

File Nos. 110019 Committee Item Nos. 3
 Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
 AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date January 31, 2011

Board of Supervisors Meeting Date _____

Cmte Board

- | | | |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

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|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>DPW Order No. 179,054 (See Item No. 2: File No. 110017)*</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>SUR Map Nos. 6009, 7009, and 8009 (See Item No. 2: File No. 110017)*</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>General Plan Referral (See Item No. 2: File No. 110017)*</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Res No. 18159 (See Item No. 2: File No. 110017)*</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Fifth Addendum to FEIS/FEIR (See Item No. 2: File No. 110017)*</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>TJPA Resolution No. 09-019 (See Item No. 2: File No. 110017)*</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Draft Quitclaim Deed for Vacation Area to TJPA</u> |

Completed by: Alisa Somera Date January 28, 2011
 Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
 The complete document can be found in the file.

1 [Street Vacation Order - Transbay Transit Center]

2
3 Ordinance ordering the vacation of portions of the public right-of-way below and/or
4 above Natoma Street, Minna Street, First Street, Fremont Street, Beale Street, Harrison
5 Street, Folsom Street, Clementina Street, Tehama Street, Howard Street, Second Street,
6 and Oscar Alley within the Transit Center Project area; quitclaiming the City's interest
7 in the vacation areas to the Transbay Joint Powers Authority; accepting Department of
8 Public Works Order No. 179,054; making environmental findings and findings of
9 consistency with the City's General Plan and Planning Code Section 101.1; and
10 authorizing official acts in connection with this Ordinance.

11 Note: Additions are *single-underline italics Times New Roman*;
12 deletions are *strikethrough italics Times New Roman*.
13 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. Findings

16 (a) On _____, 2011, the Board of Supervisors adopted Resolution No.
17 _____, a copy of which is on file with the Clerk of the Board of Supervisors in
18 File No. 110017, being a Resolution declaring its intention to order the vacation of
19 portions of the public right-of-way below and/or above Natoma Street, Minna Street, First
20 Street, Fremont Street, Beale Street, Harrison Street, Folsom Street, Clementina Street,
21 Tehama Street, Howard Street, Second Street, and Oscar Alley within the Transit Center
22 Project area (collectively, the "Vacation Area"). The location and extent of the Vacation Area
23 is shown on the Department of Public Works' draft SUR Map Nos. 6009, 7009, and 8009,
24 dated December 17, 2010. Copies of these maps are on file with the Clerk of the
25 Board of Supervisors in File No. 110019 and are incorporated herein by reference.

1 (b) The Clerk of the Board of Supervisors did transmit to the Director of the
2 Department of Public Works a certified copy of the Resolution of Intention, and the Director of
3 the Department of Public Works did cause notice of adoption of such Resolution to be posted
4 and published in the manner required by law.

5 (c) When such matter was considered as scheduled by the Board of Supervisors at its
6 regular meeting held in the City Hall, San Francisco, on _____, 2011,
7 beginning at approximately _____ P.M., the Board heard all persons interested in such
8 vacation.

9 (d) The vacation of the Vacation Area is necessary for the Transbay Joint Powers
10 Authority ("TJPA") to construct the Transbay Transit Center and associated bus ramps.

11 (e) On June 15, 2004, this Board approved Motion No. M04-67 affirming the Planning
12 Commission's certification of the final environmental impact report for the Transbay
13 Terminal/Caltrain Downtown Extension/Redevelopment Project in compliance with the
14 California Environmental Quality Act ("CEQA") (California Public Resources Code sections
15 21000 et seq.) A copy of said Motion is on file with the Clerk of the Board of Supervisors in
16 File No. 040629 and is incorporated herein by reference.

17 (f) The Board of Supervisors in Resolution No. 612-04, adopted environmental
18 findings in relation to the Transbay Terminal, Caltrain Downtown Extension, and Transbay
19 Redevelopment Plan. Copies of said Resolution and supporting materials are in the Clerk of
20 the Board of Supervisors File No. 041079. The Board of Supervisors in Ordinance No. 124-
21 05, as part of its adoption of the Transbay Redevelopment Plan, adopted additional
22 environmental findings. Copies of said Ordinance and supporting materials are in the Clerk of
23 the Board of Supervisors File No. 050184. Said Resolution and Ordinance and supporting
24 materials are incorporated by reference herein for the purposes of this Ordinance.

1 (g) On April 9, 2009, the TJPA approved Resolution No. 09-019, adopting the Fifth
2 Addendum to the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project
3 FEIS/EIR finding that the proposed vacation of the Vacation Area will not trigger the need for
4 subsequent environmental review pursuant to California Public Resources Code section
5 21166 and sections 15162 and 15163 of the CEQA Guidelines. A copy of this Resolution is
6 on file with the Clerk of the Board of Supervisors in File No. 110019 and is
7 incorporated by reference as though fully set forth herein. The Board of Supervisors adopts
8 as its own said findings pursuant to CEQA.

9 (h) On August 5, 2010, the Planning Commission adopted Motion No. 18159, making
10 findings of consistency with the General Plan and the eight priority policies of Planning Code
11 Section 101.1 for the actions contemplated herein. A copy of this Motion is on file with the
12 Clerk of the Board of Supervisors in File No. 110019 and is incorporated by reference
13 as though fully set forth herein. The Board of Supervisors adopts as its own said consistency
14 findings.

15 (i) In DPW Order No. 179,054, dated January 7, 2011, the
16 Director of the Department of Public Works determined: (i) the Vacation Area is unnecessary
17 for the City's present or prospective public street, sidewalk, and service easement purposes;
18 (ii) conveyance of the Vacation Area to the TJPA for a sales price of \$1.00 will further a proper
19 public purpose, including, but not limited to, promoting and facilitating the use of public
20 transportation, as confirmed by the Director of the Real Estate Division; (iii) there are no
21 physical public or private utilities affected by the vacation of the Vacation Area except as
22 stated below; (iv) the TJPA, with oversight from the Department of Public Works, is
23 collaborating with utility agencies and other parties for the relocation of these utilities; and (v)
24 the vacation is subject to retention of certain time-limited rights for public and private utilities
25

1 as described further herein. A copy of the DPW Order is on file with the Clerk of the Board of
2 Supervisors in File No. 110019 and incorporated herein by reference.

3 (j) The public interest, convenience and necessity require that the City reserve and
4 except from the vacation non-exclusive easements for the benefit of those in-place and
5 functioning utilities, including City utilities, PG&E, IPN, AT&T, AT&T Legacy T, Verizon, TCG,
6 Qwest, Comcast, Level 3, and AboveNet utilities and facilities, that are currently located within
7 the Vacation Area, to the extent necessary to maintain, operate, repair and remove existing
8 lines of pipe, conduits, cables, wires, poles, and other convenient structures, equipment and
9 fixtures for the operation of said utilities, together with reasonable access to the foregoing
10 utilities and facilities for the purposes set forth above. The reservation stated herein is time-
11 limited because said utilities are to be relocated from these easement locations. The TJPA is
12 responsible for relocating the City utilities and facilities. PG&E, IPN, AT&T, AT&T Legacy T,
13 Verizon, TCG, Qwest, Comcast, Level 3, and AboveNet are responsible for relocating their
14 own utilities and facilities. Accordingly, reserved easements for the City utilities shall expire
15 when the TJPA relocates the utility to the satisfaction of the City. Reserved easements for
16 PG&E, IPN, AT&T, AT&T Legacy T, Verizon, TCG, Qwest, Comcast, Level 3, and AboveNet
17 shall expire at the time the Department of Public Works grants to the TJPA a general
18 excavation permit to undertake pre-trench work at the location of the subject reserved
19 easement(s).

20 (k) As part of this vacation action, the City recognizes that private encroachments
21 permitted by the Department of Public Works, other than utilities covered in the paragraph
22 above, may exist within the Vacation Area. To the extent that such encroachments are
23 incompatible with the Transbay Program, the City shall take the necessary steps, consistent
24 with the law, to revoke permission for those encroachments. The City reserves and excepts
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1 from the vacation any private encroachment rights that have been validly permitted by the
2 Department of Public Works as of the date of this Ordinance, until such permission is revoked
3 by the City.

4 (l) The public interest, convenience, and necessity require that, except as specifically
5 provided in this Ordinance, no other easements or other rights be reserved for any public or
6 private utilities or facilities that are in place in such Vacation Area and that any rights based
7 upon any such public or private utilities or facilities are extinguished.

8 (m) The Director of the Department of Public Works also recommends that the
9 vacation of the Vacation Area is conditioned upon the following restrictions: (i) that the
10 property can be used only for the Transbay Transit Center or related bus ramps and rail
11 extensions; (ii) the property cannot be conveyed to another party for another use, provided,
12 however, that the TJPA may convey the property to another governmental entity if the
13 transferee would own and operate the Transit Center or related bus ramps and rail
14 extensions; and (iii) if the TJPA abandons the use, or never completes construction of any
15 portion of the Transit Center or its bus ramps, the associated vacated areas will automatically
16 revert back to the City and County of San Francisco in fee simple; and (iv) that the TJPA shall
17 retain 6 to 11 feet of public right-of-way width (depending on location) vacated on First and
18 Fremont Streets as public sidewalk except for limited areas around the base of the Transit
19 Center basket columns where small barriers will be installed to protect pedestrians and the
20 columns. The Board of Supervisors adopts as its own, the recommendations of the Director
21 of the Department of Public Works as set forth in DPW Order No. 179,054
22 concerning the vacation of the Vacation Area and other actions in furtherance thereof.

23 (n) The California Department of Transportation ("Caltrans") has asserted certain real
24 property interests in portions of the Vacation Area. As part of a separate future action before
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1 this Board of Supervisors, Caltrans will offer and the City will consider the acceptance of a
2 quitclaim of Caltrans' rights. To the extent any of the areas subject to this future action are
3 coterminous with the Vacation Area that is the subject of this legislation, this Board of
4 Supervisors hereby authorizes and directs the Director of the Division of Real Estate, County
5 Surveyor, and Director of Public Works to take any and all actions which they or the City
6 Attorney may deem necessary or advisable in order to quitclaim to the TJPA any new rights in
7 the Vacation Area that the City acquires from Caltrans.

8 (o) The vacation of the Vacation Area is being taken pursuant to California Streets and
9 Highways Code Sections 8300 et seq. and Public Works Code Section 787(a).

10 (p) From all the evidence submitted at the public hearing noticed in the Resolution No.
11 _____ and the associated materials on file with the Clerk of the Board in File No.
12 110017, the Board of Supervisors finds that the Vacation Area, as described in said
13 Resolution, is unnecessary for present or prospective public use, subject to the conditions
14 described in this Ordinance.

15 (q) Pursuant to the Streets and Highways Code Section 892, the Board hereby finds
16 and determines that the Vacation Area is inaccessible to non-motorized transportation, and
17 therefore has no use for a non-motorized transportation facility.

18 (r) With the exception of the easements and private encroachment rights described
19 above, the public interest, convenience and necessity require that no other easements or
20 other rights be reserved for any public or private utilities or facilities that are in place in the
21 Vacation Area and that any rights based upon any such public or private utilities or facilities
22 are extinguished.

23 (s) The public interest and convenience require that the vacation be done as declared
24 in this Ordinance.

1 Section 3. Except as set forth in Section 4 below, the Vacation Area, as shown on draft
2 SUR Map Nos. 6009, 7009, and 8009, is hereby ordered vacated and pursuant to California
3 Streets and Highways Code Sections 8300 et seq. and Public Works Code Section 787(a).

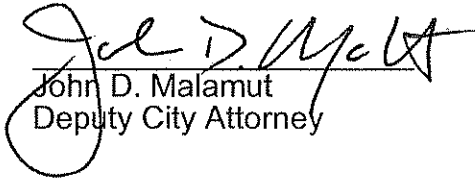
4 Section 4. The vacation of the Vacation Area is conditioned upon the following
5 restrictions: (i) that the property can be used only for the Transbay Transit Center or related
6 bus ramps and rail extensions; (ii) the property cannot be conveyed to another party for
7 another use, provided, however, that the TJPA may convey the property to another
8 governmental entity if the transferee would own and operate the Transit Center or related bus
9 ramps and rail extensions; and (iii) if the TJPA abandons the use, or never completes
10 construction of any portion of the Transit Center or its bus ramps, the associated vacated
11 areas will automatically revert back to the City and County of San Francisco in fee simple; (iv)
12 that the TJPA shall retain 6 to 11 feet of public right-of-way width (depending on location)
13 vacated on First and Fremont Streets as public sidewalk except for limited areas around the
14 base of the Transit Center basket columns where small barriers will be installed to protect
15 pedestrians and the columns; and (v) subject to the time-limited reserved easements and
16 private rights described herein.

17 Section 5. Notwithstanding the provisions of Administrative Code Chapter 23, the
18 Board of Supervisors hereby approves the quitclaim deeds to the TJPA in substantially the
19 form on file with the Clerk of the Board of Supervisors and authorizes the Director of Property
20 to execute City quitclaim deeds for the Vacation Area to the TJPA at the time when said
21 deeds and associated documentation are finalized and properly certified. A copy of said draft
22 deed(s) is on file with the Clerk of the Board of Supervisors in File No. 110019 and is
23 incorporated herein by reference.

1 Section 6. The Board of Supervisors hereby directs the Clerk of the Board of
2 Supervisors to transmit to the Director of Public Works a certified copy of this Ordinance so
3 that this Ordinance may be recorded together with the other documents necessary to
4 effectuate the quitclaim of the Vacation Area to the TJPA.

5 Section 7. All actions heretofore taken by the officers of the City with respect to this
6 Ordinance are hereby approved, confirmed and ratified, and the Mayor, Clerk of the Board,
7 Director of the Division of Real Estate, County Surveyor, and Director of Public Works are
8 hereby authorized and directed to take any and all actions which they or the City Attorney may
9 deem necessary or advisable in order to effectuate the purpose and intent of this Ordinance
10 (including, without limitation, the refinement and finalization of the Department of Public
11 Works' draft SUR Map Nos. 6009, 7009, and 8009, dated December 17, 2010; the
12 drafting of legal descriptions for the Vacation Area; the finalization and certification of the
13 quitclaim deeds for the Vacation Area, the execution of such deeds on behalf of the City, and
14 the recording of such deeds at the City and County of San Francisco Office of the Assessor-
15 Recorder; the filing of the Ordinance in the Official Records of the City and County of San
16 Francisco; the revocation of any permit to encroach upon the Vacation Area that conflicts with
17 the Transbay Transit Center program; and confirmation of satisfaction of any of the conditions
18 to the effectiveness of the vacation of the Vacation Area hereunder and execution and
19 delivery of any evidence of the same, which shall be conclusive as to the satisfaction of such
20 conditions upon signature by any such City official or his or her designee).

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: 
4 John D. Malamut
5 Deputy City Attorney

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LEGISLATIVE DIGEST

[Street Vacation Order - Transbay Transit Center]

Ordinance ordering the vacation of portions of the public right-of-way below and/or above Natoma Street, Minna Street, First Street, Fremont Street, Beale Street, Harrison Street, Folsom Street, Clementina Street, Tehama Street, Howard Street, Second Street, and Oscar Alley within the Transit Center Project area; quitclaiming the City's interest in the vacation areas to the Transbay Joint Powers Authority; accepting Department of Public Works Order No. 179,054; making environmental findings and findings of consistency with the City's General Plan and Planning Code Section 101.1; and authorizing official acts in connection with this Ordinance.

Existing Law

California Streets and Highways Code Sections 8300 et seq. and Public Works Code Section 787(a) govern the process for the vacation of streets.

Amendments to Current Law

This legislation, subject to certain conditions and reservations, would vacate portions of the public right-of-way below and/or above Natoma Street, Minna Street, First Street, Fremont Street, Beale Street, Harrison Street, Folsom Street, Clementina Street, Tehama Street, Howard Street, Second Street, and Oscar Alley within the Transit Center Project area, all in accordance with applicable State and local laws. This Ordinance would quitclaim the City's interest in the vacated area to the Transbay Joint Powers Authority ("TJPA"). This legislation would make certain findings related to the legislation, including environmental findings and findings that the legislation is consistent with the General Plan and the priority policy findings of the Planning Code Section 101.1. The Ordinance also would adopt the determination of the Director of the Department of Public Works along with maps showing the areas to be vacated.

Background

This Ordinance is necessitated by the TJPA's construction of the Transbay Transit Center and associated bus ramps, which will extend over and under portions of public streets and sidewalks. These vacations are necessary to allow for construction of the Transbay Transit Center and associated bus ramps.

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

John Updike,
Acting Director of Property
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Tel (415) 554-9875

Free Recording Requested Pursuant to
Government Code Section 27383

Documentary Transfer Tax of \$0

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

QUITCLAIM DEED

(Portion of Assessor's Parcel No. _____, Block _____)

The CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), pursuant to Ordinance No. _____, adopted by the Board of Supervisors on _____, 2011 and approved by the Mayor on _____, 2011, does hereby RELEASE, REMISE AND QUITCLAIM to the TRANSBAY JOINT POWERS AUTHORITY, a joint powers agency created under California Government Code Sections 6500 *et seq.* (the "Authority"), any and all right, title and interest City may have in and to the real property (the "Property") located in the City and County of San Francisco, State of California, described on the attached Exhibit A, subject to the following restrictions and reservations (collectively, the "Use Restrictions"):

1. The Property shall be used only for the construction, maintenance, repair and operation of the new Transbay Transit Center and any related bus ramps and rail extensions (the "Permitted Use").
2. The Property shall not be conveyed to any other party (other than the City) for any use that is not a Permitted Use; provided, however, that the Property may be conveyed to another governmental entity that will own and operate the Transbay Transit Center subject to the Use Restrictions.
3. If the Authority abandons its use of the Property for the Permitted Use, fee ownership of the Property shall automatically revert to the City as of the date of such abandonment. If the Authority fails to complete the initial construction of the Transbay Transit Center on or before _____ (the "Outside Date"), fee ownership of the Property shall automatically revert to the City as of the Outside Date.
4. The City reserves a temporary easement in the Property to access, maintain, operate, repair and remove the City's utilities and facilities located in the Property as of the date of this Quitclaim Deed (collectively, the "City Utilities"), as further described in Department of Public Works Order No. _____, dated _____, a copy of which is attached hereto as Exhibit B (the "DPW Order"). Such temporary easement for the City Utilities shall automatically expire when the Authority removes the City Utilities from the Property in the manner required by City.

5. The City reserves a temporary easement in the Property to permit the non-City parties that have utilities or any related facilities in the Property as of the date of this Quitclaim Deed to access, maintain, operate, repair and remove such utilities and facilities (collectively, the "Private Utilities"), as further described in the DPW Order. Such temporary easement for the Private Utilities shall automatically expire when the City's Department of Public Works grants the Authority a general excavation permit to undertake pre-trench work at the Property.
6. The portion of the public right-of-way vacated on First and Fremont Streets pursuant to this Quitclaim Deed shall continue to be used only as a public sidewalk and shall be maintained pursuant to the Sidewalk Maintenance Agreement between the Authority and the City, dated _____ and recorded in the Official Records of San Francisco County on the date this Quitclaim Deed is so recorded.

Executed as of this _____ day of _____, 2011.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
JOHN UPDIKE
Acting Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

LEGAL DESCRIPTION OF PROPERTY CHECKED AND APPROVED:

BRUCE R. STORRS
City and County Surveyor
City and County of San Francisco

Exhibit A

Legal Description

Exhibit B
DPW Order

State of California)
County of San Francisco)

On _____ before me, _____, a notary
public in and for said State, 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 that by his/her/their signature(s) on the instrument
the person(s), or the entity on 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 _____ (Seal)

This is to certify that the interest in real property conveyed by this deed dated _____ from the first party to the Transbay Joint Powers Authority (the "Authority"), is hereby accepted pursuant to Transbay Joint Powers Authority Board of Directors Resolution No. _____, and the Authority acknowledges the power of termination held by the State of California, acting by and through its Department of Transportation, in such real property and consents to recordation of this deed by its duly authorized officer.

Dated: _____

By: _____
Maria Ayerdi-Kaplan
Executive Director