



REPORT TO PLANNING COMMISSION City of Sacramento

4

915 I Street, Sacramento, CA 95814-2671

PUBLIC HEARING

September 23, 2010

To: Members of the Planning Commission

Subject: Highway 99 Billboard Relocation Agreement (P10-009)

A request to approve a billboard relocation agreement to construct a new replacement billboard on the same site.

- A. Environmental Determination:** Categorical Exemption per CEQA Guidelines Section 15303;
- B. Billboard Relocation Agreement** to allow for the removal of three existing billboards in order to construct a new replacement billboard on 1.65 acres in the General Commercial (C-2) zone; and
- C. Variance** to exceed the maximum allowed 35 foot height by 10 feet for a 45 foot high billboard within the C-2 zone.

Location/Council District: 7900 Stockton Blvd/ District 8

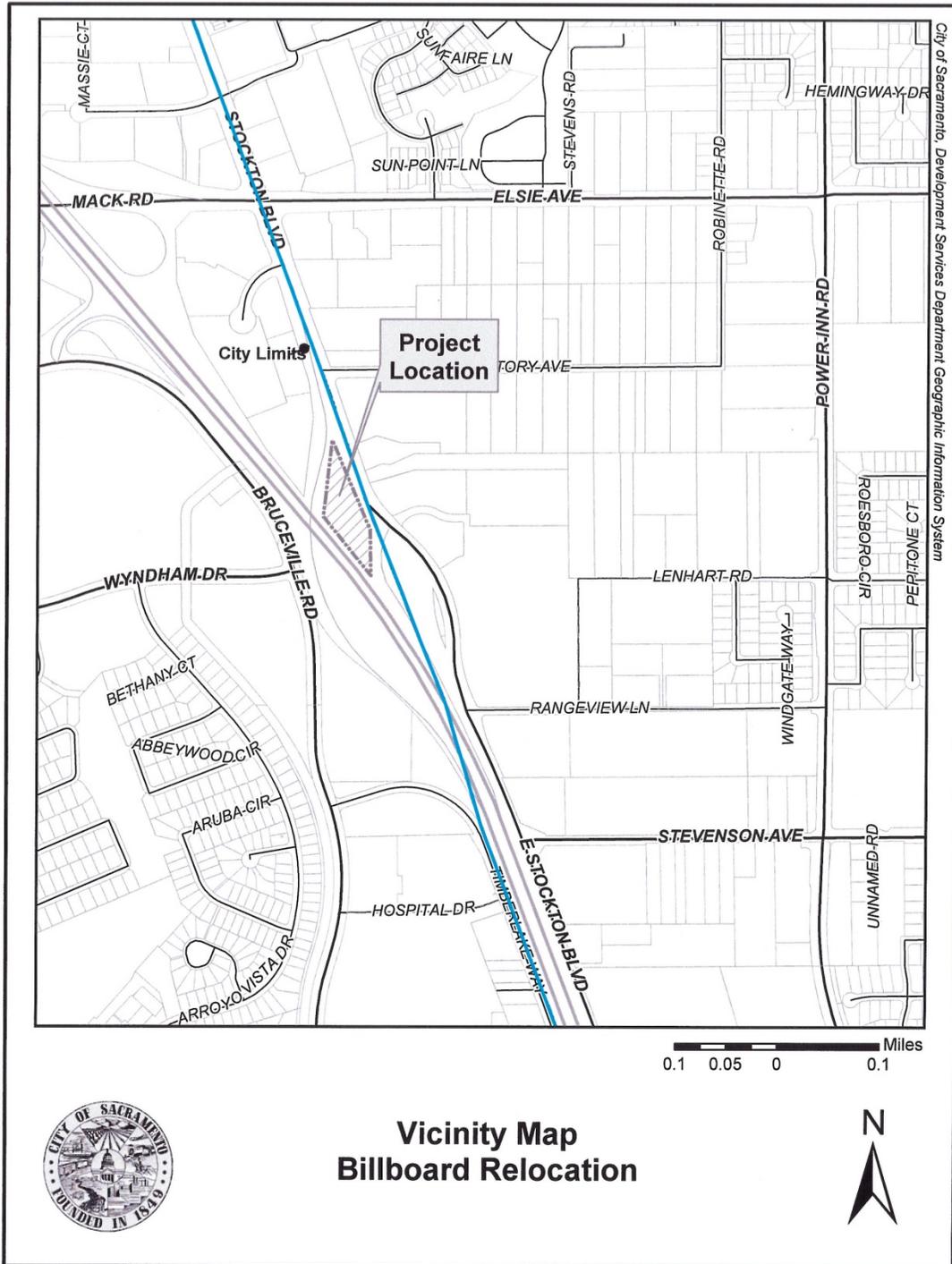
Assessor's Parcel Number: 117-0170-009

Recommendation: Staff recommends the Planning Commission recommend approval and forward the Billboard Relocation Agreement request to City Council based on the findings listed in Attachment 2. The City Council has the final approval authority over items A-B. This recommendation is based upon the conclusion the project is consistent with the applicable policies, requirements and findings for a relocation agreement established under Chapter 15.148 of the Sacramento City Code. Staff recommends the Planning Commission approve the Variance based on the findings of fact. The Planning Commission has final approval authority over item C above, and its decision is appealable to City Council.

Contact: Sandra Yope, Senior Planner, 916-808-7158 and Joy Patterson, Principal Planner, 916-808-7507

Applicant: Michael Wagener for Clear Channel Outdoor; 1107 9th St, Ste. 500; Sacramento, CA 95814, 916-492-1309

Owner: Doug Bayless; 1792 Tribute Rd., Ste. 270; Sacramento, CA 95815



Summary: The applicant is requesting approval of a billboard relocation agreement to allow for the construction of a new replacement billboard on the same site and a variance to exceed the maximum height for the new billboard. The new billboard will have a double face and be 45 feet high. Three existing billboards will be removed including the existing single face billboard currently on the site.

As of the time of writing the report there were no comments or objections from any neighborhood group or adjacent property owners. **The project is not controversial.**

Table 1: Project Information
2030 General Plan designation: Suburban Corridor
Existing zoning of site: General Commercial (C-2)
Existing use of site: Commercial/Car Dealership
Property area: 1.65 acres

Background Information

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 billboard relocation agreements under which 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 of the Sacramento City Code (“Section 15.148.815”) prescribes when and how the City may enter into a relocation agreement.

Clear Channel Outdoor (CCO) wishes to construct a new billboard under a billboard relocation agreement. The proposed agreement (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.

Public/Neighborhood Outreach and Comments

Staff routed the project to the Center Crossroads Neighborhood Association and staff has not received any comments from this neighborhood association. The Planning Commission meeting was also noticed to the property owners within a 500 foot radius of the subject site. At the time of writing of this report, staff has not received any comments, and staff is not aware of any opposition to the project.

Environmental Considerations

The Community Development Department, Environmental Planning Services Division has reviewed this project and determined that this is exempt from the provisions of the California Environmental Quality Act (CEQA) Section 15303, New Construction or

Conversion of Small Structures. The project consists of the installation of a new structure.

Project Setting

The site is a 1.65 acre commercial property developed with a car dealership. The site is currently zoned General Commercial (C-2). It is adjacent to Highway 99 to the west, the southbound connector ramp to the north, and the off ramp to the south and southeast. There is commercial development to the east that is in the county. There is an existing 300 square foot single face billboard (12 feet by 25 feet) on the south side of the site, south of the existing building.

Proposed Billboard Design, Height

The applicant proposes to construct a new billboard on the western most part of the site behind (west side) the existing building. The existing billboard will be removed. The new billboard will be 14 feet by 48 feet or 672 square feet of sign area per side. The billboard will have a double face for a total of 1344 square feet of sign area. The billboard will have a "V" design for the sign faces as in they are not parallel with each other. The new sign will be 45 feet high and supported by a single pole.

The Sign Code (Title 15.148) permits a maximum height of 35 feet for any detached sign in the C-2 zone. There is a provision to vary the code through the Planning Commission. The applicant is requesting variance for a height of 45 feet in order for the sign to be visible in both directions on Highway 99 as well as to be visible if the sight is redeveloped with a new commercial building. The southbound on-ramp to Highway 99 is to the north of the sight and is elevated necessitating the billboard has the proposed height to be visible to the southbound lanes of Highway 99.

Relocation Agreement

New billboards that are the subject of a relocation agreement are exempt from Ordinance No. 2007-079, which prohibits the construction and operation of new billboards within the City. Section 15.148.815 allows an applicant to apply for a billboard relocation agreement under which new billboards may be constructed in exchange for the permanent removal of existing billboards, resulting in a net reduction in both the number and total square footage of billboards then lawfully allowed. Under the proposed billboard relocation agreement, a total of 3 existing billboards of different sizes will be removed for the new billboard, resulting in a net reduction of 2 billboards and 228 square feet of existing billboard sign area. The list of signs proposed for removal is attached to the relocation agreement (Attachment 2).

Billboard relocation agreements are subject to the same procedural and hearing requirements as a city council approved special permits under Section 17.212.060. A billboard relocation agreement may be approved only if the following findings are made concerning the proposed new signage:

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

2. The new billboards are 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 billboards will not interfere with onsite access, circulation, or visibility.

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

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

Policy Considerations:

The subject site is designated Suburban Corridor on the 2030 General Plan Land Use and Urban Form Diagram. The proposed sign location is consistent with the land use designation. Allowing the billboard to be relocated on the site to the western side leaves the bulk of the site area for future redevelopment which supports General Plan policy to encourage infill and redevelopment of existing sites.

The relocation agreement meets the requirements of Section 15.148.815 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 proposed site is zoned General Commercial (C-2).

Respectfully submitted by: Sandra L. Yope
SANDRA YOPE
Senior Planner

Approved by:

Recommendation Approved:

Joy Patterson
JOY PATTERSON
Principal Planner

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**Proposed Record of Decision
Digital Billboard Project (P09-055)**

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 project consists of the installation of a new structure.

B. 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 2.

C. The **Variance** to exceed the maximum allowed 35 foot height by 10 feet for a 45 foot high billboard within the C-2 zone is approved based on the following Findings of Fact:

1. Granting the variance does not constitute a special privilege extended to an individual property owner in that other variances have been approved under similar circumstances.

2. Granting the variance will not be detrimental to the public welfare nor result in the creation of a public nuisance in that the billboard replaces and existing billboard and allows visibility from both directions on the highway.

3. Granting the variance does not constitute a use variance in that a relocated billboard on the same site is allowed in the C-2 zone with a relocation agreement.

4. The project is consistent with the General Plan Suburban Corridor Land Use Designation.

Attachment 2: DRAFT Resolution for Relocation Agreement

DRAFT RESOLUTION NO.

Adopted by the Sacramento City Council

**ADOPTING FINDINGS OF FACT AND APPROVING THE HIGHWAY 99
BILLBOARD RELOCATION AGREEMENT (CLEAR CHANNEL
OUTDOOR) (P10-009)**

BACKGROUND

- A. On September 23, 2010 the City Planning Commission conducted a public hearing on, and forwarded to the City Council a recommendation to approve the Highway 99 Billboard Relocation Agreement.
- B. On October 26, 2010, the City Council conducted a public hearing, for which notice was given pursuant Sacramento City Code Section 17.200.010(C)(1) (a), (b), and (c) (publication and mail (500 feet), and received and considered evidence concerning the Digital Billboards Relocation Agreement 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 Highway 99 Billboard Relocation Agreement 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:

A. Environmental Determination: 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 project consists of the installation of a new structure.

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 sites.

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

Exhibit A: Draft Proposed Relocation Agreement

Billboard Relocation Agreement
City of Sacramento and Clear Channel Outdoor

This agreement, dated October 26, 2010, for purposes of identification, is between the **City of Sacramento** (the "City"), a California municipal corporation; and **Clear Channel Outdoor, Inc.** ("CCO"), a Delaware 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. CCO desires to construct, maintain, and operate a new billboard on privately owned land within the City's jurisdiction, at CCO's sole expense (the "New Billboard"). The first column of **Exhibit A** to this agreement identifies the land on which CCO proposes to locate the New Billboard (the "New Billboard Site").

C. CCO 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 CCO remove existing billboards in return for the right to construct, operate, and maintain the New Billboard on the New Billboard Site, CCO applied to the City for a relocation agreement covering the Existing Billboards (Project No. P10-009). 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 September 23, 2010, the City's Planning Commission held a public hearing on CCO's application for a relocation agreement and then forwarded a recommendation of approval to the City Council; and on October 26, 2010, the City Council held a public hearing on the application and approved it based on the findings of fact, and subject to the conditions of approval (if any), set out in Resolution No. 2010-____.

1. 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 CCO agree as follows:

1. Removal of Existing Billboards. In return for the City’s approval of the New Billboard (Project No. P10-009), and to comply with Ordinance No. 2007-079, Section 15.148.815, and the Outdoor Advertising Act, CCO 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, CCO shall comply with all conditions of approval set out in Resolution No. 2010-___ 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. CCO hereby waives and releases all claims for compensation CCO has or may have in the future, against the City or the City’s elected officials, officers, employees, and agents, that are related to, or connected with, CCO’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. CCO 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, CCO’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. CCO 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. CCO 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

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

3. ³ Title 23 United States Code section 131.

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:

The acts or omissions of CCO or CCO’s officers, employees, or agents in removing the Existing Billboards.

- (a) The City’s processing and approval of CCO’s application for this relocation agreement. CCO’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.

5. 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:
 Sandra Yope
 Senior Planner

If to CCO:

Clear Channel Outdoor, Inc.
 1107 9th Street, Suite 500
 Sacramento, California 95814
 Attention:
 David M. McWalters
 Senior Vice President
 Real Estate & Public Affairs

- (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, CCO'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 date on which both the City and CCO have signed it, as indicated by the dates in the signature blocks below.
- (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

Clear Channel Outdoor, Inc.

By: _____
Gus Vina
Interim City Manager
Dated: October ____, 2010

By: _____
David McWalters
Senior Vice President Real Estate
Clear Channel Outdoor
Dated: October ____, 2010

Approved as to Form
Sacramento City Attorney

Approved as to Form
Remy, Thomas, Moose & Manley

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

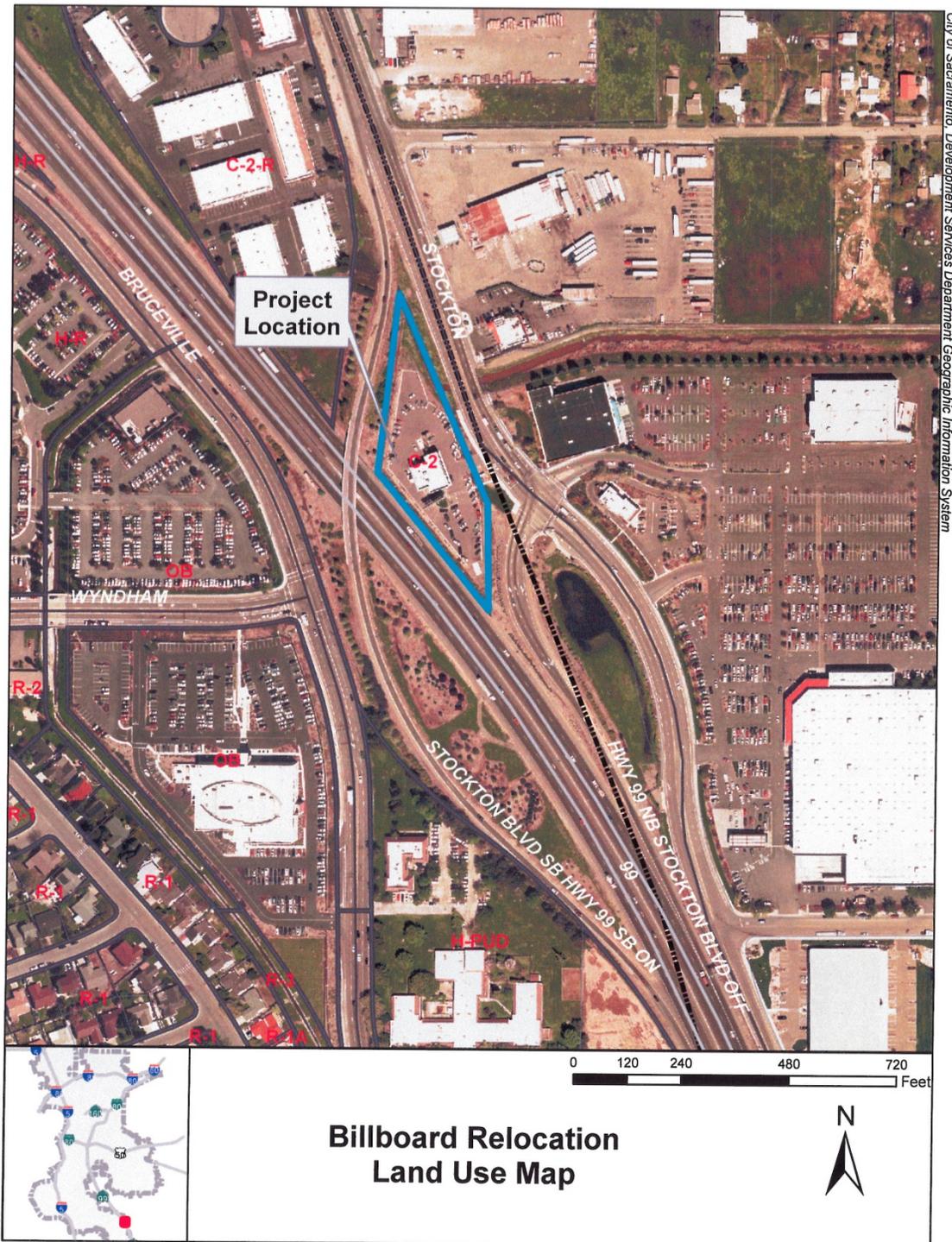
By: _____
Tina Thomas
Attorneys for Clear Channel Outdoor

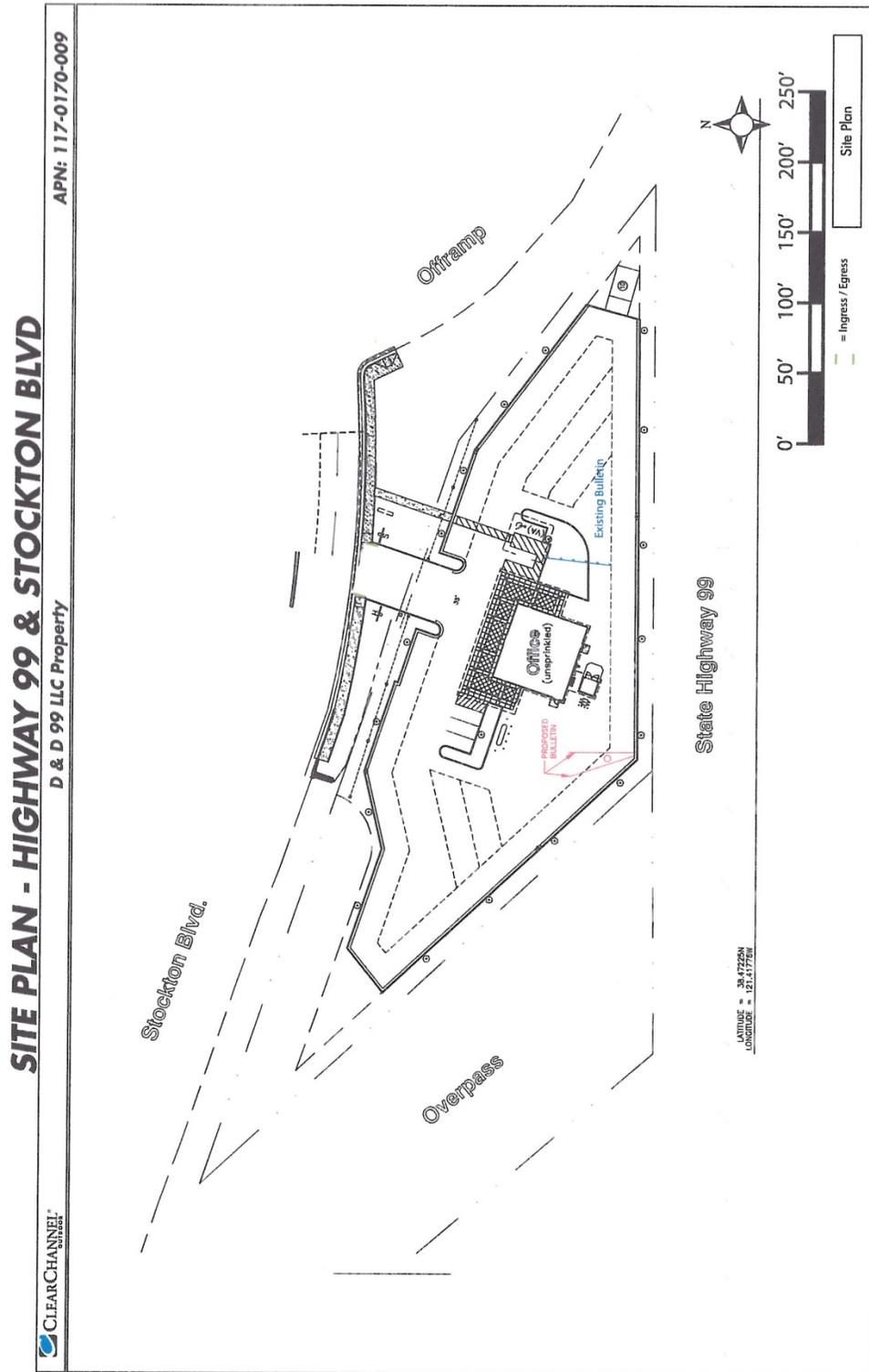
**Exhibit A to Billboard Relocation Agreement
City of Sacramento and Clear Channel Outdoor**

A. New Billboard	B. Existing Billboards
<p>New Billboard <i>General Location:</i> 7900 Stockton Boulevard <i>APN:</i> 117-0170-009 <i>Zoning:</i> C-2 <i>General Description:</i> two-sided billboard (14' X 48') <i>Total Display Area:</i> 1344 square feet</p>	<p>CCO shall permanently remove these three Existing Billboards from the indicated locations <i>before</i> CCO begins constructing the New Billboard:</p> <p>Existing Billboard 1 <i>General Location:</i> 7900 Stockton Boulevard <i>APN:</i> 117-0170-009 <i>Zoning:</i> C-2 <i>CCO Location Number:</i> ____ <i>General Description:</i> one-sided billboard (14' X 48') <i>Total Display Area:</i> 672 square feet</p> <p>Existing Billboard 2 <i>General Location:</i> 1476 Blair Avenue <i>APN:</i> 035-0091-006 <i>Zoning:</i> M-1 <i>CCO Location Number:</i> ____ <i>General Description:</i> two-sided billboard (12' X 25') <i>Total Display Area:</i> 600 square feet</p> <p>Existing Billboard 3 <i>General Location:</i> 3218 Broadway <i>APN:</i> 010-0308-005 <i>Zoning:</i> C-2 <i>CCO Location Number:</i> ____ <i>General Description:</i> one-sided billboard (12' X 25') <i>Total Display Area:</i> 300 square feet</p>

Net Reduction in Number of Signs:	2 signs
Net Reduction in Number of Display Faces:	2 faces
Net Reduction in Display Area:	228 square feet

Attachment 3: Land Use Map



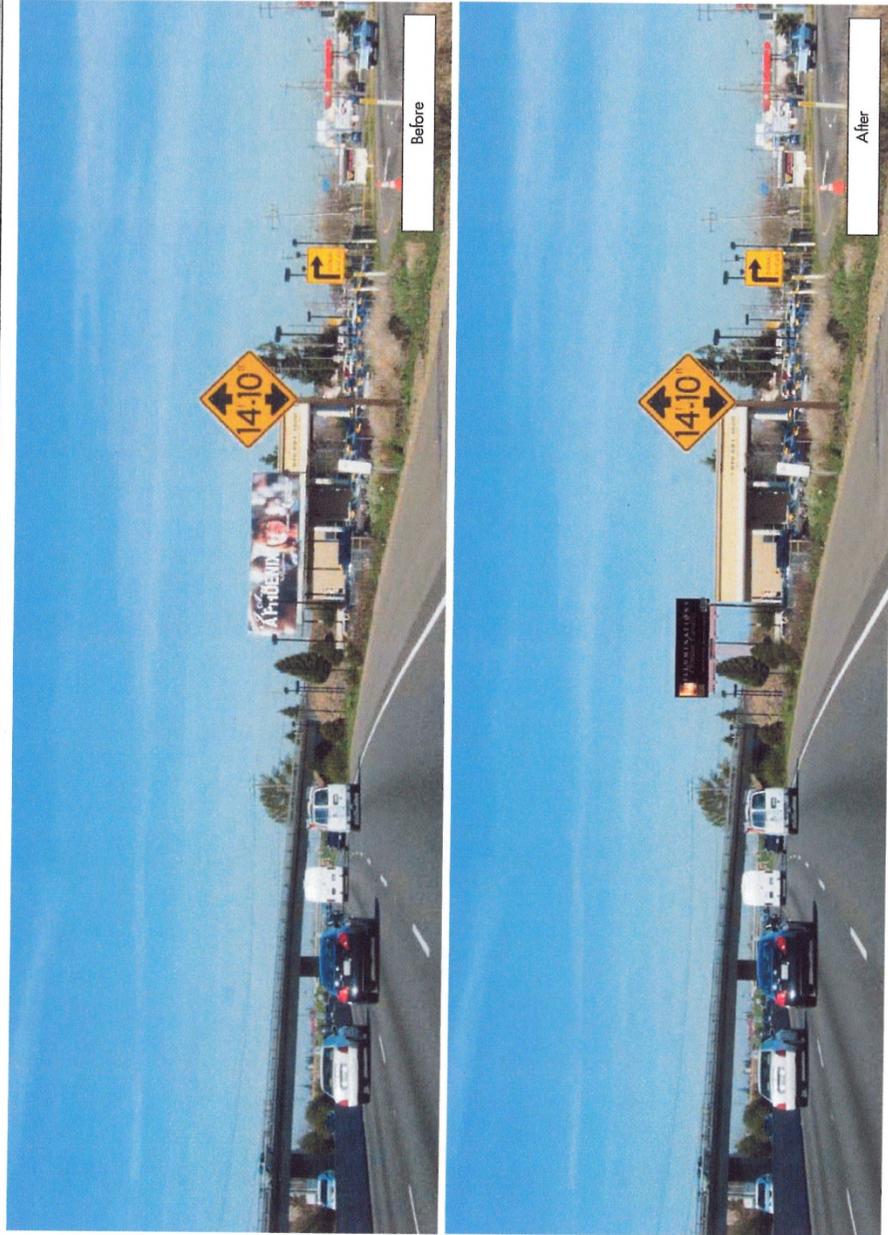


ARTIST RENDERING - HIGHWAY 99 & STOCKTON BLVD



D & D 99 LLC Property

APN: 117-0170-009



Before

After