

July 12, 2019

248190

Via Electronic Service

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
July 12, 2019
Part of
Public Record

Re: *City of Oakland, CA – Acquisition Exemption – Former Oakland Army Base,
Alameda County, CA, STB Docket No. FD 36303*

Dear Ms. Brown:

Enclosed please find for filing in the above-captioned proceeding the City of Oakland, California's Amended Verified Notice of Exemption.

Because the City of Oakland already submitted the requisite fee when it originally filed this Verified Notice of Exemption, we are not submitting a fee with this submission.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Charles A. Spitulnik
Counsel for City of Oakland, California

cc: All Parties of Record

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36303

**CITY OF OAKLAND, CA
– ACQUISITION EXEMPTION –
FORMER OAKLAND ARMY BASE, ALAMEDA COUNTY, CA**

AMENDED VERIFIED NOTICE OF EXEMPTION

Communications with respect to this
document should be addressed to:

Charles A. Spitulnik
Christian L. Alexander
KAPLAN KIRSCH & ROCKWELL LLP
1634 Eye (I) Street, N.W. Suite 300
Washington, DC 20006
(202) 955-5600
E-mail: cspitulnik@kaplankirsch.com
calexander@kaplankirsch.com

Counsel for the City of Oakland, California

Dated: July 12, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36303

**CITY OF OAKLAND, CA
– ACQUISITION EXEMPTION –
FORMER OAKLAND ARMY BASE, ALAMEDA COUNTY, CA**

AMENDED VERIFIED NOTICE OF EXEMPTION

The City of Oakland, California (“City”), a political subdivision of the State of California, hereby submits this Notice of Exemption with respect to its prior acquisition of approximately 15,000 feet of railroad spur and industrial track situated within City-owned areas of the former Oakland Army Base (“OAB”), in the City of Oakland, Alameda County, California, (the “Line”) and shown in the map attached at **Attachment 1**. The Line is referred to as the “Middle Segment” in the Board’s June 20th decision in this docket. The City, through its predecessors-in-interests Oakland Base Reuse Authority (“OBRA”) and Oakland Redevelopment Agency (“ORA”), acquired the Line along with a portion of the OAB (“City-owned OAB”) through a series of fee and easement transactions between 2003 and 2012. The City acquired the OAB for the purpose of redeveloping the area as part of the Oakland Army Base Redevelopment Project (“OAB Redevelopment Project”) according to the Oakland Army Base Reuse Plan (“Master Plan”). At the time of acquisition of the Line, the City was not aware that the OAB contained trackage subject to the jurisdiction of this Board, and did not seek Board authority for acquisition of the Line. The City, which is a non-carrier and has never had any intention of holding itself out as a common carrier by rail or providing rail service itself on the Line, became

aware of the jurisdictional nature of the Line as a result of the proceedings initiated by the Oakland Global Rail Enterprise, LLC (“OGRE”) in Docket No. FD 36168, *Oakland Global Rail Enterprises – Petition for Declaratory Order*. In those proceedings, the Board ordered the City, OGRE, and its affiliate the Oakland Bulk and Oversized Terminal (“OBOT”) to seek acquisition authority for prior acquisition of the rail line, or explain why such authority is not required, by May 14, 2019. *See Oakland Global Rail Enterprise – Petition for Declaratory Order*, STB Docket No. FD 36168, slip op. at 11 (Service Date March 15, 2019) (“March 15 Decision”).¹

On May 14, 2019, the City filed a Verified Notice under the Board’s exemption procedures, 49 C.F.R. § 1150.31, for approximately 22,200 feet of railroad spur and industrial track situated within the OAB, an extent of track originally described in OGRE’s Petition for Declaratory Order filed May 23, 2018.² On June 20th, 2019, the Board issued a decision that, among other things, directed the City to amend its verified notice of exemption that it filed on May 14, 2019 in order to seek authority only for the Middle Segment. Accordingly, the City files this Amended Verified Notice of Exemption.³

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

¹ The City continues to contest OBOT’s and OGRE’s ability to acquire operating authority over the Line without the requisite property rights, as discussed in its Petition to Reject or Revoke OBOT’s and OGRE’s Notices of Exemption in Docket Nos. FD 36302 and 36301, upon which the Board has yet to decide. The City does not intend for this Notice to be construed as waiving that opposition, but rather submits this Notice to comply with the Board’s order in the March 15th Decision and June 20th Decision.

² At the time the City noted that it may not need to file for acquisition of the entire known trackage but did so out of an abundance of caution. *See* the City’s May 14, 2019 Verified Notice, page 2, footnote 3.

³ The City hereby seeks leave to file late in the interest of complying with the Board’s order and in light of the fact that all notices of exemption for the Line are stayed and no parties will be unduly prejudiced by this late filing.

- (a) *The full name and address of the applicant, 49 C.F.R. § 1150.43(a)*

City of Oakland, California

City Administrator's Office
City of Oakland, California
One Frank H. Ogawa Plaza, Eleventh Floor
Oakland, California 94612
Attn: John Monetta, Project Manager

- (b) *The name, address and telephone number of the representative of the applicant who should receive correspondence, 49 C.F.R. § 1150.43(b)*

Charles A. Spitulnik
Christian L. Alexander
Kaplan Kirsch & Rockwell LLP
1634 I (Eye) Street, NW
Suite 300
Washington, DC 20006
(202) 955-5600

- (c) *A statement that an agreement has been reached or detail about when an agreement will be reached, 49 C.F.R. § 1150.43(c)*

The City, through its predecessors-in-interest, acquired the Line along with the City-owned OAB in a series of fee and easement transactions between 2003 and 2012. See transactional documents attached to the City's original Notice of Exemption filed in this proceeding at **Attachment 2**⁴. The Port of Oakland has been given jurisdictional control pursuant to the City Charter over those portions of the OAB not conveyed to the City through its predecessors-in-interest.

- (d) *The operator of the property, 49 C.F.R. § 1150.43(d)*

The City is a non-carrier and has never had any intention of holding itself out as a common carrier by rail or providing rail service itself on the Line. The City has always intended to seek a third-party entity to design, build, and operate the OAB Redevelopment Project according to the Master Plan, including operating any associated rail activities. The City had previously entered into an agreement (the "Ground Lease") that permitted OBOT to conduct these activities, and OBOT in turn subleased rail activities to OGRE ("Rail Sublease"). However, effective November 23, 2018, the Ground Lease, and by extension the Rail Sublease, were

⁴ The documents attached to the City's original Notice of Exemption in this proceeding have not changed with the limitation on the property that is now the subject of the Amended Notice of Exemption. Accordingly, and to avoid duplicative filing of an extensive set of documents, the City is relying on the Attachment 2 that it filed along with the original Notice of Exemption filed herein.

terminated.⁵ In light of the termination of the Ground Lease and the newly discovered information regarding the Board's continuing jurisdiction over the Line, the City will contract with a third-party operator for the Line at a future point in time once there is demonstrated demand and funding for rail service.

(e) *A brief summary of the proposed transaction, 49 C.F.R. § 1150.43(e)*

(1) *The name and address of the railroad transferring the subject property, 49 C.F.R. § 1150.43(e)(1)*

No railroad was involved in the transfer of the OAB, including the Line, from the U.S. Army to the City through its predecessors-in-interest. The U.S. Army's address is:

U.S. Secretary of the Army
101 Army Pentagon Washington, DC
20310-0101

(2) *The proposed time schedule for the consummation of the transaction, 49 C.F.R. § 1150.43(e)(2)*

As discussed above, the City acquired the Line between 2003 and 2012.

(3) *The mile-posts of the subject property, including any branch lines, 49 C.F.R. § 1150.43(e)(3)*

The City is not aware that the Line on the City-owned OAB has mile-post numbers associated with them.

(4) *The total route miles being acquired, 49 C.F.R. § 1150.43(e)(4)*

The Line acquired consists approximately 15,000 lineal feet located on approximately 11.5 acres of the OAB.

(f) *A map that clearly indicates the area to be served, including origins, terminals, stations, cities, counties and states, 49 C.F.R. § 1150.43(f)*

See **Attachment 1**. There are no existing shippers on the Line.

(g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier, 49 C.F.R. § 1150.43(g)*

See Verification and Certification, attached.

⁵ OBOT and OGRE are contesting the performance and termination of the Ground Lease in state court and before the Board. See OBOT and OGRE Complaint, Cal. Sup. Ct. Civil Case No. RG18930929 (Filed Dec. 4, 2018); OGRE Reply to Petition for Stay, STB Docket No. FD 36168 (Filed Apr. 1, 2019).

(h) *Interchange agreements*, 49 C.F.R. § 1150.43(h)

No interchange agreements are involved in the subject transaction.

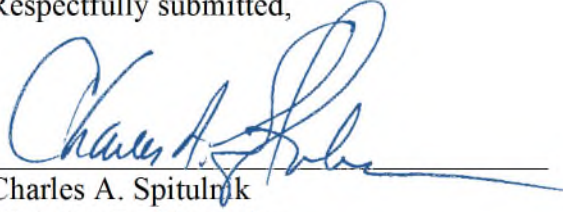
Under § 1105.6(c)(1), the City's proposed acquisition of the Line is exempt from environmental reporting requirements because the railroad operations on the line segment that is subject to the Board's jurisdiction will not be affected by the acquisition by the City. *See* 49 C.F.R. § 1105.6(c)(1). Specifically, there is no rail service and the City's acquisition will not result in any additional service because the City will not operate the Line. Any future service on jurisdictional track would require the operator to seek Board authorization.

Similarly, under 49 C.F.R. § 1105.8(b)(1), the City believes that its proposed acquisition of the Line is exempt from historic preservation reporting requirements. The proposed acquisition will continue the *status quo* with respect to freight rail operations, since the City is not seeking to operate the Line itself, but is instead merely the owner of the property. Further Board approval would be required for any future operator to seek authority to operate on the Line, and discontinuance or abandonment would likewise require Board authorization.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

An amended proposed caption summary for publication in the Federal Register is attached as **Attachment 3**.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

Charles A. Spitulnik
Christian L. Alexander
Kaplan Kirsch & Rockwell LLP
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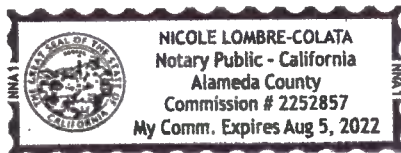
Counsel for the City of Oakland, California

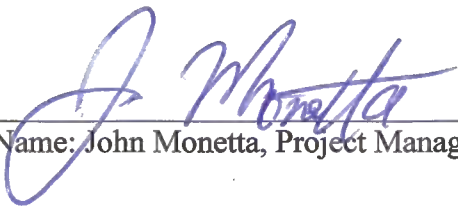
Dated: July 12, 2019

VERIFICATION AND CERTIFICATION

I, John Monetta, Project Manager, Department of Economic & Workforce Development, City of Oakland, California, verify under penalty of perjury that the facts recited in the foregoing Amended Notice of Exemption are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to verify these facts stated in this Verified Amended Notice of Exemption.

In addition, this is to certify, as required by 49 C.F.R. § 1150.43(g) that, because the City of Oakland will conduct no freight operations on the line segments being acquired, its revenues from freight operations will not result in the creation of a Class I or Class II carrier.




Name: John Monetta, Project Manager

Subscribed and sworn to
before me this 12 day of
July, 2019.


Notary Public

My commission expires: 8/5/22

Certificate of Service

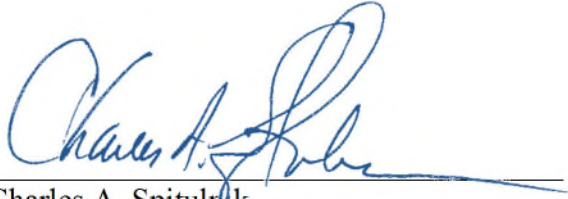
I hereby certify that I have this 12th day of July, 2019, caused to be served a copy of the foregoing Amended Verified Notice of Exemption upon the following parties of record by e-mail and by first class mail, with postage prepaid:

Kathryn Kusske Floyd
Margaret K. Fawal
Venable LLP
600 Massachusetts Ave.
Washington, D.C. 20001
(202) 344-4000

Kevin Sheys
Ed Fishman
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street NW
Washington, DC 20004
(202) 637-5600
kevin.sheys@hoganlovells.com
ed.fishman@hoganlovells.com

Counsel for Oakland Global Rail Enterprise

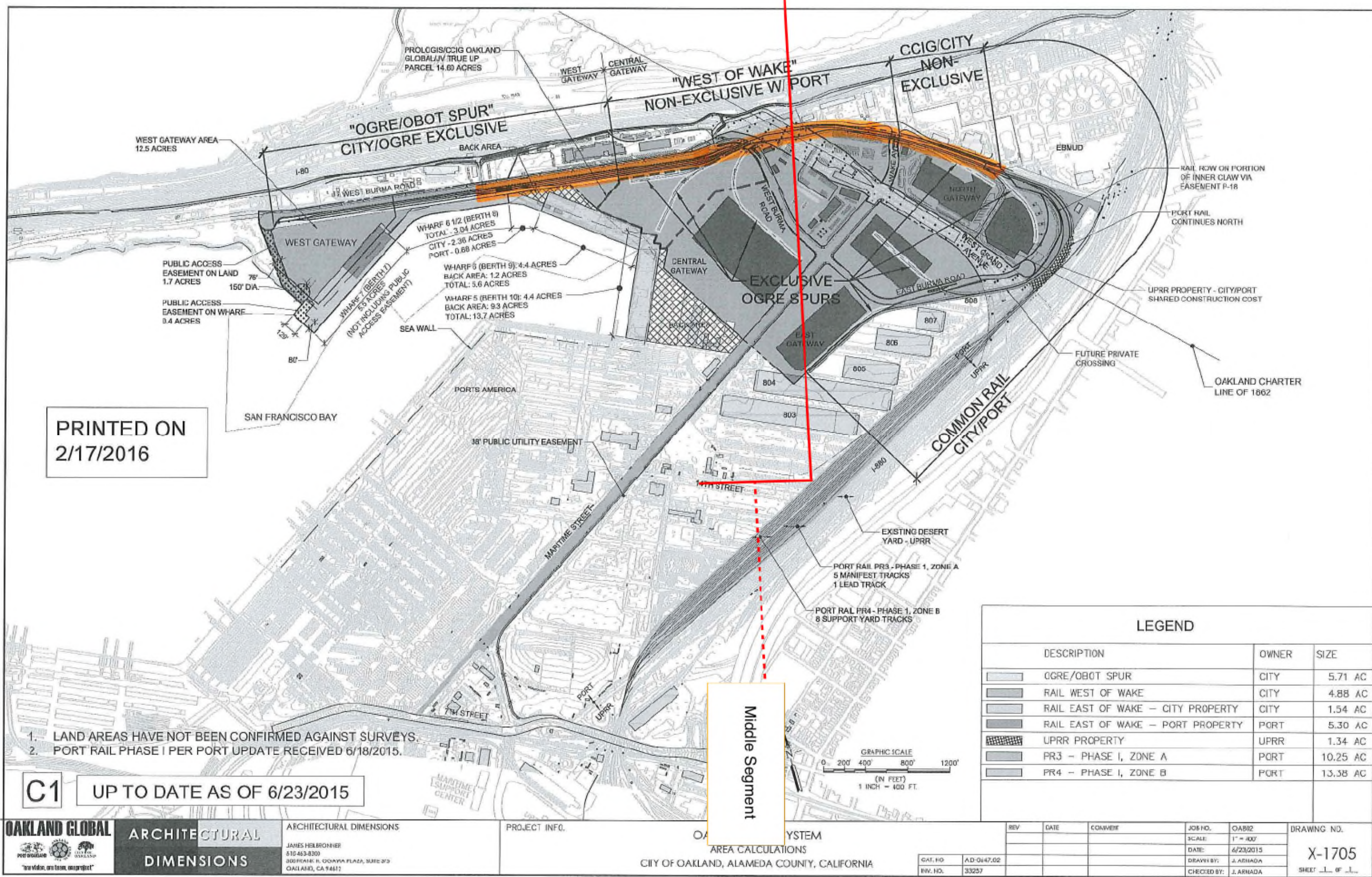
Counsel for the Port of Oakland



Charles A. Spitulnik

Attachment 1

Map



PRINTED ON
2/17/2016

- 1. LAND AREAS HAVE NOT BEEN CONFIRMED AGAINST SURVEYS.
- 2. PORT RAIL PHASE I PER PORT UPDATE RECEIVED 6/18/2015.

C1 UP TO DATE AS OF 6/23/2015

04-23-2015 - 2:47PM, Plotted by jharrington, Dimensions - 1705x1705.dwg

OAKLAND GLOBAL

"one vision, one team, one project"

ARCHITECTURAL DIMENSIONS
JAMES HILBRONNER
510-453-0300
300 FRANK H. OGDEN PLAZA, SUITE 300
OAKLAND, CA 94612

PROJECT INFO.
OAKLAND PORT SYSTEM
AREA CALCULATIONS
CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

REV	DATE	CONVERT	JOB NO.	OAR02	DRAWING NO.
			SCALE: 1" = 400'		X-1705 SHEET 1 OF 1
			DATE: 6/23/2015		
			DRAWN BY: J. ARNADA CHECKED BY: J. ARNADA		

CAT. NO. AD-0447.02
INV. NO. 33257

Attachment 2

**Documents conveying the City-owned OAB to the City through its predecessors-in-interest
OBRA and ORA**

**[NOT ATTACHED – SEE FOOTNOTE 4
OF THE AMENDED NOTICE OF EXEMPTION]**

Attachment 3

Proposed Caption Summary

**Before the
Surface Transportation Board**

STB FINANCE DOCKET NO. 36303

**CITY OF OAKLAND, CA
– ACQUISITION EXEMPTION –
FORMER OAKLAND ARMY BASE, ALAMEDA COUNTY, CA**

CAPTION SUMMARY

The City of Oakland, California (the “City”), has filed a notice of exemption for prior acquisition of the real property interests, including rail lines and associated infrastructure (the “Line”), of property known as the former Oakland Army Base located in Oakland, Alameda County, California. The City, through its predecessors-in-interests Oakland Base Reuse Authority and Oakland Redevelopment Agency, acquired the Line along with a portion of the former Oakland Army Base through a series of fee and easement transactions between 2003 and 2012. The Line is comprised of 15,000 feet of spur and industrial rail lines located on City-acquired property. At the time of acquisition, the City did not seek authority from the Surface Transportation Board and is filing this notice in order to rectify its oversight.

The City has acquired the real property and facilities associated with the Line but will not serve as a rail carrier or operate over the line, and instead will seek a third-party operator at a future point in time once there is demonstrated demand and funding for rail service.

Comments must be filed with the Board and served on Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1634 Eye (I) Street, NW, Suite 300, Washington, DC 20036, (202) 955-5600.

The notice is filed under 49 C.F.R. § 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.