

File No. 100840\*

Committee Item No. \_\_\_\_\_  
Board Item No. 51

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee \_\_\_\_\_

Date \_\_\_\_\_

Board of Supervisors Meeting

Date 07/27/10

#### Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/> | <input type="checkbox"/>            | Ordinance                                    |
| <input 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"/>            | Introduction Form (for hearings)             |
| <input type="checkbox"/> | <input checked="" 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"/>            | Award Letter                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Public Correspondence                        |

**OTHER** (Use back side if additional space is needed)

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Completed by: Joy Lamug  
Completed by: \_\_\_\_\_

Date 07/22/10  
Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

1 [Authorizing the Acquisition of Subsurface Real Property Easement By Eminent Domain for  
2 Central Subway/Third Street Light Rail Extension - 790 Market Street]

3 **Resolution authorizing the acquisition of a subsurface easement in real property**  
4 **commonly known as 790 Market Street, San Francisco, California, Assessor's Parcel**  
5 **No. Block 0328, Lot 002, by eminent domain for the public purpose of constructing the**  
6 **Central Subway/Third Street Light Rail Extension and other improvements; adopting**  
7 **environmental findings under the California Environmental Quality Act (CEQA), CEQA**  
8 **Guidelines, and Administrative Code Chapter 31; and adopting findings of consistency**  
9 **with the General Plan and City Planning Code Section 101.1.**

10  
11 WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) plans to  
12 construct a continuation of the T-Third Light Rail Vehicle line from the Caltrain Station at  
13 Fourth and King Streets to an underground station in Chinatown and other improvements (the  
14 "Project") to create a critical transportation improvement linking neighborhoods in the  
15 southeastern portion of the City and County of San Francisco (the "City") with the retail and  
16 employment centers in the City's downtown and Chinatown neighborhoods, a public use, and  
17 will require an interest in the real property described herein to construct the Project tunnels  
18 that will connect the Project's three subway stations and provide direct rail service to the City's  
19 Financial District and Chinatown neighborhoods; and

20 WHEREAS, The Project's primary objectives are to provide direct rail service to  
21 regional destinations, including the City's Chinatown, Union Square, Moscone Convention  
22 Center, Yerba Buena, SoMa and AT&T Park neighborhoods; connect BART and Caltrain;  
23 serve a low-auto-ownership population of transit customers; increase transit use and reduce  
24 travel time; reduce air and noise pollution and provide congestion relief; and  
25

1 WHEREAS, California Government Code Sections 25350.5 and 37350.5 authorize the  
2 City's Board of Supervisors to acquire any property necessary to carry out any of the powers  
3 or functions of the City by eminent domain; and

4 WHEREAS, The City requires a subsurface easement in the real property commonly  
5 known as 790 Market Street, San Francisco, California, Assessor's Parcel No. Block 0328 Lot  
6 002 (the "Subject Property"), which easement is more particularly described in Exhibit A (the  
7 "Subsurface Easement") and shown in Exhibit B (the "Project Alignment"), copies of which are  
8 on file with the Clerk of the Board of Supervisors in File No. 100840 and incorporated  
9 herein by this reference, for the construction and improvement of the Project; and

10 WHEREAS, On August 7, 2008, the City's Planning Commission certified that the Final  
11 Supplemental Environmental Impact Report ("Final Supplemental EIR") for the Central  
12 Subway/Third Street Light Rail Phase 2 was in compliance with CEQA and the CEQA  
13 Guidelines in Planning Commission Motion No. 17668. Motion No. 17668 is on file with the  
14 Clerk of the Board of Supervisors in File No. 100840 and is incorporated by reference;  
15 and

16 WHEREAS, On August 19, 2008, the SFMTA's Board of Directors, by Resolution  
17 No. 08-150, approved the Project, adopted CEQA Findings, including a Statement of  
18 Overriding Considerations and a Mitigation Monitoring and Reporting Program (MMRP) as  
19 required by CEQA. Resolution No. 08-150 is on file with the Clerk of the Board of Supervisors  
20 in File No. 100840 and is incorporated by reference; and

21 WHEREAS, On September 16, 2008, the City's Board of Supervisors (this "Board")  
22 adopted Motion No. 08-145, in Board File No. 081138, affirming the City's Planning  
23 Department decision to certify the Final Supplemental EIR. Motion No. 08-145 is on file with  
24 the Clerk of the Board of Supervisors in File No. 100840 and is incorporated by  
25 reference; and

1           WHEREAS, SFMTA staff obtained an appraisal of the Subsurface Easement in  
2 compliance with California Government Code Section 7267 et seq. and all related statutory  
3 procedures for possible acquisition of the Subsurface Easement, submitted an offer to the  
4 Subject Property owner of record to purchase the Subsurface Easement as required by  
5 California Government Code Section 7267.2 on November 20, 2009, and continues to  
6 negotiate the possible acquisition of the Subsurface Easement with the Subject Property  
7 owner of record; and

8           WHEREAS, On April 9, 2010, the City's Planning Department found the acquisition of  
9 the Subsurface Easement for the Project to be consistent with the General Plan and the Eight  
10 Priority Policies of City Planning Code Section 101.1 to the extent applicable; and

11           WHEREAS, On April 15, 2010, the City's Planning Department found that there have  
12 been no substantial changes proposed for the Project that would require major revisions to  
13 the Final Supplemental EIR or that would result in significant environmental impacts that were  
14 not evaluated in the Final Supplemental EIR; and no new information has become available  
15 that was not known and could not have been known at the time the Final Supplemental EIR  
16 was certified as complete and that would result in significant environmental impacts not  
17 evaluated in the Final Supplemental EIR; and

18           WHEREAS, On February 26, 2010, the SFMTA's Board of Directors adopted  
19 Resolution No. 10-025, in which it found that (a) the Project will assist SFMTA in meeting the  
20 objectives of Goal No. 1 of the SFMTA Strategic Plan (to provide safe, accessible, clean,  
21 environmentally sustainable service and encourage the use of auto-alternative modes through  
22 the Transit First policy), of Goal No. 2 (to improve transit reliability), of Goal No. 3 (to improve  
23 economic vitality through improved regional transportation), and of Goal No. 4 (to ensure the  
24 efficient and effective use of resources); (b) the Subsurface Easement is needed to construct  
25 and operate the Project; (c) SFMTA has limited any potential private injury by seeking to

1 acquire only a subsurface easement and leaving the remainder of the Subject Property in  
2 private ownership; and (d) the acquisition and use of the Subsurface Easement for  
3 construction and operation of the Project is compatible with the existing uses of the Subject  
4 Property and the surrounding area; and

5 WHEREAS, On February 26, 2010, the SFMTA Board of Directors, by SFMTA  
6 Resolution No. 10-025, authorized the SFMTA Executive Director/CEO to request that this  
7 Board hold a duly noticed public hearing, as required by State law, to consider the adoption of  
8 a Resolution of Necessity for the acquisition of the Subsurface Easement for its appraised fair  
9 market value and, if this Board adopts such Resolution of Necessity, to take such actions that  
10 are consistent with the City's Charter and all applicable law to proceed to acquire the  
11 Subsurface Easement; and

12 WHEREAS, This Board finds and determines that each person whose name and  
13 address appears on the last equalized County Assessment Roll notice as an owner of the  
14 Subject Property has been given notice and a reasonable opportunity to appear and be heard  
15 on this date on the matter referred to in California Code of Civil Procedure Section 1240.030  
16 in accordance with California Code of Civil Procedure Section 1245.235; now, therefore, be it

17 RESOLVED, That by at least a two-thirds vote of this Board under California Code of  
18 Civil Procedure Sections 1240.030 and 1245.230, this Board finds and determines each of the  
19 following:

- 20 1. The public interest and necessity require the proposed Project;
- 21 2. The proposed Project is planned and located in the manner that will be most  
22 compatible with the greatest public good and the least private injury;
- 23 3. The Subsurface Easement, the portion of the Subject Property sought to be  
24 acquired, is necessary for the Project;

1           4. The offer required by California Government Code Section 7267.2 has been made  
2 to the Subject Property owner of record; and, be it

3           FURTHER RESOLVED, That to the extent that any portion of the Subsurface  
4 Easement sought to be acquired is presently appropriated to a public use, the purpose for  
5 which the acquisition and use of the Subsurface Easement is sought, namely, for construction  
6 and operation of the Project, is a more necessary public use under Section 1240.610 of the  
7 California Code of Civil Procedure; and, be it

8           FURTHER RESOLVED, That to the extent that any portion of the Subject Property is  
9 presently appropriated to a public use, the purpose for which the acquisition and use of the  
10 Subsurface Easement is sought, namely, for construction and operation of the Project, is a  
11 compatible public use under Section 1240.510 of the California Code of Civil Procedure; and,  
12 be it

13           FURTHER RESOLVED, That the City Attorney is hereby authorized and directed to  
14 commence proceedings in eminent domain against the Subject Property owner of record and  
15 any and all interests therein or claims thereto for the condemnation thereof for the public use  
16 of the City; together with the authorization and direction to take any actions or comply with any  
17 legal procedures to obtain an order for immediate possession for all or a portion of the  
18 Subsurface Easement as depicted in Exhibit A and Exhibit B, in conformity with existing or  
19 amended law; and, be it

20           FURTHER RESOLVED, That this Board has reviewed and considered the Final  
21 Supplemental EIR and record as a whole, finds that the action taken herein is within the scope  
22 of the Project and activities evaluated in the Final Supplemental EIR, and that the Final  
23 Supplemental EIR is adequate for its use by the decision-making body for the action taken  
24 herein; and, be it

1 FURTHER RESOLVED, That this Board finds that since the Final Supplemental EIR  
2 was finalized, there have been no substantial Project changes and no substantial changes in  
3 Project circumstances that would require major revisions to the Final Supplemental EIR due to  
4 the involvement of new significant environmental effects or an increase in the severity of  
5 previously identified significant impacts, and there is no new information of substantial  
6 importance that would change the conclusions set forth in the Final Supplemental EIR; and,  
7 be it

8 FURTHER RESOLVED, That this Board hereby adopts as its own and incorporates by  
9 reference herein, as though fully set forth, the findings of the Planning Department that the  
10 acquisition of the Subsurface Easement is consistent with the General Plan and the Eight  
11 Priority Policies of City Planning Code Section 101.1; and, be it

12 FURTHER RESOLVED, That this Board adopts as its own and incorporates by  
13 reference herein, as though fully set forth, each of the findings made by the SFMTA in  
14 adopting Resolution No. 10-025 on February 26, 2010.

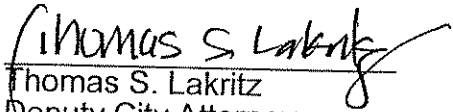
15  
16 **RECOMMENDED:**

17 SAN FRANCISCO MUNICIPAL  
18 TRANSPORTATION AGENCY

19   
20 Nathaniel P. Ford Sr.  
21 Executive Director/CEO

22 Pursuant to SFMTA  
23 Resolution No. 10-025  
24  
25

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

By:   
Thomas S. Lakritz  
Deputy City Attorney

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**EXHIBIT "A"**

**LEGAL DESCRIPTION**

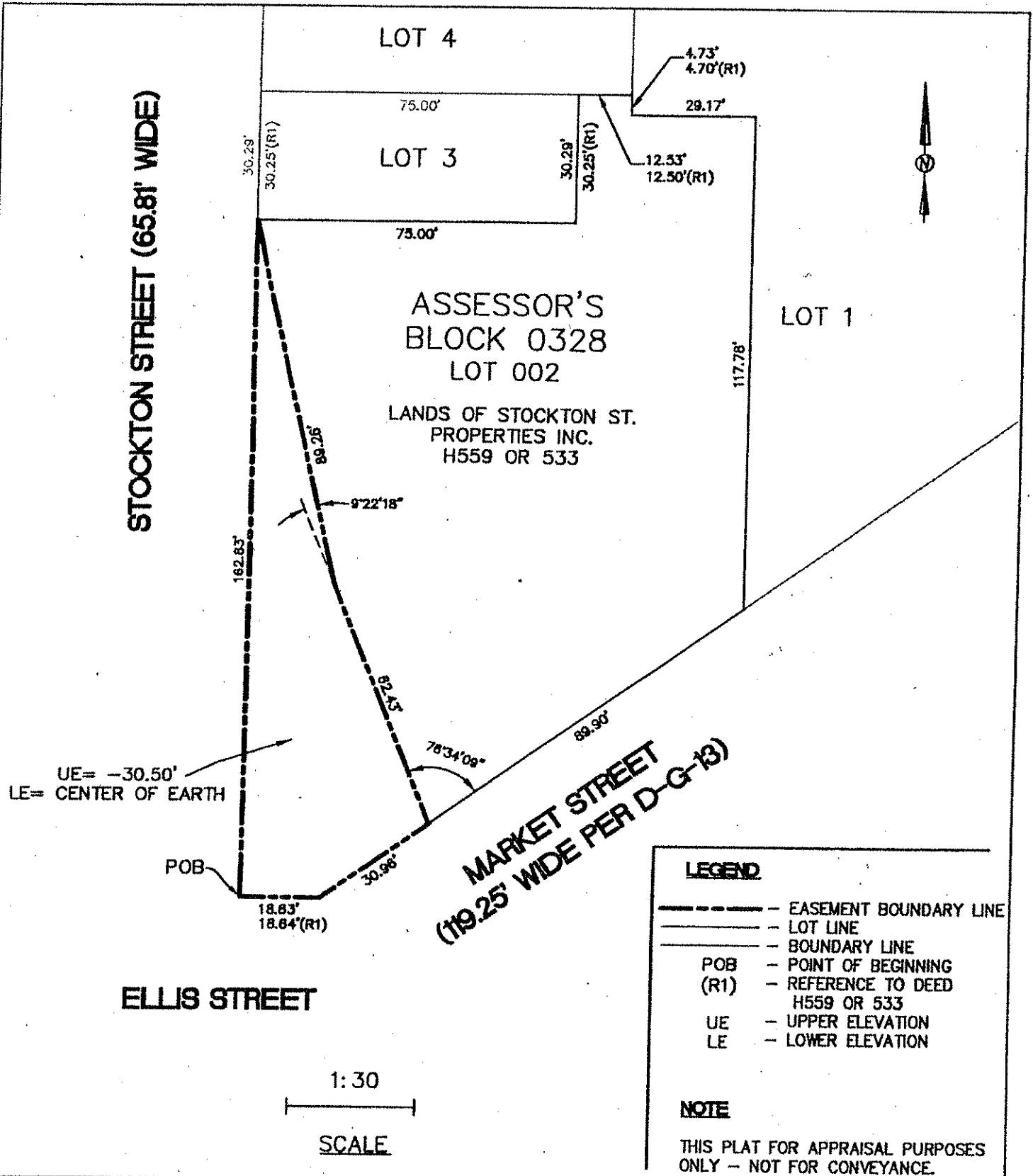
**For a portion of 790 Market Street, Assessor's Block 0328, Lot 002**

All that certain real property situate in the City and County of San Francisco, State of California, being a vertical portion of a parcel of land, said parcel being a portion of that parcel of land described in that deed recorded on January 25, 2000 in Reel H559 at Image 553, Official Records of the Assessor-Recorder of the City and County of San Francisco, the upper elevation being defined by a plane of -30.50 feet, City of San Francisco Datum (intended to be 60.00 feet below existing ground surface) and the lower elevation defined by the center of the earth, said property more particularly described as follows:

Beginning at the intersection of the easterly line of Stockton Street with the northerly line of Ellis Street; thence easterly 18.63 feet along last said northerly line to the northwesterly line of Market Street; thence northeasterly 30.96 feet along last said line; thence northwesterly 62.43 feet along a line having a deflection angle to the left of  $76^{\circ}34'09''$ ; thence northwesterly 89.26 feet along a line having a deflection angle to the right of  $9^{\circ}22'18''$  to the northwesterly corner of said parcel as described in above said deed; thence southerly 162.83 feet along said easterly line of Stockton Street to the point of beginning.

Containing 3,277 square feet, more or less.

Being a portion of 50 Vara Block No. 122  
APN: 0328-002



CITY AND COUNTY OF SAN FRANCISCO,  
STATE OF CALIFORNIA

DEPARTMENT OF PUBLIC WORKS  
BUREAU OF STREET USE AND MAPPING  
DIVISION OF SURVEYS  
PHONE: 415.554.5827  
FAX: 415.554.5324

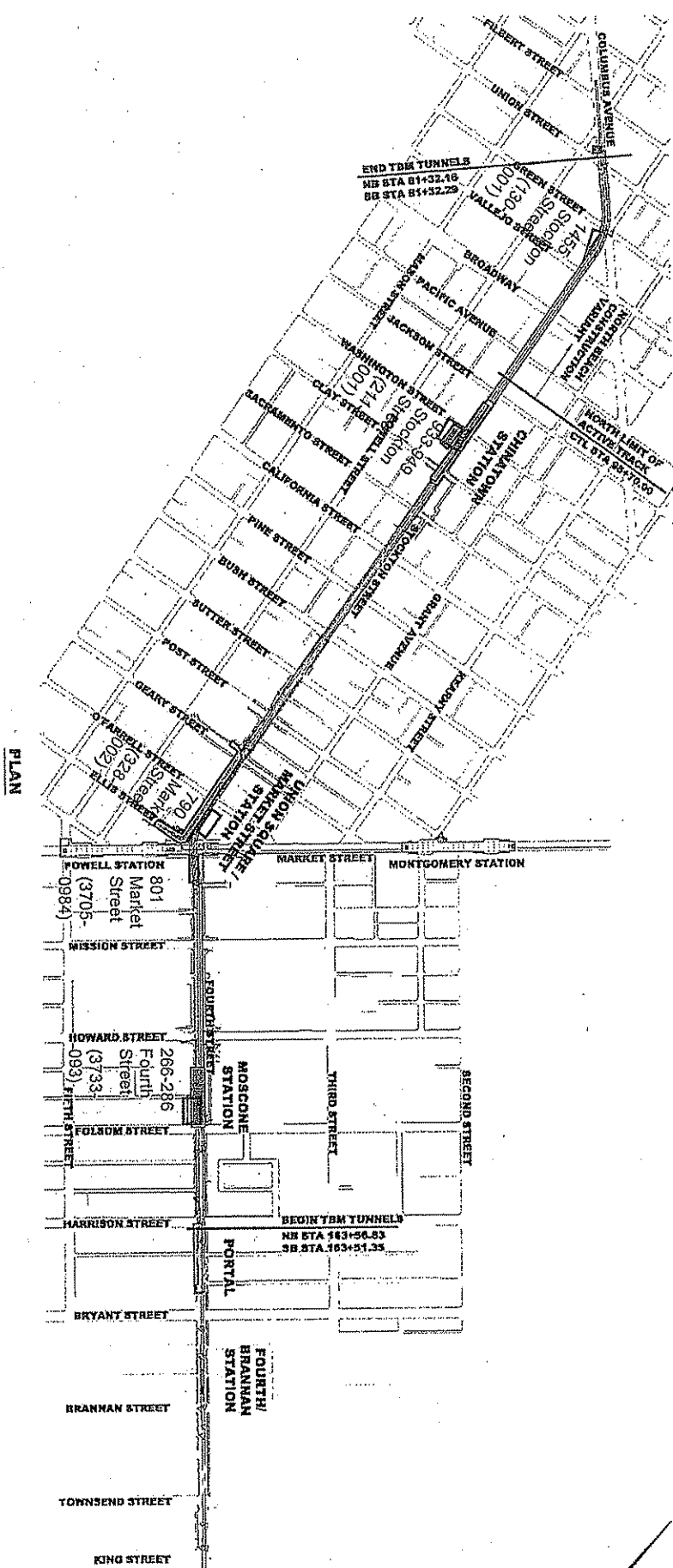


MUNICIPAL TRANSPORTATION AUTHORITY  
CENTRAL SUBWAY EASEMENT PARCEL  
AB 0328 LOT 002

MAY 2009

# Central T subway

Connecting people. Connecting communities.



PLAN

EXHIBIT B

SFMTA | Municipal Transportation Agency



**Document is available  
at the Clerk's Office  
Room 244, City Hall**

Gavin Newsom | Mayor  
Tom Nolan | Chairman  
Jerry Lee | Vice-Chairman  
Cameron Beach | Director  
Malcolm Heinicke | Director  
Bruce Oka | Director  
Nathaniel P. Ford Sr. | Executive Director/CEO

**Index of Documents in Administrative Record for Board File No. 100840**

**790 Market Street, Assessor's Parcel No. Block 0328, Lot 002**

1. July 20, 2010 Memorandum from Nathaniel P. Ford Sr., Executive Director/CEO of the SFMTA to the Honorable Members of the Board of Supervisors
2. Central Subway Project/Real Estate Acquisitions for Right-of-Way and Stations PowerPoint presentation, July 27, 2010
3. Map of Central Subway Project Alignment
4. Legal Description and diagram of Subsurface Easement needed at 790 Market Street (Assessor's Parcel No. Block 0328, Lot 002)
5. Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Final SEIS/SEIR Volume I)  
  
Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Response to Comments Volume II)  
  
Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Response to Comments Volume II/Errata)
6. San Francisco City Planning Commission, Motion No. M-17668
7. San Francisco Municipal Transportation Agency Board of Directors, Resolution No. 08-150
8. San Francisco Board of Supervisors, Motion M08-145
9. Federal Transit Administration, Record of Decision, November 26, 2008
10. April 15, 2010 Determination from the San Francisco Planning Department RE: Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report

11. May 4, 2009 Determination from the San Francisco Planning Department, in Planning Case No. 2008.084R (General Plan Referral), including Application for General Plan Referral
12. April 9, 2010 Determination from the San Francisco Planning Department, in Planning Case No. 2008.084R (General Plan Referral)
13. San Francisco Municipal Transportation Agency Board of Directors, Resolution No. 10-025
14. February 24, 2009 Letter from John Funghi to Stockton Street Properties, with Property Acquisition Information Brochure ("The Use of Eminent Domain By the City and County of San Francisco")
15. November 20, 2009 Letter from Nathaniel P. Ford Sr., Executive Director/CEO of the SFMTA, to Stockton Street Properties, offering to purchase a subsurface easement at 790 Market Street, with Appraisal Summary Statement, Legal Description, and Property Acquisition Information Brochure ("The Use of Eminent Domain By the City and County of San Francisco")
16. January 8, 2010 Letter from John C. Murphy, Luce, Forward, Hamilton & Scripps, LLP, counsel for Stockton Street Properties, to Nathaniel P. Ford Sr.
17. January 12, 2010 Letter from Kerstin Magary to John C. Murphy, Luce, Forward, Hamilton & Scripps, LLP, counsel for Stockton Street Properties
18. April 9, 2010 Letter from Kerstin Magary to John C. Murphy, Luce, Forward, Hamilton & Scripps, LLP, counsel for Stockton Street Properties, including draft Easement Deed, draft Easement Purchase and Sale Agreement, and draft License Agreement
19. Notice of Public Hearing ("Public Hearing to consider Property Acquisition – Eminent Domain"), including Proof of Service