

KATZOFF & RIGGS

ATTORNEYS AT LAW
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November 28, 2022

Sent Via GLS and E-mail

Re: Request for Cooperation Regarding Former Railroad Right of Way Located
Between 22nd Street and Treat Avenue, San Francisco Comprised of APNs
3639-036A, 3639-036B and 3639-036C (“the Right of Way”)

Dear Mr. Rubenstein:

This office has been retained by the following owners (all the “Owners”) of the following properties (“the Properties”) adjacent to the above referenced Right of Way:

APN	Address	Owner
3639-030	931 TREAT AVE	ERNEST R HEINZER REVOCABLE TRUST
3639-029	933 TREAT AVE	VERONICA ERICKSON
3639-025	969 TREAT AVE	MISSION KIDS’ COMMUNITY
3639-001	2600 HARRISON ST	H22 LLC
3639-002	2652 HARRISON ST	HARRISON & TREAT LLC
3639-004a	2660 HARRISON ST	HAYMISHION LLC

We write to you as an agent or executive for the Mission Greenway organization, who according to its website, intends to “reclaim” the Right of Way through “guerilla gardening” by installing 18 garden beds in the Right of Way

The Owners have retained our office for two reasons. First, to protect their rights to continue their

historical use of the Right of Way. Second, to open a dialog with Mission Greenway to discuss potential permissive uses of the Right of Way that is consistent with the rights of the Owners in the Right of Way and the health and safety of the neighborhood. We hope that through this discussion that the Owner's and Mission Greenway can reach a "win-win" solution that benefits everyone.

STATEMENT OF FACTS

We have reviewed the property records for the Right of Way. Although the written records of two of the parcels in the Right of Way are uncertain, there is no uncertainty that the Owners, and the prior owners of the Properties, have used the Right of Way for decades without any interference. The same is true of their neighbors who also own other properties adjacent to the Right of Way.

In particular, the owners of the commercial Properties, including warehouses, have used their back doors, that lead immediately to the Right of Way, for deliveries and pick-ups, as long as anyone can recall. The Mission Kids Community school, and its predecessor, have also used the Right of Way for many years for teacher parking and for parent pick-ups and drop offs. As the Mission Greenway website correctly states, the Owners' use of the Right of Way has been "without anyone's permission" and to the exclusion of others.

As stated on its website, Mission Greenway recently engaged in self-help to remove locks that secured the gates protecting the Right of Way from trespass, installed planter boxes in the Right of Way and posted signs at the entrance of Right of Way. These signs include a misleading sign that incorrectly suggests that a "Treat Street Greenway" is connected to legitimate action by the San Francisco Department of Recreation and Parks. We also understand that a padlock was recently placed on the fence along the Treat St. entrance to the Right of Way that prevents the Owners from accessing it. The Owners have posted signs at the entrance of the Right of Way stating, "Right to Pass by Permission and Subject to Owner's Control – Civil Code § 1008."

LEGAL ANALYSIS

A. Any Obstruction of the Right of Way that Interferes with the Owners' Historical Use Violates the Owners' Property Rights

The longstanding use of the Right of Way by the Owners and the prior owners of the Properties has created legal rights in the Owners to use Right of Way as they have historically. The law defines these ownership interests as easements by prescription.

An easement is a right to use the land of another that is created in various ways. These particular easements were created by the historical use of the Right of Way by the Owners of the Properties and their predecessors in title, for at least five years, in a clearly visible manner without an express agreement that the use is permissive. It is well established under the law of California and other

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states that the longstanding use of a right of way creates an easement benefiting the owner of an adjacent property.

The law prevents Mission Greenway, or anyone else, from interfering with the historical use of the Right of Way that has ripened into a lawful property right. The easement rights of the Owners are protected, compensable interests. Any interference with the Owners' rights to use the Right of Way could give rise to legal action, including seeking a court order to prevent interference with the Owners' property rights and monetary damages in a civil suit for loss of use of the Right of Way.

PROPOSED SOLUTION

As stated above, the Owners would like to meet with Mission Greenway to discuss a mutually beneficial arrangement that considers the Owners' property rights, the interests of Mission Greenway and the health and safety of the neighborhood. Pending this meeting, the Owners will continue to permit Mission Greenway and others to access the existing planters. The Owners request that Mission Greenway remove any locks that it has installed on the fences adjacent to the Right of Way and otherwise not interfere with the Owners' use of the Right of Way.

CONCLUSION

Please let us know if Mission Greenway is willing to meet to discuss these matters and we can schedule a time to do this over the next 30 days to do so. In the meantime, we request that Mission Greenway not interfere with the Owner's property rights in the Right of Way. Thank you for your attention to this matter. Of course, if you have any questions, please do not hesitate to contact this office.

Sincerely,



Stephen G. Preonas

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