

December 20, 2022

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Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610
Tel 650 725-8571
Fax 650 723-4426
www.law.stanford.edu

Via E-Filing

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, DC 20423-0001

Re: Petition for Declaratory Order (Finance Docket No. 36654)

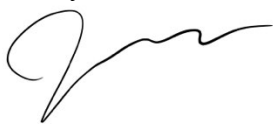
Dear Board members:

We write on behalf of Petitioners Tenth Avenue Neighbors to submit the attached Fee Waiver Request and Petition for Declaratory Order. Petitioners bring this Petition pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, which grant petitioners a statutory right to seek declaratory orders from federal agencies like the Surface Transportation Board.

Petitioner respectfully requests that the Board exercise its discretion to declare that a rail spur owned by Pitman Family Farms, and/or its affiliate Bell's Poultry, LLC, at its Hanford, CA poultry farm does not fall under the jurisdiction of the Board, pursuant to 49 U.S.C. § 10102(5).

We appreciate your further attention to this important matter.

Sincerely,



Jess X. Lu, Certified Law Student
Aaron M. Schaffer-Neitz, Certified Law Student
Deborah A. Sivas, Supervising Attorney



Mariah C. Thompson
CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
Attorneys for Tenth Avenue Neighbors

FILED
December 20, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
December 20, 2022
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36654

TRANSPORTATION AUTHORITY

FEE WAIVER REQUEST

PETITION FOR A DECLARATORY ORDER

Communications with respect to this document should be addressed to:

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
Deborah A. Sivas (CA Bar. No. 135446)
Rica Garcia (CA Bar No. 320758)
Jess X. Lu (CA Bar Student Cert. No. 00843472)
Aaron M. Schaffer-Neitz (CA Bar Student Cert. No. 00842872)

Crown Quadrangle, 559 Nathan Abbott Way
Stanford, California 94305-8610
Telephone: (650) 725.8571
Facsimile: (650) 723.4426
dsivas@stanford.edu

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.
Mariah C. Thompson (CA Bar. No. 301989)
Marisol Aguilar (CA Bar No. 294796)

3747 E. Shields Avenue
Fresno, California 93726
Telephone: (559) 441-8721
Facsimile: (559) 441-0724
mthompson@crla.org

Attorneys for
Tenth Avenue Neighbors

Dated: December 20, 2022

FEE WAIVER REQUEST

The Board may grant a reduction or waiver of filing fees when it “is in the best interest of the public, or [when] payment of the fee would impose an undue hardship on the fee waiver applicant.” 49 C.F.R. § 1002.2; *see also Hartwell First*, No. AB 1242, 2017 WL 2416742 (May 30, 2017). Petitioner, Tenth Avenue Neighbors, requests that the Board waive the filing fee of \$1,400 that would otherwise be due for the filing of this Petition. 49 C.F.R. § 1002.2.

Payment of the fee would impose an undue hardship on the Petitioner. Tenth Avenue Neighbors is an unincorporated neighborhood association, comprised primarily of low-income families, formed to address noise and disturbance caused by an adjacent private rail spur owned by Pitman Family Farms (“Pitman Farms”). Petitioner lacks any resources to pay the filing fee, and Petitioner’s individual members, residents of a rural, economically depressed area, are unable to pay the fee. The fee constitutes a barrier to the families’ participation in the judicial process to address their concerns.

Waiver of the filing fee is also in the best interest of the public because it advances the directive of Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” which requires each Federal agency, “[t]o the greatest extent practicable and permitted by law[.], . . . make achieving environmental justice part of its mission.” 59 FR 7629, Sec. 1-101 (1994).

Because industrial parks such as that in which the Pitman Farms railway track is located are disproportionately sited in, or adjacent to, low-income

communities and communities of color, the unique burdens industrial facilities place on residents of those communities are an issue of *environmental justice*.

The circumstances here are representative of similar scenarios across the Country: Petitioner's members are primarily low-income people of color whose homes predated the industrial development that resulted in Pitman's construction of a private railroad track immediately adjacent to their homes. By waiving the filing fee, and therefore eliminating Petitioner's obstacle to seeking relief, the Board allows this environmental justice issue to be adjudicated.

Accordingly, Petitioner respectfully requests the Board waive the filing fee associated with this Petition to allow Petitioner to seek redress and to promote public interest. To not delay the handling of this Petition, Counsel California Rural Legal Assistance Inc., on behalf of Tenth Avenue Neighbors, has submitted the \$1,400 filing fee on the Board's electronic payment system. Petitioner requests that the Board determine that the filing fee in this matter is waived, and refund the amount paid.

PETITION FOR DECLARATORY ORDER

INTRODUCTION

Petitioner, Tenth Avenue Neighbors (“TAN”), hereby petitions the Surface Transportation Board (“Board”) for a declaratory order pursuant to its authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321. Petitioner requests that the Board declare that a private rail spur owned by Pitman Family Farms, Inc. (“Pitman Farms”), an industrial agricultural facility located at 10365 Iona Ave, Hanford, CA (“Hanford Property”), is not a “rail carrier” within the meaning of 49 U.S.C. § 10102(5) and, therefore, does not fall under the Board’s regulatory jurisdiction under the Interstate Commerce Commission Termination Act (“ITCA”).

FACTUAL BACKGROUND

Tenth Avenue Neighbors

1. Petitioner, TAN, is a California-registered unincorporated resident association comprised of families residing in the City of Hanford and County of Kings, California. TAN formed in April 2021 for the purpose of seeking redress for ongoing noise and disturbance caused by Pitman Farms’ operation of a private rail spur immediately adjacent to, and across the street from, Petitioner’s members’ homes. Stemming from Pitman Farms’ private rail spur, Petitioner’s members have been forced to endure deafening noise at all hours and severe ground vibration that damages structures.

Pitman Family Farms

2. Petitioner is informed and believes, and on that basis alleges, that Pitman Farms is a California general stock corporation. Petitioner is further informed and believes, and on that basis alleges, that Pitman Farms' principal office is located at 1075 North Ave, Sanger, CA 93657. Petitioner is further informed and believes, and on that basis alleges, that Pitman Farms' primary business is large scale poultry farming. Petitioner is informed and believes, and on that basis alleges, that Pitman Farms is affiliated with Bell's Poultry, LLC.

The Hanford Property and Pitman Spur

3. Petitioner is informed and believes, and on that basis alleges, that Pitman Farms owns multiple properties for use in its business operations. Petitioner is informed and believes, and on that basis alleges, that the "Hanford Property" actually consists of multiple, contiguous parcels that together form one large property, which contain the rail spur at issue in this Petition. The rail spur falls entirely within the boundaries of the Hanford Property. Petitioner is further informed and believes, and on that basis alleges, that the Hanford Property is used for the production and distribution of agricultural products related to poultry production, such as feed. Petitioner is informed, and believes, and so alleges that Pitman Farms, and /or its affiliate entity, Bell's Poultry, LLC, has owned the Hanford Property since 2013. Petitioner is informed and believes, and on that basis alleges, that Pitman Farms retains whole ownership of the Hanford Property today.

4. The Hanford Property parcel is located within an approximately 1,000-acre industrial park on the outskirts of the City of Hanford, California.¹ Petitioner is informed and believes, and on that basis alleges, that BNSF Railway Company, a major freight rail transporter across North America with a strong presence in California,² provides freight service via an arterial line running through the center of the industrial park, which connects to various private spurs located on individual parcels within the industrial park. A map demonstrating the location of the arterial line is provided on page three (3) of this Petition and as Attachment 3.

5. The Hanford Property is located on the eastern side of the BNSF rail line. It is one-hundred and fifty-nine (159) acres in size and contains significant industrial development.³ Land improvements include a number of facilities constructed after Pitman Farms acquired the property in 2013, including, but not limited to, an 80,000 sq. ft. commodity building, a 7,200 sq. ft. warehouse, boilers, grain silos, and a soybean mill.⁴

6. Pitman Farm's facilities are served by a private rail spur ("Pitman Spur") that was constructed by Pitman Farms after acquiring the property.⁵ See

¹ Attach. 1 (City of Hanford City Council Staff Report).

² BNSF Railway, *BNSF in California*, BNSFCALIFORNIA.COM, <https://bnsfcalifornia.com/bnsf-in-california/>.

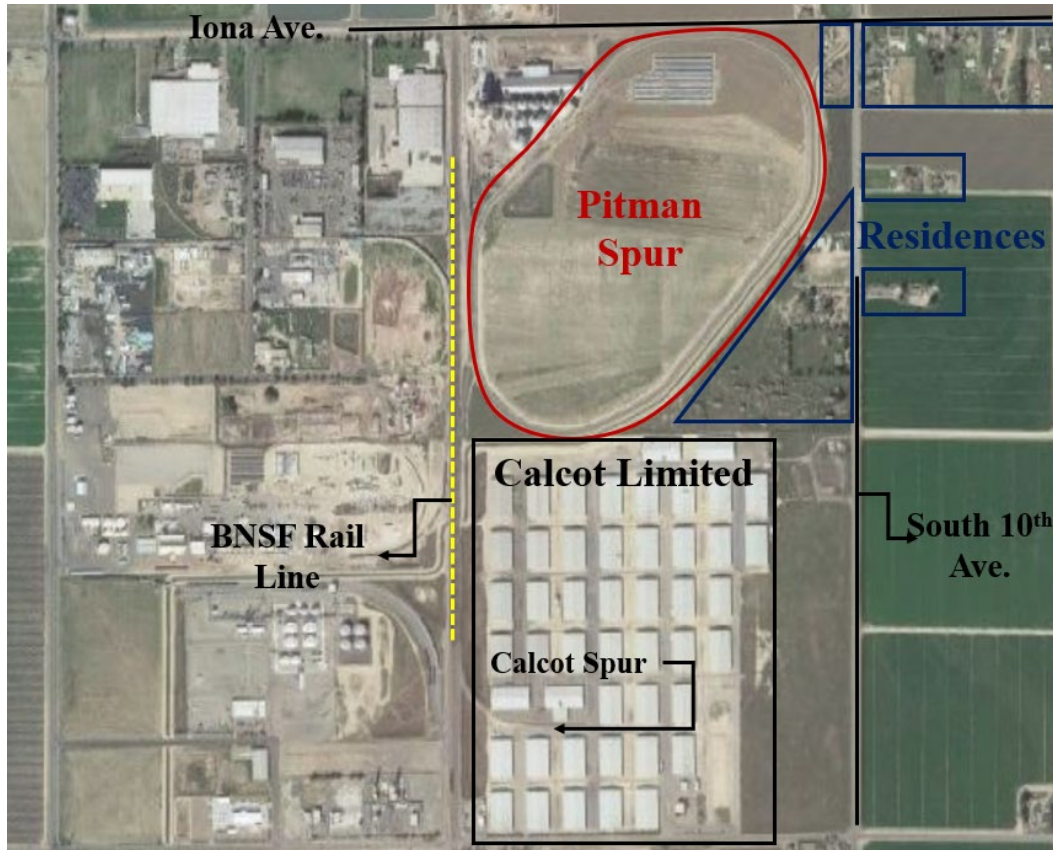
³ See Attach. 2. (2017 Site Plan); Attach. 1 (City of Hanford City Council Staff Report).

⁴ Attach. 1 (City of Hanford City Council Staff Report).

⁵ See Attach. 2 (2017 Site Plan); H & H Engineering, *Pitman Farms*, HHENG.COM, <https://www.hheng.com/project/pitman-farms/> ("H & H designed and constructed 1.7 miles of ballasted track in Hanford, California, including three turnouts and two crossovers, for a large family owned farming operation which specializes in poultry.") (last visited Dec. 1, 2022).

Attachment 3, “Satellite Image of 10365 Iona Ave., Google Maps,” also set forth below:

Satellite Image of 10365 Iona Ave., Google Maps (Attachment 3)



7. The Pitman Spur consists of a 1.7 mile closed loop that occupies much of the Hanford Property. The Pitman Spur connects to the BNSF arterial line but is otherwise located exclusively within the Hanford Property boundaries and solely serves Pitman’s facilities. Petitioner is informed and believes, and on that basis alleges, that the Pitman Spur is used primarily to transport feed to be used and stored on the Hanford Property.

8. Pitman Farms is the only entity that uses the Pitman Spur, and the location of the spur ensures that no other entity can access it or would benefit from doing

so. The Pitman Spur is abutted by rail lines and roads to the West, North, and East. The BNSF arterial line runs North-South and borders the Hanford Property to the West. Iona Avenue separates the Pitman Spur from other properties to the North. The East and Southeast of the Pitman Spur are abutted by the homes of Petitioner's members. Another road, South 10th Avenue, sits East of those residences and the Pitman Spur. Calcot Limited, to the South of the Pitman Spur, is the only industrial parcel that adjoins the Pitman Farms property. Calcot does not utilize the Pitman Spur because it maintains its own private track that connects directly to the BNSF arterial line. The Pitman Spur is a private track that was constructed, and is used, for the sole benefit of Pitman Farms.

Controversy Over Pitman Spur Oversight Authority

9. Based on the foregoing facts, Petitioner seeks a declaratory order finding that the Board does not have jurisdiction over the Pitman Spur. Such an order is necessitated by an actual, ongoing controversy between Petitioner and the City of Hanford, which has asserted that operation of the Pitman Spur is under the exclusive jurisdiction of the Board and thus exempt from any local or state oversight.

10. Pitman Farms' use of the Pitman Spur detrimentally interferes in the lives of Petitioner's members, who reside in close proximity to the Hanford Property. Pitman Farms uses the spur at all hours, including at night when Petitioner's members are attempting to sleep. The use of the spur results in excessive noise such as squealing, banging, and crashing at levels that exceed local and state limits for industrial facilities and prevent Petitioner's members from sleeping

through the night. The spur is located less than two hundred (200) feet from the nearest residence. Because the track is so close to residences, vibrations caused by the track have resulted in significant damage to Petitioner's members' homes, including disruption to foundations, visible cracks in walls, and ground subsidence.

11. In early 2021, Petitioner member Caleb Araujo submitted complaints to the City of Hanford ("City") in relation to intolerably high levels of noise caused by Pitman Farms' use of the Pitman Spur, which is located close to Mr. Araujo's residence. Mr. Araujo requested assistance from the City because he believed the noise levels violated local and state ordinances such as the California Health and Safety Code, the City of Hanford General Plan, the City of Hanford Municipal Code, and the Kings Industrial Park Performance and Development Standards.

12. The City Attorney responded to Mr. Araujo by asserting that the Pitman Spur is not subject to state or local regulation because the Board "possesses exclusive authority over all railroad matters."⁶ The City maintains that the Pitman Spur is "not subject to any rules, including noise restrictions, contained in any state statute or [local regulations.]"⁷ As a result of its legal position on the matter, the City has refused to assist Mr. Araujo or Petitioner in their attempts to resolve the ongoing noise and disturbance issues caused by ongoing operation of the private Pitman Spur.

⁶ Attach. 4 (Letter from City Attorney's Office).

⁷ *Id.*, at 2.

13. A federal agency has also disclaimed jurisdiction over the Pitman Spur. Mr. Araujo submitted a noise complaint to the Federal Railroad Administration (“FRA”), an agency within the Department of Transportation.⁸ The FRA concluded that the Pitman Spur does not fall within the definition of “railroad” under 40 C.F.R. Part 201 and is therefore not subject to those federal regulations.⁹

14. Petitioner seeks a declaratory order from the Board holding that the Pitman Spur is a private track and therefore not exempt from state and local regulation and oversight. Such an order will resolve the conflicting positions regarding what agency has oversight over noise and physical disturbance complaints resulting from operation of the Pitman Spur and allow Petitioner to proceed with its efforts to constructively address this situation with local officials.

ARGUMENT

I. The Board May Issue a Declaratory Order to Eliminate Controversy Around its Jurisdiction.

The Board has discretion to issue declaratory orders to eliminate controversy and remove uncertainty, 5 U.S.C. § 554; 49 U.S.C. § 1321, and consistently exercises this discretion to resolve uncertainty around the scope of its jurisdiction. *See Bos. & Me. Corp. v. Town of Ayer*, 330 F.3d 12, 14 n.2 (1st Cir. 2003) (finding the Board may issue declaratory orders to eliminate controversy and remove uncertainty under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321); *Intercity Transp. Co. v. United States*, 737 F.2d 103, 106 (D.C. Cir. 1984) (finding the

⁸ Attach. 5 (Email from FRA).

⁹ *See id.*

Interstate Commerce Commission, in refusing to institute a declaratory order proceeding, potentially infringed upon petitioner’s right to seek declaratory orders under 5 U.S.C. §554(e); *Grafton & Upton R.R. Co. — Petition for Declaratory Ord.*, No. FD 36518, 2021 WL 5122255 at *2 (S.T.B.) (Nov. 3, 2021) (finding the Board has authority to issue a declaratory order on a matter of Interstate Commerce Commission Termination Act pre-emption over local regulations); *DesertXpress Enterprises — Petition for Declaratory Ord.*, Fed. Carr. Cas. (CCH) P 37238, 2007 WL 1833521 at *2 (S.T.B.) (June 25, 2007) (finding that uncertainty regarding the scope of the Board’s jurisdiction made issuing a declaratory order appropriate). As previously discussed, both local and federal authorities have disclaimed jurisdiction over the Pitman Spur. Only a declaration from the Board can provide Petitioner the clarity it needs to effectively pursue its members’ interests.

II. As the Board Has Long Recognized, It Does Not Have or Assert Jurisdiction Over Private Rail Spurs.

The Board has jurisdiction over “rail carrier[s].” 49 U.S.C. 10501(a)(1). Rail carriers are defined as those “providing *common carrier* railroad transportation for compensation.” 49 U.S.C. 10102(5) (emphasis added). Consistent with the limits of its statutory authority under the Interstate Commerce Commission Termination Act, the Board has interpreted the term “common carrier” to refer to an entity that “holds itself out to the general public as engaged in the business of transporting persons or property from place to place for compensation.” *Am. Orient Express Ry. — Petition for Declaratory Ord.*, No. FIN 34502, 2005 WL 3552968, at *3 (S.T.B.) (Dec. 27, 2005). To determine

whether an entity is holding itself out to the general public as engaged in common carrier services, the Board looks to “the character of the service of the party in relation to the public.” *Id.* (citation omitted). In *Am. Orient Express Ry. — Petition for Declaratory Ord.*, the Board determined that a rail company was “holding out” and therefore was considered a common carrier because it offered transportation to a segment of the public, rather than carrying its own goods or personnel. *Id.* at *5.

A common carrier is obligated to perform shipments for any shipper that makes a “reasonable request” for the carrier’s service. 49 U.S.C. § 11101; *accord Oakland Glob. Rail Enter. — Operation Exemption-in Oakland, Cal.*, No. FD 36312, 2022 WL 1440711, at *2 (S.T.B.) (May 5, 2022) (“[A] carrier, as part of its common carrier obligation under 49 U.S.C. § 11101(a), is required to transport any commodity . . . upon a reasonable request from a shipper.”) Thus, federal law requires a common carrier to “serve other shippers that might locate along” the common carrier’s rail line. *B. Willis, C.P.A. Inc. — Petition for Declaratory Ord.*, No. 34013, 2002 WL 1730018, at *1 (S.T.B.) (July 23, 2002).

The Board does not have jurisdiction over “private rail operations” conducted over private track, or private carriers. *B. Willis, C.P.A., Inc. — Petition for Declaratory Ord.*, No. 34013, 2001 WL 1168090, at *2 (Oct. 1, 2001). An entity is considered a private carrier when it has tracks that are “built and maintained by a shipper (or for a shipper at the shipper’s expense) and operated by the shipper (or its contractor) to serve only that shipper, moving the shipper’s own goods, so that there is no ‘holding out’ to serve other shippers for

compensation.” *Id.*; accord *B. Willis*, No. 34013, 2002 WL 1730018, at *1 (finding that an entity was a private carrier because “no other shippers [were] located on the line” and no operator “h[eld] out the possibility of any other shipper(s) to obtain service over the line”); *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 250 (3d Cir. 2007) (defining private carriers as those that “offer[] services to limited customers under limited circumstances”); see also *Devens Recycling Center, LLC — Petition for Declaratory Ord.*, FIN No. 34952, 2007 WL 61948 (Jan. 9, 2007), at *3 (S.T.B.) (determining that an entity is considered a private carrier when it has not granted any carrier “the right to provide service over the track to other shippers”). Unlike common carriers, private carriers have “no obligation to serve the public at large.” *N.Y. Susquehanna*, 500 F.3d at 250.

Common carriers that provide service on private tracks also are not subject to the Board’s jurisdiction “so long as [the carrier] does not perform common carriage service on the private track and it does not maintain the track with its own funds.” *B. Willis, C.P.A., Inc.*, No. 34013, 2001 WL 1168090, at *2; see *Devens Recycling*, No. FIN 34952, 2007 WL 61948, at *3 (finding that petitioner’s track was private despite petitioner compensating a common carrier to switch rail cars).

In *Devens Recycling*, the Board determined that a recycling facility planning to build a rail track within its property boundary and connect to a main line owned and operated by a common carrier would be considered a private track not within the jurisdiction of the Board. No. FIN 34952, 2007 WL 61948, at *1.

The recycling facility was responsible for building and retaining ownership of the track but planned to enter a contract with a common carrier to switch railroad cars onto the track. *Id.* In addition to disclaiming jurisdiction over wholly private rail operations, the Board determined that it does not have jurisdiction even when “an operator that conducts common carrier operations elsewhere . . . operates on [a] private track exclusively to serve the owner of the track pursuant to a contractual arrangement with that owner.” *Id.* at *2. The Board found that the recycling facility’s track would be considered a private track because the recycler owned “the easements on the land,” planned to own the rail track after construction, and did not hold itself out as a common carrier. *Id.* at *3. Even though the recycling facility planned to contract with an operator that conducted common carrier operations elsewhere, the Board determined that the track was not within its jurisdiction because the operations that would be conducted on the track would exclusively service the recycling facility. *Id.*

III. Pursuant to the Board’s Consistent and Long-Standing Interpretation of Its Statutory Authority, the Board Does Not Have Regulatory Jurisdiction Over the Pitman Spur and Should Issue a Declaratory Order that Resolves the Present Controversy.

The Pitman Spur is a private track and therefore does not fall within the Board’s limited jurisdiction under the ICCTA. The spur was constructed exclusively for Pitman Farms by H & H Engineering Construction Inc., on land that Pitman Farms owns, and is operated and maintained solely by Pitman Farms as part of its poultry business. *See B. Willis, C.P.A., Inc.*, No. 34013, 2001 WL 1168090, at *2; *Devens Recycling*, No. FIN 34952, 2007 WL 61948, at *3.

The Pitman Spur only serves Pitman Farms, and Pitman Farms, which operates the spur, has not held itself out as a common carrier. No other shippers are located on the spur. *B. Willis, C.P.A., Inc.*, No. 34013, 2002 WL 1730018, at *1 (finding that “no other shippers are located on the” track is compelling evidence that the track is not subject to the Board’s jurisdiction). Additionally, Pitman Farms has no common carrier obligation to perform service for other shippers. *See id.* (noting that common carriers have an obligation to “serve other shippers that might locate along the line”). Pitman Farms has not stated any intent to serve other facilities nor granted any carrier the right to provide service on the track to other shippers. *Devens Recycling*, 2007 WL 61948, at *3. Like the recycling facility’s track in *Devens Recycling*, the Pitman Spur is exclusively used to transport Pitman’s goods within the Hanford Property; it is not used to transport members of the public, the public’s goods, or the goods of any other shipper.

Even if Pitman Farms contracted with a common carrier to provide rail services, the Pitman Spur would not be within the Board’s jurisdiction. No shippers are located on the spur and Pitman Farms owns and maintains the spur. The common carrier would therefore be unable to perform common carriage service on the spur, even using its own funds, and would not be subject to the Board’s jurisdiction. *B. Willis, C.P.A., Inc.* No. 34013, 2001 WL 1168090, at *2; *see also Devens Recycling* No. FIN 34952, 2007 WL 61948, at *3.

The Pitman Spur was built and maintained by Pitman Farms, is exclusively used to transport Pitman Farms’ goods, and no entity connected to the

Pitman Spur holds itself out as a common carrier. The Pitman Spur is a private track operated by a private carrier and is not subject to the Board's jurisdiction.

See 49 U.S.C. § 10501(a)(1).

CONCLUSION

Petitioner requests that the Board issue a declaratory order confirming that the Pitman Spur does not fall within the Board's ICCTA jurisdiction.

Dated: Dec. 20, 2022

Respectfully submitted,

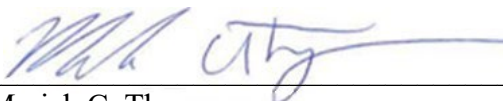
ENVIRONMENTAL LAW CLINIC
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By: 

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Jess X. Lu, Certified Law Student
Deborah A. Sivas, Supervising Attorney

Attorneys for Tenth Avenue Neighbors

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

By: 

Mariah C. Thompson

Attorneys for Tenth Avenue Neighbors

CERTIFICATE OF SERVICE

I, Elizabeth Trujillo, certify that on this day I caused the instant Petition for Declaratory Order to be sent via Certified Mail and electronically uploaded with the United States Surface Transpiration Board at <https://www.stb.gov/proceedings-actions/e-filing/>, and that I caused a copy to be served, via First-Class with the U.S. Postal Service in accordance with 46 C.R.F § 1104.12(a), upon the following parties addressed below:

Ty N. Mizote, Esq.
GRISWOLD, LaSALLE, COBB,
DOWD & GIN, L.L.P.
111 E. Seventh Street
Hanford, CA 93230
Attorneys for City of Hanford

PITMAN FAMILY FARMS
Richard J. Pitman, Agent for Service of Process
1075 North Avenue
Sanger, CA 93657

BEL'S POULTRY, LLC
ATTN: David Pitman, Manager
1075 North Avenue
Sanger, CA 93657

I certify that I have this day served copies of this document upon all parties of record in this proceeding, with postage prepaid and respective envelopes deposited with the United States Postal Service at Fresno, California.

CALIFORNIA RURAL LEGAL
ASSISTANCE, INC.

By: 

Dated: Dec. 20, 2022

ELIZABETH C. TRUJILLO

ATTACHMENT 1

**CITY OF HANFORD CITY COUNCIL
STAFF REPORT
Tuesday, July 6, 2021**

PROJECT: Study Session Item – Regarding annexation of industrial land

LOCATION: The item pertains to land surrounding the Kings Industrial Park

PLANNER: Gabrielle Myers, Senior Planner

STAFF RECOMMENDATION

Staff recommends that the City Council

1. Direct staff to proceed with annexation of a specified area and advertise the project through a request for proposals.

BACKGROUND

The Kings Industrial Park is comprised of approximately 1,000 acres located in south Hanford.

Kings EDC made a presentation to the City Council on May 4, 2021. During their presentation, they indicated to the Council that there is limited industrial land remaining available, as the industrial park is mostly filled.

Per Kings EDC, the Central Valley is the number three growth market in the U.S. The central valley is the number 12 largest industrial market in the US. Kings EDC identified making more greenfield, undeveloped property, available for industrial use would be a major attraction for Hanford, during the site identification process.

As such, Staff has identified three areas where annexation could be initiated for Council's consideration.

Annexation Area Option #1

Approximately 1,250 acres

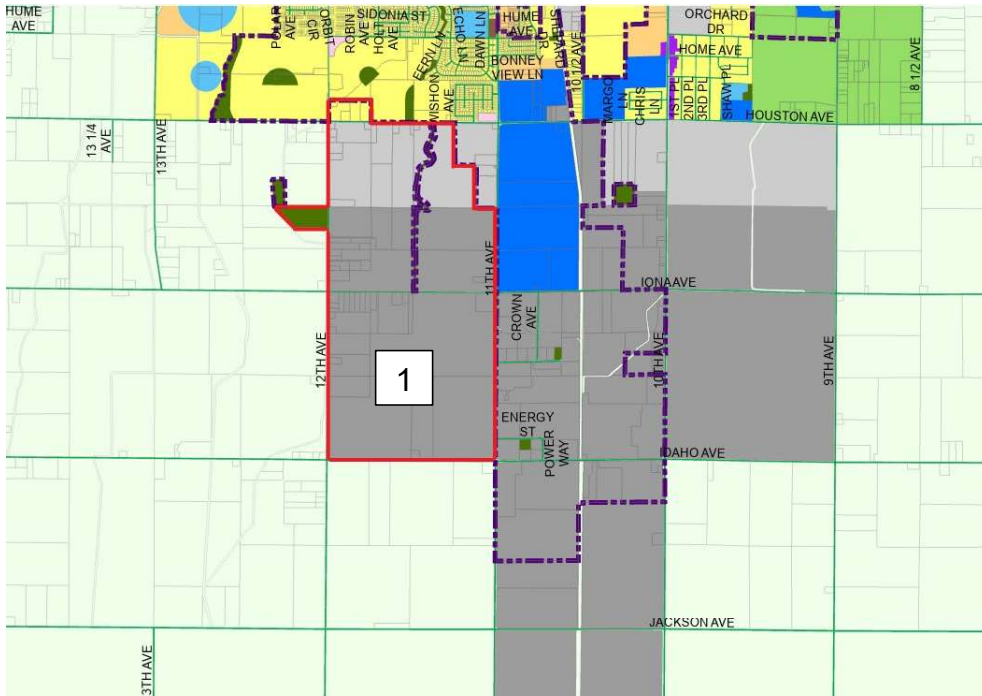
General Plan Designation:

Low-Density Residential – 20 acres

Open Space – 22 acres

Light Industrial – 260 acres

Heavy Industrial – 950 acres

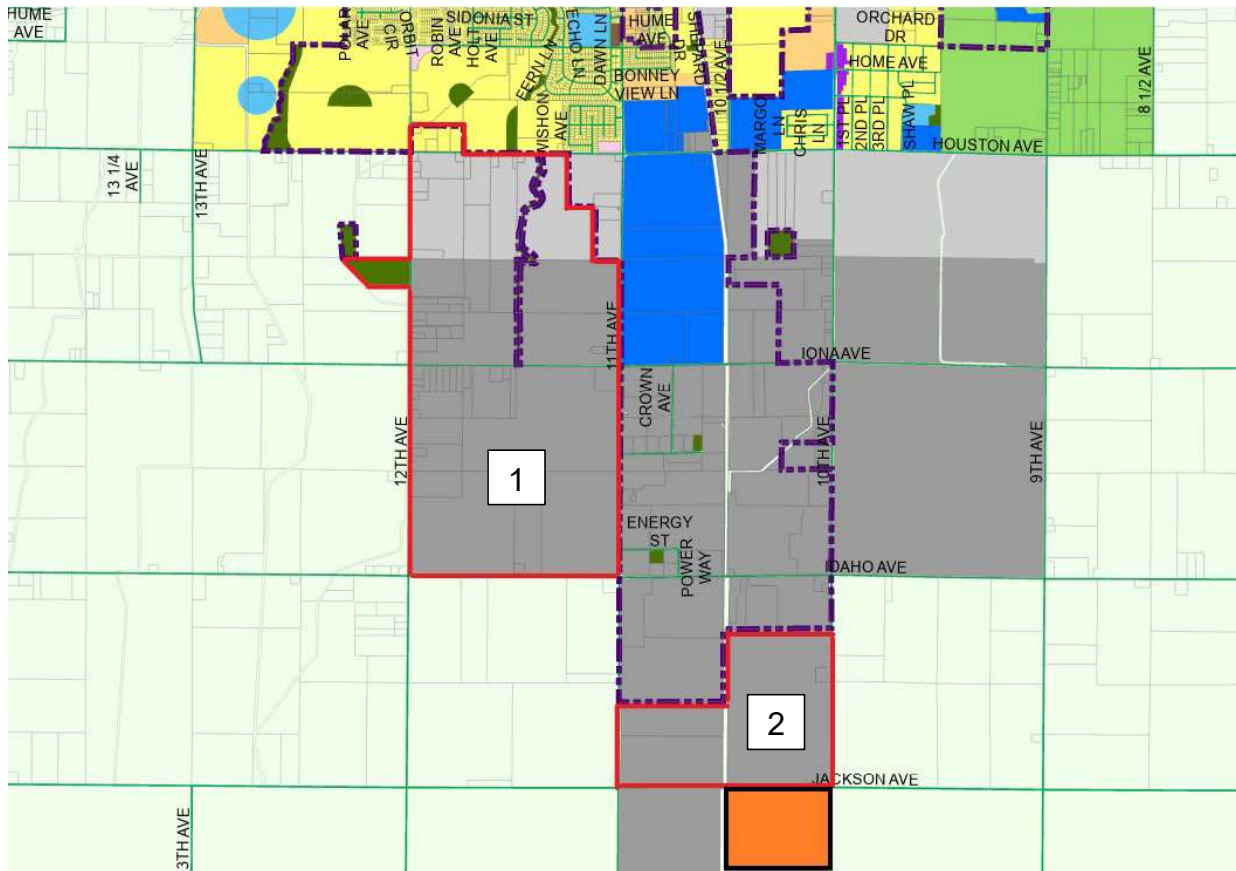


Per Kings EDC, this is the most desirable and strategic expansion of the industrial park.

Annexation Area Option #2

Approximately 366 acres

General Plan Designation:
Heavy Industrial – 366 acres



The area located South of Jackson is currently outside of the Primary Sphere of Influence and subject to a Farmland Security Zone Contract.

Annexation Area Option #3

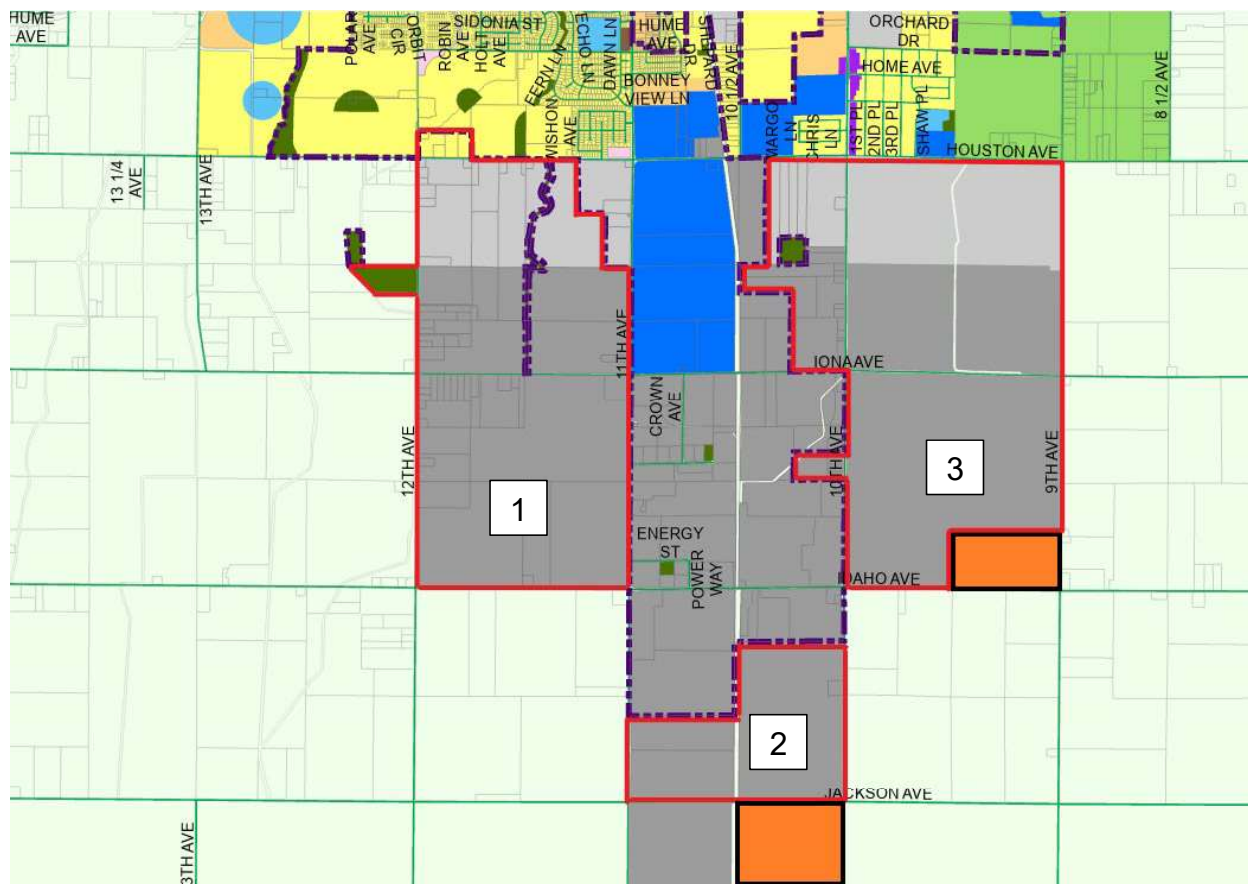
NWC of Idaho and 9th Avenue – Farmland Security Zone Contracted Land (shown in orange)

Approximately 1,425 acres

General Plan Designation:

Light Industrial – 418 acres

Heavy Industrial – 1,005 acres



ANNEXATION PROCESS

Staff's recommendation would be to hire a consultant to complete the work, including preparation of an environmental document and associated technical reports, if required.

Annexation requires the following steps:

Step	Description	Timeline
Environmental Review*	Annexation of the property into the City limits will require environmental evaluation. See flowchart attached.	Dependent on availability of consultants to process; Depends on level of environmental review required: Negative Declaration/Mitigated Negative Declaration (approximately 6 months) Environmental Impact Report (EIR) (1 year -1.5 years)
Staff Report Generation	Preparation of a staff reports describing the annexation request and pre-zoning	1 month to prepare following the environmental determination

Planning Commission Hearing	Public Hearing before the City of Hanford Planning Commission to make a recommendation to Council regarding: - certification of the environmental document - a finding of consistency that the annexation proposed is consistent with the General Plan - pre-zoning of the property	20-day comment period required
City Council Hearing	Public Hearing before the City of Hanford City Council to: - certify the environmental document - direct staff (or consultant) to file an application with Kings LAFCo for initiation of annexation - introduce and waive the 1st reading of the ordinance, pre-zoning the property	Following Planning Commission hearing, the Planning Commission's recommendation to the City Council has to be published and mailed to property owners within 500 ft. of the project site for a 10-day notice period
City Council – 2 nd reading	Second reading of the ordinance pre-zoning the property	Following the 2 nd reading before the City Council, all documents required for submittal of the annexation package are forwarded to LAFCo. Depending on the time of submittal, annexations are typically heard 1-2 months after the
LAFCo Hearing*	Kings County Local Agency Formation Commission (LAFCo) has final authority when it comes to annexation of land. The Commission in Kings County is comprised of two City Council members from the four incorporated cities, two Board of Supervisors members and a public member chosen by the four city and county commissioners. The objectives of LAFCO are to encourage the orderly formation of local government agencies, preserve agricultural land resources, discourage urban sprawl, and provide a sphere of influence for each city and special district in the county.	

*** indicates timelines outside of City staff's control**

POTENTIAL DELAYS OR OBSTACLES

Potential Setbacks:

1. Agricultural preserve land and Williamson Act Contracts
 - a. Mitigation Monitoring Program Implementation, specified in the General Plan
2. County zoning – nonconforming uses including single-family residences that may oppose annexation

3. Protest from residents or property owners within 500 feet of the project site
4. Timing of the island annexations – Kings LAFCo has indicated they would not be favorable of pursuing other annexations until the annexation of the existing county islands.

ATTACHMENT 2



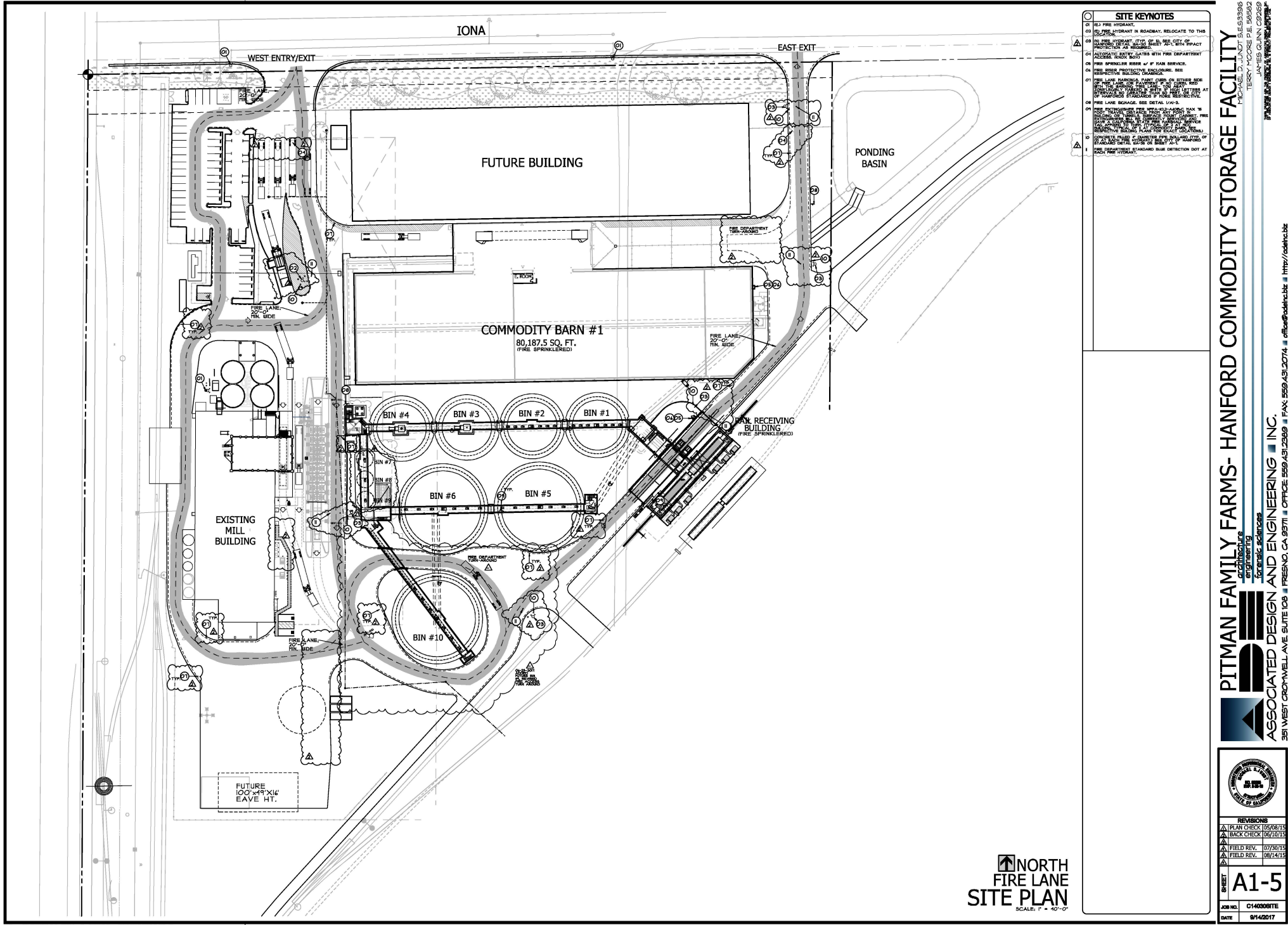
ADJUDICATION NO. 2 TO INITIAL
SUDANEGRA 2003 DECONTAMINATION
PROJECTS NO. 2003-01 AND SITE
REVIEW NO. 2003-01 (FEDERAL
FACILITY)

SCOPE OF WORK

1. RE-CONFIGURE ENTRY PARKING LOT;
2. INSTALL A SHUT CONTAINED
DECONTAMINATION STORAGE BIN IN A 100'
DIA. GRANITE SILO.

SHEET		A1-1
JOB NO.	C14030SITE	
DATE	09/14/2017	





SITE KEYNOTES	
01	REL FIRE HYDRANT
02	REL FIRE HYDRANT IN ROADWAY, RELOCATE TO THIS
03	ON FIRE HYDRANT, 17' TO GROUND, 17' TO IMPACT
04	AUTOMATIC EXTINGUISHING SYSTEMS WITH FIRE DEPARTMENT
05	FIRE SPRINKLER RISER 4" 8" RAN SERVICE, SEE
06	FIRE SPRINKLER RISER 4" 8" RAN SERVICE, SEE
07	FIRE LANE IMPROVED (FIRE LANE ON OTHER SIDE
08	ON FIRE LANE, 17' TO GROUND, 17' TO IMPACT
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PITMAN FAMILY FARMS- HANFORD COMMODITY STORAGE FACILITY

ARCHITECTURE
ENGINEERING
LANDSCAPE ARCHITECTURE

ASSOCIATED DESIGN AND ENGINEERING INC.

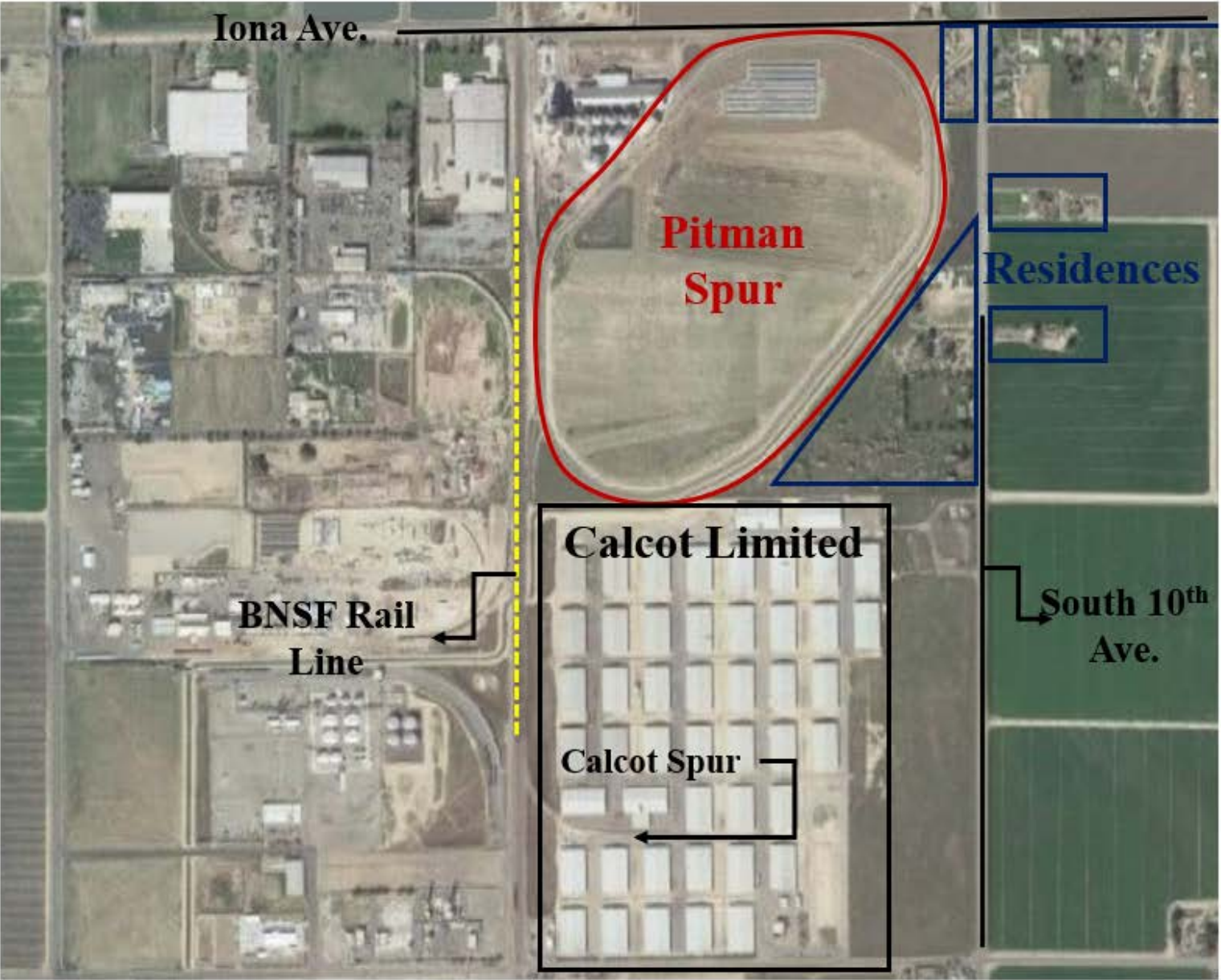
355 WEST CROWWELL AVE. SUITE 103 ■ FRENO, CA 93711 ■ OFFICE 559.431.2074 ■ FAX 559.431.2969 ■ <http://adeinc.biz>

REVISIONS

1	PLAN CHECK	08/08/15
2	BACK CHECK	09/10/15
3	FIELD REV.	07/30/15
4	FIELD REV.	08/14/15

DATE 9/14/2017

ATTACHMENT 3



ATTACHMENT 4

Robert M. Dowd*
Robert W. Gin*†
Jim D. Lee†
Jeffrey L. Levinson*
Raymond L. Carlson
Ty N. Mizote*
Michael R. Johnson*
Mario U. Zamora*
Megan N. Dodd
Christina G. Di Filippo
Sebastian L. Silveira
Luke V. Stempniak

*A Professional Corporation
†Of Counsel

GRISWOLD LASALLE

COBB DOWD & GIN LLP

ATTORNEYS
A California Limited Liability Partnership Including Professional Corporations

111 E. SEVENTH STREET
HANFORD, CA 93230

Telephone: (559) 584-6656
www.griswoldlasalle.com
tmizote@griswoldlasalle.com

Lyman D. Griswold
(1914-2000)
Michael E. LaSalle
(Retired)

Steven W. Cobb
(1947-1993)

May 25, 2021

VIA EMAIL (cda31126@gmail.com)
AND U.S. MAIL

Caleb Araujo
13077 10th Ave.
Hanford, CA 93230

Re: Kings Industrial Park Train Noise

Dear Mr. Araujo:

We are the attorneys for the City of Hanford (City). The City informed us of your complaints regarding train noise that is allegedly coming from property owned by Bel's Poultry, LLC in the Kings Industrial Park.

City staff forwarded to us a copy of your emails of March 29, April 12, and May 16, 2021 wherein you refer to state and local legal authority, including the California Health & Safety Code, the City of Hanford General Plan, the City of Hanford Municipal Code, and the Kings Industrial Park Performance and Development Standards. We understand that you believe that noise generated by rail spur operations occurring in the Kings Industrial Park (Industrial Park) may violate these state and local rules. Federal law, however, governs all railroad matters, including rail spur operations, and such operations are not subject to state or City regulations.

Federal Law

Section 10501(b)(2) of Title 49 of the United States Code (49 U.S.C. 10501(b)(2)) states that the Surface Transportation Board (STB) possesses "exclusive" authority over the construction and operation of rail spurs and side tracks and that remedies established under federal law regarding rail transportation matters "are exclusive and preempt" state and local laws.

Surface Transportation Board

Since the STB possesses exclusive authority over railroad matters, it considers issues in a manner similar to a court and renders legal decisions. In a matter involving the Borough of Riverdale, New Jersey, (STB Docket No. 33466) the STB concluded that Riverdale was prohibited from enforcing its zoning ordinances against railroad operations because "the zoning regulations that the Borough would impose clearly could be used to defeat [the railroad's] maintenance and upgrading activities, thus interfering with the efficiency of the railroad operations that are part of interstate commerce."

The STB also determined that Riverdale was prohibited from enforcing other land use restrictions because they “can be used to frustrate transportation-related activities and interfere with interstate commerce. To the extent that they are used in this way (e.g., that restrictions are placed on where a railroad facility can be located), courts have found that local regulations are preempted by the [Interstate Commerce Commission Termination Act of 1995].”

The STB further determined that states, counties, and cities may not require railroad activities to obtain a permit or environmental approval with respect to railroad construction and operations. Railroad activities may, however, be required to satisfy basic fire, plumbing, electrical, and building codes of a state.

The following conclusions can be drawn from the STB’s decision regarding Riverdale:

- Rail spurs are part of rail operations that are governed by federal law, and the STB has sole authority over railroad matters.
- Rail operations, including rail spurs, are mostly exempt from state and local laws. For example, rail spur activity occurring within the City is not subject to any rules, including noise restrictions, contained in the any state statute or the City’s General Plan, Municipal Code, or the Kings Industrial Park Performance and Development Standards. Railroad construction is, however, subject to State of California fire, plumbing, electrical, and building codes.
- The construction and operation of rail spurs are not subject to the City’s permit requirements. The party that constructed and which operates the rail spur on the Bel’s Poultry property could have refused to adhere to the City’s permitting process, and it cannot be forced to satisfy the conditions that are contained in any permit issued by the City.

Federal Court Cases

Since railroad operations, including the construction and operation of rail spurs are subject to federal jurisdiction, federal courts have considered matters involving railroad issues.

In *Rushing v. Kansas City Southern Railway Company* (2001) 194 F.Supp.2d 493, the U.S. District Court for the Southern District of Mississippi considered a matter in which homeowners challenged the operation of a railroad switching station located close to the plaintiffs’ home. The plaintiffs complained that the switching station created a nuisance under Mississippi law due to “unbearable levels of noise caused by trains switching, brakes screeching, and horn blowing at all hours of the day and night.” The homeowners also complained of vibrations from the railroad cars which were allowed “to roll down an incline and collide with other cars at the lower end.” The plaintiffs sought a monetary award under Mississippi law for injuries that they suffered as a result of the switching station and for an injunction to force the station to operate at permissible noise

levels and to eliminate damaging vibrations caused by switching activities. The court stated:

“[T]o the extent Plaintiffs seek to use state law to control noise production by regulating the manner in which the Defendant operates its switch yard, for example by restricting the hours at which time it may conduct switching and whistle-blowing activities, controlling the number of trains engaged in switching operations at any given time, and by requiring that the Defendant employ different techniques when braking its trains, all of which would result in an economic impact on the Defendant, the state law has been preempted by the ICCTA which vests exclusive jurisdiction in the STB over such matters.”

Id. at 500-501.

The *Rushing* court determined that the Interstate Commerce Commission Termination Act of 1995 (ICCTA) preempted (overrode) Mississippi law and, therefore, ruled against the homeowners.

In *Guckenberger v. Wisconsin Central Ltd.* (2001) 178 F.Supp.2d 954, the U.S. District Court for the Eastern District of Wisconsin considered a similar matter in which homeowners sued under state law for nuisance conditions created by a train switching station. *Guckenberger* involved a switching system that was built directly across the street from and within one hundred seventy feet (170') of the plaintiffs' home. The homeowners claimed that “the coupling and uncoupling of trains, squealing of wheels, braking noises, slamming of cars, switching direction of train travel, flying switches of railroad cars, idling locomotive diesel engines and other similar incidents” occurred at many as sixty (60) times per month and lasted as long as several hours per episode. Like the *Rushing* Court, the *Guckenberger* Court found that the ICCTA preempted (overrode) Wisconsin law and ruled against the homeowners.

Federal court decisions occurring in the western U.S., including California, that are appealed are heard by the 9th Circuit Court of Appeal. In *City of Auburn v. U.S. Government* (1998) 154 F.3d 1025, the 9th Circuit confirmed that 49 USC 10501(b)(2) preempts state and local laws. The 9th Circuit determined that the construction of rail improvements, including track sidings, is exempt from state and local permit requirements because the ICCTA preempts (overrode) such requirements. In reaching its decision, the Court stated:

“Section 10501 of the ICCTA, which governs the STB's jurisdiction, states the board will have *exclusive* jurisdiction over ‘the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State.’ 49 U.S.C. § 10501(b)(2) (1997). The same section states that ‘the remedies provided under this part with

respect to regulation of rail transportation are *exclusive* and *preempt* the remedies provided under Federal or State law.’ 49 U.S.C. § 10501(b) (1997).”

Id. at 1030.

Federal Remedies

Pursuant to 42 U.S.C. 4916, the U.S. government created noise emission standards for railroad operations. The standards can be found in Appendix A to Part 210 of Title 40 of the Code of Federal Regulations (copy enclosed). The standards include various railroad operations, including “moving” and “car-coupling operations.”

42 U.S.C. 4909(a)(6) makes it illegal for rail operations to violate the federal noise standards adopted pursuant to 42 U.S.C. 4616.

If rail operations do not comply with federal noise standards, an injured party may pursue a lawsuit in federal court under 42 U.S.C. 4911.

Also, 42 U.S.C. 4910 allows for federal criminal and/or civil fines for noise violations and authorizes federal courts to grant injunctions to prevent future violations.

Conclusions

- Federal law preempts state and local laws, including the California Health & Safety Code, the City of Hanford General Plan, the City of Hanford Municipal Code, and the Kings Industrial Park Performance and Development Standards.
- Due to federal preemption, rail spur activities are not subject to any state or City noise restrictions.
- The STB possesses exclusive authority over railroad issues, including rail spurs.
- Since the City has no authority over rail activities, a party may build and operate a rail spur within the City’s boundaries without having to obtain a permit or other approval from the City.
- Homeowners have sued in federal court for railroad noise that created a nuisance under state and local law. Courts, however, have consistently ruled against such plaintiffs because railroad activity is only subject to federal law.
- There are federal noise standards governing railroad activities. An injured party may sue in federal court for violations of the federal standards.

Caleb Araujo
May 25, 2021
Page 5

We trust that this letter helps you understand that the City possesses no authority over rail spur activities, and the City is prohibited from enforcing state and local noise regulations against railroad activities.

Sincerely,

GRISWOLD, LaSALLE, COBB,
DOWD & GIN, L.L.P.

By:


TY N. MIZOTE

TNM/jg

Enclosure

cc: (via email; w/encl.)
City Council
City Manager

ATTACHMENT 5



Major, Jenika (FRA) <jenika.major@dot.gov>

to me, Jenika ▾

Mon, May 11, 2020, 7:48 AM



Good Morning Mr. Araujo,

I am writing to respond to your complaint to the Federal Railroad Administration (FRA) on April 8, 2020 regarding noise event from Pitman Family Farms during car coupling of railroad cars near your residence.

The FRA is the agency within the Department of Transportation (DOT) that regulates railroad operations. Noise Emissions from car coupling impacts is regulated by the US Environmental Protection Agency (USEPA) under 40 CFR Part 201. The regulations limiting noise emissions from car coupling impacts is intended to identify specific "noise defective" equipment. The FRA does not have an ambient noise regulation of any kind. Based on a review of the location and industry, it is not possible to conduct noise sampling pursuant to 40 CFR Part 201 because the following requirements would not be met:

- The property is not part of a railroad yard and is operated as an industry location. Because Pitman Farms is not a railroad, we would not regulate noise emissions from coupling activities to this standard.
- In addition, the required number of 30 noise events cannot be collected within the prescribed time interval between 60 and 240 minutes.

I spoke with an employee at Pitman Farms and made several suggestions to decrease noise levels into the community. These suggestions are to decrease coupling speed (less than 8 mph), made sure hand brakes aren't set when moving cars, and to try and limit the use of pneumatic hammer picks to daylight hours.

I truly apologize for the inconvenience this situation has caused you, please feel free to contact me if you have any other questions. Thank you.

Jenika Major, CIH
Safety & Occupational Health Specialist
Industrial Hygiene Division
Federal Railroad Administration
Regions 7 & 8
Mobile: 360-448-3124