

**UNION PACIFIC RAILROAD  
ENFORCEMENT CASE ER2023.019.00**

**PROPOSED CEASE AND DESIST AND CIVIL PENALTY ORDER  
FOR TWO VIOLATIONS**

BELLA CASTRODALE, LEAD ENFORCEMENT ATTORNEY

NOVEMBER 14, 2024

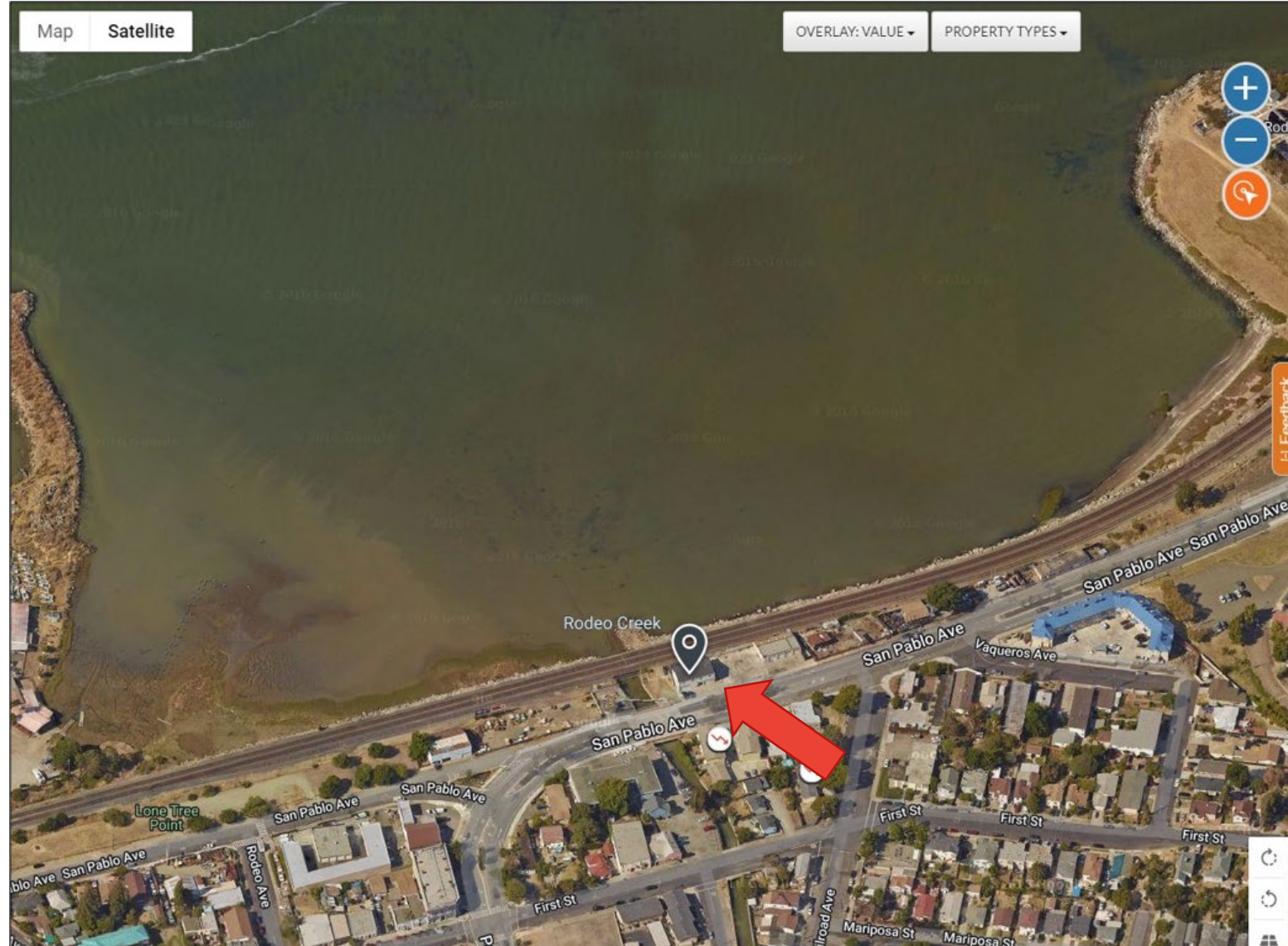
ITEM 6



# OUTLINE

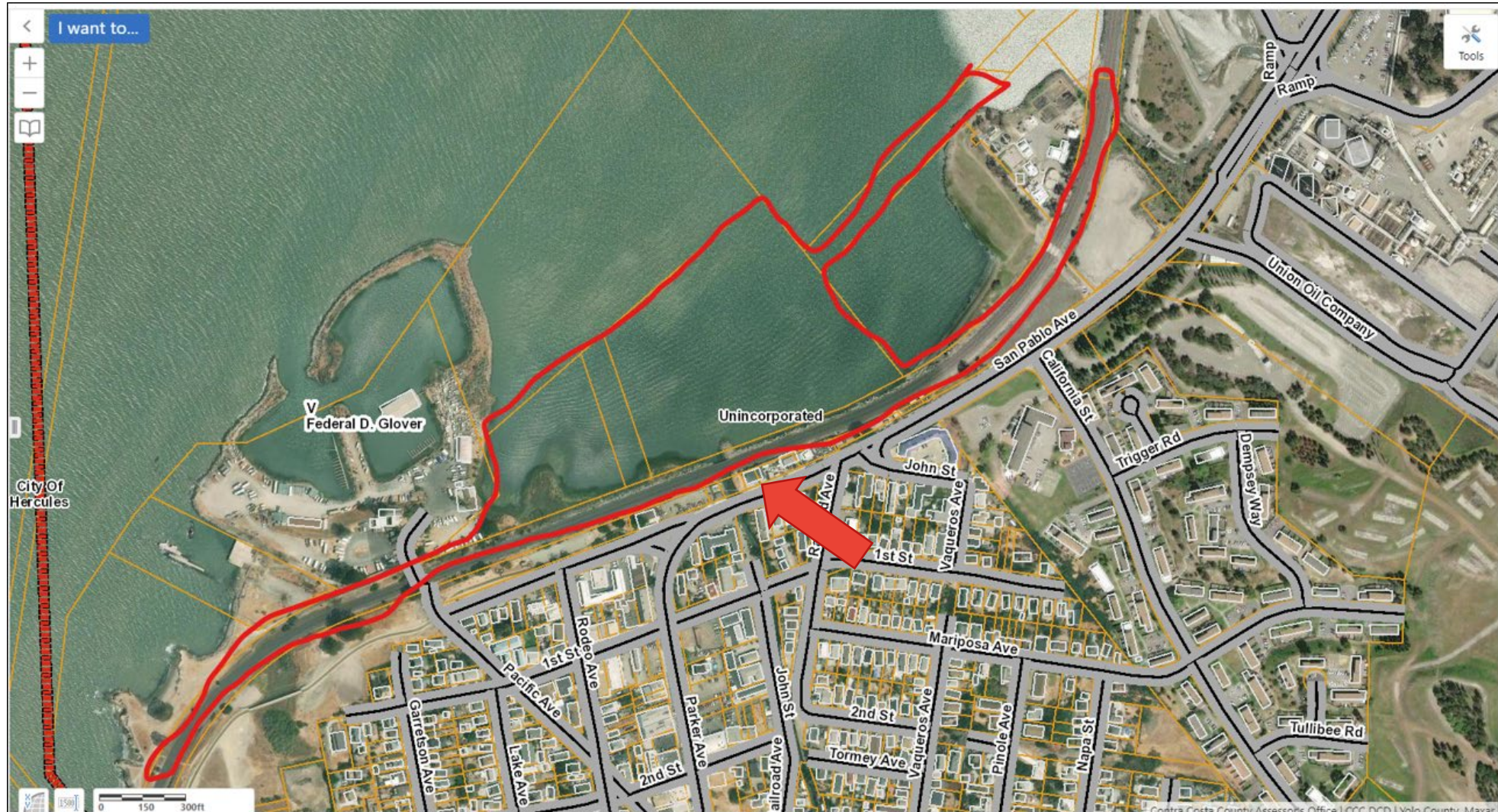
- Location of Violation
- Timeline of Events
- Violation Summary
- Respondent Defenses & Staff Rebuttals
- Staff Recommendation

# LOCATION OF VIOLATION

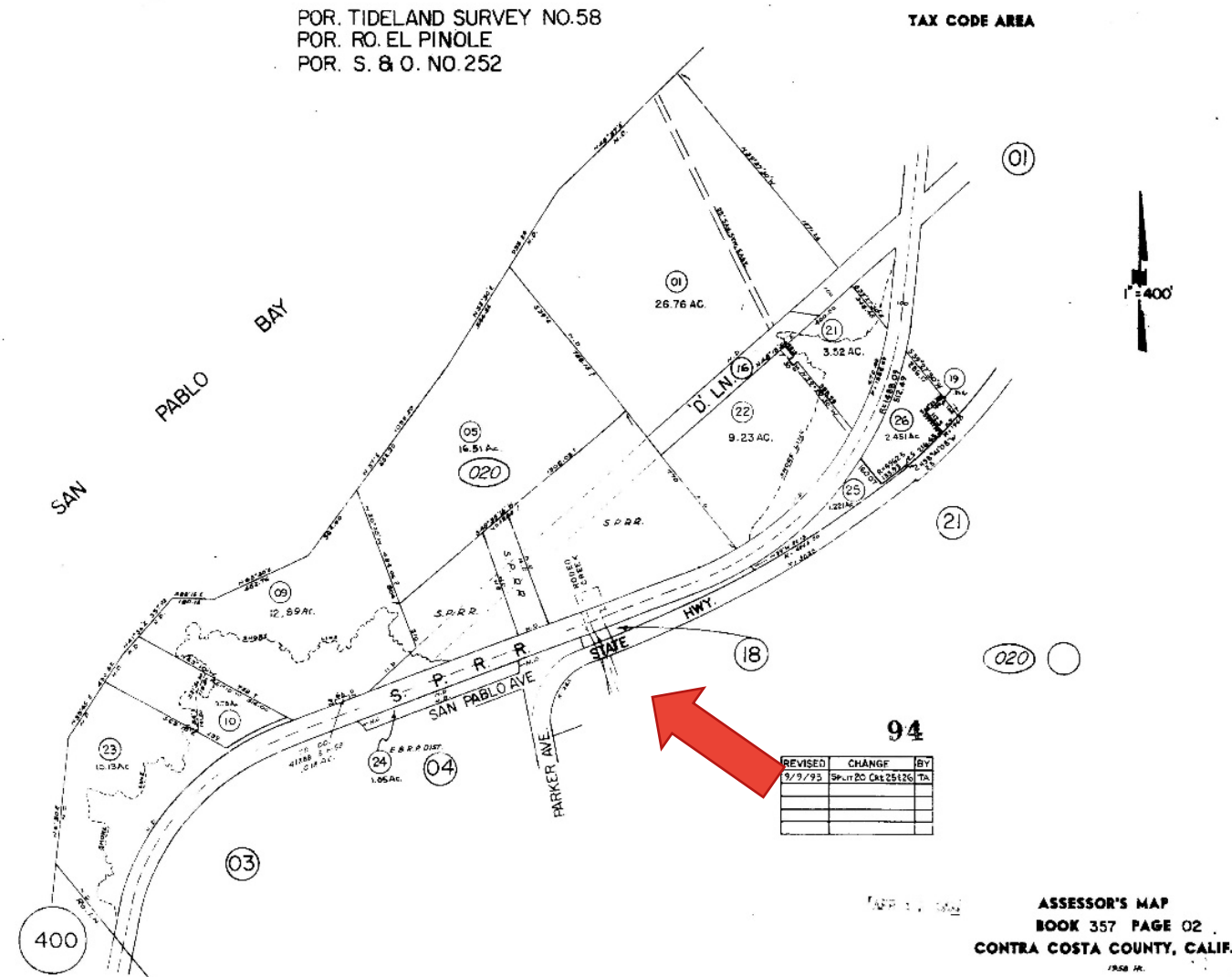




# LOCATION OF VIOLATION

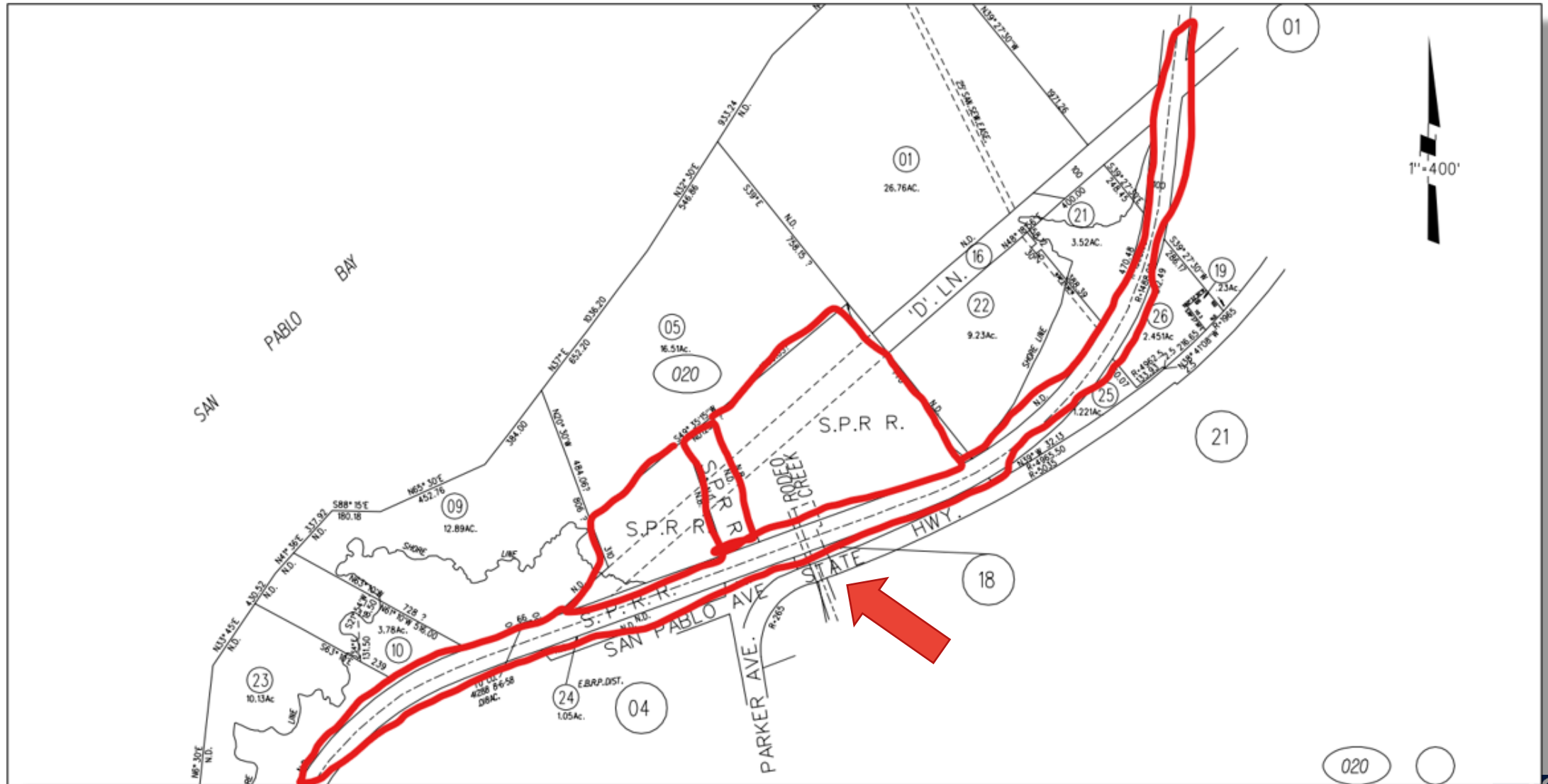


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# TIMELINE OF EVENTS

- February 2023: Staff received report of refuse, hazardous waste in the form of tires, and homeless encampment(s) on Respondent's property.
- March 2023: Staff inspected the site and collected photographic evidence depicting the fill.
- February 2024: Enforcement staff initially contacted Respondent, explaining that “tons of hazardous material in the San Francisco Bay and an illegal encampment” had been observed on Respondent's property within BCDC's permit jurisdiction.
- March 2024: BCDC staff met with Respondent's representative, during which time staff reiterated the nature of the alleged violations. BCDC staff emailed photographs of the fill.
- June 2024: BCDC staff and Respondent met over the phone, and Respondent committed to providing an update during the first week of July.
- August 2024: BCDC staff emailed Respondent requesting an update. Respondent indicated that scheduling removal of the fill was underway.
- September 2024: Staff mail Violation Report & Complaint for Administrative Civil Penalties.
- October 2024: Staff observe persistence of unauthorized fill, although some removal had occurred.

# SUMMARY OF VIOLATIONS

1. Respondent violated and is violating the McAteer-Petris Act by allowing dumping of tons (est.) waste consisting of used automotive tires, shopping carts, plastic, and trash within BCDC bay jurisdiction.
2. Respondent violated and is violating the McAteer-Petris Act by allowing the establishment of at least one encampment within the 100-foot shoreline band.



# ADMITTED ALLEGATIONS

- Respondent submitted Statement of Defense form on October 24, 2024.
- Respondent indiscriminately denied all allegations.

# RESPONDENT DEFENSE 1 OF 3

1. Respondent argues that Union Pacific has no control over the establishment of encampments and the disposal of tires or any other materials present in the Bay, nor did they authorize such disposal.

## STAFF REBUTTAL

- Under *Leslie Salt*, BCDC may hold a landowner responsible for unauthorized bay fill placed on its property by unknown third persons.

## RESPONDENT DEFENSE 2 OF 3

2. Respondent argues that the clean-up was delayed by a need to determine whether a permit was required by the Corps of Engineers and due to the illness of the individual coordinating the clean-up.

## STAFF REBUTTAL

- Respondent did not indicate to BCDC staff that extenuating circumstances, such as the illness of the individual coordinating the cleanup or permit requirements prevented Respondent from promptly addressing the unauthorized fill.



## RESPONDENT DEFENSE 3 OF 3

3. Respondent has engaged a contractor and is proceeding with the work to remove the unauthorized fill, which is ongoing. Union Pacific has been in contact with BCDC to allow staff to witness the cleanup.

## STAFF REBUTTAL

- Respondent failed to provide substantial updates concerning the scheduling or progress of the fill removal despite that nearly six months passed since BCDC initially informed Union Pacific staff of the violations. Furthermore, while Respondent did arrange for a site visit with BCDC, at the time Respondent was still searching for a suitable contractor to complete the fill removal.

# ADMINISTRATIVE CIVIL PENALTY

- BCDC staff have assessed factors as required by Appendix J.
- Violation 1:
  - Gravity of harm: **major**.
  - Extent of deviation from the statutory requirement to remove the unauthorized fill: **major**.
  - Daily penalty amount: \$2000
- Violation 2:
  - Gravity of harm: **moderate**
  - Extent of deviation from the statutory requirement to remove the unauthorized fill: **major**.
  - Daily penalty amount: \$1600
- Daily penalty per violation assessed for at least 600 days, during which time Respondent failed to take voluntary action to correct violations. Fines for each of the two violations are capped at \$30,000. Staff proposes a penalty amount of \$60,000.

# RECOMMENDED ENFORCEMENT DECISION

Vote to recommend that the Commission authorizes the Executive Director to issue the proposed Cease and Desist and Civil Penalty Order No. CCD2024.003.00, which would order Respondent to:

- 1.Cease and desist from violating the McAteer-Petris Act;
- 2.By January 1, 2025, submit a plan to remove all used automotive tires, shopping carts, plastic, and other unauthorized material, floating or sunk, from San Pablo Bay and to a legal disposal site, as prepared by a professional of record, such as an engineer or environmental scientist knowledgeable in site restoration;
- 3.By February 1, 2025, BCDC staff will review the professionally prepared fill removal plan and either approve, conditionally approve, or deny the plan;
- 4.By March 1, 2025, the professional of record shall have made any required revisions to the fill removal plan directed by staff and resubmitted it for staff review and obtained staff approval;
- 5.By June 1, 2025, Respondent shall have fully implemented the BCDC-approved fill removal plan;
- 6.Pay \$60,000 in administrative civil liability within thirty (30) days of Order issuance.