

# FLETCHER & SIPPEL LLC

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January 30, 2019

247028

## VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20024

ENTERED  
Office of Proceedings  
January 31, 2019  
Part of  
Public Record

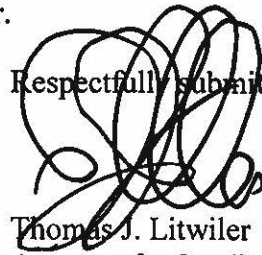
Re: **Docket No. FD 36265**  
**San Francisco Bay Railroad, Inc. -- Lease and Operation**  
**Extension Exemption -- San Francisco Port Commission**

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of San Francisco Bay Railroad, Inc., Pursuant to 49 C.F.R. § 1150.42**, dated January 30, 2019. A check in the amount of \$2,000, representing the appropriate fee for this filing, and a compact disk containing the Notice and the *Federal Register* caption summary in MS Word format are attached.

If you have any questions regarding this filing, please feel free to contact me.  
Thank you for your assistance on this matter.

Respectfully submitted,

  
Thomas J. Litwiler  
Attorney for San Francisco  
Bay Railroad, Inc.



TJL:tl

Enclosures

FILED  
January 31, 2019  
SURFACE  
TRANSPORTATION BOARD

FEE RECEIVED  
January 31, 2019  
SURFACE  
TRANSPORTATION BOARD

ORIGINAL

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36265

SAN FRANCISCO BAY RAILROAD, INC.  
-- LEASE AND OPERATION EXTENSION EXEMPTION --  
SAN FRANCISCO PORT COMMISSION

---



**VERIFIED NOTICE OF EXEMPTION  
OF  
SAN FRANCISCO BAY RAILROAD, INC.  
PURSUANT TO 49 C.F.R. § 1150.42**

Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606-3208  
(312) 252-1500

**ATTORNEY FOR SAN FRANCISCO  
BAY RAILROAD, INC.**

Dated: January 30, 2019

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36265

SAN FRANCISCO BAY RAILROAD, INC.  
-- LEASE AND OPERATION EXTENSION EXEMPTION --  
SAN FRANCISCO PORT COMMISSION

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**VERIFIED NOTICE OF EXEMPTION  
OF  
SAN FRANCISCO BAY RAILROAD, INC.  
PURSUANT TO 49 C.F.R. § 1150.42**

Pursuant to 49 C.F.R. §§ 1150.41, et seq., San Francisco Bay Railroad, Inc. ("SFBR"), a Class III rail carrier, hereby files this Verified Notice of Exemption for the extension of its lease and operation of trackage of the San Francisco Port Commission ("the Port") at the Intermodal Container Transfer Facility and Piers 92, 94 and 96 at the Port of San Francisco, California ("the Lines"). A map of the Lines is attached hereto as Exhibit A. Based on projected revenues for the Lines, SFBR expects to remain a Class III rail carrier after consummation of the transaction proposed herein.

In accordance with the requirements of 49 C.F.R. § 1150.43, SFBR submits the following information:

**Name and Address of Applicant: 49 C.F.R. § 1150.43(a)**

The full name and address of the rail carrier applicant herein is as follows:

San Francisco Bay Railroad, Inc.  
100 Cargo Way  
San Francisco, CA 94124

**Applicant's Representative: 49 C.F.R. § 1150.43(b)**

SFBR's representative to whom correspondence regarding this transaction should be sent is as follows:

Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606-3208  
(312) 252-1500

**Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)**

SFBR and the Port have executed a First Amendment to Amended and Restated Lease No. L-14397 and an Amended and Restated Rail Agreement, both dated as of December 12, 2018 (the "Agreements"), providing for SFBR's lease and operation of the Lines until December 31, 2033 with a mutual five-year extension option.

**Operation of the Property: 49 C.F.R. § 1150.43(d)**

Pursuant to the Agreements, SFBR will continue to provide rail freight service on the Lines.<sup>1</sup>

**Summary of the Transaction: 49 C.F.R. § 1150.43(e)**

SFBR is a Class III common carrier by rail which has leased and operated rail trackage in the vicinity of the Intermodal Container Transfer Facility at the Port of San Francisco since 2000. *LB Railco, Inc. -- Lease and Operation Exemption -- San Francisco Port Commission*, Docket No. FD 33985 (STB served January 8, 2001).<sup>2</sup> Rail service on that trackage had previously been provided by the San Francisco Belt Railroad and then by Union

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<sup>1</sup> SFBR is finalizing a transaction in which it is anticipated that a new entity will acquire SFBR's rail assets, including assignment of the Agreements. An appropriate notice of exemption for that transaction will be filed in Docket No. FD 36266, *San Francisco Bay Railway, LLC -- Acquisition and Operation Exemption -- San Francisco Bay Railroad, Inc.*

<sup>2</sup> LB Railco, Inc. changed its name to San Francisco Bay Railroad, Inc. on February 20, 2008.

Pacific Railroad Company ("UP"). *See San Francisco Belt Railroad -- Petition for Exemption -- Abandonment*, Docket No. FD 30884 (ICC served February 12, 1987).

Pursuant to the Agreements between SFBR and the Port, SFBR will extend its lease and license to operate the Port's rail trackage from a connection with UP near the intersection of Amador Street and Cargo Way through the Intermodal Container Transfer Facility and to Piers 92, 94 and 96, a distance of approximately 0.5 route miles and approximately 16,750 track feet in San Francisco, California. The subject rail trackage does not have mileposts. The term of the Agreements extends to December 31, 2033, with a mutual extension option to December 31, 2038.

The complete name and address of the entity extending the lease of and license to operate the Lines to SFBR is as follows:

City and County of San Francisco  
operating by and through the  
San Francisco Port Commission  
Pier 1, The Embarcadero  
San Francisco, CA 94111

SFBR intends to consummate the exemption authority obtained in this docket immediately upon its effectiveness on March 2, 2019.<sup>3</sup>

**Map: 49 C.F.R. § 1150.43(f)**

A map showing the Lines is attached as Exhibit A to this notice.

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<sup>3</sup> The Agreements between the parties became effective upon execution and extended prior agreements that were scheduled to expire on December 31, 2018 or December 31, 2023. SFBR has filed this notice of exemption as soon as practicable after execution of the Agreements, given the intervening suspension of Board operations during the partial federal government shutdown.

**Certificate of Compliance: 49 C.F.R. § 1150.43(g)**

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.43(g) stating that SFBR's projected annual revenues will not result in the creation of a Class I or II rail carrier is attached as Exhibit B to this Notice.

**Interchange Commitments: 49 C.F.R. § 1150.43(h)(1)**

The extension of SFBR's lease and operation of the Lines does not involve a limitation on SFBR's interchange with a third-party connecting carrier. UP is the only such connecting carrier.

**Advance Notice: 49 C.F.R. § 1150.42(e)**

The projected annual rail revenue of SFBR does not exceed \$5 million, and accordingly the advance notice requirements of 49 C.F.R. § 1150.42(e) are not applicable to this transaction. See Exhibit B hereto.

**Environmental and Historic Preservation Data: 49 C.F.R. § 1105**

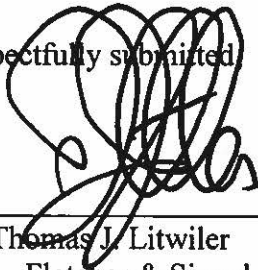
Under C.F.R. § 1105.6(c)(2), the proposed transaction is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), the proposed transaction also is exempt from historic preservation reporting requirements. The proposed extension is for the purpose of continuing rail operations. Additional Board approval would be required to discontinue or abandon SFBR's rail service. Moreover, there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

**Caption Summary: 49 C.F.R. § 1150.44**

A caption summary in appropriate form is attached as Exhibit C to this notice.

Respectfully submitted

By: 

Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606-3208  
(312) 252-1500

**ATTORNEY FOR SAN FRANCISCO  
BAY RAILROAD, INC.**

Dated: January 30, 2019

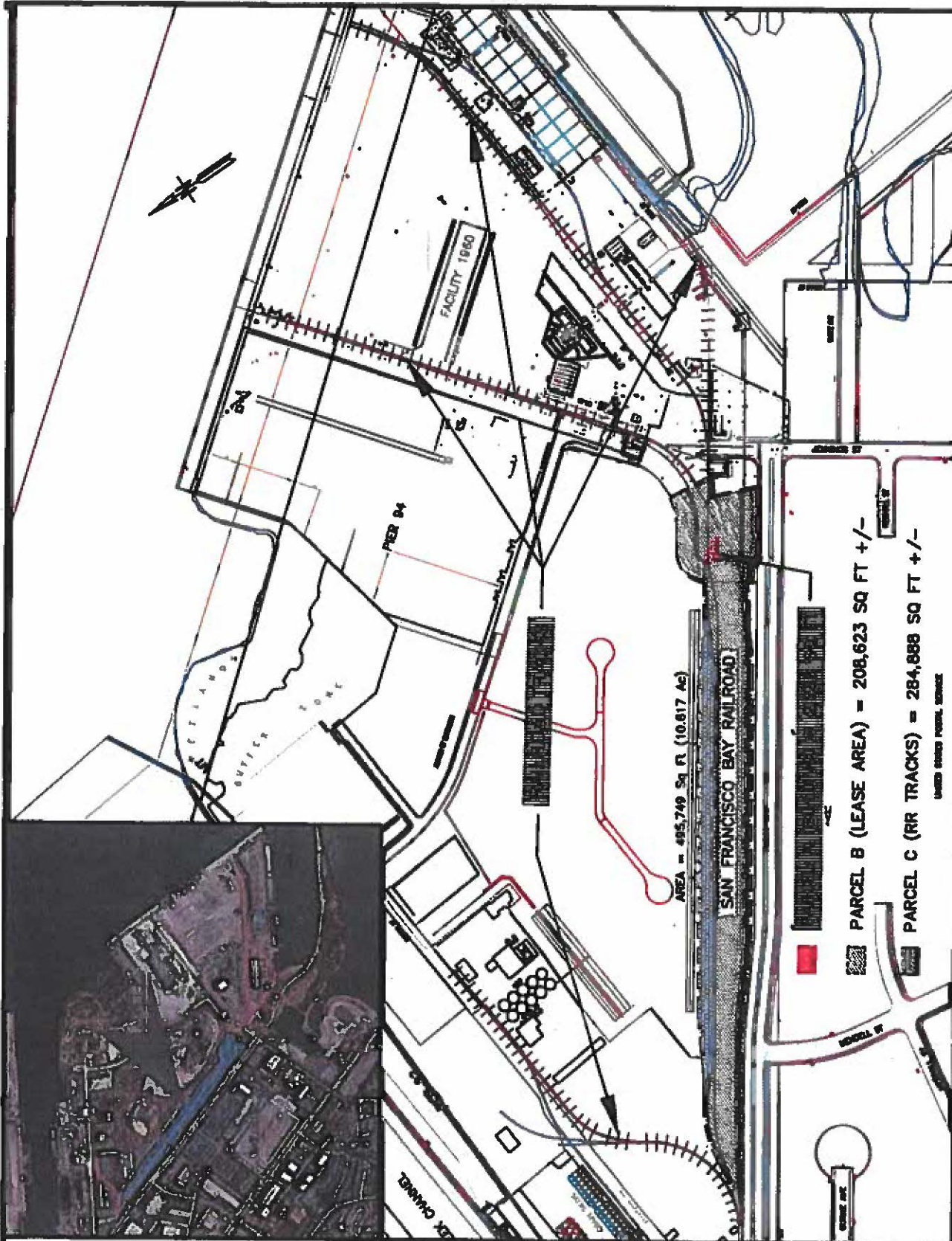


EXHIBIT A

INITIALS: PORT: \_\_\_\_\_ TENANT: \_\_\_\_\_ DATE: \_\_\_\_\_

DATE: DEC. 03, 2018  
 CHECKED BY: B. O'MARA  
 SCALE: 1" = 200'  
 PLACE CODE NO.  
 2020-00  
 SHEET NO.  
 OF SHEETS

RAIL AGREEMENT

TENANT

SAN FRANCISCO PORT COMMISSION  
 PORT OF SAN FRANCISCO  
 DEPARTMENT OF ENGINEERING

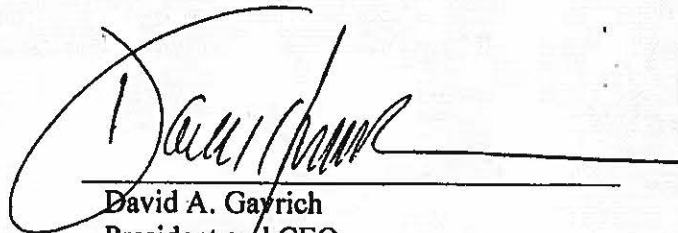
LEASE NO.  
 14503

THIS PROPERTY PLAN/Map is prepared in accordance with the provisions of the San Francisco Planning Code.

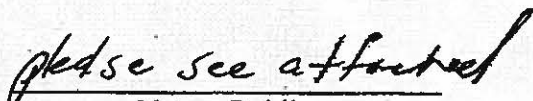
**CERTIFICATION**

State of California       )  
                                  ) ss:  
County of San Francisco   )

David A. Gavrich, being duly sworn, hereby certifies that the projected annual rail revenue of San Francisco Bay Railroad, Inc. does not exceed \$5 million and will not result in the creation of a Class II or Class I rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).

  
\_\_\_\_\_  
David A. Gavrich  
President and CEO

SUBSCRIBED AND SWORN TO  
before me this \_\_\_\_ day  
of January, 2019.

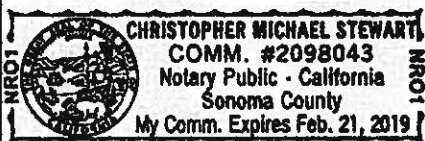
  
\_\_\_\_\_  
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Sonoma

Subscribed and sworn to (or affirmed) before me on this 28  
day of January, 20 19, by David A. Gavrich

proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.



(Seal)

Signature

**SURFACE TRANSPORTATION BOARD**

**NOTICE OF EXEMPTION**

**DOCKET NO. FD 36265**

**SAN FRANCISCO BAY RAILROAD, INC.  
-- LEASE AND OPERATION EXTENSION EXEMPTION --  
SAN FRANCISCO PORT COMMISSION**

---

San Francisco Bay Railroad, Inc. ("SFBR"), a Class III rail carrier, has filed a Notice of Exemption under 49 C.F.R. § 1150.41 et seq. to extend its lease and operation of trackage of the San Francisco Port Commission ("the Port") extending from a connection with Union Pacific Railroad Company near the intersection of Amador Street and Cargo Way through the Intermodal Container Transfer Facility and to Piers 92, 94 and 96, a distance of approximately 0.5 route miles and approximately 16,750 track feet in San Francisco, California. The subject rail trackage does not have mileposts. SFBR's lease and operation of the Port trackage will extend to December 31, 2033, with a mutual extension option to December 31, 2038.

SFBR expects to consummate the exemption authority obtained herein immediately upon its effectiveness on March 2, 2019.

Comments must be filed with the Board and served on:

Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive, Suite 800  
Chicago, Illinois 60606-3208  
(312) 252-1500

This Notice is filed under 49 C.F.R § 1150.41. If this Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under

49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

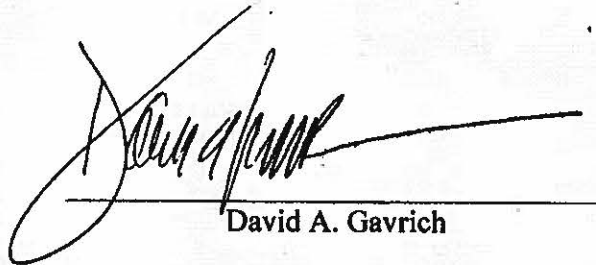
Dated: February \_\_ 2019

By the Board

**VERIFICATION**

State of California       )  
                                  ) ss:  
County of San Francisco   )

David A. Gavrich, being duly sworn, deposes and says that he is President and CEO of San Francisco Bay Railroad, Inc., that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

  
\_\_\_\_\_  
David A. Gavrich

SUBSCRIBED AND SWORN TO  
before me this \_\_\_\_ day  
of January, 2019.

*please see attached*  
Notary Public

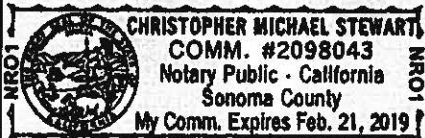
My Commission expires:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Sonoma

Subscribed and sworn to (or affirmed) before me on this 28  
day of January, 2019, by David A. Gavrich

proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.



(Seal)

Signature