City of Sacramento
City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: **2/22/2011** **Report Type:** Public Hearing

Title: Pell Circle Billboard Relocation (P10-065)

Report ID: 2011-00127

Location: District 2

Recommendation: Conduct a public hearing and upon conclusion adopt a) a Resolution declaring the project exempt from environmental review; b) a Resolution approving the Pell Circle Billboard Relocation Project; and c) an Ordinance rezoning the subject site from Light Industrial Review (M-1S-R) to Light Industrial Review (M-1-R).

Contact: Lindsey Alagozian, Senior Planner, (916) 808-2659, Community Development Department

Presenter: Antonio Ablog, Associate Planner, (916) 808-7702

Department: Community Development Dept
Division: Current Planning
Dept ID: 21001221

Attachments:

01-Description/Analysis
02-Background
03-Planning Commission Record of Decision
04-Vicinity Map
05-Land Use Map
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09-Billboards to be Removed
10-Resolution-CEQA
11-Ordinance-Rezone
12-Exhibit A-Rezone
13-Resolution-Relocation Agreement
14-Exhibit A-Relocation Agreement

City Attorney Review

Approved as to Form
Sabina D. Gilbert
2/17/2011 11:21:19 AM

City Treasurer Review

Prior Council Financial Policy Approval or
Outside City Treasurer Scope
Russell Fehr
2/10/2011 12:11:22 PM

Approvals/Acknowledgements

Department Director or Designee: Max Fernandez - 2/16/2011 2:56:44 PM

Assistant City Manager: Patti Bisharat - 2/16/2011 5:57:23 PM

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Description/Analysis

Issue: The applicant is requesting approval of a billboard relocation agreement to allow for the removal of three existing billboards with a total of 4 advertising faces and allowing the construction of a new replacement billboard that will be located at 3961 Pell Circle, adjacent to Interstate 80. The new billboard will have a double face and will be 45 feet tall. The project also requires a rezone from the M-1S-R zone to the M-1-R zone, and a variance to exceed the 40-foot height requirement for signs. The Planning Commission voted to approve the Variance and forward the Rezone and Billboard Relocation Agreement request to the City Council with a recommendation for approval.

Policy Considerations: The subject site is designated Employment Center Low Rise on the 2030 General Plan Land Use and Urban Form Diagram. The proposed sign location is consistent with the land use designation. Locating the billboard sign on the southwest side of the site provides a buffer to the residential uses to the east.

The relocation agreement meets the requirements of Section 15.148.815 Sacramento City Code and the findings can be made to support the agreement. Under both Section 15.148.815 and the provisions of the Outdoor Advertising Act (Bus. And Prof. Code §5200 et seq.), the proposed new billboard may be located only on commercial or industrial zoned property.

The subject site is proposed to be rezoned from Light Industrial Review (M-1S-R) to Light Industrial Review (M-1-R) in order to allow the relocated sign. This rezone would remove the “S” designation on the parcel. With respect to industrial zones, the “S” designation allows the same land uses as are allowed in the base M-1 Zone. The “S” designation denotes special development standards related to aesthetics and landscape setbacks. Specifically, the “S” designation requires properties to maintain a 20-foot landscape setback at any public street frontage, and requires that any industrial activities be screened from view from any public rights-of-way.

Currently there are very few opportunities within the City to reduce the number of billboards through a relocation agreement. With the exception of the recent billboard relocation initiated by the City of Sacramento, there have been only three proposed billboard relocation agreement applications submitted to the Planning Department since the relocation ordinance was adopted in 2007. This includes a recent application, submitted on January 21, 20011, to relocate three existing billboards to a new billboard to be located on Display Way in North Sacramento. Ordinance No. 2007-79 requires that relocation agreements be heard by the Planning Commission and adopted by the City Council.

Environmental Considerations:

California Environmental Quality Act (CEQA): The Community Development Department, Environmental Planning Services Division has reviewed this project and determined that it is exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15303, New Construction or Conversion of Small Structures. The project consists of the installation of a new billboard structure.

Commission/Committee Action: The Pell Circle Billboard Relocation request was heard by the Planning Commission on November 18, 2010. During the hearing, the Planning Commission discussed the height variance, the “prism” sign, and the distance between the proposed sign and

the recently constructed digital billboard. The Planning Commission ultimately voted (8 ayes, 2 nays, 1 absent) to approve the Variance and forward the requested Rezone and Relocation Agreement to the City Council with a recommendation for approval. As part of this decision, the Commission directed staff to work with the applicant to draft maintenance language for the prism sign to include in the Relocation Agreement. The applicant has since revised the project and proposes two static sign faces instead of the rotating prism signs.

Rationale for Recommendation: The relocation agreement proposes to construct a new double-faced billboard adjacent to Interstate 80 at 3961 Pell Circle. A total of 3 existing billboards of different sizes will be removed, one of which is a double-faced sign. The new, billboard will result in a net reduction of 2 billboards, 2 sign faces, and 12 square feet of existing billboard sign area. The associated Rezone will amend the zoning designation to Light Industrial (M-1-R) in order to allow the proposed billboard, but will not affect the uses allowed on the subject site. Staff supports this request as the applicant has met all relocation requirements which will result in a net reduction of signage, and the permanent removal of three existing billboards.

Financial Considerations: The applicant is incurring all costs for this billboard relocation.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.

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Attachment 2 – Background

On October 16, 2007, the Sacramento City Council adopted Ordinance No. 2007-079, which prohibits the construction and operation of new billboards within the City, except for billboards approved under a relocation agreement as provided in Sacramento City Code Section 15.148.815, a part of the City Sign Code. Under Section 15.148.815, new billboards may be constructed in exchange for the permanent removal of existing billboards, resulting in a net reduction of both the number and total square footage of billboards then lawfully allowed. Section 15.148.815 prescribes when and how the City may enter into a relocation agreement.

Rogers Media Company wishes to construct a new billboard under a billboard relocation agreement. The proposed agreement (Attachment 8, Exhibit A) identifies the location of the proposed new billboard site (which is "freeway oriented") and the location, general description, and size of the billboards proposed for permanent removal.

The site is a 2.2± acre industrial property currently occupied by a swimming pool installation business. The site is currently zoned Light Industrial (M-1S-R) and is located adjacent to Interstate 80. To the north and west is industrial development. There are existing single-family homes to the east of the site. The recently installed digital billboard is approximately 1700 feet to the west of the subject site (See attachment 4, Vicinity Map).

The applicant proposes to construct a new billboard on the southwest portion of the site. The new sign will be 45 feet high and supported by a single pole. The billboard will have a "V" shaped design for the sign faces. The east sign face will be 12 feet by 40 feet and the west face will be 14 feet by 48 feet for a total of 1,152 square feet of display area. The original approval consisted of a tri-face prism advertising displays. This was a mechanical sign where each face consisted of 8" (approximate) prisms that would rotate to show different advertisements. The applicant has since revised the sign and now proposes two static sign faces.

The applicant is requesting to rezone the subject property from the Light Industrial Review (M-1S-R) Zone to the Light Industrial Review (M-1-R) Zone. This rezone would remove the "S" designation on the parcel. With respect to industrial zones, the "S" designation allows the same land uses as are allowed in the base M-1 Zone. The "S" designation denotes special development standards related to aesthetics and landscape setbacks. Specifically, the "S" designation requires properties to maintain a 20-foot landscape setback at any public street frontage, and requires that any industrial activities be screened from view from any public rights-of-way.

Section 15.148.815 does not allow for the relocation of billboard signs to the M-1S zone. Specifically, the sign code allows pole signs in the M-1 and M-2 zones but does not allow them in the M-1-S and M-2-S industrial zones. All freestanding signs in the "S" designated industrial zones shall be monument style and low profile in nature. The applicant is requesting to remove the S designation so that the site can be used for the

relocated billboard. Staff supports this rezone as it; a) does not change any allowed/prohibited land uses for the site; b) the site has already been developed with the required 20-foot setback as prescribed by the M-1S-R zone; c) the proposed billboard is located along the side of the property and not within the required front landscape setback area; and d) it will allow for the removal of three existing billboard signs throughout the city.

Attachment 3 – Planning Commission Record of Decision

CITY OF SACRAMENTO PLANNING COMMISSION
RECORD OF DECISION
300 Richards Boulevard, Sacramento, CA 95811

Project Name:	Pell Circle Billboard Relocation
Project Number:	P10-065
Project Location:	3961 Pell Circle
Assessor's Parcel No.:	237-0400-016
Applicant:	David Nybo, Rogers Media Co, Inc, 5409 Rogers Street, Davis, Ca 95618
Action Status:	Approved Action Date: 11/18/2010

REQUESTED ENTITLEMENT(S):

A. Environmental Determination: Exempt per CEQA 15303

B. Rezone of approximately 2.32 acres from the Light Industrial (M-1S-R) zone to the Light Industrial (M-1-R) zone.

C. Relocation Agreement to relocate three existing billboards from three different locations to a 45-foot tall billboard to be located at 3961 Pell Circle in the Light Industrial (M-1-R) zone.

D. Variance to exceed the 40-foot height limit for a detached sign in the Light Industrial (M-1-R) zone in order to construct a 45-foot tall billboard.

ACTIONS TAKEN: On 11/18/2010, the Planning Commission took the following actions based on the attached findings of fact and subject to the attached conditions of approval: Approved entitlement D and forwarded entitlements B and C to City Council with a recommendation for approval.

Action certified by: David Kwong, Planning Director

Sent to Applicant: 11/22/2010 By: Antonio Ablog, Associate Planner

NOTICE OF PROTEST RIGHTS

The above conditions include the imposition of fees, dedications, reservations, or other exactions. Pursuant to California Government Code section 66020, this Notice of Decision serves as written notice to the project applicant of (1) the amount of any fees and a description of any dedications, reservations, or exactions imposed, and (2) that the applicant may file a protest against the imposition of those fees, dedications, reservations, or other exactions within 90 days of the date of this approval, which is deemed to be the date that the fees, dedications, reservations, or other exactions are imposed. If the payment of a fee is imposed as a condition of approval, but the amount of the fee is not stated in this Notice of Decision and is not otherwise available to the applicant on a fee schedule or otherwise, the 90 days protest period will begin to run when the applicant is notified of the amount of the fee.

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For purposes of this notice, the following fees are deemed to be imposed upon approval of the first discretionary entitlement for the subject development project and are subject to the protest procedures set forth in Title 18 of the Sacramento City Code as indicated: North Natomas Public Facilities Fee, Transit Fee, and Drainage Fee (SCC 18.24.160); North Natomas Land Acquisition Fee (SCC 18.24.340); North Natomas School Facilities Fee (SCC18.24.710); Jacinto Creek Planning Area Facilities Fee (SCC18.28.150); Willow Creek Project Area Development Fee (SCC 18.32.150); Development Impact Fees for the Railyards, Richards Boulevard, and Downtown Areas (SCC 18.36.150); Habitat Conservation Fee for the North and South Natomas Community Plan Areas (18.40.090); and Park Development Impact Fee (18.44.140).

The time within which to challenge a condition of approval of a tentative subdivision map, including the imposition of fees, dedication, reservation, or other exaction, is governed by Government Code section 66499.37

EXPIRATION

TENTATIVE MAP: Failure to record a final map within three years of the date of approval or conditional approval of a tentative map shall terminate all proceedings.

SPECIAL PERMIT: A use for which a Special Permit is granted must be established within three years after such permit is issued. If such use is not so established, the Special Permit shall be deemed to have expired.

VARIANCE: Any variance involving an action which requires a building permit shall expire at the end of three years unless a building permit is obtained within the variance term.

PLAN REVIEW: Any plan review shall expire at the end of three years unless a building permit is obtained within the plan review term.

NOTE: Violation of any of the foregoing conditions will constitute grounds for revocation of this permit. Building permits are required in the event any building construction is planned. The County Assessor is notified of actions taken on rezoning, special permits and variances.

APPEALS

Appeals of the Planning Commission decision of this item to the City Council must be filed at 300 Richards Boulevard, 3rd Floor, within 10 calendar days of this meeting, on or before 11/29/2010. If the 10th day falls on a Sunday or holiday, the appeal may be filed on the following business day.

Findings of Fact

A. Environmental Determination: Exemption

Based on the determination and recommendation of the City's Environmental Planning Services Manager and the oral and documentary evidence received at the hearing on the Project, the Planning Commission finds that the Project is exempt from review under **15303, New Construction or Conversion of Small Structures** of the California Environmental Quality Act (CEQA) Guidelines as follows:

The proposed project is consistent with the construction of new, small structure as it consists of the construction of a new billboard sign on approximately 2.32 acres in the Light Industrial (M-1-R) zone.

B. The Planning Commission recommends approval and forwards to the City Council the **Rezoning** for the Project as set forth in Attachment 3.

C. The Planning Commission recommends approval and forwards to the City Council the **Relocation Agreement** for the Project based on the findings as set forth in Attachment 4.

D. The **Variance** to exceed the maximum allowed 40 foot height by 5 feet for a 45 foot high billboard within the M-1-R zone is approved based on the following Findings of Fact:

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Original to File

1. That exceptional or extraordinary circumstances or conditions apply to the proposed sign that do not apply generally in the same zoning district, and that the enforcement of the regulations of the Sign Code would have an unduly harsh result upon the utilization of the subject property in that the proposed sign is oriented to the freeway with nearby ramps and overpasses. The existing conditions are such that strict adherence to the 40-foot height limit would limit the visibility of the proposed billboard sign.

2. That the variance will not result in a special privilege to one individual property owner, and that the variance would be appropriate for any property owner facing similar circumstances in that other variances for sign height have been granted in similar situations.

3. That the requested variance will not materially and adversely affect the health and safety of persons residing or working in the neighborhood, and will not be materially detrimental to the public welfare or injurious to property and improvements in the neighborhood in that the proposed billboard is located adjacent to the freeway in an area that is predominantly comprised of industrial uses. Further, the relocation of the billboard will allow for the removal of three existing billboard signs.

4. Granting the variance does not constitute a use variance in that a relocated billboard on the same site is allowed in the M-1-R zone with a relocation agreement.

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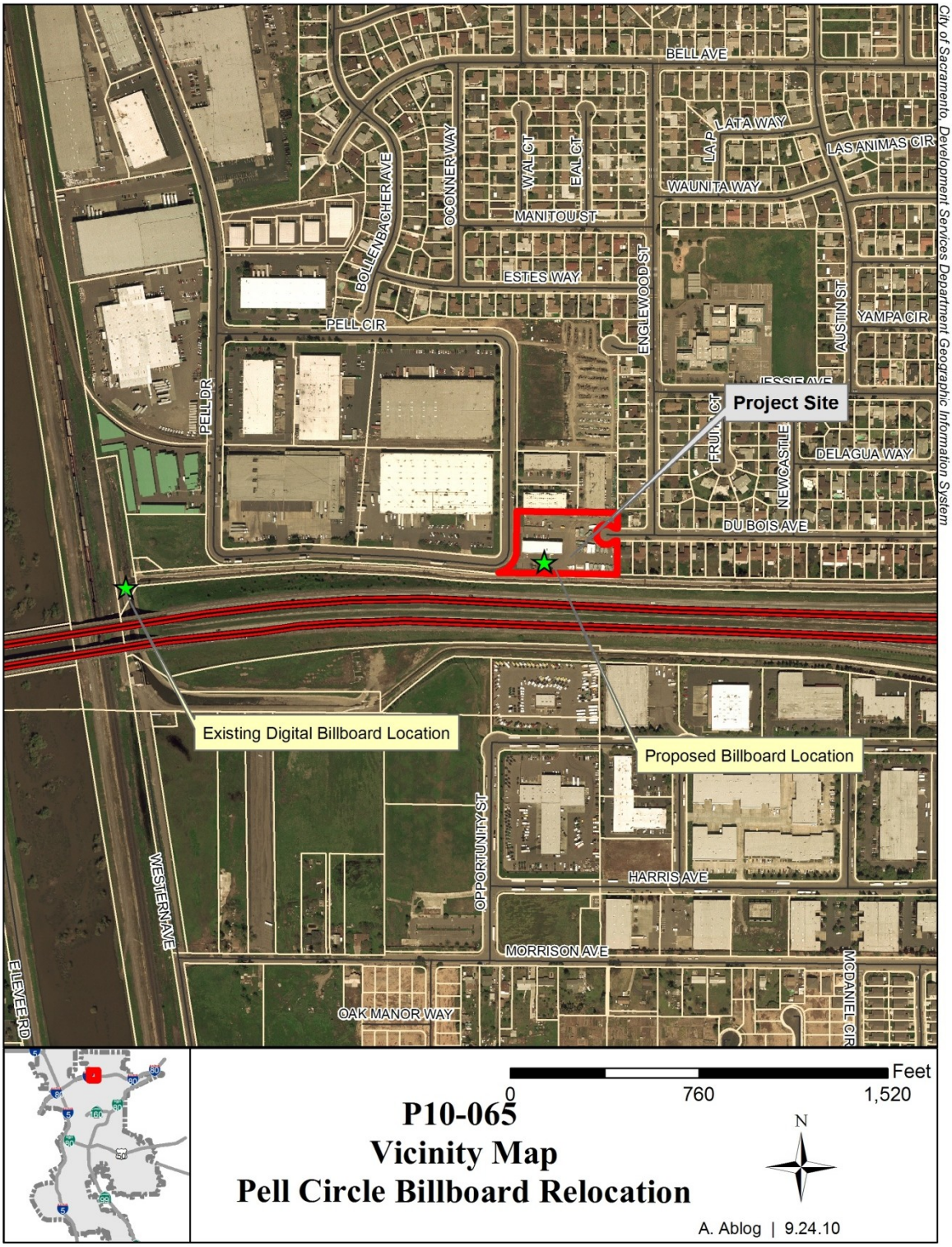
Attachment 4 – Vicinity Map



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Attachment 5 – Land Use Map

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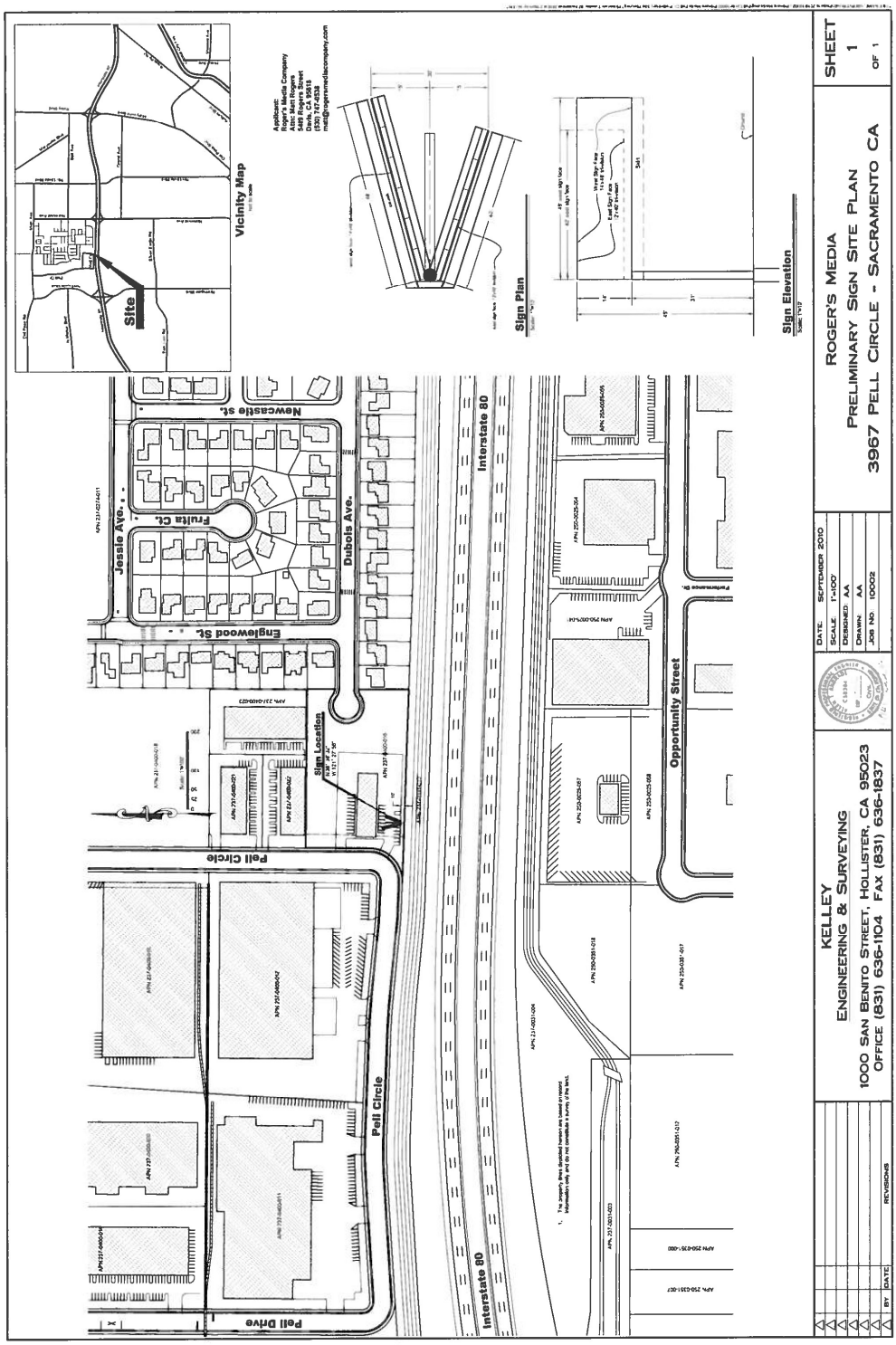
Attachment 6 – Site Plan



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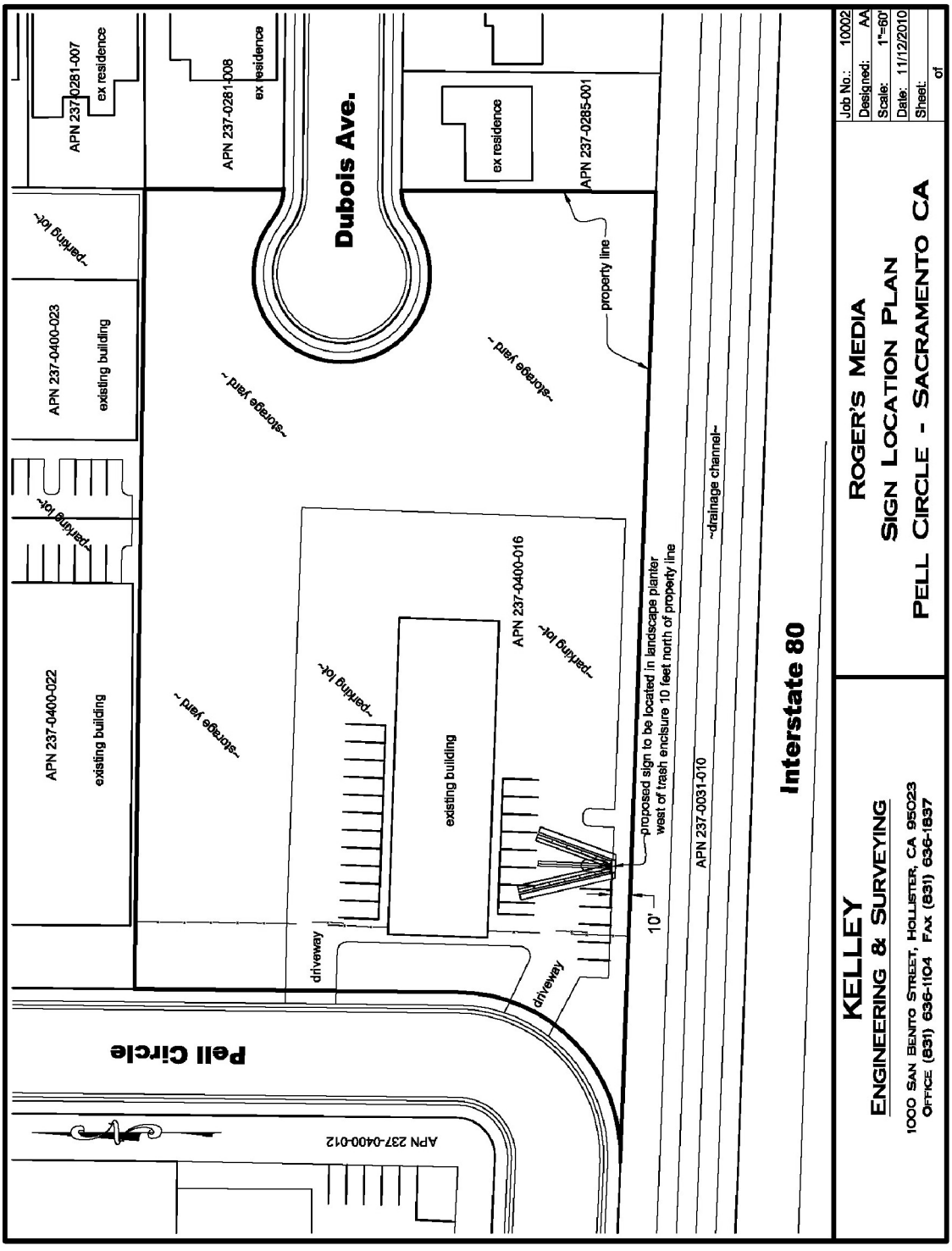
Attachment 7-Site Plan Detail



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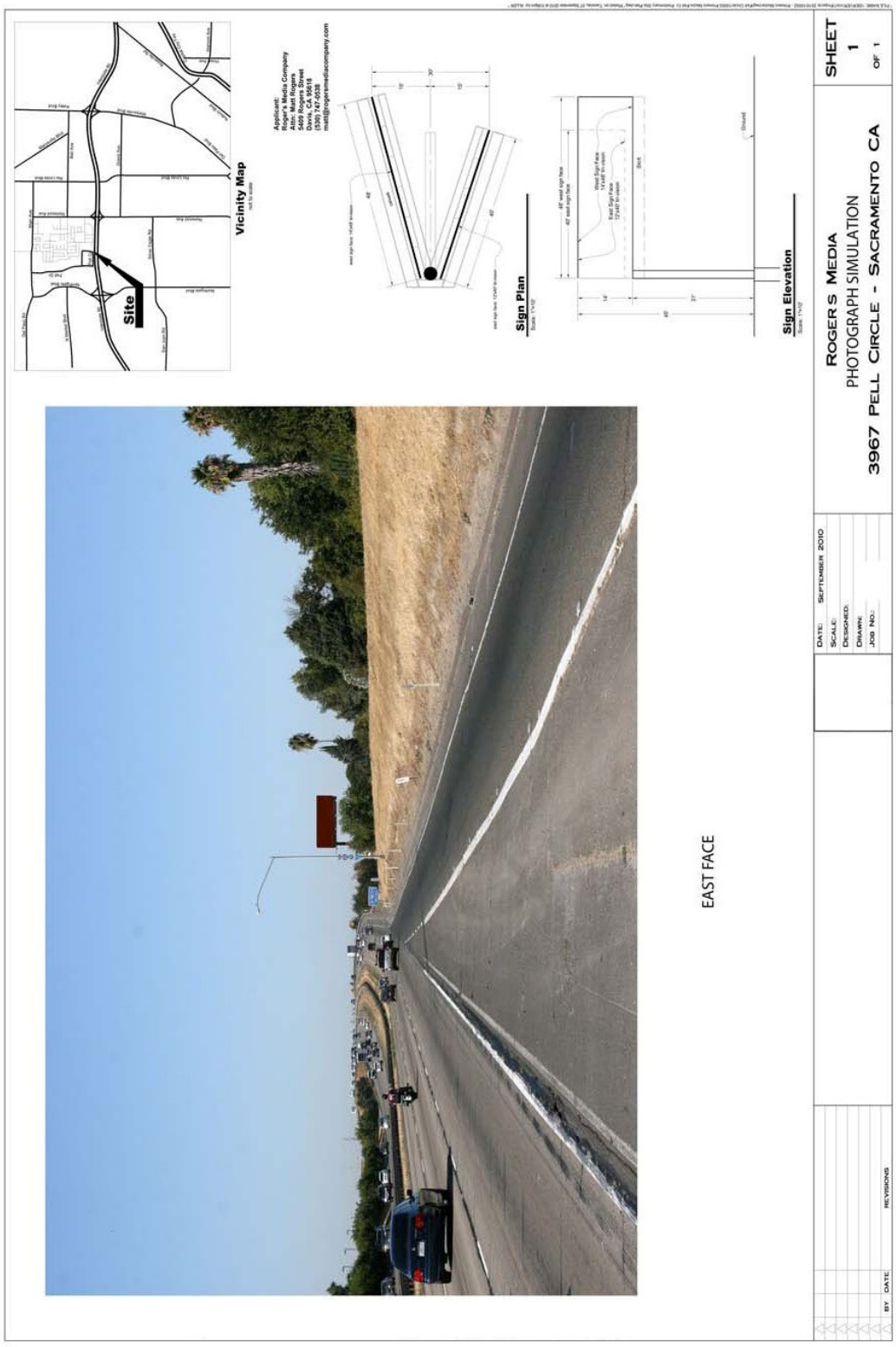
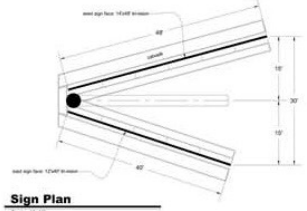
Attachment 8 – Photosimulations



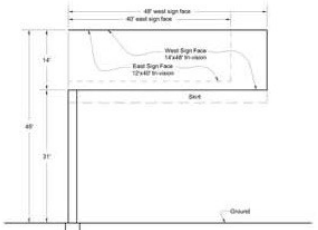
WEST FACE

Vicinity Map
not to scale

Applicant:
Roger's Media Company
Attn: Matt Rogers
5409 Rogers Street
Davis, CA 95618
(530) 747-0538
matt@rogersmediacompany.com



Sign Plan
Scale: 1"=10'



Sign Elevation
Scale: 1"=10'

BY	DATE	REVISIONS

DATE: SEPTEMBER 2010
SCALE:
DESIGNED:
DRAWN:
JOB NO.:

ROGER S MEDIA
PHOTOGRAPH SIMULATION
3967 PELL CIRCLE - SACRAMENTO CA

SHEET 1 OF 1

Pell Circle Billboard Relocation – Photographs of To Be Removed Billboards

14th Avenue (West Face) at Power Inn Road

14th Avenue (West Face) at Power Inn Road

Pell Circle Billboard Relocation – Photographs of To Be Removed Billboards

Elvas Avenue before J Street Overpass

El Camino Avenue East of Interstate 80

RESOLUTION NO.

Adopted by the Sacramento City Council

DETERMINING PELL CIRCLE BILLBOARD RELOCATION PROJECT EXEMPT FROM REVIEW UNDER THE CALIFORNIA EXVIRONMENTAL QUALITY ACT (P10-065)

BACKGROUND

A. On November 18, 2010, the City Planning Commission conducted a hearing on, and forwarded to the City Council a recommendation to approve the Pell Circle Billboard Relocation Project.

B. On February 22, 2011 the City Council conducted a public hearing, for which notice was given pursuant Sacramento City Code Section 17.200.010(C)(1) (a), and (c) (publication and mail (500 feet), and received and considered evidence concerning the Pell Circle Billboard Relocation.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. Based on the determination and recommendation of the City's Environmental Planning Services Manager and the oral and documentary evidence received at the hearing on the Project, the City Council finds that the Project is exempt from review under Section 15303 of the California Environmental Quality Act Guidelines as follows**:**

a. The proposed project is consistent with the construction of a new, small structure as it consists of the construction of a new billboard sign on approximately 2.32 acres in the Light Industrial (M-1-R) zone.

ORDINANCE NO.

Adopted by the Sacramento City Council

AMENDING TITLE 17 OF THE SACRAMENTO CITY CODE (THE ZONING CODE) BY REZONING CERTAIN REAL PROPERTY FROM LIGHT INDUSTRIAL REVIEW (M-1S-R) TO LIGHT INDUSTRIAL REVIEW (M-1-R).
(3961 PELL CIRCLE)(P10-065)(APN: 237-0400-016-0000**)**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1. Title 17 of the Sacramento City Code (the Zoning Code) is amended by rezoning the property shown in the attached Exhibit A, generally described, known, and referred to as 3961 Pell Circle (APN: 237-0400-016-0000) and consisting of ± 2.32 net acres, from Light Industrial Review (M-1S-R) to Light Industrial Review (M-1-R).

Section 2. Rezoning of the property shown in the attached Exhibit A, by the adoption of this Ordinance, will be considered to be in compliance with the requirements for the rezoning of property described in the Zoning Code, as amended, as those procedures have been affected by recent court decisions.

Section 3. The City Clerk of the City of Sacramento is directed to amend the official zoning maps, which are part of the Zoning Code, to conform to the provisions of this Ordinance.

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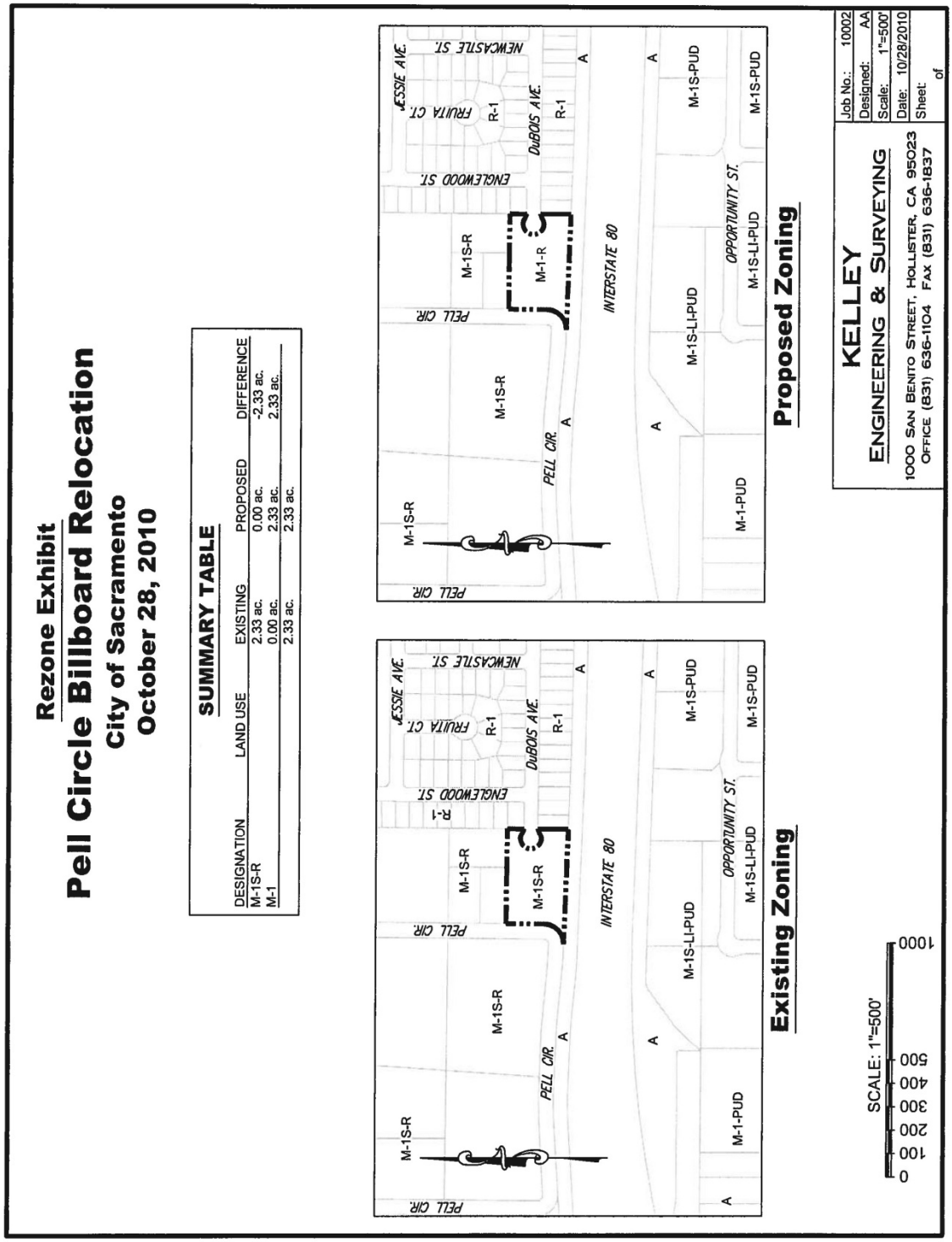
Exhibit A – Rezone



RESOLUTION NO.

Adopted by the Sacramento City Council

ADOPTING FINDINGS OF FACT AND APPROVING THE PELL CIRCLE BILLBOARD RELOCATION PROJECT (P10-065)

BACKGROUND

A. November 18, 2010, the City Planning Commission conducted a public hearing on, and forwarded to the City Council a recommendation to approve the Pell Circle Billboard Relocation Project.

B. On February 22, 2011, the City Council conducted a public hearing, for which notice was given pursuant Sacramento City Code Section 17.200.010(C)(1) (a), and (c) (publication and mail (500 feet), and received and considered evidence concerning the Pell Circle Billboard Relocation Project.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. Based on the verbal and documentary evidence received at the hearing on the Pell Circle Billboard Relocation Project, the City Council approves the Relocation Agreement as attached in Exhibit A, based on the findings of fact as set forth below.

Section 2. Findings of fact:

B. Relocation Agreement: The Billboard Relocation Agreement for the Project is approved based on the following findings of fact:

1. The new billboard complies with the purpose and requirements of Sacramento City Code Chapter 15.148, including section 15.148.815.

2. The new billboard is compatible with the uses and structures on the new sites and in the surrounding areas, including parks, trails, and other public facilities and amenities.

3. The new billboard will not interfere with onsite access, circulation, or visibility.

4. The new billboard will not create a traffic or safety hazard.

5. The new billboard will not result in any undue or significant increase in visual clutter in the areas surrounding the new billboards.

C. Relocation Agreement: The Billboard Relocation Agreement for the Project is approved subject to the following condition of approval:

1. Rogers Media and its successors shall maintain and operate the sign in accordance with industry standards.

Section 3. Exhibit A is a part of this Resolution.

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Billboard Relocation Agreement

City of Sacramento and Rogers Media Company, Inc.

This agreement, dated February 22, 2011, for purposes of identification, is between the **City of Sacramento** (the "City"), a California municipal corporation; and **Rogers Media Company, Inc.** ("RMC"), a California corporation.

Background

A. On October 16, 2007, the Sacramento City Council adopted Ordinance No. 2007-079, which prohibits the construction and operation of new billboards within the City. Ordinance No. 2007-079 also provides, however, that this prohibition does not limit the City's ability to enter into relocation agreements under which new billboards may be constructed in exchange for the permanent removal of existing billboards, as encouraged by the Outdoor Advertising Act.[1] Section 15.148.815 of the Sacramento City Code ("Section 15.148.815") prescribes when and how the City may enter into a relocation agreement.

B. RMC desires to construct, maintain, and operate a new billboard on privately owned land within the City's jurisdiction, at RMC's sole expense (the "New Billboard"). The first column of **Exhibit A** to this agreement identifies the land on which RMC proposes to locate the New Billboard (the "New Billboard Site").

C. RMC owns the existing billboards identified in the second column of **Exhibit A**, each of which is located on privately owned land within the City's jurisdiction (the "Existing Billboards"). To fulfill the requirement that RMC remove existing billboards in return for the right to construct, operate, and maintain the New Billboard on the New Billboard Site, RMC applied to the City for a relocation agreement covering the Existing Billboards (Project No. P10-065). Removal of the Existing Billboards will result in a net reduction within the City of both (1) the total number of lawfully permitted offsite signs and (2) the total square footage of lawfully permitted offsite signage, as required by Section 15.148.815.

D. In accordance with Section 15.148.815, on November 18, 2010, the City's Planning Commission held a public hearing on RMC's application for a relocation agreement and RMC's application for a rezoning of the New Billboard Site from M-1S-R to M-1-R. After conducting the hearings, the Planning Commission approved the applications and forwarded its recommendations of approval to the City Council.

E. On February 22, 2011, the City Council held a public hearing on RMC's application for a relocation agreement and approved it based on the findings of fact, and subject to the conditions of approval, set out in Resolution No. 2011-___. Also on February 22, 2011, the City Council held a public hearing on RMC's application for a rezoning of the New Billboard Site and approved it by enacting Ordinance No. 2011-__.

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[1] Chapter 2 (beginning with section 5200) in division 3 of the California Business and Professions Code.

With these background facts in mind, the City and RMC agree as follows:

1. **Removal of Existing Billboards.** In return for the City's approval of the New Billboard (Project No. P10-065), and to comply with Ordinance No. 2007-079, Section 15.148.815, and the Outdoor Advertising Act, RMC shall remove the Existing Billboards according to the schedule set forth in the second column of **Exhibit A**.

2. **Compliance with Law.** While removing the Existing Billboards and while constructing, operating, and maintaining the New Billboard on the New Billboard Site, RMC shall comply with all conditions of approval set out in Resolution No. 2011-___ and with valid and applicable statutes, ordinances, regulations, rules, and orders that concern the Existing Billboards, the New Billboard, or the New Billboard Site, including Section 15.148.815 and the Outdoor Advertising Act, whether enacted or issued before, on, or after the effective date of this agreement (see Section 6(i), below).

3. **Waiver of Compensation.** RMC hereby waives and releases all claims for compensation RMC has or may have in the future that are against the City or the City's elected officials, officers, employees, or agents and are related to, or connected with, RMC's removal of the Existing Billboards. This waiver and release includes any claims made or arising under the California Government Claims Act,[2] the Outdoor Advertising Act, the California Constitution, the federal Highway Beautification Act of 1965,[3] or the United States Constitution.

4. **Release of Claims.** RMC unconditionally and forever releases and discharges the City and the City's elected officials, officers, employees, and agents from all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal) that in any way arise from, or are connected with, RMC's removal of the Existing Billboards. This release and discharge covers all claims, rights, liabilities, demands, obligations, duties, promises, costs, expenses, damages, and other losses or rights of any kind, past, present, and future, whatever the theory of recovery, and whether known or unknown, patent or latent, suspected or unsuspected, fixed or contingent, or matured or unmatured. RMC hereby waives all rights it has or may have in the future under section 1542 of the California Civil Code, which provides as follows:

> "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 to him or her must have materially affected his or her settlement with the debtor."

5. **Indemnity.** RMC shall indemnify, defend (upon the City's written request), protect, and hold the City and the City's elected officials, officers, employees, and agents harmless against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through appeal) that arise in any way from either or both of the following:

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[2] Parts 1 through 7 (beginning with section 810) in division 3.6 of title 1 of the California Government Code.

[3] Title 23 United States Code section 131.

(a) The acts or omissions of RMC or RMC's officers, employees, or agents in removing the Existing Billboards.

(b) The City's processing and approval of RMC's application for this relocation agreement. RMC's obligation under this Section 5(b) includes all claims by the owner of property from which an Existing Billboard is removed, including claims based on the California Government Claims Act, the Outdoor Advertising Act, the California Constitution, the federal Highway Beautification Act of 1965, or the United States Constitution.

6. Miscellaneous.

(a) *Notices*. Any notice or other communication under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this Section 6(a) to the persons identified below. A mailed notice or other communication will be effective or will be considered to have been given on the third day after it is deposited in the United States Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered. Any party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section.

If to the City:

City of Sacramento
Community Development Department
Planning Division
300 Richards Boulevard, Third Floor
Sacramento, California 95811
Attention: Antonio Ablog, Associate Planner

If to RMC:

Rogers Media Company, Inc.
5409 Rogers Street
Davis, California 95618
Attention: David Nybo

(b) *Assignment.* A party may not assign or otherwise transfer this agreement or any interest in it without the other party's written consent. An assignment or other transfer made contrary to this Section 6(b) is void.

(c) *Successors and Assigns*. This agreement binds and inures to the benefit of the successors and assigns of the parties. This Section 6(c) does not constitute the City's consent to any assignment of this agreement or any interest in this agreement.

(d) *Interpretation.* This agreement is to be interpreted and applied in accordance with California law, without regard to conflict-of-law principles, subject to the following:

(1) Sections 3, 4, and 5 of this agreement are to be interpreted so as to provide the City and the City's elected officials, officers, employees, and agents with the maximum

protection possible against any obligation or liability that in any way arises from, or is connected with, RMC's removal of the Existing Billboards.

(2) The rule of interpretation in Civil Code section 1654 will not apply.

(3) "Includes" and "including" are not restrictive. "Includes" means "includes but not limited to," and "including" means "including but not limited to."

(4) Exhibit A is part of this agreement.

(e) *Waiver of Breach.* A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon the other party's breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any term or provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.

(f) *Attorney's Fees.* The party prevailing in any litigation concerning this agreement will be entitled to an award by the court of reasonable attorneys' fees and litigation costs through final resolution on appeal in addition to any other relief that may be granted in the litigation. If the City is the prevailing party, then this Section 6(f) will apply whether the City is represented in the litigation by the Office of the City Attorney or by outside counsel.

(g) *Severability.* If a court with jurisdiction holds any nonmaterial provision of this agreement to be invalid, void, or unenforceable, then the remaining provisions will remain in full force.

(h) *Counterparts.* The parties may execute this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

(i) *Effective Date*. This agreement is effective as of the *later of* the following: (1) the date on which both the City and RMC have signed it, as indicated by the dates in the signature blocks below; and (2) the date on which Ordinance No. 2011-__ takes effect.

(j) *Time of Essence.* Time is of the essence of this agreement.

(k) *Integration and Modification*. This agreement sets forth the parties' entire understanding regarding the matters addressed. It supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and may be modified only by another written agreement signed by both parties.

(*Signature Page Follows*)

City of Sacramento

By: _____

Gus Vina
Interim City Manager
Dated: February __, 2011

Approved as to Form
Sacramento City Attorney

By: _____

Joseph Cerullo Jr.
Senior Deputy City Attorney

Rogers Media Company, Inc.

By: _____
Signature

DAVID NYBO
Print Name

VP
Title

Dated: February __, 2011

Approved as to Form

By: _____
Signature

Matthew Berrien
Print Name

Attorneys for Rogers Media Company

Exhibit A to Billboard Relocation Agreement

City of Sacramento and Rogers Media Company, Inc.

New Billboard	Existing Billboards
New Billboard *General Location*: 3961 Pell Circle *APN*: 237-0400-016-000 *Zoning*: M-1-R (Light Industrial) *General Description*: double-faced billboard oriented toward Interstate 80, with one 14' X 48' face and one 12' X 40' face *Total Display Area*: 1,152 square feet	**RMC shall permanently remove these three Existing Billboards from the indicated locations *before* RMC begins constructing the New Billboard:** **Existing Billboard 1** *General Location*: 118 El Camino Place *APN*: 277-0061-021-000 *RMC Location Number*: SIG-0707252 *General Description*: Single-face billboard (8' X 36') *Total Display Area*: 288 square feet **Existing Billboard 2** *General Location*: 5905 Elvas Avenue *APN*: 005-0010-013 *RMC Location Number*: SIG 0708480 *General Description*: single-face billboard (20' X 15') *Total Display Area*: 300 square feet **Existing Billboard 3** *General Location*: 3950 Power Inn Road *APN*: 061-0023-025-0000 *RMC Location Number*: SIG-0604633 *General Description*: double-faced billboard (each face 8' X 36') *Total Display Area*: 576 square feet

Net Reduction in Number of Signs:	**2 signs**
Net Reduction in Number of Display Faces:	**2 faces**
Net Reduction in Display Area:	**12 square feet**