

STAFF REPORT FOR CALENDAR ITEM NO.: 15
FOR THE MEETING OF: March 10, 2011

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Approving a Temporary Easement Agreement (Temporary Easement) between the Transbay Joint Powers Authority (TJPA) and Pacific Gas and Electric Company (PG&E) to allow PG&E to temporarily relocate subsurface electrical and natural gas facilities through TJPA-owned parcels N and N' at no cost to the TJPA to allow for the start of construction of the Transit Center.

REPORT:

As part of the Transit Center construction, the TJPA plans to install shoring wall, rail box and other subsurface improvements in Beale Street. This construction will require the temporary and permanent relocation of existing utilities in Beale Street. PG&E currently owns and maintains subsurface electrical and natural gas facilities in Beale Street. PG&E will be required to move these facilities at no cost to the TJPA.

In order to allow the TJPA to timely proceed with the start of construction, PG&E has requested that the TJPA permit PG&E to temporarily relocate its facilities from Beale Street to the TJPA-owned Parcels N and N'.

Staff has negotiated a Temporary Easement that grants PG&E temporary access to Parcel N and N' to install, maintain, and remove electrical and natural gas facilities at no cost to the TJPA, and PG&E has signed the Temporary Easement. The Temporary Easement would grant PG&E a temporary right to enter the easement area, to install and maintain temporary utility lines, and to remove these temporary utility lines upon termination of the Temporary Easement. The Temporary Easement would commence immediately upon execution of the agreement and terminate twelve months after the TJPA provides written notice of termination to PG&E. On or before the termination date, PG&E would be required to provide the TJPA a quitclaim deed evidencing termination of the Temporary Easement.

PG&E's permanent electrical facilities will be relocated to Beale Street once the TJPA has completed construction of the rail box. PG&E's permanent natural gas facilities will be installed on Main Street and are expected to be complete in December 2011.

RECOMMENDATION:

Staff recommends that the Board authorize the Executive Director to execute the Temporary Easement with PG&E in the form attached to this report.

ATTACHMENTS:

1. Resolution
2. Temporary Easement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) requires the relocation of certain existing public and private utilities in the streets surrounding the former Transbay Terminal to construct shoring wall, rail box and other subsurface improvements required to build the Transit Center; and

WHEREAS, Under Bill No. 325, Ordinance No. 413, of the City and County of San Francisco (City), the City granted to Pacific Gas & Electric Company (PG&E) a franchise to install certain facilities and conduct certain activities in the City streets to introduce, transmit, distribute, and supply gas to the City (Gas Franchise Agreement); and

WHEREAS, Under Bill No. 326, Ordinance No. 414, of the City, the City granted to PG&E a franchise to install certain facilities and conduct certain activities in the City streets to introduce, transmit, distribute, and supply electricity to the City (Electric Franchise Agreement); and

WHEREAS, In order to meet the TJPA's schedule for construction of the Transit Center, PG&E has requested that the TJPA permit PG&E to temporarily relocate certain gas and electric facilities from the City streets to a portion of TJPA property known as Parcel N and N', in accordance with the Gas Franchise Agreement and Electric Franchise Agreement and at no cost to the TJPA; and

WHEREAS, PG&E acknowledges that the TJPA currently uses and has planned future uses of the TJPA property for construction and other activities related to the Transit Center; and

WHEREAS, The TJPA is willing to grant PG&E a non-exclusive Temporary Easement to temporarily relocate certain natural gas and electrical facilities from the City streets to a portion of the TJPA property, consistent with the terms of the Gas Franchise Agreement and Electric Franchise Agreement and conditioned on PG&E's non-interference with the TJPA's use of the easement area for the Transit Center; and

WHEREAS, Staff has prepared a Temporary Easement Agreement for the installation, maintenance and removal of electrical and natural gas facilities through TJPA-owned property; and

WHEREAS, Staff recommends that the Board approve the Temporary Easement Agreement with PG&E; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute a Temporary Easement Agreement with PG&E, authorizing PG&E to install, maintain and remove electrical and natural gas facilities through TJPA-owned property.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 10, 2011.

Secretary, Transbay Joint Powers Authority

RECORDING REQUESTED BY, and
WHEN RECORDED RETURN TO:

Transbay Joint Powers Authority
201 Mission Street Suite 2100
San Francisco, CA 94105

Recording Fee \$0 (Govt Code § 27383)
Document Transfer Tax \$0 (Rev & Tax Code § 11922)

Block No. 3718, Lot No. 025

(Space above this line reserved for Recorder's use only)

RECITALS

A. Under Bill No. 325, Ordinance No. 413, of the City and County of San Francisco (“City”), which is referred to and incorporated by reference herein, the City granted to Pacific Gas & Electric Company (“PG&E”) a franchise to install certain facilities and conduct certain activities in the City streets to introduce, transmit, distribute, and supply gas to the City (“Gas Franchise Agreement”).

B. Under Bill No. 326, Ordinance No. 414, of the City, which is referred to and incorporated by reference herein, the City granted to PG&E a franchise to install certain facilities and conduct certain activities in the City streets to introduce, transmit, distribute, and supply electricity to the City (“Electric Franchise Agreement”).

C. The Transbay Joint Powers (“TJPA”), a joint powers agency created under California Government Code sections 6500 *et seq.*, is charged with the finance, design, development, construction, and operation of the Transbay Transit Center Project (“Transbay Project”). In order to facilitate construction of the Transbay Project, PG&E, at no cost to the City or the TJPA, will relocate certain facilities installed in the City streets in accordance with the Gas Franchise Agreement and Electric Franchise Agreement.

D. The TJPA owns certain property in the City and County of San Francisco at Block No. 3718, Lot No. 025 (“TJPA Property”). The TJPA Property is currently being used for construction staging related to construction of the Transbay Project. The TJPA Property will eventually be used for phase two of the TJPA’s construction of the new Transit Center. In order to meet the TJPA’s schedule for construction of the Transbay Project, PG&E has requested that the TJPA permit PG&E to temporarily relocate certain gas and electric facilities from the City streets to a portion of the TJPA Property.

E. PG&E acknowledges that the TJPA currently uses and has planned future uses of the TJPA Property for construction and other activities related to the Transbay Project. The TJPA is willing to grant PG&E a non-exclusive right to temporarily relocate certain gas and electric facilities from the City streets to a portion of the TJPA Property consistent with the terms of the Gas Franchise Agreement and Electric Franchise Agreement; conditioned on PG&E’s

non-interference with the TJPA's use of the Temporary Easement Area for the Transbay Project; and as described below.

TEMPORARY EASEMENT

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the TJPA hereby grants to PG&E a temporary non-exclusive easement (the "Temporary Easement") affecting that portion of the real property located in the City and County of San Francisco, State of California at Block No. 3718, Lot No. 025, more particularly described in Exhibit A attached hereto and made a part hereof, and shown in Exhibit B attached hereto and made a part hereof (the "Easement Area"), subject to the following terms and conditions:

1. Term and Termination

This Temporary Easement shall commence immediately upon execution of the Temporary Easement on behalf of TJPA (the "Effective Date"). This Temporary Easement shall terminate ("Easement Termination Date") on or before twelve (12) months after TJPA provides written notice to PG&E of the termination of the Temporary Easement. On or before the Easement Termination Date, PG&E shall cause to be executed, acknowledged, and delivered on behalf of PG&E a quitclaim deed, in form reasonably satisfactory to TJPA, evidencing termination of the Temporary Easement.

Notwithstanding the foregoing, PG&E's right to use and occupy the Easement Area to construct and install the temporary facilities, as described in Section 2 below, shall begin upon written notice by TJPA to PG&E ("Construction Begin Date"), which notice will be provided after TJPA has removed all building materials and equipment from the Easement Area, and terminate one hundred and twenty (120) days thereafter ("Construction End Date"); as of the Construction End Date, PG&E's construction and installation activity in the Easement Area shall be complete.

2. Permitted Uses

TJPA grants to PG&E a temporary right to enter, occupy, and use the Easement Area for the purposes of:

(a) temporarily relocating PG&E's pipes and appurtenances (as defined in the Gas Franchise Agreement) from the streets of the City and County of San Francisco (as defined in the Gas Franchise Agreement) to the Easement Area to allow for construction of the Transbay Transit Center Program. In particular, PG&E shall have the right to lay and use (as defined in the Gas Franchise Agreement) in the Easement Area all pipes and appurtenances necessary and proper for transmitting and distributing gas within the City and County of San Francisco; and

(b) temporarily relocating PG&E's poles, wires, conduits, and appurtenances (as defined in the Electric Franchise Agreement) from the streets of the City and County of San Francisco (as defined in the Electric Franchise Agreement) to the Easement Area to allow for construction of the Transbay Transit Center Program. In particular, PG&E shall have the right to

construct and use (as defined in the Electric Franchise Agreement) in the Easement Area all poles, wires, conduits, and appurtenances necessary and proper for transmitting and distributing electricity within the City and County of San Francisco.

3. Non-Interference with TJPA Activity; Notice Prior to Entry

PG&E acknowledges that the TJPA currently uses and has planned future uses of the TJPA Property, including the Temporary Easement Area, for construction and other activities related to the Transbay Project. PG&E's right to use the Easement Area under this Temporary Easement are non-exclusive and are subordinate to the TJPA's use of the Easement Area. In particular, PG&E acknowledges that TJPA plans to use the surface area above the Temporary Easement Area for uses related to the Transbay Project during the term of this Temporary Easement.

PG&E shall provide not less than 24 hours advance notice to TJPA of PG&E's entry on the Temporary Easement Area, except in cases of emergency or as otherwise permitted by TJPA.

4. Condition of Easement Area at Easement Termination Date

On the Easement Termination Date, PG&E shall, at PG&E's sole expense: (a) vacate all portions of the Easement Area; (b) remove or relocate without expense to the TJPA any facilities installed, used, or maintained by PG&E under this Temporary Easement, or upon agreement by TJPA and PG&E, PG&E may abandon such facilities or portions thereof in place upon the Easement Area, and such facilities shall become property of the TJPA without compensation to PG&E; and (c) leave the Easement Area free of structures, equipment, materials, rubbish, debris, and personal property. PG&E shall pay to the TJPA on demand the cost of all repairs to TJPA property made necessary by any of the operations of PG&E under this Temporary Easement.

5. Compliance with Laws

PG&E shall conduct all activities in the Easement Area in a safe, prudent, and professional manner in accordance with best practices. PG&E shall, at its sole cost and expense, promptly comply with (i) all applicable laws, statutes, ordinances, rules, regulations, requirements, or orders of municipal, state, and federal authorities now in force or that may later be in force, including, but not limited to, those relating to the generation, use, storage, handling, treatment, transportation, or disposal of Hazardous Materials (as defined below); (ii) any easements, covenants, conditions, restrictions, and servitudes of record or of which PG&E has notice (collectively, "Legal Requirements").

6. Dangerous Activities; Hazardous Substances

PG&E agrees to conduct its activities and operations within the Easement Area in such a manner so as not to endanger the environment, and human health and safety. PG&E shall not cause or permit any Hazardous Materials to be stored, released, discharged, or disposed of on the Easement Area. PG&E shall be responsible for, at PG&E's sole expense, remediating any discharge or release of Hazardous Materials on the Easement Area during the term of this Temporary Easement directly caused, in whole or in part, by PG&E, or in any way associated

with PG&E's activities, and shall immediately notify the TJPA, and the appropriate regulatory authorities, where required by law, of such release. Provided, however, PG&E's obligations herein shall not extend to any discharge or release of Hazardous Materials caused by the gross negligence or willful misconduct of TJPA, its agents, employees, contractors, subcontractors, architects, engineers or consultants.

"Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA," also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of improvements or are naturally occurring substances on or about real property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

7. Insurance

Prior to commencing any work in the Easement Area and during the term of the Temporary Easement, PG&E shall obtain and provide to TJPA evidence of insurance for the following insurance coverages:

(a) Commercial General Liability insurance, including coverage for contractual liability, on an occurrence basis, and broad form property damage insurance covering damages to the Easement Area, with a combined single limits of not less than Five Million and No/100 Dollars (\$5,000,000) per occurrence. Umbrella and/or excess liability policies may be used to supplement primary coverage to meet the required limits set forth above. The liability insurance policy shall include an endorsement stating that the issuing company will endeavor to mail Thirty (30) days prior written notice to TJPA before such coverage is diminished or canceled.

(b) Workers' Compensation insurance, providing statutory benefits in the State of California either through an insurer licensed to provide such insurance or through a combination of qualified self-insurance in combination with excess insurance provided by an insurer licensed to provide such excess insurance and Employer's Liability insurance with minimum limits in accordance with statutory requirements. The foregoing Employer's Liability insurance limits may be met by using an excess or umbrella policy.

(c) PG&E shall have the right to self insure with respect to any of the insurance requirements required under this Temporary Easement. PG&E shall submit a letter of self-insurance signed by a duly authorized representative evidencing that PG&E's self-insurance program is in full force and effect and in compliance with and subject to all the terms, agreements, covenants, conditions and provisions of this Temporary Easement.

8. Indemnity

PG&E shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless TJPA, its members, officers, shareholders, managers, directors, representatives, agents, employees, transferees, successors and assigns (each, an “Indemnitee” and collectively, “Indemnites”) from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys’ fees and costs) and liabilities (collectively, “Claims”), which arise, in whole or in part, from the occupancy or use of the Easement Areas by PG&E, or the exercise by PG&E of its rights hereunder, or the performance of, or failure to perform, PG&E’s duties under this Temporary Easement, including, but not limited to, Claims arising out of: (a) injury to or death of persons, including but not limited to employees of TJPA, PG&E, or their respective agents, contractors and invitees; (b) injury to property or interests in property of TJPA, PG&E, or any third party, including, without limitation, any damage to PG&E’s improvements; and (c) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all Legal Requirements relating to human health or the environment, and including any liability which may be imposed by law or regulation without regard to fault; excepting only with respect to any Indemnitee, to the extent of any Claim arising solely from the gross negligence or the willful misconduct of such Indemnitee or its members, officers, managers, directors, representatives, agents, employees, contractors, subcontractors, architects, engineers or consultants.

Without limiting the generality of the foregoing, PG&E shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnites harmless from and against Claims arising out of any work of improvement constructed or installed at or on, labor performed on, or materials delivered to, or incorporated in any improvements constructed on, the Easement Area by, or at the request or for the benefit of, PG&E.

In the event any action or proceeding is brought against any Indemnitee for any Claim against which PG&E is obligated to indemnify or provide a defense hereunder, PG&E upon written notice from TJPA shall defend such action or proceeding at PG&E’s sole expense by counsel approved by TJPA, which approval shall not be unreasonably withheld, conditioned, or delayed.

9. Mechanics’ Liens

PG&E shall keep the Easement Area free and clear of liens or claims of liens arising or alleged to arise in connection with any work performed, labor or materials supplied or delivered, or similar activities performed by PG&E or at its request or for its benefit. If any mechanics’ liens are placed on or filed against the Easement Area in connection with PG&E’s activities under the Temporary Easement, PG&E shall promptly cause such liens to be released and

removed from title, either by payment or by recording a lien release bond in the manner specified in California Civil Code Section 3143 or any successor statute.

GRANTOR:

TRANSBAY JOINT POWERS
AUTHORITY, a joint powers agency under
Government Code sections 6500 *et seq.*

By: _____
Maria Ayerdi-Kaplan
Executive Director

Date: _____

ACKNOWLEDGMENT FORM FOR DOCUMENTS:

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On _____, before me, _____ a

Notary Public, personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

Exhibit A
Temporary Easement Legal Description

Exhibit B
Temporary Easement Diagram

EXHIBIT "A"
TEMPORARY UTILITY EASEMENT
LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF THOSE CERTAIN LANDS DESIGNATED AS CO-OP PARCEL N IN DIRECTOR'S DEED NUMBER DK-000390-01-01, RECORDED AUGUST 9, 2010, IN OFFICIAL RECORDS OF THE COUNTY OF SAN FRANCISCO UNDER DOCUMENT NO. 2010J017207, TOGETHER WITH A PORTION OF THOSE CERTAIN LANDS DESIGNATED AS CO-OP PARCEL N' IN DIRECTOR'S DEED NUMBER DK-012857-01-01, RECORDED AUGUST 9, 2010, IN OFFICIAL RECORDS OF THE COUNTY OF SAN FRANCISCO UNDER DOCUMENT NO. 2010J017211, BEING A STRIP OF LAND, 15.00 FEET WIDE, LAYING CONTIGUOUS WITH AND 7.50 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE MOST WESTERLY CORNER OF SAID CO-OP PARCEL N'; THENCE ALONG THE SOUTHWEST LINE OF SAID CO-OP PARCEL N' SOUTH 43°41'50" EAST 130.78 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE LEAVING THE SOUTHWEST LINE OF SAID CO-OP PARCEL N' AND ALONG SAID CENTERLINE, THE FOLLOWING FIVE COURSES:

- 1) SOUTH 88°09'37" EAST 12.96 FEET;
- 2) SOUTH 65°56'09" EAST 186.21 FEET; THENCE PARALLEL WITH THE SOUTHWEST LINE OF SAID PARCEL N,
- 3) SOUTH 43°41'50" EAST 85.44 FEET;
- 4) SOUTH 14°34'05" WEST 79.16 FEET; THENCE PARALLEL WITH THE SOUTHEAST LINE OF SAID PARCEL N,
- 5) SOUTH 46°18'10" WEST 12.23 FEET

TO THE POINT OF TERMINATION, BEING A POINT LAYING ON THE SOUTHWEST LINE OF SAID CO-OP PARCEL N FROM WHICH THE POINT OF BEGINNING BEARS NORTH 43°41'50" WEST 308.69 FEET DISTANT, MORE OR LESS.

THE SIDELINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED AS TO COMMENCE OR TERMINATE AT THE SOUTHWEST LINE OF SAID CO-OP PARCEL N AND CO-OP PARCEL N'.

BASIS OF BEARINGS: THE SAN FRANCISCO CITY MONUMENT LINE LOCATED IN BEALE STREET BETWEEN MONUMENT LINES IN MISSION STREET AND HOWARD STREET, IS TAKEN AS SOUTH 43°41'50" EAST 632.48 FEET (632.484 FEET PER CITY MONUMENT MAP 317, ON FILE IN THE OFFICE OF THE CITY ENGINEER).

COMPRISING 5,640 SQUARE FEET, MORE OR LESS.

PREPARED ENTIRELY FROM RECORD DATA BY:

PRELIMINARY

TODD A. TILLOTSON, PLS 8593
LICENSE EXPIRES 12/31/11

DATE: _____

PRELIMINARY

MISSION STREET

LINE TABLE		
LINE	LENGTH	BEARING
L1	12.96	S88°09'37"E
L2	186.21	S65°56'09"E
L3	85.44	S43°41'50"E
L4	79.16	S14°34'05"W
L5	12.23	S46°18'10"W

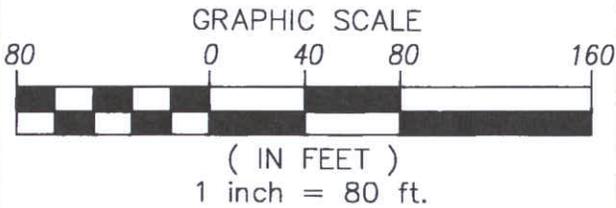
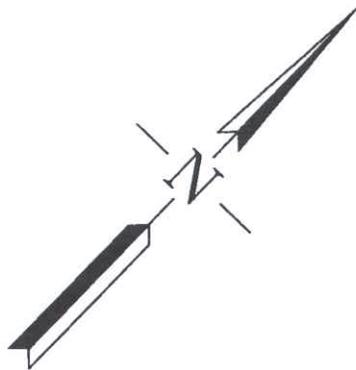
CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	295.60	406.36	41°40'44"

LEGEND

-  CENTERLINE EASEMENT
-  EASEMENT LINE
-  PROPERTY LINE
-  MONUMENT LINE

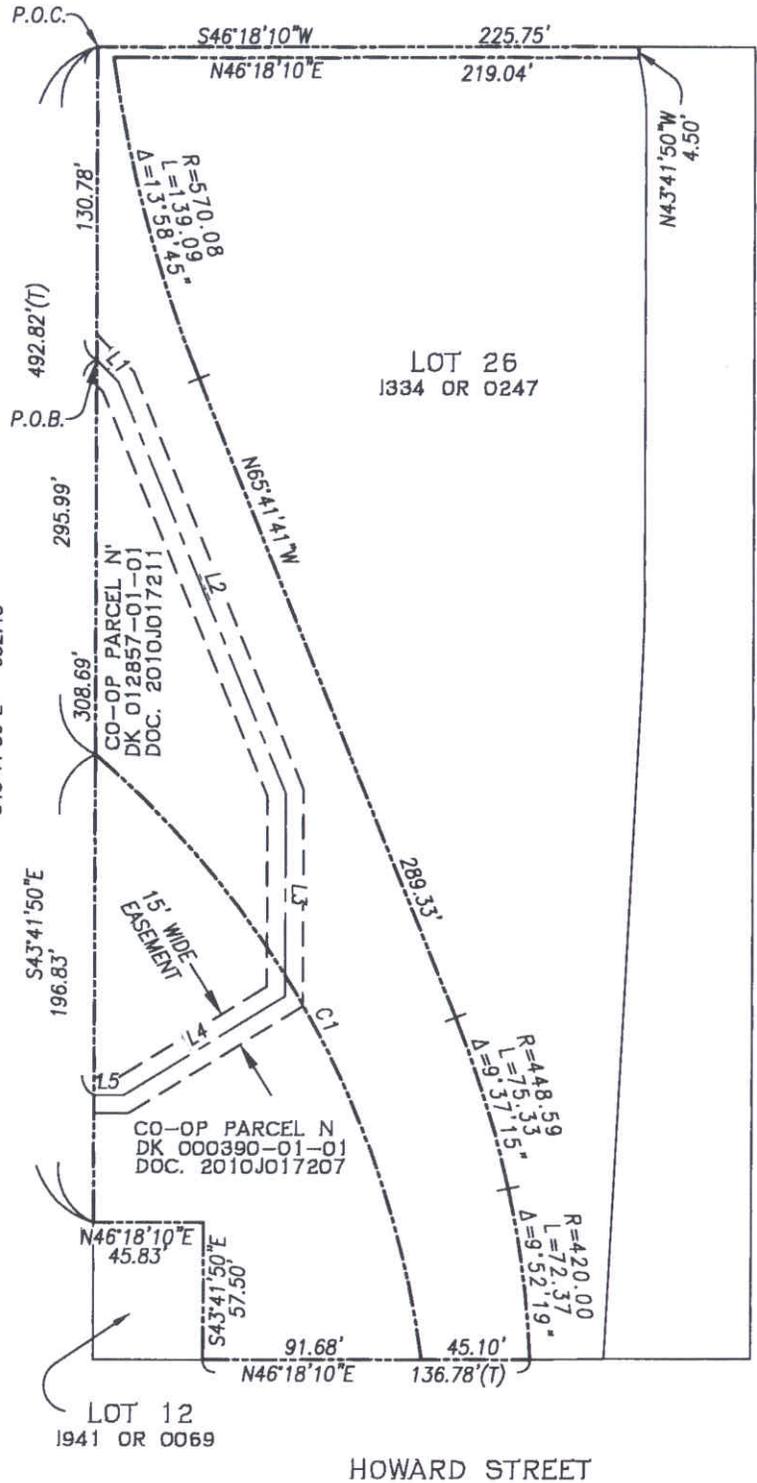
ABBREVIATIONS

- OR OFFICIAL RECORDS
- DK-012857-01-01 DIRECTOR'S DEED NUMBER
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT



BEALE STREET

BASIS OF BEARINGS
S43°41'50"E 632.48'



F3 & Associates, Inc.
 Land Surveying
 701 E.H ST, BENICIA, CA 94510
 PHONE(707)748-4300 FAX(707)361-0295
 www.F3-Inc.com

EXHIBIT 'B' - PLAT TO ACCOMPANY LEGAL DESCRIPTION
TEMPORARY UTILITY EASEMENT
 APN 3718/025 AREA=5,640 SQ.FT.
 CITY AND COUNTY OF SAN FRANCISCO CALIFORNIA

DESIGN BY:	N/A
DRAWN BY:	STAFF
DATE:	FEB 2011
SCALE:	1"=80'
PAGE	1
OF	1
JOB NUMBER:	11014