (a) approval of the location or locations and the design of such Rail Crossings and Improvements by the Grantor, which approval shall not be unreasonably withheld; (b) such conditions as Grantor may reasonably impose to protect its own operations over such easement area or to comply with applicable law; (c) approval of such Rail Crossings or Improvements by the California Public Utility Commission and by such other governmental and regulatory agencies as may be required; (d) acceptance, to the extent applicable, of such Rail Crossings as dedicated public streets by the City of Brisbane; and (e) construction of the physical improvements constituting such Rail Crossings and Improvements at no expense to the Grantor."

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EXHIBIT "B"
SCHEDULE 2
RAILROAD EASEMENTS RESERVED
IN SALE OF BAYSHORE YARD

DATE: December 20, 1909

LEGEND

INDICATES MAINLINE

INDICATES 30' WIDE RAILROAD EASEMENTS
SHOWN AT LOCATIONS 1, 2, AND 3

RAILROAD EASEMENTS RESTVRD
IN SALE OF BAYSHORE YARD

DATE: December 20, 1985

LEGEND

MAINLINE INDICATES MAINLINE

INDICATES 30' WIDE RAILROAD EASEMENTS
SHOWN AT LOCATIONS 1, 2, AND 3

END
12/28/83

EXHIBIT "B"
(Schedule 2A)

An easement in, on, under, over and through those portions of the land described in the attached Exhibit "A" included within a strip of land, 30 feet wide, lying equally 15 feet on each side of the center line of the existing drill tracks, spur tracks and future connections which lie within the land described in said Exhibit "A" at locations designated: 1, 2 and 3 on attached Exhibit "A" (Schedule 2).

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EXHIBIT M

Excerpts from the McNerney Application

1. Owner/Applicant Information

PROPERTY OWNER'S NAME:		
Martin Building Company		
ADDRESS:	ZIP CODE:	TELEPHONE:
14 Mint Plz, 5th Floor, San Francisco	94103	(415)442.4800
PROPERTY OWNER'S EMAIL:		
julie@martinbuilding.com		

APPLICANT'S NAME:		
Same as Above ☐ Reuben, Junius and Rose: Andrew Junius		
ADDRESS:	ZIP CODE:	TELEPHONE:
One Bush Street, Suite 600, San Francisco	94104	(415)567-9000
APPLICANT'S EMAIL:		

CONTACT FOR PROJECT INFORMATION:		
Same as Above Owner ☐ or Applicant ☒		
ADDRESS:	ZIP CODE:	TELEPHONE:
		()
CONTACT PERSON EMAIL:		

Request a meeting with PPA planner(s)? YES ☒ NO ☐

2. Location and Classification

STREET ADDRESS OF PROJECT:		ZIP CODE:
2201 Bayshore Blvd		94134
CROSS STREETS:		
Blanken Ave		

ASSESSORS BLOCK/LOT:	LOT DIMENSIONS:	LOT AREA (SQ FT):	ZONING DISTRICT:	HEIGHT/BULK DISTRICT:
5087 / 004/5	~86'x	49,532	MUG*	

*Project Sponsor will request a change in zoning from M-1 to MUG

3. Project Description

Please Check

New Construction ☒ Demolition ☐ Alteration ☐ Change of Use ☐ Change of Hours ☐ Other ☐

Describe what is to be done:

Construction of two new residential buildings, with the south building being 7 stories above grade with 2 below grade parking levels, and the north building being 6 stories above grade with 2 below grade storage levels.

Additions to Building: Rear ☐ Front ☐ Height ☐ Side Yard ☐

Present or Previous Use: _____

Proposed Use: _____

4. Project Summary Table

If you are unsure of the final size of the project, provide maximum estimates. TOTALS DO NOT AUTO CALCULATE.

	EXISTING USES:	EXISTING USES TO BE RETAINED:	NET NEW CONSTRUCTION AND/OR ADDITION:	PROJECT TOTALS:
GROSS SQUARE FOOTAGE (GSF)				
Residential	0	0	187,915	187,915
Retail	0	0	0	
Office	0	0	0	
Industrial/PDR <i>Production, Distribution, & Repair</i>	0	0	0	
Parking	0	0	60,142	60,142
Other (Specify Use)	0	0	18,320	18,320
TOTAL GSF	0	0	266,377	266,377
PROJECT FEATURES				
Dwelling Units	0	0	205	205
Hotel Rooms	0	0	0	0
Parking Spaces	0	0	156	156
Loading Spaces	0	0	1	1
Number of Buildings	0	0	2	2
Height of Building(s)	0	0	57' & 68'	57' & 68'
Number of Stories	0	0	6 & 7, respectively	6 & 7, respectively

Please describe any additional project features that are not included in this table:
(Attach a separate sheet if more space is needed)

Project includes a solarium on the 7th floor of the South Building.

*Residential area includes circulation, MEP, lobby, etc.

**Other Use listed above is tenant storage in North Building

The Project was included in the Visitacion Valley and Schlage Lock Plan area and proposed for re-zoning, but it was omitted when the Plan's re-zoning legislation was passed in 2014. To allow development on the site consistent with the purposes and policies of the Visitacion Valley and Schlage Lock Plan, the Project will require re-zoning from M-1 to MUD, from 40-X height and bulk district to 57-X and 68-X, and from Zone 1 to Zone 2 of the Visitacion Valley/Schlage Lock SUD.

5. Additional Project Information

Please answer each question to the best of your ability. If the answer is unknown, please state so and provide a brief explanation. Please note that providing more information about the proposed project may result in additional and/or more detailed feedback from the Department.

1. Would the project involve a major alteration of a structure constructed 45 or more years ago or a structure in an historic district? ☐ YES ☒ NO

2. Would the project involve demolition of a structure constructed 45 or more years ago or a structure located in an historic district? ☐ YES ☒ NO

3. Would the project result in excavation or soil disturbance/modification? ☒ YES ☐ NO

If yes, how many feet below grade would be excavated? South Building: Approx. 14' / North Building: Approx 20'

What type of foundation would be used (if known)? _____

4. Is the project site located in an area of potential geotechnical hazard as identified in the San Francisco General Plan or on a steep slope or would the project be located on a site with an average slope of 20% or more? ☐ YES ☒ NO

5. Would the project result in ground disturbance of 5,000 gross square feet or more? ☒ YES ☐ NO

6. Would the project result in a construction of a structure 80 feet or higher? ☐ YES ☒ NO

7. Would the project impact any public property or right(s)-of-way? ☐ YES ☒ NO

8. For any project site that is located on the Maher map or is suspected of containing hazardous materials (based on a previous use such as gas station, auto repair, dry cleaners, or heavy manufacturing, or a site with underground storage tanks): ☒ YES ☐ NO

Would the project involve soil disturbance of any amount (including grading or minor excavation for utilities) or a change of use from industrial to commercial/residential?

If yes, please describe and provide the amount of soil disturbance in cubic yards. 11,188 cuyd

AND

If yes, please describe.

9. Is the project related to a larger project, series of projects, or program? ☒ YES ☐ NO

If yes, please describe.

Related to, but not a part of, the Visitacion Valley/Schlage Lock Plan

10. Is the project in a Community Plan Area (for example, Market/Octavia)? If yes, please identify the area. ☒ YES ☐ NO

Visitacion Valley

Estimated Construction Costs

TYPE OF APPLICATION:	
Preliminary Project Assessment	
OCCUPANCY CLASSIFICATION:	
R-2, S-2	
BUILDING TYPE:	
Type I	
TOTAL GROSS SQUARE FEET OF CONSTRUCTION:	BY PROPOSED USES:
See table.	See table.
ESTIMATED CONSTRUCTION COST:	
Appx. \$30 million.	
ESTIMATE PREPARED BY:	
Project Sponsor	
FEE ESTABLISHED:	
\$4,853	

Applicant's Affidavit

Under penalty of perjury the following declarations are made:

- a: The undersigned is the owner or authorized agent of the owner of this property.
- b: The information presented is true and correct to the best of my knowledge.
- c: The other information or applications may be required.

Signature: _____



Date: May 8, 2015

Print name, and indicate whether owner, or authorized agent:

Mark Loper, Reuben, Junius & Rose, LLP

Owner / Authorized Agent (circle one)

MAY 6, 2015

PROJECT VOLUNTARILY INCREASES ON-SITE AFFORDABILITY PROVISION TO 20%

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LEVEL	GSF	STUDIO	1 BR	2BR	TOTAL
ROOF	1,133 SF	-	-	-	-
LEVEL 7	24,003 SF	1	10	11	22
LEVEL 6	24,003 SF	1	12	12	25
LEVEL 5	24,003 SF	1	12	12	25
LEVEL 4	24,003 SF	1	12	12	25
LEVEL 3	24,003 SF	1	12	12	25
LEVEL 2	20,023 SF	1	6	8	15
LEVEL 1	23,459 SF	-	5	17	22
BASEMENT 1	30,071 SF	-	-	-	-
BASEMENT 2	30,071 SF	-	-	-	-
SOUTH TOWER	201,313 SF	6	69	84	159

LEVEL	GSF	STUDIO	1 BR	2BR	TOTAL
ROOF	301 SF	-	-	-	-
LEVEL 6	7,266 SF	-	6	2	8
LEVEL 5	9,286 SF	-	6	4	10
LEVEL 4	9,286 SF	-	6	4	10
LEVEL 3	7,646 SF	-	6	2	8
LEVEL 2	5,385 SF	-	-	2	2
LEVEL 1	7,574 SF	-	-	8	8
BASEMENT 1	9,160 SF	-	-	-	-
BASEMENT 2	9,160 SF	-	-	-	-
NORTH TOTAL	65,064 SF	-	24	22	46

PROJECT TOTAL: 266,377 SF	6	93	106	205
UNIT MIX %	3.0%	45.3%	51.7%	100%

SOUTH BASEMENT LEVEL 1
PARKING SPACES: 41 SPACES (INCLUDING 3 ACCESSIBLE)
PARKING STACKERS: 45 STACKER SPACES

SOUTH BASEMENT LEVEL 2
PARKING SPACES: 68 SPACES
CAR-SHARE SPACES: 2 CAR-SHARE SPACES

GRAND TOTAL: 154 SPACES (0.75/UNIT, EXCLUDING CAR SHARE)
156 SPACES, INCLUDING CAR SHARE SPACES

CLASS-1 126 SPACES (1 SPACE FOR EVERY UNIT UP TO 100, THEN 1 SPACE FOR EVERY 4 UNITS)
CLASS-2 10 SPACES (205 DU / 20 SPACES per DU = 10.25 [ROUND DOWN TO 10])

$$205 \text{ DU} * 80 \text{ SF/DU} = 16,400 \text{ SF REQUIRED}$$

RAYMOND OPEN SPACE:	2,519 SF
SOLARIUM:	1,452 SF
ROOF DECK SOUTH:	10,550 SF
ROOF DECK NORTH:	1,967 SF
TOTAL	16,488 SF

80.4 SF OF OPEN SPACE / UNIT (80 SF / UNIT REQUIRED)

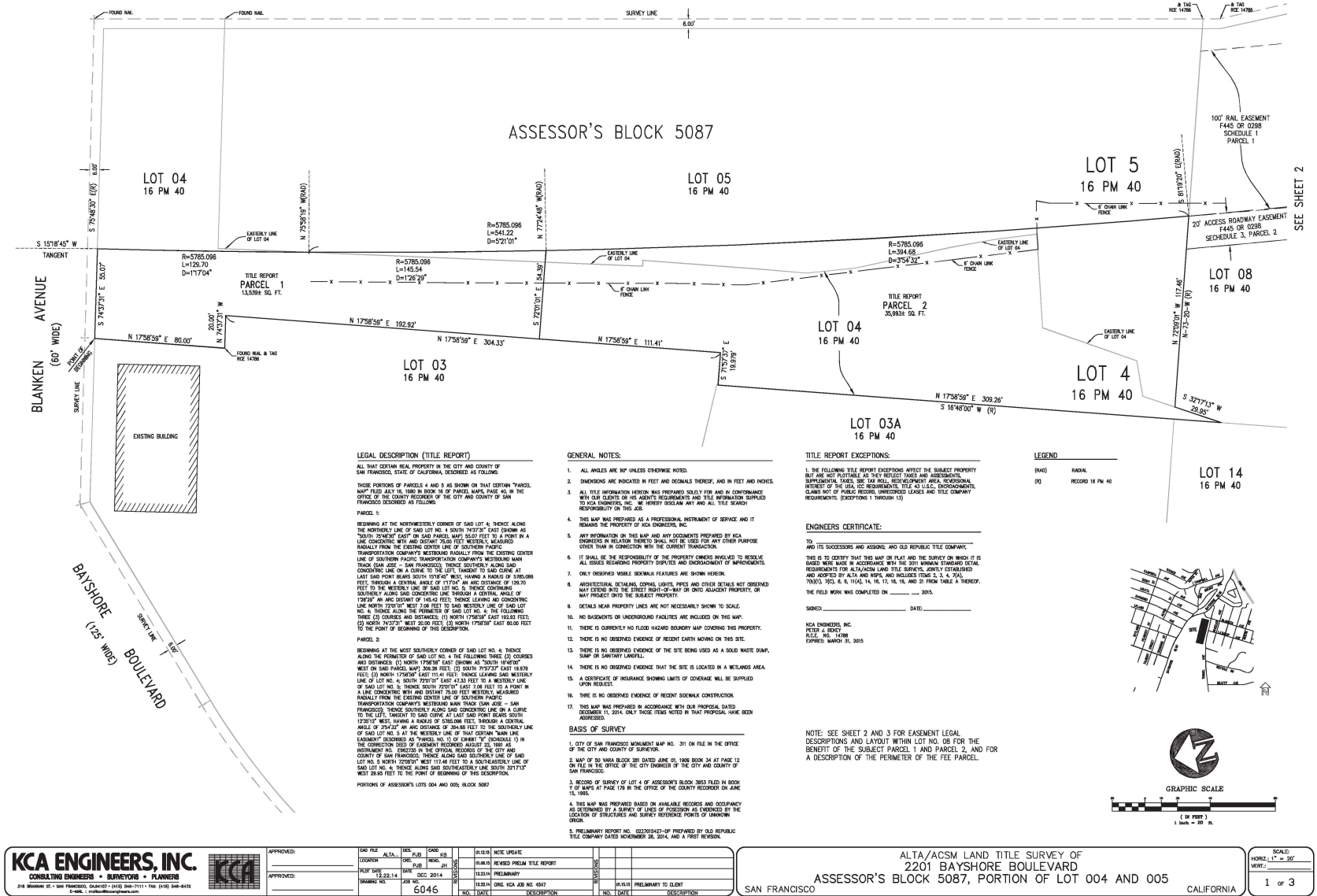
PARCEL# (BLOCK/LOT): 5087-004, 5087-005 (PARTIAL). PARTIAL LOT 005 TO BE COMBINED WITH LOT 004.
PROJECT LOT AREA: 35,993 SF (PER SURVEY)
NEIGHBORHOOD: VISITACION VALLEY
ADDRESS: BLANKEN AVENUE, SAN FRANCISCO, CA 94134

<u>Other Codebook Comments</u>		
ZONING DISTRICT:	SEC.840	MUG - MIXED USE GENERAL*
HEIGHT & BULK DISTRICT:	SCHLAGE LOCK D4D	57-X, 68-X,
REAR YARD:	SEC.134.1	25% LOT DEPTH, BUT IN NO CASE LESS THAN 15 FEET
REAR YARD MODIFICATION:	SEC.329	APPLIES
STREET FRONTAGE:	SEC.145.1	REQUIRED
STREET FRONTAGE -	SEC.145.1.c.1	MINIMUM 25 FEET SETBACK ON GROUND FLOOR, 15 FEET ON FLOORS ABOVE ABOVE GRADE PARKING
STREET FRONTAGE -	SEC.145.1.c.2	PARKING AND LOADING ACCESS RESTRICTIONS
STREET FRONTAGE -	SEC.145.1.c.3	REQUIREMENTS APPLY ACTIVE USES REQUIRED
STREET FRONTAGE -	SEC.145.1.c.4.A	MINIMUM FLOOR-TO-FLOOR HEIGHT OF 17 FEET AT NON-RESIDENTIAL GROUND FLOOR CEILING HEIGHT
FLOOR AREA RATIO:	SEC.124.	3.0 TO 1 (RESIDENTIAL SF EXEMPT)
COMMERCIAL OFF-STREET PARKING:	SEC.843.11	NONE REQUIRED. LIMITS SET FORTH IN SEC.151.1
OFF-STREET FREIGHT LOADING:	SEC.152.	ONE REQUIRED. NONE REQUIRED IF COMMERCIAL GROSS FLOOR AREA IS LESS THAN 10,000 SF AND RESIDENTIAL IS LESS THAN 100,000 SF (OFF STREET LOADING REQUIRED)
RESIDENTIAL DENSITY	SEC.840.24	NO DENSITY LIMIT
RESIDENTIAL UNIT MIX	SEC.840.25	40% OF ALL DWELLING UNITS MUST CONTAIN TWO OR MORE BEDROOMS OR 30% THREE BEDROOMS
RESIDENTIAL OPEN SPACE:	SEC.840.11	80 SQ. FT. PER UNIT IF PRIVATE, 54 SQ. FT. IF PUBLICLY ACCESSIBLE
RESIDENTIAL PARKING:	SEC.840.08	NONE REQUIRED. LIMITS SET FORTH IN SEC.151.1 - FOR DWELLING UNITS AT LEAST 1,000 SQ. FT. IN SIZE WITH TWO OR MORE BEDROOMS, 1 CAR IS PERMITTED FOR OTHER UNITS, UP TO 0.75 CARS FOR EACH UNIT IS PERMITTED.
EACH UNIT.		
CAR-SHARE PARKING:	SEC.166.d.1	2 CAR-SHARE SPACE REQUIRED
BICYCLE PARKING	SEC.155.2	ONE CLASS 1 SPACE FOR EACH UNIT UP TO 100 SPACES, AND ONE ADDITIONAL SPACE FOR EVERY FOUR UNITS OVER 100 UNITS. ONE CLASS 2 SPACE FOR EACH 20 UNITS.

*PROJECT SPONSOR WILL REQUEST A CHANGE IN ZONING FROM M-1 TO MUG IN ORDER TO MAKE ITS ZONING CONSISTENT WITH SURROUNDING PROPERTIES, WHICH WERE RE-ZONED IN 2014 PURSUANT TO THE VISITACION VALLEY/SCHLAGE LOCK PLAN.

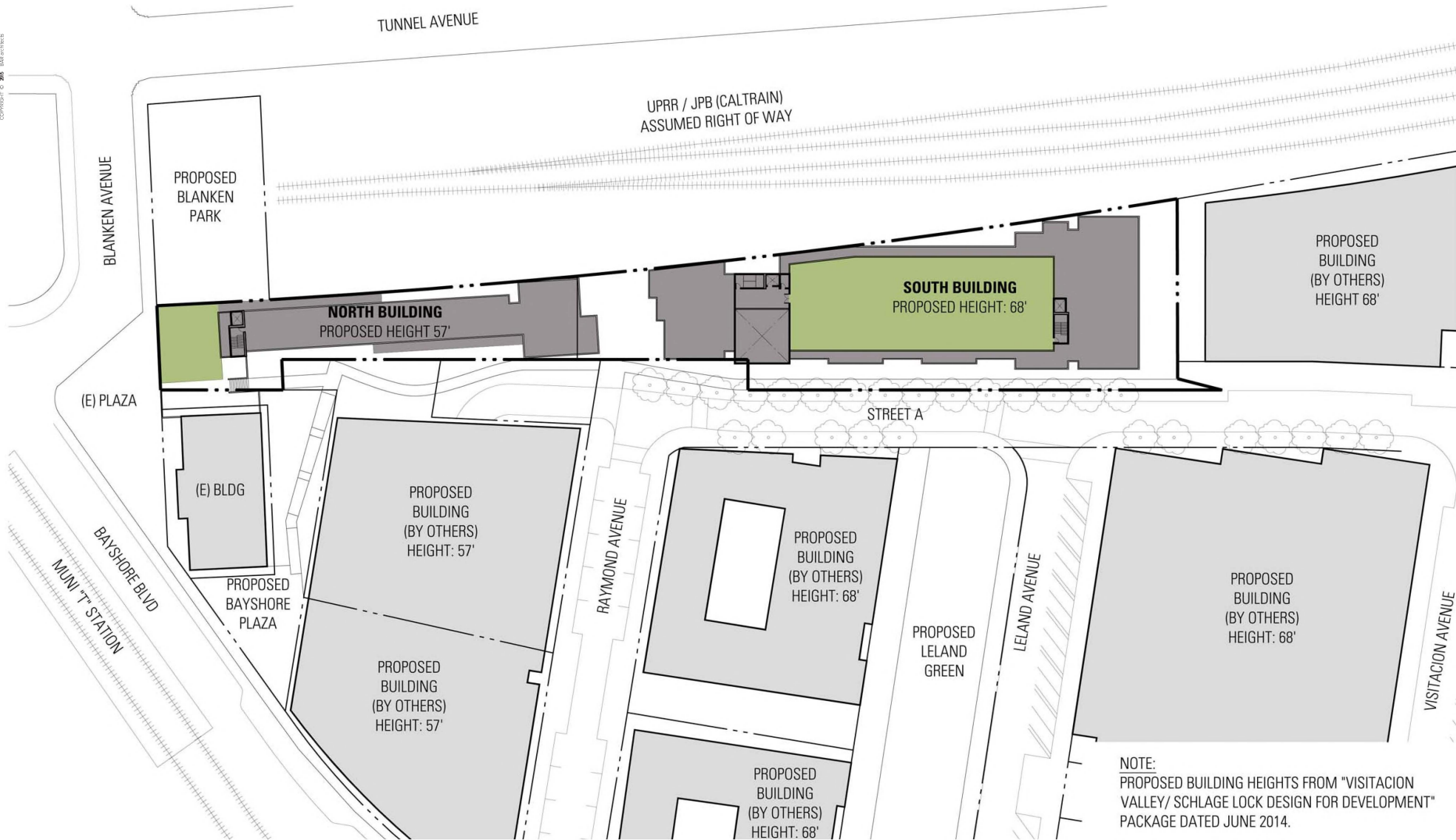
THIS PROJECT WILL PURSUE LEED FOR HOMES PLATINUM

STUDIO	500 GSF
1-BEDROOM	735 GSF
2-BEDROOM	1,004 GSF



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SITE PLAN



BLANKEN AVENUE | SAN FRANCISCO, CA

SITE PLAN

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1. View from Blanken Avenue



Site Aerial & Context



2. View from Tunnel Avenue



3. View from Bayshore Boulevard

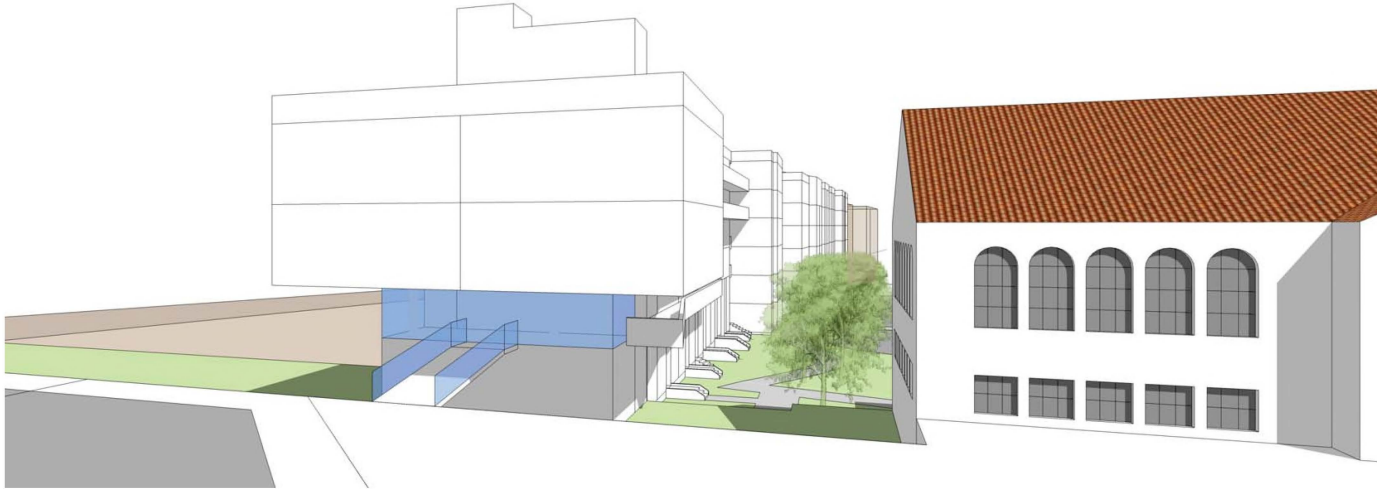
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SITE PHOTOS

This architectural rendering shows a proposed new building complex. On the left is an existing building with a red-tiled roof and arched windows. The new building is a large, modern structure with a white facade and a flat roof, featuring a central section with a glass-enclosed entrance. A paved walkway and landscaped green areas with trees connect the buildings. In the foreground, there is a large, open green field, possibly a sports field, with a curved path and a small structure. The rendering is presented in a perspective view, showing the building's integration with the surrounding environment.

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BIRDS EYE VIEW



VIEW FROM EXISTING BLANKEN PLAZA



VIEW TOWARDS RAYMOND OPEN SPACE

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PERSPECTIVE VIEWS

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