

AGENDA REPORT

Ordinance: Authorize the Executive Director to Enter into a First Amendment to a 1999 Grant of Easement Agreement with the San Francisco Bay Area Rapid Transit District for 8,390 square feet within the Berths 25-33 Marine Terminal at No Cost (\$0). **(Maritime)**

MEETING DATE: 12/14/2017

AMOUNT: \$0

PARTIES INVOLVED: San Francisco Bay Area Rapid Transit District
Grace Crunican, General Manager

SUBMITTED BY: John C. Driscoll, Director of Maritime

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

Port Staff requests approval from the Board of Port Commissioners ("Board") for the Executive Director to enter into a first amendment ("Proposed First Amendment") that modifies permitted uses under a 1999 Grant of Easement Agreement ("1999 Easement Agreement") between the Port of Oakland ("Port") and San Francisco Bay Area Rapid Transit District ("BART") within the Berths 25-33 Marine Terminal ("Berths 25-33"). The purpose of modifying the permitted uses would be to allow for the installation, operation and maintenance of future BART facilities and infrastructure.

BACKGROUND

Under a 1999 Easement Agreement with the Port, the Port has granted BART exclusive access for 66 years for 8,390 square feet of land within Berths 25-33 (referred herein as "Parcel D"), which currently includes a vent structure ("Vent Structure") to the BART Transbay Tube. Under the permitted uses of the 1999 Easement Agreement, BART is allowed to utilize Parcel D only for the purposes of ingress, egress and circulation.

Adjacent to Parcel D is another 4,630 square foot area (referred herein as "Parcel D-2"), which is the subject of a separate 2012 Grant of Easement Agreement ("2012 Easement Agreement") between the Port and BART. Permitted uses under Parcel D-2 include the installation, operation and maintenance of an emergency backup generator ("Emergency Generator") for the Vent Structure on Parcel D. Construction for the Emergency Generator is anticipated to occur in Summer 2018, subject to issuance of a Port construction permit ("Port Permit").

Parcels D and D-2 are functionally connected to each other and are within a single fence line. Refer to Attachment A for a depiction of Parcel D and Parcel D-2.

ANALYSIS

During its design and planning process, BART has determined that the Emergency Generator on Parcel D-2 will physically encroach into a small portion of Parcel D. As Parcel D is an access easement only, the Proposed First Amendment to the 1999 Easement Agreement will expand the permitted uses to allow for the installation, operation and maintenance of BART's rapid transit facilities. While driven by the generator-related issues raised by BART, the proposed modification of permitted is more broad to provide BART with flexibility for any future work and activities that may be contemplated on Parcel D.

Staff agree that the Proposed First Amendment to the 1999 Easement Agreement is necessary for BART to begin its work on the Emergency Generator as well any other future work on Parcel D. Furthermore, any development/construction activities under either of the BART easement agreements for Parcel D and D-2, including the Emergency Generator project, are subject to formal review and approval (for design, construction work plan, etc.) by the Port under its Port Permit. Consequently, Staff recommends Board approval of the Proposed First Amendment.

BUDGET & STAFFING

The proposed action is not expected to have a budget or staffing impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The Port of Oakland Maritime and Aviation Project Labor Agreement ("MAPLA") applies to this tenant project to the extent the Port has issued a building permit for such work.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan (<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>):

- Goal F: Objective 2: Partner with other agencies to create joint grant strategies.

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply to the agenda report proposed action because San Francisco Bay Area Rapid Transit District is a government agency.

ENVIRONMENTAL

CEQA Determination: BART, as the lead agency for its Emergency Generator project, has conducted its review and determined that this action is categorically exempt from requirements of the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15301 as the project involves "minor modification and maintenance to an existing facility that involves no expansion of use." A copy of BART's Notice of Exemption is attached as Exhibit B.

As noted in the Proposed First Amendment, any other future project within the easement area will be subject to environmental review.

GENERAL PLAN

This action relates to an existing approved project that was found to conform to the General Plan; therefore, a new General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

This action is not subject to the Port's Owner Controlled Insurance Program ("OCIP") as it is not a Port capital improvement construction project.

OPTIONS

Staff has identified the following options for the Board's consideration:

1. Authorize the Executive Director to enter into a First Amendment to the 1999 Easement Agreement with BART for the proposed modifications as described herein. This is the recommended action.
2. Authorize the Executive Director to enter into a First Amendment to the 1999 Easement Agreement with BART with different terms than those described herein.

3. Do not authorize the Executive Director to enter into a First Amendment to the 1999 Easement Agreement with BART for the proposed modifications as described herein. As a result, BART will need to terminate or redesign its work for the Emergency Generator project.

RECOMMENDATION

Staff recommends that the Board of Port Commissioners authorize the Executive Director to enter into a First Amendment to the Grant of Easement Agreement, between the Port of Oakland and San Francisco Bay Area Rapid Transit District (BART), dated April 6, 1999, to modify the permitted uses to allow for the installation, operation and maintenance of BART rapid transit facilities.

Exhibit A

Parcel D and D-2

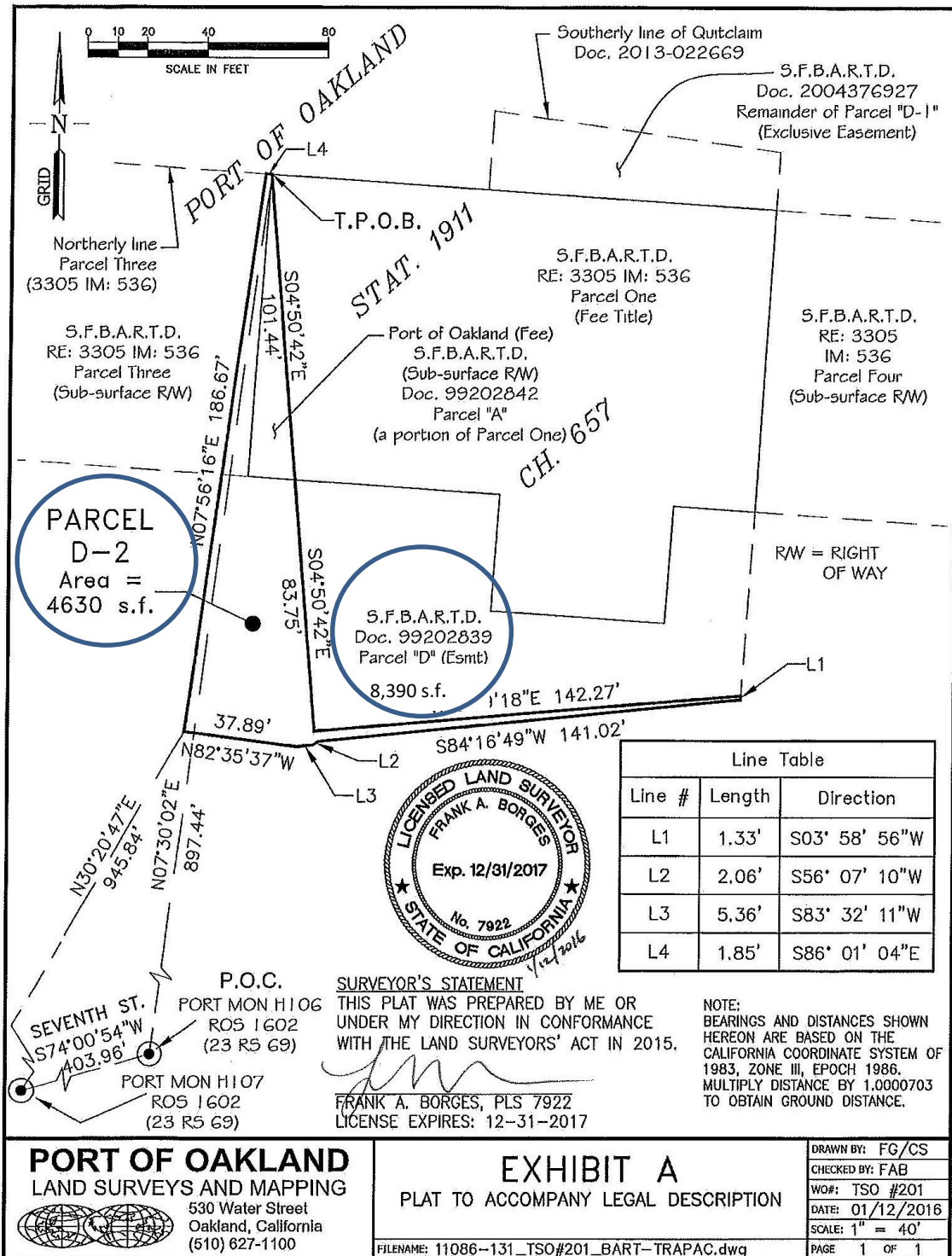


Exhibit B

Notice of Exemption

***ENVIRONMENTAL DECLARATION**

(CALIFORNIA FISH AND GAME CODE SECTION 711.4)

LEAD AGENCY NAME AND ADDRESS

San Francisco Bay Area Rapid Transit District
300 Lakeside Drive / P.O. Box 12688
Oakland CA 94604-2688

FOR COUNTY CLERK U

**ENDORSED
FILED
ALAMEDA COUNTY**

NOV 09 2017

STEVE MANNING, County Clerk

By CB Deputy

FILE NO: 17-372

CLASSIFICATION OF ENVIRONMENTAL DOCUMENT:

(PLEASE MARK ONLY ONE CLASSIFICATION)

1. NOTICE OF EXEMPTION / STATEMENT OF EXEMPTION

☒ A - STATUTORILY OR CATEGORICALLY EXEMPT

\$ 50.00 - COUNTY CLERK HANDLING FEE

2. NOTICE OF DETERMINATION (NOD)

☐ A - NEGATIVE DECLARATION (OR MITIGATED NEG. DEC.)

\$ 2,216.25 - STATE FILING FEE

\$ 50.00 - COUNTY CLERK HANDLING FEE

☐ B - ENVIRONMENTAL IMPACT REPORT (EIR)

\$ 3,078.25 - STATE FILING FEE

\$ 50.00 - COUNTY CLERK HANDLING FEE

***A COPY OF THIS FORM MUST BE COMPLETED AND SUBMITTED WITH EACH COPY OF AN ENVIRONMENTAL DECLARATION BEING FILED WITH THE ALAMEDA COUNTY CLERK.**

FOUR (4) COPIES OF ALL NECESSARY DOCUMENTS ARE REQUIRED FOR FILINGS SUBMITTED BY MAIL. FIVE (5) COPIES ARE REQUIRED FOR IN-OFFICE FILINGS.

ALL APPLICABLE FEES MUST BE PAID AT THE TIME OF FILING.

FEES ARE EFFECTIVE JANUARY 1, 2017

MAKE CHECKS PAYABLE TO: ALAMEDA COUNTY CLERK

NOTICE OF EXEMPTION

TO:

Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

FROM:

San Francisco Bay Area Rapid Transit District
300 Lakeside Dr. Floor 22
P.O. Box 12688
Oakland, CA 94604-2688

☒ County Clerk
County of Alameda
1106 Madison Street
Oakland, CA 94607

ENDORSED
FILED
ALAMEDA COUNTY

NOV 09 2017

STEVE MANNING, County Clerk

By CM Deputy

Project Title: BART Oakland Emergency Generator System

Project Location – Specific: BART Oakland Transition Structure at the east end of the Transbay Tube at the 7th Street Marine Terminal near Berth 32, Port of Oakland

Project Location - City/County: Oakland, Alameda County

Description of Nature, Purpose, and Beneficiaries of Project: Provide an emergency generator system including all electrical and mechanical equipment and structural facilities associated with the 2500 kW generator and new utility (PG&E) transformers which will provide power to the Transbay Tube in the event that power is not available from existing power sources located at the BART Oakland Transition Structure and the San Francisco Transition Structure during an emergency situation, including seismic events, thereby providing power for all life safety and critical loads including ventilation fans, fire pumps, and lighting loads.

Name of Public Agency Approving Project: San Francisco Bay Area Rapid Transit District (BART)

Name of Person or Agency Carrying Out Project: San Francisco Bay Area Rapid Transit District

Exempt Status: (Check One)

☐ Ministerial

☐ Declared Emergency

☐ Emergency Project

☒ Categorical Exemption. State type and section number:

CEQA Guideline Section 15301

Reasons why project is exempt:

The project involves minor modification and maintenance to an existing facility that involves no expansion of use

Contact Person: Janie Layton

Telephone: 510-874-7423

Signature



Title: Environmental Compliance Administrator

Date Received for Filing:
