

October 7, 2009

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

09 OCT -8 PM 2:11

TO: Vice Mayor, Ignacio De La Fuente, President Brunner and Members of the CED Committee

FROM: Council Member Rebecca Kaplan

Re: CED Committee Item 6 on October 13, 2009 Agenda:

**Discussion and Action on A Report Recommending that the City Council Authorize the City Administrator to Negotiate and Execute a Billboard Relocation Agreement with Clear Channel Outdoor, Inc. ("Clear Channel") Allowing Clear Channel to: (A) Construct a New Billboard on East Bay Municipal Utility District (EBMUD) Land East of the Bay Bridge Toll Plaza; and (B) Reconstruct an Existing Billboard on EBMUD Land East of the Bay Bridge Toll Plaza, in Exchange for Clear Channel's Agreement to Remove and Waive its Rights to Compensation, Including All Real Property and Personal Property Interests, for Sixteen Billboards at Various Locations, and Make a One-Time Payment of Four Hundred Thousand Dollars (\$400,000) to the City Plus Annual Payments of no less than Ten Percent of the Gross Revenue Generated By Both the new and converted Billboards for the term of CCO's lease agreement with EBMUD.**

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#### **SUMMARY UPDATE**

This report discusses a proposal to authorize the City Administrator to negotiate and execute on behalf of the City a Billboard Relocation Agreement with Clear Channel Outdoor Inc., a Delaware corporation ("Clear Channel" ) regarding the specific sites identified in the title of the report above.

The Agreement will result in the removal of 16 billboard structures (thirty three billboard facings) throughout various Oakland neighborhoods in exchange for the two billboards, one new and one existing, with freeway visibility.

In addition to the billboard exchange, Clear Channel will pay the City \$400,000, plus an annual payment equal to no less than ten percent (10%) of the gross revenue generated by both the new and converted Billboards for the term of CCO's lease agreement with EBMUD.

#### **FISCAL IMPACT**

The proposed Billboard Agreement will have a positive fiscal impact as a result of the one time \$400,000 payment to the City for the construction of the new billboards, in

addition to an ongoing benefit from the annual payment of no less than ten percent of the gross revenue generated by both the new and converted billboards for the term of CCO's lease agreement with EBMUD. Clear Channel shall be required to pay the \$400,000 payment within seven (7) days of the execution of the Agreement. If, after proceeding diligently, using best efforts, and in good faith, Clear Channel fails to obtain required governmental permits within a time to be negotiated, and Clear Channel is not otherwise in default under the Agreement, the City shall return the \$400,000 payment to Clear Channel. The billboard removal will not result in any direct cost impacts because Clear Channel is waiving its rights to compensation including all real property and personal property interests for the 16 billboards (33 billboard facings) specified in the request.

## **UPDATE ON KEY ISSUES AND IMPACTS**

### **A. Billboard Removal**

The agreement will result in the removal of 16 billboards (thirty three billboard facings totally 4,116 square feet of advertising space) throughout various Oakland neighborhoods in exchange for three new billboard facings (totaling 2,016 square feet of advertising space), two new and one existing with freeway visibility. (see Revised Exhibit A for updated list).

None of the 16 billboards (thirty three billboard facings) identified for removal as part of this proposed agreement were previously required to be removed under other amortization requirements.

### **B. CEQA**

The area is mostly industrial, located at or near EBMUD's Main Wastewater Treatment Plant, the former Oakland Army Base and Port of Oakland. The proposed signs are traditional, "static" displays (e.g., not utilizing LED, Tri-Vision, digital, rotating or similar technology) that do not generate the amount of light (and light pollution) that may be associated with digital/LED displays. Any cumulative impacts are adequately addressed by the state's restrictions on the location of billboards adjacent to Freeways.

Therefore, the project is exempt from CEQA pursuant to CEQA Guidelines section 15302 (replacement or reconstruction of existing structures); 15303 (new construction of small structures); 15061(b)(3) (general rule of no possibility of a significant environmental impact); and /or 15183 (projects consistent with a general plan and/or zoning for which an Environmental Impact Report has been prepared). Each of the foregoing provides a separate and independent basis for a CEQA exemption and when viewed collectively provides an overall basis to support the finding that the project is exempt from CEQA.

### **C. Other Business Deal Points**

1) Consistent with previous City-Clear Channel Billboard Relocation Agreements, Clear Channel will be allowed to construct only “static” signs; use of LED, Tri-Vision, digital, rotating, or similar technology on the new billboards at this location will be explicitly prohibited.

2) Clear Channel will be required to represent and warrant that the approval of the relocation agreement and construction of the subject billboards will not result in the inability of the City or the Redevelopment Agency to place further billboards or sign structures at the former Oakland Army Base (and vicinity) based upon Caltrans’ restrictions. Clear Channel will be required to defend, indemnify and hold harmless the City if their representation and warranty proves incorrect.

3) Clear Channel will be required to defend, indemnify and hold harmless the City for any legal or other challenge to the approval of this agreement (including CEQA challenges), with language similar to that contained in Oakland Planning Code section 17.130.060.

4) Alcohol, tobacco and firearm advertising on the new billboards will be prohibited

5) See Exhibit B for: East Bay Municipal Utility District Sign Project Map, Site Plan and Elevation, Views from I-80

#### RECOMMENDATIONS

Approve Resolution based on a one-time payment of \$400,000, plus an annual payment no less than 10% of the annual gross revenues for all three billboard faces for the term of CCO’s lease agreement with EBMUD

# Exhibit A (Revised 10/7/09)

## Billboards Identified for Removal/Relocation Exchange

Panel	Square Footage	Description	Address or Parcel #
122	72	Broadway eastline 206ft north of Mather - facing south - 1	4300 Broadway
123	72	Broadway eastline 206ft north of Mather - facing south - 2	4300 Broadway
153	72	International Blvd southline 5ft east of 52nd Av - facing west	5201 International Blvd.
154	72	International Blvd southline 5ft east of 52nd Av - facing east	5201 International Blvd.
160	72	International Blvd northline 15ft east of 64th Av - facing west	6406 International Blvd.
161	72	International Blvd northline 15ft east of 64th Av - facing east	6406 International Blvd.
191	72	Fruitvale westline 90ft north of 7th St - facing north	Railroad Property
192	72	Fruitvale westline 90ft north of 7th St - facing south	Railroad Property
115	72	Harrison eastline 300ft south of 17th St - facing north	1530 Harrison St.
116	72	Harrison eastline 339ft south of 17th St - facing south - 1	1530 Harrison St.
117	72	Harrison eastline 339ft south of 17th St - facing south - 2	1530 Harrison St.
126	72	Mac Arthur northline 105ft west of Market - facing west	912 W. MacArthur Blvd.
127	72	Mac Arthur northline 105ft west of Market - facing east	912 W. MacArthur Blvd.
143	72	3rd St southline 5ft east of Jefferson - facing west	590 2nd St.
144	72	3rd St southline 5ft east of Jefferson - facing east	590 2nd St.
161	72	27th St southline 315ft east of Telegraph - facing west	473 27th St.
162	72	27th St southline 315ft east of Telegraph - facing east	473 27th St.
175	72	23rd Ave westline 109ft south of E 20th St - facing north - 1	1951 23rd Ave.
176	72	23rd Ave westline 109ft south of E 20th St - facing north - 2	1951 23rd Ave.
156	72	International Blvd northline 158ft east of 55th Ave. - facing west	5500 East 14th Street - 038-3232-017
157	72	International Blvd northline 158ft east of 55th Ave. - facing east	5500 East 14th Street - 038-3232-017
175	72	Foothill Blvd. southline 98ft west of 19th Ave. - facing west	1839 Foothill Blvd - 020-0164-006
176	72	Foothill Blvd. southline 98ft west of 19th Ave. - facing east	1839 Foothill Blvd - 020-0164-006
135	72	Mac Arthur northline 101ft east of 75th Ave. - facing west	7526 MacArthur Blvd - 040A-3409-00113
136	72	Mac Arthur northline 101ft east of 75th Ave. - facing east	7526 MacArthur Blvd - 040A-3409-00113
177	72	San Leandro southline 34ft west of 35th Ave. - facing east	3435 San Leandro St. - 033-2188-007
178	72	San Leandro southline 34ft west of 35th Av - facing west	3435 San Leandro St. - 033-2188-007
196	300	San Pablo westline 5ft south of Castro - facing north	2040 Castro - 003-0039-002-2
173	300	Castro eastline 95' north of 16th St. - facing south	698 - 16th St. - 003-0059-019
173	300	M.L.K. Jr. Way westline 75' north of 27th St. - facing south	2721 M.L.K. Jr. Way - 009-0069-002
174	300	Webster WS 87ft N/O 20th St F/N - 1	2011 Webster - 008-0651-012-1
182	300	27th St. WS 10' W/O San Pablo Ave. F/E - 1	2625 San Pablo Ave - 003-0005-002
101	672	Broadway eastline 75ft north of Mather - facing north	5343 Broadway - 014-1248-004

## Exhibit B

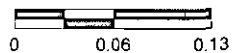
- East Bay Municipal Utility District Sign Project Map
- Site Plan and Elevation
- Right I-80 Eastbound View
- Left i-80 Westbound View

ESPECIALLY PREPARED FOR

**EAST BAY MUD -  
SIGN PROJECT**

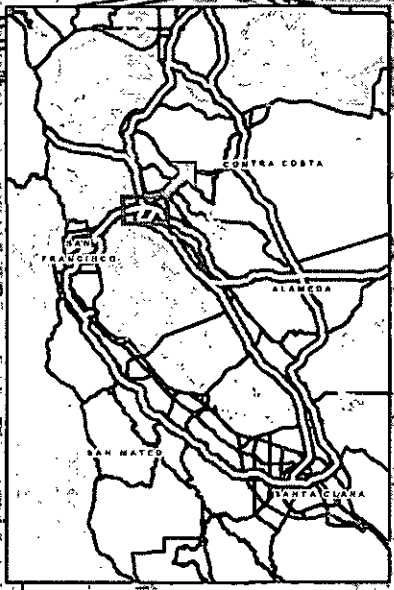
- 14'x48' V-Shaped  
Bulletin (New  
Structure)
- 14'x48' Single Facing  
Bulletin (Existing  
Structure)

Miles



OAKLAND MARKET

SAN FRANCISCO BAY AREA

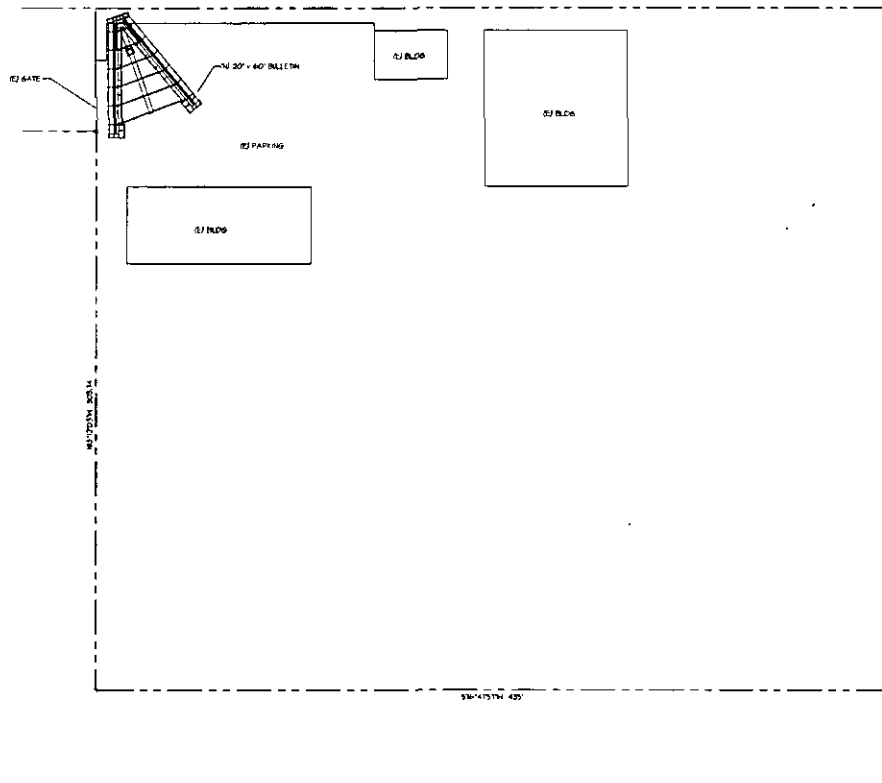


880

580

 **CLEAR CHANNEL**  
OUTDOOR

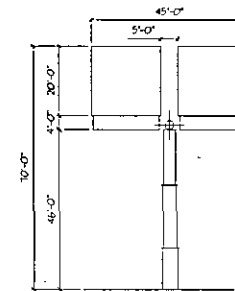
I-80



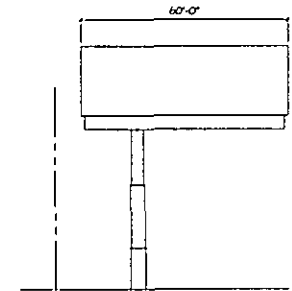
PARTIAL SITE PLAN  
1" = 30'



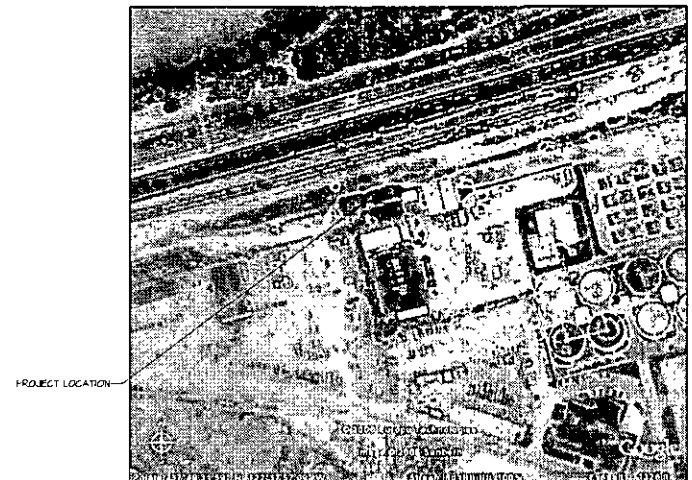
LEGEND  
(B) EXISTING CONSTRUCTION  
(P) NEW CONSTRUCTION



NORTH ELEVATION  
1/16" = 1'-0"

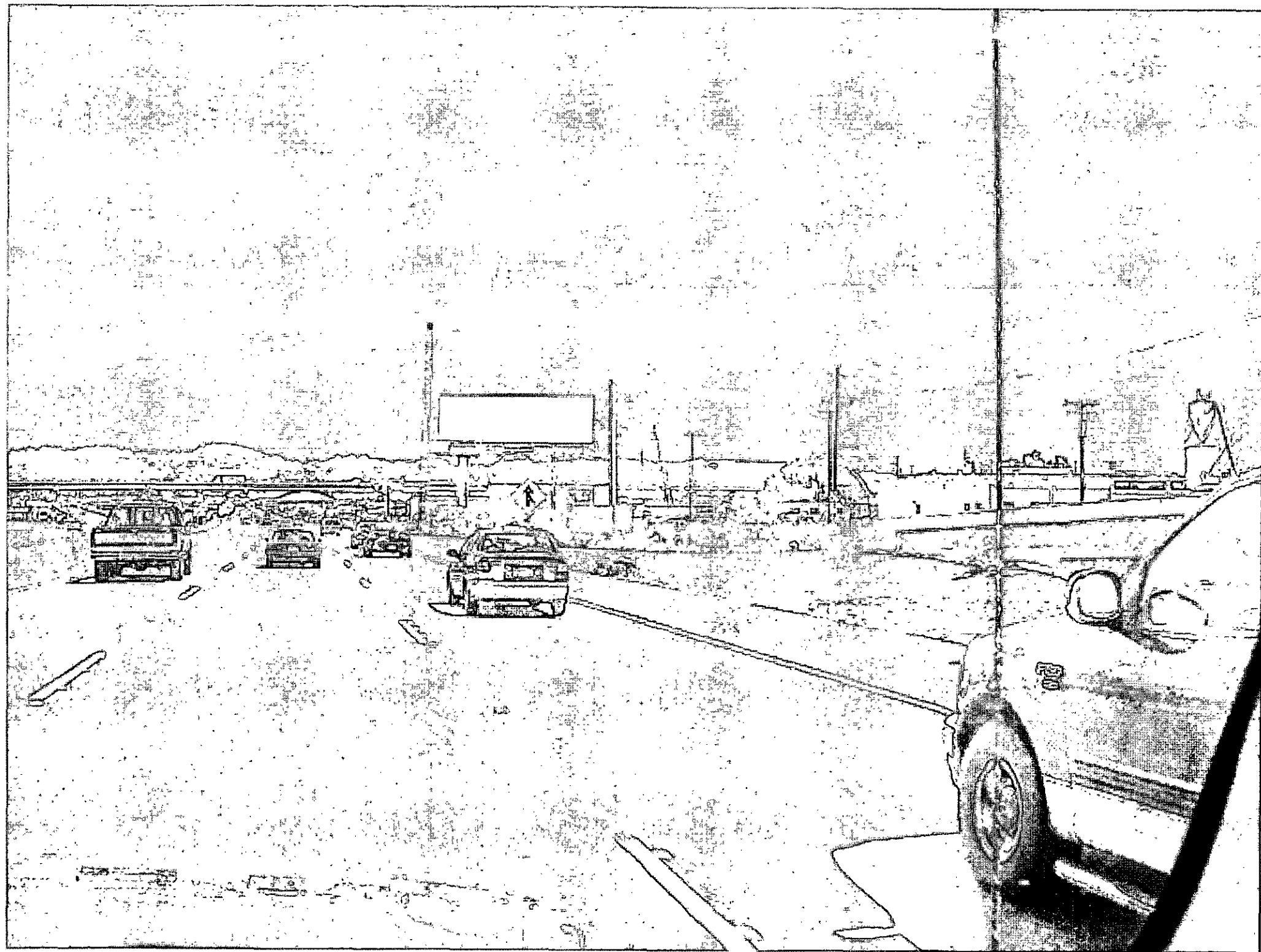


WEST ELEVATION  
1/16" = 1'-0"



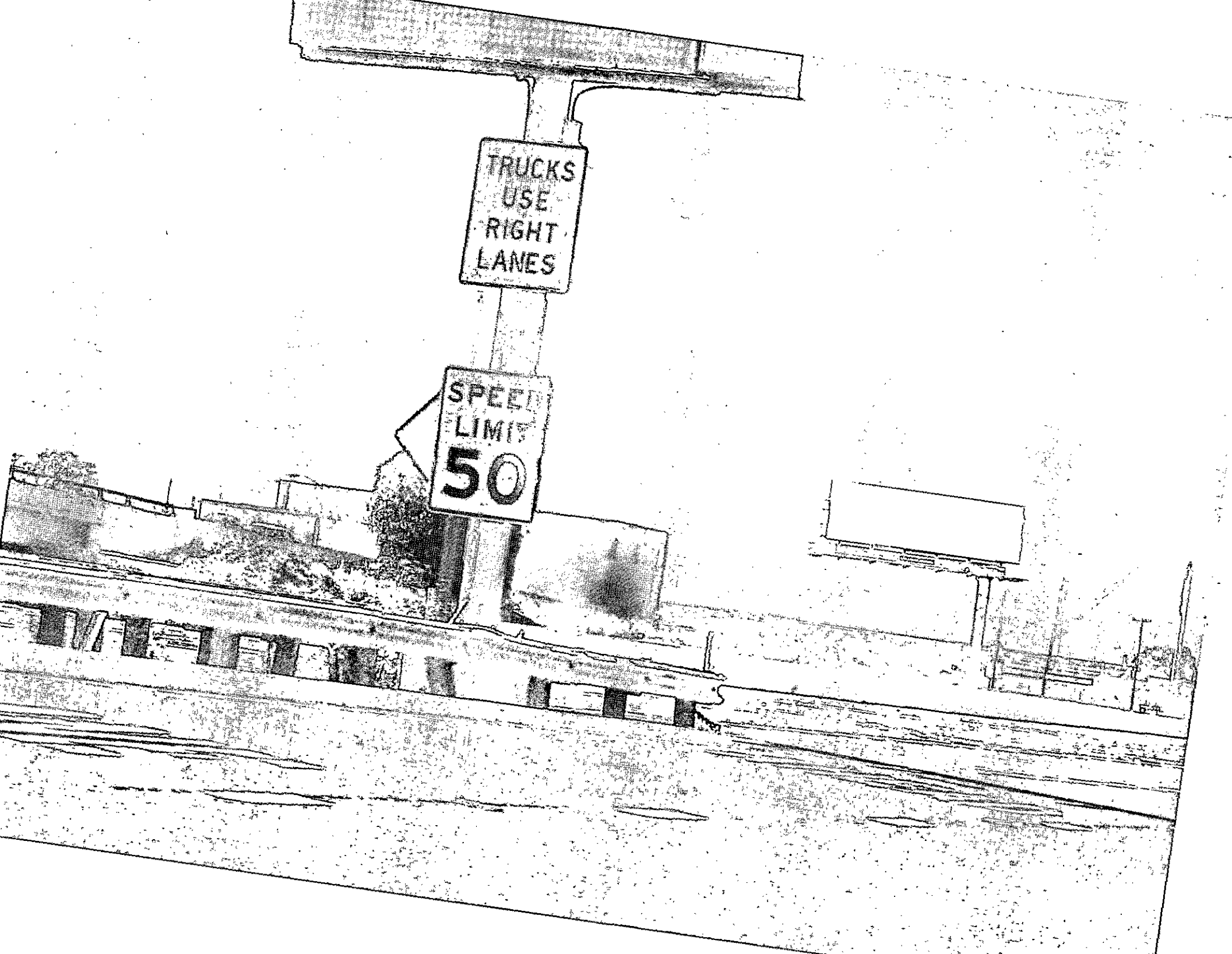
PROJECT LOCATION

△					THOMAS P. CHRISTIAN Structural Engineer 267 Fourth Street / Oakland, California 94607 / 510-452-2488	PROPOSED BULLETIN ESMD WAKE AVE., OAKLAND CLEAR CHANNEL OUTDOOR	PARTIAL SITE PLANS ELEVATIONS	Drawn By	WZF	Revision	△
△								Date	8/10/06	Sheet No.	
△								Approved By			
No	Revision	Date	By	App'd				Project No	106024		1 of 1



TRUCKS  
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50



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OAKLAND

2009 OCT -8 PM 2:44

**DRAFT**

## **OAKLAND CITY COUNCIL**

**RESOLUTION No. \_\_\_\_\_ C.M.S.**

Introduced by Councilmember Rebecca Kaplan

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**DISCUSSION AND ACTION ON A REPORT RECOMMENDING THAT THE CITY COUNCIL AUTHORIZE THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A BILLBOARD RELOCATION AGREEMENT WITH CLEAR CHANNEL OUTDOOR, INC. ("CLEAR CHANNEL") ALLOWING CLEAR CHANNEL TO: (A) CONSTRUCT A NEW BILLBOARD ON EAST BAY MUNICIPAL UTILITY DISTRICT (EBMUD) LAND EAST OF THE BAY BRIDGE TOLL PLAZA; AND (B) RECONSTRUCT AN EXISTING BILLBOARD ON EBMUD LAND EAST OF THE BAY BRIDGE TOLL PLAZA, IN EXCHANGE FOR CLEAR CHANNEL'S AGREEMENT TO REMOVE AND WAIVE ITS RIGHTS TO COMPENSATION, INCLUDING ALL REAL PROPERTY AND PERSONAL PROPERTY INTERESTS, FOR SIXTEEN BILLBOARDS AT VARIOUS LOCATIONS, AND MAKE A ONE-TIME PAYMENT OF FOUR HUNDRED THOUSAND DOLLARS (\$400,000) TO THE CITY PLUS ANNUAL PAYMENTS OF NO LESS THAN TEN PERCENT OF THE GROSS REVENUE GENERATED BY BOTH THE NEW AND CONVERTED BILLBOARDS FOR THE TERM OF CCO'S LEASE AGREEMENT WITH EBMUD.**

**WHEREAS**, CCO and EBMUD have entered into an agreement for construction of a new billboard (with two facings) and the relocation of an existing billboard (with one facing); and

**WHEREAS**, the City regulates the construction of new billboards through its Planning Code and requires that a Relocation Agreement be approved by the City Council for such new billboards; and

**WHEREAS**, CCO and the City desire to enter into a Relocation Agreement which provides, in part, for removal of billboards in the City, payment to City, and other provisions; and

**WHEREAS**, removal of a number of billboards at various locations throughout the City is consistent with the City's objective to remove billboard signage throughout Oakland to enhance the City's aesthetic attributes; and

**WHEREAS**, CCO would waive their rights to compensation, including all real property and personal property interests, thereby eliminating the various billboards at no cost to the City; and

**WHEREAS**, all the proposed billboards will be removed by CCO at its sole cost and expense; and

**WHEREAS**, the proposed billboard relocation agreement would permit CCO to construct one new "static" billboard of 1,344 square feet of advertising space on EBMUD land and reconstruct one existing "static" billboard with 672 square feet of advertising space, as detailed in the accompanying October 7, 2009 Supplemental Agenda Report to the City Council (Agenda Report); and

**WHEREAS**, CCO would remove at least sixteen billboard structures ( thirty three billboard facings) totaling at least 4,116 square feet from various locations around the City of Oakland, resulting in a net decrease of sign area in the City, as detailed in the Agenda Report; and

**WHEREAS**, the City Council would receive a one-time payment of \$400,000 within seven (7) days of the execution of the Agreement, plus an annual payment of no less than 10% of the total annual gross receipts; generated by both the new and converted billboards for the term of CCO's lease agreement with EBMUD.

**WHEREAS**, the relocation agreement will contain other requirements as detailed in the Agenda Report, including without limitation, restrictions on certain advertising, certain CCO representations and warranties, and CCO's defense and indemnity obligations; Now, Therefore, Be It

**RESOLVED:** That the City Council finds that this project is exempt from CEQA pursuant to CEQA Guidelines section 15302 (replacement or reconstruction of existing structures); 15303 (new construction of small structures); 15061(b)(3) (general rule of no possibility of a significant environmental impact); and /or 15183 (projects consistent with a general plan and/or zoning for which an Environmental Impact Report has been prepared). Each of the foregoing provides a separate and independent basis for a CEQA exemption and when viewed collectively provides an overall basis to support the finding that the project is exempt from CEQA; and be it

**FURTHER RESOLVED:** That the City Council authorizes the City Administrator, or designee, to negotiate and execute a billboard relocation agreement with CCO under the terms stated herein and the Agenda Report; and including other conditions and enforcement mechanisms as may be recommended by the City Attorney, and take whatever other steps are necessary to implement the agreement, consistent with the intent of this resolution.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2009

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, DE LA FUENTE,  
KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER,  
NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California