

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

Approving an Easement Agreement between the City and Avalon Ocean Ave. LP for acquisition of an easement on, over and under the property at 1150 Ocean Avenue so that the SFMTA can operate and maintain the traffic signal at the intersection of Ocean Avenue and Brighton Avenue; and urging the Board of Supervisors to approve the Easement Agreement.

SUMMARY:

- AvalonBay Communities constructed a residential and commercial development at 1150 Ocean Avenue (the development), which is on the north side of the intersection of Ocean Avenue opposite Brighton Avenue. As a condition of the development, the Planning Department required that the project upgrade the traffic signal at the intersection to control the driveway access to the development.
- At the SFMTA's direction, signal hardware was installed into the driveway that detects when traffic approaches the intersection.
- Avalon and the SFMTA executed an agreement, under which Avalon paid for SFMTA's design and inspection work for the signal system, as well as a lump sum for maintenance of the signal system for its useful life. Avalon also approved recordation of an easement to allow SFMTA access to the driveway in order to operate and maintain the detection hardware.
- Under City Charter Section 9.118, the Board of Supervisors must approve acquisition of the easement because obligations under the easement extend beyond 10 years.

ENCLOSURES:

1. SFMTAB Resolution
2. Easement Agreement
3. November 20, 2012 Letter to Planning Department
4. Unity Plaza Resoluton: <https://www.sfmta.com/sites/default/files/agendaitems/2015/7-7-15%20Item%2010.6%20Contract%20-%20Unity%20Plaza%20Resolution.pdf>

APPROVALS:

DATE

DIRECTOR _____ 10/26/15

SECRETARY _____ 10/26/15

ASSIGNED SFMTAB CALENDAR DATE: November 3, 2015

PURPOSE

The proposed resolution approves an Easement Agreement between the City and Avalon Ocean Ave. LP for acquisition of an easement on, over and under the property at 1150 Ocean Avenue so that the SFMTA can operate and maintain the traffic signal at the intersection of Ocean Avenue and Brighton Avenue; and urging the Board of Supervisors to approve the Easement Agreement.

GOAL

The project, a traffic signal modification at the intersection of Ocean Avenue and Brighton Avenue, is consistent with the SFMTA Strategic Plan and meets the following goals and objectives:

Goal 1: Create a safer transportation experience for everyone

Objective 1.3: Improve the Safety of the Transportation System

Goal 3: Improve the environment and quality of life in San Francisco

Objective 3.2: Increase the transportation system's positive impact on the economy

DESCRIPTION

Background:

Avalon Ocean Ave. is a residential and commercial development at 1150 Ocean Avenue, which is on the north side of the intersection of Ocean Avenue opposite Brighton Avenue. This was the site of the former Kragen Auto Parts store. As a condition of development, the Planning Department required the project to upgrade the traffic signal at the intersection to control the driveway access to the development. (See further discussion under the Environmental Review section.)

The project constructed improvements along two street frontages (Ocean Avenue and Lee Avenue) and modifications to the traffic signal at Ocean and Brighton Avenues to control the north leg of the intersection, which is a driveway. The work included the installation of vehicle and pedestrian signal indications so that the traffic signal controls the driveway approach of 1150 Ocean Avenue. The contractor installed signal hardware into the driveway that detects when traffic approaches the intersection.

Construction was completed in 2013.

Easement:

The SFMTA and Avalon negotiated an agreement (Agreement) under which Avalon was responsible for designing and constructing the modification to the existing traffic signal system, subject to review and approval by the SFMTA. Avalon fully funded the design and construction, and provided the SFMTA with \$42,500 for reviewing plans, inspecting the signal modifications, programming the signal system, permanently striping the intersection, and installing signage. The Agreement also required Avalon to pay \$22,500 the costs of maintenance and electrification of the signal for its useful life. This Agreement was finally executed by the parties as of May 15, 2015. The Director of Transportation signed the Agreement on behalf of the SFMTA under his contract delegation authority. Avalon has paid all funds required under the Agreement.

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The SFMTA requires an easement from Avalon to operate and maintain the signal detection system installed under the driveway at 1150 Ocean Ave.

Under the Agreement, Avalon agreed to the recordation of a permanent easement for installation, operation and maintenance of sensors and associated striping. The parties have agreed to the terms of an easement, which is attached as Enclosure 2.

PUBLIC OUTREACH

Not applicable. As explained below, this project was described in the Balboa Park Plan. During the Balboa Park Station Area Plan Transportation Study and the environmental review of the Balboa Park Plan, significant outreach was undertaken regarding all aspects of the Plan, from approximately 2001 to 2010.

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

Avalon has paid all funds required for construction and maintenance of the project.

The SFMTA's total cost for the project, including design, construction and maintenance, is \$65,000 which Avalon has paid.

ENVIRONMENTAL REVIEW

- In 2006, Korve Engineering prepared the Balboa Park Station Area Plan Transportation Study. The Study recommended a protected westbound left turn phase (a left turn arrow) at the intersection of Ocean Avenue and Brighton Street, adjacent to the Avalon Ocean Ave. site.
- On December 4, 2008, the Planning Commission certified the Balboa Park Station Area Plan Final Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA) in Motion 17774. In Motion 17775, adopted the same day, the Planning Commission made findings under CEQA, including adopting mitigation measures in a Mitigation Monitoring and Reporting Program (MMRP) to address projected impacts of traffic increases on Ocean Avenue resulting from development that would cause the westbound left turn to become very congested.
- The Korve study and EIR provided no guidance on how to implement a left turn phase. The Korve Study noted that the improvement would need to be reviewed and implemented by the SFMTA; the MMRP provided that the project sponsor would have to confirm with the SFMTA as to the feasibility of implementation of the left turn phase.
- On May 21, 2009, the Planning Commission passed Motion 17885, which adopted CEQA findings relating to a conditional use authorization for the Avalon Ocean Ave. project, including adopting the mitigation measure from the Balboa Park EIR MMRP regarding the signal changes recommended in the Korve study.
- Beginning in 2010, the SFMTA supported the Avalon Ocean Ave. project construction to include review of the signal modification, which also included a signal controlled approach from the development at Brighton and Ocean. The EIR required the developer of the former Kragen Auto Parts site (now Avalon Ocean Ave.) to construct the westbound left turn phase.

- All left turn options are complicated by the Light Rail Vehicle (LRV) track. Either a left turn pocket would have to be installed on the track, or the tracks would have had to be separated further apart so that a left turn lane could be installed off the trackway.
 - Any signal operation with the left turn on the track would have directly impacted and delayed Muni operations.
 - Moving the track would have been a very expensive and disruptive undertaking. The right-of-way is too narrow so sidewalks would either have to be narrowed or the right of way widened (which would likely require acquiring and demolishing existing homes and businesses).
- In 2012, the SFMTA performed an analysis of the intersection using the Korve Study volume projections. The analysis showed that the intersection experienced delays in excess of 100 seconds either with or without left turn phases; interestingly, the analysis showed that the intersection delay would be greater overall with left turn phases. The SFMTA conducted traffic counts at the intersection in October 2012 after the Avalon Ocean Ave. grocery store had opened and found that the volumes were less than initially projected in the Study, and that the intersection delay ranged from 32 to 46 seconds, with the best performance occurring in the no left-turn phase operation.
- On November 20, 2012, the SFMTA sent a letter to the Planning Department summarizing these findings. The letter concluded that the left turn phase that had been recommended in the EIR was infeasible and should not be implemented (Enclosure 3).

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Board of Supervisors must approve acquisition of the easement under Charter Section 9.118 because SFMTA's maintenance obligations under the easement extend beyond 10 years.

RECOMMENDATION

Staff recommends that this Board approve an Easement Agreement between Avalon Ocean Ave. LP for acquisition of an easement on, over and under the property at 1150 Ocean Avenue so that the SFMTA can operate and maintain the traffic signal at the intersection of Ocean Avenue and Brighton Avenue.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On May 21, 2009, the Planning Commission (Commission) approved Motion No. 17885, granting conditional use authorization to AvalonBay Communities, Inc. (Avalon) to build up to 173 new dwelling units and to provide approximately 29,500 square feet of ground-floor commercial spaces at 1150 Ocean Avenue, which is on the north side of the intersection of Ocean Avenue opposite Brighton Avenue (Project); and adopted findings under the California Environmental Quality Act (CEQA) related to the Project; and,

WHEREAS, To facilitate vehicular and pedestrian access to the Project, Avalon was required to, among other things, extend Brighton Avenue through the Project site and create new public sidewalks adjoining the new residential buildings; and,

WHEREAS, As a condition of the development, the Planning Department required that the Project upgrade the traffic signal at the intersection to control the driveway access to the development; and,

WHEREAS, In accordance with the CEQA, the Project's environmental impacts were analyzed in the Balboa Park Station Area Plan Environmental Impact Report (Area Plan EIR), which found that the Project would, among other impacts, detrimentally affect the traffic flow westbound on Ocean Avenue; and,

WHEREAS, To mitigate that impact, the Area Plan EIR proposed a mitigation measure to adjust the intersection signal timing to provide a short protected left-turn green phase for westbound traffic at the Ocean Avenue/Brighton Avenue intersection (Mitigation Measure); the Mitigation Measure required the project sponsor to confirm with the San Francisco Municipal Transportation Agency (SFMTA) as to the feasibility of implementation of the Mitigation Measure; and,

WHEREAS, As required by CEQA, the Commission made a separate and independent determination of the Project's specific and cumulative impacts based on the analysis and conclusions of the Area Plan EIR; the Commission concluded that the Mitigation Measure should be included in the Project's Mitigation Monitoring and Reporting Program (MMRP), adopted as part of Motion No. 17885, although SFMTA had not yet reviewed and analyzed the feasibility of the Mitigation Measure; and,

WHEREAS, After adoption of the relevant approvals and issuance of entitlements, agreements and authorizations to construct the Project components, Avalon became aware that the Project MMRP erroneously identified the direction of traffic subject to the signal timing change as "eastbound" rather than "westbound" as described in the Mitigation Measure; and,

WHEREAS, After the Project was under construction and negotiations between SFMTA and Avalon were underway in regard to the design of the new signal at Brighton and Ocean Avenues, SFMTA staff reviewed and analyzed the feasibility of the Mitigation Measure; and,

WHEREAS, After the analysis, which included obtaining traffic counts, SFMTA staff determined that implementing the Mitigation Measure would cause unacceptable delays to the Muni Metro K Line, which operates in both an eastbound and westbound direction on Ocean Avenue, and to vehicle traffic, and that in any event, the extent of the impacts projected in the Korve Study and the Area Plan EIR had not materialized and were not significant; and,

WHEREAS, On November 20, 2012, the City Traffic Engineer wrote to the Planning Department, detailing the reasons why the SFMTA had determined that the Mitigation Measure was infeasible and concluding that no feasible alternative signal or other improvements could be approved by the SFMTA; and,

WHEREAS, On July 7, 2015, the SFMTA Board of Directors, under Resolution No. 15-104, adopted the CEQA findings relative to the Area Plan EIR made by the Planning Commission in Motion 17775 and now relies on such findings for the actions taken in this resolution; and,

WHEREAS, Except as stated below, the SFMTA Board of Directors adopts the CEQA findings made by the Commission in Motion 17885; and,

WHEREAS, The SFMTA Board of Directors has reviewed the November 20, 2012 letter to the Planning Department, finds that it provides substantial evidence that the Mitigation Measure will result in unacceptable traffic and transit delays and potential traffic safety hazards, and therefore declines to adopt it; and,

WHEREAS, The SFMTA and Avalon executed an agreement under which Avalon designed and constructed a modification to the existing traffic signal system to provide for vehicle and pedestrian signal indications controlling the driveway approach of 1150 Ocean Avenue, subject to review and approval by the SFMTA; provided the SFMTA with \$42,500 for reviewing plans, inspecting the signal modifications, programming the signal system, permanently striping the intersection, and installing signage; and paid the SFMTA \$22,500 for the costs of maintenance and electrification of the signal system for its useful life; and,

WHEREAS, Avalon's contractor also installed signal hardware into the driveway that detects when traffic approaches the intersection; and,

WHEREAS, The SFMTA requires an easement on, over and under the property at 1150 Ocean Avenue so that it can access the driveway in order to operate and maintain the detection hardware and associated striping; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors finds that, in accordance with CEQA Guidelines Section 15162, no supplemental review of the Project is required because 1) there are no modifications to the Project proposed as a result of the Easement Agreement; (2) adoption of the Easement Agreement does not result in substantial changes with respect to the circumstances under which the Project would be implemented, requiring major revisions to the Area Plan EIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the Area Plan EIR; and (3) no new information of substantial importance to the Project has become available, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified, that would indicate (a) the Project will have significant effects not discussed in the Area Plan EIR or (b) significant environmental effects will be substantially more severe; and be it further

RESOLVED, That the SFMTA Board of Directors approves an Easement Agreement between Avalon Ocean Ave. LP for acquisition of an easement on, over and under the property at 1150 Ocean Avenue so that the SFMTA can operate and maintain the traffic signal at the intersection of Ocean Avenue and Brighton Avenue; and urges the Board of Supervisors to approve the Easement Agreement.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 3, 2015.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2

Free Recording Requested Pursuant to
Government Code Section 27383

Recording requested by and
when recorded mail to:

City and County of San Francisco
San Francisco Municipal Transportation Agency
Real Estate Section
1 South Van Ness, 8th Floor
San Francisco, CA 94103
Attn: Kerstin Magary, Senior Manager

with a copy to:

Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

(Space above this line reserved for Recorder's use only)

EASEMENT AGREEMENT

(Portion of Assessor's Parcel No. Lot 4, Block 3180)

This Easement Agreement (this "**Agreement**"), by and between the City and County of San Francisco, a municipal corporation ("**City**"), acting by and through its Municipal Transportation Agency ("**SFMTA**"), and Avalon Ocean Avenue, L.P., a Delaware limited partnership ("**Avalon**") or ("**Owner**"), is executed as of _____, 2015 (the "**Effective Date**").

RECITALS

A. Owner owns that certain real property at 1150 Ocean Avenue in San Francisco described on the attached Exhibit A (the "**Encumbered Property**"). Owner is the developer of a residential and commercial development to be located at the Encumbered Property known as Avalon Ocean Avenue, as further described in San Francisco Planning Commission Motion No. 17885.

B. Pursuant to an Agreement dated May 15, 2012, to improve traffic circulation in the vicinity of the Property for the benefit of Owner's tenants and the community ("Signal Agreement"), Owner agreed to modify the signal system at the intersection of Ocean Avenue and Brighton Avenue in San Francisco.

C. City requires an easement ("**Easement**") in, on and over the Encumbered Property to install, operate and maintain traffic sensors and associated traffic striping. As a condition of

the Signal Agreement, Owner agreed to record such Easement once it has been approved by all required City agencies.

D. The Easement includes the driveway to and from the Encumbered Property. The driveway is constructed of a four-inch concrete topping slab over a waterproofed structural slab. The City acknowledges this is not the City's standard paving detail and agrees to not drill, core or penetrate the concrete more than three inches when exercising its rights under this Easement.

E. Owner is willing to grant such easement to City, and City is willing to acquire such easement from Owner, on the terms and conditions specified in this Agreement.

AGREEMENT

NOW, THEREFORE, Owner and City agree as follows:

1. **Grant of Easement.** Owner grants to City a permanent easement (the "Easement"), on, over and under the portion of the Avalon Property described in the attached Exhibit B (the "Easement Area"), for the Permitted Uses (as defined in Section 3), subject to the terms and conditions set forth in this Agreement and the Reserved Uses (as defined in Section 5).

2. **Easement Uses.** City shall have the right to use the Easement Area to access, use, maintain, service, operate, repair and replace the Sensors (defined as follows) and associated traffic striping and to exercise its rights and obligations under this Agreement (collectively, the "**Permitted Uses**"). The Easement Area shall not be used for any purpose other than the Permitted Uses, nor shall City take any actions in the Easement Area that block access over the Easement Area to the Encumbered Property except to the extent that such actions are temporary, are reasonably necessary for City's exercise of the Permitted Uses, are performed in a manner that reasonably minimizes interference with access to the Easement Area, and occur during customary working hours (except to the extent otherwise necessary to respond to an emergency situation). City shall not leave any City equipment or material that temporarily blocks access to the Easement Area unattended at any time.

The "**Sensors**" shall mean devices installed underneath the surface of the roadway for the purpose of detecting vehicles exiting the Encumbered Property so the traffic signal can allocate time for those vehicles to enter the intersection. For purposes of this agreement, "Sensors" shall also include associated lane striping, as depicted on Exhibit C. The Sensors shall remain City's property at all times and City shall have the right to remove any or all of the Sensors or one or more of the Sensors out of active service at any time and for any length of time. City shall also have the right to replace the Sensors from time to time with any new technology that may be developed that serves the same purpose as the Sensors.

3. **Construction Activities and Uses.** Each party shall deliver at least 72 hours' prior written notice to the other party before commencing any construction or maintenance activities in the Easement Area, except in the event of any immediate danger to health or property, in which case such party shall verbally notify the other party as soon as reasonably possible. Regarding the SFMTA, such notice shall be delivered to the SFMTA traffic signal shop at 2650 Bayshore Blvd., Daly City, CA 94014 (or subsequent location) (phone: 415-550-2736). Regarding Owner, such notice shall be delivered to the address in Section 8. Either party may

restrict access within the Easement Area if reasonably necessary for such party's permitted construction or maintenance activities in the Easement Area, provided that such performing party shall take commercially reasonable efforts to minimize interference with the other party's permitted uses of the Easement Area. Each party shall conduct its construction or maintenance activities in compliance with all applicable laws, through sound construction practices and in a lien-free manner, and each party shall diligently pursue its construction or maintenance activities to completion; provided further that the City shall not drill, core or penetrate more than three inches when installing, maintaining or replacing Sensors, with the understanding that penetrating deeper may damage the waterproofing below the four-inch concrete topping slab on the driveway. Except as otherwise expressly set forth in this Agreement, a performing party shall secure and pay for any building and other permits and approvals, government fees, licenses and inspections necessary for the proper performance and completion of its construction or maintenance activities in the Easement Area, including, but not limited to any required City (acting in its regulatory capacity) approvals. In addition to the foregoing obligations, prior to performing any construction work within the Easement Area, Owner shall ensure that any Owner employee or contractor performing such construction work attends the City's required Trackside Safety Class for all contractors working within the general location of City rail rights-of-ways and complies with any other standard requirements City requires of all such contractors.

4. **Owner Use of the Easement Area**

(a) Owner shall not take, nor permit any other party to take, any action in, on, under or about the Easement Area that could damage, endanger or interfere with the Sensors or could unreasonably interfere with the Permitted Uses. City agrees and acknowledges that Owner's use of the portions of the Easement Area that are not covered by any Sensors situated underneath the surface of the Easement Area (to the extent permitted under this Agreement) as a driveway to service the residential and commercial use of the building located on the Encumbered Property shall not be deemed to damage, endanger or interfere with the Sensors or unreasonably interfere with the Sensors, so long as such use complies with the terms of this Agreement.

(b) Without limiting the foregoing, except for the Improvements (defined as follows), Owner shall not construct or place any structures or improvements of any kind or character on, or that protrude into, the Easement Area other than the Improvements (defined as follows) without first obtaining the City's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. The "**Improvements**" shall mean the following: a cover surface (the "**Driveway**"), provided that the Driveway can bear a load sufficient to support a 30,000-pound truck and has sufficient drainage

5. **Maintenance and Repair**

(a) City will install, operate, maintain, repair and, at its sole election, replace or remove, the Sensors at its sole cost and in a safe, secure and sanitary condition; provided, however, that if any repair or replacement work arises from the actions of Owner or any Agents (defined as follows) of Owner, Owner shall reimburse City for the cost of such repair or replacement work within 30 days following City's written demand for such costs. "**Agents**" shall mean a party's officers, agents, employees, representatives, trustees, managers, members, contractors or invitees. City shall keep the Easement Area free from any liens arising out of any

work performed, material furnished, or obligations incurred by or for City therein, and City shall maintain the Sensors in a safe, secure, and sanitary condition.

(b) Owner will install, operate, maintain, repair and, at its sole election, replace or remove, the Improvements at its sole cost; provided, however, that if any repair or replacement work arises from the actions of City or any Agents of City, City shall reimburse Owner for the cost of such repair or replacement work within 30 days following Owner's written demand for such costs. Owner shall maintain the Improvements in a safe, secure, and sanitary condition.

(c) Each party, at its sole expense, shall comply with all applicable laws, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force with respect to such party's activities in the Easement Area. Each party shall conduct, or shall cause its Agents to conduct, all activities in the Easement Area in a safe and reasonable manner. After any entry by City in the Easement Area, City shall restore any affected portion of the Easement Area to substantially the same condition it was in immediately prior to such entry (to the extent that such condition complies with the conditions set forth in this Agreement).

6. **Hazardous Materials.** Neither party shall use, store, locate, handle or cause or permit the dumping or other disposal or release on or about the Easement Area of any Hazardous Material, provided that the parties shall have the right for such activities to the extent the Hazardous Material is reasonably necessary for the Permitted Uses or Owner's use of the Easement Area in compliance with this Agreement, is used in a quantity customarily used for such use, and is used in compliance with applicable laws. If there is a leakage or spill of Hazardous Materials on the Easement Area, the responsible party shall bear the cost and expense to clean the contaminated property in compliance with applicable laws.

"**Hazardous Material**" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Easement Area or are naturally occurring substances in the Easement Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Easement Area.

7. **Insurance**

(a) Each party shall procure at its expense and keep in effect at all time, in form and from an insurer reasonably accept to the other party, as follows:

(i) Commercial general liability insurance with limits not less than \$1,000,000 each occurrence, combined single limit for bodily injury and property damage, including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. Such policy shall include endorsements for (1) false arrest, detention or imprisonment or malicious prosecution; (2) libel, slander or defamation of character; (3) wrongful entry or eviction or invasion of the right of privacy. Any deductible under such policy shall not exceed \$10,000 for each occurrence.

(ii) Automobile liability insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable. Any deductible under such policy shall not exceed \$10,000 for each occurrence.

(iii) If using any employees to perform work within the Easement Area, or if using any contractors using such employees, Workers' Compensation Insurance, including Employers' Liability, with limits not less than \$1,000,000 for each accident, covering all employees employed in or about the Easement Area to provide statutory benefits as required by the laws of the State of California.

(b) All insurance policies required hereunder shall (i) be written on an occurrence basis, (ii) name the other party, together with its officers, agents and employees, as additional insureds, (iii) specify that such policies are primary insurance to any other insurance available to the additional insureds with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought, (iv) provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, (v) afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period, and (vi) be endorsed to provide 30 days prior written notice of cancellation, non-renewal or reduction in coverage to the other party.

(c) If requested, a party shall deliver to the other party certificates of insurance in form and with insurers satisfactory to the requesting party, evidencing the coverages required hereunder, together with complete copies of the policies at such requesting party's request. If a party fails to procure such insurance or to deliver such policies or certificates, after five (5) business days prior written notice, the other party may procure, at its option, such insurance on such defaulting party's behalf, and the defaulting party shall pay the acting party for the cost thereof within five (5) business days of the acting party's delivery of bills therefor.

(d) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified above.

(e) A party's compliance with the provisions of this Section shall in no way relieve or decrease such party's indemnification obligations or other obligations under this Agreement. Each party shall be responsible, at its expense, for separately insuring its personal property.

(f) Notwithstanding anything to the contrary contained herein, each party hereby waives any right of recovery against the other party for any loss or damage sustained by such damaged party with respect to the Easement Area, whether or not such loss is caused by the fault or negligence of the other party, to the extent such loss or damage is covered by insurance that the damaged party is required to purchase under this Agreement (or to self-insure, with respect to the City) or is otherwise actually recovered from valid and collectible insurance covering such damaged party. Each party agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Easement Area; provided, however, that failure to do so shall not affect the above waiver.

(g) Owner acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Agreement; provided, however, that if any of City's successors or assigns under this Agreement is not a public entity, such non-public successor or assign shall carry the insurance specified in this Section. City assumes the risk of damage to any of its personal property, except for damage caused by Owner or its Agents.

8. **Notices.** All notices, demand, consents or approvals given hereunder shall be in writing and shall be personally delivered, or sent by a nationally recognized overnight courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, to the following addresses (or any other address that a party designates by written notice delivered to the other party pursuant to the provisions of this Section):

If to City: City and County of San Francisco
San Francisco Municipal Transportation Agency
Real Estate Section
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Senior Project Manager
Fax No.: (415) 701-4341

with a copy to: City and County of San Francisco
San Francisco Municipal Transportation Agency
Sustainable Streets Division – Traffic Engineering
1 South Van Ness Avenue, 7th floor
San Francisco, CA 94103
Attn: Senior Engineer
Fax No.: (415) 701-4737

with a copy to: Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property
Fax No.: (415) 552-9216

If to Owner: Avalon Ocean Avenue, L.P.
455 Market Street, Suite 1650

San Francisco, CA 94107
Attn: Joe Kirchofer
Fax No.: (415) 546-4138

9. **Indemnity.** City shall indemnify, defend, reimburse and hold harmless Owner from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind arising out of or relating to the activities of City or any City Agent in the Easement Area, except to the extent caused by the intentional acts or negligence of Owner or any Owner Agents.

Owner shall indemnify, defend, reimburse and hold harmless City and City's Agents and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind arising out of or relating to the use of the Easement Area by Owner or any Owner Agents, except to the extent caused by the intentional acts or negligence of City or any City Agents.

The foregoing indemnities shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, and shall survive any termination or extinguishment of the Easement or this Agreement.

10. **Waiver of Claims.** Each party covenants and agrees that the other party shall not be responsible or liable for, and each party hereby waives all rights against the other party and its Agents and releases the other party and its Agents from, any and all claims relating to any injury, accident or death of any person or loss or damage to any property in or about the Easement Area from any cause whatsoever, except as expressly otherwise set forth in this Section. Nothing herein shall relieve either party from liability to the extent caused by the negligence or willful misconduct of such party or its Agents of its obligations hereunder or under law, but such party shall not be liable under any circumstances for any consequential, special or punitive damages. Neither party would be willing to enter into this Agreement without such a waiver of liability for consequential, special or punitive damages due to the acts or omissions of the other party or its Agents, and each party expressly assumes the risk with respect thereto. Accordingly, as a material part of the consideration for this Agreement, each party fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action, and covenants not to sue, the other party or its Agents for any matters arising out of this Agreement or the Easement Area, except to the extent such claims result from the negligence and willful misconduct of such other party or its Agents or such party's breach of its obligations hereunder or under law.

In connection with the foregoing release, each party acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Each party acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Each party

realizes and acknowledges that it has agreed to this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Agreement.

11. **Run with the Land; Exclusive Benefit of Parties.** The rights and obligations set forth herein shall run with the land and shall bind and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that if Owner develops a condominium project on the Encumbered Property and a homeowners' association is duly formed and has sole responsibility for maintenance and operation of the Easement Area (an "**HOA**"), Owner shall have the right to assign to HOA, and HOA shall have the right to assume from Owner, Owner's rights and obligations hereunder pursuant to a written assignment and assumption agreement between Owner and such HOA and, upon delivering fully executed copy of such signed agreement to City, Owner shall be released from the terms and conditions of this Agreement as of such assignment and assumption. This Agreement is for the exclusive benefit of Owner and City and their respective successors and assigns and not for the benefit of, nor give rise to any claim or cause of action by, any other party. This Agreement shall not be deemed a dedication of any portion of the Easement Area to or for the benefit of the general public.

12. **Proprietary Capacity.** Owner understands and acknowledges that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of any plans and specifications or other materials submitted by Owner to City for City's approval pursuant to this Agreement nor any other approvals by City hereunder shall be deemed to constitute approval of City acting in its regulatory capacity or any governmental or regulatory authority with jurisdiction over the Easement Area. City makes no representations or warranties that City, acting in its regulatory capacity and under its police powers, will ultimately approve of any draft plans, specifications or other materials nor issue any necessary permits.

13. **MacBride Principles – Northern Ireland.** City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Owner acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

14. **General Provisions.** (a) This Agreement may be amended or modified only by a writing signed by City and Owner and recorded in the Official Records of the City and County of San Francisco. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This Agreement contains the entire agreement between the parties with respect to the Easement and all prior negotiations, discussions, understandings and agreements are merged herein. (d) This Agreement shall be governed by California law and City's Charter. (e) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in City with comparable experience, notwithstanding City's or Owner's use of its own attorneys. (f) This

Agreement does not create a partnership or joint venture between City and Owner as to any activity conducted by Owner on, in or relating to the Easement Area. (g) City's obligations hereunder are contingent upon approval of this instrument by Board of Directors of City's Municipal Transportation Agency and the City's Board of Supervisors and Mayor, each in their respective sole discretion, this Agreement shall be null and void if such approval is not obtained. (h) Time is of the essence of this Agreement and each party's performance of its obligations hereunder. (i) All representations, warranties, waivers, releases, indemnities and surrender obligations given or made in this Agreement shall survive the termination of this Agreement or the extinguishment of the Easement. (j) If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision shall not affect any other provision of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement. (k) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

<p>CITY: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation</p> <p>By: _____ Director of Property</p> <p>Date: _____</p> <p>CITY AND COUNTY OF SAN FRANCISCO, acting by and through its MUNICIPAL TRANSPORTATION AGENCY</p> <p>By: _____ Edward D. Reiskin Director of Transportation</p> <p>Date: _____</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No. _____ Dated: _____</p> <p>Attest: _____ Secretary, MTA Board</p> <p>Board of Supervisors Resoultion No. _____ Dated: _____ Attest: _____ Clerk of the Board</p> <hr/> <p>Approved as to Form: DENNIS J. HERRERA, City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p>	<p>OWNER: AVALON OCEAN AVENUE, L.P., a Delaware limited partnership</p> <p>By: Multiple Financing, Inc., a Maryland corporation, its General Partner</p> <p>By: _____ Nathan Hong Senior Vice-President-Development</p> <p>Date: _____</p>
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Exhibit A

Legal Description of Encumbered Property

That certain real property in the City of San Francisco, County of San Francisco, State of California, described as follows.

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF OCEAN AVENUE. DISTANT THEREON 30 FEET SOUTHEASTERLY FROM THE SOUTHWEST CORNER OF SAN FRANCISCO PARCEL 22. AS PER DEED FROM SPRING VALLEY WATER COMPANY TO CITY AND COUNTY OF SAN FRANCISCO. A MUNICIPAL CORPORATION, RECORDED MARCH 3, 1930, IN BOOK 2002, AT PAGE I, OFFICIAL RECORDS OF SAN FRANCISCO; RUNNING THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF OCEAN AVENUE 514.041 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 150 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 554.330 FEET; THENCE 105'02'04" TO THE LEFT AND RUNNING SOUTHERLY 155.316 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

APN: Lot 003, Block 3180

Exhibit B

Legal Description of Easement Area

**TRAFFIC SIGNAL MAINTENANCE EASEMENT
OVER A PORTION OF BRIGHTON AVENUE
LYING NORTH OF OCEAN AVENUE
SAN FRANCISCO, CALIFORNIA**

AN EASEMENT RUNNING OVER ALL THAT CERTAIN REAL PROPERTY LYING IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 4, AS SHOWN ON FINAL MAP NO. 5410, AS FILED NOVEMBER 16, 2011, IN BOOK "DD" OF SURVEY MAPS, AT PAGES 164-169, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHEASTERLY LINE OF OCEAN AVENUE, AT THE SOUTHWESTERLY CORNER OF SAID PARCEL 4, AS SHOWN ON SAID FINAL MAP NO. 5410;

THENCE SOUTH 75°22'00" EAST ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 4, A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 14°38'00" EAST A DISTANCE OF 55.00 FEET;

THENCE SOUTH 75°22'00" EAST A DISTANCE OF 20.00 FEET;

THENCE SOUTH 14°38'00" WEST A DISTANCE OF 55.00 FEET TO AN INTERSECTION WITH THE SOUTHEASTERLY LINE OF SAID PARCEL 4;

THENCE NORTH 75°22'00" WEST, ALONG THE SOUTHERLY LINE OF SAID PARCEL 4, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

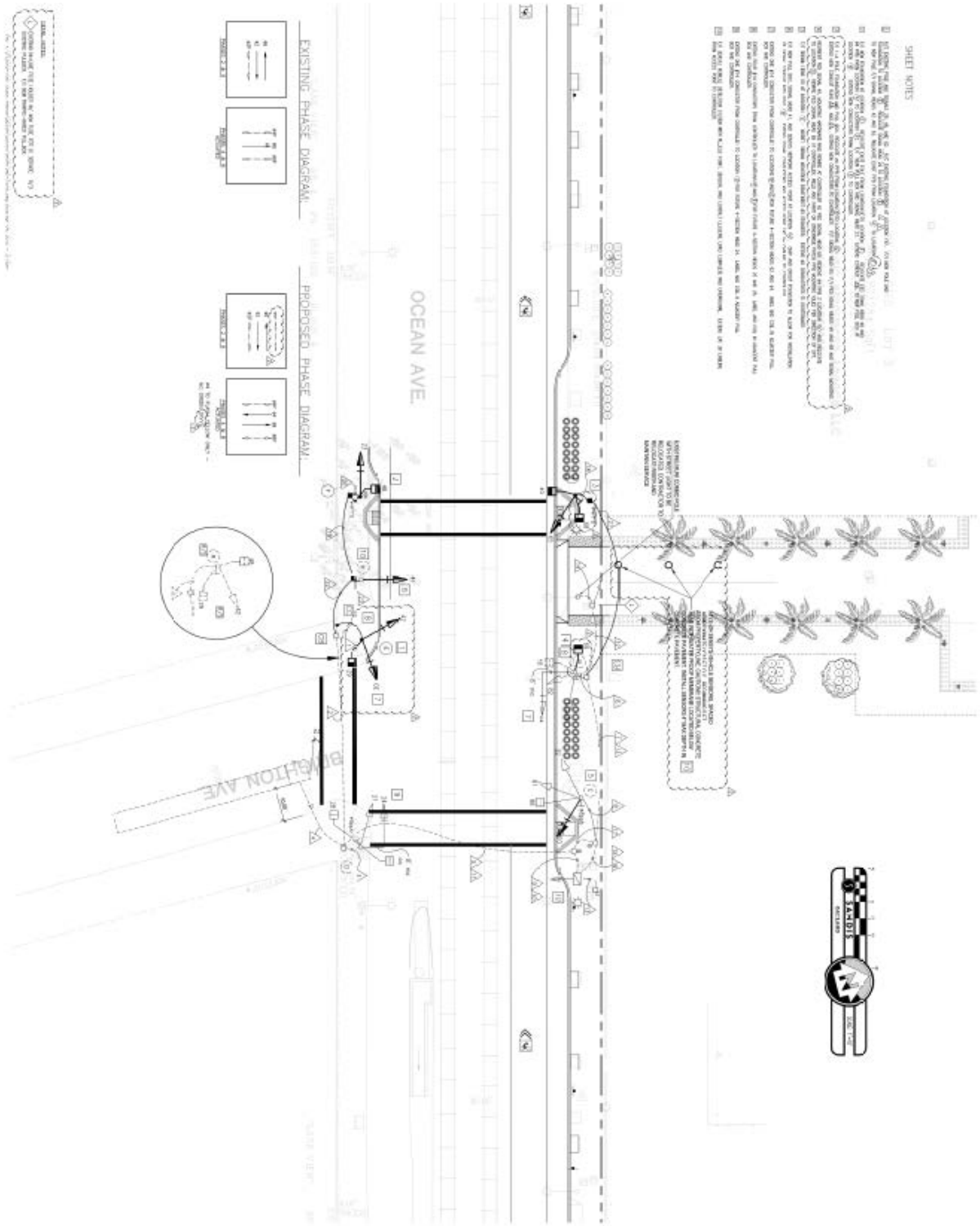
CONTAINING 1,100 SQUARE FEET OR 0.0253 ACRES, MORE OR LESS.

September 14, 2012

FILE:Traffic Signal Esmt.091412.doc

Exhibit C

Depiction of Easement Area with Locations of Sensors and Striping



Pyatak Architects, Inc.
 1150 Ocean Avenue, Suite 200
 San Francisco, CA 94112
 Tel: 415.774.4444
 Fax: 415.774.4445
 www.pyatak.com

Project Address:
 1150 Ocean Avenue, Suite 200
 San Francisco, CA 94112
 Tel: 415.774.4444
 Fax: 415.774.4445
 www.pyatak.com

Client:
 AvalonBay
 1150 Ocean Avenue, Suite 200
 San Francisco, CA 94112
 Tel: 415.774.4444
 Fax: 415.774.4445
 www.pyatak.com

Scale:
 1" = 10'-0"

Date:
 08/18/11

Sheet No.:
 T1.2

1150 OCEAN AVENUE
San Francisco, CA

AvalonBay
 REAL ESTATE SERVICES

1150 OCEAN AVENUE, SUITE 200
 SAN FRANCISCO, CA 94112
 TEL: 415.774.4444
 FAX: 415.774.4445
 WWW.PYATAK.COM

ENCLOSURE 3



SFMTA
Municipal Transportation Agency

November 20, 2012

Bill Wycko
San Francisco Planning Department
30 Van Ness Avenue
San Francisco, CA 94102

RE: Left Turn Treatment at Brighton Street and Ocean Avenue
Balboa Park Station Area Plan Transportation Study
Case #2004.1059E

Dear Mr. Wycko

SFMTA Sustainable Streets has reviewed the traffic mitigation proposed in the Balboa Park Station Area Plan Final EIR (Case No. 2004.1059E) regarding the intersection of Brighton Avenue and Ocean Avenue and determined that a protected left turn phase from westbound Ocean Avenue onto southbound Brighton Avenue is neither feasible nor acceptable to SFMTA.

The primary concern is the delays such a signal change would impose on the Muni K Line, a light rail vehicle (LRV) line which operates on Ocean Avenue. Given the current roadway geometry there is no way to provide a separate left turn pocket for the westbound left turn without widening the roadway and relocating the tracks so they would be 12 feet further apart. That mitigation was not proposed so left turns are made from the track lane. SFMTA rejection of the protected left turn phase treatment stems from problems associated with protected left turns made from a lane shared by both rail traffic and through/left-turn vehicle traffic. The following describes problems associated with the three types of protected signal phasing.

- 1. Leading Left Turn Phase** – Because there are no exclusive left turn lanes at this intersection only one direction can have a protected left turn phase, which would be westbound for this intersection. If a leading left turn phase were to be provided, then there will be less time allocated for the opposing (eastbound) transit and through and left turn traffic. As a consequence, more vehicles would queue in the eastbound track lane; any left turning cars that did not clear the intersection would remain in the track lane and Muni inbound service would be directly impacted; outbound would also be affected as the LRVs must reach the end of the line before returning westbound. In addition, because of the eastbound traffic demand, only a small percentage of time can be provided to the left turn movement. Therefore only the first four or five vehicles would clear the intersection before the left turn phase terminated. Any other vehicles in the queue wanting to turn left will be making a permissive left turn against an

Edwin M. Lee
Mayor

Tom Nolan
Chairman

Cheryl Brinkman
Vice-Chairman

Leona Bridges
Director

Malcolm Heinicke
Director

Jerry Lee
Director

Joél Ramos
Director

Cristina Rubke
Director

Edward D. Reiskin
*Director of
Transportation*

One South Van Ness Ave.
Seventh Floor
San Francisco, CA 94103
Tele: 415.701.4500



eastbound traffic stream that is more densely packed as a consequence of having to wait for the westbound left turn phase to end. It is likely that the K Line would be stuck behind left turning traffic for multiple signal cycles in both directions. A second impact would be that westbound through traffic would experience more delay as more cars maneuvered around the backed-up track lane into the curb lane – the increased lane changes and usage of the curb lane would cause that lane to queue as well.

2. **Lagging Westbound Left Turn Phase** - If a lagging left-turn phase were to be implemented, the impact on the K Line would be less than the leading left-turn phase, but still cause delay for the K-Line primarily in the eastbound direction. In addition, incorporating a lagging left turn phase requires that the opposing (eastbound) left turn movement be prohibited in order to avoid a left-turn trap for eastbound traffic. The trap is created when the opposing direction (eastbound) making a left turn movement at the end of their green phase does not know that the westbound left turning vehicles had just received a green arrow. Prohibition of an eastbound left turn is contrary to the intent of the development.

3. **Split phase operation** – while neither considered in the EIR nor analyzed below, it is discussed here for completeness. Split phase operation occurs when only one direction of traffic goes at a time – first eastbound, then westbound. Split phase operation has its uses in limited circumstances – for example, at intersections with heavy turn movement volumes and modest to light pedestrian volume. Such operation would result in increased delay for all traffic (LRV, pedestrians and vehicles) at this intersection and disrupt east/west coordination for Muni and vehicle traffic. Intersection delay would increase. SFMTA would not support split phase operation at this intersection.

2012 Analysis

SFMTA staff used Synchro 8 to analyze Level of Service and delays associated with the existing phasing, leading left turn phasing and lagging westbound left turn phasing using data from the Balboa Park Traffic Study. The results are shown below in Table 1. Given the current lane configuration, the existing two phase operation results in less delay for the intersection and eastbound traffic turning traffic than the protected phase operation. Westbound traffic faces dismal delays under all three scenarios.

TABLE 1: STUDY DATA (2006), HCM 2000

Signal Phasing	Level of Service and Delay (seconds)		
	Intersection	EB	WB
Existing (2 phase)	F (121)	C (28)	F (217)
Leading LT	F (127)	D (45)	F (216)
Lagging WBLT*	F (128)	E (72)	F (194)

* eastbound left turn prohibited

SFMTA staff was perplexed by the delays calculated by Synchro for this intersection. Traffic Engineering would have received numerous complaints from the public and Muni if the intersection was experiencing this much delay. A PM Peak traffic count was conducted on 11/7/2012. The traffic volumes were about 20% less than those used in the Balboa Park transportation study (see study figure 9: EXISTING PLUS KRAGEN TRAFFIC VOLUMES). The new data was put into SFMTA's Synchro model, and the results are shown in Table 2 below. The intersection Level of Service and delay are consistent with field observation, and the existing two phase operation still shows less delay than does the leading left turn phase operation. While lagging left turn phase overall intersection operation has overall lower intersection delay, it requires prohibition of eastbound left turns (which will need to occur somewhere else), and comes at a slight increase in delay to eastbound transit and traffic when compared to existing two-phase operation.

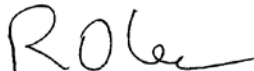
TABLE 2: CURRENT TRAFFIC DATA (11/7/2012), HCM 2000

Signal Phasing	Level of Service and Delay (seconds)		
	Intersection	EB	WB
Existing (2 phase)	D (36)	C (20)	D (52)
Leading LT	D (41)	C (24)	E (58)
Lagging WBLT*	C (32)	C (25)	D (39)

* eastbound left turn prohibited

If you have further questions about this matter please contact Brian Dusseault of my staff at (415) 701-4676.

Sincerely,



Ricardo Olea
City Traffic Engineer

cc: Brian Dusseault, Al Herce, Scott Broady, Jerry Robbins – SFMTA
Robin Reitzes – Deputy City Attorney
Scott Sanchez – City Planning

ATTACHMENT: Ocean and Brighton PM Peak Traffic Count (11/7/2012)

