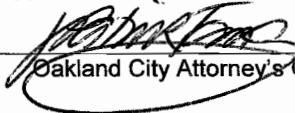


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Approved as to Form and Legality

  
Oakland City Attorney's Office

## OAKLAND CITY COUNCIL

Resolution No. 81784 C.M.S.

INTRODUCED BY COUNCILMEMBER

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**RESOLUTION RESCINDING NO. 80939 C.M.S. ADOPTED DECEMBER 4, 2007, TO:**

- 1) **RESTORE RESOLUTION NO. 23515 C.M.S., PASSED AUGUST 30, 1949, WHICH GRANTED A REVOCABLE PERMIT FOR THE MAINTENANCE AND OPERATION OF A SPUR TRACK ON AND ACROSS 23<sup>RD</sup> AVENUE, 29<sup>TH</sup> AVENUE, DERBY STREET, LANCASTER STREET AND FORD STREET AND UPON AND ALONG GLASCOCK STREET BETWEEN 29<sup>TH</sup> AVENUE AND LANCASTER STREET IN THE CITY OF OAKLAND ("FRUITVALE TRACK"), AND**
  
- 2) **WITHDRAW PREVIOUS DIRECTION REGARDING THE FILING OF AN ACTION FOR "ADVERSE ABANDONMENT" OF THE FRUITVALE TRACK WITH THE DEPARTMENT OF TRANSPORTATION SURFACE TRANSPORTATION BOARD**

**WHEREAS**, the City Council of the City of Oakland approved Resolution No. 23515 C.M.S. on August 30, 1949, which granted a revocable permit to Southern Pacific Company to maintain and operate an existing spur track upon and across 23<sup>rd</sup> Avenue, 29<sup>th</sup> Avenue, Derby Street, Lancaster Street and Ford Street and upon and along Glascock Street between 29<sup>th</sup> Avenue and Lancaster Street in the City of Oakland ("Fruitvale Track") as illustrated in Exhibit A to this Resolution; and

**WHEREAS**, Resolution No. 23515 C.M.S was approved pursuant to Oakland City Charter Article IX, *Powers Of The City And Of The City Council*, Section 51, Subdivision 55, *Spur Tracks*, which authorized the City Council, as follows:

To permit the laying down of spur or side tracks and running cars thereon, for the purpose of connecting warehouses, manufactories or other business industries and enterprises with any line of railroad or railroads that may be built along the water front or with any other line or lines of railroad which do now or may hereafter enter the City, subject to such regulations and conditions as may be prescribed from time to time by the Council, such tracks to be used for transportation of freight only, and not

to be used as a main line or a part thereof; and also for the purpose of excavating and filling in a street or portion of a street or the adjoining land, during such limited time as may be necessary for such purpose and no longer.

Such tracks may be laid level with the street and must be operated under such restrictions as not to interfere with the use of the streets by the public. All permits granted under the provisions of this subdivision shall be revocable at the pleasure of the Council.

**WHEREAS**, the revocable permit granted under Resolution No. 23515 C.M.S. was not a railroad franchise as the granting of a railroad franchise would have required an action by the City Council approving an ordinance according to provisions of Oakland City Charter Article XX, *Franchises*, Sections 137 through 151; and

**WHEREAS**, at the time Resolution No. 23515 C.M.S was approved, the area in which the Fruitvale Track is located was wholly or partly within the jurisdiction of the Port of Oakland; and

**WHEREAS**, the Board of the Port of Oakland approved Port Resolution No. B518 on August 22, 1949, which granted a revocable permit to Southern Pacific Company to maintain and operate an existing spur track over the same area authorized by the City resolution for the Fruitvale Track as illustrated in Exhibit A to this Resolution; and

**WHEREAS**, City staff has determined that the permit area described in Resolution No. 23515 C.M.S and Port Resolution B518 is now entirely within the jurisdiction of the City of Oakland and no longer within the jurisdiction of Port of Oakland; and

**WHEREAS**, railroad operations on the Fruitvale Track and the permit were assumed by Union Pacific Railroad ("Union") at some point after August 30, 1949; and

**WHEREAS**, Union currently and for many years has served businesses located along the Estuary on Embarcadero Avenue in the area of the Fruitvale Track, by running trains on another track along Interstate 880 ("Hanlon Track"); and

**WHEREAS**, Caltrans must construct seismic improvements to Interstate 880 over the Hanlon Track that will prohibit continued use of the track; and

**WHEREAS**, Union will reroute trains from the Hanlon Track to the Fruitvale Track which will require Union and City to construct improvements to the track, related traffic facilities, etc.; and

**WHEREAS**, Caltrans has agreed to pay for essential and non-essential improvements that Union and/or the City would otherwise pay for, including track improvements, traffic signals, signs, sidewalks; and

**WHEREAS**, the Caltrans Letter of Understanding ("LOU") covering the payment promise and other agreements will be submitted to the Council under separate resolution; and

**WHEREAS**, this Resolution shall not take affect until after Caltrans and the City have entered into a Cooperative Agreement, as such agreement is specified in the LOU; now, therefore, be it

**RESOLVED:** That Resolution No. 80939 adopted December 4, 2007, (which revoked a permit to Southern Pacific Company to maintain and operate an existing spur track on and across 23<sup>rd</sup> Avenue, 29<sup>th</sup> Avenue, Derby Street, Lancaster Street and Ford Street and upon and along Glascock Street between 29<sup>th</sup> Avenue and Lancaster Street in the City of Oakland ("Fruitvale Track") as illustrated in Exhibit A to this Resolution), is hereby rescinded, including all findings adopted therein as well as direction regarding the filing of an adverse abandonment action with the Department of Transportation Surface Transportation Board; and be it

**FURTHER RESOLVED:** Based on information contained in the City Administrator's report accompanying this Resolution, the City Council finds and determines that the Fruitvale track, as illustrated in Exhibit A, is currently entirely within the jurisdiction of the City of Oakland and no longer in the jurisdiction of the Port of Oakland; and be it

**FURTHER RESOLVED:** That the action taken under this Resolution regarding the Fruitvale Track permit is deemed complete and final and no further action by the Port of Oakland Board of Commissioners is required.

IN COUNCIL, OAKLAND, CALIFORNIA, FEB 3 2009

PASSED BY THE FOLLOWING VOTE:

AYES - ~~BROOKS~~, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID AND PRESIDENT BRUNNER - 7

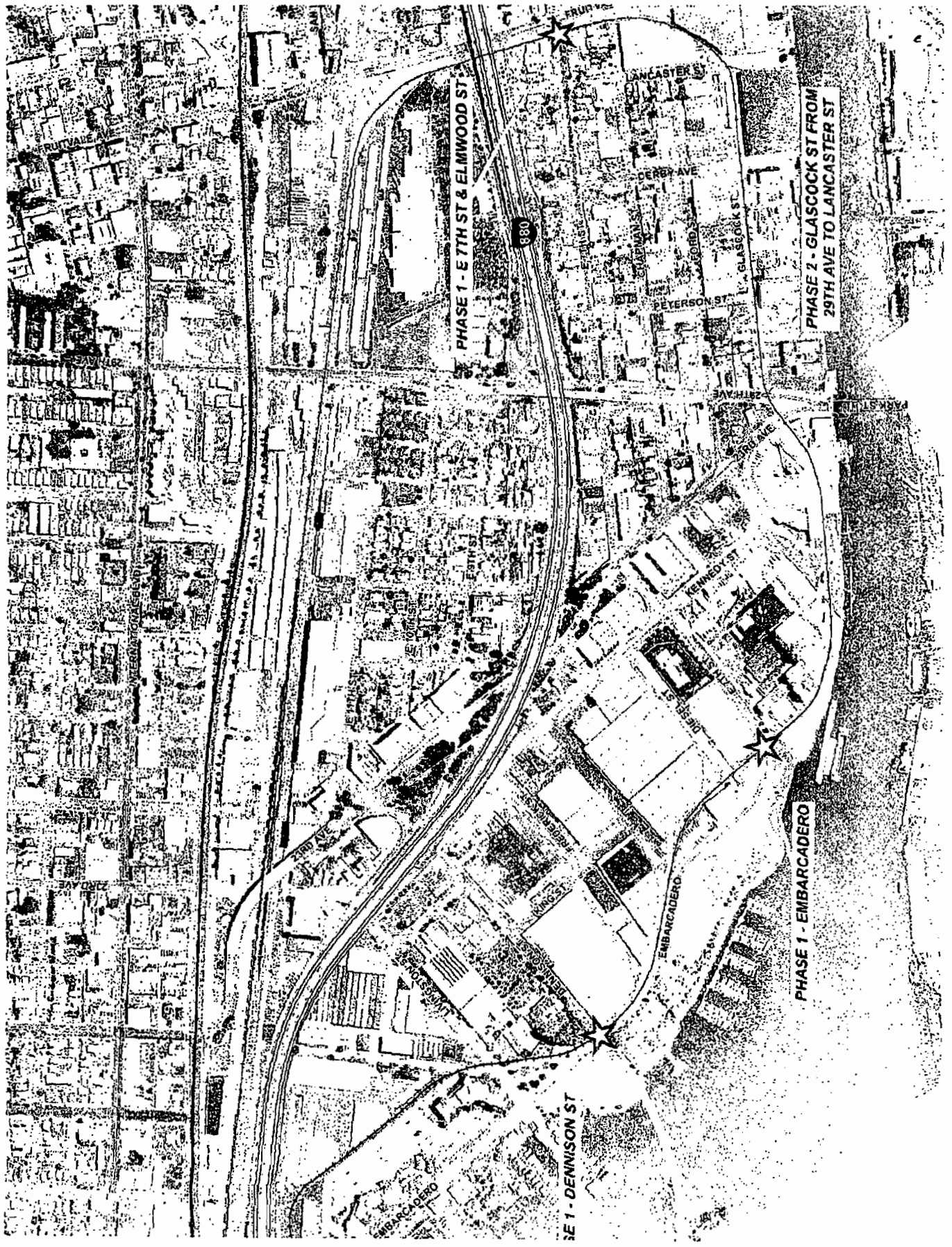
NOES - 0  
ABSENT - 0  
ABSTENTION - 0  
Excused - Brooks - 1

ATTEST:



LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California

## Exhibit A



PHASE 1 - E 7TH ST & ELMWOOD ST

PHASE 2 - GLASCOCK ST FROM  
29TH AVE TO LANCASTER ST

PHASE 1 - EMBARCADERO

PHASE 1 - DENNISON ST

930

FRUITVALE AVE

LANCASTER ST

CECER AVENUE

PETERSON ST

GLASCOCK ST

E 7TH ST

ELMWOOD ST

EMBARCADERO

EMBARCADERO

EMBARCADERO

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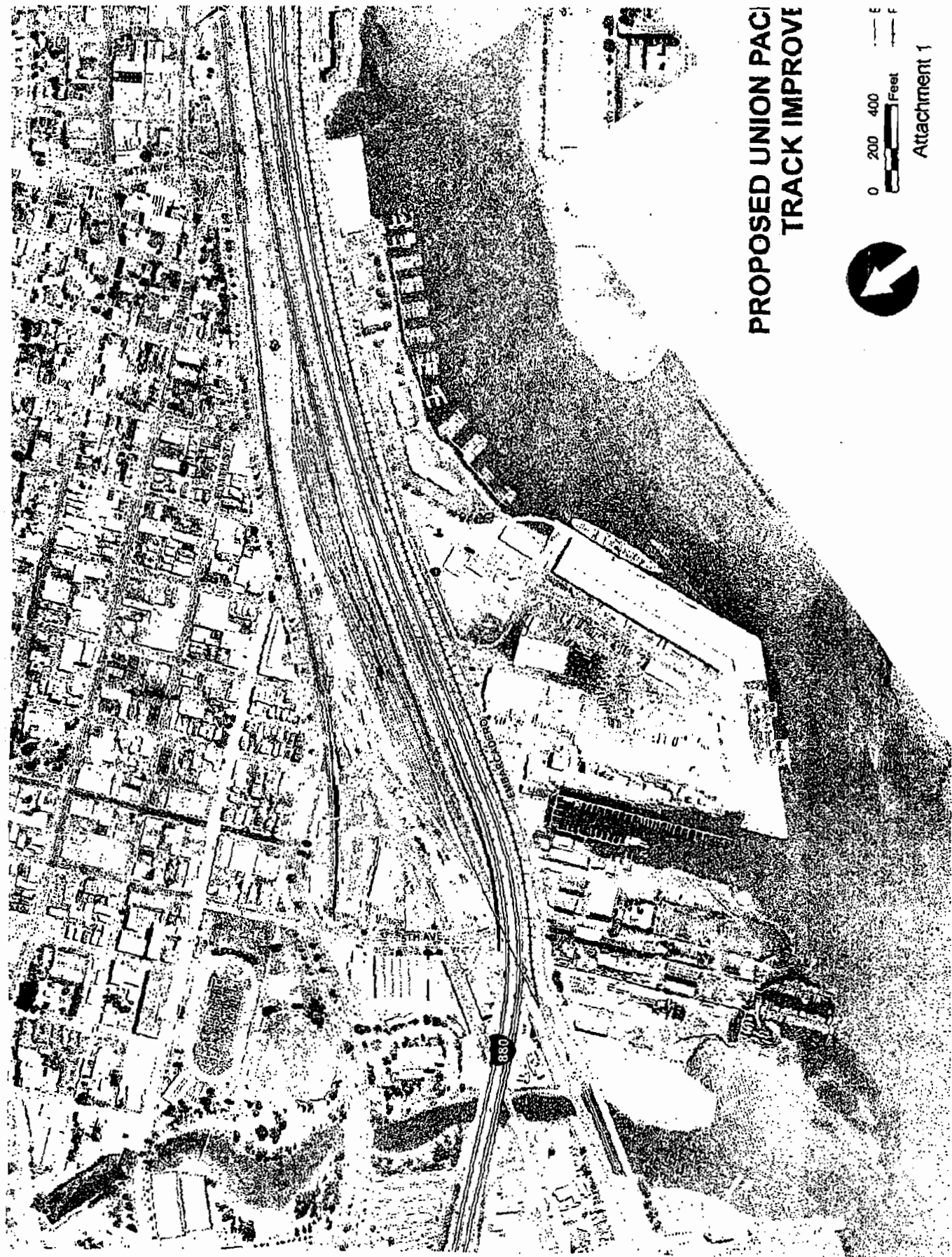
EMBARCADERO

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EMBARCADERO



**PROPOSED UNION PACIFIC  
TRACK IMPROVE**



Attachment 1