

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Office of Proceedings
June 30, 2022
Part of
Public Record

DOCKET NO. FD 36616

**SAVAGE TOOEELE RAILROAD COMPANY – CONSTRUCTION AND OPERATION
EXEMPTION – LINE OF RAILROAD IN TOOEELE COUNTY, UTAH**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502 and 49 C.F.R. Part 1121, Savage Tooele Railroad Company (“STR”), a non-carrier, hereby petitions the Surface Transportation Board (“Board” or “STB”) for an exemption from the full requirements of 49 U.S.C. § 10901 and the Board’s regulations at 49 C.F.R. Part 1150 subparts A and B governing an application for construction and operation of approximately eleven miles of new railroad line in Tooele County, Utah. As set forth hereinbelow, the project for which STR seeks approval entails (a) the reinstitution of common carrier freight service over an approximately six mile segment of a former 15.8-mile branch line now owned by Union Pacific Railroad Company (“UP”) that was fully abandoned by UP’s predecessor Western Pacific Railroad Company (“WP”) in 1983 but remains largely intact, and (b) the construction of approximately five miles of new railroad line to extend the reinstated railroad line to and into a newly developed industrial park. The approximately eleven miles of new railroad line covered by this project would re-establish the former branch line’s connection to UP’s Shafter Subdivision at Burmester, Utah, and STR would provide common carrier service over the combined reinstated

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UP line and newly constructed track to enable tenants of the industrial park to receive and ship commodities by railroad.¹

STR asserts that an exemption from the full application requirements is warranted in this particular case because they are not necessary to carry out the rail transportation policy (“RTP”) set forth in 49 U.S.C. § 10101, the proposed construction and operations is limited in scope, and Board regulation is not necessary to protect any shipper from an abuse of market power. STR also requests that the Board expeditiously grant the authority sought by this Petition subject to the completion of the Board’s environmental review process. This Petition is supported by the attached Verified Statement of Mr. Kirk W. Aubry, the President and Chief Executive Officer of STR (Aubry V.S.).

¹ The project described in this Petition for Exemption was also the subject of a Verified Notice of Exemption for acquisition and operation filed in Docket No. FD 36524 on September 2, 2021. The Verified Notice was ordered held in abeyance by the Acting Director of the Office of Proceedings on September 30, 2021. On May 13, 2022, STR moved to withdraw the Verified Notice and its other filings in Docket No. FD 36524 because, during the ongoing due diligence being conducted by UP and STR, it was discovered that the railroad line being acquired by STR had been formally abandoned by WP 1983. Consequently, the sale of the abandoned right-of-way and track to STR does not require Board approval, but its reinstatement for common carrier freight service does require such authority. *See, e.g.*, STB Finance Docket No. 32977, *Burlington Northern Railroad Company – Operation Exemption – In Mills and Pottawattamie Counties, IA* (served March 12, 1997); STB Finance Docket No. 35116, *R.J. Corman Railroad Co./Pennsylvania Lines Inc. – Construction and Operation Exemption – In Clearfield County, Pa.* (Served July 27, 2009). The Acting Director granted STR’s motion by decision served on May 27, 2022. Moreover, this Petition for Exemption reflects several modifications and differences between the original project as described in the Notice of Exemption. For example, the Notice contemplated UP conveying an operating easement to STR but the parties have modified their plans and UP now intends to convey the right-of-way and track assets to STR. Also, this Petition for Exemption describes how UP may retain ownership of the former line from MP 0.0 to MP 1.04.

I.
**DESCRIPTION OF PETITIONER,
THE PROJECT AND PLANNED OPERATIONS**

A. Description of STR

STR is a non-carrier, wholly owned subsidiary of Savage Enterprises, LLC, a Delaware company. Both of these companies are subsidiaries of the Savage Companies, which was founded in Utah in 1946 and provides transportation and logistics services worldwide.²

B. Project Purpose and Need

The purpose of this proposed project is to reinstate common carrier rail service over an abandoned but largely intact segment of a former branch line of railroad constructed by WP in 1917 that formerly connected to UP's main line near Burmester, Utah, and to connect the reinstated segment with five miles of newly constructed lines of railroad to enable common carrier railroad service to be provided to a 1700-acre business park being developed in Grantsville, Utah called the Lakeview Business Park.³ The business park's first phase is currently under development, with its first non-rail served tenant's facility completed in 2022. Without rail service, the entire 1700-acre park would be entirely served by truck, which limits its appeal to a wide range of companies.⁴ The proposed project will enable rail traffic to and from the park to be interchanged with UP and BNSF Railway Company ("BNSF") at Burmester,⁵ thereby providing greater mode

² Aubry V.S. at 1.

³ *Id.*; See <https://www.lakeviewbusinesspark.com/>

⁴ Aubry V.S. at 3.

⁵ Burmester is located along UP's Shafter Subdivision that runs between Salt Lake City, UT and Alazon, NV. This is a UP line over which BNSF has overhead trackage rights and the right to interchange with new Class III railroads that serve new facilities such as the Lakeview Business Park which seek a connection to the UP main line. See, e.g, Section 8(k) of the "Restated and Amended Agreement" between BNSF and UP that was jointly submitted by them on March 1, 2002 in Docket No. FD 32760 (Sub – No. 21) *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Rail*

optionality for business park tenants, competitive freight optionality, lower total emissions due to fewer truck movements, reduced overall truck traffic, and improved road longevity due to less wear and tear from trucks. The rail-served business park will also allow for greater business diversity due to modal optionality, which may include cold products storage and bulk-material dependent manufacturing, such as roofing or plastics and other rail-centric businesses.⁶

C. Project Description⁷

As stated, approximately six miles of right-of-way and tracks covered by this proposed project as currently designed are abandoned railroad line and right-of-way which STR is contracting to purchase from UP. The segment was part of an approximately 15.8-mile line known historically as the Warner Branch (and sometimes the Warner Spur). It extended in a northwest to southeast direction from approximately milepost (MP) 897.84 of UP's Shafter Subdivision from Burmester, to the town of Tooele, Utah. The line remained in service by WP until 1983, when the entire Warner Branch was fully abandoned in Interstate Commerce Commission Finance Docket No. 30208, *Western Pacific Railroad Company - Abandonment Exemption – in Tooele County, Utah (the Warner Branch)*.

STR and UP intend to enter into a Purchase and Sale Agreement (“PSA”) whereby STR will acquire, at a minimum, all of UP's remaining rights and interests in the right-of-way and railroad track assets between MP 1.04 to MP 6.94, the latter of which is the approximate location of the northern boundary of the Lakeview Business Park property and where the new construction proposed by STR would begin.⁸ UP may retain ownership of the abandoned right-of-way and

Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company.

⁶ Aubry V.S. at 3.

⁷ Exhibit A to this Petition contains several maps of the project and project area.

⁸ Aubry V.S. at 2.

track between MP 0.0 and MP 1.04, in which event STR contemplates this track would become part of the non-jurisdictional ancillary tracks used by UP and BNSF to interchange cars with STR.⁹ If the parties' final PSA conveys the track from MP 0.0 to MP 1.04 to STR, and their intent is for STR to reinstate common carrier service over it, STR will amend this Petition for Exemption as necessary.

Although formally abandoned, the right-of-way and track of the Warner Branch has largely remained in place. Thus, there will be minimal new track construction on the portion of the proposed project on the land being purchased from UP. However, in 2004, and again in 2015, UP (which WP merged into) deeded two adjoining parcels of the right-of-way between MP 6.04 and 6.66 to adjacent landowners, and each of the landowners subsequently removed the tracks on this combined .54-mile segment.¹⁰ Consequently, reinstatement of common carrier service over this section of the former branch line will require STR to acquire the underlying land comprising the right-of-way and reconstruct approximately .54 mile of track. In addition, the reactivation of this segment of the Warner Branch will entail the reinstallation of two at-grade rail crossings at State Highway 138 and Erda Way which are in close proximity to one another.¹¹

The PSA and other agreements between STR and UP will contain the terms and conditions governing the reestablishment of the connection to UP's main line as well as the construction and operation of interchange and ancillary tracks required for the interchange of railcars destined to and delivered from the Lakeview Business Park.¹² As planned, STR will construct interchange

⁹ MP 0.0 of the Warner Branch tracks is located at the southern end of a wye track connected to UP's Shafter Subdivision. *See* Exhibit A, page 1.

¹⁰ Aubry V.S. at 2.

¹¹ The crossing locations are shown on the map at Exhibit A, page 2.

¹² STR anticipates it will also enter into agreements with BNSF governing its interchange of rail cars with STR.

and ancillary tracks near MP 1.04 headed in a southeasterly direction following the mainline right-of-way. The two interchange tracks will be approximately 2,500 feet in length and will facilitate the exchange of rail traffic between the UP, BNSF and STR. Additionally, STR will construct two ancillary tracks that will be used to classify railcars destined to customers within the Lakeview Business Park.¹³ This infrastructure will be constructed within the property right-of-way which will be purchased from UP through the PSA.

STR will also construct and operate approximately five miles of new railroad line that will extend the former Warner Branch segment into the industrial park boundaries pursuant to rights under a lease and/or a permanent easement obtained from the owners of the Lakeview Business Park.¹⁴ The current design and layout of the track to be constructed is shown on page 3 of Exhibit A. It is anticipated that the track construction within the park will be phased in over time as the park secures new tenants.¹⁵

D. Planned Operations

Upon rehabilitation of the former Warner Branch segment and construction of new railroad, STR will provide common carrier freight service over these 11 miles of tracks to tenants in the Lakeview Business Park. The operations will consist of switching services and other railroad activities within the park boundaries, and the movement of railcars to and from the UP main line. Current plans for the Lakeview Business Park contemplate the delivery of inbound loaded railcars containing commodities such as refrigerated products which would then be transloaded to trucks for distribution to surrounding communities. The area of Tooele County where the project and industrial park are located is a non-attainment area under the Clean Air Act, but STR anticipates

¹³ Aubry V.S. at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

it will operate less than three trains per day once the project is fully constructed and the park is built out.¹⁶

II.

DISCUSSIONS WITH THE OFFICE OF ENVIRONMENTAL ANALYSIS

Discussions with members of the Office of Environmental Analysis (“OEA”) about the updated project plans began on May 6, 2022.¹⁷ On May 14, 2022, STR submitted a letter to OEA requesting a waiver of the 6-month prefiling notice requirement for rail construction and operation petitions required by 49 C.F.R. §1105.10(a)(1). By letter dated May 24, 2022, OEA granted the waiver request. STR fully intends to utilize the Board’s process for selecting and retaining a Third-Party Consultant to work with OEA to complete the necessary environmental review under the National Environmental Policy Act and Board procedures and rules.

III.

ARGUMENT

A. The Proposed Construction and Operation Meet the Criteria of §10502

Section 10901(c) directs the Board to grant rail construction proposals unless it finds the proposal “inconsistent with the public convenience and necessity.”¹⁸ “Thus, Congress has established a presumption that rail construction projects are in the public interest unless shown otherwise.”¹⁹ Under 49 U.S.C. § 10502(a), the Board must exempt a proposed track construction

¹⁶ *Id.* at 3-4.

¹⁷ STR notes that OEA was already aware of this project because various parties submitted letters to OEA in response to the filing of the Notice of Exemption.

¹⁸ Docket No. FD 36186, *Texas Railway Exchange – Construction and Operation Exemption – Galveston, TX* (served January 17, 2020); *citing, Alaska R.R.—Constr. & Operation Exemption—Rail Line Extension to Port MacKenzie, Alaska*, FD 35095, slip op. at 5 (STB served Nov. 21, 2011), *aff’d sub nom. Alaska Survival v. STB*, 705 F.3d 1073 (9th Cir. 2013).

¹⁹ Docket No. FD 35544, *DesertXpress Enterprises, LLC and DesertXpress HSR Corporation –Construction and Operation Exemption – In Victorville, Cal. And Las Vegas, Nev.* (served October 25, 2011) at 3; *citing Mid States Coal. for Progress v. STB*, 345 F.3d 520, 557

from the detailed application process of 49 U.S.C. § 10901 when the Board finds (1) that the process is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the proposal is of limited scope, or (b) the application process is not necessary to protect shippers from the abuse of market power. The Board is to apply the exemption provisions broadly in pursuing exemptions for transportation or service that comply with the standards of the exemption statute.²⁰

As established more fully below, the goals of the RTP will be furthered by exempting the proposed project from the full application requirements under 49 U.S.C. § 10901 and 49 C.F.R. Part 1150 subparts A and B. Moreover, the transaction is clearly limited in scope and regulation by the Board is not necessary to protect shippers from the abuse of market power.

1. An Exemption Will Promote the Rail Transportation Policy

Regulation by the Board of the reinstitution of service over the former UP line, and the construction and operation of five miles of new rail line are not necessary to carry out the RTP expressed in 49 U.S.C. § 10101, which states in pertinent part that: “it is the policy of the United States Government . . . (1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail; (2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required. . . (4) to ensure the development and continuation

(8th Cir. 2003); *accord* Docket No. FD 30186 (Sub-No. 3), *Tongue River Railroad Co., Inc.—Construction and Operation—Western Alignment* (served on Nov. 7, 2007).

²⁰ See, e.g., *American Trucking Assns v. ICC*, 656 F. 2d 1115, 1119 (5th Cir, 1981) (where the court held the ICC was charged with the responsibility of actively pursuing exemptions for transportation and service that comply with the section’s standards); H.R. Rep. No. 96-1430, at 105 (1980) (the ICC is charged with removing “as many as possible of the Commission’s restrictions...”).

of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;” . . . (5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes; . . . (7) to reduce regulatory barriers to entry into and exit from the industry;...(14) to encourage and promote energy conservation...[and] (15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.” The Board has frequently applied the relevant provisions of the RTP to the statutory provisions for which the exemption is sought.²¹

Granting the requested exemption will serve to promote the RTP through the re-establishment of common carrier rail service over an existing railroad right-of-way that was long used for that purpose, combined with newly constructed railroad lines. It will also promote the RTP by allowing the construction and operation of rail lines that will facilitate the development of the Lakeview Business Park, which will provide much needed rail-served means to receive and distribute commodities to the surrounding communities and beyond. Moreover, establishing additional rail infrastructure and service in this area of the country will reduce the current reliance on truck transportation for movement of goods, which will ease the burdens on the interstate highway system and local roads, as well as reduce carbon emissions.

2. The Transaction is Limited in Scope and Regulation is not Necessary to Protect Shippers from the Abuse of Market Power

The proposed construction and operation covered by this Petition easily satisfies the second prong of the statutory requirements of §10502 that “either (a) the proposal is of limited scope, or (b) the application process is not necessary to protect shippers from the abuse of market power.”

²¹ *Alaska Survival v. STB*, 705 F.3d 1073 (9th Cir. 2013) (affirming that §§ 10101(2), (4), (5), (7), and (14) of the rail transportation policy are goals promoted by § 10901).

First, the proposal is of limited scope. The total length of the rail line to be constructed and operated is approximately 11 miles, and more than half of it consists of rehabilitating (with .54 miles of new construction) existing railroad right-of-way and track. While not necessary to also demonstrate, there is no need for the Board to closely scrutinize this project under a more rigorous application process because no shippers need to be protected from the abuse of market power. On the contrary, not only is this project intended to provide the shippers located in the Lakeview Business Park with transportation options, STR expects that the park tenants will have access to rail service from both BNSF and UP.

B. The Board Should Conditionally Grant the Requested Exemption on an Expedited Basis, Subject to the Completion of the Board’s Environmental Review Process

STR requests that the Board conditionally approve this Petition for Exemption on an expedited basis subject to the completion of the OEA’s environmental review process. STR recognizes that the Board’s general policy is to decide the transportation merits of a construction proposal based on a complete record that includes environmental review, absent “unique or compelling circumstances.”²² STR submits such circumstances are present here.

Conditional approval of the project will help facilitate the development of the overall project by providing relative assurances to parties considering locating within the Lakeview Business Park that rail service from STR can be expected. It would also assist in the efforts of STR to acquire the .54 mile segment of former right-of-way that UP conveyed to the adjacent landowners. Finally, information developed during the environmental review process “is separate from the Board’s consideration of comments on the transportation merits and proceeds under a

²² *Alaska R.R.—Constr. & Operation Exemption—Rail Line Between Eielson Air Force Base (North Pole) and Fort Greely (Delta Junction), Alaska*, FD 34658 (STB served Oct. 4, 2007) at 3.

separate schedule,”²³ which schedule is often longer than it takes to render a decision on the transportation merits that the project is in the public interest.

IV CONCLUSION

For the foregoing reasons, STR respectfully requests that the Board grant this Petition for Exemption to authorize STR to construct and operate approximately 11 miles of new lines of railroad in Tooele County, Utah without the need of a full application pursuant to 49 U.S.C. § 10901. STR also respectfully requests that the Board conditionally grant this Petition on an expedited basis, subject to completion of the OEA’s environmental review process.

Respectfully submitted,



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Attorney for Savage Tooele Railroad Company

June 9, 2022

²³ *Great Lakes Basin Transportation, Inc. – Rail Construction and Operation – In Rock County, Wisc., Winnebago, Ogle, Lee, LaSalle, Grundy, and Kankakee Counties, Ill., and Lake and Porter Counties, Ind.*, STB Docket No. FD 35952 (Served June 2, 2017) at 1, n.2.

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VERIFIED STATEMENT OF KIRK W. AUBRY

My name is Mr. Kirk W. Aubry. I am the President and CEO of the Savage Tooele Railroad Company (“STR”). STR is a non-carrier, wholly owned subsidiary of Savage Enterprises, LLC. Both companies are subsidiaries of the Savage Companies, which was founded in Utah in 1946 and provides transportation and logistics services worldwide. As President and CEO of STR I am overseeing the plans of STR to (1) acquire and reinstate common carrier rail service over an approximately six mile segment of an abandoned railroad line and right-of-way first constructed by Western Pacific Railroad Company in 1917 that is now owned by Union Pacific Railroad Company (“UP”), and (2) construct five miles of additional railroad track that would extend the segment of former UP line into the 1700 acre Lakeview Business Park being developed near Grantsville, Utah.

The abandoned branch line, known as the Warner Branch or the Warner Spur, originally connected to UP’s Shafter Subdivision main line near Burmester, Utah, and extended in a south and easter direction approximately 15.8 miles to Tooele Utah. The connection was via a wye track at Milepost 0.0 near the UP main line. While UP originally agreed to convey an operating easement to STR, the parties now intend for UP to convey to STR all of its rights and interests in

the land and track assets between MP 1.04 and MP 6.94, which is the northern boundary of the Lakeview Business Park property. UP may retain ownership of the abandoned right-of-way and track between MP 0.0 and 1.04, in which case STR anticipates that this track will become part of the interchange tracks utilized by UP and BNSF Railway Company to exchange cars with STR.

Although the entire Warner Branch was abandoned in 1983, much of the right-of-way and track between MP 0.0 and MP 6.94 remains in place. Consequently, there will be minimal new track construction on this part of the project. However, in 2004 and 2015 UP deeded two adjoining parcels of the right-of-way between MP 6.04 and 6.66 to adjacent landowners, and each of the landowners subsequently removed the tracks on this combined .54 mile segment. As a result, STR's reinstatement of common carrier service over this section of the branch line will require us to acquire the underlying land and reconstruct approximately .54 mile of track. There are also two road at grade road crossings in close proximity to one another which will need to be reconstructed.

The PSA and other agreements between STR and UP will contain the terms and conditions governing the reestablishment of the connection to UP's main line as well as the construction and operation of interchange and ancillary tracks required for the interchange of railcars destined to and delivered from the Lakeview Business Park. As planned, STR will construct interchange and ancillary tracks near MP 1.04 headed in a southeasterly direction following the mainline right-of-way. The two interchange tracks will be approximately 2,500 feet in length and will facilitate the exchange of rail traffic between the UP, BNSF and STR. Additionally, STR will construct two ancillary tracks that will be used to classify railcars destined to customers within the Lakeview Business Park. STR anticipates it will also enter into agreements with BNSF governing its interchange of rail cars with STR.

STR will also construct approximately five miles of new railroad line that will extend the former Warner Branch segment into the industrial park boundaries on property owned by the park. The construction will be pursuant to a lease and/or a permanent easement obtained from the owners of the Lakeview Business Park. It is anticipated that the track construction within the park will be phased in over time as the park secures new tenants. The business park's first phase is currently under development, with its first non-rail served building and tenant completed in 2022.

Once the rehabilitation and reconstruction of the former Warner Branch segment and construction of new tracks are completed STR will provide common carrier freight service over these 11 miles of tracks to tenants in the Lakeview Business Park. The operations will consist of switching services and other railroad activities within the park boundaries, and the movement of railcars to and from the UP main line. Current plans for the Lakeview Business Park contemplate the delivery of inbound loaded railcars containing commodities such as refrigerated products which would then be stored or transloaded to trucks for distribution to surrounding communities. The rail-served business park will also allow for greater business diversity due to modal optionality, which may include bulk-material dependent manufacturing such as roofing or plastics and other rail-centric businesses.

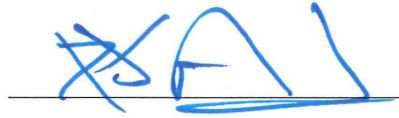
Without rail service, the entire 1700-acre park would be served only by truck, which limits the park's appeal to a wide range of companies. The proposed project will provide greater mode optionality for business park tenants, competitive freight optionality, lower total emissions due to fewer truck movements, reduced overall truck traffic, and improved road longevity due to less wear and tear from trucks. Finally, I note that the area of Tooele County where the project and industrial park are located is a non-attainment area under the Clean Air Act, but STR anticipates

it will operate less than three trains per day once the project is fully constructed and the park is built out.

I, Kirk W. Aubry, declare under penalty of perjury that the foregoing is true and correct.

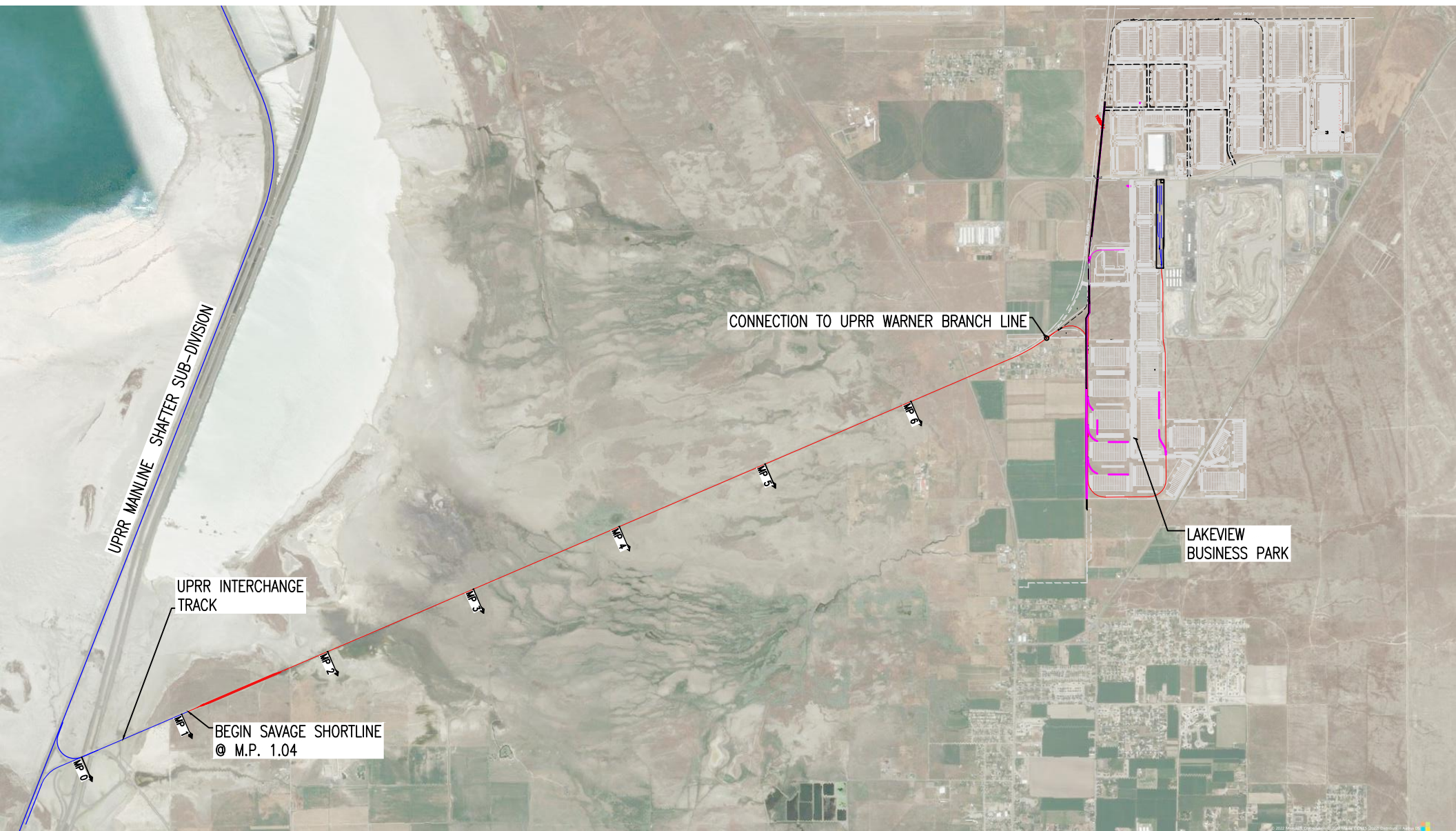
Further, I certify that I am qualified and authorized to sponsor this testimony.

Executed: June 8th 2022



Kirk W. Aubry

EXHIBIT A - MAPS



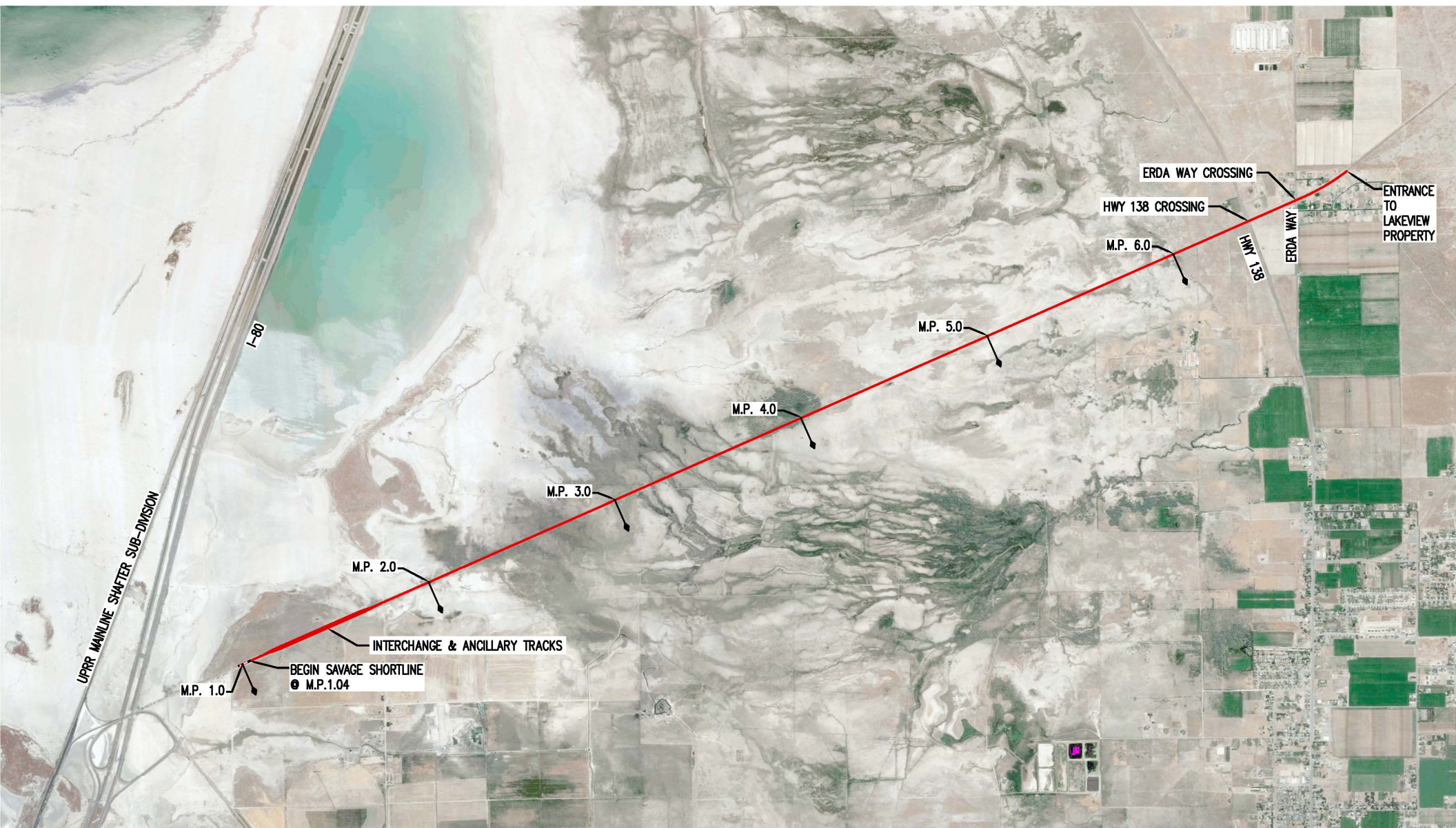
UPRR MAINLINE SHAFTER SUB-DIVISION

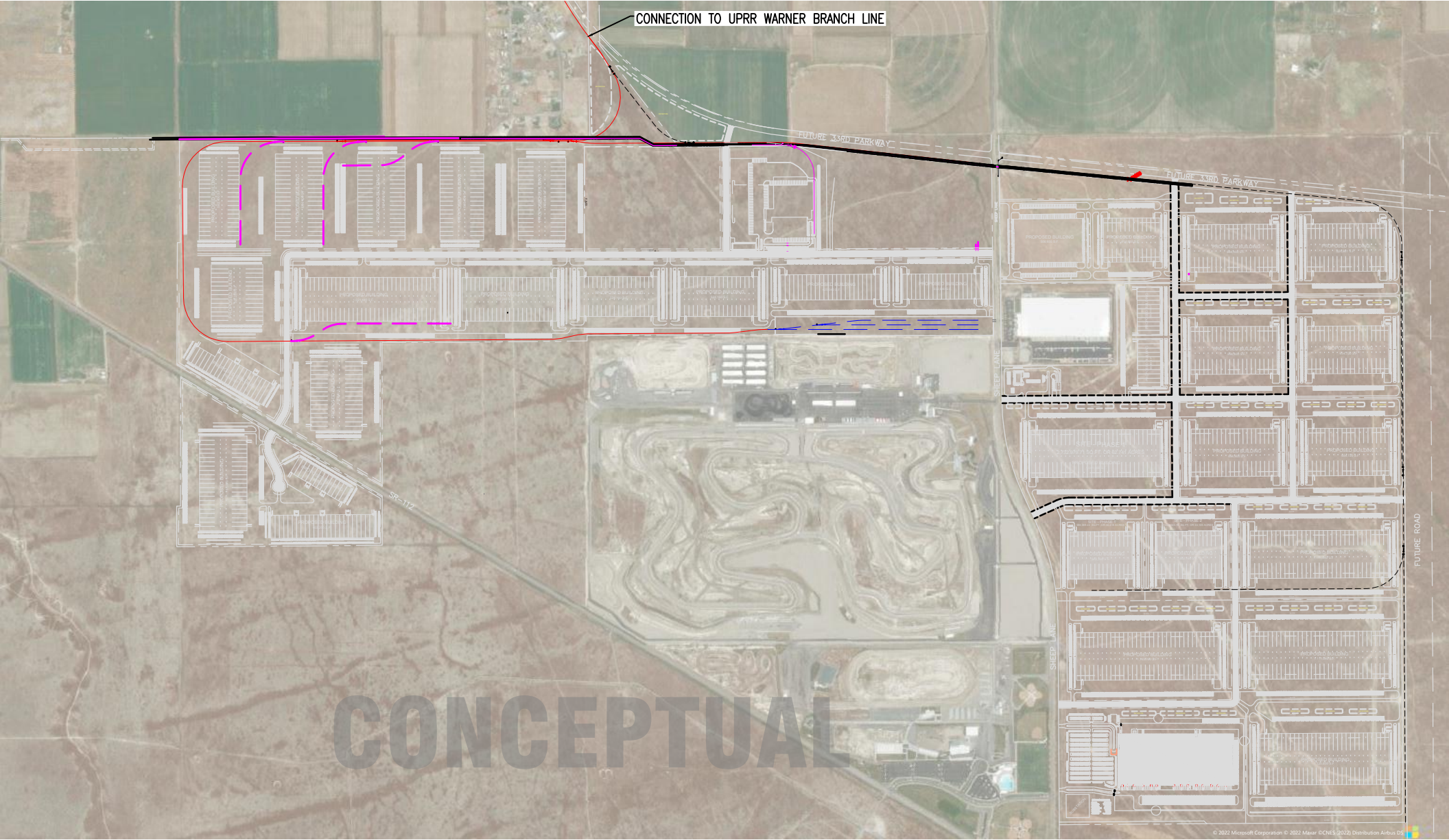
UPRR INTERCHANGE TRACK

BEGIN SAVAGE SHORTLINE
@ M.P. 1.04

CONNECTION TO UPRR WARNER BRANCH LINE

LAKEVIEW
BUSINESS PARK





CONNECTION TO UPRR WARNER BRANCH LINE

FUTURE 13RD PARKWAY

FUTURE 13RD PARKWAY

SR-112

SLEEP LANE

SLEEP LANE

FUTURE ROAD

CONCEPTUAL