



ATTORNEYS AT LAW

CANAL SQUARE 1054 THIRTY-FIRST STREET, NW WASHINGTON, DC 20007-4492
TELEPHONE: 202/342-5200 FACSIMILE: 202/342-5219

RICHARD BAR
BRENDAN COLLINS
STEVEN JOHN FELLMAN
EDWARD D. GREENBERG
KATHARINE FOSTER MEYER
DAVID K. MONROE
TROY A. ROLF
DAVID P. STREET
KEITH G. SWIRSKY
THOMAS W. WILCOX
CHRISTOPHER B. YOUNGER

SVETLANA B. LYUBCHENKO

MINNESOTA OFFICE:
700 TWELVE OAKS CENTER DRIVE, SUITE 204
WAYZATA, MN 55391
(T) 952/449-8817 (F) 952/449-0614

WRITER'S DIRECT E-MAIL ADDRESS
EGREENBERG@GKGLAW.COM

WRITER'S DIRECT DIAL NUMBER
202-342-5277

235679

March 24, 2014

VIA E-FILING

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
March 24, 2014
Part of
Public Record

Re: *Oakland Global Rail Enterprise, LLC – Acquisition and Operating Exemption – Lines of Railroad Within the Port of Oakland, California, Finance Docket No. 35807*

Dear Ms. Brown:

We represent Oakland Global Rail Enterprise, LLC (“OGRE”) in connection with the Notice of Exemption it filed on February 7, 2014 in this docket. We have been advised that OGRE wishes to withdraw the Notice of Exemption (“Notice”) it filed without prejudice to any action it may take in the future to become a rail carrier. However, in view of the Board’s order of February 21, 2014 which directed OGRE to file supplemental information describing the activities it was contemplating, OGRE is providing information responsive to that directive.

In this regard, all of the rail construction activities that OGRE contemplated were to be conducted within the large industrial facility that is owned by the Port of Oakland (“Port”) and the City of Oakland (“City”). Recently, the Port and the City, which collectively own what had been a base owned by the U.S. Army, have engaged in a major redevelopment of the Port’s industrial facility that includes the construction of new warehouses, recycling and logistics facilities, open spaces, docks for vessels and significant new roads and rail tracks within the Port, including a new unit train support yard. At this point, the project is estimated to cost approximately \$500 Million. The funding for this redevelopment project has come from a variety of sources, including \$242 Million from California Transportation Corridor Infrastructure Funds and a U.S. Department of Transportation TIGER grant amounting to \$15



An International Association of Independent Law Firms in Major World Centers

GKG Law, P.C.

Cynthia Brown, Surface Transportation Board

Page 2

March 24, 2014

Million. In addition, matching funds are being provided by the City, the Port and various private investment entities.

In advance of any work being done, the project was approved and certified in 2012 under the California Environmental Quality Act ("CEQA") and in 2013 under the National Environmental Policy Act ("NEPA"). In addition, the project has a Remediation Action Plan and a Risk Management Plan that is regulated by both the Port and the City of Oakland, as well as by the California Department of Toxic Substances Control. Pursuant to that, there are extensive Standard Conditions of Approval and Mitigation Monitoring and Reporting that are being completed pursuant to the CEQA that are being monitored by the City and the involved development team.

With that background in mind, we may have inadvertently misled the Board in the Notice OGRE filed in this docket in several ways. First, contrary to what the notice may imply, OGRE would not have done any track construction for several years after commencing operations. To the contrary, OGRE intended to exclusively operate over existing UP and BNSF track until such time as the Port and City started and completed the track construction that is their part of the redevelopment project and they have entered into the necessary lease agreements with OGRE. At some point thereafter, OGRE intends to build a spur track off the track owned by the City once industries have located in that section of the Port facility.

Second, the length of track that OGRE would be constructing is only 15,000 feet, rather than the 32,960 feet set forth in the Notice. The 32,960 feet of track listed in the Notice is actually the total of the track that the City and OGRE would collectively construct at later development stages of the port expansion.

Third, as of this moment, OGRE does not yet have any right to access the Port tracks that are to be constructed by the Port over the next two years. However, OGRE has entered into an Exclusive Negotiation Agreement with the Port to negotiate a 66 year ground lease or operating agreement for the use of that property and expects to complete that process in the near future. When that agreement goes into effect, OGRE will provide switching services for industries located there.

To help explain exactly what rail construction is contemplated, we have appended a copy of the map that accompanied the Notice, but have now labeled the various existing and future trackage that would be relevant to OGRE's operations. (*See* Attachment A.) The map shows, first, that all of the track is or will be either switch yard or leads into the various industries. Second, the map identifies the existing UP and BNSF track, over which OGRE intends, once authorized by the Board, to commence its rail carrier service using the existing interchange tracks of both UP and BNSF. Subsequently, once the Port and the City of Oakland complete their respective rail construction projects, OGRE would then also utilize those tracks

GKG Law, P.C.

Cynthia Brown, Surface Transportation Board

Page 3

March 24, 2014

to provide switching services pursuant to lease rights it expects to have. The tracks to be built by the Port are shown on the map in teal blue, while the City tracks are shown in green.

However, the City will only be building the portion of that green-colored track which will connect with the Port tracks in the south and that will run both to the northwest roughly parallel to East Burma Road and that extend north until Wake Avenue. It is currently anticipated that this construction will be completed by September 2016.

Thereafter, and once industries are located there, at some future point OGRE would expect to construct a spur track that extends north from Wake Avenue and runs along West Burma Road. At the time of that construction, the City will be responsible for building the road crossing at the location shown as West Burma Road (which is also shown on the track). Based on our current understanding, we estimate that this spur track will be approximately 15,000 track feet plus turnouts. That track will come to a dead end at the northernmost point and will not extend outside the Port facility. Nor will it connect with any other rail carrier, and it would be used solely to pick-up and deliver freight to the several shippers and warehouse that are expected to locate there. Consequently, we believe that track would properly be classified as spur track, subject to the exemption in 49 U.S.C. §10906, when it is constructed.

As noted above, all of the track construction and other development work being doing in the Port has been vetted and approved under the CEQA and NEPA processes, so this is not an independent construction effort that is being unilaterally planned or constructed by the Port, the City or OGRE. As part of its contract with the City, OGRE agreed to finance and construct the track north of Wake Avenue and will then be able to operate there pursuant to a long term ground lease.

OGRE regrets that the information contained in the Notice of Exemption was somewhat incomplete and misleading concerning the nature and scope of OGRE's proposed operations or the work that the Port and City are doing in the Port of Oakland to enhance and facilitate rail transportation services within the port area. But, to reiterate, until such time as the Port and City have completed their intended rail infrastructure improvements, OGRE's proposed activities would be confined to operating over the UP and BNSF tracks to serve customers in the Port.

To remedy the confusion, OGRE has concluded that the most efficient path forward would be to seek leave to withdraw the Notice without prejudice, provide relevant information to the Board in order to make clear that this withdrawal was not intended to evade or circumvent the questions raised by the Board's directive of February 21, 2014, and then file a new Notice of Exemption covering the specific activities OGRE will conduct in 2015 when the Notice of Exemption becomes effective.

GKG Law, P.C.

Cynthia Brown, Surface Transportation Board

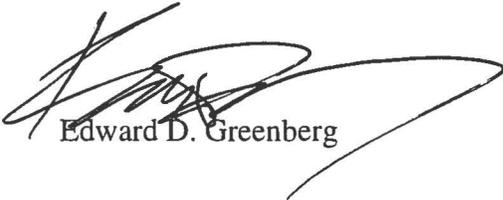
Page 4

March 24, 2014

Consequently, we respectfully request that the Board grant leave to withdraw the Notice of Exemption that was filed on February 7, 2014 in this docket without prejudice. We further request that the Board refund the filing fee that was submitted with the February 7, 2014 filing.

If you have any questions concerning this, please do not hesitate to contact me.

Very truly yours,

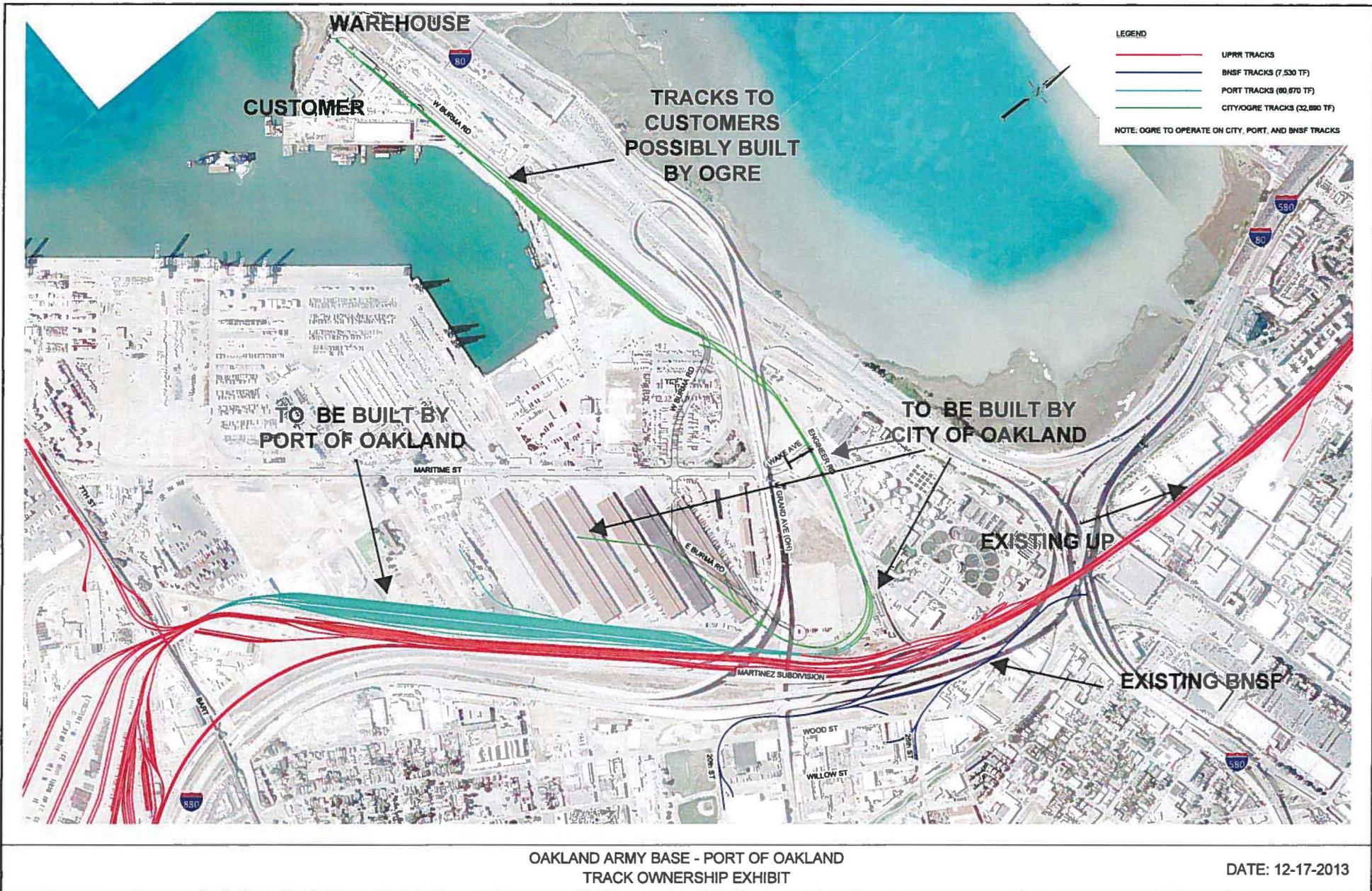


Edward D. Greenberg

cc: Rachel Campbell, Director, Office of Proceedings

Attachment

325702



Dec 17, 2013 - 4:28pm. Printed by: [unclear]
C:\Users\j\OneDrive\Documents\Oakland Army Base