

# *City of Brisbane*

## *Planning Commission Agenda Report*

**TO:** Planning Commission For the Meeting of 6/12/14

**FROM:** Ken Johnson, Senior Planner, via John A. Swiecki, Community Development Director JAS

**SUBJECT:** **Freeway 101 at Beatty Avenue;** Use Permit UP-2-14, Interim Use Permit for Existing Billboard to Remain for 5 Years; Robert Hatton, Clear Channel Outdoor, applicant; Oyster Point Properties (Universal Paragon Corporation), owner; APN 005-340-050

**Request:** The applicant requests approval of an Interim Use Permit for an existing billboard (“nonappurtenant advertising structure” per Brisbane Municipal Code Section 17.36.020.A.14) to remain for an additional five years. The structure, oriented to Highway 101, is located approximately 100 ft. south of Beatty Avenue at Hwy 101. The structure consists of two illuminated 23 ft. by 60 ft. faces, each at a 65-degree angle to the freeway with a total height of 55 ft. The requested approval would extend the previously approved Use Permits UP-4-82, UP-12-89, UP-5-94, UP-17-99, UP-20-04 and UP-1-10.

**Recommendation:** Conditionally approve Use Permit UP-2-14 per the staff memorandum with attachments, via adoption of Resolution UP-2-14 with Exhibit A containing the findings and conditions of approval.

**Environmental Determination:** Existing off-premise signs are categorically exempt from the provisions of the California Environmental Quality Act per Section 15301 of the State CEQA Guidelines. The exceptions to this categorical exemption referenced in Section 15300.2 do not apply.

**Applicable Code Sections:** The existing billboard is a “nonconforming sign” per Brisbane Municipal Code Sections 17.36.020.A.15 & 17.36.030.C, which is allowed to remain per BMC Section 17.36.080. BMC Chapter 17.41, adopted June 10, 1996, establishes the process for approving interim uses in the Baylands subarea.

**Background:** On February 28, 1983, as part of a legal settlement of a lawsuit concerning enforcement of the City’s billboard prohibition, 6 existing billboards along Bayshore Boulevard were removed and the City Council conditionally approved Use Permit UP-4-82 for a billboard located at the southwesterly corner of the 101 Freeway at Beatty Avenue. As detailed in the attached original conditions of that approval, the original use permit was granted for a term of six years, and the applicant was allowed to apply for additional extensions. In regard to subsequent

extensions, the original permit specified that "in considering [the owner's] application for such extension, Brisbane will give due consideration to the character of the neighborhood and environs in which the structure is located and whether there has been a material change therein such that the structure is no longer compatible with the character of said neighborhood."

**Analysis and Findings:**

BMC Section 17.02.060 requires a finding of consistency with the general plan and any applicable specific plan adopted by the City Council for approval of use permits. BMC Sections 17.41.060.A-F require findings that the interim use will not be detrimental to the public health, safety or welfare, or injurious to nearby properties or improvements; that the interim use will not create any significant environmental impacts; that the interim use will not obstruct redevelopment; that all required public utilities and other infrastructure are or will be available; and that the use will be a benefit to the property and/or the public.

Consistent with General/Specific Plan--General Plan Policy 332 provides for approval of interim uses in the Baylands Subarea. BMC Section 17.41.020 defines "interim use" as one that is not expressly authorized under the redevelopment plan, any specific plan or the zoning regulations, provided that the use is not expressly prohibited in the General Plan or BMC Section 17.41.030. General Plan Program 35f states, "Prohibit new commercial billboard sites and seek to remove those currently in place." The lawsuit settlement discussed above resulted in the removal of six billboards, and established terms for evaluating future extensions of the billboard in question, and these terms still apply. In evaluating the extension there has not been a material change in the character of the Baylands subarea such that the billboard is no longer compatible with the uses of the immediately surrounding neighborhood. No specific plan for the Baylands has yet been adopted as required for development under the PD-TC Planned Development-Trade Commercial General Plan land use designation, and no changes in the character or uses in the vicinity have taken place.

Not Detrimental or Injurious to Neighborhood or City--With no material changes having occurred in the Baylands subarea, allowing the billboard to remain for an additional 5 year term would not be detrimental to the neighborhood.

No Significant Environmental Impacts--Extension of the permit will not result in any physical changes to the existing structure. The operation of existing facilities are categorically exempt under California Environmental Quality Act per Section 15301 of the State CEQA Guidelines.

No Obstruction to Redevelopment-- In considering approval of the Interim Use Permit, the Planning Commission must find that the use "...will not obstruct, interfere with, or delay the intended redevelopment of the property..." (BMC Section 17.41.060.C). The billboard is located within the Brisbane Baylands Specific Plan area, in proximity to the planned Hwy 101/Geneva Ave interchange. Based on interchange design work undertaken to date, the existing billboard could potentially be impacted by future interchange improvements and/or related grading. However, the Baylands Draft EIR, of which that interchange is a part, is still in process so an element of uncertainty remains. Even if the sign location conflicts with the future interchange, there is no established schedule for the construction of interchange improvements. Final interchange design, funding and construction would involve a multi-year program, and it appears

unlikely that allowing the sign to remain for the next five years would interfere with a future interchange project. However, to ensure that the sign will not interfere with the interchange project in the unlikely event it proceeds during the term of the interim use permit, a condition of approval is included that the owner of the sign shall remove it if it is identified as an obstacle to public improvements.

Availability of Required Utilities and Infrastructure—The site is adequately served, given the use's limited needs.

Benefits to the Property and the Public--BMC Section 17.41.060E requires that the use will provide a benefit to the property, such as the elimination of blight or hazardous conditions, and/or a benefit to the public, such as jobs, revenues, needed goods or services. In this case, the benefit provided to the public is the payment of an annual business license fee to the City of Brisbane. The business license fee rate is 8% of the sign's annual gross receipts. According to the City Finance Department, the annual business license fee has averaged approximately \$47,000 for the last 5 years. A local employment program per BMC Section 17.41.060.F is not feasible for this.

Attachments: Draft Resolution UP-2-14  
Original Conditions of Approval- UP- 4-82  
Applicant's Plans & Photos

**RESOLUTION UP-2-14**

**A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE  
CONDITIONALLY APPROVING INTERIM USE PERMIT UP-2-14  
TO PERMIT BILLBOARD (NONAPPURTENANT ADVERTISING STRUCTURE) TO  
REMAIN AT THE SOUTHWEST CORNER OF THE 101 FREEWAY AND BEATTY  
AVENUE**

WHEREAS, Clear Channel Outdoor, the applicant, applied to the City of Brisbane for Use Permit approval for an existing billboard along the 101 Freeway at Beatty Avenue, such application being identified as Use Permit UP-2-14; and

WHEREAS, on June 12, 2014, the Planning Commission conducted a hearing of the application, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the staff memorandum relating to said application, the plans and photographs, the written and oral evidence presented to the Planning Commission in support of and in opposition to the application; and

WHEREAS, the Planning Commission finds that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings attached herein as Exhibit A in connection with the Use Permit.

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of June 12, 2014, did resolve as follows:

Use Permit Application UP-2-14 is approved per the conditions of approval attached herein as Exhibit A.

ADOPTED this twelfth day of June, 2014, by the following vote:

AYES:

NOES:

ABSENT:

Karen Cunningham  
Chairperson

ATTEST:

JOHN A. SWIECKI, Community Development Director

## EXHIBIT A

**Action Taken:** Conditionally approved Use Permit UP-2-14 per the staff memorandum with attachments, via adoption of Resolution UP-2-14.

### Findings:

1. Approval of the use permit is consistent with the general plan and any applicable specific plan adopted by the city council, specifically General Plan Policy 332 and Program 35f, in that a condition of approval of the Interim Use Permit seeks to remove the billboard pursuant to the 1983 legal settlement agreement;
2. The proposed interim use and the conditions under which it would be operated will not be detrimental to the public health, safety or welfare, or injurious to properties or improvements in the vicinity, in that there has been no material change in the character of the environs of the billboard such as to necessitate its removal, as detailed in the staff memorandum;
3. The proposed interim use will not create any significant unmitigated adverse environmental impacts, as detailed in the staff memorandum;
4. The proposed interim use will not obstruct, interfere with, or delay the intended redevelopment of the property in accordance with the uses anticipated in the General Plan or any adopted specific plan applicable to the site, in that redevelopment of the project site under any Specific Plan that might be approved by the City Council is not anticipated to begin within the requested term of the Interim Use Permit;
5. All public utilities and other infrastructure improvements required in order for the interim use to be conducted in a safe, sanitary, and lawful manner are either available at the site or shall be installed by the applicant, prior to occupancy, in a manner approved by the City Engineer, given the conditions of approval, as detailed in the staff memorandum;
6. The use will provide either or both of the following benefits: (a) A benefit to the property, including, but not limited to, the elimination of blight or unsightly or hazardous conditions, or the installation of improvements that will facilitate redevelopment of the property; (b) A benefit to the public, such as the creation of jobs or revenues or the provision of needed goods or services, in that outdoor advertisements businesses pay an annual business license fee, based upon reported gross receipts, averaging approximately \$47,000 over the last 5 years;
7. Given the type of use, it is not reasonably possible to establish a program to encourage employment of Brisbane residents in the construction and operation of the use.

**Conditions of Approval:**

- A. The Use Permit shall be valid for a term of five (5) years from the effective date, and shall expire June 27, 2019.
- B. An agreement in a form acceptable to the City Attorney shall be recorded that will require the applicant to remove the sign, at their own expense, if the City determines that the sign will interfere with or obstruct any planned public improvements that require use of the site. Removal shall be completed within thirty (30) days after written notice to remove is given by City to the applicant.
- C. Prior to the expiration of the five (5) year term, the owner of the sign structure may apply for an extension of the Use Permit, and in considering the application for such extension, the City of Brisbane will give due consideration to the character of the neighborhood and environs in which the structure is located and whether there has been a material change therein such that the structure is no longer compatible with the character of said neighborhood.
- D. The right to apply for an extension of the Use Permit, as set forth above, shall not be deemed to establish a vested right in the owner with respect to the Use Permit or the structure therein authorized.
- E. At the expiration of the Use Permit or its extension, the owner of the sign structure shall cause the structure to be removed at the sole cost and expense of the owner of the structure.

### **Original Conditions of Sign Approval (UP-4-82)**

- a. The use permit shall be valid for an initial term of six (6) years, commencing ninety (90) days from issuance of the condition use permit or from the date construction of the sign commences, whichever is sooner.
- b. During the initial six (6) year term, removal of the structure can be required by Brisbane if it determines that there has been a material change in the character of the neighborhood such that it is no longer compatible with the uses of the immediately surrounding neighborhood. If Brisbane requires removal before the end of such six (6) years, Brisbane will pay [the owner of the structure] the sum of \$694.44 for each full month remaining in the six (6) year period following the date of removal (1/72 of the \$50,000 amortization).
- c. ...At the expiration of the term of the conditional use permit, said expiration shall be without prejudice to [the owner's] right to apply for an extension of the term for successive like periods, and in considering [the owner's] application for such extension, Brisbane will give due consideration to the character of the neighborhood and environs in which the structure is located and whether there has been a material change therein such that the structure is no longer compatible with the character of said neighborhood.
- d. The right to apply for an extension of the Conditional Use Permit, as set forth... above, shall not be deemed to establish a vested right in [the owner] with respect to the Conditional Use Permit or the structure therein authorized.
- e. At the expiration of the initial term or extension thereof, [the owner] shall cause the structure to be removed at the sole cost and expense of [the owner of the structure].

**SUPPORTING STATEMENTS**  
**for Interim Use Permit**

Description of the proposed use: Continued use of the two billboard facings in place at the subject site.

---

---

---

Days and hours of operation: 5:00 am thru 1:00 am

Number of employees on site: 0

Company vehicles and equipment on site: 1 truck and crane visit the site once per month or less.

---

List the types and quantities of hazardous, toxic, flammable or explosive materials or wastes are involved with the use:

None

---

---

List any governmental permits required for the handling or storage of the hazardous materials involved with the use:

None.

---

---

List any materials and equipment which will be stored outside and explain how will these be screened from public view:

None.

---

---

Will the use generate air emissions, odors, smoke or dust? If so, how will these be controlled?

None.

---

---

---



Will the use generate noise or vibration? If so, how will these be controlled?

None.

Will the use generate glare, heat or other impacts? If so, how will these be controlled?

None.

Will the use generate waste materials? If so, how will these be disposed?

The vinyl advertising displays are recycled after use by Clear Channel Outdoor clients.

How will waste materials from the use be prevented from polluting storm water runoff?

N/A.

What utilities and other infrastructure is required for your use? Are these existing on the site? If not, how will they be provided?

There is an existing electrical supply used to light the sign facings.

The Brisbane Municipal Code requires that your use benefit the property. List the benefits below: (a) eliminating blight or unsightly or hazardous conditions, (b) by installing improvements that will facilitate redevelopment of the property, (c) other:

The signs generate significant income for the property's owner.

The Brisbane Municipal Code requires that your use benefit the public. List the public benefits below: (a) creating jobs, (b) generating revenues, (c) providing needs goods or services, (d) other:

The sign generates revenue (b) through the annual payments from Clear Channel Outdoor to Brisbane for a business license.

Will you establish a program to encourage employment of Brisbane residents in the construction and operation of the use? Explain:

N/A - no new construction is necessary.

Will your use include any of the following?

YES NO

[ ] [  ] the manufacture, processing, handling, treatment, transportation, recycling, or storage of hazardous, toxic, flammable or explosive materials or wastes in quantities for which a permit is required from any governmental agency

[ ] the dumping, processing, sorting, recycling, recovery or storage of garbage, debris, scrap materials, or similar items (excluding the recycling of concrete or brick and the storage and processing of soils, rock, and other similar materials)

[ ] [  ] uses that create unsightly visual impacts or the appearance of blight as seen from any other location with the city, such as automotive dismantling and wrecking yards, junk yards, outside storage of used equipment, trailers, or vehicles not being offered for sale, and outside storage of glass, metal, paper, cardboard, or other material collected for recycling or disposal (except as otherwise permitted)

Vinyl is recycled.

Will your use include any of the following?

YES NO

- [ ] [  ] heavy manufacturing operations, including concrete or asphalt batch plants, foundries and other activities involving the fabrication of metal products from raw materials, processing of chemicals, and the rendering or refining of oils or animal materials

What is the length of time for which you are applying for a Interim Use Permit?

5 years

(For initial terms of up to 5 years, Planning Commission approval is required. For initial terms of more than 5 years, City Council approval is required, following a recommendation from the Planning Commission.)

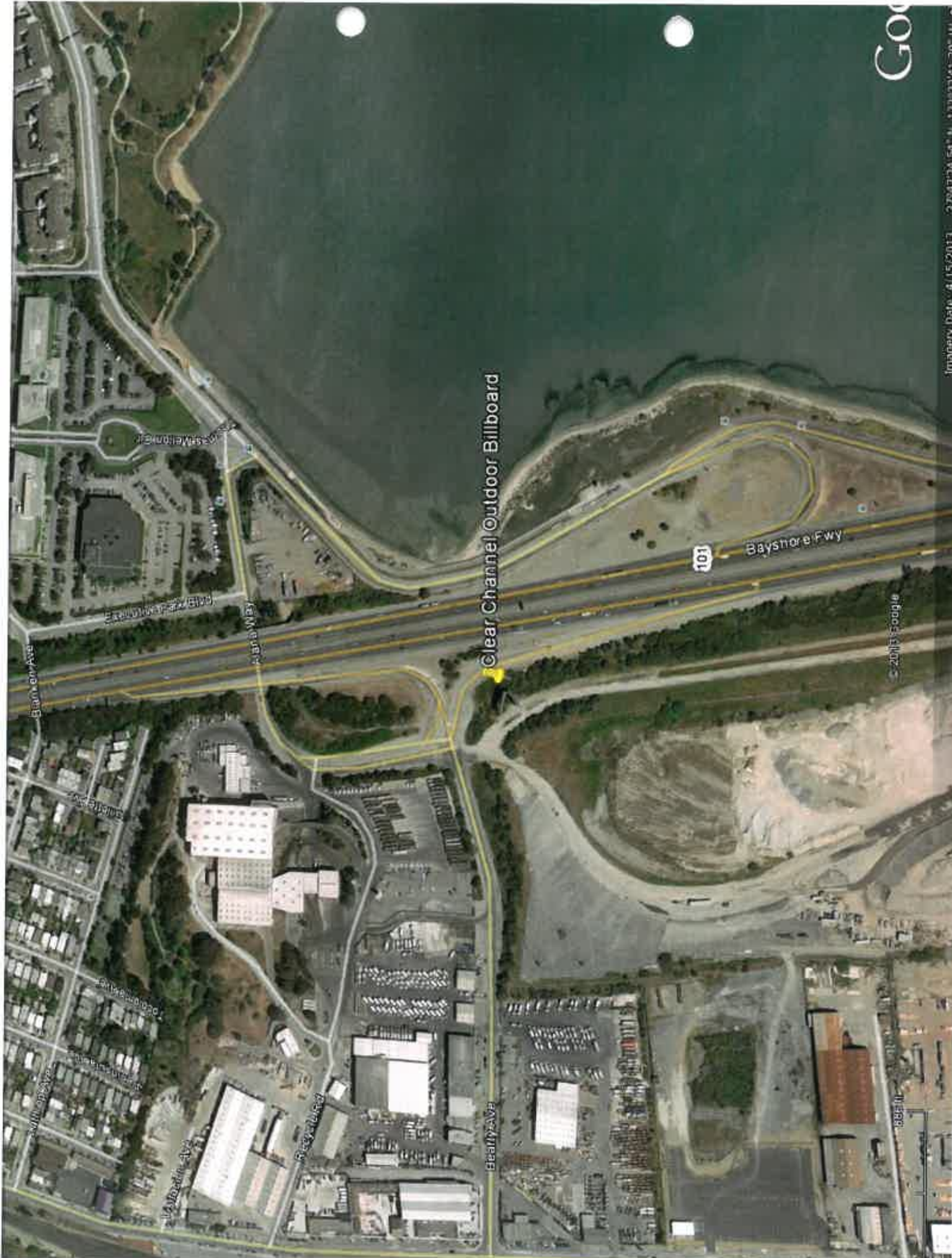
*Robert M. Holt*

APPLICANT'S SIGNATURE

*Agent for Clear Channel Outdoor*

*3/25/2014*

DATE



Clear Channel Outdoor Billboard

101

Bayshore Fwy

© 2013 Google

GOO

Imagery Date: 4/15/2013 37°42'24.54" N 122°23'41.39" W

F112

GRATIFICATION  
WITHOUT DELAY.

Command  
PERFORMANCE  
SALES EVENT



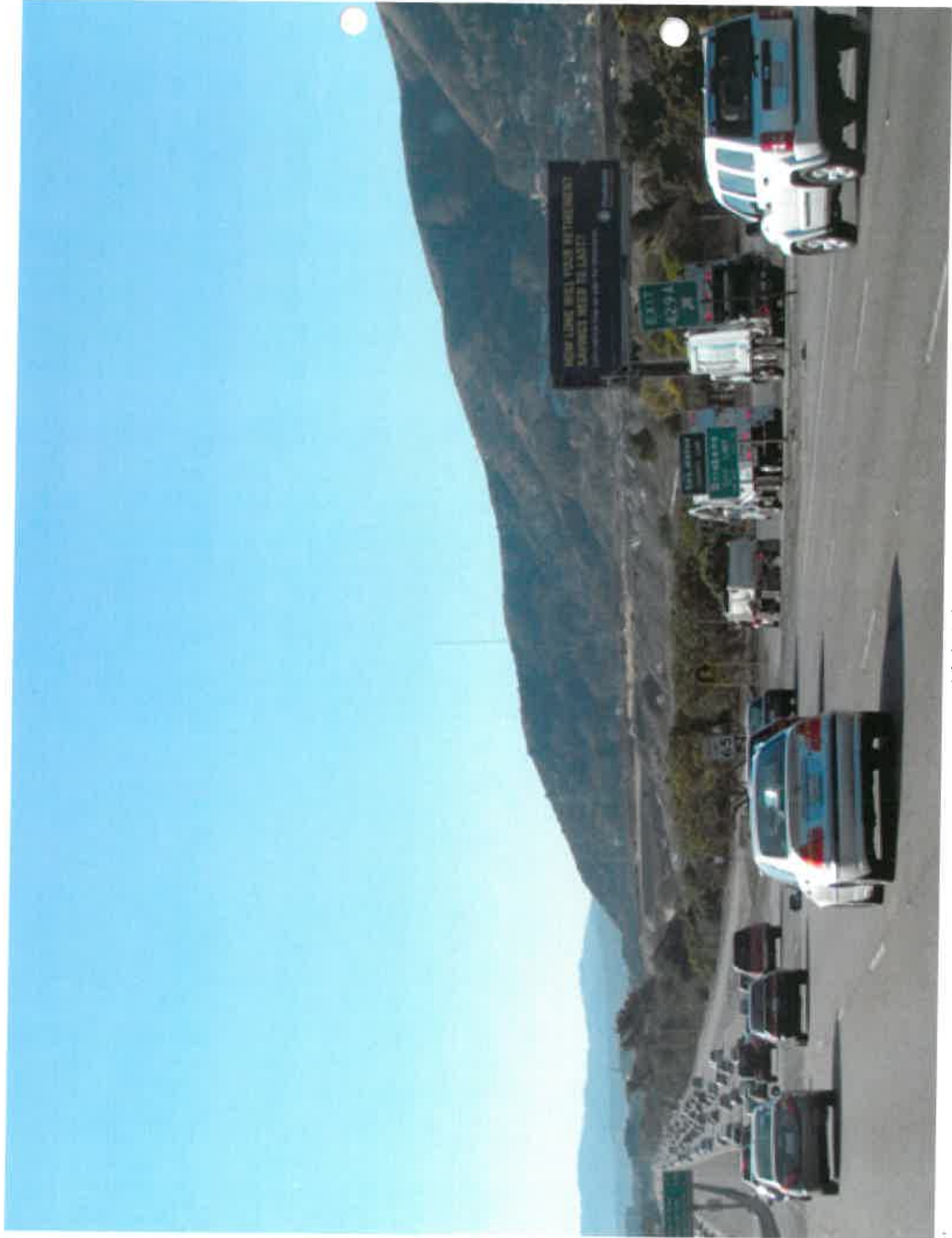
ENDS MARCH 31



CLARQUE

001615

F.1.13



F.1.14