

Summary of Proposed Ordinance for Electric Ready Buildings

We Call for an Ordinance Requiring New Buildings to be Pre-Wired for Electric Appliances

1. As called for in current Climate Action Plan (para. 2.3.1) such an ordinance would enable home-owners to adopt greener electric appliances now or at a future time.
2. Cost to homeowner is minimal (<\$250/home). Avoids future rewiring at substantially higher cost.
3. Ordinance would not require “reach code” approval by the California Energy Commission. No consultant costs. Only requires filing with CA Buildings Standards Commission.
4. This action complements Sonoma Clean Power upcoming renewables/electric appliances promotions (storefront, hi-efficiency electric appliance discount programs).
5. 2019 CA Electrical Code requires this for water heaters. Proposed ordinance would simply extend this to heating-cooling, dryers and electric range. Ordinance wording to follow 2019 Code example.

Andy Ferguson – Member of SR Friends of the Climate Action Plan

Proposal for Implementation of Santa Rosa Climate Action Plan Items:

- Pass Ordinance for Electric Ready Buildings in New Construction - per paragraph 2.3.1 of CAP
- Mandate and Enforce CAP Appendix E - New Development Checklist
- Establish a Council Subcommittee on Climate

CAP Calls for Reduced Emissions - Looking At Costs, Savings and Benefits Of **Electric Ready**

- The cost advantage of fossil fuels vs renewables are shifting rapidly towards renewables and electric energy. Fossil fuel prices are facing volatility. Renewable energy options are growing rapidly. Technology is gaining in efficiency and newly efficient electric appliances are the future
- Public safety issues favor electric: Earthquakes, fires, aging gas infrastructure equals a brittle and dangerous system
- An electric ready ordinance now will **Future Proof** new homes and avoid the much higher costs of retrofitting buildings later
- Moving away from fossil fuels will reduce greenhouse gas emissions

An Easy CAP Directed First Step to Going Electric Ready is in Line with Existing Frameworks

- For new construction an ordinance would require adding 220v electric circuits at locations of gas appliances (I.E. water heater, furnace/air conditioner, range, dryer, fireplace)
- Only requirement is to file ordinance with CA building standards commission
- Does not require approval from CEC
- Does not require a cost effectiveness study
- Dovetails with SCP plans

Costs of Electric Ready are Minimal

- Added construction cost estimates consistently **less than \$250 per home**
- Reduced operating costs for electric vs gas:
 - New heat pump waters heaters 3x more efficient than gas (BTU basis)
 - With solar PV, operating costs are virtually eliminated
 - Heat pump technologies super-efficient and equipment prices expected to fall, as solar did

In Addition:

We feel appendix E, the New Development Checklist, is comprehensive and that required items must be mandated and options enforced to remain in compliance with our CAP

We also want to state our support on the record for the creation of a council subcommittee on climate

In Summary FoCAP is asking the Council to:

- Pass an ordinance for all new buildings to be Electric Ready - The wording for an ordinance can be easily modeled on wording found in the 2019 electric code pre-wiring requirements for water heaters

As well

- Mandate and Enforce Use of CAP Appendix E - New Development Checklist
- Establish a Council Subcommittee on Climate

MASTER REIMBURSEMENT AGREEMENT

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AND CITY OF SANTA ROSA

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made as of _____, 2017, by and between the **SONOMA-MARIN AREA RAILTRANSIT DISTRICT**, a public entity duly established under the laws of California (District or SMART), and the **CITY OF SANTA ROSA**, a municipal corporation (City). City and District may be referred to herein individually as "Party" or collectively as "Parties."

Recitals

A. The Sonoma-Marín Area Rail Transit (SMART) rail corridor, historically known as the Northwestern Pacific Railroad (NWP), generally parallels Highway 101 running north-south in Sonoma and Marin Counties. The corridor is owned by District from Milepost (MP) 68.22 in Healdsburg southward to MP 11.4 in Corte Madera.

B. District is obligated to operate and maintain the rail corridor in accordance with applicable California Public Utilities Commission (CPUC) and Federal Railroad Administration (FRA) laws and regulations.

C. City desires to add a Pedestrian at-grade crossing across the SMART tracks at Jennings Avenue (Railroad Mile Post MP 54.98).

D. City prepared construction documents and received approval from the California Public Utilities Commission (CPUC) for the California Environmental Quality Act (CEQA) for the Jennings Avenue pedestrian at-grade crossing in Santa Rosa at MP 54.98, referred to herein as the "Project." At the request of the City, the District has agreed to construct an at grade pedestrian and bicycle rail crossing improvements within their and the Sonoma County Water Agency (SCWA) right-of-way and perform related systems integration work with SMART in the Project area.

E. The Project is described in Exhibit A to this Agreement.

F. The City acknowledges that SMART is initiating passenger rail service in or around the time that this project will be constructed. As such, SMART is "fitting" this work into the rail schedule with an intent on minimizing disruption to said schedule. Therefore, the work will likely require night, weekend, and "off hours" work which could increase the time and cost of construction.

F. City requested that SMART construct the Jennings pedestrian at-grade crossing to reduce cost to the City and minimize future disruption to the rail corridor.

G. District is willing to complete the Project under the terms set forth herein.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and District agree as follows:

1. **RECITALS**

A. The above recitals are true and correct and are hereby incorporated in and expressly form a part of this Agreement.

2. **COORDINATION**

A. City shall coordinate the work with District's Chief Engineer or his designee. The contact information of the parties' respective representatives is set forth below:

District	City
Bill Gamlen Chief Engineer Sonoma Marin Area Rail Transit (SMART) 5401 Old Redwood Highway, Suite 200 Petaluma, California 94954	Jason Nutt Director – Transportation and Public Works City of Santa Rosa 69 Stony Circle Santa Rosa, CA 95404
Phone: 707.794.3330	Phone: 707-543-3810
Fax: 707.794.3037	Fax: 707-543-3801
Email: bgamlen@sonomamarintrain.org	Email: jnutt@srcity.org

3. **SCOPE OF WORK**

- A. Proposed Improvements. City has requested SMART to construct certain improvements within the Sonoma County Water Agency (SCWA) right-of-way and SMART right-of-way at milepost MP-54.98:
- B. Construct a bike and pedestrian at-grade crossing at Jennings Avenue within the District right-of-way and the SCWA right-of-way.
- C. The Project is described in detail in the construction documents in Exhibit A.

4. **DISTRICT'S RESPONSIBILITIES**

District shall be responsible for the following:

- A. Permits: District shall obtain any permits that may be necessary from regulatory agencies for construction of the Project.
- B. Construction of the Work: The Project will be constructed by District Contractors. District Contractors will complete the work based upon the design developed by and provided by City and system's engineering work required by District as depicted in Exhibit A.

- C. Contract Administration: District shall administer the construction contract for the Project. Reasonable costs incurred by the District to administer the contract will be reimbursed by City pursuant to Section 6 below.
- D. Inspection: District shall be responsible for inspecting Project construction within the District and SCWA right-of-way.
- E. Easement: District shall provide documentation of an easement from SCWA for the construction, use, and maintenance of the Project in the easement area.
- F. Ownership and Maintenance: District shall own and maintain the Project. Should it become necessary to close or remove the Jennings at-grade crossing, the District shall notify and consider input from the City prior to making such modifications unless the closure is determined by the District to be required for safety, in which case it may be closed, altered or removed immediately.

5. CITY'S RESPONSIBILITIES

City agrees to perform the following:

- A. Final Plans and Specifications: Preparation of construction documents for the Project that are included in Exhibit A of this Agreement.
- B. Engineering Support During Construction: The City shall provide technical support for their construction documents during construction to address inconsistencies, field discrepancies, errors, and other considerations that may require engineering input during construction. Failure to provide this support in a timely manner could delay and increase the cost to the Project which will be the responsibility of the City.
- C. Environmental Documentation: City shall provide SMART with documentation of its compliance with CEQA prior to the start of construction.
- D. Permitting: the City shall secure any and all permits required for the Project and provide them to SMART prior to the start of construction.
- E. Surveying: City shall perform topographical and construction staking as necessary to construct the Project.
- F. Utilities: City is responsible for identifying and resolving any utility conflicts that may arise in the course of Project construction.
- G. Materials Engineering: City shall be responsible for materials testing, including concrete and compaction as determined by District as necessary as part of quality control.
- H. Public Outreach: City shall perform all public outreach associated with the Project that City deems necessary to make the public and surrounding community aware of construction activities.

- I. Costs: City is responsible for all costs associated with Project construction, including but not limited to: construction costs, reasonable District construction management costs, permitting costs and unanticipated costs that may arise as a result of implementing the work. City commits to funding the Project in order to complete the work.
- J. Signage & Striping: City shall complete all signage and striping as defined in the construction documents (Exhibit A).
- K. Barricades/Detour Signs: City shall place all barricades and detour signage as needed for parking restrictions and pedestrian detours during construction in order to keep the public safe and out of the construction area.
- L. Payment: City shall reimburse the District in accordance with Section 6 below.

6. REIMBURSEMENT PROCEDURES

Within 30 days of receipt of an invoice from the District, City shall reimburse District for the reasonable cost of inspection, systems engineering, staff time & management and construction costs for the Project. The estimated costs for the Project area are set forth in Exhibit B. District management and overhead costs for each Project are detailed in Exhibit B. The total reimbursement amount from City to District under this Agreement shall not exceed \$1,825,000.

The District shall invoice the City as work is constructed and as the contractor invoices the District.

The City shall approve all change orders that may be necessary to complete the work.

7. ADDITIONAL REQUIREMENTS

A. Amendments to Agreement

This Agreement may be amended only by the mutual written consent of both parties.

B. Indemnification

City shall defend, hold harmless and indemnify District, its officers, agents and employees, and each and every one of them, from and against any and all actions, damages costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by District's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities") including but not limited to liabilities arising from personal injury or death; damage to personal, real or intellectual property or the environment; contractual or other economic damages, or regulatory penalties, arising out of

or in any way connected with the performance of or the failure to perform the Agreement by City, anyone directly or indirectly employed by City or anyone for whose acts City may be liable, whether or not such liabilities are caused in part by a party indemnified hereunder, or such Liabilities are litigated, settled or reduced to judgement; provided, that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from (i) the sole negligence, or willful misconduct of District, District Contractor, any subcontractor or agent, or (ii) the actual negligence of District, District Contractor, any subcontractor or agent.

District shall defend, hold harmless and indemnify City, its officers, agents and employees, and each and every one of them, from and against any and all actions, damages costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities") including but not limited to liabilities arising from personal injury or death; damage to personal, real or intellectual property or the environment; contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with the performance of or the failure to perform the Agreement by District, District Contractor, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not such liabilities are caused in part by a party indemnified hereunder, or such Liabilities are litigated, settled or reduced to judgement; provided, that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from (i) the sole negligence, or willful misconduct of City, or (ii) the actual negligence of City.

The Existence of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of the City's rights hereunder, nor shall the limits of such insurance limit District's liability to the City hereunder. The provisions of this section and section C below shall survive any expiration or termination of the Agreement.

C. Insurance

District shall maintain, and ensure that District Contractors have obtained, and shall maintain, all of the insurance coverage requirements set forth in Attachment 2 to Exhibit A.

D. Term.

This Agreement shall become effective on the date that it is made, set forth on the first page of this Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement.

E. Notice

Unless otherwise requested by a party, all notices, demands, requests, consents or other communications which may be or are required to be given by either party to the other shall be in writing and shall be deemed effective upon service. Notices shall be deemed to have been properly given when served on the party to whom the same is to be given by hand delivery or by deposit in the United States mail addressed to the party as follows:

District: Bill Gamlen, P.E
Chief Engineer
Sonoma-Marín Area Rail Transit District
5401 Old Redwood Highway
Petaluma, CA 94954

City: Jason Nutt
Director – Transportation and Public Works
City of Santa Rosa
69 Stony Circle
Santa Rosa, CA 95404

When a notice is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a notice or payment is sent via United States Mail, it shall be deemed received seventy-two (72) hours after deposit in the United States Mail, registered or certified, return receipt requested, with the postage thereon fully prepaid. In all other instances, notices, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this section.

F. Governing Law, Venue

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

- G. Compliance with Laws. District shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.) ("ADA"), and any regulations and guidelines issued pursuant to the ADA; and (ii) Labor Code sections 1720, et seq., which require prevailing wages (in accordance with DIR determinations at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code sections 1720 et seq.

H. Entire Agreement

This instrument contains the entire agreement between the Parties, and no statement, promise, or inducement made by either Party or agents of the Parties that is not contained in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified, or altered except in writing signed by the Parties.

I. Authority of City and District

The undersigned hereby represent and warrant that he or she has authority to execute and deliver this Agreement on behalf of City or District.

J. No Waiver of Breach

The waiver by any of the Parties of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

K. Time of Essence

Time is and shall be of the essence of this Agreement and every provision hereof.

L. Incorporation of Attachments and Exhibits. The attachments and exhibits to this Agreement are incorporated and made part of this Agreement, subject to terms and provisions herein contained.

IN WITNESS WHEREOF, the District and the City have executed this Agreement as of the date first above written.

CITY OF SANTA ROSA:

SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT

By: _____
Sean McGlynn, City Manager

By: _____
Farhad Mansourian, General Manager

APPROVED AS TO FORM FOR CITY:
FOR DISTRICT:

APPROVED AS TO FORM

By: _____
City Attorney

By: _____
Tom Lyons, SMART Counsel

Attachments: Exhibit A, Scope of Project
Exhibit B, Cost Summary

Subject **RE: Jennings Crossing Update**
From Dwyer, Gregory <GDwyer@srcity.org>
To JLDuncan <jlduncan@sonic.net>
Date 06/28/2017 1:30 pm

Hello Mr. Duncan - As you are aware, The City has worked closely with SMART for the past several months on the agreement. We recently reached agreement on the language and SMART provided the revised agreement to the City for signature. The agreement was fully signed by the City and hand delivered to SMART. We are currently waiting for their signatures to fully execute the agreement. Construction work can begin once the agreement has been executed by both parties.

Thanks,

Greg Dwyer

Gregory Dwyer, PE | Associate Civil Engineer - Capital Projects Engineering
Transportation and Public Works Department | 69 Stony Circle | Santa Rosa, CA 95401
Tel. (707) 543-3838 | gdwyer@srcity.org

-----Original Message-----

From: JLDuncan [<mailto:jlduncan@sonic.net>]
Sent: Tuesday, June 27, 2017 3:35 PM
To: Dwyer, Gregory <GDwyer@srcity.org>
Subject: Jennings Crossing Update

Hi,

I'm going to be providing a Jennings crossing project update next week for the neighbors and groups that worked to get the Jennings crossing approved so I need to check out a few things myself first.

I recently had a phone conversation with Bill Gamlen, of SMART, regarding the status of the Jennings Av. rail crossing improvements project. He said that the Agreement between the City and SMART regarding the City's funding for the Jennings project was still pending. Further, that a construction schedule had not been set and would not be set until the Agreement was executed.

Is the Agreement between the City and SMART still pending?

If so, why is the Agreement still pending? The City Council approved the funding over 6 months ago and your department must have started on working out the funding with SMART even before that. My recollection is that the amount of the funding approved by the City Council took into consideration the cost projections made by SMART. Bill Gamlen did not discuss why there is a delay in executing the Agreement.

There is some concern about the delay in reopening Jennings. There has been unattributed information that SMART will not finish the improvements at Jennings until spring of 2018. The Jennings DEIR estimated that the construction of the Jennings improvements would take about 5 weeks to complete. The CPUC approved the City's Jennings Application in September 2016. If SMART does not finish the construction at Jennings until 2018 that would be a gap of about a year and a half.

Some neighbors and possibly some groups are thinking about contacting our SMART representative, members of our City Council, and the SMART Board with these concerns. Yet, without accurate information it could easily be a waste of time and attention.

So, any information regarding the overall status of the Jennings project and, in particular, the Agreement between the City and SMART (I assume that the staff of the CPUC are no longer delaying the project) will be most helpful.

Thank you,

Jim Duncan
707-528-0586

Attachment 2



Vhb Assocs. v. Orix Real Estate Equities

United States District Court for the Central District of California

September 3, 2002, Decided ; September 3, 2002, Filed; September 4, 2002, Entered on ICMS

Case No. CV 02-4710 JFW (RNBx)

Reporter

2002 U.S. Dist. LEXIS 17569 *; 2002 WL 32619802

VHB Associates Inc., et al., Plaintiffs, v. Orix Real Estate Equities, Defendants.

Subsequent History: Affirmed by VHB Assocs. v. Orix Real Estate Equities, 2004 U.S. App. LEXIS 2465 (9th Cir. Cal., Feb. 11, 2004)

Disposition: [*1] ORIX's motion for partial summary judgment granted.

Core Terms

venture agreement, parties, terms, amended complaint, binding, breach of fiduciary duty, letter of intent, partnership, designee, withdraw, joint venture, environmental contamination, partial summary judgment, fiduciary duty, genuine, covenant of good faith, breach of contract, board approval, fair dealing, conditions, Venture, partner, promise, soil

Case Summary

Procedural Posture

Plaintiffs and defendants, developers, agreed to form a general partnership, through their designees, to develop a parcel of real estate. After the parties discovered environmental contamination on the site, defendants withdrew from the project. Plaintiffs sued. Defendants moved for partial summary judgment on plaintiff's claims for breach of contract and the implied covenant of good faith and fair dealing, breach of fiduciary duty, and fraud.

Overview

As for plaintiffs' breach of contract and related claim, the court determined that the parties' letters of intent did not constitute a binding agreement because they merely outlined the terms under which defendants were interested in working with plaintiffs. The venture agreement was a binding agreement, however; it did not matter that defendants did not return a signed copy of

the agreement to plaintiffs. Defendants' consent was evidenced by their preparation of the document, their delivery of the document to plaintiffs, and their written statement to plaintiffs that they would sign the agreement. Defendants were entitled to rely on all provisions of the agreement, including the provision which allowed them to withdraw from the project because of concerns over environmental contamination. As for the breach of fiduciary duty claim, none of the acts complained of by plaintiffs established that defendants breached their fiduciary duty. Plaintiffs offered no evidence that defendants engaged in bad faith or attempted to gain an advantage over them, and defendants' conduct did not cause plaintiffs harm. Finally, as for the fraud claim, plaintiffs failed to show defendants' intent.

Outcome

Defendants' motion for partial summary judgment was granted in its entirety.

LexisNexis® Headnotes

Civil Procedure > ... > Discovery > Methods of Discovery > General Overview

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Genuine Disputes

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Materiality of Facts

chose to withdraw from the Project in accordance with Section 2.4(b) of the Venture Agreement which provides that ORIX "in its sole discretion" must be satisfied with and approve, among other things, all soils tests, environmental issues, and all other matters that arise in due diligence before the partnership would [*6] construct the Project.

IV. LEGAL STANDARD.

HN1 Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Fed. R. Civ. P. 56(c)*. HN2 The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). HN3 A party opposing a properly made and supported motion for summary judgment may not rest upon mere denials but "must set forth specific [*7] facts showing that there is a genuine issue for trial." *Fed. R. Civ. P. 56(e)*. In particular, when the non-moving party bears the burden of proving an element essential to its case, that party must make a showing sufficient to establish a genuine issue of material fact with respect to the existence of that element or be subject to summary judgment. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986).

HN4 Where the non-moving party fails to offer evidence establishing the existence of an essential element, "there can be no genuine issue of material fact since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Celotex*, 477 U.S. at 322-323. In such a case, the moving party is entitled to a judgment as a matter of law "because the non-moving party has failed to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof." *Id.*

v. COUNT I- BREACH OF CONTRACT AND THE IMPLIED COVENANT OF GOOD FAITH AND FAIR

Autonation USA, the owner of a portion of the real property to be developed by the partnership, assume responsibility for the remediation and indemnify ORIX in the event the contamination was linked to a problem with the regional groundwater. (TAC P58.)

DEALING.

A. The Letters of Intent Did Not Constitute a Binding [*8] Agreement.

Plaintiffs' contend that the letters of intent and the conduct of the parties constituted a binding joint venture that governed the parties' relationship before they entered into the Venture Agreement. The Court rejects this contention.

Letters of intent are commonly used "in real estate development deals." *Rennick v. O.P.T.I.O.N. Care, Inc.*, 77 F.3d 309, 316 (9th Cir. 1996). The letters of intent at issue here could not be binding because the Project was conditioned on Board approval and execution of the Venture Agreement. *Id.* (not an offer where subsequent Board approval is required). The letters of intent merely "outlined the business terms under which [ORIX] would be interested in working with [VHB]," they did not purport to bind ORIX or VHB to perform. (TAC, Exhs. 2-3.) See *Beck v. American Health Group Int'l, Inc.*, 211 Cal. App. 3d 1555, 1562, 260 Cal. Rptr. 237 (1989). HN5 (unenforceable letter of intent where letter was merely an "outline of our future agreement").

B. The Venture Agreement is Binding.

The Court also rejects Plaintiffs' claim that the Venture Agreement did not become binding because ORIX never returned [*9] a fully executed copy to Plaintiffs. ORIX prepared the Venture Agreement and delivered it to Plaintiffs for execution. After Plaintiffs signed the Venture Agreement, they returned it to ORIX.⁶ (TAC P47.) ORIX's President signed the Venture Agreement on behalf of ORIX and its designee. (UMF 32.) Accordingly the Court finds that the parties intended to enter into the Venture Agreement and there was a meeting of the minds as to its terms.⁷

Returning a fully executed copy of the Venture Agreement, [*10] under these circumstances, would

⁶In fact, in an effort to expedite the development of this Project, Plaintiff signed a draft version of the Venture Agreement in early May, 2000. (TAC P41.)

⁷Plaintiffs do not dispute any of the facts offered by ORIX regarding the Venture Agreement, they simply attempt to avoid the consequence of the Venture Agreement by arguing that the Venture Agreement did not replace or alter the joint venture relationship that Plaintiffs erroneously believe existed before the parties entered into the Venture Agreement.



merely have been a formality. Under California law⁸, Plaintiffs could have been compelled to perform even if ORIX did not sign. *Benard v. Walkup*, 272 Cal. App. 2d 595, 602, 77 Cal. Rptr. 544 (1969) HN6[*] ("It is well established that the receipt and acceptance by one party of a writing signed by the other only, and purporting to embody all the terms of a contract between the two, binds the acceptor as well as the signor to the terms of the writing."); *E.O.C. Ord. Inc. v. Kovakovich*, 200 Cal. App. 3d 1194, 1199-1200, 246 Cal. Rptr. 456 (1988) (contract enforceable even though one party had not signed the agreement); *Cal. Civ. Code* § 3388 (party who has signed a written contract may be compelled to specifically perform it, though the other party has not signed it).

[*11] ORIX's failure to return a signed copy of the Venture Agreement to Plaintiffs cannot be construed as a failure to consent to be bound to the contract.⁹ ORIX's consent is evidenced by its preparation of the document, ORIX's delivery of the document to Plaintiffs and ORIX's written statement to VHB that ORIX would sign the Venture Agreement. (UMF 29-32.) *James De Nicholas Associates, Inc. v. Heritage Constr. Corp.*, 5 Cal. App. 3d 421, 425, 85 Cal. Rptr. 233 (1970) HN7[*] (acceptance of contract terms by defendant shown where defendant prepared the agreement). ORIX consent is further evidenced by offering to and actually undertaking to perform. (UMF 47-48.)

C. ORIX was Entitled to Rely on the Terms of Venture Agreement.

Having determined that the Venture Agreement [*12] was binding, the Court now must decide whether Section 2.4(b) permitted ORIX to withdraw from the Project after environmental contamination was discovered on the property. Plaintiffs' contend that the implied covenant of good faith and fair dealing restricts the subjective discretion granted to ORIX, under the express terms of the Venture Agreement, to approve the

⁸ Although the terms of the Venture Agreement provide that it is to be "governed by and enforced in accordance with the laws of the State of Illinois without regard to principles of conflicts of law" (Venture Agreement § 15.2), at oral argument the parties advised the Court that because there is no difference between California and Illinois law, they agreed that the Motion should be decided under California law.

⁹ One of ORIX's real estate attorneys explained that, due to the press of other work on the Project, he simply forgot to send a fully executed copy of the Venture Agreement to VHB. (Becker Depo. 55:15-56:23.) VHB does not dispute this fact.

environmental risks. However, HN8[*] the "implied covenant cannot be utilized to limit or restrict an express grant of discretion in a contract to one of the parties thereto." *New Hampshire Ins. Co. v. Ridout Roofing Co. Inc.*, 68 Cal. App. 4th 495, 504, 80 Cal. Rptr. 2d 286 (1998), citing *Carna Developers, Inc. v. Marathon Development California, Inc.*, 2 Cal. 4th 342, 374, 826 P.2d 710, 6 Cal. Rptr. 2d 467 (1992). See also *Third Story Music, Inc. v. Waits*, 41 Cal. App. 4th 798, 808, 48 Cal. Rptr. 2d 747 (1995) ("... courts are not at liberty to imply a covenant directly at odds with a contract's express grant of discretionary power. . ."); *PMC, Inc. v. Porthole Yachts*, 65 Cal. App. 4th 882, 891, 76 Cal. Rptr. 2d 832 (1998) (rejecting claim that the covenant of good faith and fair dealing could be used to limit contract provision which conditioned [*13] performance on party's subjective satisfaction).

ORIX immediately expressed concern regarding the potential liability that could result from the contamination and ultimately decided not to accept the attendant risks. Although Plaintiffs contend that this concern was a sham, they fail to offer any evidence to support this contention. Indeed, the Court's review of the evidence results in the opposite conclusion because ORIX, VHB and others spent months working with environmental consultants and the RWCQB trying to resolve this problem before ORIX withdrew from the Project. (UMF 36, 47; TAC PP48-55; Hess Decl. PP27-39.)

The Court rejects Plaintiffs' contention that the environmental conditions were satisfied or waived when ORIX signed the Venture Agreement. HN9[*] A party does not waive the provisions of a contract by entering into that contract. Moreover, the Venture Agreement required that waiver of any of its terms had to be in writing. (Venture Agreement § 15.8.)

The Court also rejects Plaintiffs' claim that the Venture Agreement does not apply to ORIX because ORIX signed a "limited joinder" to the Venture Agreement. First, ORIX and VHB contemplated from the beginning that they would [*14] each name a "designee" as the actual partner in the joint venture to be created. (UMF 8.) VHB named VHB Hawthorne and ORIX named ORIX Hawthorne. Second, both VHB and ORIX were third party beneficiaries of the Venture Agreement and subject to its terms. See *Stratosphere Litigation L.L.C. v. Grand Casinos, Inc.*, 298 F.3d 1137, 2002 DJDAR 9285, 9288 (9th Cir. Aug. 14, 2002) (internal citation omitted) HN10[*] (rights of a third party beneficiary are based on the contract between the promisor and promisee); *Votaw Precision Tool Co. v. Air Canada*, 60



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES
September 20, 2017 - 1:30 PM
5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954**

1. Call to Order

Chair Fudge called the meeting to order at 1:30 PM. Directors Arnold, Eddie, Hillmer, Lucan, Mackenzie, Pahre, Rabbitt, Russell, Sears and Zane were present. Director Phillips arrived later.

2. Approval of the September 6, 2017 Board Meeting Minutes

MOTION: Director Eddie moved approval of September 6, 2017 minutes as presented. Director Russell second. The motion carries 10-0-0 (Director Phillips arrived later; Director Mackenzie abstain).

3. Public Comment on Non-Agenda Items

James Duncan mentioned that he has lived near the Jennings Avenue crossing for the last 35 years. He supported the City of Santa Rosa and California Public Utility Commission (CPUC) Jennings Avenue Crossing application. He urged the Board members to direct SMART staff to make construction improvements of Jennings Avenue crossing the highest priority to SMART and to complete before the arrival of the raining season.

Director Phillips arrived 1:33PM

Johanna James had comments on the Jennings Avenue crossing closure. She mentioned that she has lived near the Jennings Avenue crossing for over 39 years, and the closing of the crossing for over 2 years has made many people and students take a long detour, whereas before were able to walk across the railroad tracks on a daily basis. Many of them have supported SMART, not just for passenger service but especially for its commitment to promote pedestrian and bicycle pathways. The residents are questioning why the Jennings crossing is still closed even if CPUC application has approved. She urged to direct SMART to construct the Jennings Avenue crossing prior to the arrival of the raining season.

Steve Birdlebough mentioned that the Transportation and Land Use Coalition, Sierra Club and Friends of SMART all participated in the CPUC process to approve the Jennings Avenue Crossing Application. He stated that there is a safety issue and he is concerned about how many people jump the fence. Also, when the CPUC representatives visited the area, they pointed out four locations along the fence where various installations/electric boxes can be used for people to jump the fence. He urged the Board members to direct SMART to fix the Jennings Avenue Crossing.

Rick Coates mentioned that bicycles are overwhelming SMART's passenger service and perhaps causing some delays. He encouraged SMART's staff coordinate with Sonoma and Marin Counties Bicycle Coalitions to come up with some solutions, perhaps have bicycle rentals to make the last destination connection. He stated the bus connections needs to improve for people with disabilities. He thanked SMART's staff of all the work that has been completed.

Ben (Petaluma Resident/SMART rider) speaking on behalf of his wife who is a daily commuter and bicycle rider. He suggested that SMART holds a public meeting in the evening in Marin County where commuters can participate and give feedback. He addressed the following issues: 1) bicycle riders are competing with disabled riders; 2) folding seats need to be removed; 3) SMART should learn from BART and Caltrain and redesign the trains to accommodate more bicycles; 4) remove the snack bar and tables to create more space and 5) add a Caboose train.

Chris Rogers (City of Santa Rosa Councilmember) thanked everyone who have worked numerous years to obtain approval of the Jennings Avenue Crossing CPUC application. The City of Santa Rosa approved \$1.8M to fund the at-grade Jennings crossing last year. He stated that he was informed last week that the Jennings Agreement is being held for bargaining on a separate unrelated agreement. According to the Santa Rosa City Attorney and emails received, the Jennings Avenue Crossing Reimbursement Agreement is being held pending the approval of the long term infrastructure maintenance for the Quiet Zone issues. These two issues are unrelated and the City of Santa Rosa representatives are happy to meet with SMART staff to resolve the Quiet Zone issues. However, the City of Santa Rosa and CPUC have approved the Jennings Avenue Crossing and urged the Board to move forward the approval of the Jennings Avenue Crossing Reimbursement Agreement for the residents that rely on this at-grade crossing to have access as promised.

4. Board Member Announcements

Director Zane stated that she has requested a meeting to address the remaining issues with regard to the Jennings Avenue at-grade crossing with SMART's General Manager, SMART Board of Director Chair, City of Santa Rosa Manager, Mayor of Santa Rosa, Attorneys, and herself. She was informed by a constituent last week regarding Jennings Avenue crossing still being closed and contacted the City of Santa Rosa and SMART. She understands that this matter involves a contract issue to move forward, however this issue involves Safety and Quiet Zones. Her largest concern is that this is a high density living area with lots of

children. This section is a double track in an urban area and if you finish an at-grade crossing with a Quiet Zone you are informing the children and residents that is safe, however, I have issues with the horn not blowing. This issue can be resolve first instead of waiting and later point fingers. She stated that the fence should remained closed for safety. Chair Fudge mentioned that the meeting was suggested for the next week.

Director Mackenzie mentioned that the Governor will be considering Senate Bill 595 which contains language which enables the Metropolitan Transportation Commission (MTC) to request a vote in the nine Bay Area Counties for specified projects and programs. The Bill includes: 1) San Rafael Transit Center. Construct a replacement for the San Rafael (Bettini) Transit Center in downtown San Rafael for \$30M and 2) Provide SMART funding to extend the rail system north of Airport Station to the Cities of Windsor and Healdsburg for \$40M.

Director Lucan stated that while visiting Denver this last weekend he took the A-Line train from the Denver Airport and they are still staffing flaggers at each grade crossings. This is a very good reminder why SMART waited to have the system complete in order to start passenger service.

Director Phillips mentioned that 60% of the riders are choosing San Rafael Downtown Station as their destination and suggested having a meeting in San Rafael or Novato to discuss connectivity. He met with school district this morning as they want to provide connectivity for their teachers and the County is doing the same. He asked the General Manager if there is a staff person with connectivity knowledge that can facilitate the message.

Director Rabbitt thanked Director Zane for initiating and requesting a meeting to discuss the Jennings Avenue Crossing issue. The Sonoma County Board of Supervisors approved a contract with Ghilotti Bros. in the amount of \$633,600 for the construction of supplemental safety measures for Quiet Zones along the incorporated area of Sonoma County. He said the Johannes Hoevertsz who was the lead person for Quiet Zone Implementation for the County has been promoted to Director of Transportation and Public Works. Also, he suggested SMART have a Ridership Adaption Plan as we continue passenger service. Lastly, on Monday, September 25th at 1pm there is a State Route Highway 37 Policy Committee meeting.

Chair Fudge stated that she attended the League of California Cities meeting last week and met with the Mayor of Santa Rosa numerous times to discuss the Jennings Avenue Crossing. She is glad that Director Zane has requested the meeting.

5. General Manager's Report

General Manager Mansourian thanked the public for addressing their concerns and SMART will continue to improve passenger service.

11. Approve a Resolution Authorizing the General Manager to Execute Amendment No. 1 to Contract No. CV-DB-16-001 with Stacy and Witbeck/Herzog, Joint Venture for the Systems Work for the Larkspur Extension Project

Chief Engineer Bill Gamlen stated that the Larkspur Extension Project is a 2.2 mile extension of our passenger rail system from Downtown San Rafael to Larkspur with one proposed station. On June 21, 2017 your Board awarded a design-build contract to Stacy and Witbeck/Herzog for the construction of track, bridges, platforms and grade crossings in the amount of \$36.3M.

This amendment will design and construct the system portion of the passenger rail system, which includes: 1) Positive Train Control (PTC); 2) grade crossing protection system; 3) communication systems to provide train to dispatch communication and 4) communications system for security camera systems.

SMART chose to pursue a sole-source procurement for the train signaling and communications system. This is essential so SMART secures the same system design with the same methodologies and approach that has been applied to the Initial Operating System (IOS) especially the technology for critical systems elements like PTC system. From a safety point, it is safer to extend the existing system with the existing team rather than introducing a different system by a different team and also potentially unsafe location for two separate signaling technology to integrate. SMART has worked closely with our Federal funding partners, the Federal Transit Administration (FTA) to be sure that a sole source procurement is allowed and acceptable.

The project team prepared an estimate for the work that served as a baseline to evaluate the price proposal and have negotiated a contract price of \$8,693,101. This project has three funding sources which include: 1) Federal Transit Administration (\$22,533,000); 2) Federal Railroad Administration (\$3M); 3) Federal Highway Administration (\$3,205,079); 4) Metropolitan Transportation Commission Regional Measure 2 (\$20M); and 5) SMART (\$3,733,943). The federal grant agreement is under development and is anticipated to be executed in this fall.

Therefore, staff is recommending approving Resolution No. 2017-12 which approves Amendment No 1 to Contract No. CV-DB-16-001 in an amount of \$8,693,101 and not-to-exceed amount of \$44,993,101 and extend the terms by 246 calendar days.

General Manager Mansourian mentioned that many have address their concerns regarding Jennings Avenue Crossing today. This is the contract that will build the Systems of that Jennings Avenue Crossing contract. The issues of delay was incorrect and now SMART has a contract and can proceed with the work.

Directors' Comments

Director Lucan asked for clarification on the system component for the Downtown Novato Station that the City of Novato is funding. Mr. Gamlen responded that this would be the

**SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
PROPOSED BUDGET: FISCAL YEAR 2017-18**

and

Fiscal Year 2016-17 Year-End Report

JUNE 21, 2017

Attachment 5

TABLE 3

**PROPOSED BUDGET FISCAL YEAR 2017-18
ADMINISTRATION, CAPITAL AND OPERATIONS**

DESCRIPTION	FY 2016-17	FY 2017-18	EXPLANATION OF SIGNIFICANT CHANGES
	YEAR-END ACTUALS & ESTIMATES	PROPOSED BUDGET	
REVENUES:			
Sales/Use Taxes			
Board of Equalization Cost on Taxes	847,860	890,253	Increase in state collection costs
Sales Tax withheld by Trustee	13,600,350	14,204,100	Debt schedule increase
Net Sales Tax	21,838,038	21,917,620	
Total Sales/Use Taxes	36,286,248	37,011,973	Assumption of 2% increase
Intergovernmental Revenues			
State - Grants and Rail/Transit	469,683	4,321,096	State Commuter Rail/STA Funding, Additional Rail Sets
Federal - ISTEIA	182,499	-	Project completed in FY17
Federal - Grant Funds	8,087,468	8,157,643	Larkspur Extension Project ongoing
Other Governments	2,881,949	1,805,000	Construction of Jennings Crossing ←
Measure M - Sonoma County	10,000	285,000	Sonoma Pathway Project - Payran to Southpoint design
MTC - Bridge Tolls	5,949,012	4,073,222	7th car set final funding, Larkspur extension, transit connection signs
Total Intergovernmental Revenues	17,580,611	18,641,961	
Use of Money/Property			
Interest Earnings	473,957	295,000	Reduction due to drawdown of fund balances
Rent - Real Estate	487,197	394,088	Reduction due to lease termination for Larkspur Extension
Total Use of Money/Property	961,154	689,088	
Charges for Services			
Fare Revenue	-	2,925,000	New
Parking Revenue	-	25,000	New
Other Charges - Fees, Reimbursements	53,343	30,000	Dispatch payments
Total Charges for Services	53,343	2,980,000	
Miscellaneous Revenues			
Sale - Lease/Purchase	261,855	-	Prior Revenue not continued
Miscellaneous Revenue	72,718	50,000	
Total Miscellaneous Revenues	334,573	50,000	
TOTAL REVENUES	55,215,929	59,373,023	

- Debt service costs increase by \$603,750 in accordance with the 2012 bond sale structure.
- Significant increase in depreciation expense as our new infrastructure and vehicles are placed into service. This does not result in actual spending but is required for transparency in financial reporting.
- Salary and benefits increase of \$1.1 million to fund needed new positions, benefit cost increases, and implementation of regular salary step increments within approved salary ranges.

Capital:

Capital Budget expenditures in Fiscal Year 2017-18 decrease from \$39,195,080 to \$37,552,965. The Proposed Capital Budget includes final payments for completion of Phase 1, including acceptance of all systems, facilities and rail car sets. In addition, the following are also included in Capital expenditures:

- Authorization of \$1.4 million for progress payments for additional four rail cars funded by the State of California Cap and Trade funds.
- Payments of \$7.5 million to vehicle manufacturer for original seven rail car sets.
- Shift of \$2 million for completion of pathway segments in Novato (Franklin to Grant and Rush Creek to Novato North station) that were delayed due to permitting.
- Appropriation of \$13.4 million in anticipated expenditures for the Larkspur extension project.
- Inclusion of \$1.8 million for the City of Santa Rosa for the Jennings Avenue crossing paid entirely by the City of Santa Rosa.] ←
- Deletion of vacant and unused positions and addition of a new Associate Engineer position and reclassification of Three Junior Engineers to Assistant Engineers to allow for the progression of engineering positions for current staff. Engineering positions are funded primarily by grant and other funds for projects.

Operations:

The Proposed Operations Budget shows increases in SMART operating costs from \$16,349,139 to \$21,889,565 primarily due to increased services related to startup of passenger services. This level of expenditure is necessary to provide 24-hour dispatching, seven-day-a week scheduled service, train and signal operation, vehicle maintenance and regulatory tracking, and maintenance of all SMART infrastructure and facilities (including track, structures, grade crossings, communications, signals and pathway). Significant highlights include the following:

- Salary and benefits increase of \$2 million. This increase is for two reasons: first, the addition of 2 Engineer-Conductors, 2 vehicle Maintenance Technicians, 1 Track Maintainer, and 1 Signal Technician. Second, an increase due to anticipated staffing compared to the prior year. Positions are listed in further detail in **Table 4**.

SMART crossing stalls over liability

JENNINGS AVENUE » SR, rail officials clash over who must pay in lawsuits

By

KEVIN McCALLUM

THE PRESS DEMOCRAT

It's been five years since Santa Rosa officials began trying to figure out how to preserve a rail crossing at Jennings Avenue once regular rail service was restored to the area. It's been two years since the Sonoma-Marín Area Rail Transit agency fenced off the crossing just south of the Guerneville Road station to keep people off the tracks during train testing. And it's been a year since Santa Rosa won a hard-fought approval from state utility regulators to build the at-grade crossing over the line, a \$1.8 million project that includes a level walking surface and flashing warning gates.

Now, city officials are expressing frustration that a month after paid rail service on the 43-mile rail line began, the crossing is being held up further by a legal dispute between the city and SMART.

Councilman Chris Rogers took the unusual step last week of attending a SMART board meeting in Petaluma to express the city's frustration that the project, which the city is paying SMART to build, is stalled.

The project is "being held hostage" by SMART officials seeking leverage in an unrelated legal dispute, Rogers said.

"The bottom line is this was promised to the neighbors, the money has been allocated, so let's just get the project done," Rogers said.

At the core of the dispute is a question of who should be responsible for lawsuits that arise over rail crossings in quiet zones, the stretches of track where trains do not routinely sound their horns at rail crossings. Engineers still have full discretion to blow their whistles whenever they see fit in response to road and track conditions.

SMART wants the cities along the line to indemnify SMART, or agree that they, not SMART, are legally responsible, for such lawsuits, explained Santa Rosa City

Attorney Sue Gallagher.

The language is buried in detailed technical agreements that lay out responsibility for maintaining the conditions at rail crossings. For example, SMART is responsible for crossing gates working properly, but the city is responsible for ensuring the lines painted on the roads telling cars where to stop remain visible, Gallagher said.

"This is a complex project, and clearly there are issues that need to be resolved," Belding said. "The safety of children, and all pedestrians, is and remains SMART's highest priority. SMART is committed to continue working with all of our partners to resolve any issues."

The issue came to Zane's attention after a resident asked her why the crossing was held up. It has for years been used by schoolchildren to get to Helen Lehman Elementary School a few blocks west of the crossing. The city pushed for the crossing in part out of

Attachment 6

→ But the indemnification agreement as insisted upon by SMART's general manager, Farhad Mansourian, effectively put the city on the legal hook for any incidents at crossings, regardless of who is responsible, Gallagher said.

"This isn't about the safety of that crossing," she said. "It's about who's going to have to pay for any litigation."

While the debate over the fairness of that provision continues among staff members at SMART and other cities negotiating with it on this issue, Mansourian has said the Jennings crossing will not move forward, Gallagher said. The city views this as Mansourian using the Jennings project as leverage to win the "unilateral city indemnification of SMART" that he seeks, Gallagher said.

But Mansourian is worried about safety at the crossing and doesn't want to allow another crossing to be built in a quiet zone until these issues are worked out, said Supervisor Shirlee Zane, who agrees.

"I want to make sure that whatever we do at Jennings is ultimately going to protect the safety of the people who live there," Zane said.

It's not clear what the safety issue is. The area is fenced off and safe, SMART spokeswoman Jeanne Belding said.

a concern that closing it would force kids to either walk up to Guerneville Road, try to jump the fence as a shortcut or have to be driven to school by their parents. The idea of a bridge over the rails was abandoned following opposition from neighbors.

Zane proposed a meeting to sort the issue out, but that hasn't happened. Gallagher said the staff of SMART and cities involved, including Novato, Petaluma and Cotati, preferred to continue working toward a fair agreement.

Options include joint indemnification, or just leaving it out and letting the ample case law on liability guide ultimate responsibility, she said. *You can reach Staff Writer Kevin McCallum at 707521-5207 or kevin.mccallum@pressdemocrat.com. On Twitter @srcitybeat.*

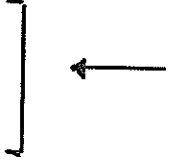
"Whatever we do at Jennings is ultimately going to protect the safety of the people who live there."

SHIRLEE ZANE, Sonoma County supervisor

On Nov 1, 2017 8:15 AM, "Nutt, Jason" <jnutt@srcity.org> wrote:

Jack –

The City Manager's Office mentioned that you are looking for information about the Jennings Avenue crossing project. Unfortunately, SMART has decided to hold approval of the construction agreement until the City signs a separate agreement associated with ongoing maintenance and liability of the Quiet Zones. While the City does not see the nexus between these two agreements, SMART continues to state that they are connected. At the September BOD meeting, Director Zane stated that the nexus was due to the safety of children using the dual track crossing and the lack of proper design now that a Quiet Zone has been established. The City and SMART jointly designed the crossing to meet the criteria for Quiet Zones and further adjusted the design at the request of the CPUC to incorporate a higher level of security for the elementary aged school children that we know will be using the crossing. That design was forwarded and approved by the CPUC staff last Spring. The City worked with SMART to finalize the Jennings Avenue crossing agreement and delivered a signed original in early June. Shortly after, we learned that SMART would not execute the Jennings Avenue Crossing agreement until the Quiet Zone maintenance agreement was executed.



Let me know if you have additional questions and would like to discuss this further.

Very truly yours,

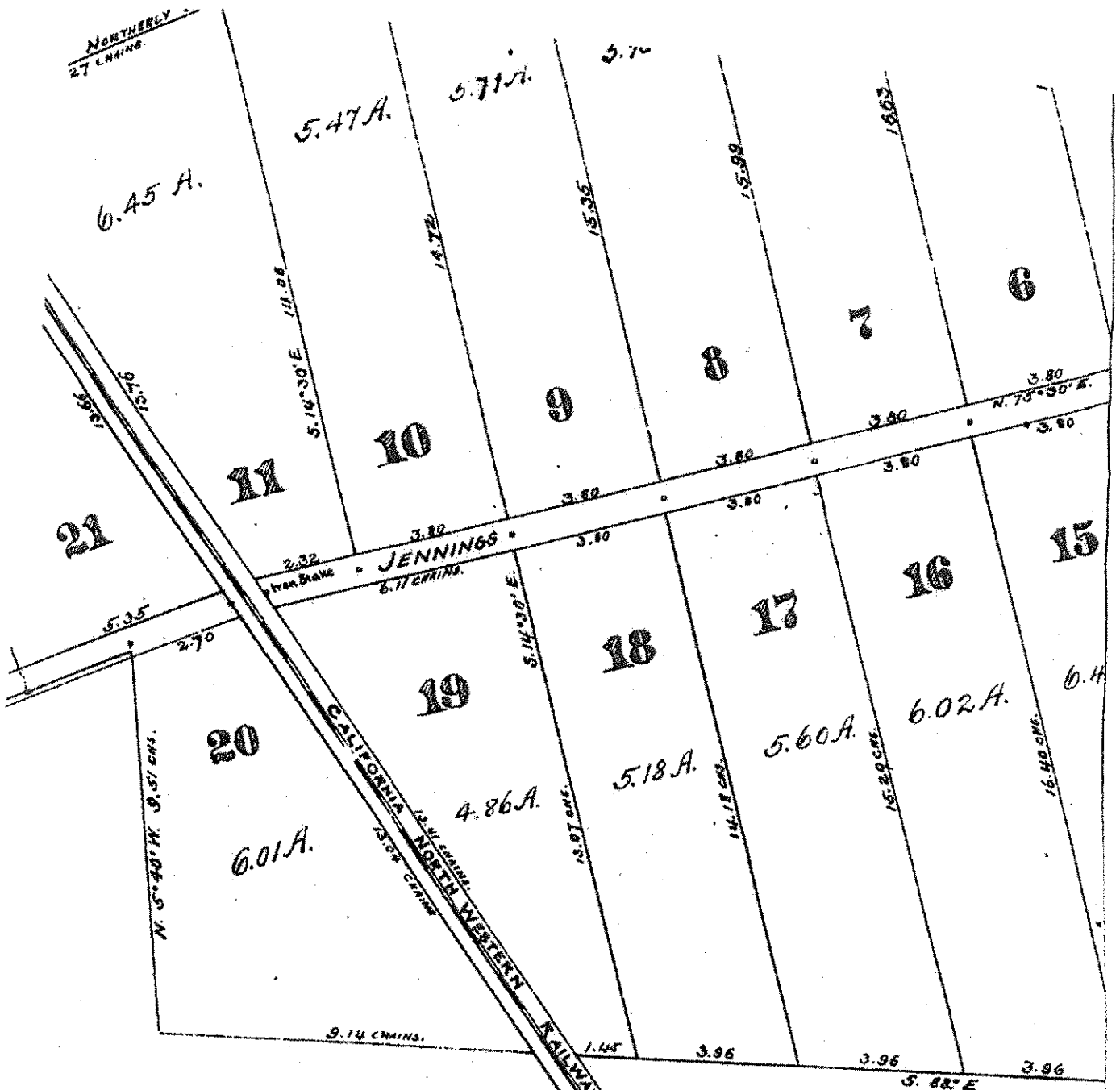
Jason Nutt | Director

Transportation & Public Works | Recreation & Parks

69 Stony Circle | 55 Stony Point Road, Santa Rosa, CA 95401

Tel. (707) 543-3810 | Fax (707) 543-3801 | jnutt@srcity.org

Attachment 7



In the Rooms of the Board of Supervisors } ss.
of SONOMA COUNTY, STATE OF CALIFORNIA

This is to certify that the BOARD of SUPERVISORS of the County of Sonoma, State of California, did on this 7th day of October, 1904, by resolution regularly passed and entered in the minutes of said BOARD, accept JENNINGS AVENUE, as designated upon this MAP, for and on behalf of the public, and dedicate the same to public use.

Witness my hand and the seal of said Board.

Attest *J. S. [Signature]*

CHAIRMAN.

J. A. [Signature] Clerk.

Recorded
County Rec
at request
October 10
part 2 of

Paid 50^{cts}.

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

November 4, 2015

Jason Nutt
Public Works Department
City of Santa Rosa
69 Stony Circle
Santa Rosa, CA 95401-9506Farhad Mansourian
General Manager
Sonoma-Marin Area Rail Transit District
5401 Old Redwood Hwy., 2nd Floor
Petaluma, CA 94954

RE: Jennings Avenue trespassing issue

Gentlemen:

While CPUC and City of Santa Rosa (City) staff continue to work on resolving proceeding A.15-05-01 to obtain CPUC authorization for a crossing at Jennings Avenue, we believe that the safety at this location needs to be addressed immediately. This safety concern is independent of the proceeding. Trespassing is happening now. It is frequent and will continue to be an issue at Jennings Avenue. The danger to trespassers will only increase as SMART tests and runs more trains through this location.



SMART has already started testing its trains, and that testing will only increase as they ramp up the frequency of trains and train speeds through the area as they approach the projected opening date for revenue service. In addition to the increase in trains and train speeds, the addition of a second track and increased height of the tracks has made crossing at the location more hazardous than ever. The loose ballast and increased, steeper slope of the track bed makes for very unsafe footing in the area.

Further, with schools now back in session, more children are apt to be using the area to cross the tracks to go to and from school. They, along with the elderly and other people that live in the area, can slip and fall, and strollers, wheelchairs, and bicycles can very easily get stuck on the tracks.

Public safety at the location must be assured by installing at least a 6-foot tall, vandal-proof fencing along both sides of the railroad right-of-way (ROW) between College Avenue and Guerneville Road to deter trespassing at this location and along the SMART ROW. If the City is concerned about access from one side of the tracks to the other, rather than continue to endanger its citizens, other transportation means can be established.

Attachment 9

Jason Nutt
Farhad Mansourian
November 4, 2015
Page 2 of 2

These current conditions represent a serious hazard. Please respond to Elizaveta Malashenko, Director, Safety and Enforcement Division, within 15 days from receipt of this letter by U.S. mail or via e-mail at elizaveta.malashenko@cpuc.ca.gov, with your written plan to fence off this pathway.

If you have any questions regarding this matter, or any other issues, please feel free to contact David Stewart at (916) 928-2515 or david.stewart@cpuc.ca.gov. Thanks in advance for your cooperation.

Sincerely,

Paul W. King (sk)

Paul W. King, PhD
Deputy Director, Office of Rail Safety
Safety and Enforcement Division
California Public Utilities Commission

Copies by e-mail only:

Jacob Park – NWP
Mitch Stogner – NCRA
Bill Gamlen – SMART
Elizaveta Malashenko, CPUC
Michael Robertson, CPUC
Roger Clugston, CPUC
Dave Stewart, CPUC
Patrick Berdge, CPUC

RESOLUTION NO. 8910

RESOLUTION ORDERING THE ABANDONMENT AND VACATION OF THE TENTH STREET RAILROAD CROSSING WHEN A CROSSING IS CONSTRUCTED AT PINER ROAD

WHEREAS, the Council of the City of Santa Rosa did on the 28th day of January, 1969 adopt Resolution No. 8881, declaring its intention to consider the vacation and abandonment of the Tenth Street Railroad Crossing, subject to certain conditions relative to the construction of a railroad crossing at Piner Road in the County of Sonoma, State of California; and

WHEREAS, said Resolution No. 8881 fixed the 18th day of February, 1969, at the hour of 8:00 p. m. in the Council Chambers, City Hall, Santa Rosa California, as the time and place for hearing all persons interested in or objecting to the proposed abandonment of the Tenth Street Railroad crossing; and

WHEREAS, said notice to consider abandonment and vacation was duly published as required by law and at least three notices of such proposed abandonment and vacation were duly posted at the crossing proposed to be abandoned, which notices recited that the said resolution had been adopted and stated the time and place of hearing; and

WHEREAS, the Council of the City of Santa Rosa has duly held the hearing at the time and place above stated and there being no objections submitted by persons interested in the vacation and abandonment of the said portion of right of way, or all objections being hereby overruled;

NOW, THEREFORE, IT IS RESOLVED by the Council of the City of Santa Rosa that that certain railroad crossing designated as the Tenth Street Railroad Crossing, will be declared unnecessary for public use and will be abandoned and vacated when a railroad crossing is constructed at Piner Road; SAVING AND EXCEPTING, that there is hereby reserved to all public utilities the right to maintain, repair, construct or reconstruct sewers, water pipes, gas pipes, power lines, and other public utility facilities now in place at said crossing, street or road, and the right of all necessary entry therefor.

IT IS FURTHER RESOLVED, that the City Clerk be and is hereby directed to cause a certified copy of such order of abandonment to be recorded in the office of the Sonoma County Recorder, when the crossing is constructed on Piner Road and the Tenth Street Crossing may be finally abandoned and vacated.

IN COUNCIL DULY PASSED this 18th day of March, 1969

AYES: (5) Mayor Meyers, Councilmen Cadding, Downey, Poznanovich, Nyersen

NOES: (0)

ABSENT: (0)

APPROVED: LEWIS A. MEYERS

Mayor

ATTEST: AGNES M. BICK
City Clerk



I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF A RESOLUTION DULY AND REGULARLY ADOPTED BY THE COUNCIL OF THE CITY OF SANTA ROSA AT A REGULAR MEETING THEREOF HELD March 18, 1969.

Agnes M. Bick
City Clerk

L 13181

City of Santa Rosa
RECORDED AT REQUEST OF
AT 14 MIN. PAST 11 A M
SONOMA COUNTY, CALIFORNIA
H. H. ... RECORDER

MAR 24 1969

DEEICAI RECORDS

BOOK 2385 PAGE 27

FEES \$ No Fee PD.

L 13484



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

FILED
4-19-16
04:59 PM

Application of the City of Santa Rosa for Approval to Construct a Public Pedestrian and Bicycle At-Grade Crossing of the Sonoma Marin Area Rail Transit ("SMART") Track at Jennings Avenue Located in Santa Rosa, Sonoma County, California.

Application No. 15-05-014
(Filing date May 14, 2015)

**OPENING BRIEF
OF THE SONOMA COUNTY TRANSPORTATION
AND LAND USE COALITION, THE SIERRA CLUB,
THE FRIENDS OF SMART, AND STEPHEN C. BIRDLEBOUGH**

STEPHEN C. BIRDLEBOUGH
684 Benicia Drive
Santa Rosa, CA 95409
Telephone (707) 576-6632
Facsimile (707) 576-6616
E-Mail affirm@friendshouse.org

As an individual and representing
the Sonoma County Transportation
and Land Use Coalition, the Sierra
Club, and the Friends of SMART

Date: April 15, 2016

Attachment 11

1 [Presentation, questions and answers of Bill Gamlen, Chief Engineer for the Sonoma
2 Marin Area Rail Transit District beginning at about 3:06:30 of the Video Archive and ending at
3 about 3:20:05.]

4 Mr. Gamlen: Good evening, Mr. Mayor, Councilmembers. My name is Bill Gamlen. I
5 am the chief engineer with SMART. Staff has asked me to come this evening and make a few
6 remarks on the Jennings Crossing and, perhaps, answer any questions that you might have for
7 SMART.

8 First and foremost, SMART supports the City in whatever it chooses to do at the
9 Jennings Crossing. We've been working very closely with staff and the CPUC looking at this
10 location probably for well over two years. We will continue to do that. I'd also like to point out
11 the CPUC does have jurisdictional authority here. We work very closely with the CPUC up and
12 down our corridor and all of our grade crossings. I would also like to point out that, really,
13 safety is paramount for us anywhere up and down the crossing – grade crossings especially. So,
14 whatever happens here, we will work very closely with staff and the CPUC to make sure that
15 these crossings are absolutely safe.

16 And finally, I would like to commend staff. They've done a fabulous job. They've
17 worked very hard on this for a couple of years now and put together a good team to do it and
18 they've a pleasure to work with.

19 Mayor Sawyer: Thank you. Any questions? Mr. Wysocky.

20 Councilmember Wysocky: I do. Thank you, Mr. Gamlan, for your presentation. In
21 working with the CPUC, did they give any rationale why they don't consider closing of private
22 crossings the equivalent of closing public crossings?

23 Mr. Gamlen: Private crossings are a little bit different with railroads and the users of
24 private crossings. They're a little bit more informal and things are left a little bit more up to the
25 railroad and the private crossing user to determine how that crossing is going to work. The
26 CPUC, of course, can step in at any time if they feel that things are unsafe. In fact, they have
27 directed us to consolidate a couple of crossings in the system.

28

29

1 Councilmember Wysocky: So, just a couple? Or five or six? Roughly.

2 Mr. Gamlen: Two.

3 Councilmember Wysocky: Two? Okay. Do we – do you have any idea of how long the
4 fencing that would be required, should an overcrossing be approved at Jennings? What type of
5 barriers would prevent people from crossing – accessing and crossing them?

6 Mr. Gamlen: SMART hasn't really gotten into details of fencing throughout our
7 corridor, so I'm not sure exactly what we would do at this location. We have other locations like
8 this throughout the corridor where we have well-worn, unauthorized paths, so it is an issue that
9 we're looking into.

10 Councilmember Wysocky: So, it's anticipated that this – since there are other locations
11 where it's already happening, it would – this would be highly susceptible for it to happen again
12 at this spot. Is that a fair statement?

13 Mr. Gamlen: An unauthorized crossing there?

14 Councilmember Wysocky: Well, if someone to cut through a fence, whatever the barrier
15 is, just like they're doing at the example I gave earlier at 3rd Street where the Joe Rodota Trail is;
16 where the trail turns away from the tracks.

17 Mr. Gamlen: Perhaps. I mean, again, we haven't really done much fencing in the
18 corridor; certainly any right-of-way fencing. So locations that exist, that fencing was there when
19 we took over the corridor.

20 Councilmember Wysocky: Right. But you anticipate there would be additional fencing
21 for quite – for a distance, which you're not certain of.

22 Mr. Gamlen: Correct.

23 Mayor Sawyer: Thank you. Ms. Carlstrom.

24 Councilmember Carlstrom: Thank you, Mr. Mayor. Thank you very much for being
25 here. I appreciate you taking the time to come and talk with us. Can you tell me what some of
26 the other jurisdictions along the line have done with respect to crossings like ours?

27

28

29

1 Mr. Gamlen: I don't think we've had a location like this up and down the line. We have
2 existing pedestrian crossings but no other new pedestrian crossings.

3 Councilmember Carlstrom: Well, let's be careful not to classify this as a new
4 pedestrian crossing. What has been SMART's role with those other jurisdictions?

5 Mr. Gamlen: We work closely with the jurisdictions on the at-grade crossings. We do a
6 field diagnostic with both City staff, with CPUC, sometimes even the Federal Railroad
7 Administration. That group establishes the safety treatments that will be done at each crossing.
8 It's documented. The CPUC, everybody signs off on it. CPUC approves it and that becomes
9 what is implemented in the field.

10 Councilmember Carlstrom: Thank you. So, there are costs incurred to SMART in
11 analyzing and dealing with these crossings.

12 Mr. Gamlen: Sure. Staff costs. Yeah.

13 Councilmember Carlstrom: Okay. I think those are all the questions I have for you, sir.

14 Councilmember Wysocky: Quick follow-up while you're looking – can you distinguish,
15 sir, between the Copeland Creek Crossing in Railroad Park and this one here, if it was an at-
16 grade crossing for ped-bike?

17 Mr. Gamlen: What do you mean by distinguish?

18 Councilmember Wysocky: Well, my understanding is Copeland Creek is a ped-bike
19 crossing.

20 Mr. Gamlen: Yeah. There's two existing pedestrian crossings at Copeland Creek, one on
21 each side of the creek, very close together.

22 Councilmember Wysocky: And the CPUC is okay with their adequacy – of their safety?
23 They've been – they've said that they [U/I 03:12:03]

24 Mr. Gamlen: Correct. We made some significant improvements there a couple of years
25 ago.

26 Councilmember Wysocky: Would that be similar to what you expect at a Jennings at-
27 grade crossing?

1 Mr. Gamlen: I would expect a Jennings at-grade crossing to look very similar.

2 Councilmember Wysocky: Thank you.

3 Mr. Gamlen: Bells, gates, lights, full treatment.

4 Councilmember Wysocky: Thank you.

5 Councilmember Carlstrom: I remembered myself. Thank you. Can you clarify for me
6 what the various ownership interests are at any of these given crossings?

7 Mr. Gamlen: Of the crossing itself and the equipment and the purposes?.

8 Councilmember Carlstrom: When we look at that picture and it's got the yellow overlay
9 and the streets and the rail line and the pedestrian and the culverts, who owns what? What does
10 SMART own?

11 Mr. Gamlen: SMART owns the improvements within the right-of-way, within the
12 SMART right-of-way.

13 Councilmember Carlstrom: Okay. What if we elect no project? Earlier, an assertion was
14 made that if there is no crossing at Jennings, then pedestrians will have to go around to
15 Guerneville. I don't believe that's actually the case. I think that SMART may be forced to act.
16 What's your sense of that?

17 Mr. Gamlen: SMART would make the railroad safe. That could involve fencing across
18 Jennings.

19 Councilmember Carlstrom: Indeed. Thank you.

20 Mayor Sawyer: Mr. Coursey.

21 Councilmember Coursey: Thanks for being here, Bill. I wanted to follow up on a
22 question that Councilwoman Combs asked earlier about the possibility of combining 6th, 7th, and
23 8th and making it one crossing with unified gates and signals. Have you ever heard of that before
24 and do you know if that's a possibility?

25 Mr. Gamlen: Interesting question. I think that's probably a little bit more for the CPUC
26 to weigh in on. Generally, I think the CPUC would look at each crossing independently, because
27 you have the potential for an incident to exist at each one of those. In reality, because, those

28

29

1 crossings are so close together, they're probably going to look like one because the gates are all
2 going to come down pretty close order. But they would also be set up so if something happened
3 to a crossing, they fail in a safe condition, they wouldn't all fail. One would fail closed and the
4 others would remain open.

5 Councilmember Coursey: Do you know if the CPUC considers the two bike-ped
6 crossings on either side of Copeland Creek as two crossings or one.

7 Mr. Gamlen: Good question. I believe two, but I'm not a hundred percent certain of that.

8 Councilmember Coursey: Okay. And a bike-ped crossing with the swing gates, as we've
9 seen on the pictures here, is that considered a safe crossing?

10 Mr. Gamlen: Absolutely.

11 Councilmember Coursey: Thank you.

12 Mr. Gamlen: SMART and the CPUC wouldn't put anything in like that wasn't safe.

13 Mayor Sawyer: Mr. Schwedhelm.

14 Vice Mayor Coursey: Thank you. I'm not sure if you're in the right role with SMART,
15 but I was wondering, when this discussion started coming up, when SMART went the voters for
16 support of this rail line, was there any marketing or public information saying a consequence of
17 supporting this may result, depending upon circumstances, in the closure of some roads along
18 the line?

19 Mr. Gamlen: You know, I don't know the answer to that question.

20 Vice Mayor Coursey: [Fair enough 03:15:19].

21 Mayor Sawyer: Miss Combs.

22 Councilmember Combs: Thank you very much for coming here and helping us with a
23 difficult decision. I'd like to follow up on one of my other Councilmember's questions. I
24 thought I heard you say that you have a number of well-worn, unauthorized paths. I mean, I
25 think you used the phrase, "well-worn, unauthorized paths."

26 Mr. Gamlen: I believe I did. Yes.

27 Councilmember Combs: So, are those paths unsafe?
28
29

1 Mr. Gamlen: They are probably not unsafe today, but as soon as the railroad becomes
2 active, yes. They become unsafe. We're very concerned about people being in the right-of-way
3 once trains start running, and in some cases, trains are running today.

4 Councilmember Combs: Does SMART plan to make safety measures other than barrier
5 fencing at well-worn, unauthorized paths?

6 Mr. Gamlen: I'm not sure what measures you might be thinking of. Fencing's probably
7 going to be the primary deterrent for keeping people out of the right-of-way. We will certainly
8 have an education piece as we start running trains, to make people more aware of train activity.

9 Councilmember Combs: I've seen fencing cut; even really good fencing cut. I'm
10 assuming you have, too. If that's a persistent problem, does a well-worn, unauthorized path,
11 where there is a persistent breaching of the barrier, rise to the occasion where SMART would
12 provide some safety mechanism for allowing a safer crossing?

13 Mr. Gamlen: I guess you're leading to creating a crossing at that location?

14 Councilmember Combs: I'm trying to lead there without having said if for you. Yes.

15 Thank you.

16 Mr. Gamlen: [laughs]

17 Councilmember Combs: Thank you for saying it.

18 Mr. Gamlen: I mean, again, it wouldn't be up to us. We'd have to discuss that location

19 with the CPUC, probably the local jurisdiction would weigh in; again, a diagnostic review. I'm
20 not sure that would be the first place we'd go to try and prevent folks from getting into the right-
21 of-way.

22 Councilmember Combs: Okay. And I'm being told that, because we gave this crossing
23 up for cars, it's considered an abandoned crossing for pedestrians, even though it's not clear that
24 it was ever given up for pedestrians and bicycles. Why is this being viewed as an old – an
25 abandoned crossing for pedestrians and bicycles, when it was apparently abandoned for cars?

26

27

28

29

1 Mr. Gamlen: I don't have the history on that, but there's clearly no formal crossing
2 treatments to get anybody safely across the track there today, and there wasn't any existing
3 before we started reconstructing the railroad and it –

4 Councilmember Combs: Although, we built a culvert device so that people don't walk
5 through the creek. There's a, you know, a metal –

6 Mr. Gamlen: Sure. Sure.

7 Councilmember Combs: – culvert to cross.

8 Mr. Gamlen: Sure, but there's nothing to get across the tracks. I don't believe there's
9 any sort of a DOT number that exists would – might acknowledge this as a crossing location,
10 and it sounds like Southern Pacific asked the City to give this up for Guerneville –

11 Councilmember Combs: And for cars –

12 Mr. Gamlen: – because they're in close proximity.

13 Councilmember Combs: – is what I'm guessing, though.

14 Mr. Gamlen: Right. Right.

15 Councilmember Combs: And that people weren't as conscious of walking and bicycling
16 then.

17 Mr. Gamlen: Right.

18 Councilmember Combs: So there's not – there's not records for a distinction between
19 the two. Is that –?

20 Mr. Gamlen: I don't know for certain. Not to my knowledge.

21 Councilmember Combs: Okay. Okay, thank you very much again for coming.

22 Mr. Gamlen: You're welcome.

23 Councilmember Combs: I'm having trouble not viewing the fact that every time we look
24 at overhead pictures for the last hundred years, we see a crossing there. I'm having trouble
25 viewing that as not an existing crossing. So – and I'm very concerned about well-worn,
26 unauthorized paths.

27 Mr. Gamlen: As are we.

1 Councilmember Combs: Thank you.
2 Mayor Sawyer: Mr. Wysocky.
3 Councilmember Wysocky: One quick follow-up on the subject of crossings, sir. Did
4 SMART ever publish a listing of legal crossings?

5 Mr. Gamlen: Yes, I imagine we have. I mean, all of our crossings are recorded with the
6 Department of Transportation.

7 Councilmember Wysocky: Did you share that?

8 Mr. Gamlen: The CPUC would have that list as well. It's public information.

9 Councilmember Wysocky: So that – would that be shared with staff, then?

10 Mr. Gamlen: Yeah.

11 Councilmember Wysocky: And in researching that, would you review aerial maps or a
12 history of the crossings as, quote, that ones that weren't legal, as to why they were excluded?
13 Any idea what thought went into that process.

14 Mr. Gamlen: Yeah, I'm not sure if we've looked at it from that angle.

15 Councilmember Wysocky: Okay. Thank you.

16 [Presentation, questions and answers of Bill Gamlen, Chief Engineer for the Sonoma
17 Marin Area Rail Transit District ending at about 3:20:05 of the Video Archive.]

18 **END OF TRANSCRIPT OF PARTIAL HEARING**

19
20
21
22
23
24
25
26
27
28
29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

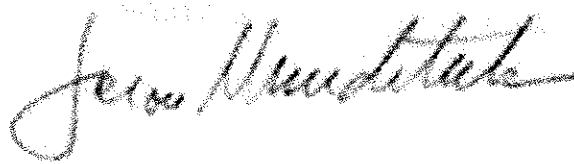
CERTIFICATION

I, Jason Mundstuk, certify the following: I am a professional transcriptionist with 15 years experience that includes legal, medical and forensic transcriptions. I have extensive experience in preparing deposition summaries. I am a citizen of the United States. I am over 18 years of age. My business address is 5500 College Avenue, Oakland, CA 94618 dba Randy Black & Associates.

I declare under penalty of perjury that I have truly, accurately, and completely transcribed the recording provided to me to the best of my ability and that the transcript is provided above. I further guarantee the confidentiality of this material.

Electronically signed on this first day of April, 2016 in the County of Alameda, California.

Jason Mundstuk



Randy Black & Associates

5530 College Ave #4
Oakland, CA 94618
Phone: 510-652-3717
E-mail: jmundstuk@gmail.com

Date: Monday October 22, 2018

To: Mayor Chris Coursey
Vice Mayor Chris Rogers
Council Member Julie Combs
Council Member Ernesto Olivares
Council Member John Sawyer
Council Member Tom Schweldhelm
Council Member Jack Tibbets
via email

From: Pete Gang, Architect
e-mail: pete@commonsensedesign.com

Re: 10-22-18 City Council Study Session – All-Electric Ready Construction

Dear Mayor, Vice Mayor, and Members of the City Council,

Part One: The context

Two weeks ago, the Intergovernmental Panel on Climate Change (IPCC) released its **Special Report on Global Warming of 1.5°C**. The Report says that **the community of nations must limit global temperature rise to 1.5°C above pre-industrial averages in order to maintain environmental conditions on earth that are compatible with life as it has evolved.**

Doing so requires that we greatly accelerate efforts now underway to reduce anthropogenic emissions of greenhouse gases.

The Special Report makes abundantly clear that in order to have a likely chance of limiting global warming to 1.5°C, **we must completely stop using fossil fuels and have in place methods of removing CO2 from the atmosphere by 2040.**

That's 22 years from today. Doing so requires that we be willing to engage in a concerted society-wide transformation.

In contrast, the greenhouse gas (GHG) reduction goals set forth in the City's 2012 Climate Action Plan (CAP) were barely consequential. Even so, according to the Regional Climate Protection Authority (RCPA), the City will miss them.

This sobering reality is the context for the work of the Friends of the Climate Action Plan (FoCAP).

Part Two: Threat multiplier

To be clear, **climate change doesn't cause wildfires**. Wildfires are caused by lightning, by downed power lines, by faulty electrical equipment, by arsonists, and by other means. **The U.S. Military correctly views climate change as a "threat multiplier," increasing the probability of existing risks**. Through effects on temperature, drought, decreasing soil moisture, etc., climate change "loads the dice" in favor of wildfires.

Climate change doesn't cause wildfires in much the same way that alcohol doesn't cause teen pregnancies.

Part Three: All-electric-ready

Following last October's devastating wildfires, a group of climate activists met to discuss how our rebuilding efforts could increase resilience to future disasters, minimize the use of limited resources, build community, and reduce climate impacts.

We chose to focus our efforts on **eliminating the use of natural gas in residential construction. Natural gas is a fossil fuel whose use must be completely eliminated by 2040**. Natural gas continues to be sold to us as "clean natural gas," but this cheery appraisal neglects the fact that natural gas is composed primarily of methane (CH₄), which itself is a potent greenhouse gas with global warming potential (GWP₂₀) over 100 times that of CO₂ when compared over a period of 20 years!

We are asking for a City ordinance requiring that all new residential construction be "**all-electric-ready**." **All-electric-ready** construction grudgingly accepts that most homeowners will end up using natural gas as the primary energy source for space heating, water heating, cooking, and clothes drying. Making a home "all-electric-ready" simply adds electric circuits at time of initial construction at the locations of those gas appliances. This pre-wiring makes the home easily convertible to all-electric at a future date.

And once converted to **all-electric**, true **zero net energy** (ZNE) is possible with the simple addition of onsite renewable electricity.

Part Four: My experience

I am a CA-licensed architect and general building contractor with a career-long interest in energy matters and environmental matters. Over the course of the last 8 - 10 years, I **have consistently nudged my clients away from using natural gas and toward all-electric construction**. Doing so involves the use of:

- electric mini-split heat-pump heating/cooling systems
- electric heat-pump water heaters
- (electric) induction ranges, and

- electric clothes dryers

My clients are happy with their all-electric homes. While they may not be aware of them, they all enjoy the following benefits (as compared to using gas appliances):

- reduced operating costs (due to highly-efficient heat-pump appliances)
- better indoor air quality (no combustion byproducts in the indoor air)
- no risk of CO exposure (even though Code still requires installation of CO detectors in all new residential construction)
- non-participation in the ruinous practice of hydraulic fracturing (“fracking”)
- congruence of lifestyles and values


UN Secretary General Antonio Guterres recently said, *“Nothing less than the future and the fate of humankind depends on how we rise to the climate challenge.”* [*The Guardian, “Fossil fuel dependence poses ‘direct existential threat,’ warns UN Chief,” September 11, 2018*]

Bold climate action demands that all of us – planners, professionals, policymakers, homeowners, citizens, consumers, and all others – be fully engaged in this, the greatest challenge to the future of our species.

And the City of Santa Rosa needs to claim a leadership role in the global fight against climate change.

As one small but consequential step, I strongly urge the Council to pass an ordinance requiring all-electric-ready residential construction.

Respectfully submitted,



Pete Gang, Architect, LEED-AP