

File No. 101421

Committee Item No. _____

Board Item No. 33

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: _____ Date _____

Board of Supervisors Meeting

Date December 7, 2010

Cmte Board

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" 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"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" 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"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

✓ See *Index of Documents*

(See File 101409 for complete documents)

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Alisa Somera Date December 2, 2010

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 [Authorizing the Acquisition of Real Property by Eminent Domain for Transbay Transit Center
2 Program - 85 Natoma Street No. 5]

3
4 **Resolution authorizing the acquisition of real property commonly known as 85 Natoma**
5 **Street No. 5, San Francisco, California (Assessor's Block No. 3721, Lot No. 113) by**
6 **eminent domain for the public purpose of constructing the Transbay Transit Center**
7 **Program; adopting environmental findings under the California Environmental Quality**
8 **Act (CEQA), CEQA Guidelines, and Administrative Code Chapter 31; and adopting**
9 **findings of consistency with the General Plan and City Planning Code Section 101.1.**

10
11 WHEREAS, The Transbay Transit Center Program (the Project) consists of, among
12 other things, a new Transit Center at the current site of the Transbay Terminal in the City and
13 County of San Francisco (the City); a temporary terminal on the block bounded by Main,
14 Beale, Folsom, and Howard Streets; reconstructed bus ramps from the Transit Center to the
15 San Francisco-Oakland Bay Bridge; an offsite bus storage/layover area under Interstate 80 on
16 the two blocks bounded by Perry, Stillman, 2nd, and 4th Streets; a Caltrain station near 4th
17 and Townsend Street; and the Transbay Redevelopment Plan; and

18 WHEREAS, The Project's primary objectives include connecting multiple modes of
19 transit; extending Caltrain and High Speed Rail into the new downtown Transit Center;
20 increasing transit use and reducing travel time; and creating a new transit-oriented
21 neighborhood around the Transit Center; and

22 WHEREAS, The Project will provide a critical transportation improvement,
23 including a modern regional transit hub connecting eight Bay Area counties and the State of
24 California through eleven transit systems; and

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

4 WHEREAS, The real property commonly known as 85 Natoma Street No. 5, San
5 Francisco, California (Assessor's Block 3721, Lot 113) (the Subject Property), which is more
6 particularly described in Exhibit A and shown in Exhibit B, is required for the construction of
7 the Project; and

8 WHEREAS, On April 22, 2004, the City's Planning Commission (the Commission)
9 certified in Motion No. 16773 that the Final Environmental Impact Statement/Environmental
10 Impact Report and Section 4(f) Evaluation (Final EIS/EIR) for the Project was in compliance
11 with CEQA, the CEQA Guidelines, and Chapter 31 of the City Administrative Code. The Final
12 EIS/EIR and Motion No. 16773 are on file with the Clerk of the Board of Supervisors in File
13 No. 040616 and are incorporated by reference; and

14 WHEREAS, On April 22, 2004, in Resolution No. 2004-11, the Peninsula Corridor Joint
15 Powers Board also certified the Final EIS/EIR and made findings similar to those of the
16 Commission with regard to CEQA and the CEQA guidelines. Resolution No. 2004-11 is on
17 file with the Clerk of the Board of Supervisors in File No. 040616 and is incorporated by
18 reference; and

19 WHEREAS, On April 20, 2004, in Resolution No. 45-2004, the San Francisco
20 Redevelopment Agency also certified the Final EIS/EIR and made findings similar to those of
21 the Commission with regard to CEQA and the CEQA guidelines. Resolution No. 45-2004 is
22 on file with the Clerk of the Board of Supervisors in File No. 040616 and is incorporated by
23 reference; and
24
25

1 WHEREAS, On April 22, 2004, the Board of Directors of the Transbay Joint Powers
2 Authority (TJPA), by Resolution No. 04-004, approved the components of the Project within its
3 jurisdiction and adopted CEQA Findings, including a Statement of Overriding Considerations
4 and a Mitigation Monitoring and Reporting Program. Resolution No. 04-004 is on file with the
5 Clerk of the Board of Supervisors in File No. 041079 and is incorporated by reference; and

6 WHEREAS, On June 15, 2004, this Board adopted Motion No. 04-67, in Board File No.
7 040629, affirming the Commission's decision to certify the Final EIS/EIR. Motion No. 04-67 is
8 on file with the Clerk of the Board of Supervisors in File No. 040629 and is incorporated by
9 reference; and

10 WHEREAS, The Board of Supervisors in Resolution No. 612-04, adopted
11 environmental findings in relation to the Transbay Terminal, Caltrain Downtown Extension,
12 and Transbay Redevelopment Plan. Copies of said Resolution and supporting materials are in
13 Clerk of the Board of Supervisors File No. 41079. The Board of Supervisors, in Ordinance
14 No. 124-05 as part of its adoption of the Transbay Redevelopment Plan, adopted additional
15 environmental findings. Copies of said Ordinance and supporting materials are in Clerk of the
16 Board of Supervisors File No. 50184. Said Resolution and Ordinance and supporting
17 materials are incorporated by reference herein for the purposes of this Resolution; and

18 WHEREAS, The Board of Supervisors in Resolution No. 612-04, adopted
19 environmental findings in relation to the Transbay Terminal, Caltrain Downtown Extension,
20 and Transbay Redevelopment Plan. Copies of said Resolution and supporting materials are in
21 Clerk of the Board of Supervisors File No. 41079. The Board of Supervisors, in Ordinance
22 No. 124-05 as part of its adoption of the Transbay Redevelopment Plan, adopted additional
23 environmental findings. Copies of said Ordinance and supporting materials are in Clerk of the
24 Board of Supervisors File No. 50184. Said Resolution and Ordinance and supporting
25 materials are incorporated by reference herein for the purposes of this Resolution; and

1 WHEREAS, The Board of Directors of the TJPA have approved addenda to the Final
2 EIS/EIR as follows: Addendum No. 1 (Resolution No. 06-011) (June 2, 2006); Addendum No.
3 2 (Resolution No. 07-013) (April 19, 2007); Addendum No. 3 (Resolution No. 08-003)
4 (January 17, 2008); Addendum No. 4 (Resolution No. 08-039) (October 17, 2008); and
5 Addendum No. 5 (Resolution No. 09-019) (April 9, 2009) (collectively, Addenda). The
6 Addenda and adopting resolutions are on file with the Clerk of the Board of Supervisors in File
7 No. 101409 and are incorporated by reference; and

8 WHEREAS, The Final EIS/EIR files and other Project-related Planning Department
9 files are available for review by this Board and the public. The Planning Department files are
10 available at 1660 Mission Street. Those files are part of the record before this Board and are
11 incorporated by reference; and

12 WHEREAS, The City's Planning Department has found that the acquisition of the
13 Subject Property for the Project is consistent with the General Plan and the Eight Priority
14 Policies of the City Planning Code Section 101.1 to the extent applicable; and

15 WHEREAS, The City and TJPA staff obtained appraisals of the Subject Property in
16 compliance with California Government Code Section 7267 et seq. and all related statutory
17 procedures for possible acquisition of the Subject Property, and submitted a joint offer to the
18 Subject Property owner of record to purchase the Subject Property as required by California
19 Government Code Section 7267.2; and

20 WHEREAS, On October 14, 2010, the TJPA's Board of Directors adopted Resolution
21 No. 10-045, in which it found that (a) the public interest and necessity require the Project; (b)
22 the Project is planned to maximize the public good and minimize private injury; (c) the Subject
23 Property is necessary for the Project; (d) the City and the TJPA have made a sufficient offer of
24 purchase and complied with all procedural prerequisites to the exercise of eminent domain;
25 and (e) acquisition of the Subject Property for the Project will fulfill the mandates of various

1 State and City laws, including San Francisco Proposition H-Downtown Caltrain Station
2 (November 1999), San Francisco Proposition K-San Francisco Transportation Sales Tax
3 (November 2003), California Public Resources Code Section 5027.1(a), and California Streets
4 and Highways Code Sections 2704.04(b) and 30914(c), all of which concern reconstruction of
5 the new Transit Center on the site of the existing Transbay Terminal and the new Transit
6 Center's accommodation of a Caltrain extension and high speed passenger rail line; and

7 WHEREAS, In adopting Resolution No. 10-045, the TJPA Board of Directors
8 recommended that this Board adopt a Resolution of Necessity to condemn the Subject
9 Property and initiate eminent domain proceedings to acquire the Subject Property for the
10 Project; and

11 WHEREAS, In adopting Resolution No. 10-045, the TJPA Board of Directors also
12 found that in the event that the City elects to adopt a Resolution of Necessity and initiate
13 eminent domain proceedings to acquire the Subject Property, the TJPA will bear the costs of
14 litigating any eminent domain action, and will provide all compensation ordered by the court
15 for the condemned Subject Property; and

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

21 RESOLVED, That this Board, having reviewed and considered the Final EIS/EIR and
22 Addenda, and the record as a whole, finds that the action taken herein is within the scope of
23 the Project and activities evaluated in the Final EIS/EIR and Addenda, that the Final EIS/EIR
24 and Addenda are adequate for use by this Board for the action taken herein, and adopt the
25 Addenda for purposes of the action taken herein; and, be it

1 FURTHER RESOLVED, That this Board finds that since the Final EIS/EIR and
2 Addenda were finalized, there have been no substantial Project changes and no substantial
3 changes in Project circumstances that would require major revisions to the Final EIS/EIR and
4 Addenda due to 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 EIS/EIR and Addenda;
7 and, 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 Subject Property is consistent with the General Plan and the Eight Priority
11 Policies of City Planning Code Section 101.1; and, be it

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


- 15 1. The public interest and necessity require the Project;
- 16 2. The Project is planned and located in the manner that will be most compatible with
17 the greatest public good and the least private injury;
- 18 3. The Subject Property is necessary for the Project;
- 19 4. The offer required by California Government Code Section 7267.2 has been made
20 to the owner of record of the Subject Property; and, be it

21 FURTHER RESOLVED, That the City Attorney is hereby authorized and directed to
22 take all steps necessary to commence and prosecute proceedings in eminent domain against
23 the owner of record of the Subject Property and the owner or owners of any and all interests
24 therein or claims thereto for the condemnation thereof for the Project, to the extent such
25 proceedings are necessary, and is authorized and directed to take any and all actions or

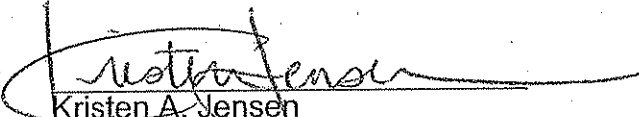
1 comply with any and all legal procedures to obtain an order for immediate or permanent
2 possession of the Subject Property, as described in Exhibit A and shown in Exhibit B, in
3 conformity with existing or amended law; and, be it

4 FURTHER RESOLVED, That this Board adopts as its own and incorporates by
5 reference herein, as though fully set forth, each of the findings made by the TJPA in adopting
6 Resolution No. 10-045 on October 14, 2010.

7
8
9
10
11
12 RECOMMENDED:
13 REAL ESTATE DIVISION, GENERAL SERVICES AGENCY

14 By: 
15 Amy Brown
16 Director of Real Estate

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: 
21 Kristen A. Jensen
22 Deputy City Attorney

**EXHIBIT A
LEGAL DESCRIPTION**

CITY SAN FRANCISCO

PARCEL I:

CONDOMINIUM UNIT NO. 5, LOT NO. 113, AS SHOWN UPON THE CONDOMINIUM MAP AND DIAGRAMMATIC FLOOR PLAN ENTITLED, "MAP OF 85 NATOMA STREET, A LIVE/WORK CONDOMINIUM PROJECT, BEING A SUBDIVISION OF LOT 90 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED JUNE 24, 1998 IN BOOK 43 OF PARCEL MAPS AT PAGE 181, BEING A PORTION OF ASSESSOR'S BLOCK 3721, SAN FRANCISCO, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, ON DECEMBER 18TH, 2000, IN BOOK 66 OF CONDOMINIUM MAPS, AT PAGES 18 TO 22, INCLUSIVE, (REFERRED TO HEREIN AS "THE MAP") AND AS FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED ON APRIL 9TH, 2001, IN BOOK H862, PAGE 70 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA (REFERRED TO HEREIN AS "THE DECLARATION".)

EXCEPTING THEREFROM ANY PORTION OF THE COMMON AREA LYING WITHIN SAID UNIT.

EXCEPTING THEREFROM:

(A) EASEMENTS THROUGH SAID UNIT, APPURTENANT TO THE COMMON AREA AND ALL OTHER UNITS, FOR SUPPORT AND REPAIR OF THE COMMON AREA AND ALL OTHER UNITS.

(B) EASEMENTS, APPURTENANT TO THE COMMON AREA, FOR ENCROACHMENT UPON THE AIR SPACE OF THE UNIT BY THOSE PORTIONS OF THE COMMON AREA LOCATED WITHIN THE UNIT.

PARCEL II:

AN UNDIVIDED 12.62% INTEREST IN AND TO THE COMMON AREA AS SHOWN AND DEFINED ON THE MAP, EXCEPTING THEREFROM THE FOLLOWING:

(A) EXCLUSIVE EASEMENTS, OTHER THAN PARCEL III, AS DESIGNATED ON THE MAP AND RESERVED TO UNITS FOR USE AS DESIGNATED IN THE DECLARATION; AND

(B) NON-EXCLUSIVE EASEMENTS, APPURTENANT TO ALL UNITS, FOR INGRESS AND EGRESS, SUPPORT, REPAIR AND MAINTENANCE.

PARCEL III:

(A) THE EXCLUSIVE EASEMENT TO USE DECK AREA DESIGNATED D-5 ON THE MAP;

(B) THE EXCLUSIVE EASEMENT TO USE PARKING AREA DESIGNATED P-6 ON THE MAP.

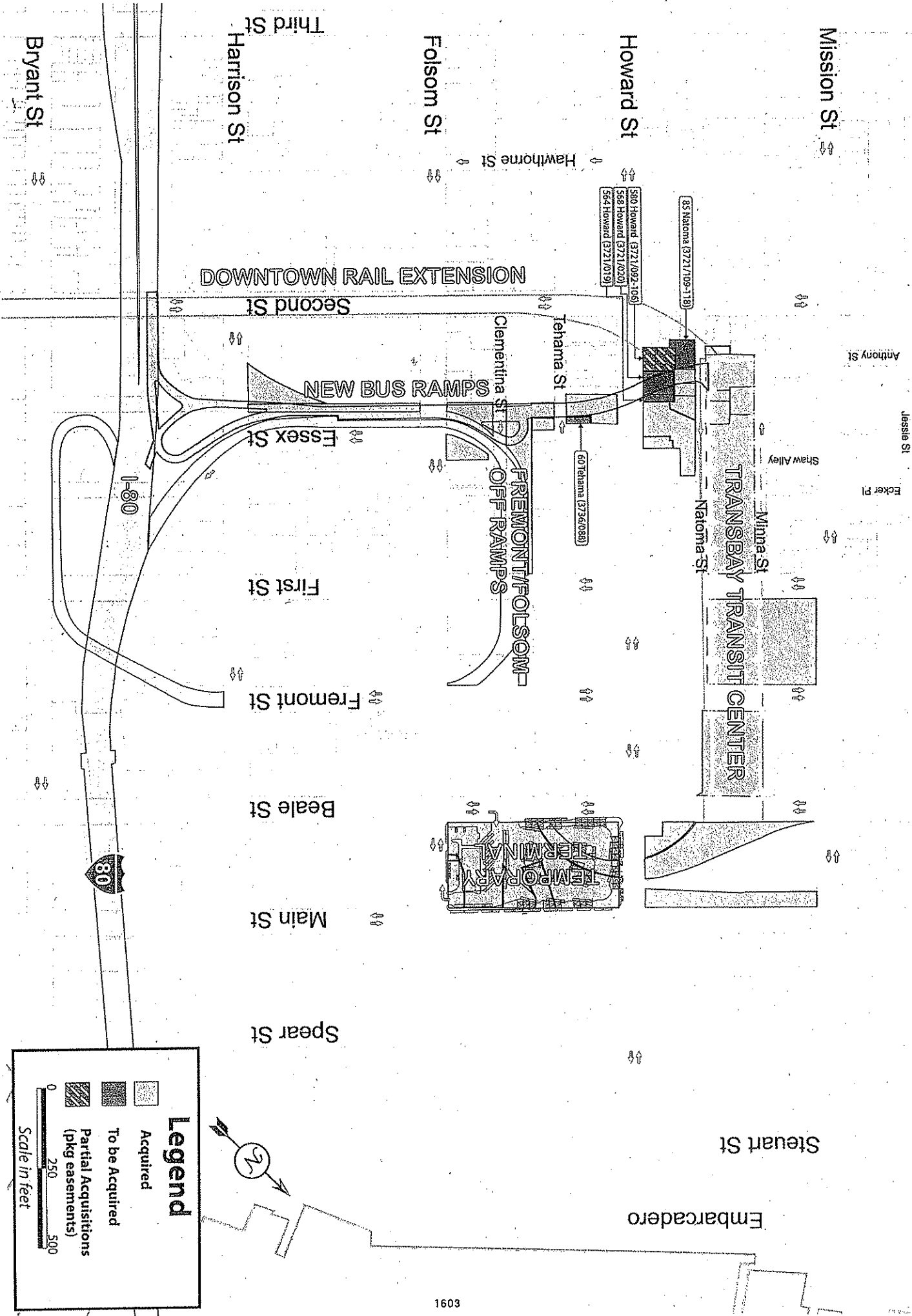
PARCEL IV:

A NON-EXCLUSIVE EASEMENT APPURTENANT TO PARCEL I, ABOVE, FOR SUPPORT, REPAIR AND MAINTENANCE, AND FOR INGRESS AND EGRESS THROUGH THE COMMON AREA.

PARCEL V:
ENCROACHMENT EASEMENTS, APPURTENANT TO THE UNIT, IN ACCORDANCE
WITH THE PROVISIONS OF THE DECLARATION.

LÔT 113, BLOCK 3721 (85 Natoma #5)

EXHIBIT B
MAP



Legend

- Acquired
- To be Acquired
- Partial Acquisitions (pkg easements)

Scale in feet

0 250 500

Index of Documents in Administrative Record for Board File Nos. 101420 and 101421

85 Natoma Street #5, San Francisco (Block 3721, Lot 113)

Date	Document
Procedural	
10/14/10	TJPA Board of Directors Resolution No. 10-045
11/23/10	Letter from TJPA to San Francisco Board of Supervisors re: 85 Natoma #5
	Assessor's Master Sheet – 85 Natoma #5 (FY 2009-2010)
	TJPA Notices of Public Hearing to Acquire Various Real Properties by Eminent Domain for Transbay Transit Center Program – 85 Natoma #5
11/20/10	San Francisco Planning Department General Plan Consistency Determination – 85 Natoma #5
Offer Letter	
9/15/09	Offer to purchase 85 Natoma #5—City and TJPA to Terri L. Brown <u>Enclosure 1</u> : Appraisal <u>Enclosure 2</u> : Relocation Assistance Brochure <u>Enclosure 3</u> : Eminent Domain Brochure <u>Enclosure 4</u> : Agreement for Purchase and Sale of Real Estate
Property Description	
4/16/07	Preliminary Title Report
	Legal Description and Map
	Map of 85 Natoma in relationship to Transbay Project
	Map of 85 Natoma in relationship to Transbay Project – aerial photo of train box
	Map of 85 Natoma in relationship to Transbay Project – overhead drawing of west end of train box
Correspondence	
09/19/06	Letter from William Turner to Shute, Mihaly & Weinberger LLP (SMW)
11/14/06	Letter from SMW to William Turner
dated 01/12/07; sent 01/14/07	Letter from Terri Brown to SMW
02/08/07	Letter from SMW to Terri Brown
04/10/07	Letter from SMW to Terri Brown
04/24/07	Letter from SMW to Terri Brown
05/14/07	Letter from SMW to Terri Brown
05/24/07	Facsimile from SMW to Terri Brown
08/08/07	Letter from SMW to Terri Brown
02/27/08	Letter from SMW to Terri Brown

Index of Documents in Administrative Record for Board File Nos. 101420 and 101421

85 Natoma Street #5, San Francisco (Block 3721, Lot 113)

Date	Document
02/09/09	Letter from SMW to Terri Brown
02/19/09	Letter from SMW to Terri Brown
02/23/09	Letter from SMW to Terri Brown
03/04/09	Letter from SMW to Terri Brown
03/13/09	Letter from SMW to Terri Brown
03/13/09	Letter from SMW to Terri Brown
03/27/09	Letter from SMW to Terri Brown
04/09/09	Letter from SMW to Terri Brown
04/17/09	Letter from SMW to Terri Brown
06/09/09	Letter from SMW to Terri Brown
07/17/09	Letter from SMW to Terri Brown
08/24/09	Letter from TJPA to Terri Brown (enclosures omitted)
10/23/09	Letter from SMW to Terri Brown
11/24/09	Letter from SMW to Terri Brown
11/30/09	Letter from SMW to Terri Brown
12/10/09	Letter from SMW to Terri Brown
01/14/10	Letter from SMW to Terri Brown
04/22/10	Letter from SMW to Terri Brown
Studies and Reports	
	Caltrans Highway Design Manual (excerpts)
	Cambridge Systematics – Caltrain Downtown Extension and Transbay Ridership Analysis
09/2007	TJPA Final Relocation Impact Study I
01/2010	TJPA Final Relocation Impact Study II
	TJPA Relocation Assistance Brochure - Business
	TJPA Relocation Assistance Brochure - Residential
NEPA/CEQA	
04/2004	Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project: Final Environmental Impact Statement/Environmental Impact Report and Section 4(f) Evaluation (Final EIS/EIR) Volume I: Chapters 1-8; Appendices A-G Volume II: Responses to Public Comments on the Draft EIS/EIR Volume III: Written Public Comments and Public Hearing Transcripts on the Draft EIS/EIR
04/22/04	TJPA Resolution No. 04-004

Index of Documents in Administrative Record for Board File Nos. 101420 and 101421

85 Natoma Street #5, San Francisco (Block 3721, Lot 113)

Date	Document
02/08/05	Federal Transit Administration: Record of Decision <u>Appendix A</u> : Mitigation Monitoring and Reporting Program <u>Appendix B</u> : Memorandum of Agreement between the FTA and the California State Historic Preservation Officer
05/25/06	Final EIS/EIR - First Addendum
04/19/07	Final EIS/EIR - Second Addendum
1/17/08	Final EIS/EIR - Third Addendum
10/03/05	Final EIS/EIR - Fourth Addendum
04/09/09	Final EIS/EIR - Fifth Addendum
05/2010	Federal Railroad Administration: Reevaluation Updating the Transbay Program 2004 Final EIS (exhibits omitted except where noted) <u>Exhibit 6(a)</u> : Federal Transit Authority internal memo re: Environmental Clearance for advance construction on "train box" portion of Transbay Transit Center <u>Exhibit 6(b)</u> : Federal Railroad Administration letter to TJPA re: California allocation of High Speed Rail grants <u>Exhibit 9(a)</u> : California High-Speed Rail Authority: Report to the Legislature <u>Exhibit 9(b)</u> : California High-Speed Rail Authority Briefing April 2010 Meeting Agenda Item #7 re: Transbay Transit Center Design/Trainbox
08/04/10	Federal Railroad Administration: Record of Decision <u>Appendix A</u> : Mitigation Monitoring and Reporting Program <u>Appendix B</u> : Memorandum of Agreement Between the FTA and the California State Historic Preservation Officer
Transbay Legislation	
	Cal. Public Resources Code Section 5027.1
	Cal. Streets & Highway Code Section 2704.04
	Cal. Streets & Highway Code Section 30914
04/04/01	TJPA Joint Powers Agreement
11/02/99	San Francisco Proposition H
11/02/03	San Francisco Proposition K
03/02/04	San Francisco Regional Measure 2
11/04/08	California Proposition A
09/19/02	Senate Bill 1856 (Costa)
07/22/03	Assembly Bill 812 (Yee)
10/08/03	Senate Bill 916 (Perata)
12/19/01	Metropolitan Transportation Commission Resolution No. 3434
01/02/01	San Francisco Board of Supervisor Resolution No. 13-01

Index of Documents in Administrative Record for Board File Nos. 101420 and 101421

85 Natoma Street #5, San Francisco (Block 3721, Lot 113)

Date	Document
02/12/01	San Francisco Board of Supervisor Resolution No. 104-01
06/04/01	San Francisco Board of Supervisor Resolution No. 455-01
10/15/01	San Francisco Board of Supervisor Resolution No. 804-01
07/08/03	San Francisco Board of Supervisor Resolution No. 441-03
06/15/04	San Francisco Board of Supervisor Resolution No. 04-067
09/28/04	San Francisco Board of Supervisor Resolution No. 612-04
06/21/05	San Francisco Board of Supervisor Resolution No. 124-05
06/21/05	San Francisco Board of Supervisor Resolution No. 125-05
02/07/06	San Francisco Board of Supervisor Resolution No. 78-06
05/09/06	San Francisco Board of Supervisor Resolution No. 94-06
05/09/06	San Francisco Board of Supervisor Resolution No. 95-06
05/09/06	San Francisco Board of Supervisor Resolution No. 99-06
Litigation	
Brown v. Transbay Joint Powers Authority, et al. (San Francisco Superior Ct. No. CGC-89-490878)	
07/28/09	Brown - Complaint for inverse condemnation
09/11/09	TJPA - Demurrer
09/28/09	Brown - Opposition to demurrer
10/05/09	TJPA - Reply to opposition to demurrer
10/19/09	Brown - Dismissal

PROCEDURAL

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. **10-045**

WHEREAS, The TJPA has determined that 60 Tehama Street, 564 Howard Street, 568 Howard Street, 8 condominium units in 85 Natoma Street, and easement interests held by the owner of 580 Howard in certain parking spaces and access in and through 85 Natoma in San Francisco (the "Properties") are required for the Transbay Transit Center Program; and

WHEREAS, The TJPA and the City and County of San Francisco ("City") made joint offers to the owners of the Properties to purchase each Property for its fair market value, in compliance with federal and state law, including California Government Code section 7267.2, as follows:

Property	Owner	Date of Offer	Amount of Offer
60 Tehama	Peter F. Byrne Revocable Trust	September 15, 2009	\$1,000,000
564 Howard	564 Howard Street, LLC	September 15, 2009	\$1,450,000
568 Howard	InvesMaster	September 15, 2009	\$6,200,000
85 Natoma #1	Patrick McNerney	August 2, 2010	\$1,230,000
85 Natoma #2	Steel Arc Properties, LLC	August 2, 2010	\$1,100,000
85 Natoma #3	Abbas A. Razaghi and the 2005 Heydayian/Nouri Family Trust	August 2, 2010	\$740,000
85 Natoma #4	Alyce Stanwood	August 2, 2010	\$780,000
85 Natoma #5	Terri Brown	September 15, 2009	\$1,250,000
85 Natoma #7	Abbas A. Razaghi and the 2005 Heydayian/Nouri Family Trust	August 2, 2010	\$765,000
85 Natoma #9	Wendy Roess-DeCenzo and Christopher John DeCenzo	August 2, 2010	\$2,850,000
85 Natoma #C1	Martin Properties, LLC	August 2, 2010	\$150,000
580 Howard -- easement interest in parking in and across 85 Natoma	580 Howard Historic Properties, LLC	August 2, 2010	9 indoor spaces at \$75,000 each 4 outdoor spaces at \$65,000 each

WHEREAS, The TJPA determined the fair market value for the Properties based on two independent appraisals of each Property and a review by a third-party appraiser; the TJPA obtained the Federal Transit Administration's (FTA) concurrence with the fair market value conclusion for each Property; and

WHEREAS, The Property owners have not accepted the TJPA's offers to purchase their respective Properties and the TJPA does not expect to reach a negotiated agreement for the purchase of these Properties; and

WHEREAS, The TJPA needs possession of the Properties in early 2011 to proceed with construction of the Transbay Program in a timely manner; and

WHEREAS, Acquisition of the Properties by eminent domain is authorized by law and falls within the scope of the City's authority to exercise eminent domain on the TJPA's behalf. The public interest and necessity require the Transbay Program, the project for which the Properties are to be taken. The Transbay Program is planned to maximize the public good and minimize private injury. The Properties are necessary for the Transbay Program. The City and the TJPA have made sufficient offers of purchase, and complied with all procedural prerequisites to the exercise of eminent domain; and

WHEREAS, The Final Environmental Impact Statement/Environmental Impact Report for the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project (SCH. No. 95063004) (the "Final EIS/EIR"), certified in accordance with the provisions of the California Environmental Quality Act (Cal. Public Resources Code sections 21000 et seq.) and the State CEQA Guidelines (Cal. Code of Regulations Title 14, sections 15000 et seq.) and as subsequently amended, identifies the Properties as required for the Transbay Transit Center Program; and

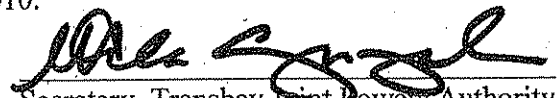
WHEREAS, The acquisition of the Properties for the Transbay Program will fulfill the mandates of various State and City laws, including San Francisco Proposition H-Downtown Caltrain Station (November 1999), San Francisco Proposition K-San Francisco Transportation Sales Tax (November 2002), California Public Resources Code Section 5027.1 (a), and California Streets and Highways Code Sections 2704.04 (b) and 30914 (c), all of which concern reconstruction of the new Transit Center on the site of the existing Transbay Terminal and the new Transit Center's accommodation of a Caltrain extension and high speed passenger rail line; now, therefore, be it

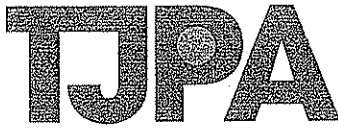
RESOLVED, That the TJPA recommends that the City Board of Supervisors adopt Resolutions of Necessity for the City to condemn on behalf of the TJPA the following properties, and initiate eminent domain proceedings to acquire the following properties for the Transbay Transit Center Program:

- 60 Tehama Street (Block 3736, Lot 88)
- 564 Howard Street (Block 3721, Lot 19)
- 568 Howard Street (Block 3721, Lot 20)
- 85 Natoma Street #1 (Block 3721, Lot 109)
- 85 Natoma Street #2 (Block 3721, Lot 110)
- 85 Natoma Street #3 (Block 3721, Lot 111)
- 85 Natoma Street #4 (Block 3721, Lot 112)
- 85 Natoma Street #5 (Block 3721, Lot 113)
- 85 Natoma Street #7 (Block 3721, Lot 115)
- 85 Natoma Street #9 (Block 3721, Lot 117)
- 85 Natoma Street #C1 (Block 3721, Lot 118)
- 9 easement interests in indoor parking spaces in and across the 85 Natoma garage
- 4 easement interests in outdoor parking spaces accessed across the 85 Natoma garage; and be it

FURTHER RESOLVED, In the event that the City elects to adopt the Resolutions of Necessity and initiate eminent domain proceedings to acquire the properties, the TJPA will bear the cost of litigating any eminent domain action, including compensation ordered by the court for the condemned property.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of October 14, 2010.


Secretary, Transbay Joint Powers Authority



TRANSBAY JOINT POWERS AUTHORITY

Maria Ayerdi-Kaplan • Executive Director

November 23, 2010

Board of Supervisors
City and County of San Francisco
Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Board File Nos. 101420 and 101421

Re: Urging the Board of Supervisors to Pass a Resolution of Necessity Authorizing the Acquisition of 85 Natoma Street #5, Assessor's Block 3721, Lot 113, by Eminent Domain for the Transbay Transit Center Program

Dear President Chiu and Honorable Members of the Board of Supervisors:

As you are aware, the Transbay Transit Center Program (Project) is a national model for transit-oriented development. The Project will combine transportation, housing, and other urban amenities to create a livable, revitalized neighborhood in downtown San Francisco. It will connect eleven transit systems under one roof, including future high-speed rail from Southern California; reduce traffic congestion; and lower carbon emissions. The Project also is a catalyst for economic expansion; it will create more than 125,000 direct, indirect, and induced jobs over the life of the Project, and the Transit Center will serve more than 100,000 transit riders each week day.

The City and County of San Francisco (City), Alameda-Contra Costa Transit Authority (AC Transit), the Peninsula Corridor Joint Powers Board (Caltrain), and the State of California Department of Transportation (Caltrans) (*ex-officio*) are the members of the Transbay Joint Powers Authority (TJPA). The TJPA is charged with the finance, design, development, construction, and operation of the Project, which has enjoyed the strong and continued support of the City and your Board. The TJPA recently received \$400 million in high-speed rail funds from the American Recovery and Reinvestment Act of 2009. This Project is one of the first high-speed rail projects to break ground in the nation.

The Project has three basic parts: a new multi-modal Transbay Transit Center on the site of the existing Transbay Terminal at First and Mission Streets, a tunnel extending Caltrain and California High-Speed Rail from the current railway terminus at Fourth and King Streets to the new Transit Center (DTX), and a Redevelopment Plan that will result in transit oriented development of the area around the Transit Center, including 2,600 new homes, 35 percent of which will be affordable.

With the City's cooperation, the TJPA has successfully acquired thirteen properties for the Project through voluntary purchase-sale agreements with private property owners over the past five years. The TJPA also acquired one property, 80 Natoma, through a negotiated agreement following the filing of an eminent domain action by the City.

As described in the March 2004 Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) and subsequent addenda, the TJPA needs to acquire the property located at 85 Natoma Street #5, Assessor's Block 3721, Lot 113 (the Property) for the Project. A copy of the Final EIS/EIR and addenda are on file with the Clerk of the Board of Supervisors in File Nos. 101420 and 101421, as are maps showing the relationship of the Property to the Project.

The TJPA has adopted a Relocation Assistance Program and has explained to owners and occupants of the Property that this program will assist them with relocation to replacement locations. Copies of information regarding the Relocation Assistance Program are on file with the Clerk of the Board of Supervisors in File Nos. 101420 and 101421.

As described in detail below, the City and the TJPA have made a joint offer to purchase the Property for its fair market value. The TJPA has made extensive efforts to reach a negotiated resolution with the property owner. The owner has not accepted the TJPA's offer and the TJPA does not expect to reach a negotiated agreement for the purchase of this Property at this time. Copies of the offers to purchase are on file with the Clerk of the Board of Supervisors in File Nos. 101420 and 101421.

The TJPA needs possession of the Property in early 2011 to proceed with scheduled construction of the Project. Acquisition of the Property by eminent domain is authorized by law and falls within the scope of the City's authority to exercise eminent domain on the TJPA's behalf. The City and the TJPA have complied with all procedural prerequisites to the exercise of eminent domain. Accordingly, on October 14, 2010, the TJPA Board of Directors adopted Resolution No. 10-045, urging the San Francisco Board of Supervisors to pass a Resolution of Necessity and to authorize the use of eminent domain to acquire the Property for the Project. A copy of the TJPA resolution is on file with the Clerk of the Board of Supervisors in File Nos. 101420 and 101421.

As described in the TJPA's Resolution, in the event that the City elects to adopt a Resolution of Necessity and initiate eminent domain proceedings to acquire the Property, the TJPA will bear all legal fees and costs of litigating any eminent domain action, and will be responsible for all compensation ordered by the court for the condemned Property.

Use of Eminent Domain

The California Constitution requires a public agency taking private property for public use to pay just compensation to the property owner. Prior to exercising eminent domain, however, federal and state law require that the agency make reasonable efforts to negotiate a voluntary acquisition of the property. The agency must offer to purchase the property for its fair market value, as determined by an independent appraisal.

If the property owner declines the agency's offer to purchase, then the agency may initiate eminent domain proceedings by adopting a Resolution of Necessity for the property that includes:

- a statement of the public use for which the property is to be taken;
- a reference to the statute that authorizes it to acquire the property by eminent domain;
- a description of the property; and
- findings that:
 - the public interest and necessity require the project for which the property is to be taken,
 - the project is planned to maximize public good and minimize private injury,
 - the property is necessary for the project, and
 - the public entity has made an offer to purchase the property for its fair market value as determined by an appraisal.

After adopting the Resolution of Necessity, the agency may file a complaint in eminent domain in the superior court of the county where the property is located. If the agency deposits with the court the probable amount of compensation for the property, which is its fair market value, then the court may award the agency possession of the property within 120 days to allow the agency to start construction of the project on the property. A judge resolves any legal challenges to the agency's right to use eminent domain, and either a judge or a jury decides the question of "just compensation" based on evidence presented by both sides. The agency pays the just compensation amount, and the court awards the agency title to the property.

The Resolution of Necessity

As described above, the City must make certain findings regarding the Project and the necessity of the Property for the Project. The Property is critical to the development of the Project and its acquisition falls within the scope of the City's authority to exercise eminent domain. The City and the TJPA have complied with all procedural prerequisites to the exercise of eminent domain. Thus, the City can make the requisite findings as follows.

Finding #1: The public interest and necessity require the project for which the property is to be taken.

The Project will be a national model for transit-oriented development, combining public transit, housing, and other urban amenities to create a livable, revitalized neighborhood in downtown San Francisco. In particular, the Transit Center will connect eleven transit systems under one roof, including future high-speed rail from Southern California, thereby reducing traffic

congestion and lowering emissions of carbon dioxide and other pollutants. The Project also will serve as a catalyst for economic expansion as it will create more than 125,000 direct, indirect, and induced jobs over the life of the Project; build 2,600 new homes; and serve more than 100,000 transit riders each week day.

The new Transit Center will be built on the current site of the Transbay Terminal in downtown San Francisco. The current Transbay Terminal was constructed in 1939 to facilitate rail travel across the San Francisco-Oakland Bay Bridge. Following World War II, the lower deck of the Bay Bridge was converted to automobile traffic and the Transbay Terminal became a bus only facility. As part of the Program, and because it was not seismically sound and could not meet current or future transportation needs of the region or the State, the bus terminal is currently under demolition. The new Transit Center will be a one million square foot regional transportation hub. The new bus ramp will provide safe and efficient access between the Transit Center, the Bay Bridge, and a new offsite bus storage facility. The Transit Center will feature a 5.4-acre public park on its roof and will include ground floor retail on Natoma and Minna streets, public art, and a public plaza/park for the benefit of the surrounding neighborhood.

The DTX will bring the Caltrain rail line underground into the heart of San Francisco, taking drivers off the road, eliminating many tons of carbon dioxide each year, and connecting San Francisco to the rest of California via the future California High Speed Rail. Extending Caltrain into the central business district will save commuters almost an hour a day in travel time, particularly those travelling to and from the Peninsula, approximately 33,000 of whom will use the Transit Center each weekday. The DTX is also designed to accommodate high speed rail and rail connections to the East Bay, making the new Transit Center the Northern California terminus for high speed rail. By connecting all major cities in California with a state-of-the-art transportation system, high-speed trains will increase mobility while reducing air pollution and greenhouse gas emissions.

This improved connectivity and design are particularly important because use of public transit is expected to increase dramatically over the next twenty years. By 2030, AC Transit ridership will increase by 140 percent without the new Transit Center, and by even more in response to the improved facility. During the same time period, Caltrain ridership is projected to increase by over 90 percent if its terminal remains at 4th and King Streets, and by almost 150 percent once the DTX brings riders to the downtown Transit Center. The outdated Transbay Terminal could not serve existing ridership adequately and clearly lacked capacity for such increases.

By improving the efficiency and connectivity of public transit, the Project also will reduce use of automobiles and resulting vehicle miles travelled. This, in turn, will save commuters both traffic delays and the cost of operating and maintaining their vehicles. It also will reduce accidents and emissions of greenhouse gases and other pollutants. Economists have estimated that these changes represent hundreds of millions of dollars of direct benefits to travelers, including both transit riders who enjoy more efficient service and drivers who enjoy less crowded roads. Overall, the Project offers enormous benefits to the local and regional economies.

The Project also will fulfill the mandates of various local and state laws. These include San Francisco Proposition H, passed in November 1999, which directs the City to extend Caltrain from the current station to the Transit Center, and San Francisco Proposition K, passed in November 2003, which directs the City to expend transportation sales tax funds in part on the

DTX. The Project also complies with California Public Resources Code Section 5027.1(a) and California Streets and Highways Code Sections 2704.04(b) and 30914(c), all of which endorse reconstruction of the new Transit Center on the site of the existing Transbay Terminal and the new Transit Center's accommodation of a Caltrain extension and high speed passenger rail line. Copies of the referenced legislation are on file with the Clerk of the Board in File Nos. 101420 and 101421.

In Motion No. 16773, the City's Planning Commission adopted findings certifying the Project's Final EIS/EIR and recognized that the Project is necessary and beneficial to the public for improvement of regional transit services and replacement of the existing, seismically inadequate Terminal. In Motion No. 04-067, the Board of Supervisors adopted the Planning Commission's findings. In Resolution No. 612-04, the Board of Supervisors adopted environmental findings in relation to the Project. In Ordinance No. 124-05, the Board of Supervisors adopted additional environmental findings as part of its adoption of the Transbay Redevelopment Plan. On November 20, 2010, the Planning Department issued a determination that acquisition of the Property for the Project is consistent with the General Plan and Eight Priority Policies. Copies of the referenced legislation and letter are on file with the Clerk of the Board in File Nos. 101420 and 101421.

The inadequacy of the old Transbay Terminal and the substantial benefits offered by the Project make clear that the public interest and necessity require the Project.

Finding #2: The project is planned to maximize public good and minimize private injury.

The Project has undergone years of intense planning. It is designed to promote mass transit ridership, optimize connectivity with other transit projects such as California High Speed Rail, enhance redevelopment opportunities, and generate thousands of jobs in San Francisco and statewide. To foster ridership and connectivity, the TJPA has coordinated its planning and design efforts with public transportation providers such as San Francisco Muni, Bay Area Regional Transit (BART), AC Transit, Caltrain, Amtrak, California High Speed Rail, Golden Gate Transit, SamTrans, Greyhound, WestCAT Lynx, and paratransit. The TJPA also has cooperated in the planning efforts of the City Planning Department and the San Francisco Redevelopment Agency to facilitate redevelopment of the Transbay Neighborhood and to ensure that the Project results in transit-oriented development.

To build a new state-of-the-art Transit Center that can accommodate the needs of these diverse transit providers under a single roof, the TJPA must acquire several private properties. To minimize displacement of businesses and residents, the TJPA has scrutinized Project alternatives and selected the Project design and alignment that achieves the goals of safety, efficiency, and convenience, while minimizing cost and the need to acquire right of way. The Final EIS/EIR and its addenda describe alternatives that the TJPA considered and rejected as inferior to the approved plan and design.

As set forth in Board of Supervisors Resolution No. 612-04, which authorized the acquisition of property located at 80 Natoma Street by eminent domain, the Project is also planned to minimize private injury through mitigation measures that protect affected property owners and residents. A copy of the resolution is on file with the Clerk of the Board in File Nos. 101420 and 101421, and File No. 41079. The Final EIS/EIR and its addenda describe these measures, which include

specific methods used to calculate fair market value and the provisions of relocation assistance to property owners and tenants. As one such measure, the TJPA has adopted a comprehensive Relocation Assistance Program that provides displaced persons the full assistance available under federal and state law, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Copies of materials related to the TJPA's Relocation Assistance Program are on file with the Clerk of the Board in File Nos. 101420 and 101421.

As demonstrated by each of these measures, the Project is planned to maximize public good and to minimize private injury.

Finding #3: The property is necessary for the project.

The Property is one condominium unit in a four story building located on Natoma Street, between First and Second Streets. The building contains more than 19,160 square feet of gross floor area. It has no historic significance. The Property is a 2,109 square foot live/work condominium unit on the second floor. The Property is not owner-occupied. The Final EIS/EIR identifies the Property as right of way that the TJPA will need to acquire for construction of the Project. The condominium owners have not disputed the TJPA's need to acquire the condos in the building for the Project.

The TJPA requires the Property for construction of the train box portion of the Transit Center and the DTX tunnel. The DTX tunnel alignment will come into the Transit Center from Second Street, expanding to six tracks as it enters the lower levels of the new Transit Center. The interface between the DTX tunnel and the rail levels to be constructed within the Transit Center will be beneath the 85 Natoma condominium building. Construction of the train box requires demolition of the building. Maps depicting the relationship of the Property to the Program, and to the train box and tunnel in particular, are on file with the Clerk of the Board in File Nos. 101420 and 101421.

Although the TJPA initially planned to acquire the 85 Natoma building, including the Property, in Phase 2 of the Transbay Program, refinement of plans for construction of the rail levels of the Transit Center in Phase 1 now requires the TJPA to acquire all of the properties in the 85 Natoma building as part of Phase 1. In particular, the TJPA needs possession of the Property in early 2011 to proceed with scheduled construction of the Project.

The TJPA has engaged a contractor to demolish existing Transbay facilities in preparation for construction of the new Transit Center and train box; significant demolition work is ongoing. All of the demolition work is expected to be complete in May 2011. The TJPA plans to demolish the building on 85 Natoma as soon as it receives possession of the Property, either by amending the current demolition contract, or issuing a new demolition contract. To timely enter into a contract for demolition of the existing 85 Natoma building, the TJPA must have possession of the Property by April 2011.

The TJPA expects to award a contract for buttress, shoring, and excavation ("BS&E") related to the train box in December 2010. The TJPA plans to add the Property to the BS&E contract as soon as the TJPA receives possession of the Property. The TJPA plans to begin construction of the shoring wall prior to excavation of the train box in May 2011.

In light of these requirements and the location of the Property, the Property is immediately necessary for construction and completion of the Project.

Finding #4: The public entity has made a sufficient offer of purchase.

On September 15, 2009, the City and the TJPA jointly offered to purchase 85 Natoma #5 for \$1,250,000. The joint offer fully complies with Government Code § 7267.2: it (1) establishes the amount that the agencies believe to be just compensation for the Property, which is not less than the approved appraisals of its fair market value; (2) extends an offer to the owner of record to acquire the Property for the full amount so established; (3) provides an informational pamphlet detailing the process of eminent domain and the owner's rights under the Eminent Domain Law; and (4) provides a sufficiently detailed written statement of, and summary of the basis for, the amounts established as just compensation.

The property owner has not accepted the offer and has provided an independent appraisal. (The TJPA notes that the just compensation for the purchase of the Property is not at issue in the hearing on the Resolution of Necessity. Rather, the necessity to acquire property for the Project is the sole issue presented by the Resolution.)

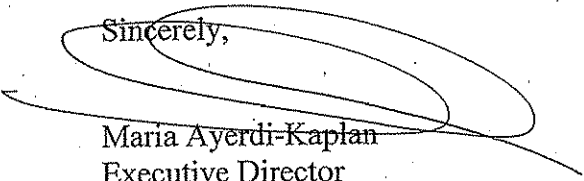
Nonetheless, the joint offer to purchase the Property for its full, assessed, fair market value is sufficient for the City to proceed with an action in eminent domain.

Recommendation

On October 14, 2010 the TJPA Board of Directors adopted Resolution No. 10-045, which included the findings that (1) the public interest and necessity require the Transbay Transit Center Program, for which the property located at 85 Natoma Street #5 is to be taken, (2) the Project is planned to maximize public good and minimize private injury, (3) the Property is necessary for the Project, and (4) the City and the TJPA have made an offer of purchase for the fair market value of the Property as determined by an appraisal. Resolution No. 10-045 urges the San Francisco Board of Supervisors to adopt a Resolution of Necessity as required to condemn the Property on behalf of the TJPA for the Project.

Thank you for your long-standing and continued support of the Transbay Transit Center Program.

Sincerely,



Maria Ayerdi-Kaplan
Executive Director

Enclosure: Materials submitted to Board File Nos. 101420 and 101421

B07005

Real Property Master

Displayed: 11/05/2010

Read Only Block Lot Roll 2010 RollCde S Secured
 Vol 25 APN 3721 113 Year 2010 EvtDate 9/18/2003 Seq 001 VSC ENR 50
 Location 85 NATOMA ST #5 Typ REG O REG ROLL Date 6/30/2010

Owner BROWN TERRI L Bill Num Res# A0176
 Care Of Not.Date Next

Address 1050 CRESTVIEW DR #324 TransCde SD Sale - Direct Enrollm
 CtyStZip MOUNTAIN VIEW CA 94040 Date 9/18/2003 2003H542342

Status Cde * Taxable NewConst
 Use Code SRES Single Family Residential NC Date Apl#

Class Code LZ Live/Work Condominium
 Nbrhd Code 09-B Financial District South TempCode

CPI Factor 2370% TRA 1-016 TempDate
 Tax Rate 1.1640 Acct #

Last Sale SD 9/18/2003 1,275,000 Appr Id 222 4/28/2006

Base Years 2004 506 Int 480 Penalty 0

Land 702,183 Improvement 702,183 Total L&I 1,404,366

Temp Land 0 Temp Impr 0 Total Temp 0

Pers Prop 0 Fixtures 0 Exemptions 0
 Remarks SEE NOTES 0 Taxable 1,404,366

F1=Hlp F2=Mnu F3=Ext/Sav F4=Vw F6=Prpgt F9=Chrs F12=Cncl F22=CanAsmt F24=Dup

Sent via US Mail on November 19, 2010:

Terri Brown
85 Natoma Street, Suite 5
San Francisco, CA 94105

NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT, in accordance with Section 1245.235 of the Code of Civil Procedure, the Board of Supervisors of the City and County of San Francisco, as a Committee of the Whole, will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date: Tuesday, December 7, 2010

Time: 3:00 p.m.

Location: Legislative Chamber, Room 250 located at City Hall, 1 Dr. Carlton B. Goodlett, Place, San Francisco, CA

Subject: Public Hearing on Adopting Resolution to Acquire Real Property by Eminent Domain: authorize acquisition of real property commonly known as 85 Natoma Street #5, San Francisco, California (Assessor's Parcel No. Block 3721, Lot 113) by eminent domain for the public purpose of constructing the Transbay Transit Center Program.

Said public hearing will be held to make findings of whether the public interest and necessity require the City and County of San Francisco to acquire, by eminent domain, the following real property on behalf of the Transbay Joint Powers Authority (TJPA): fee ownership of the real property commonly known as 85 Natoma Street #5, San Francisco, California (Assessor's Parcel No. Block 3721, Lot 113) (Property), by eminent domain, for the public purpose of constructing the Transbay Transit Center Program (Project); adopting environmental findings under the California Environmental Quality Act (CEQA), CEQA Guidelines, and Administrative Code Chapter 31; and adopting findings of consistency with the General Plan and City Planning Code Section 101.1. A description of the Property is set forth in **Schedule 1**, available in the official file for review in the Office of the Clerk of the Board.

The purpose of said hearing is to hear all persons interested in the matter. You have a right to appear and be heard on the matters referred to in California Code of Civil Procedure Section 1240.030, including, but not limited to, whether: (1) the public interest and necessity require the Project; (2) the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (3) the Property sought to be acquired is necessary for the Project; and (4) the City and the TJPA have made the offer required by California Government Code §7267.2 to the owner(s) of record of the Property.

Owners of the property who have been notified of such public hearing and who, within fifteen (15) days after the mailing of such notice, have filed a written request to do so, may

appear and be heard at the public hearing. The Board, at its discretion, need not give an opportunity to any other person to appear and be heard.

The procedure of the Board requires that the finding of public interest and necessity be made by a two-thirds vote of all its members.

At the close of the public hearing, a vote will be made on a resolution entitled **“Resolution authorizing the acquisition of real property commonly known as 85 Natoma Street #5, San Francisco, California (Assessor’s Parcel No. Block 3721, Lot 113) by eminent domain for the public purpose of constructing the Transbay Transit Center Program; adopting environmental findings under the California Environmental Quality Act (CEQA), CEQA Guidelines, and Administrative Code Chapter 31; and adopting findings of consistency with the General Plan and City Planning Code Section 101.1.”**

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on these matters may submit written comments prior to the time the hearing begins. These comments will be made part of the official public record in these matters and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA, 94012.

Information relating to this matter is available in the Office of the Clerk of the Board and agenda information relating to this matter will be available for public review on Thursday December 2, 2010.

SCHEDULE 1

**Legal description for the fee simple interest in real property commonly known as
85 Natoma Street #5, San Francisco, California (Assessor's Parcel No. Block 3721, Lot 113)**

CITY SAN FRANCISCO

PARCEL I:

CONDOMINIUM UNIT NO. 5, LOT NO. 113, AS SHOWN UPON THE CONDOMINIUM MAP AND DIAGRAMMATIC FLOOR PLAN ENTITLED, "MAP OF 85 NATOMA STREET, A LIVE/WORK CONDOMINIUM PROJECT, BEING A SUBDIVISION OF LOT 90 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED JUNE 24, 1998 IN BOOK 43 OF PARCEL MAPS AT PAGE 181, BEING A PORTION OF ASSESSOR'S BLOCK 3721, SAN FRANCISCO, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, ON DECEMBER 18TH, 2000, IN BOOK 66 OF CONDOMINIUM MAPS, AT PAGES 18 TO 22, INCLUSIVE, (REFERRED TO HEREIN AS "THE MAP") AND AS FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED ON APRIL 9TH, 2001, IN BOOK H862, PAGE 70 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA (REFERRED TO HEREIN AS "THE DECLARATION".)

EXCEPTING THEREFROM ANY PORTION OF THE COMMON AREA LYING WITHIN SAID UNIT.

EXCEPTING THEREFROM:

- (A) EASEMENTS THROUGH SAID UNIT, APPURTENANT TO THE COMMON AREA AND ALL OTHER UNITS, FOR SUPPORT AND REPAIR OF THE COMMON AREA AND ALL OTHER UNITS.
- (B) EASEMENTS, APPURTENANT TO THE COMMON AREA, FOR ENCROACHMENT UPON THE AIR SPACE OF THE UNIT BY THOSE PORTIONS OF THE COMMON AREA LOCATED WITHIN THE UNIT.

PARCEL II:

AN UNDIVIDED 12.62% INTEREST IN AND TO THE COMMON AREA AS SHOWN AND DEFINED ON THE MAP, EXCEPTING THEREFROM THE FOLLOWING:

- (A) EXCLUSIVE EASEMENTS, OTHER THAN PARCEL III, AS DESIGNATED ON THE MAP AND RESERVED TO UNITS FOR USE AS DESIGNATED IN THE DECLARATION; AND
- (B) NON-EXCLUSIVE EASEMENTS, APPURTENANT TO ALL UNITS, FOR INGRESS AND EGRESS, SUPPORT, REPAIR AND MAINTENANCE.

PARCEL III:

(A) THE EXCLUSIVE EASEMENT TO USE DECK AREA DESIGNATED D-5 ON THE MAP;

(B) THE EXCLUSIVE EASEMENT TO USE PARKING AREA DESIGNATED P-6 ON THE MAP.

PARCEL IV:

A NON-EXCLUSIVE EASEMENT APPURTENANT TO PARCEL I, ABOVE, FOR SUPPORT, REPAIR AND MAINTENANCE, AND FOR INGRESS AND EGRESS THROUGH THE COMMON AREA.

PARCEL V:

ENCROACHMENT EASEMENTS, APPURTENANT TO THE UNIT, IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.

LOT 113, BLOCK 3721 (85 Natoma #5)

Sent via US Mail on November 19, 2010:

Corin Frost
85 Natoma St. #5
San Francisco, CA 94105

NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT, in accordance with Section 1245.235 of the Code of Civil Procedure, the Board of Supervisors of the City and County of San Francisco, as a Committee of the Whole, will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

- Date:** Tuesday, December 7, 2010
- Time:** 3:00 p.m.
- Location:** Legislative Chamber, Room 250 located at City Hall, 1 Dr. Carlton B. Goodlett, Place, San Francisco, CA
- Subject:** Public Hearing on Adopting Resolution to Acquire Real Property by Eminent Domain: authorize acquisition of real property commonly known as 85 Natoma Street #5, San Francisco, California (Assessor's Parcel No. Block 3721, Lot 113) by eminent domain for the public purpose of constructing the Transbay Transit Center Program.

Said public hearing will be held to make findings of whether the public interest and necessity require the City and County of San Francisco to acquire, by eminent domain, the following real property on behalf of the Transbay Joint Powers Authority (TJPA): fee ownership of the real property commonly known as 85 Natoma Street #5, San Francisco, California (Assessor's Parcel No. Block 3721, Lot 113) (Property), by eminent domain, for the public purpose of constructing the Transbay Transit Center Program (Project); adopting environmental findings under the California Environmental Quality Act (CEQA), CEQA Guidelines, and Administrative Code Chapter 31; and adopting findings of consistency with the General Plan and City Planning Code Section 101.1. A description of the Property is set forth in **Schedule 1**, available in the official file for review in the Office of the Clerk of the Board.

The purpose of said hearing is to hear all persons interested in the matter. You have a right to appear and be heard on the matters referred to in California Code of Civil Procedure Section 1240.030, including, but not limited to, whether: (1) the public interest and necessity require the Project; (2) the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (3) the Property sought to be acquired is necessary for the Project; and (4) the City and the TJPA have made the offer required by California Government Code §7267.2 to the owner(s) of record of the Property.

Owners of the property who have been notified of such public hearing and who, within fifteen (15) days after the mailing of such notice, have filed a written request to do so, may

appear and be heard at the public hearing. The Board, at its discretion, need not give an opportunity to any other person to appear and be heard.

The procedure of the Board requires that the finding of public interest and necessity be made by a two-thirds vote of all its members.

At the close of the public hearing, a vote will be made on a resolution entitled **“Resolution authorizing the acquisition of real property commonly known as 85 Natoma Street #5, San Francisco, California (Assessor’s Parcel No. Block 3721, Lot 113) by eminent domain for the public purpose of constructing the Transbay Transit Center Program; adopting environmental findings under the California Environmental Quality Act (CEQA), CEQA Guidelines, and Administrative Code Chapter 31; and adopting findings of consistency with the General Plan and City Planning Code Section 101.1.”**

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on these matters may submit written comments prior to the time the hearing begins. These comments will be made part of the official public record in these matters and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA, 94012.

Information relating to this matter is available in the Office of the Clerk of the Board and agenda information relating to this matter will be available for public review on Thursday December 2, 2010.

SCHEDULE 1

**Legal description for the fee simple interest in real property commonly known as
85 Natoma Street #5, San Francisco, California (Assessor's Parcel No. Block 3721, Lot 113)**

CITY SAN FRANCISCO

PARCEL I:

CONDOMINIUM UNIT NO. 5, LOT NO. 113, AS SHOWN UPON THE CONDOMINIUM MAP AND DIAGRAMMATIC FLOOR PLAN ENTITLED, "MAP OF 85 NATOMA STREET, A LIVE/WORK CONDOMINIUM PROJECT, BEING A SUBDIVISION OF LOT 90 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED JUNE 24, 1998 IN BOOK 43 OF PARCEL MAPS AT PAGE 181, BEING A PORTION OF ASSESSOR'S BLOCK 3721, SAN FRANCISCO, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, ON DECEMBER 18TH, 2000, IN BOOK 66 OF CONDOMINIUM MAPS, AT PAGES 18 TO 22, INCLUSIVE, (REFERRED TO HEREIN AS "THE MAP") AND AS FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED ON APRIL 9TH, 2001, IN BOOK H862, PAGE 70 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA (REFERRED TO HEREIN AS "THE DECLARATION".)

EXCEPTING THEREFROM ANY PORTION OF THE COMMON AREA LYING WITHIN SAID UNIT.

EXCEPTING THEREFROM:

- (A) EASEMENTS THROUGH SAID UNIT, APPURTENANT TO THE COMMON AREA AND ALL OTHER UNITS, FOR SUPPORT AND REPAIR OF THE COMMON AREA AND ALL OTHER UNITS.
- (B) EASEMENTS, APPURTENANT TO THE COMMON AREA, FOR ENCROACHMENT UPON THE AIR SPACE OF THE UNIT BY THOSE PORTIONS OF THE COMMON AREA LOCATED WITHIN THE UNIT.

PARCEL II:

AN UNDIVIDED 12.62% INTEREST IN AND TO THE COMMON AREA AS SHOWN AND DEFINED ON THE MAP, EXCEPTING THEREFROM THE FOLLOWING:

- (A) EXCLUSIVE EASEMENTS, OTHER THAN PARCEL III, AS DESIGNATED ON THE MAP AND RESERVED TO UNITS FOR USE AS DESIGNATED IN THE DECLARATION; AND
- (B) NON-EXCLUSIVE EASEMENTS, APPURTENANT TO ALL UNITS, FOR INGRESS AND EGRESS, SUPPORT, REPAIR AND MAINTENANCE.

PARCEL III:

(A) THE EXCLUSIVE EASEMENT TO USE DECK AREA DESIGNATED D-5 ON THE MAP;

(B) THE EXCLUSIVE EASEMENT TO USE PARKING AREA DESIGNATED P-6 ON THE MAP.

PARCEL IV:

A NON-EXCLUSIVE EASEMENT APPURTENANT TO PARCEL I, ABOVE, FOR SUPPORT, REPAIR AND MAINTENANCE, AND FOR INGRESS AND EGRESS THROUGH THE COMMON AREA.

PARCEL V:

ENCROACHMENT EASEMENTS, APPURTENANT TO THE UNIT, IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.

LOT 113, BLOCK 3721 (85 Natoma #5)

OFFER LETTER



Amy L. Brown
Director of Real Estate



September 15, 2009

Via Certified Mail

Terri L. Brown
c/o Judi Cohen
MBV Law, LLP
855 Front Street
San Francisco, CA 94111

Re: 85 Natoma Street #5 (Block 3721, Lot 113): Offer to Purchase

Dear Ms. Brown and Ms. Cohen:

This letter constitutes a joint offer by the City and County of San Francisco ("City") and the Transbay Joint Powers Authority (TJPA) to purchase 85 Natoma Street #5 (Block 3721, Lot 113) (the "Property") from Terri L. Brown for One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) for the unencumbered fee simple interest in the Property.

The amount of the offer is the fair market value of the Property, as reflected in the attached Summary Appraisal Statement (dated May 18, 2009). The Summary Appraisal Statement provides a summary of the basis of the appraisal. The City's and the TJPA's joint offer is the full amount of the appraisal. Also attached is a proposed Agreement for Purchase and Sale of Real Estate containing the terms of the proposed purchase of the Property.

As you know, the City and the TJPA are making this offer to purchase the Property as an advanced acquisition based on the property owner's hardship. Because the property owner has asked the TJPA to acquire the Property earlier than the TJPA had planned, the TJPA must seek an additional source of funds for the acquisition from its funding partner, the San Mateo County Transportation Authority (SMCTA). Thus, the offer is contingent on the TJPA receiving funding from SMCTA.

As the owner of property acquired by a public agency, Ms. Brown may be entitled to relocation assistance. The attached Relocation Assistance Brochure should answer most questions concerning relocation assistance. If you have any questions that are not answered by this guide, please do not hesitate to contact me.

Office of the Director of Real Estate • 25 Van Ness Avenue, Suite 400 • San Francisco, CA 94102
(415) 554-9850 • FAX: (415) 552-9216

Letter to Terri L. Brown
c/o Judi Cohen
September 15, 2009
Page 2

We also attach an information pamphlet detailing the process of eminent domain and your rights under the Eminent Domain Law.

Under Code of Civil Procedure Section 1263.025, should Ms. Brown elect to obtain an independent appraisal, the TJPA will pay for the actual, reasonable costs of the appraisal up to \$5,000, subject to the following conditions:

(a) Ms. Brown, not the City or the TJPA, must order the appraisal. Should the property owner enter a contract with the selected appraiser, the City and the TJPA will not be parties to the contract.

(b) The selected appraiser must be a Certified General Appraiser with experience in appraising property in eminent domain actions, and licensed by the California Office of Real Estate Appraisers (OREA).

(c) Appraisal cost reimbursement requests must be made in writing and submitted to the TJPA. The property owner must provide a copy of the invoice for all work completed by the appraiser.

We look forward to working with you to arrive at a mutually satisfactory agreement.

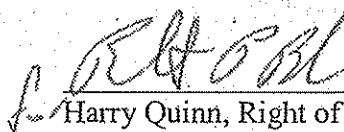
Very truly yours,

CITY AND COUNTY OF SAN FRANCISCO
a Municipal Corporation



Amy L. Brown, Director of Property

TRANSBAY JOINT POWERS AUTHORITY



Harry Quinn, Right of Way Acquisition Agent

Letter to Terri L. Brown
c/o Judi Cohen
September 15, 2009
Page 3

Enclosures (1) Summary Appraisal Statement
 (1) Relocation Assistance Brochure
 (1) Eminent Domain Brochure
 (1) Agreement for Purchase and Sale of Real Estate

cc (w/o encls): Maria Ayerdi-Kaplan
 Andrew Schwartz
 Kristen Jensen

PROPERTY DESCRIPTION



CHICAGO TITLE COMPANY

PRELIMINARY REPORT

FIRST UPDATED

Dated as of: April 16, 2007

at 5:00 PM

Reference: 160250462

Order No.: 160123 - MB

Regarding: 85 Natoma Street, #5
San Francisco, California

CHICAGO TITLE COMPANY hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception in Schedule B or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in the attached list. Copies of the Policy forms are available upon request.

Please read the exceptions shown or referred to in Schedule B and the exceptions and exclusions set forth in the attached list of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered. It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

THIS REPORT (AND ANY SUPPLEMENTS OR AMENDMENTS HERETO) IS ISSUED SOLELY FOR THE PURPOSE OF FACILITATING THE ISSUANCE OF A POLICY OF TITLE INSURANCE AND NO LIABILITY IS ASSUMED HEREBY. IF IT IS DESIRED THAT LIABILITY BE ASSUMED PRIOR TO THE ISSUANCE OF A POLICY OF TITLE INSURANCE, A BINDER OR COMMITMENT SHOULD BE REQUESTED.

The form of policy of title insurance contemplated by this report is:

California Land Title Association Standard Coverage Policy

Visit Us On The Web: westerndivision.ctt.com

Title Department:



Escrow Location:

CHICAGO TITLE COMPANY
2150 John Glenn, Suite 300
Concord, CA 94520
Phone: (925) 288-8000
Fax: (925) 521-9562

Chicago Title - San Francisco
388 Market St., Ste. 1300
San Francisco, California 94111
(415)788-0871 fax: (415)399-0940
Susan Trowbridge
ESCROW OFFICER

Meg Bertini
TITLE OFFICER

SCHEDULE A

Order No: 160123 MB

Your Ref: 160250462

1. The estate or interest in the land hereinafter described or referred to covered by this report is:

A CONDOMINIUM, AS THE SAME IS DEFINED IN SECTION 783 OF THE CIVIL CODE

2. Title to said estate or interest at the date hereof is vested in:

TERRI L. BROWN, AN UNMARRIED WOMAN

3. The land referred to in this report is situated in the State of California, County of San Francisco and is described as follows:

SEE ATTACHED DESCRIPTION

DESCRIPTION

CITY OF SAN FRANCISCO

PARCEL I:

CONDOMINIUM UNIT NO. 5, LOT NO. 113, AS SHOWN UPON THE CONDOMINIUM MAP AND DIAGRAMMATIC FLOOR PLAN ENTITLED, "MAP OF 85 NATOMA STREET, A LIVE/WORK CONDOMINIUM PROJECT, BEING A SUBDIVISION OF LOT 90 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED JUNE 24, 1998 IN BOOK 43 OF PARCEL MAPS AT PAGE 181, BEING A PORTION OF ASSESSOR'S BLOCK 3721, SAN FRANCISCO, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, ON DECEMBER 18TH, 2000, IN BOOK 66 OF CONDOMINIUM MAPS, AT PAGES 18 TO 22, INCLUSIVE, (REFERRED TO HEREIN AS "THE MAP") AND AS FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED ON APRIL 9TH, 2001, IN BOOK H862, PAGE 70 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA (REFERRED TO HEREIN AS "THE DECLARATION".)

EXCEPTING THEREFROM ANY PORTION OF THE COMMON AREA LYING WITHIN SAID UNIT.

EXCEPTING THEREFROM:

- (A) EASEMENTS THROUGH SAID UNIT, APPURTENANT TO THE COMMON AREA AND ALL OTHER UNITS, FOR SUPPORT AND REPAIR OF THE COMMON AREA AND ALL OTHER UNITS.
- (B) EASEMENTS, APPURTENANT TO THE COMMON AREA, FOR ENCROACHMENT UPON THE AIR SPACE OF THE UNIT BY THOSE PORTIONS OF THE COMMON AREA LOCATED WITHIN THE UNIT.

PARCEL II:

AN UNDIVIDED 12.62% INTEREST IN AND TO THE COMMON AREA AS SHOWN AND DEFINED ON THE MAP, EXCEPTING THEREFROM THE FOLLOWING:

- (A) EXCLUSIVE EASEMENTS, OTHER THAN PARCEL III, AS DESIGNATED ON THE MAP AND RESERVED TO UNITS FOR USE AS DESIGNATED IN THE DECLARATION; AND
- (B) NON-EXCLUSIVE EASEMENTS, APPURTENANT TO ALL UNITS, FOR INGRESS AND EGRESS, SUPPORT, REPAIR AND MAINTENANCE.

PARCEL III:

- (A) THE EXCLUSIVE EASEMENT TO USE DECK AREA DESIGNATED D-5 ON THE MAP;
- (B) THE EXCLUSIVE EASEMENT TO USE PARKING AREA DESIGNATED P-6 ON THE MAP.

PARCEL IV:

A NON-EXCLUSIVE EASEMENT APPURTENANT TO PARCEL I, ABOVE, FOR SUPPORT, REPAIR AND MAINTENANCE, AND FOR INGRESS AND EGRESS THROUGH THE COMMON AREA.

DESCRIPTION

PARCEL V:

ENCROACHMENT EASEMENTS, APPURTENANT TO THE UNIT, IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.

LOT 113, BLOCK 3721

SCHEDULE B

Page 1

Order No: 160123 MB

Your Ref: 160250462

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in the policy form designated on the face page of this Report would be as follows:

A 1. County and city taxes for the Fiscal Year 2007 - 2008, a lien not yet due or payable.

R 2. County and City taxes for the Fiscal Year 2006 - 2007
1st Installment : \$7544.04 PAID
2nd Installment : \$7544.04 DELINQUENT + \$764.40 PENALTY
Land : \$663,255.00
Improvements : \$663,255.00
Personal Property : NONE
Exemption : NONE
A.P. No. : LOT 113 BLOCK 2721
Code Area : N/A

B 3. The Lien of Supplemental Taxes, if any, assessed pursuant to the provisions of Chapter 3.5, Revenue and Taxation Code, Sections 75 et seq.

C 4. The herein described property lies within the boundaries of a Mello-Roos Community Facilities District ("CFD"), as follows:

CFD No. : 90-1
For : School Facility Repair and Maintenance

This property, along with all other parcels in the CFD, is liable for an annual Special Tax. This Special Tax is included with and payable with the general property taxes of the City and County of San Francisco. The tax may not be prepaid.

Further information may be obtained by contacting:

San Francisco Unified School District
Office of the Superintendent for Business
135 Van Ness Ave.
San Francisco, CA 94102

D 5. Notice of Special Restrictions under the City Planning Code of the City and County of San Francisco, upon the terms and conditions contained therein
Recorded : OCTOBER 8, 1998, REEL H237, IMAGE 624, SERIES NO. 98-G447785-00, OFFICIAL RECORDS

E 6. Property Line Window Agreement
Dated : OCTOBER 6, 1998

SCHEDULE B
(continued)

Order No: 160123 MB

Your Ref: 160250462

Executed By : MARTIN PROPERTIES, LLC
Recorded : OCTOBER 8, 1998, REEL H237, IMAGE 626, SERIES NO. 98-G447787-00, OFFICIAL RECORDS

Which recites as Follows:

That the proposed openings along the northeast property line will be protected or closed with approved windows or wall construction, in the event that the adjoining property is improved in such a manner that the openings no longer comply with Sec. 504 (D) of the San Francisco Building Code.

F 7. Easement Agreement

Dated : OCTOBER 25, 2000
Executed By : MARTIN PROPERTIES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY ("MPLLC")
And Between : 580 HOWARD STREET OWNERS ASSOCIATION, A CALIFORNIA NON-PROFIT OWNERS ASSOCIATION CORPORATION (580 OWNERS ASSOCIATION)

Upon the terms, provisions, covenants and conditions contained therein,
Recorded : NOVEMBER 6, 2000, REEL H758, IMAGE 426, SERIES NO. 2000-G860199-00, OFFICIAL RECORDS

G 8. Limitations, covenants, conditions, easements, restrictions, reservations, exception, terms, liens or charges, but omitting any covenant or restriction, if any, based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, contained in the Declaration

By : MARTIN PROPERTIES, LLC
Recorded : APRIL 9, 2001, REEL H862, IMAGE 70, SERIES NO. 2001-G928081-00, OFFICIAL RECORDS

NOTE: Section 12956.1 of the Government Code provides the following: If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

H Contains no reversionary clause.

I Contains a mortgagee protection clause.

J 9. Liens and charges for upkeep and maintenance as set forth in the above mentioned Declaration, payable to 85 NATOMA STREET OWNERS ASSOCIATION.

SCHEDULE B (continued)

Order No: 160123 MB

Your Ref: 160250462

x 10. Deed of Trust to secure an indebtedness in the original amount shown below

Amount : \$892,500.00
 Dated : SEPTEMBER 11, 2003
 Trustor : TERRI L. BROWN, AN UNMARRIED WOMAN
 Trustee : CALIFORNIA RECONVEYANCE COMPANY
 Beneficiary : WASHINGTON MUTUAL BANK, FA, A FEDERAL ASSOCIATION
 Address : C/O ACS IMAGE SOLUTIONS
 12691 PALA DRIVE
 MS156DPCA
 GARDEN GROVE, CA 92841

Loan No. : 03-0661-065935077-1
 Recorded : SEPTEMBER 18, 2003, REEL 1475, IMAGE 208, SERIES
 NO. 2003-H542343-00, OFFICIAL RECORDS

L 11. Deed of Trust to secure an indebtedness in the original amount shown below

Amount : \$250,000.00
 Dated : APRIL 27, 2005
 Trustor : TERRI L. BROWN, AN UNMARRIED WOMAN
 Trustee : AMERICAN SECURITIES COMPANY
 Beneficiary : WELLS FARGO BANK, N.A.
 Address : LSI-NORTH RECORDING DIVISION
 5029 DUDLEY BLVD.
 MC CLELLAN, CA 95652

Loan No. : 0651-651-8091528-1998
 Recorded : MAY 6, 2005, REEL 1884, IMAGE 378, SERIES NO.
 2005-H948727-00, OFFICIAL RECORDS

S 12. SAID LAND LIES WITHIN THE BOUNDARIES OF THE "REDEVELOPMENT PLAN FOR THE TRANSBAY PROJECT AREA", AS DISCLOSED BY INSTRUMENT RECORDED AUGUST 4, 2006, IN REEL J-197, IMAGE 0575, INSTRUMENT NO. 2006-I224836-00, OFFICIAL RECORDS

T 13. DECLARATION OF RESTRICTIONS FOR THE TRANSBAY REDEVELOPMENT PROJECT AREA, RECORDED AUGUST 4, 2006, IN REEL J-197, IMAGE 0578, INSTRUMENT NO. 2006-I222839-00, OFFICIAL RECORDS.

V 14. The effect of instruments, proceedings, liens, decrees or other matters which do not specifically describe said land but which, if any exist, may affect the title or impose liens or encumbrances thereon. The name search necessary to ascertain the existence of such matters has not been completed and in order to do so we require a Statement of Identity

From : TERRY L. BROWN

M SUPPLEMENTAL NOTE:

None of the above exceptions preclude attachment of a CLTA 100 endorsement

**SCHEDULE B
(continued)**

Order No: 160123 MB

Your Ref: 160250462

to an ALTA loan policy issued pursuant to this Report and a CLTA 116.2 endorsement will reflect that there is located on said land a COMMERCIAL CONDOMINIUM known as 85 NATOMA STREET, #5, SAN FRANCISCO, CALIFORNIA.

NOTE 2:

According to the Public Records, no Deed conveying the property described in this Report has been recorded within a period of two years prior to the date of this Report, except as shown herein:

Title of the Vestee, herein was

Acquired By : GRANT DEED
From : STEEL ARC PROEPTIES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY
To : TERRI L. BROWN, AN UNMARRIED WOMAN
Recorded : SEPTEMBER 18, 2003, REEL I475, IMAGE 207, SERIES NO. 2003-H542342-00, OFFICIAL RECORDS

JR/kh
07/31/05
Meg Update 4/26/2007

SCHEDULE B (continued)

Order No: 160123 MB

Your Ref: 160250462

CREDITORS' RIGHTS NOTE

NOTE: If a 1970 ALTA Owner's or Lender's or 1975 ALTA Leasehold Owner's or Lender's policy form has been requested, the policy, when approved for issuance, will be endorsed to add the following to the Exclusions From Coverage contained therein:

Loan Policy Exclusion:

Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

- (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
- (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
- (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure
 - a. to timely record the instrument of transfer; or
 - b. of such recordation to impart notice to a purchaser for value or a judgment or lien creditor

Owner's Policy Exclusion:

Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

- (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
- (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure
 - a. to timely record the instrument of transfer; or
 - b. of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

NOTE

The land referred to in this Preliminary Report was identified in the order application only by street address or assessor's parcel number. This land has been located on the attached map. The use of a street address or assessor's parcel number creates an uncertainty as to the correct legal description for the land involved in your transaction. Please review the map. Is the correct land located on the map? If your transaction involves other land or more land or less land than that located on the map you should immediately advise your title officer or escrow officer.

CHICAGO TITLE INSURANCE COMPANY
Fidelity National Financial Group of Companies' Privacy Statement
July 1, 2001

We recognize and respect the privacy expectation of today's consumers and the requirements of applicable federal and state privacy laws. We believe that making you aware of how we use your non-public personal information ("Personal Information"), and to whom it is disclosed, will form the basis for a relationship of trust between us and the public that we serve. This Privacy Statement provides that explanation. We reserve the right to change this Privacy Statement from time to time consistent with applicable privacy laws.

In the course of our business, we may collect Personal Information about you from the following sources:

- * From applications or other forms we receive from you or your authorized representative;
- * From your transactions with, or from the services being performed by, us, our affiliates, or others;
- * From our internet web sites;
- * From the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others; and
- * From consumer or other reporting agencies.

Our Policies Regarding The Protection Of The Confidentiality And Security Of Your Personal Information

We maintain physical, electronic and procedural safeguards to protect your Personal Information from unauthorized access or intrusion. We limit access to the Personal Information only to those employees who need such access in connection with providing products or services to you or for other legitimate business purposes.

Our Policies and Practices Regarding the Sharing of Your Personal Information

We may share your Personal Information with our affiliates, such as insurance companies, agents, and other real estate settlement service providers. We may also disclose your Personal Information:

- * to agents, brokers or representatives to provide you with services you have requested;
- * to third-party contractors or service providers who provide services or perform marketing or other functions on our behalf; and
- * to others with whom we enter into joint marketing agreements for products or services that we believe you may find of interest.

In addition, we will disclose your Personal Information when you direct or give us permission, when we are required by law to do so, or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

One of the important responsibilities of some of our affiliated companies is to record documents in the public domain. Such documents may contain your Personal Information.

Right To Access Your Personal Information And Ability To Correct Errors Or Request Change Or Deletion

Certain states afford you the right to access your Personal Information and, under certain circumstances, to find out to whom your Personal Information has been disclosed. Also, certain states afford you the right to request correction, amendment or deletion of your Personal Information. We reserve the right, where permitted by law, to charge a reasonable fee to cover the costs incurred in responding to such requests.

All requests must be made in writing to the following address:

Privacy Compliance Officer
Fidelity National Financial, Inc.
601 Riverside Drive
Jacksonville, FL 32204

Multiple Products or Services:

If we provide you with more than one financial product or service, you may receive more than one privacy notice from us. We apologize for any inconvenience this may cause you.

LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS

CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorney's fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the ability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens, or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)

EXCLUSIONS

In addition to the exceptions in Schedule B, you are not insured against loss, costs, attorney's fees and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or governmental regulation. This includes building and zoning ordinances and also laws and regulations concerning:

land use	land division
improvement on the land	environmental protection

This exclusion does not apply to the violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
 - a notice of exercising the right appears in the public records on the Policy Date
 - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
 - that are created, allowed, or agreed to by you
 - that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
 - that result in no loss to you
 - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
 - to any land outside the area specially described and referred to in item 3 of Schedule A, or
 - in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

EXCEPTIONS FROM COVERAGE

In addition to the Exceptions, you are not insured against loss, costs, attorneys' fees and expenses resulting from:

1. Someone claiming an interest in your land by reason of:
 - A. Easements not shown in the public records
 - B. Boundary disputes not shown in the public records
 - C. Improvements owned by your neighbor placed on your land
2. If, in addition to a single family residence, your existing structure consists of one or more Additional Dwelling Unit, Item 12 of Covered Title Risks does not insure you against loss, costs, attorneys' fees, and expenses resulting from:
 - A. The forced removal of any Additional Dwelling Unit, or,
 - B. The forced conversion of any Additional Dwelling Unit back to its original use,

if said Additional Dwelling Unit was either constructed or converted to use as a dwelling unit in violation of any law or government regulation.

AMERICAN LAND TITLE ASSOCIATION HOMEOWNER'S POLICY OF TITLE INSURANCE (10-17-98)

EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorney's fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:

a. building	c. Land use	e. Land division
b. zoning	d. Improvements on the Land	f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.
This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17, or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
 - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
 - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8,d, 22, 23, 24 or 25.
5. Failure to pay value of Your Title.
6. Lack of a right:
 - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

**AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92)
WITH ALTA ENDORSEMENT - FORM 1 COVERAGE
and
AMERICAN LAND TITLE ASSOCIATION LEASEHOLD LOAN POLICY (10-17-92)
WITH ALTA ENDORSEMENT - FORM 1 COVERAGE**

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorney's fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violations of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim or priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to purchaser for value or a judgment or lien creditor.

The above policy forms may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following General Exceptions:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens, or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92)
and
AMERICAN LAND TITLE ASSOCIATION LEASEHOLD OWNER'S POLICY (10-17-92)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorney's fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violations of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy forms may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following General Exceptions:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens, or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

OWNER'S STATEMENT

KNOW ALL MEN BY THESE PRESENTS That the undersigned state that they are the only parties having record title interest in the land subdivided and shown enclosed within the distinctive boundary line upon this map and do hereby consent to the preparation and recording of the map entitled:

"MAP OF 85 NATOMA STREET, A LIVE/WORK CONDOMINIUM PROJECT BEING A SUBDIVISION OF LOT 90 AS SHOWN ON THE CERTAIN PARCEL MAP FILED JUNE 24, 1988 IN BOOK 43 OF PARCEL MAPS AT PAGE 181, BEING A PORTION OF ASSESSOR'S BLOCK 3721, SAN FRANCISCO, CALIFORNIA," consisting of 5 sheets.

And further that the undersigned consent to the filing of this map as a map and plan under the provisions of Chapter 1 of Title 5 of Part 4 of Division 2 of the Civil Code of California, consisting of this survey and diacromatic plans shown herein and this statement.

Dated this 7th day of November, 2000.

OWNERS: MARTIN PROPERTIES, LLC By: PATRICK HENNINGER, Its President

TRUSTEES: CALIFORNIA TRUST COMPANY, a corporation organized under the laws of the State of California, under Deed of Trust recorded Book 12, Page 289, Official Records, Book 12, Page 289, Official Records.

By: JAMES B. YOUNG, Its Vice President

By: JAMES B. YOUNG, Its Vice President

OWNER'S ACKNOWLEDGEMENT

State of California County of San Francisco I, s. s. On November 7, 2000, before me, Keith D. Sullivan, a Notary Public in and for said county and State, personally appeared James B. Young, known to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by their signatures on the instrument upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for said County and State James B. Young, Expires 12-31-01

TRUSTEE'S ACKNOWLEDGEMENT

State of California County of San Francisco I, s. s. On November 7, 2000, before me, Keith D. Sullivan, a Notary Public in and for said county and State, personally appeared James B. Young, known to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by their signatures on the instrument upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for said County and State James B. Young, Expires 12-31-01

TRUSTEE'S ACKNOWLEDGEMENT

State of California County of San Francisco I, s. s. On November 7, 2000, before me, Keith D. Sullivan, a Notary Public in and for said county and State, personally appeared James B. Young, known to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by their signatures on the instrument upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for said County and State James B. Young, Expires 12-31-01

STATEMENT OF AGREEMENT

Martin Properties, LLC, the undersigned, subdividers of the real property shown on this map, heretofore and hereafter, do hereby agree to file this map with the Planning Commission and the Board of Supervisors. We further state that all applicable provisions of the Subdivision Map Act of the State of California and the Subdivision Map Act of the City and County of San Francisco governing approval of this map shall be adhered to.

OWNERS: By: PATRICK HENNINGER, Its President

ENGINEER'S STATEMENT I hereby state that during the month of November, 1996, a survey authorized by the Owners hereon was completed and shown on this map. I do hereby state that the monuments are of the character and occupy the positions indicated on this map and the survey of this map can be retraced from the monuments indicated.

Dated this 27th day of November, 2000.

James B. Young, R.G.P., 16,149 (Exp. 3-31-01)

CITY ENGINEER'S STATEMENT

I hereby state that I have examined this map; that the subdivision as shown is substantially the same as it appeared on the tentative map; that the same complies with the provisions of the California Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map have been complied with; and that I am satisfied that this map is technically correct.

Date Nov. 27, 2000. By: Marlan L. Kelly, Jr., City Engineer

Notary Public in and for said County and State James B. Young, Expires 12-31-01

APPROVALS

This Map is approved this 29th day of November, 2000, by Order No. 172-00

APPROVED AS TO FORM

LOUISE RENNE, City Attorney, County of San Francisco

CLERK'S STATEMENT I, Gloria L. Young, Clerk of the Board of Supervisors of the City and County of San Francisco, State of California, do hereby state that said Board of Supervisors by its Motion File No. 2000-172 adopted Resolution 2000-172, approved this map entitled:

"MAP OF 85 NATOMA STREET, A LIVE/WORK CONDOMINIUM PROJECT BEING A SUBDIVISION OF LOT 90 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED JUNE 24, 1988 IN BOOK 43 OF PARCEL MAPS AT PAGE 181, BEING A PORTION OF ASSESSOR'S BLOCK 3721, SAN FRANCISCO, CALIFORNIA," consisting of 5 sheets.

IN TESTIMONY WHEREOF, I have hereunto subscribed my hand and caused the seal of this office to be affixed.

Gloria L. Young, Clerk of the Board of Supervisors of the City and County of San Francisco

TAX STATEMENT

I, Gloria L. Young, Clerk of the Board of Supervisors of the City and County of San Francisco, State of California, do hereby state that the subdivision herein filed a certificate from the County Assessor's Office showing that according to the records of his office there are no liens against this subdivision or any part thereof for unpaid State, County, Municipal or local taxes or special assessments collected as taxes, except as taxes or special assessments not yet payable, which are estimated to be \$

I also do hereby state that a bond in the amount fixed by the Board and by its terms made to inure to the benefit of the City and County of San Francisco conditions for payment of the above taxes or special assessments not yet payable, has been filed with and approved by said Board.

Dated this 6th day of December, 2000.

Gloria L. Young, Clerk of the Board of Supervisors of the City and County of San Francisco

RECORDER'S STATEMENT

Filed this 18th day of December, 2000 at 12:12 AM in Book 66 of Condominium Maps at page 18 through 22, at the request of Martin Properties, LLC.

County Recorder City and County of San Francisco

FILED

Not Returnable

MAP OF 85 NATOMA STREET A LIVE/WORK CONDOMINIUM PROJECT BEING A SUBDIVISION OF LOT 90 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED JUNE 24, 1988 IN BOOK 43 OF PARCEL MAPS AT PAGE 181 BEING A PORTION OF ASSESSOR'S BLOCK 3721 SAN FRANCISCO, CALIFORNIA

GL+A CIVIL ENGINEERS

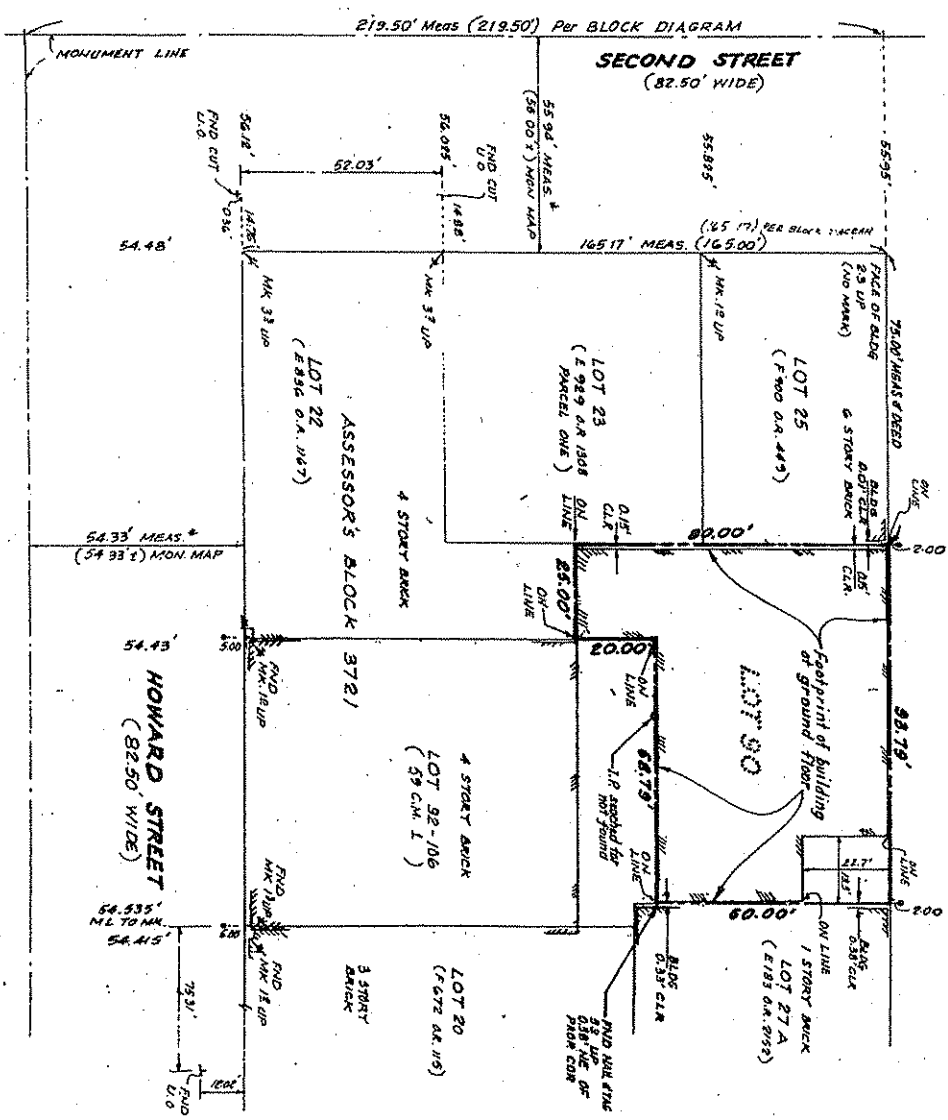
SEP. 2000

SHEET 1 OF 5 SHEETS



San Francisco Assessor-Recorder Seal, Doc-2000-GB75741-00, REEL H766 IMAGE 0051

LEGEND:
 * PND MAIL TAG R.C.E. #2, 49 #4 43MB
 --- PROPERTY LINE
 --- MK MARK ON BUILDING
 (550) RECORD DATA
 PND FOUND MEASUREMENTS
 * MEASURED OCCUPANCY



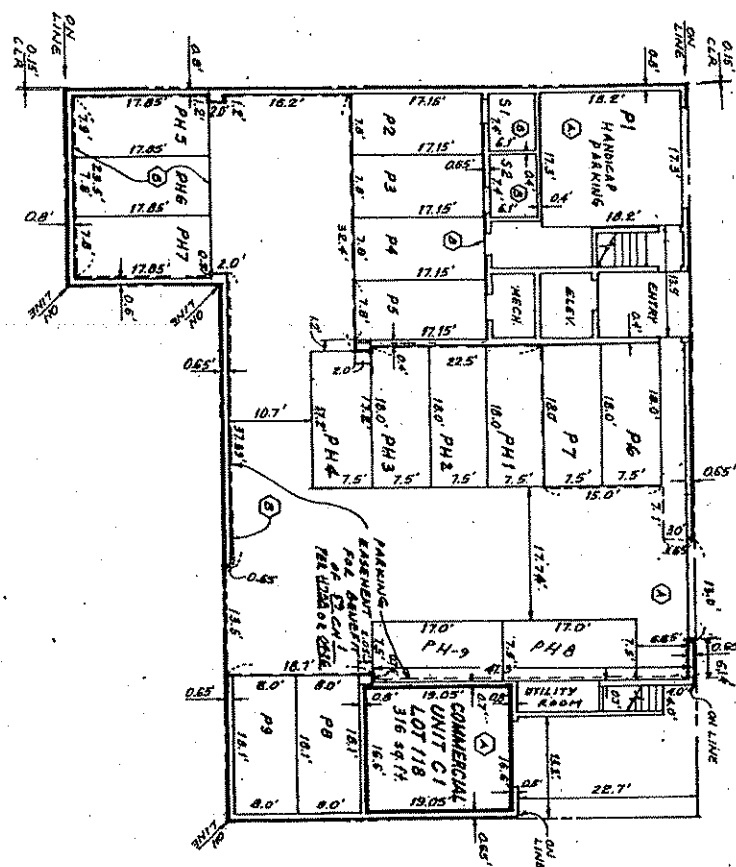
19

- GENERAL NOTES**
- The subdivision depicted herein is subject to the provisions of the Subdividing Common Interest Development Act, Title 41, Part 4, Division Second of the Civil Code.
 - Common Area shall mean those portions of land and improvements owned by the Declarant which are to be owned in common by the owners of any units as shown on this Map and which are to be used for the benefit of the owners of the units. The Common Area includes, but is not limited to, the following: (a) streets, sidewalks, walkways, foundations, curbs, gutters, drainage, water, sewer, gas, telephone, cable, and other utilities; (b) landscaping, lawns, trees, shrubs, and other plants; (c) fences, walls, and other structures; (d) pools, spas, and other recreational facilities; (e) parking areas; (f) storage areas; (g) other facilities and improvements which are necessary for the proper use and enjoyment of the units.
 - The Declarant shall have the right to alter, modify, or improve the Common Area at any time without the consent of the owners of the units.
 - The Declarant shall be responsible for the maintenance and repair of the Common Area.
 - All areas are 50' unless otherwise indicated.
 - All walls are 6" thick unless otherwise indicated.
 - All interior elevations shown and elevations noted on this map shall be finished floor elevations unless otherwise indicated.
 - Nonconformances - City Ordinance No. 116, Ordinance No. 117, Ordinance No. 118, Ordinance No. 119, Ordinance No. 120, Ordinance No. 121, Ordinance No. 122, Ordinance No. 123, Ordinance No. 124, Ordinance No. 125, Ordinance No. 126, Ordinance No. 127, Ordinance No. 128, Ordinance No. 129, Ordinance No. 130, Ordinance No. 131, Ordinance No. 132, Ordinance No. 133, Ordinance No. 134, Ordinance No. 135, Ordinance No. 136, Ordinance No. 137, Ordinance No. 138, Ordinance No. 139, Ordinance No. 140, Ordinance No. 141, Ordinance No. 142, Ordinance No. 143, Ordinance No. 144, Ordinance No. 145, Ordinance No. 146, Ordinance No. 147, Ordinance No. 148, Ordinance No. 149, Ordinance No. 150, Ordinance No. 151, Ordinance No. 152, Ordinance No. 153, Ordinance No. 154, Ordinance No. 155, Ordinance No. 156, Ordinance No. 157, Ordinance No. 158, Ordinance No. 159, Ordinance No. 160, Ordinance No. 161, Ordinance No. 162, Ordinance No. 163, Ordinance No. 164, Ordinance No. 165, Ordinance No. 166, Ordinance No. 167, Ordinance No. 168, Ordinance No. 169, Ordinance No. 170, Ordinance No. 171, Ordinance No. 172, Ordinance No. 173, Ordinance No. 174, Ordinance No. 175, Ordinance No. 176, Ordinance No. 177, Ordinance No. 178, Ordinance No. 179, Ordinance No. 180, Ordinance No. 181, Ordinance No. 182, Ordinance No. 183, Ordinance No. 184, Ordinance No. 185, Ordinance No. 186, Ordinance No. 187, Ordinance No. 188, Ordinance No. 189, Ordinance No. 190, Ordinance No. 191, Ordinance No. 192, Ordinance No. 193, Ordinance No. 194, Ordinance No. 195, Ordinance No. 196, Ordinance No. 197, Ordinance No. 198, Ordinance No. 199, Ordinance No. 200.
 - Subject to the provisions of the Subdividing Common Interest Development Act, Title 41, Part 4, Division Second of the Civil Code.

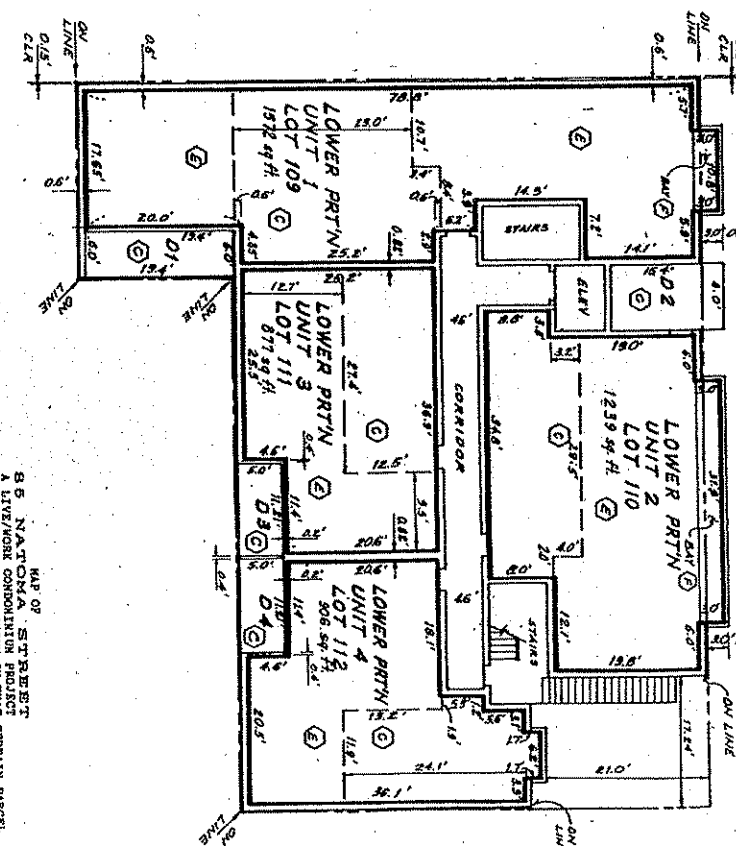
GL+A CIVIL ENGINEERS
 SCALE: 1" = 20'
 SEP, 2000
 SHEET 2 OF 5 SHEETS



GROUND FLOOR NATOMA STREET



FIRST FLOOR



ELEVATION	
DESIG.	FLOOR / CEILING
1	12.2 / 21.7
2	13.2 / 21.7
3	23.0 / 32.8
4	23.0 / 32.8
5	25.0 / 32.8
6	25.0 / 35.4

20

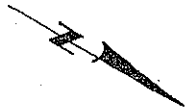
MAP OF NATOMA STREET
A LIVEWORK COMMISSION ON THAT CERTAIN PARCEL
BEING A SUBDIVISION 198 IN BOOK 43 OF PARCEL MAPS AT PAGE 181
HAP FILED BEING A PORTION OF ASSessor'S BLOCK 3721
SAN FRANCISCO, CALIFORNIA

SEP, 2000

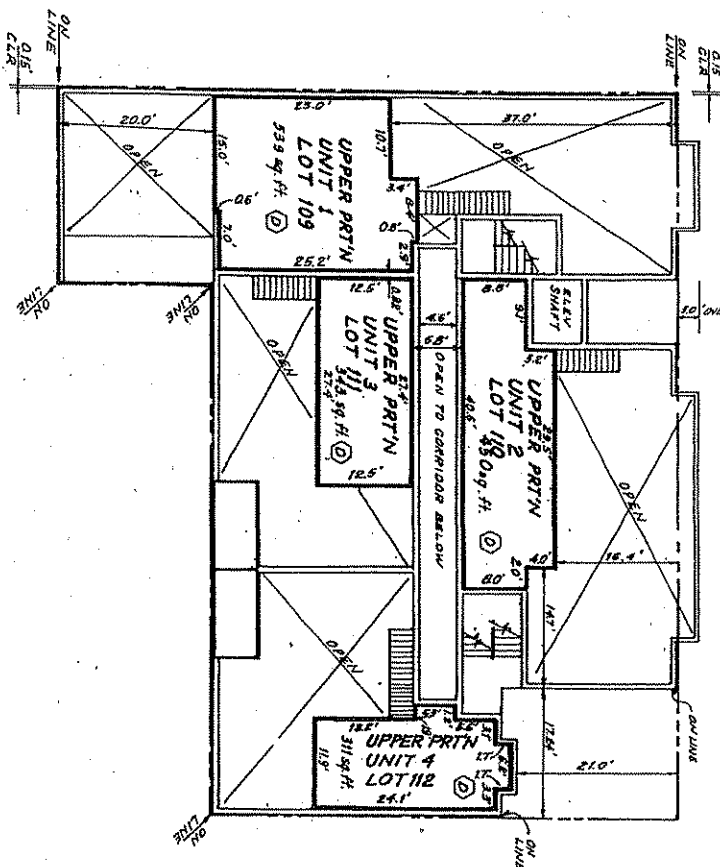
GL+A CIVIL ENGINEERS

SHEET 3 OF 5 SHEETS

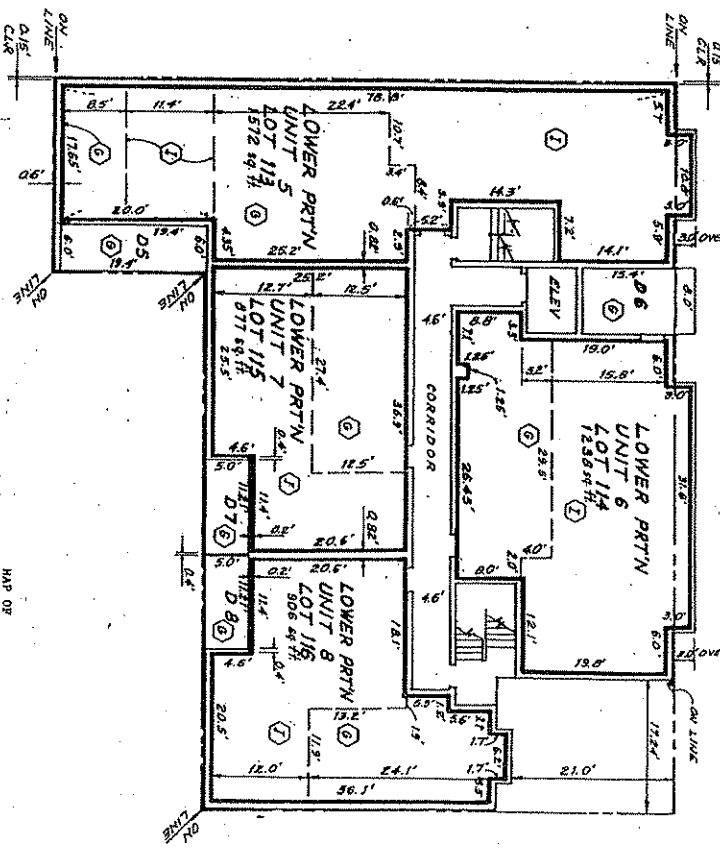
SCALE: 1" = 10'



FIRST FLOOR MEZZANINE
NATOMA STREET



SECOND FLOOR
SECOND FLOOR



21

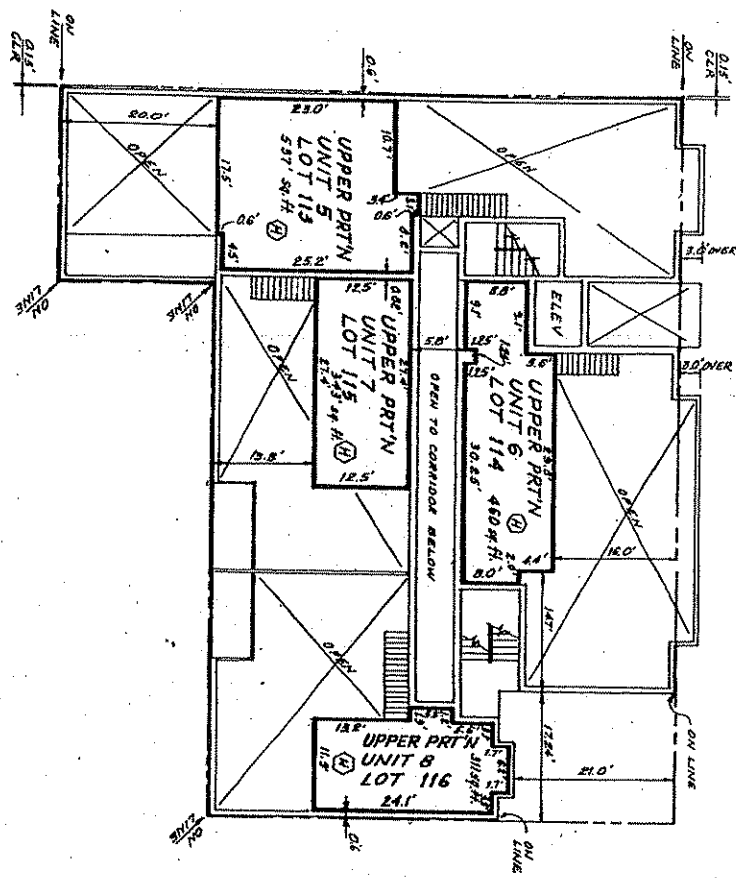
ELEVATION	
DESIG.	FLOOR / CEILING
(D)	31.7 / 33.4
(C)	40.5 / 43.3
(T)	40.5 / 53.3

HAP 07
85 NATOMA STREET
A LIVE/WORK CONDOMINIUM PROJECT
BEING A SUBDIVISION OF LOT 30 AS SHOWN ON THAT CERTAIN PARCEL
MAP FILED JUNE 24 1988 IN THE OFFICE OF THE COUNTY CLERK
BEING A PORTION OF ASSessor'S BOOK 3721
SAN FRANCISCO, CALIFORNIA

GL + A CIVIL ENGINEERS
SEP, 2000
SHEET 4 OF 5 SHEETS
SCALE: 1" = 10'

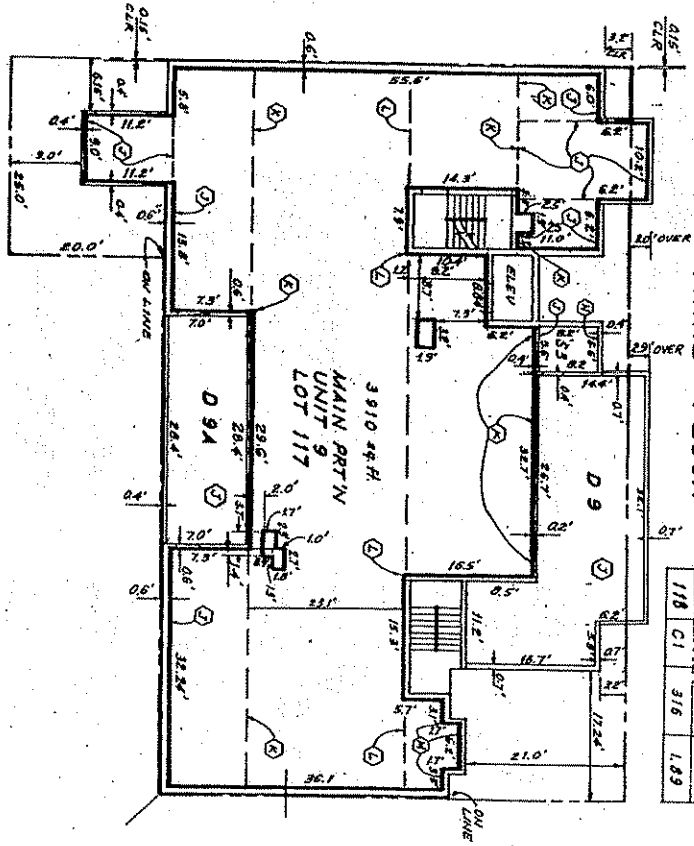


SECOND FLOOR MEZZANINE
NATOMA STREET



22

THIRD FLOOR



ELEVATION	
DESIG.	FLOOR CEILING
(H)	48.2
(J)	56.9
(K)	58.0
(L)	66.7
(M)	69.5
(N)	58.0
(O)	73.0
(P)	58.0
(Q)	71.5
(R)	58.0

UNIT NO.	AREAL SQ. FT.	PERCENT COMMON INTEREST
109	2111	12.84
110	1688	10.17
111	1280	7.30
112	1217	7.29
113	2109	12.62
114	1698	10.16
115	1220	7.30
116	1217	7.29
117	3910	23.40
118	316	1.89

MAP OF
8 S NATOMA STREET
A LIVE/WORK CONDOMINIUM PROJECT
BEING A SUBDIVISION OF LOT 90 AS SHOWN ON THAT CERTAIN PARCEL
MAP FILED IN THE OFFICE OF THE COUNTY CLERK OF SAN FRANCISCO
BEING A REBID OF PARCEL MAPS AT PAGE 181
SAN FRANCISCO, CALIFORNIA

GL+A CIVIL ENGINEERS

SEP. 2000 SHEET 5 OF 5 SHEETS SCALE: 1" = 10'

DESCRIPTION

CITY OF SAN FRANCISCO

PARCEL I:

CONDOMINIUM UNIT NO. 5, LOT NO. 113, AS SHOWN UPON THE CONDOMINIUM MAP AND DIAGRAMMATIC FLOOR PLAN ENTITLED, "MAP OF 85 NATOMA STREET, A LIVE/WORK CONDOMINIUM PROJECT, BEING A SUBDIVISION OF LOT 90 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED JUNE 24, 1998 IN BOOK 43 OF PARCEL MAPS AT PAGE 181, BEING A PORTION OF ASSESSOR'S BLOCK 3721, SAN FRANCISCO, CALIFORNIA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, ON DECEMBER 18TH, 2000, IN BOOK 66 OF CONDOMINIUM MAPS, AT PAGES 18 TO 22, INCLUSIVE, (REFERRED TO HEREIN AS "THE MAP") AND AS FURTHER DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED ON APRIL 9TH, 2001, IN BOOK H862, PAGE 70 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA (REFERRED TO HEREIN AS "THE DECLARATION".)

EXCEPTING THEREFROM ANY PORTION OF THE COMMON AREA LYING WITHIN SAID UNIT.

EXCEPTING THEREFROM:

- (A) EASEMENTS THROUGH SAID UNIT, APPURTENANT TO THE COMMON AREA AND ALL OTHER UNITS, FOR SUPPORT AND REPAIR OF THE COMMON AREA AND ALL OTHER UNITS.
- (B) EASEMENTS, APPURTENANT TO THE COMMON AREA, FOR ENCROACHMENT UPON THE AIR SPACE OF THE UNIT BY THOSE PORTIONS OF THE COMMON AREA LOCATED WITHIN THE UNIT.

PARCEL II:

AN UNDIVIDED 12.62% INTEREST IN AND TO THE COMMON AREA AS SHOWN AND DEFINED ON THE MAP, EXCEPTING THEREFROM THE FOLLOWING:

- (A) EXCLUSIVE EASEMENTS, OTHER THAN PARCEL III, AS DESIGNATED ON THE MAP AND RESERVED TO UNITS FOR USE AS DESIGNATED IN THE DECLARATION; AND
- (B) NON-EXCLUSIVE EASEMENTS, APPURTENANT TO ALL UNITS, FOR INGRESS AND EGRESS, SUPPORT, REPAIR AND MAINTENANCE.

PARCEL III:

- (A) THE EXCLUSIVE EASEMENT TO USE DECK AREA DESIGNATED D-5 ON THE MAP;
- (B) THE EXCLUSIVE EASEMENT TO USE PARKING AREA DESIGNATED P-6 ON THE MAP.

PARCEL IV:

A NON-EXCLUSIVE EASEMENT APPURTENANT TO PARCEL I, ABOVE, FOR SUPPORT, REPAIR AND MAINTENANCE, AND FOR INGRESS AND EGRESS THROUGH THE COMMON AREA.

Page 2
Order No. 160123

DESCRIPTION

PARCEL V:

ENCROACHMENT EASEMENTS, APPURTENANT TO THE UNIT, IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.

LOT 113, BLOCK 3721

OWNER'S STATEMENT

KNOW ALL MEN BY THESE PRESENTS

That the undersigned state that they are the only parties having record title interest in the land subdivided and shown enclosed within the distinctive boundary lines upon this map and the necessary consent to the preparation and recording of the map and subdivision map.

By: Mark A. Soper, LLC
By: Mark A. Soper, LLC
By: Mark A. Soper, LLC

Witness my hand and official seal.
Notary Public in and for said County of San Francisco, California, on this 7th day of November, 2000.

OWNER'S ACKNOWLEDGEMENT

State of California, County of San Francisco, I, Mark A. Soper, LLC, do hereby certify that the above described map and subdivision map were prepared and recorded in accordance with the provisions of Chapter 1 of Title 6 of Part 4 of Division 2 of the Civil Code of California, and that the consent of the owner of the land shown on the map and subdivision map has been obtained and that the map and subdivision map are correct and true to the original plan shown herein and that statement.

Witness my hand and official seal.
Notary Public in and for said County and State of California, on this 7th day of November, 2000.

TRUSTEE'S ACKNOWLEDGEMENT

State of California, County of San Francisco, I, Mark A. Soper, LLC, do hereby certify that the above described map and subdivision map were prepared and recorded in accordance with the provisions of Chapter 1 of Title 6 of Part 4 of Division 2 of the Civil Code of California, and that the consent of the owner of the land shown on the map and subdivision map has been obtained and that the map and subdivision map are correct and true to the original plan shown herein and that statement.

Witness my hand and official seal.
Notary Public in and for said County and State of California, on this 7th day of November, 2000.

TRUSTEE'S ACKNOWLEDGEMENT

State of California, County of San Francisco, I, Mark A. Soper, LLC, do hereby certify that the above described map and subdivision map were prepared and recorded in accordance with the provisions of Chapter 1 of Title 6 of Part 4 of Division 2 of the Civil Code of California, and that the consent of the owner of the land shown on the map and subdivision map has been obtained and that the map and subdivision map are correct and true to the original plan shown herein and that statement.

Witness my hand and official seal.
Notary Public in and for said County and State of California, on this 7th day of November, 2000.

ENGINEER'S STATEMENT

I hereby state that during the month of November, 1986, a survey was made for the subdivision map shown on this map and subdivision map. The survey was made in accordance with the provisions of the California Engineering Act of 1927, and the survey was made in accordance with the provisions of the California Engineering Act of 1927, and the survey was made in accordance with the provisions of the California Engineering Act of 1927.

Witness my hand and official seal.
Notary Public in and for said County and State of California, on this 7th day of November, 2000.

CITY ENGINEER'S STATEMENT

I hereby state that I have examined this map and subdivision map and that the subdivision map is in accordance with the provisions of the California Engineering Act of 1927, and that the subdivision map is in accordance with the provisions of the California Engineering Act of 1927.

Witness my hand and official seal.
Notary Public in and for said County and State of California, on this 7th day of November, 2000.

APPROVAL

This map is approved this 29th day of November, 2000.
By: John J. ...
Notary Public in and for said County of San Francisco, California, on this 29th day of November, 2000.

LOUIS ERNE, CITY ATTORNEY
Notary Public in and for said County of San Francisco, California, on this 29th day of November, 2000.

CLERK'S STATEMENT
I, John J. ..., Clerk of the Board of Supervisors of the City and County of San Francisco, State of California, do hereby state that the above described map and subdivision map were prepared and recorded in accordance with the provisions of Chapter 1 of Title 6 of Part 4 of Division 2 of the Civil Code of California, and that the consent of the owner of the land shown on the map and subdivision map has been obtained and that the map and subdivision map are correct and true to the original plan shown herein and that statement.

IN TESTIMONY WHEREOF, I have hereunto subscribed my hand and caused the seal of this office to be affixed.
Notary Public in and for said County of San Francisco, California, on this 29th day of November, 2000.

RECORDER'S STATEMENT

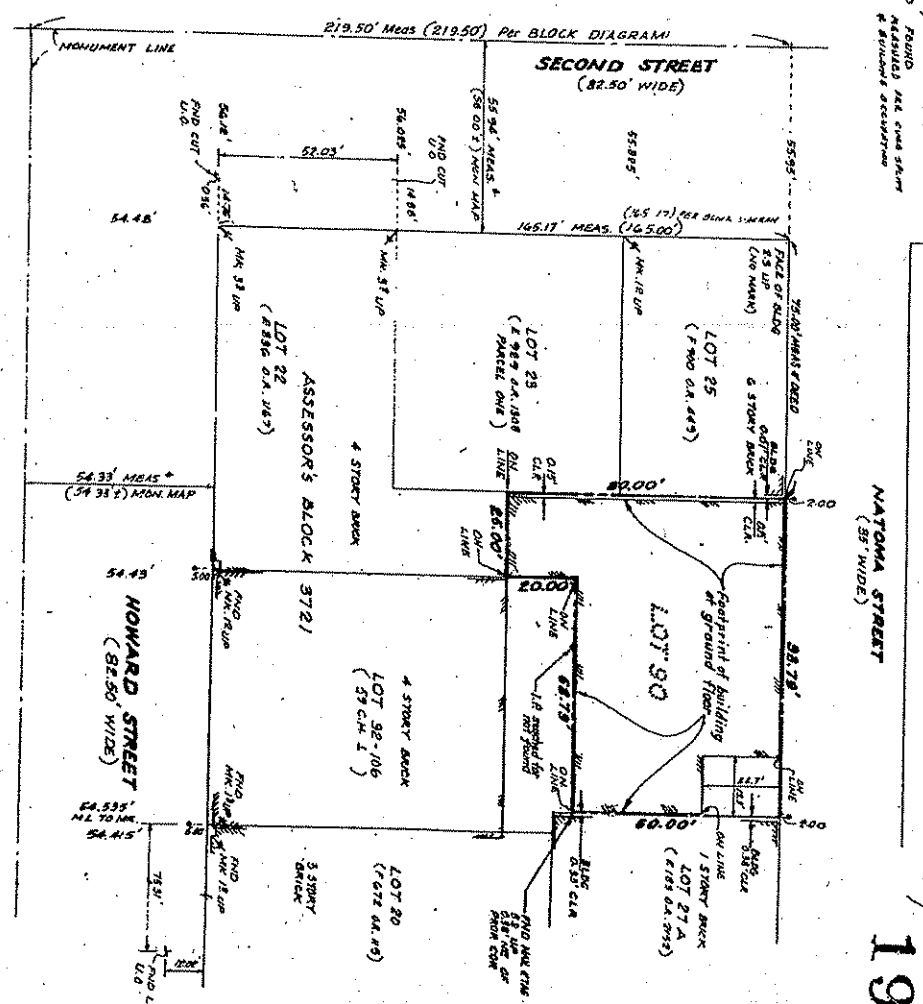
I filed this 29th day of November, 2000, at San Francisco, California, in the office of the Recorder of Deeds, County of San Francisco, California, the above described map and subdivision map, and the same is hereby certified to be a true and correct copy of the original map and subdivision map as recorded in the office of the Recorder of Deeds, County of San Francisco, California, on this 29th day of November, 2000.

Witness my hand and official seal.
Notary Public in and for said County and State of California, on this 29th day of November, 2000.

FILED
Not Returnable
B. NATOMA STREET
A LIVERMORE CONDOMINIUM PROJECT
BEING A SUBDIVISION OF LOT 90 AS SHOWN ON THE CIVIL MAP
FILED JUNE 21, 1988 IN BOOK 43 OF PARCEL MAPS AT PAGE 181
SAN FRANCISCO, CALIFORNIA

GI+A CIVIL ENGINEERS
SFP, 2000
SHEET 1 OF 5 SHEETS

1. NO HULL & TAG R.C.C. #1, #2 AT 41181
 2. PROPERTY LINE
 3. JUNCTION BOUND
 4. MARK ON BUILDING
 5. RECORD DATA
 6. FOUND
 7. MEASURED 1st TIME 5/1/11
 8. BUILDING'S CENTERLINE



19

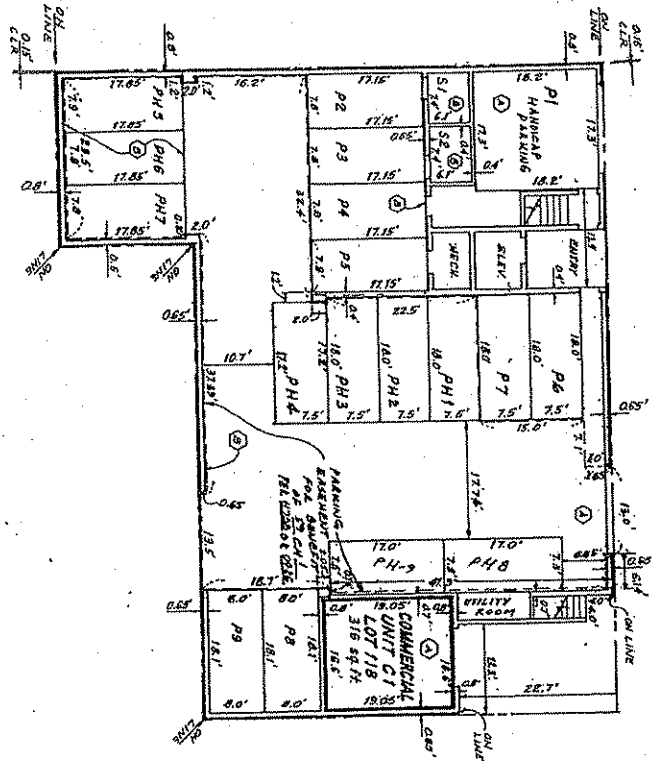
B.S. NATOMA MAP OF S.F. COUNTY
 BEING A SUBDIVISION OF LOT 82 AS SHOWN ON THAT CERTAIN PARCEL
 MAP FILED WITH THE COUNTY CLERK OF SAN FRANCISCO COUNTY, CALIFORNIA
 BEING 24, 1918 IN BOOK 43 OF PARCEL MAPS AT PAGE 191
 AND BEING 24, 1918 IN BOOK 43 OF PARCEL MAPS AT PAGE 191
 SAN FRANCISCO, CALIFORNIA

GL+A CIVIL ENGINEERS
 SCALE: 1" = 20'
 SHEET 2 OF 5 SHEETS

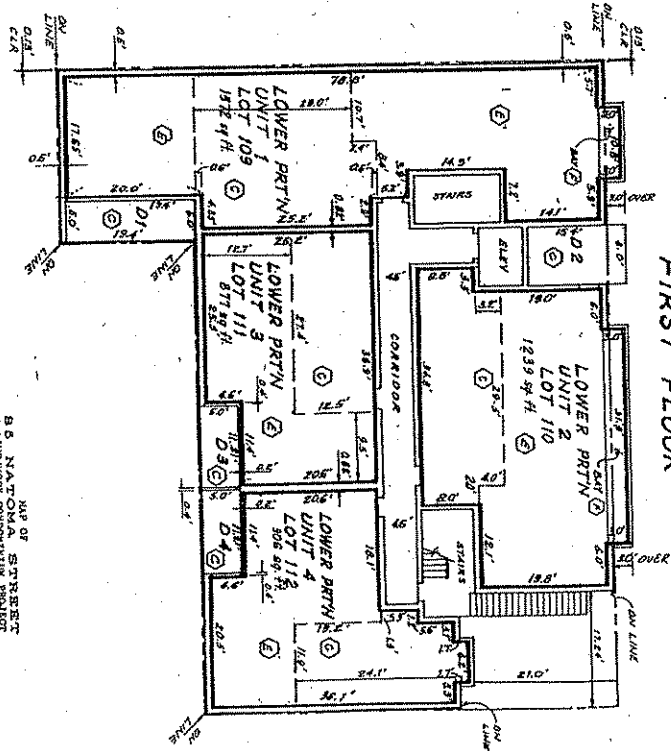
- GENERAL NOTES**
- The subdivision described herein is subject to the provisions of the Act in the subdivision of the City of San Francisco, Cal. 1911, and to the provisions of the Act in the subdivision of the City of San Francisco, Cal. 1912, which are hereby incorporated by reference herein.
 - All lots shall be surveyed and shown on the plan on sheets 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.



GROUND FLOOR
NATOMA STREET



FIRST FLOOR



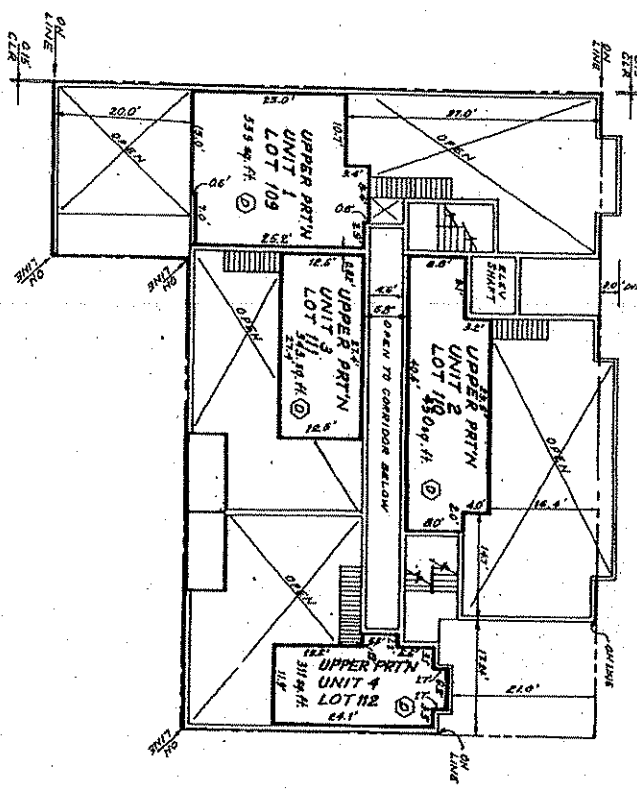
ELEVATION	
DESIG.	FLOOR / CEILING
A	12.2 / 217
B	12.2 / 217
C	23.0 / 300
D	23.0 / 300
E	25.0 / 300

20

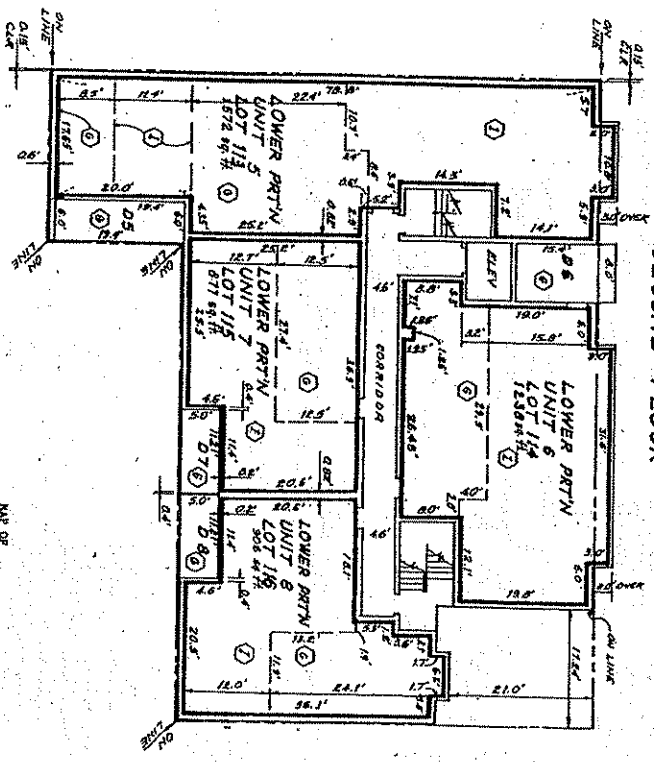
MAP OF
86 NATOMA STREET
A EVIDENCE COMPLAINT OF THAT CERTAIN PARCEL
BEING A SUBDIVISION OF THE PARCEL OF THE
MAP BEING A PORTION OF ASSASSON'S BLOCK 5111
SAN FRANCISCO, CALIFORNIA
GL+A CIVIL ENGINEERS
SCALE: 1" = 10'
SHEET 3 OF 5 SHEETS
SEP. 2000



FIRST FLOOR MEZZANINE NATOMA STREET



SECOND FLOOR



21

ELEVATION	
①	GEN. FLOOR CEILING
②	31.7
③	40.5
④	48.5
⑤	58.5

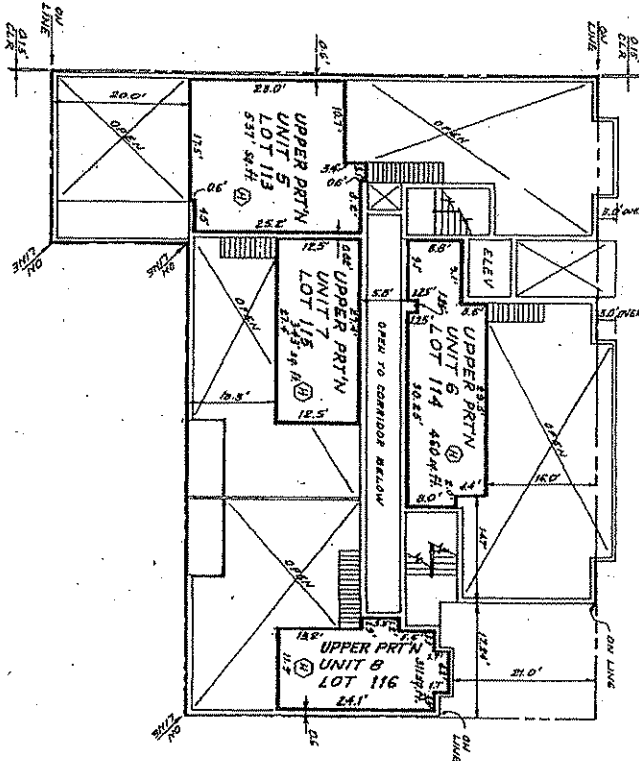
MAP OF
 85 NATOMA STREET
 A LIVE/WORK CONDOMINIUM PROJECT
 BEING A SUBDIVISION SHOWN ON PLAT CERTAIN PARCELS
 MAP FILED JUNE 24, 1981 IN BOOK 44, PAGE 181
 BEING A PORTION OF ASSessor'S BLOCK 1721
 SAN FRANCISCO, CALIFORNIA

GL+A CIVIL ENGINEERS

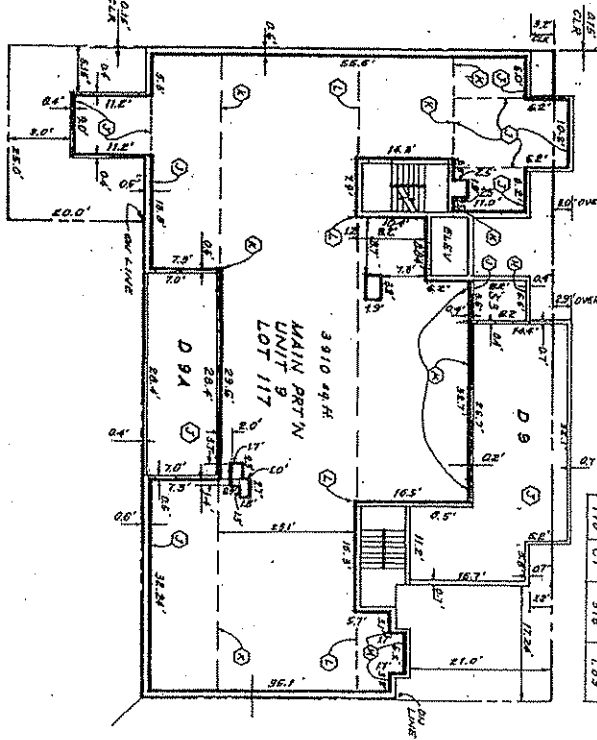
SEP. 2000
 SHEET 4 OF 5 SHEETS
 SCALE: 1" = 10'



SECOND FLOOR MEZZANINE
NATOMA STREET



THIRD FLOOR
THIRD STREET



22

ELEVATION	
DESIG.	FLOOR / CEILING
(1)	48.6 / 56.9
(2)	58.0 / 66.7
(3)	58.0 / 69.5
(4)	58.0 / 73.0
(5)	58.0 / 71.5
(6)	58.0 / 58.0

LOT NO.	UNIT NO.	AREA SQ. FT.	PERCENT CHANGED
108	1	2111	12.84
110	2	1828	10.11
111	3	1226	7.30
112	4	1217	7.23
113	5	2108	12.62
114	6	1698	10.18
115	7	1220	7.30
116	8	1817	7.89
117	9	3910	23.40
118	C1	316	1.89

U.S. NATIONAL SURVEY
 A LIVE/WORK CONDOMINIUM PROJECT
 MAP 5118 BEING A SUBDIVISION OF LOT 99 AS SHOWN ON THAT GENERAL PLAN
 MAP 5118 BEING A SUBDIVISION OF LOT 99 AS SHOWN ON THAT GENERAL PLAN
 SAN FRANCISCO, CALIFORNIA

GL+A CIVIL ENGINEERS
 SEP. 2000
 SHEET 9 OF 5 SHEETS
 SCALE: 1" = 10'

85 Natoma St. (3721/109-118)

Embarcadero

Steuart St

Spear St

Main St

Beale St

Fremont St

First St

Essex St

Second St

DOWNTOWN RAIL EXTENSION

Hawthorne St

Mission St

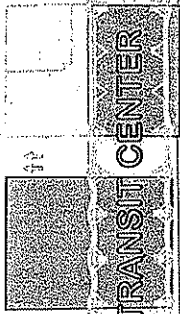
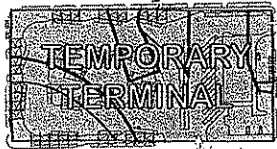
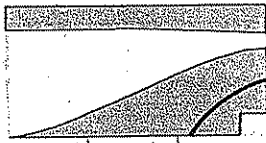
Howard St

Folsom St

Third St

Harrison St

Bryant St



NEW BUS RAMP

Subject Property

85 Natoma (3721/109-118)

580 Howard (3721/092-106)

558 Howard (3721/030)

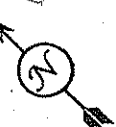
564 Howard (3721/019)

60 Tehama (3726/088)

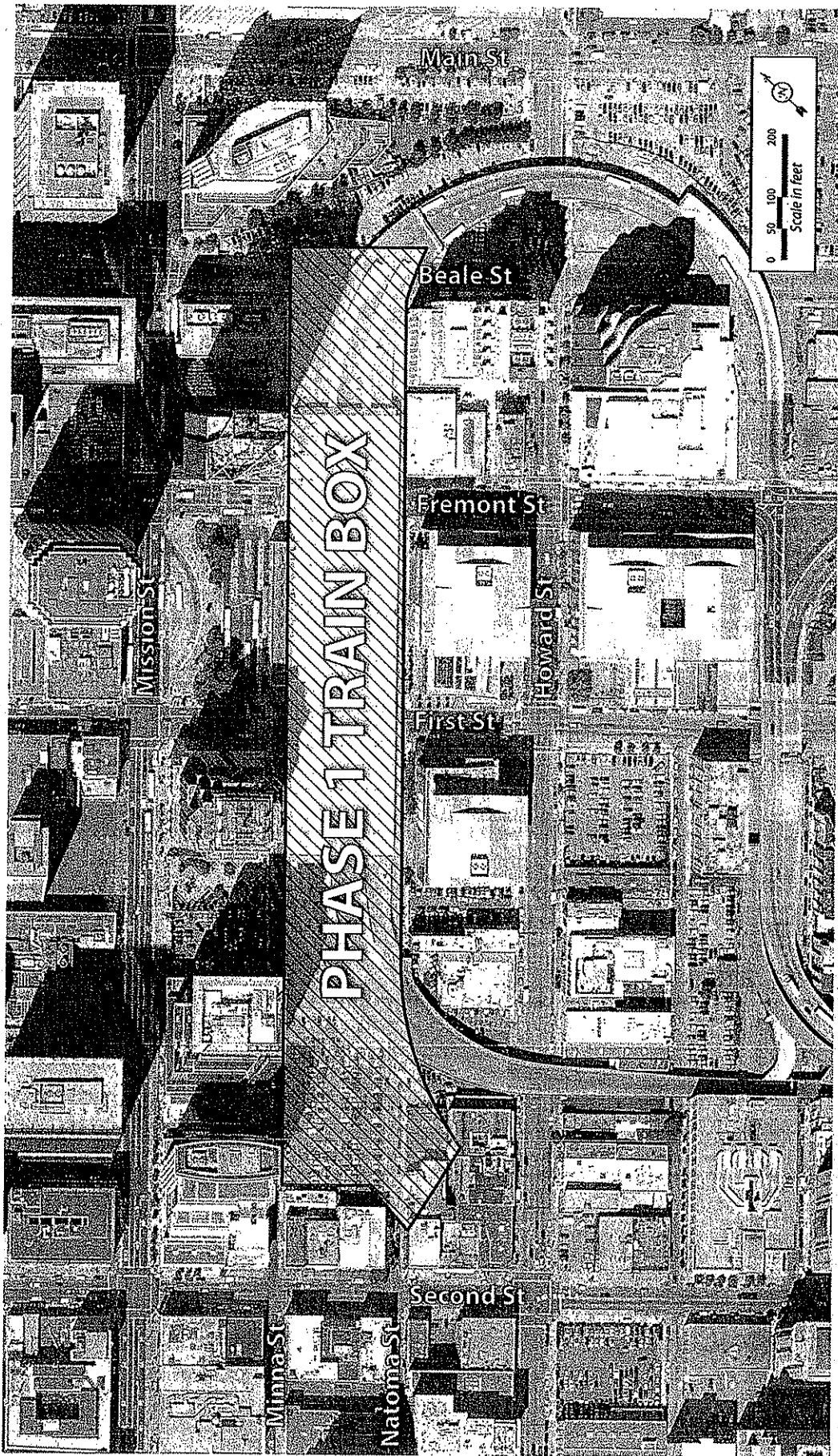
Legend

- Acquired
- To be Acquired
- Partial Acquisitions (pkg easements)

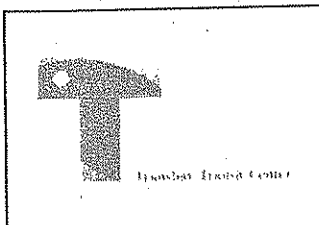
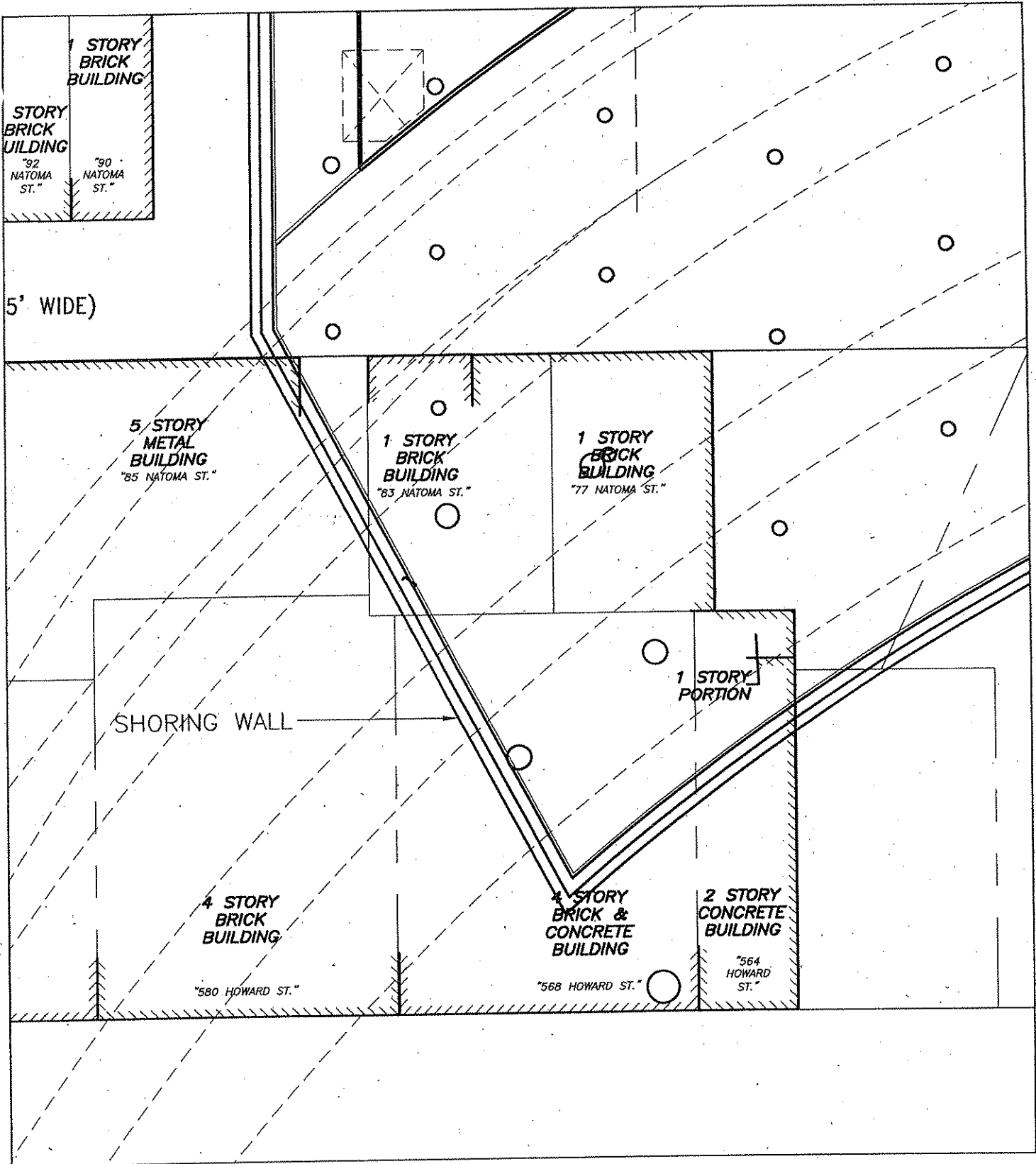
Scale in feet
0 250 500



I-80



Phase 1 Train Box



adamson
ASSOCIATES, INC.

DRAWING TITLE:
SHORING WALL LAYOUT
ARCHITECTURAL LAYOUT

SCALE: 1/32" = 1'-0"
PROJECT NO.

DATE: 09/17/10
0803-00

SKA-1045

DRAWN BY: GR
CHECKED BY: PM

CORRESPONDENCE

LAW OFFICES
TURNER & TURNER
A PROFESSIONAL CORPORATION

WILLIAM J. TURNER
ANDREW J. TURNER

September 19, 2006

411 BOREL AVENUE, SUITE 230
SAN MATEO, CA 94402-3512
TELEPHONE (650) 573-7677 FAX (650) 573-1150
www.turner-turner.com
EMAIL info@turner-turner.com

Andrew W. Schwartz, Esq.
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102

Re: Terri Brown (85 Natoma, Suite No. 5) - Transbay Terminal/Caltrain Extension Project

Dear Mr. Schwartz:

Our firm represents Terri Brown who owns Suite No. 5 located at 85 Natoma Street, San Francisco, Ca. (Property). We are informed you represent Transbay Joint Powers Authority (TJPA) and that you are authorized to receive this letter on its behalf. The purpose of this letter is to summarize the adverse impact of the Transbay Terminal/Caltrain Extension Project (Project) on Ms. Brown and to assist your client in responding to her request for immediate acquisition of the Property.

Ms. Brown listed the Property for sale in December 2004. Immediately she had an interested buyer. This buyer's interest ceased when he learned about the Project and TJPA's intent to acquire the Property. This was the first Ms. Brown had heard that TJPA intended to acquire it. Soon after, Ms. Brown began her own investigation and learned that the Property was in fact designated for Acquisition & Demolition. (TJPA EIS/EIR). Ms. Brown quickly realized she could not sell the Property because of this threat of TJPA's proposed condemnation and took it off the market.

Ms. Brown first spoke with TJPA's representative, Harry Quinn, regarding its plans to acquire the Property in March 2005. At that time Mr. Quinn represented that TJPA intended to acquire the Property and that the acquisition process, beginning with appraisals, would commence in the fall of 2005.

Between April 2005 and August 2006 Ms. Brown had numerous additional conversations with Mr. Quinn regarding the Project and the timing relating to TJPA's proposed acquisition of the Property.

As a result of the impending acquisition, Ms. Brown's tenant, Echopass Corp. gave notice in June 2005 that it did not intend to renew its lease and vacated the Property in September 2005.

In October 2005, Ms. Brown, a single mother, was living with her 12 year old daughter in their home located in Bernal Heights. Since she was no longer receiving the \$6,000 per month rental

income from leasing the Property, it became readily apparent Ms. Brown could not afford to carry both properties. She also understood that since TJPA would soon be pursuing eminent domain to acquire the Property, it would not be leasable or saleable at its fair rental or market value. Faced with this unfortunate situation, Ms. Brown made the only choice she had, sell her Bernal Heights home and move with her daughter temporarily to the Property until TJPA acquired it.

In November 2005, Ms. Brown listed her Bernal Heights home for sale and in January 2006, she sold it and moved with her daughter to the Property.

Within a couple months of moving into the Property with her daughter, Ms. Brown learned from Mr. Quinn that there would be a delay in TJPA's acquisition of the Property. This put Ms. Brown in a horrible position since she had planned to and could only afford to live in the Property for a few months. In April 2006, she learned that the tenant living below the Property was interested in leasing it. This tenant was aware of the Project and was willing to enter a lease for the Property for \$5,800 per month. This rate is well below current market and does not even cover Ms. Brown's costs to carry the Property. In May 2006, Ms. Brown vacated the Property and the tenant moved in.

Between November 2005 and June 2006 Ms. Brown was given numerous schedules and representations by Mr. Quinn that TJPA would soon be appraising the Property and making its offer of compensation for acquisition of it. As recent as late June 2006 Mr. Quinn advised Ms. Brown that two appraisers had been hired and that they would be contacting her in early August 2006 to arrange for appraisals.

It was not until August 2006 that Ms. Brown learned in a conversation with you that the Property may not be acquired by TJPA until 2012.

After vacating the Property in May 2006, Ms. Brown placed her belongings in storage and has been living with friends. Ms. Brown's daughter, Madison, has been living full time with her other mother. Until this school year, Madison attended Adda Clevenger Junior Preparatory School in San Francisco. Due to Ms. Brown's financial constraints Madison no longer attends that school. She now attends public school in Palo Alto where her other mother is a teacher. Ms. Brown wants her life back which obviously includes having a home where she can be with her daughter.

Ms. Brown is severely strained financially by her attempt to carry the Property. By continuing to hold it, she daily incurs substantial economic and personal loss. She cannot sell it at its fair

Andrew W. Schwartz, Esq.

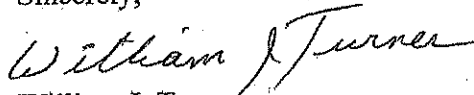
Page 3

September 19, 2006

market value under the continuing cloud of TJPA's plans to acquire it by eminent domain. In short, Ms. Brown has been placed in an intolerable situation that can be alleviated only by prompt acquisition of the Property by TJPA at its fair market value. That fair market value must of course be established by an appraisal which ignores the adverse impacts of the Project on that value.

In view of her obvious continuing hardship, Ms. Brown requests that TJPA immediately complete the process of acquisition of her Property.

Sincerely,


William J. Turner

WJT:n

cc: Terri Brown

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.
MARK I. WEINBERGER (1948-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

KEVIN P. BUNDY
ANDREA RUIZ-ESQUIDE
SHERIDAN J. PAUKER
ELENA K. SAXONHOUSE
MICHELLE WILDE ANDERSON

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

DAVID NAWI
ANDREW W. SCHWARTZ
OF COUNSEL

November 14, 2006

William J. Turner
Turner & Turner
411 Borel Avenue, Suite 230
San Mateo, CA 94402-3512

Re: 85 Natoma Street #5

Dear Mr. Turner:

As you know, this firm represents the Transbay Joint Powers Authority ("TJPA") on matters relating to the Transbay Transit Center Program ("Program"). We are writing in response to your letter dated September 19, 2006 requesting that the TJPA acquire 85 Natoma Street #5 at least several years in advance of the planned acquisition for the Program based on the parcel owner Terri Brown's alleged hardship.

As we have informed you, the public agencies that provide 100 percent of the funding to the TJPA for the Program have limited funds available for property acquisition. Accordingly, to justify an extraordinary request for funds for purchase of properties many years in advance of the Program's need for the property, the TJPA must be presented with clear evidence of special circumstances that differentiate the advance purchase applicant from the owners of other properties planned for acquisition in the future.

At its regular meeting on October 27, 2006, the TJPA Staff presented your September 19 letter to the Board in closed session. Following the closed session, it has been determined that the TJPA will consider your client's request for an advance purchase; provided, however, that your client provide more information supporting her claim of hardship.

The guidelines provided by the California Department of Transportation's ("Caltrans") Right of Way Manual, sections 5.03.00.00 et seq., enclosed for your reference, state that requests for advanced acquisition must satisfy four minimum criteria:

- (1) Owner demonstrates need to dispose of property.
Caltrans recognizes the following circumstances may justify an owner's need to dispose of her property: (a) medical (e.g., advanced age, ambulatory defect, major disability or a doctor's recommendation); (b) financial (e.g., loss of employment, retirement, or pending mortgage foreclosure); (c) change of work location; (d) non-decent, safe, and sanitary housing; or (e) monetary loss.
- (2) Owner is unable to dispose of property at fair market value because of transportation facility plans.
The TJPA does not need to acquire properties for Phase II of the Program, including your client's property, for at least five years. Thus, in order to satisfy this criterion, a property owner would need to demonstrate an inability to sell or rent the property during this five year period at fair market value/rent because of the Program.
- (3) Owner cannot reasonably alleviate the hardship in the absence of the state's purchase.
- (4) State's purchase will either partially or totally alleviate the hardship.

In order to evaluate your client's claim of hardship and prioritize requests for advanced acquisition, the TJPA needs additional information demonstrating your client's satisfaction of the four criteria described above, and otherwise substantiating your client's alleged hardship. In particular, please provide us with pertinent information and supporting documentation, such as:

- Financial information supporting any claimed need to dispose of the property based on financial hardship (sample Caltrans financial statement indicating the required level of detail enclosed for your reference);
- Doctor's statement or equivalent supporting any claimed need to dispose of the property based on medical need;
- Verification from employer or equivalent supporting any claimed need to dispose of the property based on change of employment location;
- Copies of real estate listings or other, similar documentation indicating your client's effort to rent or sell the parcel;
- Letter(s) from a real estate broker or other, similar professional supporting any claimed inability to rent or sell the parcel at fair market value over the next five years;
- Evidence supporting the claimed fair market rent and/or sale value of the parcel.

William J. Turner
November 14, 2006
Page 3

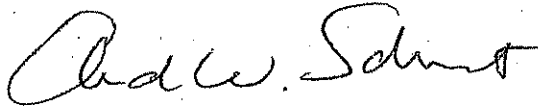
- Evidence supporting any claim of inability to sell or rent the property at fair market value/rent.

This information is necessary for the TJPA's investigation and it will be treated in a confidential manner. At the conclusion of the TJPA's investigation, any confidential material will be returned to you.

Please be advised that to be eligible for any relocation benefits under existing regulations, the claimant must occupy the required property at the time the acquiring agency makes the first offer to buy the property. To be considered a first offer for this purpose, the offer must include the dollar amount offered for the purchase, as distinguished from a more general discussion of the TJPA's need to acquire the property.

If you have any questions or need assistance regarding the application, please contact me.

Very truly yours,
SHUTE, MIHALY & WEINBERGER LLP



Andrew W. Schwartz

Enclosures

cc: Maria Ayerdi

P:\TJPA\ROW\85 Natoma\#5\dk001(hardship request).doc

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
PERSONAL FINANCIAL STATEMENT
 (Form #)

EXHIBIT
 5-EX-10
 PAGE 1 OF 3

PERSONAL INFORMATION NOTICE

Pursuant to the Federal Privacy Act (P.L. 93-579) and the Information Practices Act of 1977 (Civil Code Sections 1798, et seq.), notice is hereby given for the request of personal information by this form. The requested personal information is voluntary. The principal purpose of the voluntary information is to facilitate the processing of this form. The failure to provide all or any part of the requested information may delay processing of this form. No disclosure of personal information will be made unless permissible under Article 6, Section 1798.24 of the IPA of 1977. Each individual has the right upon request and proper identification, to inspect all personal information in any record maintained on the individual by an identifying particular. Direct any inquiries on information maintenance to your IPA Office.

As of _____, 19__

Name _____ Age _____ Employed by _____ Years _____

Address _____ Occupation _____ Name of Spouse _____ Age _____

TO: Department of Transportation
 California

The undersigned, for the purpose of obtaining consideration for advance acquisition of my transportation-affected property under the hardship program, submits the following information:

ASSETS	DOLLARS	LIABILITIES (TOTAL AMOUNT DUE)	DOLLARS
CHECKING ACCOUNTS		ACCOUNTS PAYABLE (INSTALLMENT PURCHASES)	
1. _____		1. _____	
2. _____		2. _____	
3. _____		3. _____	
SAVINGS ACCOUNTS (SCHEDULE A) _____		4. _____	
STOCKS AND BONDS (SCHEDULE B) _____		NOTES PAYABLE _____	
NOTES RECEIVABLE-GOOD _____		1. _____	
CASH SURRENDER VALUE LIFE INSURANCE _____		2. _____	
AUTOS _____		TAXES PAYABLE _____	
(Year-Make) (Year-Make)		CONTRACTS PAYABLE _____	
REAL ESTATE (SCHEDULE C) _____		(To Whom)	
OTHER ASSETS (DESCRIBE)		REAL ESTATE INDEBTEDNESS (SCHEDULE C) _____	
1. _____		OTHER LIABILITIES (DESCRIBE)	
2. _____		1. _____	
3. _____		2. _____	
4. _____		3. _____	
5. _____		4. _____	
TOTAL ASSETS		TOTAL LIABILITIES	
LESS TOTAL LIABILITIES			
NET WORTH			

PERSONAL FINANCIAL STATEMENT (Cont.)
(Form #)

EXHIBIT
5-EX-10
PAGE 2 OF 3

ASSETS	DOLLARS	ANNUAL EXPENDITURES (EXCLUDING ORDINARY LIVING EXPENSES)	DOLLARS
SALARY _____		REAL ESTATE PAYMENT(S) _____	
SALARY (SPOUSE) _____		RENT _____	
DIVIDEND INCOME _____		INCOME TAXES _____	
GROSS RENTAL INCOME _____		INSURANCE PREMIUMS _____	
OTHER (DESCRIBE) _____		PROPERTY TAXES _____	
1. _____		OTHER (DESCRIBE—INCLUDE INSTALLMENT PAYMENTS OTHER THAN REAL ESTATE)	
2. _____		1. _____	
3. _____		2. _____	
4. _____		3. _____	
5. _____		4. _____	
6. _____		5. _____	
7. _____			
TOTAL INCOME		TOTAL EXPENDITURES	
LESS TOTAL EXPENDITURES			
NET CASH INCOME			
(EXCLUSIVE OF ORDINARY LIVING EXPENSES)			

* If insurance premiums and property taxes are included in real estate payment do not duplicate here.

PERSONAL FINANCIAL STATEMENT (Cont.)

(Form #)

EXHIBIT

5-EX-10

PAGE 3 OF 3

SCHEDULE A-SAVINGS

Savings Institution and Address	AMOUNT	
1. _____		
2. _____		
3. _____		
4. _____		
5. _____		
TOTAL (ENTER ON FRONT PAGE)	Description	

SCHEDULE B-STOCKS AND BONDS

Number of Shares Amount of Bonds	Description	Current Value
1. _____		\$ _____
2. _____		
3. _____		
4. _____		
TOTAL (ENTER ON FRONT PAGE)		

SCHEDULE C-REAL ESTATE

Location and Type of Improvement	Title	Estimated Value	Amount Owed	To Whom Payable
1. _____				
2. _____				
3. _____				
4. _____				
TOTAL (ENTER ON FRONT PAGE)				

If additional space is needed for Schedule A, Schedule B, and/or Schedule C, list on separate sheet and attach.

The undersigned certifies that the above statement (or in lieu thereof, the attached statement, as the case may be) and supporting schedules, be they printed and written, give a full, true, and correct statement of the financial condition of the undersigned as of the date indicated.

Signature _____ Date _____

Signature _____ Date _____

5.03.00.00 - HARDSHIP

5.03.01.00 General

Hardship is defined as a situation where unusual personal circumstances of an owner are aggravated by a proposed transportation facility and cannot be solved by the owner without acquisition by the State. There are two types of hardships:

- Those which occur in advance of the regular right of way acquisition process.
- Those which occur when the requirements for commencing the regular right of way acquisition process have been met, but funding and activity on the project have been deferred.

The Districts are authorized to approve both types of parcels for hardship acquisition.

Departmental practice is to investigate to determine need and to appraise and acquire the property with minimal delay. In some instances this may require extraordinary efforts such as obtaining independent staff appraisals. Owners of hardship parcels should receive full consideration and service consistent with normal acquisition procedures, including appropriate relocation assistance and sufficient time to consider State's offer. The District shall make the first written offer to the applicant within 90 days from the date of the DDD-R/W's approval letter or the Federal authorization if requested.

5.03.02.00 RAP Eligibility

The District should notify the applicant in writing of the requirements for RAP eligibility when the hardship investigation commences. If the hardship application is not approved, the applicant should be informed of benefits that will be lost if applicant vacates prior to regular acquisition (first written offer). (See Exhibit 5-EX-04.) At the same time, it is important to ensure that double relocation payments are not made and Federal reimbursement is not lost. In line with this intent, if an application is approved and the applicant is forced to move prior to the time a written offer can be presented, the District must mail a Notice of Intent to Acquire to

preserve relocation eligibility. (See Forms RW 06-11, 13, and 14.) This letter should not be mailed until after approval of the hardship acquisition and should not be issued unless initiation of negotiations will commence less than 90 days subsequent to said Notice. This action will preserve the relocation eligibility of applicants and will avoid the possibility of creating more than one eligible relocatee.

5.03.03.00 Cessation of Hardship

If it determines that a hardship no longer exists, the Acquisition Branch must immediately withdraw any outstanding offer to purchase and advise the owner of the right to appeal the case to the District Hardship Appeals Board. (See Sections 5.03.06.00 through 5.03.06.03.)

5.03.04.00 Guidelines for Processing Requests

5.03.04.01 Hardship Criteria

The following minimal requirements must be met and documented if a hardship request is approved:

- Owner demonstrates need to dispose of property.
- Owner is unable to dispose of property at fair market value because of transportation facility plans.
- Owner cannot reasonably alleviate the hardship in the absence of the State's purchase.
- State's purchase will either partially or totally alleviate the hardship.

Inconveniences experienced by all or most owners along a route are not satisfactory reasons for hardship purchase (for example, an owner's simple desire to move to another area).

5.03.04.02 Need to Dispose of Property

Some of the reasons that may require an owner to sell immediately and that can result in a

SUBMITTAL ITEMS - HARDSHIP APPLICATION		
Item	Explanation	Circumstance
Written Request or Statement	Outlining the reasons why owner(s) must sell the property at this time.	
Application	Completed and signed by owner(s). See Exhibit 5-EX-3.	
Financial Statement	See Exhibit 5-EX-10 or 5-EX-11	Not required (at the District's discretion) if the hardship request is due to medical problems, job transfer, advanced age, or retirement move.
Market Substantiation	Evidence of reasonable attempt to market the property: <ul style="list-style-type: none"> • Copy of valid listing. • Statement from a broker citing reasons the property has not or cannot be sold. • Evidence or information obtained by the District. 	If there have been other unsuccessful attempts to sell the property on the project at fair market value, listing the property is not required. The District should state in its recommendation that the property cannot be sold at fair market value because of the proposed project.
Income Tax Authorization	Signed authorization to obtain a copy of Federal and State income tax returns (Exhibits 5-EX-5 and 5-EX-6). The District secures copies of the latest tax returns if additional documentation is needed.	Optional if the District is satisfied with all the financial information submitted by applicant.
Doctor's Statement or Equivalent		Required if hardship request is based on a medical reason.
Verification from Employer		Required if hardship request is based on a transfer of employment.
Index Map and Plat Map	Showing affected parcel in relation to project right of way. Maps should be 11"x17" if possible.	
FNM-76	Copy of the request for Federal participation if applicable.	
Hazardous Waste Statement	Describing potential of hazardous waste at the property, if any.	
District Approval Letter		
Categorical Exemption/ Exclusion Determination	And required statement.	
Review and Written Approval of Regional Legal Office.	Determines if acquisition would influence environmental assessment of proposed project.	Required if project is not environmentally cleared.

The District is responsible for seeing that the information submitted is accurate and appropriately documents the request; e.g., a doctor's letter or affidavit from employer.

5.03.04.04 Documentation of Files

For each application, the District maintains a file that becomes part of the parcel file upon commencement of acquisition. A parcel diary is initiated when application is made. Care should be taken to ensure that reasons for recommending approval or denial of application are clearly outlined in the diary or file. The date of notification of requirements for RAP eligibility shall be entered following the initial contact with the applicant. The application and other items submitted in support of the hardship are to be retained in the file. (See Section 5.03.04.03.)

The DDD-R/W is responsible for approving or denying each application. Statements of the District's action are made by a signed entry in the parcel diary. The following should be explained and included as part of the entry:

- Basis of decision to accept or deny the application.
- Fact that file has been reviewed prior to approval or denial and that reviewer is familiar with the contents of the file.

5.03.04.05 Notification of Approval or Denial

The Department considers hardship requests to be sensitive since the outcome of a request (approval/denial) could have a significant effect on the applicant. The District must ensure that proper notification is given as follows:

- **Request Approved** - the District notifies the applicant promptly by telephone and makes an entry in the diary.
- **Request Denied** - the District sends a letter to the applicant.

When FHWA approval is required, the telephone notification is made after the FHWA has

authorized an FNM-76 for the subject parcel. The responsibility for implementing this procedure rests with the DDD-R/W in each District.

5.03.04.06 Negotiation Alternatives

If negotiations are unsuccessful, the District should either:

- Consider the merits of an Administrative Settlement.
- Explain the condemnation process to the owner. The Agent should inform the owner that if they wish the State to condemn the property, they should send a letter to that effect. The State will then proceed with an action in eminent domain. If owner wishes, the State could prepare such a letter on owner's behalf (see Exhibit 5-EX-7). A copy of the letter shall be submitted with the District's request for the CTC resolution.
- Withdraw the offer in writing. It is important that all offers of relocation assistance or payments to owners and tenants be formally withdrawn in writing no later than 10 days from the date of the determination not to acquire (see RAP Chapter for procedures to follow in withdrawing RAP offers).

5.03.04.07 Vacation of Property

The contract will require grantors to vacate the property within 120 days from the date of the close of escrow, providing replacement housing is available. See Section 8.09.15.00 of the Acquisition Chapter for appropriate clauses and commentary on application.

5.03.05.00 Disposition of Financial Information

The District shall maintain confidentiality of the financial statement and income tax returns and permit only authorized personnel to have access to this information. Authorized personnel are those who process the application and those who make the final decision to approve or disapprove the application. While processing the application, the Agent shall store this information

JAN 12, 2007

TO: ANDREW SCHWARTZ 415-552-5816

FROM: TERRI BROWN

RE: 85 NATOMA #5

PAGE INCLUDING COVER: 4

JAN. 11, 2007

MR. ANDREW SCHWARTZ
396 HAGES ST.
S.F. CA 94102
415-552-5816 (FAX)

RE: 85 NADOMA ST #5: EIR AND TSPA RESTRICTIONS

DEAR MR. SCHWARTZ:

I SINCE HAVE NOT RECEIVED THE TSPA EIR
~~DETAILS RELATED SPECIFICALLY TO MY HOME AT~~
~~85 NADOMA ST #5.~~ AS STATED, I NEED ACCESS
TO ALL ENVIRONMENTAL IMPACT AND MITIGATING
INITIATIVES AS RELATED TO PHASE 4 CONSTRUCTION
OF THE TRANSBAY TERMINAL. THIS INFORMATION
IS URGENT AS MY CURRENT TENANT WILL BE
VACATING AT THE END OF HIS LEASE (MAY 12, 2007)
I AND MUST IMMEDIATELY FIND A REPLACEMENT
TENANT. I AM REQUIRED TO DISCLOSE
DEVELOPMENT PLANS, SCHEDULES AND ENVIRONMENTAL
IMPACT TO PROSPECTIVE TENANTS. I AM
ENGAGING A LEASING AGENT THIS MONTH AND
I NEED TO GET CITY'S DISCLOSURES ASAP.

ADDITIONALLY, I'VE ATTACHED A COPY OF MY

TD

PRELIMINARY THE REPORT, PAGE 7. THERE ARE NOW TWO RECORDED DOCUMENTS RELATED TO THE TIPA PROJECT. AS YOU KNOW, I ~~WAS NOT NOTIFIED OF THESE RECORDS~~ NUMBER 14 WAS RECORDED BY THE SF BOARD OF SUP. ON AUG 4, 2006 AND APPEARS TO BE RESTRICTIONS RELATED TO THE TRANSBAY PROJECT. CAN YOU PLEASE ~~PROVIDE THE DOCUMENT # 2006-1229839~~ ~~BOOK 3197 PAGE 0576 AND EXPLAIN ITS IMPACT ON MY PROPERTY.~~

AS YOU KNOW, I CAN NOT AFFORD LEGAL REPRESENTATION AND THUS, I'M AT A HUGE DISADVANTAGE IN TRYING TO DEAL WITH THE CITY AND ITS VAST RESOURCES. I AM FULLY TOGETHER ALL THE DOCUMENTS REQUESTED ON NOV 14 2006 TO DEMONSTRATE HARDSHIP. YOU WILL RECEIVE MY SUBMISSION BY JAN 28, 2007. YOU WILL SEE THAT I AM RUNNING OUT OF TIME AND BECOMING DESPERATE TO ~~CHANGE MY~~ RESOLVE THE DISPOSITION OF MY PROPERTY WHICH I'VE BEEN TRYING TO DO ~~FOR~~ FOR TWO YEARS.

~~PLEASE SEND ALL REQUESTED DOCUMENTS TO:~~

TERRE BROWN
PO BOX 1187
HERNDON, VA 20148

Regards, Terri Brown

(2)

ITEMS: (continued)

Title No. 06-36502507-RV
Locate No. CACTI7738-7738-2365-0036502507

- 13.** The fact that said land is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the redevelopment plan) as disclosed by a document.

Redevelopment:

Agency:

San Francisco Redevelopment Agency (Redevelopment Plan for The Transbay Redevelopment Project Area)

Recorded:

August 4, 2006, Instrument No. 2006-1224836-00, Book J-197, Page 0575, of Official Records

- 14.** Matters contained in that certain document entitled "Transbay Redevelopment Project Area Declaration of Restrictions" dated July 28, 2006, executed by Board of Supervisors of the City and County of San Francisco recorded August 4, 2006, Instrument No. 2006-1224839-00, Book J-197, Page 0578, of Official Records.

Reference is hereby made to said document for full particulars.

- 15.** We find various Liens and Judgments, that are of record against persons with similar or the same name as that of our vestee(s) shown herein. In order to complete this report, this Company requires a **Statement of Information** to be provided for the following vestee(s), which may allow and assist elimination of some or all of said Liens and Judgments. After review of the requested Statement(s) of Information, the Company reserves the right to add additional items or make further requirements prior to the issuance of any Policy of Title Insurance.

Vestee(s):

Terri L. Brown

END OF ITEMS

- Note 1.** The name(s) of the buyer(s) furnished with this application for Title Insurance is/are:

(no names furnished)

If these names are incorrect, incomplete or misspelled, please notify the Company.

- Note 2.** None of the items shown in this report will cause the Company to decline to attach CLTA Endorsement Form 100 to an Extended Coverage Loan Policy, when issued.

- Note 3.** The Company is not aware of any matters which would cause it to decline to attach the CLTA Endorsement Form 116.2 indicating that the land includes a condominium designated as Unit No. 5 and known as 85 Naboma Street, #5, San Francisco, CA to an Extended Coverage Policy.

- Note 4.** There are NO deeds affecting said land, recorded within twenty-four (24) months of the date of this report.

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1948-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

KEVIN P. BUNDY
ANDREA RUIZ-ESQUIDE
SHERIDAN J. PAUKER
ELENA K. SAXONHOUSE
MICHELLE WILDE ANDERSON
DOUG A. OBEGI

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

DAVID NAWI
OF COUNSEL

February 8, 2007

Terri Brown
P.O. Box 1181
Healdsburg, CA 95448

Re: 85 Natoma Street #5

Dear Ms. Brown:

This letter is in response to your letter dated January 12, 2007 and faxed to our office on January 14, 2007 regarding your condominium at 85 Natoma Street #5 and the Transbay Transit Center Program ("the Project"). We respond below to each of the points in your letter.

1. Impacts to Your Parcel Described in the Environmental Impact Report.

You requested that the TJPA provide you with information regarding environmental impacts and mitigation measures described in the Environmental Impact Report (EIR) for Phase I of the Project. In particular, you requested information regarding any impacts or mitigation measures relating to your parcel.

As you will recall, in a telephone call to me around December 12, 2006, you indicated that you were planning to list your condominium for sale with a real estate broker, and you requested information regarding any anticipated impacts of construction and/or operation of the Project on your condominium. I explained that any such impacts are described in detail in the EIR for the Project. I also explained that the ordinances of the City and County of San Francisco's (City) relating to the regulation of construction activities would be applicable to the Project. On December 18, 2006, in a telephone call to me you indicated that you were no longer planning to list your parcel with a sales broker, and thus, you had no need for the information that you previously had requested. On January 12, 2007, in a telephone call to me you indicated that you are now planning

Terri Brown
February 8, 2007
Page 2

to list your parcel for rent with a broker, and thus renewed your request for information about the Project's impacts.

As you know, the EIR details the environmental impacts of the Project. The draft EIR (DEIR), the final EIR (FEIR), and the mitigation program describing all of the mitigation measures applicable to the Project are available on the TJPA's website: www.transbaycenter.org (select the link to "Documents," then select the link to "Environmental"). In addition, a printed copy of the EIR is available for review in the TJPA offices at 201 Mission Street, Suite 1960 in San Francisco.

The Project's environmental impacts and mitigation measures are analyzed in much too great detail to repeat verbatim here. We direct your attention, however, to FEIR section 5.20 (pages 5-158 to 5-183), which describes the Project construction staging and methods, and FEIR section 5.321 (pages 5-184 to 5-225), which describes the Project's construction impacts. We also point you to the following pages as examples of discussion in the EIR of the Project's impacts on your particular parcel:

- DEIR section 5.2 (pages 5-19 to 5-30) describe the Project's displacement and relocation impacts. Your condominium is described, among other places, on page 5-25.
- FEIR page 5-160 describes temporary street closures during construction, including specific discussion of temporary closures on Natoma Street between 1st and 2nd Streets, which is near your condominium.
- FEIR page 5-163 describes the construction activities associated with tunnel construction, including construction on 2nd Street near your condominium.
- FEIR page 5-169 describes the Project's soil excavation methods based on soil type. In particular, the FEIR explains the construction methods for stiff clays and/or dense sands, which typically underlay property in your area.
- FEIR page 5-180 describes the proposed "construction staging" or contractor work areas for the Project. The FEIR identifies the northeast corner of the Howard Street/Second Street intersection near your condominium as a possible staging area. In addition, FEIR page 5-211 describes the noise impact that may be associated with such staging areas. The FEIR discusses potential noise at the Howard/Second Street staging area.
- FEIR page 5-191 describes the Project's effect on public transit in the vicinity of your condominium. In particular, it describes temporary changes to public transit routes and/or schedules along Mission Street and Second Street.

Terri Brown
February 8, 2007
Page 3

- FEIR page 5-201 describes on-street parking that would be removed temporarily during construction, including the particular blocks that would be affected.

The EIR is also useful to identify what impacts are not likely to affect your condominium. For example, FEIR pages 5-197 to 5-198 identify existing driveways that may be temporarily affected by Project construction. You will note that your parcel is not identified there. In summary, the EIR provides extensive detail about the impacts that you and any current or prospective tenant/lessee can expect from the Project.

In addition, the City's ordinance regulating construction activities and impacts will apply. You can review these ordinances on the City website: http://www.ci.sf.ca.us/site/government_index.asp#codes (select the link for the "San Francisco Municipal Code Index").

2. Notice of Recorded Documents Relating to the Redevelopment Plan.

You state that you were not notified by the City and County of San Francisco that two items were recorded against your parcel relating to the Project. It appears that an item was recorded by the City on August 4, 2006, by instrument No. 2006-1224836-00. The item was recorded in response to City Ordinance No. 124-05 (adopted by the City Board of Supervisors June 21, 2005) and Ordinance No. 99-06 (adopted by the City Board of Supervisors May 9, 2006). It also appears that an item was recorded by the City on August 4, 2006, by instrument No. 2006-1224839-00.

The TJPA is a legally distinct entity from the City and the San Francisco Redevelopment Agency. The TJPA's Board of Directors is not the same as the City's Board of Supervisors. The TJPA was not responsible for recording any documents or providing any notices relating to the Redevelopment Plan. That being said, there are certain notices that are required by state law relating to redevelopment plans, and which were issued in relation to the Transbay Redevelopment Plan.

Under the California Environmental Quality Act, Public Resources Code §§ 21000 *et seq.*, and its implementing regulations, 14 Cal. Code Regs. §§ 14000 *et seq.*, the agency preparing an EIR for a redevelopment plan must issue certain notices and provide certain opportunities for public comment, such as:

- Notice of preparation of EIR;
- Notice of completion of DEIR;
- Public comment on DEIR;
- Notice of public hearing on FEIR;
- Public hearing on FEIR; and
- Notice of determination of approval of the redevelopment plan.

Terri Brown
February 8, 2007
Page 4

Under the Community Redevelopment Law, Health & Safety Code §§ 33000 *et seq.*, the redevelopment agency and/or the legislative body that will adopt the redevelopment plan must issue certain public notices and provide certain opportunities for public comment, such as:

- Notice of hearing on redevelopment plan to all residents and businesses within a project area;
- Public hearing on redevelopment plan;
- Notice to county recorder of adoption of redevelopment plan;
- Recorded description of parcels within a redevelopment project area.

In addition to the above notices and opportunities for public comment, public notice of meetings of the City and the Redevelopment Agency are regularly posted in advance of such meetings in conformance with the Brown Act, and the City Sunshine Ordinance, where applicable. We do not have any information about specific notices that may have been sent to you. We have no reason to believe, however, that any required notices were not properly issued by the appropriate agencies.

You asked the TJPA to provide you with a copy of one of the items recorded against your property, the Declaration of Restrictions. The TJPA did not prepare or record this document, and it does not have a copy of the document to provide to you. You may order a copy of any document recorded against your parcel, however, from the City Assessor-Recorded by visiting the City's searchable website of recorded documents: <http://www.criis.com/sanfrancisco/official.shtml>. The City may charge a nominal fee.

You asked the TJPA to explain the effect of the Declaration of Restrictions on your condominium. We cannot advise you as to the legal effect of such recorded documents on your condominium. Nonetheless we note that the recorded document to which you refer is related to the Redevelopment Plan. We are unaware of any "restrictions" on the use, rent, or sale of your condominium imposed by the Redevelopment Plan. To get definitive information as to the effect of the Redevelopment Plan and any related notices or recorded documents on your condominium, you may want to contact the San Francisco Redevelopment Agency and/or retain legal counsel to advise you.

3. Request for Early Acquisition of Your Parcel.


On November 21, 2006, we sent you a letter at the TJPA Board's direction requesting more information and documentation regarding your request that the TJPA acquire your condominium earlier than required for the Project. You indicated you would send such information by January 28, 2007. We have not yet received any

Terri Brown
February 8, 2007
Page 5

correspondence from you in regard to the TIPA's request for additional information and substantiation of your claim.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in cursive script, appearing to read "Andrew W. Schwartz".

Andrew W. Schwartz

cc: Maria Ayerdi

P:\TJPA\ROW85 Natoma\#5\dk002 (letter to Terri Brown) v2.doc

SHUTE, MIHALY & WEINBERGER LLP

ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1948-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

KEVIN P. BUNDY
ANDREA RUIZ-ESQUIDE
SHERIDAN J. PAUKER
ELENA K. SAXONHOUSE
MICHELLE WILDE ANDERSON
DOUG A. OBEGI

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

APRIL 10, 2007

Terri Brown
P.O. Box 1181
Healdsburg, CA 95448

Re: 85 Natoma Street #5

Dear Ms. Brown:

Thank you for your letter dated March 30, 2007, which I received by Federal Express on April 9, 2007. Your letter was missing several crucial pieces of information. Before the TJPA Staff can present your request for early acquisition of your property to the TJPA Board of Directors and the TJPA's funding agencies, the TJPA must have the following information:

1. State the annual expenses for 85 Natoma #5 for your first and second mortgages (principal and interest, and rates of interest), taxes, insurance, and all landlord expenses, such as utilities, maintenance, and repairs. Please break out each of these expenses. Please provide me with documentation for each of these expenses; e.g., mortgage statements, tax statements, insurance invoices, utility bills, etc.
2. The December 26, 2006 letter from real estate broker James Wavro states that the current fair market rent for 85 Natoma #5 is \$6,500-\$7,000. Mr. Wavro states that a tenant would pay this rent if given a 2-3 year lease. Because the TJPA does not plan to acquire your property until after 2010, why can't you lease the property at its fair market rent?
3. What is the term of the current lease for 85 Natoma #5? Please provide me with a signed copy of that lease.
4. Is your ex partner required by law to contribute to your child's expenses? If so, how much? Are you required by law to support your ex partner?

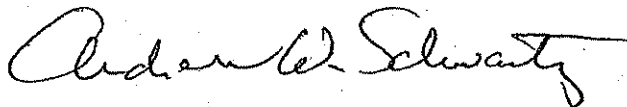
Terri Brown
April 10, 2007
Page 2

5. Why have you been unemployed for the past 18 months? Can you find new employment? What was your last employment and what was your income from that employment in the one year before you lost your job?
6. Why can't you pay down the mortgage on 85 Natoma #5 with the equity in your Healdsburg residence and move into 85 Natoma #5 as your primary residence?
7. Your previous tenant, Echopass Corp., moved out "due to impending disruptions resulting from the Project." What disruptions are you referring to?

The sooner you can provide this information the better. Thank you for your cooperation.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Andrew W. Schwartz

cc: Maria Ayerdi

P:\TJPA\ROW\85 Natoma #5\Letter to T. Brown 4-10-07.doc

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1948-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

KEVIN P. BUNDY
ANDREA RUIZ-ESÓUIDE
SHERIDAN J. PAUKER
ELENA K. SAXONHOUSE
MICHELLE WILDE ANDERSON
DOUG A. OBEGI

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

April 24, 2007

Terri Brown
P.O. Box 1181
Healdsburg, CA 95448

Re: 85 Natoma Street #5

Dear Ms. Brown:

I am writing in response to the voicemail message you left for my colleague, Andrew Schwartz, yesterday, April 23, 2007. Mr. Schwartz wanted to make sure you received a prompt reply, but was occupied with other pressing matters, and so asked me to respond on his behalf.

In your message, you asked why the TJPA needed a response to two of the questions posed in Mr. Schwartz's April 10, 2007 letter to you. In particular, Mr. Schwartz had asked:

- (a) Why have you been unemployed for the past 18 months? Can you find new employment? What was your last employment and what was your income from that employment in the one year before you lost your job?
- (b) Why can't you pay down the mortgage on 85 Natoma #5 with the equity in your Healdsburg residence and move into 85 Natoma #5?

The sole purpose of these questions, along with the other five questions included in the April 10 letter to you, is to gather enough information for the TJPA Board of Directors to determine whether your situation meets the minimal requirements under the law for a "hardship request" for early acquisition of your property. According to the rules and regulations governing the TJPA's acquisition of property for the Transbay Transit Center Program, the TJPA and the other government agencies that fund the Transbay Program can only approve your hardship request if you can provide them with

Terri Brown
April 24, 2007
Page 2

documentation that the following four conditions are met: (1) you (the property owner) need to dispose of the property; (2) you are unable to dispose of the property at fair market value because of the TJPA's transportation facility plans; (3) you cannot reasonably alleviate the hardship in the absence of the TJPA's purchase of the property; and (4) the TJPA's purchase will either partially or totally alleviate the hardship.

The questions regarding your employment history and your ability to pay down the mortgage on 85 Natoma #5 with equity from your other real estate holdings are relevant to the third inquiry: whether you can reasonably alleviate your hardship on your own (that is, in the absence of TJPA's purchase of your property) by finding new employment or restructuring your investments. We understand that these are sensitive questions, but we can assure you that your responses will be treated in a confidential manner. Moreover, we are not suggesting that you take any particular action (such as selling your Healdsburg residence and moving back to 85 Natoma #5). We are just asking for additional information that is necessary for the TJPA and its funding agencies to make its determination as to whether you qualify for early acquisition. When we present your application for early acquisition of your property to the TJPA Board of Directors and the TJPA's funding agencies, we must be prepared to explain why you cannot alleviate your alleged financial hardship by starting a new job or selling one of your three properties.

I hope this letter answers your remaining questions. Mr. Schwartz and I are very sorry for your recent loss. To help you with your financial situation, however, we must present a complete, accurate, and fair picture of your financial circumstances to the TJPA and its funding agencies. Again, the sooner we receive the additional information requested in Mr. Schwartz's April 10 letter, the sooner TJPA staff can bring your request before the Board of Directors.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

SHUTE, MIHALY & WEINBERGER LLP

ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1948-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

KEVIN P. BUNDY
ANDREA RUIZ-ESQUIDE
SHERIDAN J. PAUKER
ELENA K. SAXONHOUSE
MICHELLE WILDE ANDERSON
DOUG A. OBEGI

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

May 14, 2007

Terri Brown
P.O. Box 1181
Healdsburg, CA 95448

Re: 85 Natoma Street #5

Dear Ms. Brown:

I received your May 8, 2007 letter, providing additional information in support of your request for early acquisition of your property by the Transbay Joint Powers Authority ("TJPA"). This information, together with the information submitted with your letter dated March 30, 2007, and the information submitted by your accountant, will assist the TJPA Board in determining whether your situation meets the requirements for a "hardship request" for early acquisition. After reviewing your letters, we identified a few important pieces of information that we still need in order to present your request to the Board.

1. What were your living expenses, other than your mortgages and car lease, in 2006?
2. How much monetary support did you provide for your daughter in 2006?
3. Does your rental agreement for 85 Natoma #5 include the parking space, or do you rent that separately? If you rent the parking space separately, how much income do you receive for that rental?
4. Please provide us with the actual amount of income taxes you paid for 2006. In your March 30 letter, you provided us with an estimate, which appears to be high in relation to your income.
5. Please provide us with a signed copy of your lease for 85 Natoma #5.
6. Is it your position that you cannot earn income from a new business without access to the capital tied up in 85 Natoma #5? If so, please explain the capital investment needs of your proposed new business.

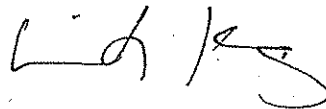
Terri Brown
May 14, 2007
Page 2

The information requested by all six questions is necessary to present an accurate statement of your finances to the Board.

As soon as we receive this information, we will present your request to the Board of Directors.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

[P:\TIPA\ROW85 Natoma\5\wk001(Letter to Terri Brown 4-24-07).doc]

SHUTE, MIHALY & WEINBERGER LLP

ATTORNEYS AT LAW

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE (415) 552-7272
FACSIMILE (415) 552-5816
WWW.SMVLAW.COM

FAX COVER SHEET

Date Sent: May 24, 2007 Client: TJPA.1
Number of Pages: 3 Sent By: _____
(including cover sheet)
Original to Follow: No Time Sent: _____

TO:

Terri Brown

Fax: (707) 837-9083

FROM:

Winter King

Phone: 415/552-7272 Ext: _____
Fax: 415/552-5816

MESSAGE:

Dear Ms. Brown,
Attached please find two forms designed to help you provide us with information necessary for the TJPA Board to evaluate your early acquisition request. The TJPA Board meets regularly on the third Thursday of each month at 9:00 am in San Francisco City Hall, Room 416, 1 Carlton B. Goodlett Place. The only agency that will review your request for early acquisition is the TJPA Board. In response to your additional questions about other properties that have been or will be acquired for the Transbay Terminal Project, the TJPA has, to date, only acquired one: 80 Natoma. The TJPA acquired this property pursuant to the settlement of a lawsuit for approximately \$36 million. To see a list of other properties to be acquired and the priority of acquisition, please see the EIR for the project, which is available online at <http://sfgov.org/site/frame.asp?u=http://www.transbaycenter.org>. Although I recognize that you do not have internet access, many public libraries, coffee shops, and other establishments provide this service.

Winter King

If there are any problems or questions related to this fax, please call our Receptionist at 415/552-7272

Request for Early Acquisition Due to Hardship

Description of Current Business Venture

You have explained to us that you need to sell 85 Natoma #5 in part in order to finance a new business venture. Please provide us with an estimate of the total amount of capital required to start this new business and a one paragraph description of what that capital is needed for (e.g., renovation of buildings, developing vineyards, paying employees, carrying costs, etc.).

Estimated capital required: _____

Please also provide us with your projected net income from this business venture the next three years, and a one paragraph explanation of the basis for your projection.

Estimated net income: _____

I, Terri Brown, certify that the above estimates are accurate and correct.

Date

Signature

Request for Early Acquisition Due to Hardship

Living Expenses

Please provide us with an estimate of your average monthly living expenses during 2006 for yourself and your daughter.

Expense	Average Monthly Amount
Medical/Dental Expenses (including health insurance, dental insurance, copays, medication, etc.)	
Schooling (including supplies, tuition, lessons, etc.)	
Food	
Utilities	
Clothing	
Entertainment	
Travel	
Miscellaneous/Incidentals	
Total	

If it is easier to separate out your expenses for yourself from your expenses for your daughter, feel free to copy this form and fill out one for yourself and one for your daughter. Also, if it is easier for you to estimate your total living expenses, including all of the above items, in one monthly amount, you may do so as well.

If you anticipate any significant change in your living expenses in the future, please explain on the lines below:

I, Terri Brown, certify that the above estimates are accurate and correct.

Date

Signature

MEMORY TRANSMISSION REPORT

PAGE : 001
TIME : 05-24-2007 02:56PM
TEL NUMBER1: +4155525816
TEL NUMBER2: 000-000-0000
NAME : Shute, Mihaly & Weinberger LLP.

FILE NUMBER : 045
DATE : 05-24 02:54PM
TO : 17078379083-145
DOCUMENT PAGES : 003
START TIME : 05-24 02:54PM
END TIME : 05-24 02:56PM
SENT PAGES : 003
STATUS : OK

FILE NUMBER : 045 *** SUCCESSFUL TX NOTICE ***

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE (415) 552-7272
FACSIMILE (415) 552-5816
WWW.SMVLAW.COM

FAX COVER SHEET

Date Sent: May 24, 2007 Client: TJPA.1
Number of Pages: 3 Sent By: _____
(including cover sheet) Original to Follow: No Time Sent: _____

TO: Terri Brown Fax: (707) 837-9083

FROM: Winter King Phone: 415/552-7272 Ext: _____
Fax: 415/552-5816

MESSAGE:

Dear Ms. Brown,
Attached please find two forms designed to help you provide us with information necessary for the TJPA Board to evaluate your early acquisition request. The TJPA Board meets regularly on the third Thursday of each month at 9:00 am in San Francisco City Hall, Room 416, 1 Carlton B. Goodlett Place. The only agency that will review your request for early acquisition is the TJPA Board. In response to your additional questions about other properties that have been or will be acquired for the Transbay Terminal Project, the TJPA has, to date, only acquired one: 80 Natoma. The TJPA acquired this property pursuant to the settlement of a lawsuit for approximately \$36 million. To see a list of other properties to be acquired and the priority of acquisition, please see the EIR for the project, which is available online at <http://sf.gov.org/site/frame.asp?u=http://www.transbaycenter.org>. Although I recognize that you do not have internet access, many public libraries, coffee shops, and other establishments provide this service.

Winter King

If there are any problems or questions related to this fax, please call our Receptionist at 415/552-7272

SHUTE, MIHALY & WEINBERGER LLP

ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1948-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

KEVIN P. BUNDY
ELENA K. SAXONHOUSE
MICHELLE WILDE ANDERSON
DOUG A. OBEGI

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

August 8, 2007

Terri Brown
P.O. Box 1181
Healdsburg, CA 95448

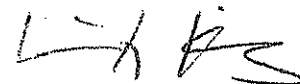
Re: 85 Natoma Street #5 – Early Acquisition Request

Dear Ms. Brown:

I am writing to inquire about the status of your request for early acquisition of 85 Natoma Street #5 by the Transbay Joint Powers Authority ("TJPA"). We last spoke about your request in May, and on May 24, 2007, I faxed you two forms specifying the remaining information we need to present your request to the TJPA Board of Directors. I have not yet received these forms back from you. From our last conversation, I understand that you have many demands on your time these days. However, I wanted to reiterate that the sooner we receive this information from you, the sooner we can present your request to the Board of Directors.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

[P:\TJPA\ROW\85 Natoma\No5\wk004(Letter to T. Brown 8-08-07).doc]

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1848-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDY
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

ELENA K. SAXONHOUSE
MICHELLE WILDE ANDERSON
DOUG A. OBEGI
AMANDA R. GARCIA
JEANNETTE M. MACMILLAN
ISAAC N. BOWERS

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

February 27, 2008

Via U.S. Mail

Terri Brown
958 Sanchez St.
San Francisco, CA 94114

Re: 85 Natoma #5

Dear Ms. Brown,

I am writing in response to your request, left by voicemail on February 21, that I send you a clean copy of the Personal Financial Statement form you filled out in March 2007 in support of your request for early acquisition of your property by the Transbay Joint Powers Authority ("TJPA"). It is my understanding that you wish to update the information presented to the TJPA in the past in order to renew your request for early acquisition due to financial hardship. However, as you may recall, the information required by TJPA and provided by you goes beyond just that contained in the Personal Financial Statement form, and thus any change in your circumstances requires that you update all relevant information that you have provided to the TJPA. Moreover, at the time of our last conversation about your request, there was still some essential information that you had not yet provided to us. Thus, to avoid any confusion about the information necessary for the TJPA to process your early acquisition request, I am including below a summary of the information requested by the TJPA and provided by you over the last two years, and enclosing copies of our correspondence.

Given the amount of time that has passed since your last submission (over nine months), please review the information you have submitted to us and update that information as necessary. Please also provide us with the additional information we requested in our May 14, 2007 letter by completing the enclosed forms (entitled "Living Expenses" and "Descriptions of Current Business Venture"), providing us with a signed

copy of the current lease for the property, and indicating whether you rent the parking space separately from the unit. If you rent the parking space separately, please also enclose a signed copy of the parking space lease. Per your request, I am also enclosing a clean copy of the Personal Financial Statement form, which you originally submitted in March 2007.

Summary of correspondence:

- In September, 2006, the TJPA received your request, made by your attorney William J. Turner, for early acquisition of your property based on your financial hardship.
- Our firm responded to your request by letter dated November 14, 2006. In this letter, we described the criteria pursuant to which the TJPA could grant a hardship request for early acquisition and asked you to provide information sufficient to demonstrate that your situation satisfies these criteria. In particular, we asked you to "please provide us with pertinent information and supporting documentation, such as:
 - Financial information supporting any claimed need to dispose of the property based on financial hardship (sample Caltrans financial statement indicating the required level of detail enclosed for your reference);
 - Doctor's statement or equivalent supporting any claimed need to dispose of the property based on medical need;
 - Verification from employer or equivalent supporting any claimed need to dispose of the property based on change of employment location;
 - Copies of real estate listings or other, similar documentation indicating your client's effort to rent or sell the parcel;
 - Letter(s) from a real estate broker or other, similar professional supporting any claimed inability to rent or sell the parcel at fair market value over the next five years;
 - Evidence supporting the claimed fair market rent and/or sale value of the parcel.
 - Evidence supporting any claim of inability to sell or rent the property at fair market value/rent."
- On April 9, 2007, we received a letter from you (dated March 30, 2007) providing financial and other information in support of your hardship request.
- On April 10, 2007, we notified you that the information you provided was not sufficient, and that TJPA would need additional information to process your request. In particular, we stated that "the TJPA must have the following information:
 - State the annual expenses for 85 Natoma #5 for your first and second mortgages (principal and interest, and rates of interest), taxes, insurance,

and all landlord expenses, such as utilities, maintenance, and repairs. Please break out each of these expenses. Please provide me with documentation for each of these expenses; e.g., mortgage statements, tax statements, insurance invoices, utility bills, etc.

- The December 26, 2006 letter from real estate broker James Wavro states that the current fair market rent for 85 Natoma #5 is \$6,500-\$7,000. Mr. Wavro states that a tenant would pay this rent if given a 2-3 year lease. Because the TJPA does not plan to acquire your property until after 2010, why can't you lease the property at its fair market rent?
 - What is the term of the current lease for 85 Natoma #5? Please provide me with a signed copy of that lease.
 - Is your ex partner required by law to contribute to your child's expenses? If so, how much? Are you required by law to support your ex partner?
 - Why have you been unemployed for the past 18 months? Can you find new employment? What was your last employment and what was your income from that employment in the one year before you lost your job?
 - Why can't you pay down the mortgage on 85 Natoma #5 with the equity in your Healdsburg residence and move into 85 Natoma #5 as your primary residence?
 - Your previous tenant, Echopass Corp., moved out "due to impending disruptions resulting from the Project." What disruptions are you referring to?"
-
- On April 23, 2007, you left a voicemail for Andrew Schwartz, asking why the TJPA needed this additional information. On April 24, 2007, we responded by letter, explaining that this information is necessary to show that your circumstances meet the criteria for early acquisition due to financial hardship.
 - We subsequently received a letter dated April 27, 2007 from your accountant, Patrick P. Paquette, which included additional information about your mortgage, property taxes, and rental income received.
 - By letter dated May 8, 2007, you provided us with some additional information in response to our April 10, 2007 letter.
 - On May 14, we wrote to you again, noting that the information in your May 8, 2007 letter, "together with the information submitted with your letter dated March 30, 2007, and the information submitted by your accountant, will assist the TJPA Board in determining whether your situation meets the requirements for a 'hardship request' for early acquisition." However, "after reviewing your letters, we identified a few important pieces of information that we still need in order to present your request to the Board."
 - What were your living expenses, other than your mortgages and car lease, in 2006?
 - How much monetary support did you provide for your daughter in 2006?

Terri Brown
February 27, 2008
Page 4

- Does your rental agreement for 85 Natoma #5 include the parking space, or do you rent that separately? If you rent the parking space separately, how much income do you receive for that rental?
 - Please provide us with the actual amount of income taxes you paid for 2006. In your March 30 letter, you provided us with an estimate, which appears to be high in relation to your income.
 - Please provide us with a signed copy of your lease for 85 Natoma #5.
 - Is it your position that you cannot earn income from a new business without access to the capital tied up in 85 Natoma #5? If so, please explain the capital investment needs of your proposed new business.”
- Shortly after we sent you this letter, you and I spoke over the phone. You asked us to provide you with additional forms to fill out to ensure that your response to these questions would provide the information we were seeking. During this call, I reiterated that we needed a signed copy of the current lease for the property. You informed me that the lease was at your sister’s house, but that you would obtain a copy for us. On May 24, 2007, I faxed you the additional forms you had requested.
 - On August 8, 2007, we wrote you to inquire about the status of your early acquisition request, as we had not yet received either a copy of the lease or completed copies of the additional forms. We did not receive any response from you to this letter.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

Enclosures

P:\TJPA\ROW\85 Natoma\No5\wk005(Letter to T. Brown 2-26-08).doc

FORMS

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
PERSONAL FINANCIAL STATEMENT
 (Form #)

EXHIBIT
 5-EX-10
 PAGE 1 OF 3

PERSONAL INFORMATION NOTICE

Pursuant to the Federal Privacy Act (P.L. 93-579) and the Information Practices Act of 1977 (Civil Code Sections 1798, et seq.), notice is hereby given for the request of personal information by this form. The requested personal information is voluntary. The principal purpose of the voluntary information is to facilitate the processing of this form. The failure to provide all or any part of the requested information may delay processing of this form. No disclosure of personal information will be made unless permissible under Article 6, Section 1798.24 of the IPA of 1977. Each individual has the right upon request and proper identification, to inspect all personal information in any record maintained on the individual by an identifying particular. Direct any inquiries on information maintenance to your IPA Office.

As of _____, 19__

Name _____ Age ____ Employed by _____ Years ____

Address _____ Occupation _____ Name of Spouse _____ Age ____

TO: Department of Transportation
 California

The undersigned, for the purpose of obtaining consideration for advance acquisition of my transportation-affected property under the hardship program, submits the following information:

ASSETS	DOLLARS	LIABILITIES (TOTAL AMOUNT DUE)	DOLLARS
CHECKING ACCOUNTS		ACCOUNTS PAYABLE (INSTALLMENT PURCHASES)	
1. _____		1. _____	
2. _____		2. _____	
3. _____		3. _____	
SAVINGS ACCOUNTS (SCHEDULE A)		4. _____	
STOCKS AND BONDS (SCHEDULE B)		NOTES PAYABLE	
NOTES RECEIVABLE-GOOD		1. _____	
CASH SURRENDER VALUE LIFE INSURANCE		2. _____	
AUTOS		TAXES PAYABLE	
(Year-Make) (Year-Make)		CONTRACTS PAYABLE	
REAL ESTATE (SCHEDULE C)		(To Whom)	
OTHER ASSETS (DESCRIBE)		REAL ESTATE INDEBTEDNESS	
1. _____		(SCHEDULE C)	
2. _____		OTHER LIABILITIES (DESCRIBE)	
3. _____		1. _____	
4. _____		2. _____	
5. _____		3. _____	
		4. _____	
TOTAL ASSETS		TOTAL LIABILITIES	
LESS TOTAL LIABILITIES			
NET WORTH			

PERSONAL FINANCIAL STATEMENT (Cont.)
(Form #)

EXHIBIT
5-EX-10
PAGE 2 OF 3

ASSETS	DOLLARS	ANNUAL EXPENDITURES (EXCLUDING ORDINARY LIVING EXPENSES)	DOLLARS
SALARY		REAL ESTATE PAYMENT(S)	
SALARY (SPOUSE)		RENT	
DIVIDEND INCOME		INCOME TAXES	
GROSS RENTAL INCOME		INSURANCE PREMIUMS	
OTHER (DESCRIBE)		PROPERTY TAXES	
1.		OTHER (DESCRIBE—INCLUDE INSTALLMENT PAYMENTS OTHER THAN REAL ESTATE)	
2.		1.	
3.		2.	
4.		3.	
5.		4.	
6.		5.	
7.			
TOTAL INCOME		TOTAL EXPENDITURES	
LESS TOTAL EXPENDITURES			
NET CASH INCOME (EXCLUSIVE OF ORDINARY LIVING EXPENSES)			

* If insurance premiums and property taxes are included in real estate payment do not duplicate here.

PERSONAL FINANCIAL STATEMENT (Cont.)

(Form #)

EXHIBIT

5-EX-10

PAGE 3 OF 3

SCHEDULE A-SAVINGS

Savings Institution and Address	AMOUNT
1.	
2.	
3.	
4.	
5.	
TOTAL (ENTER ON FRONT PAGE)	Description

SCHEDULE B-STOCKS AND BONDS

Number of Shares Amount of Bonds	Description	Current Value
1.		\$
2.		
3.		
4.		

TOTAL (ENTER ON FRONT PAGE)

SCHEDULE C-REAL ESTATE

Location and Type of Improvement	Title	Estimated Value	Amount Owed	To Whom Payable
1.				
2.				
3.				
4.				

TOTAL (ENTER ON FRONT PAGE)

If additional space is needed for Schedule A, Schedule B, and/or Schedule C, list on separate sheet and attach.

<p>The undersigned certifies that the above statement (or in lieu thereof, the attached statement, as the case may be) and supporting schedules, be they printed and written, give a full, true, and correct statement of the financial condition of the undersigned as of the date indicated.</p>
--

Signature

Date

Signature

Date

5.03.00.00 - HARDSHIP

5.03.01.00 General

Hardship is defined as a situation where unusual personal circumstances of an owner are aggravated by a proposed transportation facility and cannot be solved by the owner without acquisition by the State. There are two types of hardships:

- Those which occur in advance of the regular right of way acquisition process.
- Those which occur when the requirements for commencing the regular right of way acquisition process have been met, but funding and activity on the project have been deferred.

The Districts are authorized to approve both types of parcels for hardship acquisition.

Departmental practice is to investigate to determine need and to appraise and acquire the property with minimal delay. In some instances this may require extraordinary efforts such as obtaining independent staff appraisals. Owners of hardship parcels should receive full consideration and service consistent with normal acquisition procedures, including appropriate relocation assistance and sufficient time to consider State's offer. The District shall make the first written offer to the applicant within 90 days from the date of the DDD-R/W's approval letter or the Federal authorization if requested.

5.03.02.00 RAP Eligibility

The District should notify the applicant in writing of the requirements for RAP eligibility when the hardship investigation commences. If the hardship application is not approved, the applicant should be informed of benefits that will be lost if applicant vacates prior to regular acquisition (first written offer). (See Exhibit 5-EX-04.) At the same time, it is important to ensure that double relocation payments are not made and Federal reimbursement is not lost. In line with this intent, if an application is approved and the applicant is forced to move prior to the time a written offer can be presented, the District must mail a Notice of Intent to Acquire to

preserve relocation eligibility. (See Forms RW 06-11, 13, and 14.) This letter should not be mailed until after approval of the hardship acquisition and should not be issued unless initiation of negotiations will commence less than 90 days subsequent to said Notice. This action will preserve the relocation eligibility of applicants and will avoid the possibility of creating more than one eligible relocatee.

5.03.03.00 Cessation of Hardship

If it determines that a hardship no longer exists, the Acquisition Branch must immediately withdraw any outstanding offer to purchase and advise the owner of the right to appeal the case to the District Hardship Appeals Board. (See Sections 5.03.06.00 through 5.03.06.03.)

5.03.04.00 Guidelines for Processing Requests

5.03.04.01 Hardship Criteria

The following minimal requirements must be met and documented if a hardship request is approved:

- Owner demonstrates need to dispose of property.
- Owner is unable to dispose of property at fair market value because of transportation facility plans.
- Owner cannot reasonably alleviate the hardship in the absence of the State's purchase.
- State's purchase will either partially or totally alleviate the hardship.

Inconveniences experienced by all or most owners along a route are not satisfactory reasons for hardship purchase (for example, an owner's simple desire to move to another area).

5.03.04.02 Need to Dispose of Property

Some of the reasons that may require an owner to sell immediately and that can result in a

SUBMITTAL ITEMS - HARDSHIP APPLICATION		
Item	Explanation	Circumstance
Written Request or Statement	Outlining the reasons why owner(s) must sell the property at this time.	
Application	Completed and signed by owner(s). See Exhibit 5-EX-3.	
Financial Statement	See Exhibit 5-EX-10 or 5-EX-11	Not required (at the District's discretion) if the hardship request is due to medical problems, job transfer, advanced age, or retirement move.
Market Substantiation	Evidence of reasonable attempt to market the property: <ul style="list-style-type: none"> • Copy of valid listing. • Statement from a broker citing reasons the property has not or cannot be sold. • Evidence or information obtained by the District. 	If there have been other unsuccessful attempts to sell the property on the project at fair market value, listing the property is not required. The District should state in its recommendation that the property cannot be sold at fair market value because of the proposed project.
Income Tax Authorization	Signed authorization to obtain a copy of Federal and State income tax returns (Exhibits 5-EX-5 and 5-EX-6). The District secures copies of the latest tax returns if additional documentation is needed.	Optional if the District is satisfied with all the financial information submitted by applicant.
Doctor's Statement or Equivalent		Required if hardship request is based on a medical reason.
Verification from Employer		Required if hardship request is based on a transfer of employment.
Index Map and Plat Map	Showing affected parcel in relation to project right of way. Maps should be 11"x17" if possible.	
FNM-76	Copy of the request for Federal participation if applicable.	
Hazardous Waste Statement	Describing potential of hazardous waste at the property, if any.	
District Approval Letter		
Categorical Exemption/ Exclusion Determination	And required statement.	
Review and Written Approval of Regional Legal Office.	Determines if acquisition would influence environmental assessment of proposed project.	Required if project is not environmentally cleared.

The District is responsible for seeing that the information submitted is accurate and appropriately documents the request; e.g., a doctor's letter or affidavit from employer.

5.03.04.04 Documentation of Files

For each application, the District maintains a file that becomes part of the parcel file upon commencement of acquisition. A parcel diary is initiated when application is made. Care should be taken to ensure that reasons for recommending approval or denial of application are clearly outlined in the diary or file. The date of notification of requirements for RAP eligibility shall be entered following the initial contact with the applicant. The application and other items submitted in support of the hardship are to be retained in the file. (See Section 5.03.04.03.)

The DDD-R/W is responsible for approving or denying each application. Statements of the District's action are made by a signed entry in the parcel diary. The following should be explained and included as part of the entry:

- Basis of decision to accept or deny the application.
- Fact that file has been reviewed prior to approval or denial and that reviewer is familiar with the contents of the file.

5.03.04.05 Notification of Approval or Denial

The Department considers hardship requests to be sensitive since the outcome of a request (approval/denial) could have a significant effect on the applicant. The District must ensure that proper notification is given as follows:

- Request Approved - the District notifies the applicant promptly by telephone and makes an entry in the diary.
- Request Denied - the District sends a letter to the applicant.

When FHWA approval is required, the telephone notification is made after the FHWA has

authorized an FNM-76 for the subject parcel. The responsibility for implementing this procedure rests with the DDD-R/W in each District.

5.03.04.06 Negotiation Alternatives

If negotiations are unsuccessful, the District should either:

- Consider the merits of an Administrative Settlement.
- Explain the condemnation process to the owner. The Agent should inform the owner that if they wish the State to condemn the property, they should send a letter to that effect. The State will then proceed with an action in eminent domain. If owner wishes, the State could prepare such a letter on owner's behalf (see Exhibit 5-EX-7). A copy of the letter shall be submitted with the District's request for the CTC resolution.
- Withdraw the offer in writing. It is important that all offers of relocation assistance or payments to owners and tenants be formally withdrawn in writing no later than 10 days from the date of the determination not to acquire (see RAP Chapter for procedures to follow in withdrawing RAP offers).

5.03.04.07 Vacation of Property

The contract will require grantors to vacate the property within 120 days from the date of the close of escrow, providing replacement housing is available. See Section 8.09.15.00 of the Acquisition Chapter for appropriate clauses and commentary on application.

5.03.05.00 Disposition of Financial Information

The District shall maintain confidentiality of the financial statement and income tax returns and permit only authorized personnel to have access to this information. Authorized personnel are those who process the application and those who make the final decision to approve or disapprove the application. While processing the application, the Agent shall store this information

Request for Early Acquisition Due to Hardship

Living Expenses

Please provide us with an estimate of your average monthly living expenses during 2007 for yourself and your daughter.

Expense	Average Monthly Amount
Medical/Dental Expenses (including health insurance, dental insurance, copays, medication, etc.)	
Schooling (including supplies, tuition, lessons, etc.)	
Food	
Utilities	
Clothing	
Entertainment	
Travel	
Miscellaneous/Incidentals	
Total	

If it is easier to separate out your expenses for yourself from your expenses for your daughter, feel free to copy this form and fill out one for yourself and one for your daughter. Also, if it is easier for you to estimate your total living expenses, including all of the above items, in one monthly amount, you may do so as well.

If you anticipate any significant change in your living expenses in the future, please explain on the lines below:

I, Terri Brown, certify that the above estimates are accurate and correct.

_____ Date

_____ Signature

Request for Early Acquisition Due to Hardship

Description of Current Business Venture

You have explained to us that you need to sell 85 Natoma #5 in part in order to finance a new business venture. Please provide us with an estimate of the total amount of capital required to start this new business and a one paragraph description of what that capital is needed for (e.g., renovation of buildings, developing vineyards, paying employees, carrying costs, etc.).

Estimated capital required: _____

Please also provide us with your projected net income from this business venture the next three years, and a one paragraph explanation of the basis for your projection.

Estimated net income: _____

I, Terri Brown, certify that the above estimates are accurate and correct.

Date

Signature

CORRESPONDENCE

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1948-2008)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDY
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

AMANDA R. GARCIA
JEANNETTE M. MACMILLAN
ISAAC N. BOWERS
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

February 9, 2009

Via Facsimile & U.S. Mail

Terri Brown
Ingear Investments
24849 Summerhill Avenue
Los Altos, 94024
Fax: (707) 837-9083

Re: 85 Natoma #5, San Francisco, CA

Dear Ms. Brown:

As you requested in your letters dated February 5 and 7, 2009, we are writing to confirm that we have received your January 26 and February 4, 2009 correspondence regarding your request for early acquisition of 85 Natoma #5 from the Transbay Joint Powers Authority ("TJPA") due to financial hardship.

In your February 4 letter, you state that you are depending on "the immediate acquisition of 85 Natoma to avoid defaulting" on the loan for your Chalk Hill property. However, because we did not receive all of the information the TJPA required to evaluate your request for early acquisition in 2007, and because so much time has elapsed since you last submitted information to the TJPA (the last time we received any information from you was in May 2007, more than 19 months ago), we will need to review the information that you provided in 2007 and in your recent letters to determine whether the information we have as to your financial circumstances is complete and up to date. If it is, we will request that the TJPA staff present your request to the TJPA Board of Directors. The next Board meeting is not until March 12, 2009.

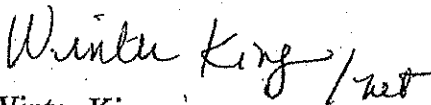
Terri Brown
February 9, 2009
Page 2

If your information is not up to date – and from your letter it appears that it is not – you will need to provide the TJPA with up to date information before we can present your request to the TJPA Board of Directors. We must inform you that, even if you were to provide complete and up to date information and the TJPA staff were to complete its evaluation and staff report in time for the Board hearing on March 12, 2009 (staff submissions to the Board are due a week before the hearing), and even if the Board were to grant your request for early acquisition, the TJPA would still need to arrange for funding of the purchase with its funding agencies. Given these factors, please be aware that a purchase could not be completed until at least April 2009. If you are counting on the TJPA purchasing your property immediately to pay your debts, you may wish to make alternative arrangements.

We will be contacting you shortly to identify the information and documentation that you should provide to complete and update your request for early acquisition.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP


Winter King

[P:\TJPA\met001 (letter to T. Brown re 85 Natoma).docx]

**** Transmit Confirmation Report ****

P. 1
SHUTE MIHALY WEINBERGE Fax: 415-552-5816

Feb 9 2009 04:20pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	09,04:19pm	0'59"	3	* O K	

SHUTE, MIHALY & WEINBERGER LLP

ATTORNEYS AT LAW

398 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE (415) 552-7272
FACSIMILE (415) 552-5816
WWW.SMVLAW.COM

FAX COVER SHEET

Date Sent: February 9, 2009

Client: TJPA.I

Number of Pages: 3
(including cover sheet)

Sent By: Jet

Original to Follow: Via U.S. Mail

Time Sent: 4:15 pm

TO:

Terri Brown

Fax: 707.837.9083

FROM:

Winter King

Phone: 415/552-7272 Ext: 237
Fax: 415/552-5816

MESSAGE:

If there are any problems or questions related to this fax, please call our Receptionist at 415/552-7272

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK J. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDY
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

AMANDA R. GARCIA
JEANNETTE M. MACMILLAN
ISAAC N. BOWERS
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

February 19, 2009

Via Facsimile & U.S. Mail

Terri Brown
Ingear Investments
24849 Summerhill Avenue
Los Altos, 94024
Fax: (707) 837-9083

Re: 85 Natoma #5, San Francisco, CA

Dear Ms. Brown:

I am writing in response to your letter, faxed to me on February 17, 2009, stating that you assume we "have everything [we] need to complete the ROW acquisition by the March 12, 2009 [sic]." As I wrote before, we are currently reviewing the information you submitted to determine what additional information we may need to present your request to the Board. We are trying to be as expeditious as possible in getting back to you, but also wish to be thorough in this review so that we may present you with one comprehensive list of all information we still need. Please keep in mind that we are asking you for this information not to impede your request but to ensure that, once we present your request to the Board, the Board will have sufficient information to act on it.

As we move through the TJPA's early acquisition process, I want you to be clear on the timing of any purchase of your property by the TJPA: Under the TJPA's current plans, the TJPA would not purchase your property until 2012 or later. As we previously informed you, the TJPA may consider an early purchase of your property if you can establish a financial or other hardship.

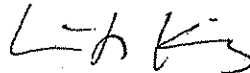
Terri Brown
February 19, 2009
Page 2

Even if the Board of Directors of the TJPA approves your request for a hardship early acquisition, however, the TJPA, as a public agency, is subject to other legal requirements before it can complete the purchase. Following the Board's approval, if any, the TJPA would be legally required to obtain two appraisals of your property. The appraisals will have to be reviewed by the TJPA's review appraiser for compliance with state and federal law. If the review appraiser approves the appraisals and recommends one, because the Transbay Project is receiving federal funds the TJPA would then be required to seek the Federal Transportation Administration's (FTA's) concurrence with that recommendation. For property the TJPA has already acquired through this process, FTA concurrence alone has taken from six weeks to several months.

If the FTA concurs with the reviewer's recommendation, then the TJPA could make you an offer to buy your property. If the parties can agree on a purchase price, the TJPA would then need to obtain funding for the purchase from its funding agencies. Escrow would not close on a purchase until all title and other contingencies have been removed. Under this process, a closing on the purchase of your property would take at least several months following TJPA Board approval, if any.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Feb 19 2009 09:39am

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	19,09:38am	1'01"	3	* O K	

SHUTE, MIHALY & WEINBERGER LLP

ATTORNEYS AT LAW

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE (415) 552-7272
FACSIMILE (415) 552-5816
WWW.SMWLAW.COM

FAX COVER SHEET

Date Sent: February 19, 2009

Client: TIPA.I

Number of Pages: 3
(including cover sheet)

Sent By: het

Original to Follow: Via U.S.Mail

Time Sent: 9:32 am

TO:

Terri Brown

Fax: 707.837.9083

FROM:

Winter King

Phone: 415/552-7272 Ext. 237
Fax: 415/552-5816

MESSAGE:

If there are any problems or questions related to this fax, please call our Receptionist at 415/552-7272

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDY
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA
94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

AMANDA R. GARCIA
JEANNETTE M.
MACMILLAN
ISAAC N. BOWERS
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

February 23, 2009

Via Facsimile and U.S. Mail

Terri Brown
Ingear Investments
24849 Summerhill Avenue
Los Altos, CA 94024
Facsimile: 707.837.9083

Re: 85 Natoma #5

Dear Ms. Brown:

We have reviewed the information you submitted to us on February 4, 2009 in support of your request for early acquisition of your property by the Transbay Joint Powers Authority ("TJPA"). This information supplements and updates the information you have submitted to us in the past. However, as we indicated in our previous correspondence with you, several pieces of information are still necessary for the TJPA Board to make a determination on your hardship request. We have asked for this information in our past letters to you, but either we have not received it or the information we have received has become outdated. If we receive this information from you by March 2, 2009, we will be able to present your request to the Board at its next meeting on March 12, 2009.

1. In our November 14, 2006 letter to you, we indicated that we needed documents supporting your claimed inability to sell or rent your property at the fair market value. You provided us with a letter from your real estate broker stating that it was not possible to sell the property. You also provided us with a letter from James Wavro stating that the market rate rent for your unit was \$6,500-\$7,000, provided the tenant could obtain a two- to three-year lease. In our April 10, 2007

letter to you, we asked why it would not be possible to enter a market-rate, two- to three-year lease, given that the TJPA would not acquire your property for at least another three years. You did not respond to that question. Your most recent submission indicates that your current tenant is paying \$7,000 per month for a one-year lease ending in March. To determine whether you are able to rent the unit at fair market value, we need to know the following:

- a. Is \$7,000 per month the current fair market rental value for your property? If not, please provide us with some documentation to support what the current fair market rental value of the property is.
 - b. Your current lease expires at the end of March 2009. Will your tenant stay on after the lease expires? If not, do you have another tenant for the property after your current tenant vacates? What will the rent be for the next lease term, if known?
 - c. Given that the TJPA does not plan to acquire your property until 2012, at the earliest, why can't you find a tenant to pay market rate for a 2-3 year lease?
 - d. If you are claiming that you cannot find a tenant to rent your property at fair market rental value, please explain why not and submit evidence to support your explanation.
 - e. It appears from the information you have submitted that, even when receiving \$7,000 per month in rent, your cash flow from 85 Natoma #5 is negative. If you assert that the fair market rental value of the property is greater than \$7,000 per month, please explain whether your cash flow would be positive if you received the asserted fair market rental value. Also please explain whether your cash flow from 85 Natoma #5 is positive after consideration of the tax consequences to you for deduction of any interest and depreciation.
2. In our November 14, 2006 letter to you, we indicated that you needed to provide evidence supporting the claimed fair market value of your property. In your most recent submissions, you state on your personal financial statement that the estimated value of 85 Natoma #5 is \$2,100,000. However, you also provided us with a listing agreement from 2005 (attached to your May 8, 2007 letter) in which the listing price for the property is \$1,550,000. Please provide us with an appraisal or other evidence supporting your claim that the fair market value of the property is \$2,100,000.

3. In our April 10, 2007 letter to you, we stated that you needed to provide us with the annual expenses for 85 Natoma #5, including first and second mortgages (principal and interest, and rates of interest), taxes, insurance, and all landlord expenses such as utilities, maintenance, and repairs. You submitted to us a Supplemental Income and Loss form for 2007. While this form supplies most of the information we need, it raises the following questions.
 - a. What is the "Other interest" listed on line 13?
 - b. What is included in the "Other" category listed on line 18? We did not receive Statements 2, 3, and 4.
 - c. What is the significance of the Passive Activity Deduction Worksheet, which you attached and highlighted?
4. In your May 8, 2007 letter, you asserted that you needed the proceeds of the sale of 85 Natoma #5 to start up a new business. We provided you with a form to assist you in explaining this new business venture and how much capital you needed to finance it. In your February 4, 2009 letter, you state that you "depend solely on returns from [your] income property investments for [your] livelihood; that is [your] business." You did not complete the "Description of Current Business Venture" form we sent to you. Please clarify whether you need the proceeds of the sale of 85 Natoma #5 to finance a new business venture. If so, please fill out the attached "Description of Current Business Venture" form. If not, no further response is necessary.
5. In our May 14, 2007 letter to you, we asked that you provide us with the actual amount of income taxes you paid in 2006, rather than an estimate. In addition, the Caltrans hardship acquisition regulations (section 5.03-3) authorizes the TJPA to request a copy of your income tax returns to verify the other information you have submitted. You did not submit a copy of your 2006 income tax returns to us in 2007, nor did you provide us with your 2007 returns in your most recent submission. Please provide us with your complete, signed Federal Income Tax Return for 2007 so that the TJPA can verify the other information you have submitted concerning your income, expenses, and assets.

You ask the TJPA to acquire your property now because TJPA has acquired the building next door at 81-83 Natoma. The TJPA's acquisition and demolition of the improvements on 81-83 Natoma is necessary for a bus ramp for Phase 1 of the Transbay Program. Phase I has already begun, and will require demolition of 81-83 Natoma and construction of the bus ramps on that parcel in late 2009 or early 2010. Your property,

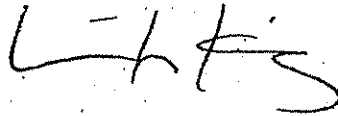
Terri Brown
February 23, 2009
Page 4

by contrast, is planned for acquisition in Phase 2 of the TJPA Program. Phase 2 involves the extension of the rail line in a tunnel from 4th and Townsend into the new Transit Center. The proposed tunnel would go directly through 85 Natoma. Construction of Phase 2, however, is not scheduled to start until at least 2012. Accordingly, the TJPA is not required to purchase your property at this time, and in fact planned to wait to purchase the property until it is needed in 2012.

As we have stated before, we are not asking you for this additional information to stall your request. Quite to the contrary, we need this information to assist the TJPA Board in determining whether your situation qualifies for early acquisition pursuant to the regulations governing the Board's actions. Again, if you provide us with all of this remaining information by March 2, 2009, we will be able to present your application to the TJPA Board at its March 12, 2009 meeting.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

Enclosure

P:\TJPA\ROW\85 Natoma\No5 (3721-113)\wk007(Letter to T. Brown 2-23-09).doc

Request for Early Acquisition Due to Hardship

Description of Current Business Venture

You have explained to us that you need to sell 85 Natoma #5 in part in order to finance a new business venture. Please provide us with an estimate of the total amount of capital required to start this new business and a one paragraph description of what that capital is needed for (e.g., renovation of buildings, developing vineyards, paying employees, carrying costs, etc.).

Estimated capital required: _____

Please also provide us with your projected net income from this business venture the next three years, and a one paragraph explanation of the basis for your projection.

Estimated net income: _____

I, Terri Brown, certify that the above estimates are accurate and correct.

Date

Signature

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Feb 23 2009 12:22pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	23, 12:20pm	2' 10"	6	* O K	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW
396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

FAX COVER SHEET

Date Sent: February 23, 2009 Client: 145
Number of Pages: 6 Sent By: _____
(including cover sheet)
Original to Follow: Via U.S. Mail Time Sent: _____

TO:
Terri Brown Fax: 707.837.9083

FROM:
Winter King Phone: (415) 552-7272 Ext: 237
Fax: (415) 552-5816

MESSAGE:
Attached: (1) Letter dated February 23, 2009 from Winter King to Terri Brown and (2)
Request for Early Acquisition Due to Hardship-Description of Current Business
Venture form

\\smw\vol1_data\T\FAIRO\785 Natoma\No5 (3721-113)\Fax Cover Sheet (2-20-2009).doc

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

TJPA CC

SHUTE, MIHALY & WEINBERGER LLP

ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDY
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

AMANDA R. GARCIA
JEANNETTE M. MACMILLAN
ISAAC N. BOWERS
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

March 4, 2009

Via Facsimile and U.S. Mail

Terri Brown
85 Natoma #5
958 Sanchez St.
San Francisco, CA 94114

Re: 85 Natoma #5

Dear Ms. Brown:

We have received your letter dated March 2, 2009, with attachments. We will present your request for early acquisition of 85 Natoma #5 to the TJPA Board of Directors in closed session on March 12, 2009.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Winter King
/het
Winter King

\\Smw\vol1_data\TJPA\ROW\85 Natoma\No5 (3721-113)\wk010(Ltr to T. Brown 3-3-2009).doc

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Mar 4 2009 11:58am

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	04.11:57am	0'40"	2	* OK	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

398 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

FAX COVER SHEET

Date Sent: March 4, 2009

Client: 145

Number of Pages: 2
(including cover sheet)

Sent By: Wat

Original to Follow: Via U.S. Mail

Time Sent: 11:55a

TO:

Terri Brown

Fax: (707) 837-9083

FROM:

Winter King

Phone: (415) 552-7272 Ext: 237
Fax: (415) 552-5816

MESSAGE:

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

TJPA ccy

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK J. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDY
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

AMANDA R. GARCIA
JEANNETTE M. MACMILLAN
ISAAC N. BOWERS
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

WINTER KING
KING@SMWLAW.COM
(415) 552-7272 EXT. 237

March 13, 2009

Via Facsimile and U.S. Mail

Terri Brown
24849 Summerhill Ave.
Los Altos, CA 94024
Facsimile: (707) 837-9083

Re: 85 Natoma #5

Dear Ms. Brown:

I am writing in response to your March 4, 2009 letter, in which you ask several questions about the Transbay Joint Powers Authority's ("TJPA") plans to acquire property and proceed with construction near 85 Natoma #5. Below please find our answers to these questions.

1. Yes, 77-79 Natoma is necessary for construction of a bus ramp in Phase 1 of the Transbay Transit Center Program ("Program").
2. No, the TJPA has not yet acquired 564 and 568 Howard. Both of these properties are necessary for Phase 1 of the Program. TJPA is currently in the process of trying to acquire them. The properties have been appraised previously and offers made to the owners, but they were rejected. The TJPA is in the process of updating the appraisal and intends to make renewed offers to buy the properties in the near future.
3. No firm schedule has been set for demolition of the Phase 1 properties necessary for construction of the bus ramp. Currently, TJPA is planning to proceed with demolition of these buildings sometime between October 2009 and April 2010. However, these plans are subject to change by the TJPA.

Terri Brown
March 13, 2009
Page 2

4. You state that the western wall of 81-83 Natoma "provides a wall that blocks unlawful entry into my garage and courtyard," and ask how TJPA will address the security issues raised by the demolition of 81-83 Natoma. To answer this question, we need more information from you. Please provide us with information about the location of your courtyard relative to 81-83 Natoma, how that building is currently blocking unlawful entry to your garage, and what effect demolition of that building will have.


5. You ask how you and your tenant will "be protected from environmental hazards during demolition of adjoining buildings." The Final Environmental Impact Statement/Environmental Impact Report ("Final EIS/EIR") for the Program lists the measures that will be employed to mitigate the environmental impacts of the Program, including impacts to neighboring residents. The EIR is located on the TJPA's website: www.transbaycenter.org. (Select the link to "Documents," then select the link to "Environmental." The Final EIS/EIR, certified June 15, 2004, is listed on this page.). In particular, you may wish to review Section 5.21 (pages 5-184 et seq.), which discusses construction-related impacts and mitigation measures. In addition to the measures discussed in the Final EIS/EIR, the TJPA will comply with the City of San Francisco's ordinances regulating construction activities. You can review these ordinances on the City website: http://www.ci.sf.ca.us/site/government_index.asp#codes (select the link for the "San Francisco Municipal Code Index").

6. You ask for more information about construction-related noise and traffic impacts caused by the Program. Again, please refer to the Final EIS/EIR on the TJPA website for a discussion of these impacts and the measures adopted to mitigate them.

7. No, our office has not been in contact or negotiations with Patrick McNerney.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP


Winter King

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Mar 13 2009 04:51pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	13.04:50pm	1'08"	3	* O K	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW
396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

FAX COVER SHEET

Date Sent: March 13, 2009

Client: 145

Number of Pages: 3
(including cover sheet)

Sent By: Net

Original to Follow: Via U.S. Mail

Time Sent: 4:45 pm

TO:

Terri Brown

Fax: (707) 837-9083

FROM:

Winter King

Phone: (415) 552-7272 Ext: 237
Fax: (415) 552-5816

MESSAGE:

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272.

TJPA
CCP

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDY
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

AMANDA R. GARCIA
JEANNETTE M. MACMILLAN
ISAAC N. BOWERS
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD
LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

March 13, 2009

Via Facsimile and U.S. Mail

Terri Brown
24849 Summerhill Ave.
Los Altos, CA 94024
Facsimile: (707) 837-9083

Re: 85 Natoma #5

Dear Ms. Brown:

I am writing to reiterate the information I relayed to you in a voicemail yesterday, and to respond to your March 12, 2009 letter regarding your request for early acquisition of 85 Natoma #5 by the Transbay Joint Powers Authority ("TJPA"). As I stated in my message, the TJPA Board met in closed session on March 12, 2009 to discuss your request, and had no objection to proceeding with the appraisals, review, and other steps necessary to make you an early offer to purchase your property. Please note that the Board did not approve the acquisition of your property at this time. Several steps must be taken before the TJPA Board can make you an offer, including a determination by the Board that there are sufficient funds available to purchase the property ahead of schedule.

Although we will make every effort to take these steps as quickly as possible, they are both legally required and time-consuming. As we explained in earlier correspondence, the TJPA is legally required to obtain two appraisals prior to making you an offer for your property. These appraisals will have to be reviewed by the TJPA's review appraiser for compliance with state and federal law. If the review appraiser approves the appraisals and recommends one, the TJPA would then be required to seek the Federal Transportation Administration's (FTA's) concurrence with that

Terri Brown
March 13, 2009
Page 2

recommendation. For property the TJPA has already acquired through this process, FTA concurrence alone has taken from six weeks to several months.

If the FTA concurs with the reviewer's recommendation, then the TJPA can make you an offer to buy your property, provided the TJPA can obtain sufficient funding to do so. Escrow would not close on a purchase until all title and other contingencies have been removed. Under this process, a closing on the purchase of your property will take at least several months.

The TJPA's appraisers will contact you within the next few weeks to tour your condominium. The appraisers are Chris Carneghi and John Clifford.

Finally, we disagree with your statement that the TJPA has delayed this early acquisition process. A review of our correspondence shows that, during the time that you claim the TJPA delayed, we were waiting for you to provide us with accurate and complete information necessary to present your request to the Board. For example, after notifying you that we needed some additional information in May 2007, we did not receive any word from you until February 2008, and then did not receive any additional information from you until February 2009, a year later. These delays, in turn, meant that we needed you to update the information you had previously submitted. Moreover, we were required to make repeated requests for information that you failed to provide to complete your application. Once we received the complete and accurate information we asked you to provide, we promptly proceeded to the next step in the hardship early acquisition process.

I am also preparing a response to your March 4, 2009 letter, which I will send under separate cover.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Winter King
Winter King / *het*

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Mar 13 2009 04:53pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	13,04:52pm	1'08"	3	* O K	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW
306 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5818
WWW.SMWLAW.COM

FAX COVER SHEET

Date Sent: March 13, 2009

Client: 145

Number of Pages: 3
(including cover sheet)

Sent By: NET

Original to Follow: Via U.S. Mail

Time Sent: 4:45p

TO:

Terri Brown

Fax: (707) 837-9083

FROM:

Winter King

Phone: (415) 552-7272 Ext: 237

Fax: (415) 552-5816

MESSAGE:

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR. *
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDY
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

AMANDA R. GARCIA
JEANNETTE M. MACMILLAN
ISAAC N. BOWERS
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

WINTER KING
KING@SMWLAW.COM
(415) 552-7272 Ext. 237

March 27, 2009

Via Facsimile and U.S. Mail

Terri Brown
24849 Summerhill Ave.
Los Altos, CA 94024
Facsimile: (707) 837-9083

Re: 85 Natoma #5

Dear Ms. Brown:

I am writing in response to your most recent letters, in which you provide me with information about the relationship of 85 Natoma and the adjoining properties, and ask for clarification about the Transbay Joint Powers Authority ("TJPA") Board's decision regarding your request for early acquisition of 85 Natoma #5 due to financial hardship.

Thank you for the information you provided about the relationship of 85 Natoma and the adjoining properties. You may wish to contact the San Francisco Department of Building Inspection and/or the Planning Department to determine whether there are any requirements imposed by the City related to this issue. Given that 85 Natoma is currently relying on the adjoining properties to enclose its garage and outdoor space, it may be the responsibility of the HOA for your building to construct a fence, if necessary, when the TJPA removes these buildings.

Next, you ask when you can expect to hear from the TJPA's appraisers. The TJPA's appraisers will begin their appraisals of 85 Natoma #5 in mid-April. The appraisals should be completed in a month to six weeks. The review of the appraisals should take one to three weeks. In the past, the review by the Federal Transit

Terri Brown
March 27, 2009
Page 2

Administration ("FTA") has taken from six weeks to three months. We have no control over the timing of that review. If we obtain the FTA's concurrence on the appraisal and if funds are available at that time, the TJPA will offer you the full amount of the appraisal.

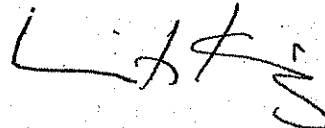
You also request further explanation about the decision taken by the Board in closed session on March 12, 2009. As I explained in my previous letter to you, dated March 13, 2009, the Board reviewed the information you submitted and had no objection to proceeding with the appraisals, review, and other steps necessary to make you an early offer to purchase your property. The reason the record of the closed session indicates that there was "nothing to report" on this closed session agenda item is that the Board did not approve an early purchase, but rather had no objection to proceeding with the appraisal and offer process. Transcripts of the Board's closed session meetings are not available to the public.

In addition, you ask when the TJPA will either approve or deny your request for early acquisition. After FTA concurrence, the TJPA staff must determine whether there are sufficient funds available to purchase the property ahead of schedule and make you an offer. If that offer results in an agreement between you and the TJPA staff, the staff will recommend approval by the Board. The Board retains discretion to approve the agreement. Given that the appraisal and review process will not be completed by April 9, the early acquisition of your property will not be on the agenda for the Board's April meeting.

Finally, please be aware that the TJPA will use its own title company to obtain a preliminary title report for your property. We are aware of the potential discrepancy you have noted in your March 13, 2009 letter to me. We will contact you if we need your assistance in resolving any title issues.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Mar 27 2009 03:14pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	27,03:13pm	1'09"	3	* 0 K	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

FAX COVER SHEET

Date Sent: March 27, 2009 Client: 145
Number of Pages: 3 Sent By: Net
(including cover sheet)
Original to Follow: Via U.S. Mail Time Sent: 3:07 pm

TO:

Terri Brown

Fax: (707) 837-9083

FROM:

Winter King

Phone: (415) 552-7272 Ext: 237
Fax: (415) 552-5816

MESSAGE:

PATIPAROW\B5 Netoma\No5 (3721-113)\wk017\Fax Cover for Ltr to T. Brown 3-27-2009.doc

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

TJPA
ccp

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR. *
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDDY
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

AMANDA R. GARCIA
JEANNETTE M. MACMILLAN
ISAAC N. BOWERS
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. SURFORD

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

April 9, 2009

Via Facsimile and U.S. Mail

Terri Brown
24849 Summerhill Avenue
Los Altos, CA 94024
Facsimile: (707) 837-9083

Re: 85 Natoma #5

Dear Ms. Brown:

I am writing in response to your letter faxed to me on April 7, 2009. In that letter, you ask whether the process and timing for the Transbay Joint Powers Authority's ("TJPA") response to your early acquisition request complies with the Caltrans Right-of-Way Manual ("ROW Manual"). In short, the TJPA's response fully complies with the ROW Manual, as well as the other state and federal laws and regulations governing the TJPA's acquisition process.

Section 5.03.01.00 of the ROW Manual, which you cite, describes two types of hardship requests for early acquisition of a property: first, those "which occur in advance of the regular right of way acquisition process", and; second, those which occur within the scheduled acquisition period, but for which "funding and activity on the project have been deferred." Your request falls under the first category because, pursuant to the schedule adopted for construction of the Transbay Transit Center, your property is not slated for acquisition until at least 2012, during Phase II of the project. Because you are seeking acquisition ahead of schedule, and because the TJPA does not now have at its disposal the funding for all future property acquisitions, the TJPA must determine whether it has sufficient funds to purchase your property before making you an offer.

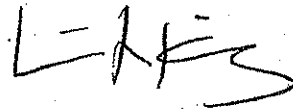
Terri Brown
April 9, 2009
Page 2

Nothing in the ROW Manual requires the TJPA to purchase a property ahead of schedule when it lacks funds to do so.

As we have stated in our prior correspondence with you, the TJPA's acquisition of property is governed not only by state law, but also by federal requirements because the federal government is funding a portion of the Transbay Program. Pursuant to these requirements, the TJPA must obtain two appraisals prior to making you an offer for your property. These appraisals will have to be reviewed by the TJPA's review appraiser for compliance with state and federal law. If the review appraiser approves the appraisals and recommends one, the TJPA would then be required to seek the Federal Transportation Administration's (FTA's) concurrence with that recommendation. The TJPA has followed this process for every parcel it has acquired to date. Because of the state and federal regulations governing the TJPA's acquisition of property, the TJPA cannot omit any of these steps in acquiring your property, i.e., there is no "fast-track" process available to the TJPA for early acquisitions due to financial hardship.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

**** Transmit Confirmation Report ****

P.1

SHUTE MIHALY WEINBERGE Fax:415-552-5816

Apr 9 2009 02:28pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	09,02:27pm	1'05"	3	* O K	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

398 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

FAX COVER SHEET

Date Sent: April 9, 2009

Client: 145

Number of Pages: 3
(including cover sheet)

Sent By: met

Original to Follow: Via U.S. Mail

Time Sent: 2:22 pm

TO:

Terri Brown

Fax: (707) 837-9083

FROM:

Winter King

Phone: (415) 552-7272 Ext: 237
Fax: (415) 552-5816

MESSAGE:

\\smw\vol_data\TFAIROW\85 Netome\No5 (3721-115)\wk019\Fax Cover for Ltr to T. Brown 4-9-2009.doc

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDY
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

AMANDA R. GARCIA
JEANNETTE M. MACMILLAN
ISAAC N. BOWERS
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

April 17, 2009

Via Facsimile and U.S. Mail

Terri Brown
24849 Summerhill Avenue
Los Altos, CA 94024
Facsimile: (707) 837-9083

Re: 85 Natoma #5

Dear Ms. Brown:

I am writing in response to the voicemails you left for me and Andrew Schwartz during the week of April 13, 2009. In particular, you requested clarification about when the TJPA's appraisers would be appraising your property, and why they had not begun to do so already. You also asked for a contact at the Department of Transportation ("Caltrans") with whom you could discuss the Right of Way (ROW) Manual guidelines for early acquisition due to financial hardship.

As we informed you in previous letters, we anticipated that the TJPA's appraisers would begin their work on your property in mid-April. As of today, April 17, one appraisal of your property (that conducted by John Clifford) is already under way. The appraiser who will be conducting the second appraisal of your property, Chris Carneghi, has been authorized to begin work as of today.

If you would like to speak with someone at Caltrans regarding their ROW Manual, their main number is (916) 654-5266. We do not represent Caltrans, and do not know who at that agency would be able to best answer your questions. Please note that

Terri Brown
April 17, 2009
Page 2

while the TJPA generally follows the Caltrans ROW Manual, Caltrans has no authority concerning the TJPA's right of way acquisitions for the Transbay Program.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Winter King by AWS
Winter King

\\Srmw\vol1_data\TJPA\ROW\85 Natoma\No5 (3721-113)\wk020(Ltr to T. Brown 4-17-2009).doc

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Apr 17 2009 05:13pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	17,05:12pm	0'56"	3	* O K	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SHWLAW.COM

FAX COVER SHEET

Date Sent: April 17, 2009

Client: 145

Number of Pages: 3
(including cover sheet)

Sent By: Net

Original to Follow: Via U.S. Mail

Time Sent: 5:05 pm

TO:

Terri Brown

Fax: (707) 837-9083

FROM:

Winter King

Phone: (415) 552-7272 Ext: 237

Fax: (415) 552-5816

MESSAGE:

\\smw\wof1_data\TPA\ROW\85 Natoma\No9 (3721-113)\wk021(Fax Cover for Ltr to T. Brown 4-17-2009).doc

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

TJPA/ROW / NATOMA
no. 3 ccf

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDY
* SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

AMANDA R. GARCIA
JEANNETTE M. MACMILLAN
ISAAC N. BOWERS
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

WINTER KING
KING@SMVLAW.COM
(415) 552-7272 EXT. 237

June 9, 2009

Via Facsimile and U.S. Mail

Terri Brown
24849 Summerhill Avenue
Los Altos, CA 94024
Fax: (707) 837-9083

Re: Natoma Street Between First and Second Streets

Dear Ms. Brown:

I am writing in response to your fax dated June 2, 2009. In that letter, you requested an explanation of how the activities analyzed in the Fifth Addendum to the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project FEIS/EIR will affect access to your property.

In short, your use of Natoma Street between First and Second Streets will not be affected by the activities described in the Fifth Addendum. As discussed in that document, the Transit Center is designed to occupy portions of the public right-of-way above Natoma Street (where the building façade and bus ramps will extend out over the street) and below Natoma Street (where the underground train box will be constructed). Because these spaces are currently part of the public right-of-way owned by the City of San Francisco, the TJPA must apply to the City to "vacate" them in order to construct the new Transit Center. If the City approves the vacation, the spaces will no longer be part of the public right-of-way or owned by the City. However, the *surface* of Natoma Street between First and Second Streets will remain part of the public right-of-way, open to the public and owned by the City. Moreover, the process of "vacating" the portions of the public right-of-way needed for the Transit Center will not involve any construction or

Terri Brown
June 9, 2009
Page 2

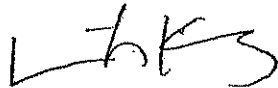
physical changes to the street. Thus, the "vacation" discussed in the Fifth Addendum will not affect your use of Natoma Street to access your home and garage.

There is currently no set schedule for the vacation process. The TJPA plans to submit its public right-of-way vacation application to the City in the coming months. A few months later, the Board of Supervisors will hold a hearing on it. As a neighboring property owner, you will receive notice of this hearing, and may participate in it if you like.

The TJPA is also planning to conduct informational sessions with neighboring property owners to discuss the construction schedule for the Transit Center and to answer any questions you may have. Once the TJPA has selected dates for these sessions, it will notify you and the other neighboring property owners.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

cc: Judi Cohen

\\Smw\vol1_data\TJPA\ROW\85 Natoma\No5 (3721-113)\wk022v2(Ltr to T. Brown 6-5-09).doc

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Jun 9 2009 03:05pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	09,03:04pm	1'02"	3	* O K	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW
396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

FAX COVER SHEET

Date Sent: June 9, 2009

Client: 145

Number of Pages: 3
(including cover sheet)

Sent By: bot

Original to Follow: Via U.S. Mail

Time Sent: 3:00 pm

TO:

Terri Brown

Fax: (707) 837-9083

FROM:

Winter King

Phone: (415) 552-7272 Ext: 237

Fax: (415) 552-5816

MESSAGE:

Attachment: Letter re: Natoma Street btw. First and Second Streets

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named herein (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax: 415-552-5816

Jun 9 2009 03:24pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
14159895143/P145	Normal	09,03:24pm	0'36"	3	# 0 K	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

306 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

FAX COVER SHEET

Date Sent: June 9, 2009

Client: 145

Number of Pages: 3
(including cover sheet)

Sent By: Jwt

Original to Follow: Via U.S. Mail

Time Sent: 3:00pm

TO:

Judi Cohen

Fax: (415) 989-5143

FROM:

Winter King

Phone: (415) 552-7272 Ext: 237
Fax: (415) 552-5816

MESSAGE:

Attachment: Letter re: Natoma Street btw. First and Second Streets

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR. *
MARK I. WEINBERGER (1948-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
KEVIN P. BUNDY
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

AMANDA R. GARCIA
JEANNETTE M. MACMILLAN
ISAAC N. BOWERS
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

WINTER KING
KING@SMWLAW.COM
(415) 552-7272 Ext. 237

July 17, 2009

Via Facsimile and U.S. Mail

Terri Brown
24849 Summerhill Avenue
Los Altos, CA 94024
Facsimile: (707) 837-9083

Re: 85 Natoma Communication from TJPA

Dear Ms. Brown:

We received your letter, dated July 16, 2009, requesting information about the letters TJPA has recently sent to the owners of 85 Natoma other than yourself. These letters are notices of decision to appraise the other properties in the building. As you know, the TJPA initially planned to acquire the 85 Natoma building in Phase II of the Transbay Program, which is scheduled to begin in 2012. Due to the TJPA's refinement of plans for construction of Phase I, the TJPA has now determined that it may acquire the 85 Natoma building in Phase I, which is currently underway. As your property has already been appraised, it was not necessary to send you any such notice. Please note that the appraisal of the other units in 85 Natoma will not affect the speed with which the TJPA processes your hardship acquisition request.

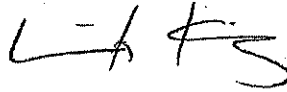
The TJPA has not sent any notices or other mailings to your tenant at 85 Natoma #5. The TJPA may, however, contact the tenant as required by law. Nor has the TJPA requested a meeting with the homeowners' association for 85 Natoma; however, a member of the homeowners' association has requested a meeting with the TJPA, and Andrew Schwartz will be meeting with some homeowners in front of the building on July 29, 2009, and 9:30 a.m. to discuss the possible acquisition. You are welcome to attend that meeting.

Terri Brown
July 17, 2009
Page 2

Finally, because you are represented by counsel, we request that you do not contact us directly, and that any communication be made through your attorney. We cannot communicate with you directly without your counsel present.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

cc: Judi Cohen

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Jul 17 2009 03:35pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	17.03:34pm	0'58"	3	* O K	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

398 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

FAX COVER SHEET

Date Sent: July 17, 2009
Number of Pages: 3
(including cover sheet)
Original to Follow: Via U.S. Mail

Client: 145
Sent By: net
Time Sent: 3:24

TO:

Terri Brown

Fax: (707) 837-9083

FROM:

Winter King

Phone: (415) 552-7272 Ext. 237
Fax: (415) 552-5816

MESSAGE:

Attachment: Letter re: 85 Natoma

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Jul 17 2009 04:04pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
9895143/P145	Normal	17,04:04pm	0'34"	3	# 0 K	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

FAX COVER SHEET

Date Sent: July 17, 2009

Client: 145

Number of Pages: 3
(including cover sheet)

Sent By: Ykt

Original to Follow: Via U.S. Mail

Time Sent: 3:48

TO:

Judi Cohen

Fax: (415) 989-5143

FROM:

Winter King

Phone: (415) 552-7272 Ext: 237

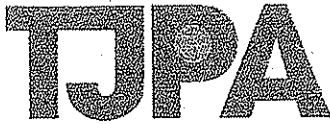
Fax: (415) 552-5816

MESSAGE:

Attachment: Letter re: 85 Natoma Street

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272



096410

TRANSBAY JOINT POWERS AUTHORITY

Maria Ayerdi-Kaplan • Executive Director

August 24, 2009

Judi Cohen
MBV Law, LLP
855 Front Street
San Francisco, CA 94111

Re: Transbay Program
Initial Contact Letter and General Information Notice—Landlord Terri Brown
Affected Property: 85 Natoma St. #5 (Block 3721, Lot 113)

Dear Ms. Cohen:

As you know, the Transbay Joint Powers Authority ("TJPA") is considering acquiring the property your client Terri Brown owns located at 85 Natoma St. #5 (Block 3721, Lot 113) in San Francisco (the "Property") in Phase 1 of the Transbay Transit Center Program (the "Transbay Program"), which is currently underway. We understand that Ms. Brown owns the Property but leases it to Art Club, who occupies the Property as a business location (the "Tenant"). We are not aware of any other occupants of the Property. It is our understanding that although Ms. Brown may store personal property on the site, she does not occupy the site as her business, residence, or otherwise.


We are writing to inform Ms. Brown of her rights, as owner/landlord of the Property, and her Tenant's rights, as occupant of the Property, to receive relocation assistance, should the TJPA acquire the Property.

Property Owner/Landlord Relocation Assistance

If the TJPA acquires the Property, Ms. Brown would be required to relocate any of her personal property on the site in order to allow for construction of the Transbay Program. Ms. Brown would be eligible to receive relocation assistance and payments related to the cost to relocate her personal property from the Property, in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, and the California Relocation Act (the "Relocation Laws"). Ms. Brown's rights under these laws are discussed in the enclosed Relocation Brochure and summarized below:

- Moving Expenses. If Ms. Brown is required to move personal property from the site as a result of the TJPA's acquisition of the Property for the Transbay Program, she would be eligible to receive reimbursement for certain actual, reasonable moving expenses.
- Eligibility to Receive Payment. There is no eligibility to receive relocation assistance unless/until the TJPA makes an offer to acquire a property. If the TJPA makes an offer to purchase the Property, it will provide Ms. Brown a Notice of Eligibility for relocation assistance related to relocation of her personal property from the site.
- Right to Appeal. A person or business may appeal if it believes the TJPA has failed to properly determine eligibility or the amount of payment authorized by the relocation regulations. A person or business has the right to be represented by legal counsel, but this is not required. If a person or business still believes a proper determination has not been made at the conclusion of the appeal, the person or business may seek judicial review.
- Nondiscrimination. All services and/or benefits to be derived from any right of way activity will be administered without regard to race, color, national origin, or sex in compliance with Title VI of the 1964 Civil Rights Act.

The TJPA has hired the relocation assistance consultant Associated Right of Way Services ("ARWS") to help it administer the Relocation Assistance Program. Jamie Guillen of ARWS is Ms. Brown's Relocation Advisor and can answer her questions related to the relocation of her personal property.

 ASSOCIATED
RIGHT OF WAY
SERVICES, INC.

Ms. Jamie Guillen, Relocation Advisor
Associated Right of Way Services, Inc.
2300 Contra Costa Boulevard, Suite 525
Pleasant Hill, CA 94523
(800) 558-5151 toll-free • (925) 691-6505 fax
jguillen@arws.com

Tenant Relocation Assistance

If the TJPA acquires the Property, Ms. Brown's Tenant would be relocated in order to allow for construction of the Transbay Program. The TJPA will provide relocation assistance to all eligible tenants that are required to relocate as a result of the Transbay Program, in accordance with the Relocation Laws.

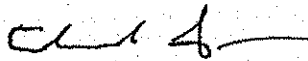
The TJPA has contacted Ms. Brown's Tenant to inform it of the TJPA's plan for providing relocation assistance to any persons or businesses that are displaced as a result of the Transbay Program, notify the Tenant of its rights under federal and state law should the Tenant be required to move from the Property for the Transbay Program, and invite the Tenant to meet with ARWS.

The TJPA has notified Ms. Brown's Tenant that the TJPA has not issued a notice to vacate the premises, and the TJPA is not requiring the Tenant to move at this time. The TJPA has explained that it has not acquired the Property and the TJPA is not the Tenant's landlord. The TJPA has encouraged Ms. Brown's Tenant to continue to honor the terms of any rental agreement with Ms. Brown.

A copy of the letter to Ms. Brown's Tenant is enclosed for your information.

Thank you for working with the TJPA to help to plan for this important public transportation project. Please inform us if we have misunderstood Ms. Brown's ownership or occupancy of the Property, or if there are any other owners or occupants of the Property. Should you have additional questions or if I can be of additional service please contact me by phone at 415-597-4620 or email at esum@transbaycenter.org.

Sincerely,



Edmond Sum, PE
Engineering Manager

Enclosures: (1) Relocation Brochure
(1) Letter to Tenant

cc: Jamie Guillen, ARWS

Certification of Delivery	
<input type="checkbox"/>	This Notice was sent via first class and certified mail on _____
<input type="checkbox"/>	This Notice was personally delivered on _____
Signature:	Date:

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

AMANDA R. GARCIA
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD
MARY J. REICHERT
BRIANNA R. FAIRBANKS

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

DEBORAH L. KEETH
KEETH@SMVLAW.COM
(415) 552-7272 Ext. 257

October 23, 2009

Via Facsimile and U.S. Mail

Terri L. Brown
24849 Summerhill Avenue
Los Altos, CA 94024
Facsimile: (707) 837-9083

Re: 85 Natoma #5, San Francisco (Block 3721, Lot 113)

Dear Ms. Brown:

As you know, this office represents the Transbay Joint Powers Authority (TJPA) on matters relating to the Transbay Transit Center Program. This letter is in response to your telephone messages to me on October 22 and 23, 2009.

In your message you stated that you have rejected the September 15, 2009 joint offer from the TJPA and the City and County of San Francisco to acquire an unencumbered fee simple interest in 85 Natoma #5, San Francisco (the "Property") for \$1,250,000.

In your message you also stated that Judi Cohen and Dwight Donovan of MBV Law, LLP no longer represent you on matters relating to the Property. Before we can communicate directly with you, we will need a letter from Ms. Cohen and Mr. Donovan confirming this status.

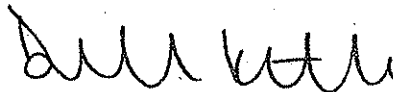
Following our receipt of this confirmation from your attorneys, and based on your phone message stating that you have no other legal counsel representing you regarding the Property, we will direct future correspondence on matters relating to the Property to you directly. We also advise you that all communication between you and the TJPA must be

Terri L. Brown
October 23, 2009
Page 2

made in writing. If you provide us your email address, we will send correspondence electronically and via U.S. mail.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Deborah L. Keeth

cc: Judi Cohen
Dwight Donovan
Maria Ayerdi-Kaplan
Kristen Jensen

TJPA. Brown
CCP

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

AMANDA R. GARCIA
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD
MARY J. REICHERT
BRIANNA R. FAIRBANKS

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

November 24, 2009

Via Facsimile and U.S. Mail

Terri Brown
24849 Summerhill Avenue
Los Altos, CA 94024
Facsimile: (707) 837-9083

Re: 24-hour Work Notice

Dear Ms. Brown:

Edmond Sum, Engineering Manager for the Transbay Joint Powers Authority (TJPA), forwarded to me your voicemail, in which you request information about the 24-hour work notice provided to neighbors of 80 Natoma. As we have stated in the past, please address all your communications to the TJPA to our office, and make them in writing. We believe this method of communication will avoid miscommunication and misunderstanding between you and the TJPA. We will respond promptly to any questions or reasonable requests for information you present to us.

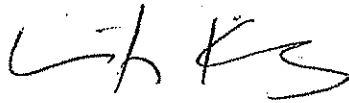
Regarding the 24-hour work notice provided to the residents of 85 Natoma: The TJPA has obtained a permit temporarily extending the hours during which it can carry out its construction work at 80 Natoma. In its efforts to complete all work at that site prior to the Thanksgiving holiday weekend, the TJPA may need to work beyond its usual construction hours Monday to Wednesday, November 23-25. The TJPA does not anticipate that it will need to perform heavy construction work all through the night any of these nights, but may need to begin work before 7:00 am or end after 7:00 pm. The 24-hour work notice alerts the residents of neighboring buildings of this possibility. The TJPA intends to finish its work at 80 Natoma by 8:00 pm on Wednesday.

Terri Brown
November 24, 2009
Page 2

I hope this answers your questions about the 24-hour work notice. If you have any additional questions, please submit them to me in writing.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in black ink, appearing to read 'Winter King', written in a cursive style.

Winter King

\\Srnw\vol1_data\TJPA\ROW\85 Natoma\No5 (3721-113)\wk024(Ltr to T. Brown 11-23-09).doc

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Nov 24 2009 09:56am

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	24,09:55am	0'58"	3	* O K	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

FAX COVER SHEET

Date Sent: November 24, 2009

Client: 145

Number of Pages: 3
(including cover sheet)

Sent By: ket

Original to Follow: Via U.S. Mail

Time Sent: 9:48 am

TO:

Terri Brown

Fax: (707) 837-9083

FROM:

Winter King

Phone: (415) 552-7272 Ext: 237

Fax: (415) 552-5816

MESSAGE:

PATJPAROW\85 Nasoma\No5 (3721-113)\wk021\Fax Cover for Ltr to T. Brown 4-17-2009.doc

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

TJPA
Brown
ccp

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

AMANDA R. GARCIA
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD
MARY J. REICHERT
BRIANNA R. FAIRBANKS
LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

WINTER KING
KING@SMWLAW.COM
(415) 552-7272 Ext. 237

November 30, 2009

Via Facsimile and U.S. Mail

Terri Brown
24849 Summerhill Avenue
Los Altos, CA 94024
Facsimile: (707) 837-9083

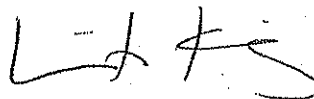
Re: Communications with TJPA

Dear Ms. Brown:

I received your voicemail last week in which you requested that we speak by telephone to discuss your questions about the TJPA's plans for construction near 85 Natoma. As I wrote you before, we are prepared to respond promptly to any written request for information—including letters, faxes, and e-mails. The reason for limiting our communication with you to writing is to avoid any misunderstanding or miscommunication about the TJPA's plans. For this same reason, please address your inquiries to our office rather than contacting TJPA staff directly. Our fax number is: (415) 552-5816. My e-mail is: king@smwlaw.com. Our mailing address is: Shute, Mihaly & Weinberger, LLP, 396 Hayes Street, San Francisco, CA, 94102.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax: 415-552-5816

Nov 30 2009 04:25pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	30,04:24pm	0'45"	2	* O K	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

306 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

FAX COVER SHEET

Date Sent: November 30, 2009

Client: 145

Number of Pages: 2
(including cover sheet)

Sent By: jest

Original to Follow: Via U.S. Mail

Time Sent: 11:23

TO:

Terri Brown

Fax: (707) 837-9083

FROM:

Winter King

Phone: (415) 552-7272 Ext: 237

Fax: (415) 552-5816

MESSAGE:

P:\TIPAROW\83 Natoma\No5 (3721-113)\wk021(Fax Cover for Ltr to T. Brown 4-17-2009).doc

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR. *
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

AMANDA R. GARCIA
HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD
MARY J. REICHERT
BRIANNA R. FAIRBANKS

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

WINTER KING
KING@SMVLAW.COM
(415) 552-7272 EXT. 237

December 10, 2009

Via Facsimile and U.S. Mail

Terri Brown
24849 Summerhill Avenue
Los Altos, CA 94024
Facsimile: (707) 837-9083

Re: 85 Natoma #5

Dear Ms. Brown:

I received your voicemail on Thursday afternoon, December 3, regarding the ongoing activity at 80 Natoma. You indicated that your tenants are seeking to break their lease with you on account of the noise from this activity, and requested information about (1) when the activity will end, (2) when the TJPA will begin providing relocation assistance to your tenants, and (3) what you should do about your tenants' threat to break their lease.

(1) As indicated in my previous letter, the TJPA had hoped to complete the geotechnical testing work on 80 Natoma before the Thanksgiving weekend. However, that was not possible. The TJPA anticipates this work will be complete by the end of December 2009. This schedule is, however, subject to change.

(2) The TJPA has notified your tenants that they may be eligible to receive relocation assistance from the TJPA. They became eligible as of the date the TJPA made its first written offer to you to purchase the property. For your reference, I am attaching the notice the TJPA sent to your tenants.

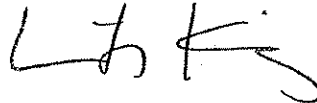
Terri Brown
December 10, 2009
Page 2

(3) We cannot advise you on your rights as a landlord. However, the TJPA has notified your tenants twice in recent correspondence that the TJPA has not acquired the property, the TJPA is not the landlord, and any rights or obligations the tenants may have under their lease with you remain in effect.

Finally, given the issues you raise in your voicemail, I would like to reiterate the efforts the TJPA has made at your request to acquire your property ahead of schedule. The TJPA offered to acquire your property on September 15, 2009, at the full amount of the TJPA's appraisal of the property. On October 22 and 23, 2009, we were informed that you rejected this offer, and that you were preparing your own appraisal. We have not yet received any appraisal from you. The TJPA would be glad to consider any appraisal you want to provide us.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

Enclosure

cc: Maria Ayerdi-Kaplan

\\Snrw\vol1_data\TJPA\ROW\85 Natoma\No5 (3721-113)\wk026(Ltr to T. Brown 12-10-09).doc



TRANSBAY JOINT POWERS AUTHORITY

Maria Ayerdi-Kaplan - Executive Director

008564

November 13, 2009

No Agenda

Mévio Ltd.

Micky Hoogendijk Productions

85 Natoma Street, Unit 5

San Francisco, California 94105

Subject: Transbay Transit Center Program
Notice of Potential Eligibility to Receive Relocation Assistance for
Business Tenant Occupants
85 Natoma Street, Unit 5, San Francisco, California
Block 3721, Lot 113

Dear Mr. Curry, Mr. Dvorak, and Ms. Hoogendijk:

The Transbay Joint Powers Authority (TJPA) plans to acquire property to allow for the development of the Transbay Transit Center Program (Program), which will replace the Transbay Terminal at First and Mission streets in San Francisco with a new Transit Center, and build a new neighborhood with approximately 2,600 new residential units. The property that your business occupies at 85 Natoma Street, Unit 5, in San Francisco, California (Property), is one of several properties in the area that the TJPA proposes to acquire for the Transbay Program.

In response to the Property owner's request that the TJPA acquire the Property earlier than it would otherwise be required for the Program due to the Property owner's hardship, on September 15, 2009 the TJPA made a first written offer to acquire the Property. If the TJPA is successful in acquiring the Property, your business would be required to relocate from the Property to allow for construction of the Program. As a result of the TJPA's offer to purchase the Property, your business may be entitled to receive *business* relocation assistance from the TJPA, as described below. The TJPA will send information regarding *residential* relocation assistance under separate cover.

Notice of Potential Eligibility. As the business occupant of the Property, your business may be eligible to receive certain benefits under the TJPA's Relocation Assistance Program for Business Occupants.¹ These benefits are outlined below and are discussed in further detail in the Business Relocation Assistance Brochure, which is enclosed for your review. Certain conditions must be satisfied before the TJPA will confirm your eligibility for business relocation assistance; proof of occupancy of the Property as of the date of the TJPA's offer to purchase the Property; a copy of

¹ The TJPA's Relocation Assistance Program is required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. Section 4601 et seq., and its implementing regulations, 49 CFR Part 24, as well as the California Relocation Act, Govt. Code Section 7260 et seq., and its implementing regulations, 25 Cal. Code Regs. Section 6000 et seq.

the lease agreement; and legal residency certification for business owners or a corporation are required for all business occupants.

Timing of Relocation. The current Program schedule has been developed in order to provide you with as much lead time as is possible to successfully relocate your business. It is anticipated that you will not be required to move from the Property prior to (1) the TJPA securing possession of the Property, and (2) **August of 2010**. Your business will not be required to move from the Property until at least 90 days after you receive a formal, written Notice to Vacate. Assuming you meet the eligibility requirements, your business is eligible now to receive relocation assistance in accordance with the TJPA's Relocation Assistance Program for Business Occupants.

It also is important that you understand that the TJPA has not yet acquired the Property and the TJPA is not the landlord of the Property. Thus, any obligations your business may have under a lease agreement for the Property, including the obligation to pay rent and provide a certain period of notice when you intend to vacate the Property, continue to apply. We will update you on the status of the TJPA's efforts to purchase the Property.

The enclosed Business Relocation Assistance Brochure describes in detail the assistance available to eligible business occupants of the Property. That assistance is summarized as follows:

Relocation Assistance. The TJPA's Relocation Assistance Program provides referrals to replacement property, help in filing claims for reasonable moving costs and other eligible relocation expenses, and other assistance to help your business successfully relocate. Eligible businesses may request reimbursement for certain actual, reasonable, and necessary moving and related expenses (e.g., the cost to move inventory and other personal property). In addition, certain small businesses and nonprofit organizations may be eligible for reimbursement of certain actual, reasonable, and necessary reestablishment expenses. Alternatively, certain businesses and nonprofit organizations may be eligible to receive a fixed payment instead of actual moving expenses.

The potential reimbursement options, the kinds of expenses that are eligible for reimbursement, and the requirements for reimbursement are described in detail in the enclosed Business Relocation Assistance Brochure. In addition, your Relocation Advisor will work with you to help you to understand the relocation assistance that would be available so that you can make informed decisions as you plan your relocation.

Relocation Claims and Payments. Relocation expenses typically will be reimbursed after your business submits to your Relocation Advisor a signed claim and all required documentation supporting the claim. Your Relocation Advisor will work with you to properly document your claims for reimbursement. Your Relocation Advisor will submit each complete claim to the TJPA for review and processing. The TJPA will make every effort to provide reimbursement for any approved, eligible portion of your claim within approximately 45 days of final approval of the claim.

Mr. Curry, Mr. Dvorak, and Ms. Hoogendijk
November 13, 2009
Page 3 of 3

If your business is owned by persons who are not lawfully present in the United States, then the business may be ineligible to receive relocation payments and assistance. Your Relocation Advisors will ask you to certify that the business owner(s) are lawfully present in the United States. Certification of residency status for business owners or a corporation must be on file with the TJPA in order for the business owner or corporation to receive benefits.

If you believe that the TJPA has failed to properly determine your eligibility or the amount of a payment under the law, you may submit a letter of appeal and, ultimately, be heard by the San Francisco Relocation Appeals Board. You have the right to be represented by legal counsel at your own expense but the presence of legal counsel is not required. If you still believe a proper determination has not been made by the Relocation Appeals Board, you may seek judicial review. You may submit an appeal in writing to your Relocation Advisor.

It is important that you understand the matters explained in this letter and in the brochure. Please work closely with your Relocation Advisor, Ms. Jamie Guillen of AR/WS, to search for available replacement sites, plan for your move, and file claims for payment.

 ASSOCIATED
RIGHT OF WAY
SERVICES INC.

Ms. Jamie Guillen, Relocation Advisor
Associated Right of Way Services, Inc.
2300 Contra Costa Boulevard, Suite 525
Pleasant Hill, CA 94523
(800) 558-5151 toll-free • (925) 691-6505 fax
jguillen@arws.com

Sincerely,

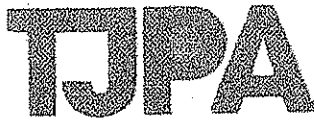


Robert Beck, PE
Senior Program Manager

cc: Jamie Guillen, Associated Right of Way Services, Inc.
Joyce Oishi, PMPC

Enclosure: Business Relocation Assistance Brochure

Certification of Delivery	
<input checked="" type="checkbox"/> This Notice was sent via first class and certified mail on _____	SHIPPED NOV 13 2009
<input type="checkbox"/> This Notice was personally delivered on _____	
Signature: <u>Melissa Clemente</u>	Date: <u>11/13/2009</u>



TRANSBAY JOINT POWERS AUTHORITY

Maria Ayerdi-Kaplan • Executive Director

008562

November 13, 2009

Mr. Adam Curry
Ms. Micky Hoogendijk
85 Natoma Street, Unit 5
San Francisco, California 94105

Subject: Transbay Transit Center Program
Notice of Potential Eligibility to Receive Relocation Assistance for Residential Tenant Occupants
85 Natoma Street, Unit 5, San Francisco, California
Block 3721, Lot 113

Dear Mr. Curry and Ms. Hoogendijk:

The Transbay Joint Powers Authority (TJPA) plans to acquire property to allow for the development of the Transbay Transit Center Program (Program), which will replace the Transbay Terminal at First and Mission streets in San Francisco with a new Transit Center, and build a new neighborhood with approximately 2,600 new residential units. The property where you live at 85 Natoma Street, Unit 5, in San Francisco, California (Property), is one of several properties in the area that the TJPA proposes to acquire for the Transbay Program.

In response to the Property owner's request that the TJPA acquire the Property earlier than it would otherwise be required for the Program due to the Property owner's hardship, on September 15, 2009 the TJPA made a first written offer to acquire the Property. If the TJPA is successful in acquiring the Property, you would be required to relocate from the Property to allow for construction of the Program. As a result of the TJPA's offer to purchase the Property, you may be entitled to receive *residential* relocation assistance from the TJPA, as described below. The TJPA will send information regarding *business* relocation assistance under separate cover.

Notice of Potential Eligibility. As the residential occupants of the Property, you may be entitled to receive certain benefits under the TJPA's Relocation Assistance Program for Residential Occupants.¹ These benefits are outlined below and are discussed in further detail in the Residential Relocation Assistance Brochure, which is enclosed for your review. Certain conditions must be satisfied before the TJPA will confirm your eligibility for residential

¹ The TJPA's Relocation Assistance Program is required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. Section 4601 et seq., and its implementing regulations, 49 CFR Part 24, as well as the California Relocation Act, Govt. Code Section 7260 et seq., and its implementing regulations, 25 Cal. Code Regs. Section 6000 et seq.

relocation assistance; proof of 90-day consecutive residential occupancy of the Property, a copy of the lease agreement, and legal residency certification are required for all residential occupants.

The total dollar amount of Relocation Assistance that you may be entitled to receive has not been calculated at this time. Our Relocation Consultant, Associated Right of Way Services, Inc., is preparing a Housing Valuation Study, describing the cost and availability of comparable, decent, safe, and sanitary housing in the area. Once this Study has been prepared and the TJPA receives the eligibility documentation described above, the TJPA will provide you a Conditional Entitlement Letter, describing the amount of Replacement Housing Payments that you may be entitled to receive. Please continue to work with your Relocation Advisor, Ms. Guillen, so that this determination can be made as quickly as possible.

Timing of Relocation. The current Program schedule has been developed in order to provide you with as much lead time as is possible to successfully relocate to a replacement dwelling of your choice. It is anticipated that you will not be required to move from the Property prior to (1) the TJPA securing possession of the Property, and (2) **August of 2010**. You will not be required to move from the Property until at least 90 days after you receive a formal, written Notice to Vacate.

Assuming you meet the eligibility requirements, you are eligible now to receive relocation assistance in accordance with the TJPA's Relocation Assistance Program for Residential Occupants. Nonetheless, we encourage you not to obligate yourself to rent or purchase a replacement dwelling until your eligibility and entitlement have been confirmed in a Conditional Entitlement Letter.

It also is important that you understand that the TJPA has not yet acquired the Property and the TJPA is not the landlord of the Property. Thus, any obligations you may have under a lease agreement for the Property, including the obligation to pay rent and provide a certain period of notice when you intend to vacate the Property, continue to apply. We will update you on the status of the TJPA's efforts to purchase the Property.

The enclosed Residential Relocation Assistance Brochure describes in detail the assistance available to eligible residential occupants of the Property. That assistance is summarized as follows:

Relocation Advisory Assistance. Your Relocation Advisor will provide you with verbal and written information regarding the assistance available to you under the TJPA's Relocation Assistance Program. Ms. Guillen is available to help you find a comparable, decent, safe, and sanitary replacement dwelling. If you would like assistance with your search for housing, please contact her at the phone number listed below. Ms. Guillen will also be available to help you to file all claims for assistance under the TJPA's Relocation Assistance Program for Residential Occupants. The TJPA strongly encourages you to work closely with your Relocation Advisor to plan your relocation before you incur any expenses.

Moving Expenses. You may choose one of the following options to cover costs related to moving your personal property to a replacement site:

1. Have the TJPA pay a professional moving company to move your personal property;
2. Receive a fixed moving expense and dislocation allowance of \$1,425.00 if you choose to move your own personal property; or
3. Choose a combination of the two moving options, depending upon your circumstances.

Your Relocation Advisor will discuss these options with you. The following moving expenses may be considered as compensable under the Relocation Assistance Program for Residential Occupants:

- A. Transportation of personal property limited to 50 miles or less. Distances beyond 50 miles are not eligible, unless the TJPA determines that relocation beyond 50 miles is justified.
- B. Packing, crating, unpacking, and uncrating of the personal property.
- C. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated personal property.
- D. Storage of the personal property not to exceed 12 months, unless the TJPA determines that a longer period is necessary.
- E. Insurance for the replacement value of the personal property in connection with the move and necessary storage.
- F. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of you, your agent, or your employee) where insurance covering such loss, theft, or damage is not reasonably available.
- G. Other moving-related expenses as the TJPA determines to be reasonable and necessary.

Caution: In order to qualify for reimbursement of the above-described expenses, you *must* do the following:

- Provide your Relocation Advisor with an updated list of the personal property to be moved at least 30 days in advance of the start of your move.
- Notify your Relocation Advisor at least 15 days in advance of the date of the start of your move or disposition of your property.
- Permit your Relocation Advisor to monitor the move and make reasonable and timely inspections of the personal property at both the displacement and replacement sites.

Failure to comply with any of the requirements may result in your losing part or all of your benefits.

You should also be aware that under the Relocation Assistance Program for Residential Occupants you are *not* entitled to the following:

- The cost of moving any structure or other real property improvement in which you reserved ownership.
- Interest on a loan to cover moving expenses.
- Personal injury.

Comparable Replacement Housing Payment. Certain residential occupants of property may be eligible to receive assistance in renting or buying a comparable replacement dwelling. In order to be eligible, you must have lived in the property to be acquired by the TJPA as your primary residence for at least 90 consecutive days prior to the date of the TJPA's first written offer to acquire the property (Eligible Tenant Occupants). Eligible Tenant Occupants may be eligible to receive the following assistance:

A. If You Rent Replacement Housing. A Replacement Housing Payment is equal to the difference between the actual or comparable monthly rent for a replacement dwelling and the "base monthly rent" for the present home. This assistance is available for a period of 42 months and is limited to \$5,250. Additional assistance may be available, however, under the Last Resort Housing program. Replacement Housing Payments are paid in a single payment or in periodic installments, depending upon the payment amount. Please provide housing cost and income information to your Relocation Advisor so that this determination can be made as quickly as possible.

In order to receive a Replacement Housing Payment, you must rent and occupy a replacement dwelling within 12 months after you move from the property acquired by the TJPA.

B. If You Purchase A Replacement Dwelling. You may choose to apply the Replacement Housing Payment based on the rent differential (as described above) or the amount of a reasonable down payment, whichever is less, toward a down payment and incidental purchase expenses on a replacement dwelling.

If you choose to apply the Replacement Housing Payment toward a down payment, you must do so within one year after you move from the property acquired by the TJPA. If you have received any amount of Replacement Housing Payment prior to purchasing a replacement home, those amounts will be deducted from all eligible payment calculations.

You do not have to accept any dwelling referred to you by the TJPA. You may choose your own replacement dwelling, but it must be decent, safe, and sanitary to qualify for replacement housing payments.

Payments under the Relocation Assistance Program for Residential Occupants are not considered as income for the purposes of personal income tax laws. Furthermore, these payments are not considered income or resources to recipients of public assistance. Relocation payments are

normally made within 45 days of the date that your completed claim has been approved by the TJPA.

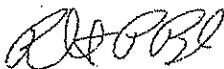
If you believe that the TJPA has failed to properly determine your eligibility or the amount of a payment under the law, you may submit a letter of appeal and, ultimately, be heard by the San Francisco Relocation Appeals Board. You have the right to be represented by legal counsel at your own expense but the presence of legal counsel is not required. If you still believe a proper determination has not been made by the Relocation Appeals Board, you may seek judicial review. You may submit an appeal in writing to your Relocation Advisor.

It is important that you understand the matters explained in this letter, which relate to your eligibility. If at any time you would like assistance, please contact Ms. Guillen by writing to her or telephoning her. To avoid losing part or all of your relocation benefits, the TJPA encourages you *not to move* from your home and *not to contract* to rent or purchase a replacement dwelling without first contacting Ms. Guillen.

 ASSOCIATED
RIGHT OF WAY
SERVICES INC

Ms. Jamie Guillen, Relocation Advisor
Associated Right of Way Services, Inc.
2300 Contra Costa Boulevard, Suite 525
Pleasant Hill, CA 94523
(800) 558-5151 toll-free • (925) 691-6505 fax
jguillen@arws.com

Sincerely,



Robert Beck, PE
Senior Program Manager

cc: Jamie Guillen, Associated Right of Way Services, Inc.
Joyce Oishi, PMPC

Enclosure: Residential Relocation Assistance Brochure

Certification of Delivery	
<input checked="" type="checkbox"/> This Notice was sent via first class and certified mail on	SHIPPED NOV 13 2009
<input type="checkbox"/> This Notice was personally delivered on	
Signature: <i>Rebecca Clemente</i>	Date: <i>11/13/2009</i>

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Dec 10 2009 04:15pm

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	10.04:10pm	4'49"	12	* 0 K	

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

FAX COVER SHEET

Date Sent: December 10, 2009 Client: 145
Number of Pages: 12 Sent By: NET
(including cover sheet)
Original to Follow: Via U.S. Mail Time Sent: 4:00pm

TO:

Terri Brown Fax: (707) 837-9083

FROM:

Winter King Phone: (415) 552-7272 Ext: 237
Fax: (415) 552-5816

MESSAGE:

P:\JIPAROW\83 Notoma\No5 (3721-113)\NET003 (Fax Cover to T. Brown 12-10-2009).doc

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
AMANDA R. GARCIA
*SENIOR COUNSEL

396 HAYES STREET.
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD
MARY J. REICHERT
BRIANNA R. FAIRBANKS

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

WINTER KING
KING@SMVLAW.COM
(415) 552-7272 EXT. 237

January 14, 2010

Via Facsimile and U.S. Mail

Terri Brown
24849 Summerhill Avenue
Los Altos, CA 94024
Facsimile: (707) 837-9083

Re: 85 Natoma #5

Dear Ms. Brown:

I received your voicemail on Tuesday afternoon, January 12, 2010, regarding the property at 85 Natoma #5 ("Property"). In that voicemail, you ask whether the TJPA has sent any correspondence to your formal legal counsel, MBV Law LLP, without copying you after receiving notice that MBV Law no longer represents you. No, it has not. On October 23, 2009, the TJPA sent you a letter informing you that TJPA needed to receive written confirmation from MBV Law that the firm was no longer representing you before TJPA could correspond with you directly. On October 26, 2009, Dwight Donovan of MBV Law provided the requested confirmation by email to me; he copied you on the email. The TJPA has not had any contact with MBV Law after Mr. Donovan's October 26 email, and has sent all correspondence since that date to you at this address.

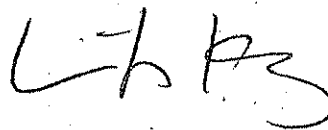
You also inquired about the status of the TJPA's acquisition of your Property. On September 15, 2009, the TJPA offered to acquire your Property at the full amount of the TJPA's appraisal of the Property. This offer was made in response to your request that the TJPA consider early acquisition of the Property due to your financial hardship. On October 22 and 23, 2009, we were informed that you rejected this offer, and that you were preparing your own appraisal. We have not yet received any appraisal

Terri Brown
January 14, 2010
Page 2

from you. The TJPA would be glad to consider any appraisal you want to provide us. The TJPA has no plans to ask the City and County of San Francisco to initiate condemnation proceedings (as opposed to following through on TJPA's offer to purchase the Property voluntarily) at this time.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

cc: Maria Ayerdi-Kaplan

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Jan 14 2010 11:18am

Name/Fax No.	Mode	Start	Time	Page	Result	Note
17078379083/P145	Normal	14,11:17am	0'59"	3	* O K	

SHUTE, MIHALY & WEINBERGER LLP

ATTORNEYS AT LAW

398 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

FAX COVER SHEET

Date Sent: January 14, 2010

Client: 145

Number of Pages: 3
(including cover sheet)

Sent By: NET

Original to Follow: Via U.S. Mail

Time Sent: 11:10 am

TO:

Terri Brown

Fax: (707) 837-9083

FROM:

Winter King

Phone: (415) 552-7272 Ext: 237

Fax: (415) 552-5816

MESSAGE:

F:\PA\ROW\85 Natoma\No5 (3721-113)\NET004 (Fax Cover to T. Brown 1-14-2009).doc

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
AMANDA R. GARCIA
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMVLAW.COM

HEATHER M. MINNER
ERIN B. CHALMERS
MARY J. REICHERT
BRIANNA R. FAIRBANKS
LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

DEBORAH L. KEETH
KEETH@SMVLAW.COM
(415) 552-7272 Ext. 257

April 22, 2010

Via Facsimile, Email, and U.S. Mail

Terri Brown
24849 Summerhill Avenue
Los Altos, CA 94024
Facsimile: (707) 837-9083
Email: tbrown39@rocketmail.com

Re: 85 Natoma #5

Dear Ms. Brown:

We are writing in regard to your April 20, 2010 email to me and Winter King regarding your appraisal of 85 Natoma #5 ("Property"), and your April 20, 2010 email to Ms. King regarding your tenant in the Property. We respond to each of your inquiries below.

Geller Appraisal

As to your inquiry regarding whether we received an appraisal from you, on April 8, 2010, we received a December 15, 2009 appraisal of the Property by Geller and Associates ("Geller Appraisal"). The TJPA is currently reviewing the Geller Appraisal and will provide you a formal written response.

As to your inquiry regarding reimbursement for the cost of the Geller Appraisal, as the TJPA and the City and County of San Francisco explained in September 15, 2009 correspondence to you, under California Code of Civil Procedure section 1263.025, the TJPA will pay for the actual, reasonable costs of a property owner's independent appraisal, up to \$5,000, subject to the following conditions:

Terri Brown
April 22, 2010
Page 2

- (a) The property owner, not the City or the TJPA, must order the appraisal. Should the property owner enter a contract with the selected appraiser, the City and the TJPA will not be parties to the contract.
- (b) The property owner's appraiser must be a Certified General Appraiser with experience in appraising property in eminent domain actions, and licensed by the California Office of Real Estate Appraisers (OREA).
- (c) The property owner must submit a request in writing to the TJPA for reimbursement of the appraisal cost. The property owner must provide a copy of the invoice for all work completed by the appraiser.

Consistent with these criteria, please provide us a copy of the invoice for all work completed by the appraiser, and evidence of your payment of the invoice. We will transmit the documentation to the TJPA.

Acquisition of the Property

In response to your inquiry about the process for moving forward on the acquisition of the Property, we want to remind you that on September 15, 2009, the TJPA made an offer to purchase your Property for \$1,250,000, the full amount of the TJPA's appraisal of the fair market value of the Property, and presented you the TJPA's proposed form of purchase-sale agreement. On October 22 and 23, 2009, we were informed that you rejected the TJPA's offer and were preparing your own appraisal.

The TJPA has received and is reviewing the Geller Appraisal; the TJPA will provide you a formal written response. If you and the TJPA are able to reach agreement on the terms of a voluntary purchase-sale of the Property for more than the TJPA's offer, the TJPA may need to obtain the approval of the Federal Transit Administration (FTA). If the FTA approves the compromise amount or if FTA approval is not required, TJPA staff would present a recommend purchase-sale agreement to the TJPA Board of Directors for its consideration, in its sole discretion, at a regularly scheduled Board meeting.

If the TJPA Board approves the purchase-sale agreement, the parties would open escrow for the conveyance of the Property. The parties would submit several documents, described in the purchase-sale agreement, to the escrow officer. Assuming the parties meet all of the terms of the purchase-sale agreement, escrow would close, at which time title to the Property would transfer to the TJPA and the purchase price would be wired to your account. Based on the TJPA's prior property transactions, we have found that escrow typically closes within 45 days.

Terri Brown
April 22, 2010
Page 3

As we previously indicated, the TJPA has no plans to ask the City and County of San Francisco to initiate condemnation proceedings (as opposed to following through on TJPA's offer to purchase the Property voluntarily) at this time.

Transbay Program Schedule

In response to your request that the TJPA provide you information regarding the TJPA's plans for development of the Transbay Program, we direct you to the TJPA's Environmental Impact Report for the project, which describes in detail the properties that the TJPA plans to acquire for the project, and any expected environmental impacts as a result of development of the project.

As to the 85 Natoma building in particular, that building is required for Phase 1 of the Program, in which the TJPA plans to build a below ground train box and the portion of the tunnel approach to the train box as it curves to the southwest across Natoma Street under 85 Natoma. The TJPA also would require the building at 85 Natoma for the downtown extension (DTX) component of the Transbay Program, known as Phase 2. The TJPA has accelerated construction of the train box, moving construction from Phase 2 into Phase 1 and, thus, is considering acquiring the building earlier than originally planned.

The TJPA has entered a contract to demolish the existing Transbay Terminal and bus ramps. The TJPA anticipates authorizing the contractor to proceed with demolition in late summer 2010, although that schedule is subject to change. The demolition contract does not currently include the 85 Natoma building.

Tenant

In response to your statement that your tenant has vacated the Property, as we previously indicated, the TJPA has notified your tenant at least twice that the TJPA has not acquired the Property, the TJPA is not the landlord, and any rights or obligations the tenant may have under their lease with you remain in effect. We were not aware that the tenant had vacated the Property.

Communications

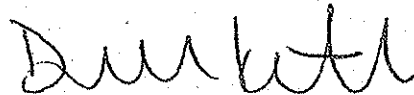
In response to your inquiry as to who you should direct your communications to, please

Terri Brown
April 22, 2010
Page 4

direct your correspondence in writing to me at the address listed above and/or via email
(email: keeth@smwlaw.com).

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Deborah L. Keeth

cc: Maria Ayerdi-Kaplan

LITIGATION

1 JONATHAN S. O'DONNELL (State Bar No. 100051)
2 DWIGHT C. DONOVAN (State Bar No. 114785)
3 MBV LAW LLP
4 855 Front Street
5 San Francisco, California 94111
6 Telephone: (415) 781-4400
7 Facsimile: (415) 989-5143

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2009 JUL 28 AM 1:59

GORDON PARKER-LI, CLERK

BY: ~~CHRIS BENTLEY~~
DEPUTY CLERK

5 Attorneys for Plaintiff
6 TERRI BROWN

DEC 31 2009 - 9:00 AM

~~DEPARTMENT 212~~

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

MBV LAW LLP
855 FRONT STREET
SAN FRANCISCO CA 94111

11 TERRI BROWN,
12 Plaintiff,
13 v.
14 TRANSBAY JOINT POWERS
15 AUTHORITY; REDEVELOPMENT
16 AGENCY OF THE CITY AND COUNTY
17 OF SAN FRANCISCO; and DOES 1
18 through 30, inclusive,
19 Defendants.

CASE No. 08C-09-490878

COMPLAINT FOR INVERSE
CONDEMNATION

[CAL. CONST. ART. 1, Section 19]

BY FAX

19 Plaintiff alleges:

- 20 1. Plaintiff is, and all times herein mentioned was, the owner of real property and
21 improvements located at 85 Natoma, Unit 5, in the City and County of San Francisco, more
22 specifically described in the legal description attached to this complaint as Exhibit A. Plaintiff's
23 property interest is referred to in this complaint as the "Subject Property."
24 2. Plaintiff is informed and believes and thereon alleges that defendant TRANSBAY
25 JOINT POWERS AUTHORITY ("TJPA") is, and all times herein mentioned was, a public entity
26 organized and existing under the laws of the State of California. Plaintiff is informed and
27 believes and thereon alleges that the TJPA Board of Directors is comprised of representatives
28 from the City and County of San Francisco, the Alameda-Contra Costa Transit District

COMPLAINT FOR INVERSE CONDEMNATION

1 (“AC Transit”), and the Peninsula Corridor Joint Powers Board-CalTrain.

2 3. Plaintiff is informed and believes and thereon alleges that defendant
3 REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO is, and
4 all times herein mentioned was, a public entity organized and existing under the laws of the State
5 of California. Plaintiff is informed and believes and thereon alleges that the
6 REDEVELOPMENT AGENCY has been granted powers of eminent domain in connection with
7 acquiring real property to redevelop and construct the project identified herein.

8 4. Plaintiff is informed and believes and thereon alleges that the TJPA has powers of
9 eminent domain in connection with acquiring real property to redevelop and construct the
10 TransBay Transit Center, which will replace the existing TransBay Terminal at First and Mission
11 Streets in San Francisco; extend the CalTrain terminus from its current location at Fourth and
12 Townsend to the new downtown transit center, which will also serve as the San Francisco station
13 for future California High Speed Rail; and create a new neighborhood adjacent to the new Transit
14 Center.

15 5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein
16 as DOES 1 through 30, inclusive, and therefore sues said defendants by such fictitious names.
17 Plaintiff will amend this Complaint to insert their true names and capacities when ascertained.

18 6. Plaintiff is informed and believes, and on that basis alleges, that each of the
19 fictitiously named defendants is in some manner responsible for the injury and damage to
20 plaintiff alleged herein. Plaintiff is also informed and believes, and thereon alleges, that those
21 fictitiously named defendants are, and at all times herein mentioned were, the agents, servants,
22 and employees of their co-defendants and were acting within such authority at the time of the acts
23 herein alleged.

24 7. From and after January, 2005, defendants, and each of them, engaged in the
25 following acts which constitute a de facto taking of plaintiff’s property under the California
26 Constitution and California law.

27 8. Plaintiff originally purchased the Subject Property in September, 2003 as an
28 investment property, with the goal of selling it after holding it for approximately two years. She

1 entered into a listing agreement to sell the property in January, 2005, at a sales price of
2 \$1,550,000.

3 9. Plaintiff secured a potential buyer for the Subject Property. However, the buyer
4 backed out of the purchase after learning, upon conducting due diligence, that defendant had
5 plans to acquire and demolish the building. This came as a complete surprise to plaintiff.

6 10. Thereafter, plaintiff was in regular contact with Harry Quinn, identified as an
7 acquisition consultant for TJPA, who repeatedly advised plaintiff that the Subject Property would
8 be condemned and acquired by the end of 2005.

9 11. At the time, the Subject Property was leased to Echopass Corp. In the Summer of
10 2005, Echopass advised of its intention not to renew the lease due to its understanding that
11 TJPA's plans for condemnation and planned construction in the surrounding areas would make
12 the space functionally uninhabitable. The Subject Property is designated as work/live loft space.
13 Echopass vacated the premises at the end of its lease term, in the Summer of 2005.

14 12. Plaintiff attempted to re-let the premises, with no success. Based on ongoing
15 representations from Mr. Quinn to the effect that condemnation and purchase of the property
16 would occur by the end of the year, plaintiff elected to mitigate damages by selling her residence
17 and moving into the property pending acquisition. The end of the year came and went, and TJPA
18 failed to purchase the property or institute formal condemnation proceedings.

19 13. By April of 2006, plaintiff learned that another tenant in the building was
20 interested in short term occupancy. Plaintiff, who was living in the Subject Property with her 11
21 year old daughter, had already overstayed her period of intended occupancy, and was concerned
22 with the safety and noise elements of the neighborhood on her daughter's behalf. She therefore
23 leased the unit at below market rent to the above-described tenant.

24 14. On August 11, 2006, over a year and a half after plaintiff had been unable to sell
25 the Subject Property due to TJPA's dissemination of information concerning condemnation
26 plans, and over a year after TJPA had told her it would purchase the Subject Property, plaintiff
27 received a telephone message from counsel for TJPA, advising that Mr. Quinn had no authority
28 to speak on behalf of the TJPA, and advising that condemnation of the Subject Property was not

1 in fact imminent.

2 15. On August 11, 2006, plaintiff was told that the TJPA had decided to split the
3 TransBay Terminal Development Project into two phases – Phase 1 and Phase 2. Plaintiff was
4 told that her property had been moved from Phase 1 to Phase 2, and would not be acquired until
5 2012 or 2014, if at all. Notwithstanding, there were documents in the public record, including
6 environmental impact assessments, declaring that the Subject Property would be purchased and
7 vacated prior to or concurrently with Phase 1 construction, which was to commence in 2006.

8 16. Plaintiff is informed and believes and thereon alleges that TJPA proceeded with
9 acquisition of properties directly adjacent to hers, and is proceeding with construction plans that
10 threaten to, and will, directly impact her property. Among other things, these plans include
11 shutting down Natoma Street, tearing down a security wall of plaintiff's garage that also serves as
12 a boundary to plaintiff's property, performing extensive demolition, and thereafter initiating
13 around-the-clock heavy construction on all sides of the Subject Property. These threats, and
14 references thereto in the public record and elsewhere, made it virtually impossible for plaintiff to
15 market her property, and continue to do so.

16 17. Plaintiff attempted to mitigate damages by trying to lease the premises. Plaintiff
17 was advised by her leasing agent in December of 2006 that he did not believe he could secure a
18 live/work tenant at market rent in the Subject Property due to the impending development of the
19 TransBay Terminal Project. Plaintiff was advised that potential live/work tenants are looking to
20 lock in a two to three year lease to insure business stability, and are not willing to endure the
21 threat of 24/7 construction activity directly adjacent to the property, all of which would need to
22 be disclosed to prospective tenants. Plaintiff was told that she might be able to lease the property
23 on a short term basis at below market value, which she attempted to do.

24 18. Plaintiff also renewed her attempts to sell the Subject Property after hearing from
25 TJPA's counsel. However, brokers refused to list the property. Among the comments received
26 from brokers were the following: "Since this building is in the process of being taken over by the
27 City through the eminent domain process, I will not be able to sell this property at fair market
28 value"; "You won't be able to sell that property"; "I wouldn't touch this listing with a stick"; and

1 "Good luck trying to sell that property."

2 19. When plaintiff attempted to list the Subject Property, she was advised by a
3 potential broker that certain clouds on title appeared in connection with the Subject Property,
4 including the following. Unbeknownst to plaintiff, on or about August 4, 2006, a document
5 clouding plaintiff's title had been recorded by defendant REDEVELOPMENT AGENCY with
6 the San Francisco County Assessor-Recorder as Document 2006-I224836-00, constituting a
7 redevelopment plan, and placing the public on further notice that plaintiff's property would be
8 acquired by the powers of eminent domain. Plaintiff is informed and believes and thereon alleges
9 that this publicly recorded document appears on any title report prepared in connection with the
10 Subject Property.

11 20. Further unbeknownst to plaintiff, on or about August 4, 2006, defendant
12 REDEVELOPMENT AGENCY recorded with the San Francisco County Assessor-Recorder as
13 Document 2006-I224839-00 a document entitled TransBay Redevelopment Project Area
14 Declaration of Restrictions, purporting to impose restrictions on plaintiff's property. Plaintiff is
15 informed and believes that this document is a matter of public record which will appear on any
16 title report prepared in connection with the Subject Property.

17 21. As a result of the foregoing, plaintiff was unable to sell the Subject Property, and
18 she has only sporadically been able to lease it for short periods of time, at below-market rents.
19 Meanwhile, her financing (which was obtained in 2003 at an adjustable rate, predicated upon
20 plaintiff's intent to only hold the property for two years) has adjusted significantly upwards,
21 creating a drastic negative economic impact upon plaintiff.

22 22. Meanwhile, the TJPA's plans, and the delineation of boundaries and work to be
23 effected during purported Phase 1 and purported Phase 2, continued and continues to shift.

24 23. TJPA counsel advised plaintiff that her only recourse was to submit a hardship
25 application requesting early action on the acquisition of her property. Notwithstanding, TJPA
26 has not acted in good faith in processing this hardship application, repeatedly asking for
27 information that had already been provided to it; dragging its feet with respect to processing the
28 application; and giving plaintiff inconsistent information over the telephone and in writing. The

1 "hardship application" process has dragged on for over two full years, with no results.

2 24. In order to avoid defaulting on her financial obligations on the Subject Property,
3 plaintiff has attempted to sell a separate property in Healdsburg, California at a loss. Plaintiff
4 placed this property on the market in December, 2007, and has been unable to sell the property
5 despite reductions in the asking price that, even if accepted, would not make her whole. Plaintiff
6 is currently three months behind on payments on this property, and in all likelihood will lose the
7 property in foreclosure. Plaintiff has further been required to spend a significant amount of
8 money on legal fees as a result of the wrongful behavior of defendants.

9 25. Plaintiff is informed and believes and thereon alleges that within the past two
10 weeks, other owners of property within the building (but not plaintiff) have been notified, in
11 writing, that TJPA now intends to condemn the entire building as part of Phase 1. TJPA's acts,
12 in excluding plaintiff from this dialogue, are further evidence of unreasonable pre-condemnation
13 activity.

14 26. The above-alleged acts of defendant, and each of them, constitute unreasonable
15 pre-condemnation activity for which plaintiff is entitled to compensation in inverse
16 condemnation.

17 27. As a direct and proximate result of the unreasonable pre-condemnation activities
18 of defendants, plaintiff's property has diminished in value in an amount subject to proof at trial.
19 Further, defendants' unreasonable pre-condemnation activities have affected plaintiff's ability to
20 rent her property at its fair market value, thereby resulting in lost rental income in an amount
21 according to proof at trial. Plaintiff has further been damaged in terms of being forced to
22 prematurely sell her personal residence as alleged in paragraph 12 above, in being required to sell
23 the Healdsburg property at a loss or to lose the property to foreclosure as alleged in paragraph 22,
24 above, and in incurring legal fees and brokers' commissions, in addition to other damages which
25 shall be proven at trial.

26 28. The above-alleged acts constitute a taking and damage to property without
27 compensation, contrary to Article 1, Section 19 of the California Constitution.


28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as follows:

- 1. For general and special damages, including, without limitation, diminution in market value and lost rental income, in an amount according to proof;
- 2. For plaintiff's reasonable attorneys' fees and appraisal fees incurred in connection with this action;
- 3. For costs of suit; and
- 4. For such and further relief as this Court may deem just and proper.

DATED: July 28, 2009

MBV LAW LLP


By: DWIGHT C. DONOVAN
Attorneys for Plaintiff TERRI BROWN

MBV LAW LLP
855 FRONT STREET
SAN FRANCISCO CA 94111

EXHIBIT "A"
LEGAL DESCRIPTION

The land referred to is situated in the State of California, City and County of San Francisco, and is described as follows:

PARCEL I:

Condominium Unit No. 5, Lot No. 113, as shown upon the Condominium Map and diagrammatic floor plan entitled, "Map of 85 NATOMA STREET, A LIVE/WORK CONDOMINIUM PROJECT, BEING A SUBDIVISION OF LOT 90 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED JUNE 24, 1998 IN BOOK 43 OF PARCEL MAPS AT PAGE 181, BEING A PORTION OF ASSESSOR'S BLOCK 3721, SAN FRANCISCO, CALIFORNIA", which Map was filed for record in the office of the Recorder of the City and County of San Francisco, State of California, on December 18th, 2000, in Book 66 of Condominium Maps, at Pages 18 to 22, inclusive, (referred to herein as "the Map") and as further defined in the Declaration of Covenants, Conditions and Restrictions recorded on April 9th, 2001, in Book H862, Page 70 of Official Records of the City and County of San Francisco, State of California (referred to herein as "the Declaration").

EXCEPTING THEREFROM any portion of the common area lying within said Unit.

EXCEPTING THEREFROM:

- (a) Easements through said Unit, appurtenant to the common area and all other Units, for support and repair of the common area and all other Units.
- (b) Easement, appurtenant to the common area for encroachment upon the air space of the Unit by those portions of the common area located within the Unit.

PARCEL II:

An undivided 12.62% interest in and to the Common Area as shown and defined on the Map, excepting therefrom the following:

- (a) Exclusive easements, other than PARCEL III, as designated on the Map and reserved to Units for use as designated in the Declaration; and
- (b) Nonexclusive easements appurtenant to all units for ingress and egress, support, repair and maintenance.

PARCEL III:

- (a) The exclusive easement to use Deck Area designated D-5, on the Map;
- (b) The exclusive easement to use Parking Area designated P-6, on the Map.

PARCEL IV:

A nonexclusive easement appurtenant to PARCEL I above for support, repair and maintenance, and for ingress and egress through the Common Area.

1 ANDREW W. SCHWARTZ (State Bar No. 87699)
2 WINTER KING (State Bar No. 237958)
3 SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
4 San Francisco, CA 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816

ENDORSED
FILED
Superior Court of California
County of San Francisco

SEP 11 2009

5 Attorneys for Defendant
6 TRANSBAY JOINT POWERS AUTHORITY

GORDON PARKLI, Clerk
~~MAURITA GARCIA, Deputy Clerk~~

7
8
9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12
13 TERRI BROWN,

14 Plaintiff,

15 v.

16 TRANSBAY JOINT POWERS AUTHORITY;
17 REDEVELOPMENT AGENCY OF THE CITY
AND COUNTY OF SAN FRANCISCO; and
18 DOES 1 through 30, inclusive,

19 Defendants.

Case No. CGC-09-490878

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT TRANSBAY JOINT POWERS
AUTHORITY'S DEMURRER TO
PLAINTIFF TERRI BROWN'S
COMPLAINT FOR INVERSE
CONDEMNATION**

Date: October 13, 2009
Time: 9:30 a.m.
Dept.: 302

Action Filed: July 28, 2009
Trial Date: N/A

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS..... i
TABLE OF AUTHORITIES..... ii
INTRODUCTION 1
FACTS 2
 I. THE TRANSBAY TRANSIT CENTER PROJECT. 2
 II. BROWN’S ALLEGATIONS. 3
STANDARD OF REVIEW 5
ARGUMENT 6
 I. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION FOR A
 “DE FACTO” TAKING. 6
 II. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION FOR
 DAMAGES CAUSED BY UNREASONABLE PRECONDEMNATION
 ACTIVITY UNDER *KLOPPING V. WHITTIER*. 7
 A. Brown’s Claim for *Klopping* Damages Must Be Dismissed Because
 the TJPA Has Not Actually Condemned the Property. 7
 B. Brown’s Claim for *Klopping* Damages Must Be Dismissed Because
 the TJPA Has Not Announced Its Intent to Condemn the Property. 8
 1. Planning Alone Cannot Subject the TJPA to Liability for
 Klopping Damages. 9
 2. Brown’s Communications with TJPA Staff Do Not Constitute
 an “Official Action” Stating an Intent to Condemn the
 Property. 12
 3. The Recordation of the Redevelopment Plan Is Not an
 Official Announcement of An Intent to Condemn Brown’s
 Property. 13
 C. Brown’s Allegations Fall Outside the “Narrow Scope” of Cases in
 which *Klopping* Damages Have Been Awarded. 14
CONCLUSION..... 15

TABLE OF AUTHORITIES

Federal Cases

Lingle v. Chevron U.S.A., Inc.
(2005) 544 U.S. 5286

State Cases

Buena Park School Dist. v. Metrim Corp.
(1959) 176 Cal.App.2d 2557

Cambria Spring Co. v. City of Pico Rivera
(1985) 171 Cal.App.3d 1080 13

City and County of San Francisco v. Golden Gate Heights Investments
(1993) 14 Cal.App.4th 1203 14

City of Walnut Creek v. Leadership Housing Systems, Inc.
(1977) 73 Cal.App.3d 6119

Contra Costa Water District v. Vaquero Farms, Inc.
(1997) 58 Cal.App.4th 8839

Guinnane v. City and County of San Francisco
(1987) 197 Cal.App.3d 8629

Helix Land Co. v. City of San Diego
(1978) 82 Cal.App.3d 932 14

Johnson v. California
(1979) 90 Cal.App.3d 195 11, 12

Klopping v. City of Whittier
(1972) 8 Cal.3d 39 passim

Kong v. City of Hawaiian Gardens Redevelopment Agency
(2002) 108 Cal.App.4th 1028 8

Lee v. Interinsurance Exchange
(1996) 50 Cal.App.4th 6946

McAllister v. County of Monterey
(2007) 147 Cal.App.4th 2535

Rakestraw v. California Physicians' Service
(2000) 81 Cal.App.4th 395

Redevelopment Agency of San Diego v. Mesdaq
(2007) 154 Cal.App.4th 1111 8, 14

Selby Realty Co. v. City of San Buenaventura
(1973) 10 Cal.3d 110 passim

1	<i>Smith v. California</i>	
	(1975) 50 Cal.App.3d 529	10
2	<i>Smith v. City and County of San Francisco</i>	
3	(1990) 225 Cal.App.3d 38	6, 7
4	<i>Terminals Equipment Co. v. City and County of San Francisco</i>	
	(1990) 221 Cal.App.3d 234	6, 8, 9, 12
5	<i>Toso v. City of Santa Barbara</i>	
6	(1980) 101 Cal.App.3d 934	8, 13, 14

State Statutes

8	Code of Civil Procedure § 430.10	5
9	Code of Civil Procedure § 1245.220	9, 11, 13
10	Health & Safety Code § 33373	13
11	Public Resources Code § 5027.1	11

Other References

14	California Department of Transportation	
	Right Of Way Manual	
15	§§ 5.03.00	8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

1
2 Plaintiff Terri Brown ("Brown") is a real estate investor and landlord of a condominium located
3 within the area planned for the new Transbay Transit Center Project ("Transit Center" or "Project").
4 The Transit Center will replace San Francisco's outdated Transbay Terminal with a new, one million
5 square foot multi-modal Transit Center—the "Grand Central Terminal of the West"—which will
6 combine all public transit in San Francisco under one roof. The Transit Center will also be the new San
7 Francisco station for Caltrain and the Northern California terminus for high-speed rail. The Project will
8 be a model for Transit-Oriented Development. By saving thousands of daily vehicle trips into San
9 Francisco, it will play a crucial role in the fight against global warming.

10 If all goes according to plan, the agency responsible for carrying out the Project, Defendant
11 Transbay Joint Powers Authority ("TJPA"), will acquire Brown's investment property, either through a
12 voluntary sale or eminent domain, when that property is needed to construct the Project and when
13 funding is available. Thus far, however, the TJPA has engaged in planning for the Project only; it has
14 taken no official action to begin condemnation proceedings. Nor has the TJPA interfered in any way
15 with Brown's ability to use her investment by leasing it, selling it, or living in it.

16 Brown's complaint against the TJPA boils down to no more than this: the TJPA has adopted a
17 plan for a substantial public infrastructure project and has identified Brown's property, among scores of
18 others, as needed for the Project. Brown contends that as a result of these actions, Brown has been
19 unable to sell her investment or charge market rental rates for several years. Brown contends that the
20 TJPA's conduct effected a "de facto" or "regulatory" taking of her property. Brown has alleged
21 planning activity only; she has not alleged that the TJPA has taken any regulatory action that has
22 interfered in any way with her use of the property. To the contrary, the Brown's Complaint for Inverse
23 Condemnation ("Complaint" or "Compl.") alleges that Brown has resided in and rented out the property
24 over the last several years. Thus, the Complaint fails to state a claim for a "regulatory" taking.

25 Brown further contends that the TJPA's planning activity constitutes "unreasonable
26 precondemnation conduct." Assuming the truth of Brown's allegations, however, Brown fails to state a
27 cause of action for damages against the TJPA. Under settled law, the TJPA's planning activity, without
28 any direct interference with Brown's use, development, or sale of her property, is not actionable.

1 Indeed, if Brown's allegations could render a public agency liable for damages, all public
2 infrastructure projects would come to a grinding halt. Such projects can require lengthy planning,
3 including environmental review, public participation, funding, and design, prior to any actual acquisition
4 of real property. Throughout this process, plans can change, eliminating the need to acquire some
5 property and creating the need to acquire others, or adjusting the schedule of acquisition due to financial
6 or other limitations. Public agencies simply could not build public projects if they were liable for
7 damages to every owner of property affected by the project immediately upon the agency's indication in
8 a *planning* document that private property may be required to carry out the project. California courts
9 have recognized this significant policy concern in consistently rejecting such claims.

10 FACTS

11 I. THE TRANSBAY TRANSIT CENTER PROJECT.

12 The TJPA is a public entity responsible for planning, constructing, and managing the Transbay
13 Transit Center Project at a total estimated cost of \$4.5 billion. The Transit Center will feature a 5.4-acre
14 public park and "green roof" atop the facility. Bus ramps will connect the new Transit Center directly to
15 Interstate 80 and the Bay Bridge. The Project will extend the Peninsula corridor Caltrain commuter rail
16 service from its current San Francisco terminus, which is more than 1.3 miles from the heart of San
17 Francisco's employment center, to the new downtown Transit Center through an underground tunnel,
18 connecting California's technology center with San Francisco's financial hub. The Transit Center will
19 be the San Francisco station for California High Speed Rail that will connect the Northern and Southern
20 halves of the State with trains that will make the trip from San Francisco to Los Angeles in 2 ½ hours.

21 The Transbay Project will centralize the region's transportation networks by connecting eight
22 Bay Area counties, create seamless connections between transit providers by accommodating nine
23 transit systems under one roof, and serve more than 100,000 passengers per day. The Project will
24 increase bus and rail ridership throughout the Bay Area and the State by improving access and
25 connectivity to public transportation. The Project will improve the environment by reducing auto traffic,
26 fuel consumption and associated emissions by providing numerous and interconnected transit
27 alternatives to automobiles and airplanes. It is anticipated that the Project will reduce greenhouse gas
28 emissions by 42,000 tons annually.

1 The Transbay Project will also create California's largest transit-friendly neighborhood, with
2 2,600 new homes (35 percent of which will be affordable, including extremely low-income housing and
3 senior housing), public parks, 3 million square feet of new office space, and 100,000 square feet of retail
4 serving transit passengers.

5 Finally, the Project will create more than 45,000 jobs. It will be one of the largest construction
6 projects ever conducted in the San Francisco Bay Area.

7 II. BROWN'S ALLEGATIONS.

8 Brown's Complaint makes the following allegations, which the TJPA assumes are true for
9 purposes of this demurrer only:

10 Brown is the owner of Unit 5 of a building at 85 Natoma Street in San Francisco, California
11 ("Property"). Brown purchased the Property as an investment in September 2003 with the goal of
12 holding it for approximately two years. (Compl. ¶¶ 1, 8.) In January 2005, Plaintiff listed the property
13 at a sales price of \$1,550,000. (Id. ¶ 8.)

14 The TJPA is a public entity whose Board of Directors is comprised of representatives from the
15 City and County of San Francisco, the Alameda-Contra Costa Transit District, and the Peninsula
16 Corridor Joint Powers Board. (Id. ¶ 2.) The TJPA has the authority to acquire properties by eminent
17 domain to develop and construct the Transit Center. (Id. ¶ 4.) The Transit Center will replace the
18 existing Transbay Terminal at First and Mission Streets in San Francisco, extend the Caltrain terminus
19 from its current location at Fourth and Townsend to the new Transit Center, and serve as the San
20 Francisco station for future high-speed rail. (Id.) The Redevelopment Agency of the City and County
21 of San Francisco ("Redevelopment Agency") is a public entity with authority to acquire property to
22 redevelop the Transbay area. (Id. ¶ 3.)

23 The TJPA plans to acquire and demolish the Property, and disseminated that information to the
24 public. (Id. ¶¶ 9, 14.) The TJPA placed documents in the public record, including environmental
25 impact assessments, stating the Property would be purchased and vacated in the first phase of Project
26 construction, which was to commence in 2006. (Id. ¶ 15.) Sometime in 2005, an "acquisition
27 consultant" for the TJPA repeatedly advised Brown that her Property would be condemned and acquired
28 by the end of 2005. (Id. ¶ 10.) The TJPA did not purchase the Property or institute formal

1 condemnation proceedings by the end of 2005. (*Id.* ¶ 12.)

2 On or about August 4, 2006, the Redevelopment Agency recorded a redevelopment plan and a
3 document entitled "TransBay Redevelopment Project Area Declaration of Restrictions" with the San
4 Francisco County Assessor-Recorder. (*Id.* ¶¶ 19, 20; *see also* Defendant TJPA's Request for Judicial
5 Notice ("RJN") Ex. A.) These publicly recorded documents appear on title reports prepared in
6 connection with the Property. (Compl. ¶¶ 19, 20.) The Complaint is silent as to whether any of the
7 "restrictions" in that document limit the use, sale, or development of the Property.

8 On August 11, 2006, counsel for the TJPA telephoned Brown and advised her that the
9 "acquisition consultant" had no authority to speak on behalf of the TJPA, and told her that
10 condemnation of her Property was not imminent. (*Id.* ¶ 14.) That same day, an unnamed individual told
11 Brown that the TJPA had split the Transit Center Project into two phases. This individual told Brown
12 that the Property would not be acquired until "2012 or 2014; if at all." (*Id.* ¶ 15.)

13 The TJPA has "proceeded with acquisition" of properties directly adjacent to Brown's Property.
14 (*Id.* ¶ 16.) The TJPA is proceeding with construction plans "that threaten to, and will" impact the
15 Property by shutting down Natoma Street; removing a wall that serves as one of the Property's
16 boundaries; and performing demolition and "around-the-clock heavy construction" surrounding the
17 Property. The TJPA has made these construction plans available in the public record and elsewhere.
18 (*Id.* ¶ 16.) However, the TJPA continues to shift its plans, adjusting the boundaries of work to be
19 conducted during the two phases of Project construction and the areas that will be affected by that work.
20 (*Id.* ¶ 22.)

21 Sometime in July 2009, an unnamed individual notified other owners of units in 85 Natoma that
22 the TJPA intends to condemn the building as part of the first phase of Project construction. (*Id.* ¶ 25.)

23 As a result of the activities of the TJPA and the Redevelopment Agency, the Property has
24 diminished in value in an unspecified amount. (*Id.* ¶ 27.) Brown has been unable to sell the Property,
25 and her financing on the Property has adjusted upwards, creating a "drastic negative economic impact"
26 on Brown. (*Id.* ¶ 21.) In 2005, Brown secured a potential buyer for the Property, but the buyer backed
27 out of the purchase after learning that TJPA had plans to acquire and demolish the building. (*Id.* ¶ 9.)
28 To avoid defaulting on the Property, Brown has attempted to sell a separate property in Healdsburg,

1 California "at a loss," but has been unable to do so and will likely lose that property in foreclosure. (*Id.*
2 ¶¶ 24, 27.) Brown has incurred legal fees and brokers' commissions. (*Id.* ¶ 27.)

3 Brown's ability to rent the Property at the market rate has been "affected" and she has lost rental
4 income. (*Id.*) In 2005, her tenant advised her of its intention not to renew the lease due to its
5 understanding that the TJPA's plans for condemnation and construction in the surrounding areas would
6 make the space functionally uninhabitable. (*Id.* ¶ 11.) When Brown was unable to lease the Property in
7 2005, she sold her residence and moved into the Property. (*Id.* ¶ 12, 27.) Around April 2006, Brown
8 leased the Property at below-market rent to another tenant in the building. (*Id.* ¶ 13.) Since that time,
9 Brown has been able to lease the property for short periods of time, at below-market rent. (*Id.* ¶ 21.)

10 The TJPA's counsel advised Brown that "her only recourse" was to submit a hardship
11 application requesting early action on the acquisition of the Property. (*Id.* ¶ 23.) In processing Brown's
12 hardship application, the TJPA has repeatedly asked for information that has already been provided;
13 dragged its feet; and given Brown inconsistent information over the phone and in writing. The TJPA has
14 not yet approved the hardship application 2 ½ years after it was filed. (*Id.* ¶ 23.)

15 The Complaint does not enumerate causes of action distinct from the background facts.
16 However, paragraphs 7 and 26-28 allege that Brown is entitled to inverse condemnation damages for the
17 "de facto" taking of her Property and for the TJPA's unreasonable pre-condemnation activities.

18 STANDARD OF REVIEW

19 A complaint for inverse condemnation is subject to demurrer. (*Selby Realty Co. v. City of San*
20 *Buenaventura* (1973) 10 Cal.3d 110, 113.) A demurrer is appropriate where a complaint fails to state
21 facts sufficient to constitute a cause of action. (Code Civ. Proc. § 430.10.) In reviewing the sufficiency
22 of a complaint against a general demurrer, the Court treats the demurrer as admitting all material facts
23 properly pleaded, but not contentions, deductions, or conclusions of fact or law. (*Rakestraw v.*
24 *California Physicians' Service* (2000) 81 Cal.App.4th 39, 43.) The Court also considers matters that
25 may be judicially noticed. (*Id.*) If a complaint includes allegations that conflict with judicially noticed
26 documents or represent bare legal conclusions, the Court must disregard those allegations when
27 assessing the sufficiency of the pleading. (*McAllister v. County of Monterey* (2007) 147 Cal.App.4th
28 253, 289.) "[I]t is proper to sustain a demurrer without leave to amend if it is probable from the nature

1 of the defects and previous unsuccessful attempts to plead that plaintiff cannot state a cause of action.”
2 (*Lee v. Interinsurance Exchange* (1996) 50 Cal.App.4th 694, 724.)

3
4 **ARGUMENT**

5 **I. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION FOR A “DE FACTO” TAKING.**

6 The Complaint claims that Brown is entitled to damages because the TJPA’s actions constitute a
7 “de facto taking.” (Compl. ¶ 7.) A “de facto” or “regulatory” taking occurs when “government
8 regulation of private property [is] so onerous that its effect is tantamount to a direct appropriation or
9 ouster” (*Lingle v. Chevron U.S.A., Inc.* (2005) 544 U.S. 528, 537). However, the Complaint fails
10 to allege any *regulatory* action by the TJPA whatsoever. Nor could it, because the TJPA has no
11 authority to regulate the use of Brown’s property. (See RJN Ex. A, at 14 [land uses within Zone 2 of
12 Redevelopment Plan shall be consistent with City’s General Plan and Planning Code]; *id.* at 39 [showing
13 Natoma street within Zone 2].)

14 The Complaint also fails to allege that the TJPA’s actions denied Brown *all use* of the
15 Property—allegations that are required to support a regulatory takings claim. (*Smith v. City and County*
16 *of San Francisco* (1990) 225 Cal.App.3d 38, 45-46 [*Smith v. San Francisco*] [citing cases]; *Terminals*
17 *Equipment Co. v. City and County of San Francisco* (1990) 221 Cal.App.3d 234, 238-39.) In fact,
18 Brown does not allege that the TJPA’s actions (which so far have been limited to *planning* the
19 development of the Transit Center) have interfered with her use of the property in any way. To the
20 contrary, the Complaint indicates that Brown has continued to use the Property, living there for some
21 time in 2005 and 2006, and leasing it to several tenants over the last four years. (Compl. ¶¶ 12, 13, 21).
22 While the Complaint suggests that the TJPA’s plans have prevented her from receiving full market rent
23 from her tenants, such an impact clearly does not rise to the level of depriving Brown of “all use” of her
24 property. (See *Terminals*, 221 Cal.App.3d at 242 [“inverse condemnation does not lie in zoning actions
25 in which the complaint alleges a mere reduction of market value”].) As a result, Brown has failed to
26 allege facts sufficient to support a regulatory takings claim.

1 **II. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION FOR DAMAGES**
2 **CAUSED BY UNREASONABLE PRECONDEMNATION ACTIVITY UNDER**
3 ***KLOPPING V. WHITTIER.***

4 Brown also apparently seeks damages for “unreasonable precondemnation activity” under
5 *Klopping v. City of Whittier* (1972) 8 Cal.3d 39. In that case, the California Supreme Court held that a
6 landowner may recover certain damages accruing prior to the condemnation of her property if: “(1) the
7 public authority [condemning the property] acted improperly either by unreasonably delaying eminent
8 domain action following an announcement of intent to condemn or by other unreasonable conduct prior
9 to condemnation; and (2) as a result of such action, the property in question suffered a diminution in
10 market value.” (*Id.* at 52.) The Court recognized the need for such a remedy to protect landowners
11 from a condemning agency taking actions to “depress the market value of the property for the purpose
12 of acquiring it at less than market value.” (*Id.* at 51 [quoting *Buena Park School Dist. v. Metrim Corp.*
13 (1959) 176 Cal.App.2d 255, 258-259].)

14 Thus, to state a claim for damages under *Klopping*, Brown must at the very least allege that the
15 TJPA has either (1) made a formal announcement that it intends to condemn the Property, after which
16 the TJPA unreasonably delayed filing a condemnation action, or (2) acted unreasonably prior to
17 condemning the Property. Brown has not and cannot do so.

18 Instead, the only actions Brown alleges in support of her claim under *Klopping* are: (1) the TJPA
19 has referred to its plans to construct the Transit Center in “the public record and elsewhere”; (2) an
20 “acquisition consultant” for the TJPA repeatedly advised Brown that her Property would be condemned
21 and acquired by the end of 2005; and (3) the Redevelopment Agency recorded a redevelopment plan and
22 Declaration of Restrictions with the County Assessor. Courts have routinely denied *Klopping* damages
23 when presented with similar allegations of government planning activities.

24 **A. Brown’s Claim for *Klopping* Damages Must Be Dismissed Because the TJPA Has**
25 **Not Actually Condemned the Property.**

26 Brown’s claim for precondemnation damages must be dismissed because the Complaint fails to
27 allege that the Property has actually been condemned, either by an action in eminent domain or by a
28 regulatory action depriving Brown of the use of her Property. As one court succinctly reasoned: “By
definition, damages for precondemnation conduct require that the property be *condemned.*” (*Smith v.*

1 *San Francisco*, 225 Cal.App.3d at 47 [emphasis added]; *see also id.* [denying *Klopping* damages where
2 City never took action to condemn property].) *Klopping* did not create a private right of action
3 “enabling property owners to collect damages whenever [an agency] acts ‘unreasonably.’”
4 (*Redevelopment Agency of San Diego v. Mesdaq* (2007) 154 Cal.App.4th 1111, 1135 [“*Mesdaq*”].)
5 “Rather, *Klopping* damages are a narrow remedy” to ensure that, when an agency condemns a property,
6 the owner receives “just compensation.” (*Id.*; *see also Kong v. City of Hawaiian Gardens*
7 *Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1045 [a claim for precondemnation damages “is
8 simply a form of damages that may be recovered in an action for inverse condemnation.”].)

9 The Complaint does not allege that the TJPA has filed an action in eminent domain to condemn
10 the property directly.¹ Nor, for the reasons stated above (*see supra* Section I), does it state a claim for
11 inverse condemnation under a “regulatory taking” theory. In the absence of either a direct or indirect
12 condemnation of the Property by the TJPA, Brown cannot state a claim for *precondemnation* damages.
13 Indeed, Defendant TJPA has been unable to find a single published opinion in which a court has granted
14 or upheld *Klopping* damages in the absence of condemnation.

15 **B. Brown’s Claim for *Klopping* Damages Must Be Dismissed Because the TJPA Has**
16 **Not Announced Its Intent to Condemn the Property.**

17 Even if actual condemnation were not required to establish a cause of action for
18 precondemnation damages under *Klopping*, an official announcement of the agency’s intent to condemn
19 is. “In order for any right to pre-condemnation damages to accrue, . . . there must have been either some
20 formal announcement by the condemning agency of its intention to condemn, or some other official act
21 or expression of intent to acquire the property in question.” (*Terminals*, 221 Cal.App.3d at 245.)
22 Without this official action, there can be no cause of action in inverse condemnation for unreasonable
23 precondemnation activities. (*Toso v. City of Santa Barbara* (1980) 101 Cal.App.3d 934, 957; *see also*
24

25 ¹ Indeed, Plaintiff alleges that she has submitted a hardship application for early acquisition of her
26 property (Compl. ¶ 23), a process that would not be necessary if the TJPA Board had instituted eminent
27 domain proceedings. (*See* California Department of Transportation Right Of Way Manual §§ 5.03.00 et
28 seq. [authorizing acquisition by the state prior to when the project requires acquisition of the property if
hardship shown].)

1 *Guinnane v. City and County of San Francisco* (1987) 197 Cal.App.3d 862, 866 [granting city's motion
2 for summary judgment because "there was never any announcement by the city of an intention to
3 condemn plaintiff's property."].)

4 Pursuant to Code of Civil Procedure section 1245.220, the only way for a public agency to
5 initiate condemnation proceedings is for its governing body to adopt a "resolution of necessity." (Code
6 Civ. Proc. § 1245.220 ["A public entity may not commence an eminent domain proceeding until its
7 governing body has adopted a resolution of necessity"].) Brown has not alleged, nor can she
8 allege, that the governing body of the TJPA, its Board of Directors, has adopted a resolution of necessity
9 for the acquisition of Brown's Property.

10 **1. Planning Alone Cannot Subject the TJPA to Liability for *Klopping* Damages.**

11 In the absence of a resolution of necessity, Brown attempts to establish an official
12 "announcement of an intent to condemn" by pointing to the TJPA's plans to carry out the Transit Center
13 Project. However, courts have consistently and unanimously denied *Klopping* damages claimed when
14 the only alleged "announcement of an intent to condemn" comes in the form of an agency's general plan
15 for public infrastructure improvements. (*Selby*, 10 Cal.3d at 117-18 [city and county adoption of
16 general plan showing location of proposed street crossing plaintiff's property did not state inverse
17 condemnation claim]; *Guinnane*, 197 Cal.App.3d at 867 [city's designation of property as open space in
18 its master plan and indicating it may be acquired did not state a *Klopping* claim]; *Contra Costa Water*
19 *District v. Vaquero Farms, Inc.* (1997) 58 Cal.App.4th 883, 896, 903 [denying recovery under *Klopping*
20 for property's diminution in fair market value caused by adoption of an Environmental Impact Report
21 that showed the property as part of a reservoir project]; *Terminals*, 221 Cal.App.3d at 246 [no
22 precondemnation *Klopping* damages for designation of property for public use in redevelopment plan
23 where there was no formal announcement of intent to acquire]; *City of Walnut Creek v. Leadership*
24 *Housing Systems, Inc.* (1977) 73 Cal.App.3d 611, 622 ["The right of a governmental body to plan for the
25 acquisition of property is unquestioned."].)

26 Thus, in *Selby*, the Supreme Court rejected a precondemnation damage claim for damages
27 caused by a city and county's approval of a general plan designating the plaintiff's property as a public
28 right-of-way. According to the Court, "[n]either *Klopping* nor any other decision of which we are aware

1 holds that the enactment of a general plan for the future development of an area, 'indicating potential
2 public uses of privately owned land, amounts to inverse condemnation of that land.' (*Selby*, 10 Cal.3d
3 at 119.) The Supreme Court emphasized the severe, adverse policy implications of reaching a contrary
4 result:

5 If a governmental entity and its responsible officials were held subject to a
6 claim for inverse condemnation merely because a parcel of land was
7 designated for potential public use on one of these several authorized
8 plans, *the process of community planning would either grind to a halt, or*
9 *deteriorate to publication of vacuous generalizations regarding the future*
10 *use of land.*

11 (*Id.* at 120 [emphasis added; footnote omitted].)

12 Following *Selby*, the court in *Smith v. California* (1975) 50 Cal.App.3d 529 ("*Smith*"), rejected a
13 claim for damages allegedly caused by the State Highway Commission's plan to construct a freeway
14 over the plaintiffs' property. (*Id.* at 531, 536.) In that case, the plaintiffs alleged that the Commission's
15 plan showed that a substantial part of the plaintiffs' property would be needed for the construction of the
16 freeway. (*Id.* at 531) In addition, the State Highway Commission had planned the acquisition of the
17 necessary rights-of-way and the construction of the freeway in four increments, requiring several years
18 for each. (*Id.* at 534) The final acquisition schedule was dependent upon the availability of funding and
19 traffic priorities. (*Id.*)

20 The *Smith* court held that such allegations fell "many leagues short" of those necessary to state a
21 claim for inverse condemnation damages.

22 [I]nvocation of the doctrine of inverse condemnation or the assessment of
23 damages against the state upon the public announcement of the state's
24 plan [to develop a freeway] would result in acquisition of large amounts of
25 property that may never be used and would inordinately increase the cost
26 of any such project. *The real result would be a severe hampering of the*
27 *state's ability to undertake necessary and worthwhile improvements in our*
28 *highway system.*

29 (*Id.* at 536 [emphasis added].) The court further recognized that, for major public works projects,
30 "[d]eliberate pace in acquisition and construction is demanded by the applicable laws" and that the
31 timing of acquisition of property will often result from "prudent scheduling . . . , which takes into
32 account an annual appropriation procedure, communication with the public by way of open hearings and
33 on-going studies of environmental impact." (*Id.* at 536-37.)

1 These same considerations require dismissal of the case at hand. Here, Brown has not alleged
2 that the TJPA has begun condemnation proceedings by adopting a resolution of necessity, as required by
3 Code of Civil Procedure section 1245.220. (Code Civ. Proc. § 1245.220 [“A public entity may not
4 commence an eminent domain proceeding until its governing body has adopted a resolution of
5 necessity.”].) Nor has Brown alleged any other official action taken by the TJPA Board of Directors
6 specifically indicating its intention to condemn her Property.

7 Rather, Brown has alleged that she is entitled to damages because her property, along with many
8 other properties, is included in plans for the development of the Transit Center. However, as *Selby* and
9 *Smith* show, such planning efforts are not sufficient to support a claim for *Klopping* damages. (*See also*
10 *Johnson v. California* (1979) 90 Cal.App.3d 195, 199 [“*Klopping* was not intended to inhibit long-range
11 planning of public projects or to require that property for proposed public improvements be purchased
12 before it may be needed.”].) Like any public agency carrying out a major public works project, the
13 TJPA must conduct its planning in a public forum, refine designs in greater and greater detail, and
14 proceed at a deliberate pace, scheduling acquisition in response to the evolving demands, timelines, and
15 availability of funding for the project.

16 If this Court were to find that such planning activities exposed the TJPA to liability, neither the
17 Transit Center nor any other major public works project could proceed because the public agency
18 building the project would be required either to (1) acquire all property that may be necessary for the
19 project immediately following the announcement of a plan for the project—whether the property was
20 ultimately required for the project, the agency was ready to acquire the property, or the agency had
21 secured the funding to acquire the property, or (2) pay damages to each property owner whose property
22 may be affected. The California Supreme Court has firmly held that neither alternative is acceptable.

23 Under Brown’s logic, the State of California would also be liable for precondemnation damages
24 merely by authorizing the Transbay Project, even though the State itself has no intention of ever
25 acquiring Brown’s property. The State Legislature has specifically authorized construction of the
26 Transit Center. (Pub. Res. Code § 5027.1 [authorizing demolition of the existing Transbay Terminal
27 and construction of the Transit Center].) Such a result would run contrary to the narrow scope of
28 liability prescribed in *Klopping*.

1 In refusing to allow *Klopping* damages absent any official announcement of an intent to
2 condemn, courts have relied on the logic that, without such an announcement, there is no assurance that
3 the property will actually be condemned. (*Selby*, 10 Cal.3d at 119 [holding demurrers properly
4 sustained where there was no “firm declaration of an intention to condemn”].) Planning for large,
5 complex public infrastructure projects can involve unforeseen changes in design and delays in
6 acquisition schedules. (*Johnson*, 90 Cal.App.3d at 198-99.) In any public infrastructure project, “[u]ntil
7 design has been completed, environmental considerations have been accounted for, and *actual*
8 *condemnation resolutions* are issued, it cannot be said with any certainty what property will be required
9 for a project.” (*Id.* at 199 [emphasis added].)

10 The Transit Center Project is no different. As Brown alleges, plans for the timing and
11 construction of the Project continue to evolve under the changing physical, political, and financial
12 conditions in which the Project is proceeding. (Compl. ¶ 22.) According to the Complaint, TJPA’s
13 counsel informed her of the possibility that the TJPA may not even need to acquire her property. (*Id.* ¶
14 15.) Thus, any claim for precondemnation damages is clearly without merit where, as here, there is no
15 guarantee that the Property will actually be condemned.

16 **2. Brown’s Communications with TJPA Staff Do Not Constitute an “Official**
17 **Action” Stating an Intent to Condemn the Property.**

18 Brown’s allegations that a staff member told her that the TJPA would acquire her property
19 (Compl. ¶ 10) similarly fail to rise to the level of an official announcement of intent to condemn. Nearly
20 identical allegations were found insufficient to support a claim for damages in *Terminals*. (221
21 Cal.App.3d. at 246.) There, the City and County of San Francisco and the San Francisco
22 Redevelopment Agency approved and adopted a redevelopment plan that designated the plaintiffs’
23 property as a waterfront park. (*Id.* at 239.) When the City had not yet acquired the property more than
24 seven years after adopting the plan, plaintiffs sued. (*Id.* at 241.) Their complaint alleged that “City and
25 Agency officials have on ‘numerous occasions ... assured’ appellants that the Property would eventually
26 be acquired by negotiation or through the power of eminent domain at some future date” (*Id.* at
27 240-41.) The court rejected plaintiff’s *Klopping* claim for precondemnation damages, stating that
28 “informal representations to the effect that [the City] intended to acquire the Property by purchase or

1 condemnation” did not amount to an official announcement of an intent to condemn giving rise to
2 precondemnation damages. (*Id.* at 246; *see also Toso*, 101 Cal.App.3d at 941, 957 [city’s actions
3 placing a measure on the ballot to acquire plaintiff’s property and subsequent negotiations by the city
4 attorney for the purchase of the property did not constitute an official announcement of an intent to
5 acquire the property by eminent domain].)

6 Similarly, the alleged statements by the TJPA’s “acquisition consultant” as to the TJPA’s plans
7 for acquiring the Property are insufficient to support a claim for *Klopping* damages. An agency
8 employee or official is “not a person empowered to bind [the agency] on its intent to acquire the
9 property” (*Cambria Spring Co. v. City of Pico Rivera* (1985) 171 Cal.App.3d 1080, 1096.) Only
10 an agency’s “governing body” has that authority. (Code Civ. Proc. § 1245.220.) Here, the governing
11 body of the TJPA is its Board of Directors. Brown’s Complaint does not and cannot allege that the
12 TJPA Board has made any official announcement of its intent to condemn her Property.

13
14 **3. The Recordation of the Redevelopment Plan Is Not an Official
Announcement of An Intent to Condemn Brown’s Property.**

15 Brown’s allegation that the Redevelopment Agency has recorded the Transbay Redevelopment
16 Plan and the associated Declaration of Restrictions against her property (Compl. ¶ 19) does nothing to
17 further her claim. In *Cambria Spring*, the court held that recording a redevelopment plan with a legal
18 description that included the plaintiff’s property is not an official announcement of intent to condemn
19 required to maintain a *Klopping* damages claim. (171 Cal.App.3d. at 1096, 1098.) The court noted that
20 state law *requires* a redevelopment agency to record an adopted redevelopment plan, and a description
21 of the properties included in the plan. (*Id.* at 1094 [citing Health & Safety Code § 33373].) Similarly,
22 the recording of the Redevelopment Plan and Declaration of Restrictions in the case at hand does not
23 constitute an official announcement of an intent to condemn the Property.

24 In sum, Brown has not alleged any facts showing that the TJPA has issued an official
25 announcement of an intent to condemn her property. Without such an announcement, her *Klopping*
26 claim must fail.
27
28

1 **C. Brown's Allegations Fall Outside the "Narrow Scope" of Cases in which *Klopping***
2 **Damages Have Been Awarded.**

3 Even if Brown could allege that the TJPA had made a formal announcement of an intent to
4 condemn the property, she has not alleged any "unreasonable" precondemnation conduct on the part of
5 TJPA. The courts have only recognized such unreasonable conduct in two situations: (1) when a public
6 entity delayed commencing an eminent domain action after the governing body adopted a resolution of
7 necessity stating its intent to acquire property by eminent domain (*City and County of San Francisco v.*
8 *Golden Gate Heights Investments* (1993) 14 Cal.App.4th 1203, 1207, 1213), or (2) when a public entity
9 downzoned a property or took other regulatory action to depress a property's value prior to condemning
10 it. (*Helix Land Co. v. City of San Diego* (1978) 82 Cal.App.3d 932, 941, 946; *see also Toso*, 101
11 Cal.App.3d at 952.) Thus the scope of the remedy provided in *Klopping* is extremely narrow. (*Mesdaq*,
12 154 Cal.App.4th at 1136 [recognizing "narrow scope" of *Klopping* doctrine].)

13 The TJPA has not adopted a resolution of necessity stating its intent to acquire the Property by
14 eminent domain, and thus, logically, cannot have "delayed" commencement of an eminent domain
15 action after doing so. Quite to the contrary, as the Complaint acknowledges, the TJPA is currently
16 processing Brown's request for early acquisition due to financial hardship. (Compl. ¶ 23.) Far from
17 delaying the acquisition of Brown's property, the TJPA is considering making an offer to purchase the
18 Property before it actually needs it.

19 Nor does the Complaint allege that the TJPA interfered in any way with Brown's use of her
20 property by downzoning the property or taking other regulatory action to depress the property's value.
21 Indeed, Brown cannot make any such allegations because the TJPA has no regulatory authority. (*See*
22 *RJN Ex. A at 14 & 39* [use of Property regulated by City of San Francisco General Plan and Planning
23 Code].) Moreover, the Complaint indicates that Brown has been able to use the Property without
24 interference from the TJPA: Brown lived at the property in 2005-2006, and has leased the property to
25 various tenants before and after. (Compl. ¶¶ 12, 13, 21.)

26 Thus, Brown has failed to allege any unreasonable conduct by the TJPA entitling her to *Klopping*
27 damages.

28

1 **CONCLUSION**

2 The TJPA respectfully requests that the Court grant the demurrer without leave to amend.

3
4 DATED: September 11, 2009

SHUTE, MIHALY & WEINBERGER LLP

5
6 By: 

7 WINTER KING

8 Attorneys for Defendant
9 TRANSBAY JOINT POWERS AUTHORITY

10 \\Smw\vol1_data\TJPA\ROW\85 Natoma\Brown v. TJPA\Draft Demurrer MPA (9-10-09).doc

MBV LAW LLP
855 FRONT STREET
SAN FRANCISCO CA 94111

1 JONATHAN S. O'DONNELL (State Bar No. 100051)
2 DWIGHT C. DONOVAN (State Bar No. 114785)
3 MBV LAW LLP
4 855 Front Street
5 San Francisco, California 94111
6 Telephone: (415) 781-4400
7 Facsimile: (415) 989-5143

8 Attorneys for Plaintiff
9 TERRI BROWN

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

13 TERRI BROWN,

14 Plaintiff,

15 v.

16 TRANSBAY JOINT POWERS
17 AUTHORITY; REDEVELOPMENT
18 AGENCY OF THE CITY AND COUNTY
19 OF SAN FRANCISCO; and DOES 1
20 through 30, inclusive,

21 Defendants.

CASE No. CGC-09-490878

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO DEMURRER OF
DEFENDANT TRANSBAY JOINT
POWERS AUTHORITY**

Date: October 13, 2009
Time: 9:30 am
Dept: 302

22 I.

INTRODUCTION

23 Defendant, Transbay Joint Powers Authority (“TJPA”) advances the novel position that
24 *Klopping* damages are not available to a plaintiff in inverse condemnation unless and until an
25 agency has filed a formal notice of intent to condemn. The law does not so hold. As discussed
26 below, where, as here, the condemnor has entered the acquisition phase of the proceedings, and
27 where the condemnor acts unreasonably in connection with and in furtherance of this activity, a
28 party is entitled to damages in inverse condemnation under *Klopping*.

TERRI BROWN has pleaded facts constituting a cause of action. Accepting all of

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEMURRER OF
DEFENDANT TRANSBAY JOINT POWERS AUTHORITY – CASE No. CGC-09-490878

23725.01\417108.DOC

1 plaintiff's pleaded facts as true -- which the court is required to do for the purposes of demurrer
2 -- plaintiff has established a claim for inverse condemnation. As such, the demurrer must be
3 overruled.

4 II.

5 FACTS

6 Plaintiff's complaint alleges the following facts, all of which are accepted as true for
7 purposes of demurrer. Plaintiff originally listed her property for sale in 2005, but the buyer
8 backed out after learning of planned condemnation proceedings. Complaint, ¶8, 9. Defendant
9 TJPA, by and through its acquisition consultant Harry Quinn, told plaintiff her property would be
10 acquired by the end of 2005. *Id.*, ¶10. Thereafter, defendant engaged in a series of delays,
11 including stating that the demolition/acquisition of plaintiff's property had been moved into a
12 different phase (Complaint, ¶15), to avoid paying plaintiff for her property. The property is
13 actually part of phase one work (Complaint, ¶25). Through discovery, plaintiff will explore the
14 basis for TJPA's statements to the plaintiff to the contrary. Plaintiff engaged in a series of acts
15 designed to mitigate her damages, but she has been harmed by the TJPA's unreasonable pre-
16 condemnation delay tactics. Complaint, ¶ 11-18, 21.

17 Contrary to TJPA's assertion on demurrer, TJPA's intent to demolish and acquire
18 plaintiff's property for the Transbay Terminal Project is not at the generic, hypothetical
19 "planning stage" but, rather, is an absolute certainty. In addition to the actions of TJPA's agent,
20 Harry Quinn identified above, TJPA has notified owners of property in plaintiff's building of its
21 intent to condemn the entire building. Complaint, ¶ 25. TJPA has also acquired property
22 directly adjacent to plaintiff's property, and is proceeding with construction plans that will shut
23 down plaintiff's street, demolish a security wall to her garage, and perform around-the-clock
24 heavy construction on all sides of plaintiff's property. Complaint, ¶16. Against this factual
25 backdrop, TJPA's arguments have no merit. Plaintiff has pleaded facts sufficient to state a cause
26 of action and the demurrer must be overruled.

27 ///

M B V L A W L L P
855 FRONT STREET
SAN FRANCISCO CA 94111

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

DISCUSSION

A. General Principles Governing Demurrers.

A demurrer tests the adequacy of a pleading to see whether the pleader has stated a valid cause of action. A demurrer admits as true all material facts that are properly pleaded. *Serrano v. Priest* (1971) 5 Cal.3rd 584, 591. A complaint must be construed liberally, with a view to substantial justice between the parties. CCP §452; *Stevens v. Superior Court* (1999) 75 Cal.App. 4th 594, 601. Where a complaint alleges facts to entitling the pleader to any relief, a demurrer will be overruled. *Gressley v. Williams* (1961) 193 Cal.App. 2nd 636, 639.

B. Plaintiff Has Stated A Cause Of Action For Inverse Condemnation.

TJPA asserts that plaintiff has failed to state a cause of action for inverse condemnation under *Klopping v. City of Whittier* (1972) 8 Cal.3rd 39. The bulk of TJPA's demurrer argues that plaintiff's claim fails to state a cause of action for *Klopping* damages because "the TJPA has not actually condemned the property," (Demurrer 7:24-8:14), and because "the TJPA has not announced its intent to condemn the property." (Demurrer, 8:16-13:26.)¹ In advancing those arguments, TJPA drastically misreads *Klopping* and the cases following it.

An official statement of intent to condemn is not required before a party may bring an inverse condemnation claim. Even prior to *Klopping*, it had been established that particularly oppressive acts involving a physical invasion or a direct legal restraint on the use of property could amount to a "de facto taking" even without formal condemnation. *Klopping v. City of Whittier*, supra, 8 Cal.3rd 39. *Klopping* went on to hold that "when the condemnor acts unreasonably in issuing precondemnation statements, either by excessively delaying eminent domain action or by other oppressive conduct, our constitutional concern over property rights requires that the owner be compensated. This requirement applies even though the activities

¹ TJPA makes the ancillary argument that plaintiff has not stated a cause of action for a *de facto* taking. Without conceding this point, BROWN submits that she only needs to plead entitlement to damages in inverse condemnation on a single legal theory for purposes of demurrer. TJPA's final point, that *Klopping* damages are only awarded within a "narrow scope," is improperly raised on demurrer. The issue of what constitutes unreasonable pre-condemnation conduct is ultimately a question of fact to be determined at trial.

1 which give rise to such damages may be significantly less than those which would constitute a de
2 facto taking of the property . . .” *Id.*, ¶51-52.

3 In order for a right to pre-condemnation damages to accrue, condemnation proceedings do
4 not need to be formally commenced, nor does there need to be a formal announcement of an
5 intention to condemn. It is enough that there be “some other official act or expression of intent to
6 acquire the property in question.” *Terminals Equipment Co., Inc. v. City and County of San*
7 *Francisco* (1990) 221 Cal.App. 3rd 234, 245, citing *Klopping* and a host of other cases. “The
8 pivotal issue in every case is whether the public agency’s activities have gone beyond the
9 planning stage to reach the ‘acquiring stage.’” *Id.*, citing other cases. Among the numerous
10 cases that are at odds with the statements articulated by TJPA are *People ex rel. Dept. of Pub.*
11 *Works v. Peninsula Enterprises, Inc.* (1979) 91 Cal.App. 3rd 332, 356; *Tilem v. City Los Angeles*
12 (1983) 142 Cal.App. 3rd 694, 711; *Toso v. City of Santa Barbara* (1990) 101 Cal.App. 3rd 934,
13 951 - 952; and *Jones v. People ex rel. Dept. of Transportation* (1978) 22 Cal. 3rd 144, 154.

14 Against the clear statement in *Terminals Equipment Co.*, cited above, it is unfathomable
15 that TJPA can assert that plaintiff has failed to state a cause of action. The complaint specifically
16 alleges that Harry Quinn, acquisition consultant for TJPA, repeatedly advised plaintiff that the
17 Subject Property would be condemned and acquired by the end of 2005. Complaint, ¶10.
18 BROWN also alleges that TJPA “proceeded with acquisition of properties directly adjacent to
19 hers and is proceeding with construction plans that threaten to, and will, directly impact her
20 property.” Complaint, ¶16. This includes shutting down Natoma Street, tearing down a security
21 wall of plaintiff’s garage, and other such activities. *Id.* Plaintiff has also alleged that other
22 owners of property within her very building have been notified, in writing, of TJPA’s intent to
23 condemn the entire building, though BROWN was omitted from the notification process.
24 Complaint, ¶25. These factual allegations, all of which are deemed true for purposes of
25 demurrer, clearly establish that the agency has moved beyond the “general planning” stage to the
26 acquisition stage. The argument that TJPA must actually condemn the property, or issue a
27 resolution of intent to condemn the property, is legally flawed. The argument that the project is

MBV LAW LLP
855 FRONT STREET
SAN FRANCISCO CA 94111

1 in the "planning" stage rather than the "acquisition" stage with respect to 85 Natoma is factually
2 flawed.

3 The disingenuous nature of the of TJPA's position is underscored by documents in the
4 public record, of which this Court may take judicial notice. See, Plaintiff's Request for Judicial
5 Notice, filed concurrently herewith. The TJPA public agenda for its March 12, 2009 meeting
6 specifically identifies an agenda item confirming a conference with Real Property Negotiators
7 concerning plaintiff's property. See, March 12, 2009 Closed Session Agenda Item 4.2, Plaintiff's
8 Request for Judicial Notice, Ex. 1. Plaintiff BROWN and counsel who filed the subject demurrer
9 are both identified by name in the agenda item. It is hard to fathom how the TJPA can demur to a
10 complaint on the basis that the TJPA is in nothing more than the "planning" stage where, as here,
11 the public record clearly shows that TJPA is in the direct acquisition phase with respect to the
12 Subject Property. The argument that BROWN has not stated a cause of action for inverse
13 condemnation under *Klopping* and its successor cases is without merit. The demurrer must be
14 overruled.

15 IV.

16 CONCLUSION

17 For the reasons stated herein, BROWN has more than adequately pleaded a cause of
18 action for inverse condemnation under *Klopping*. The position advanced by defendant is without
19 legal or factual support. As stated above, BROWN respectfully requests an order of this Court
20 overruling the demurrer and ordering defendant TJPA to answer BROWN's Complaint forthwith.

21 DATED: September 28, 2009

MBV LAW LLP

22 By: 

23 DWIGHT C. DONOVAN
24 Attorneys for Plaintiff TERRI BROWN

1 ANDREW W. SCHWARTZ (State Bar No. 87699)
WINTER KING (State Bar No. 237958)
2 SHUTE, MIHALY & WEINBERGER LLP
3 396 Hayes Street
San Francisco, CA 94102
Telephone: (415) 552-7272
4 Facsimile: (415) 552-5816

ENDORSED
FILED
Superior Court of California
County of San Francisco

OCT 05 2009

5 Attorneys for Defendant
TRANSBAY JOINT POWERS AUTHORITY

GORDON PARK-LI, Clerk
BY: MARY A. MORAN
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

12 TERRI BROWN,

13 Plaintiff,

14 v.

15 TRANSBAY JOINT POWERS
16 AUTHORITY; REDEVELOPMENT
AGENCY OF THE CITY AND COUNTY
17 OF SAN FRANCISCO; and DOES 1 through
30, inclusive,

18 Defendants.

Case No. CGC-09-490878

**DEFENDANT TRANSBAY JOINT
POWERS AUTHORITY'S REPLY BRIEF
IN SUPPORT OF DEMURRER TO
PLAINTIFF TERRI BROWN'S
COMPLAINT FOR INVERSE
CONDEMNATION**

Date: October 13, 2009
Time: 9:30 a.m.
Dept.: 302

Action Filed: July 28, 2009
Trial Date: N/A

1 INTRODUCTION

2 Defendant Transbay Joint Powers Authority (“TJPA”) is in the process of planning and
3 developing the new Transbay Transit Center in San Francisco—a project that will serve more
4 than 100,000 travelers per day by connecting numerous modes of public transit under one roof,
5 employ approximately 45,000 workers, and create the largest transit-friendly neighborhood in
6 California. The TJPA has spent years planning, conducting environmental review, and
7 arranging financing to accomplish this ambitious goal. To develop the Transit Center, the TJPA
8 plans to acquire Plaintiff Terri Brown’s (“Brown”) property. However, given the construction,
9 planning, and financing schedule, the TJPA does not need her property at this time.
10 Nevertheless, when Brown submitted a request for early acquisition, the TJPA considered this
11 request and ultimately offered to purchase her property.

12 Brown now attempts to use the very fact that the TJPA considered her request for early
13 acquisition as evidence that the TJPA has moved from the “planning” phase of the Transit
14 Center project to the “acquisition” phase. As a result, she argues, she can state a claim for
15 precondemnation damages under *Klopping v. City of Whittier*. However, neither *Klopping* nor
16 any subsequent case supports this position. Rather, *Klopping* authorized a *condemnee* to recover
17 damages for unreasonable actions taken *prior to condemnation* by a public agency. Because the
18 TJPA has not condemned Brown’s property—either directly by an action in eminent domain or
19 indirectly by regulatory action—it cannot be liable for precondemnation damages.

20 Brown also fails to allege that the TJPA made any official announcement of its intent to
21 condemn her property—a required element of any *Klopping* claim. Instead, she alleges that a
22 staff person told her that her property would be acquired in 2005, that the owners of other units
23 in her building have been notified that the TJPA will acquire the entire building as part of Phase
24 1 of the Transit Center Project, and that the TJPA is continuing with its plans to develop the
25 Project. None of these allegations rises to the level of an official announcement of intent to
26 condemn, and courts have repeatedly sustained demurrers to claims for *Klopping* damages when
27 presented with very similar allegations.

28 ///

1 Finally, Brown has failed to allege any unreasonable conduct on the part of the TJPA.
2 Because the TJPA has not yet issued any official announcement of its intent to condemn
3 Brown's property, Brown cannot establish that the TJPA has unreasonably delayed bringing an
4 eminent domain action after announcing its intent to condemn. Moreover, the written notice
5 Brown alleges was provided to other owners in her building was, according to Brown's
6 complaint, provided less than two weeks before Brown filed suit—hardly an unreasonable delay.

7 Because Brown cannot state a claim for precondemnation damages, her complaint should
8 be dismissed.

9 ARGUMENT

10 I. IN THE ABSENCE OF CONDEMNATION—EITHER DIRECT OR INVERSE— 11 BROWN CANNOT STATE A CLAIM FOR PRECONDEMNATION DAMAGES.

12 In her opposition to the TJPA's demurrer, Brown concedes that her property has not been
13 condemned by the TJPA—either through an eminent domain action initiated by the TJPA or by
14 a “de facto” or regulatory taking. (Plaintiff's Memorandum of Points and Authorities in
15 Opposition to Demurrer of Defendant Transbay Joint Powers Authority (“Brown Opp.”) at 3 &
16 fn. 1.) This concession alone requires dismissal of her Complaint for Inverse Condemnation.
17 “By definition, damages for improper *precondemnation* conduct require that the property be
18 *condemned.*” (*Smith v. San Francisco* (1990) 225 Cal.App.3d 38, 47 [emphasis added].)

19 The facts and analysis of *Klopping* support this conclusion. In that case, the issue was
20 whether the plaintiffs were entitled to recover damages caused by the City of Whittier's
21 announcements of its intent to condemn the property where the damages were incurred “during
22 the period between the public statements [indicating an intent to condemn] *and the taking of the*
23 *property.*” (*Klopping v. City of Whittier* (1972) 8 Cal.3d 39, 46 [emphasis added].) Both
24 properties at issue in *Klopping* were acquired by the City—Klopping's by eminent domain, and
25 plaintiff Sarff's by negotiated purchase. (*Id.* at 45, fn. 2.) The holding of that case focuses
26 specifically on the remedy that must be afforded a *condemnee*:

27 [W]e hold that a *condemnee* must be provided with an opportunity to
28 demonstrate that (1) the public authority acted improperly either by
unreasonably delaying eminent domain action following an
announcement of intent to condemn or by other unreasonable

1 conduct prior to condemnation; and (2) as a result of such action the
2 property in question suffered a diminution in market value.

3 (*Id.* at 52.)

4 Thus, contrary to Brown's suggestion, *Klopping* does not create a new cause of action for
5 any and all property owners, but rather allows a *condemnee* to recover damages for a decrease in
6 market value caused by the government's unreasonable precondemnation activities. The
7 Supreme Court subsequently made this point clear: "[I]n *Klopping*[,] . . . [w]e held only that the
8 plaintiff should be able to include *in his eminent domain damages* the decline in value
9 attributable to th[e] unreasonable precondemnation action by the city." (*HFH, Ltd. v. Superior*
10 *Court of Los Angeles County* (1975) 15 Cal.3d 508, 516, fn. 14 [emphasis added]; *see also*
11 *Redevelopment Agency of San Diego v. Mesdaq* (2007) 154 Cal.App.4th 1111, 1135 [*Klopping*
12 does not create private right of action "enabling property owners to collect damages whenever
13 [an agency] acts 'unreasonably'"]; *Kong v. City of Hawaiian Gardens Redevelopment Agency*
14 (2002) 108 Cal.App.4th 1028, 1045 [a claim for precondemnation damages "is simply a form of
15 damages that may be recovered in an action for inverse condemnation"].)

16 Thus, if and when the TJPA condemns Brown's property, she will be entitled to the
17 property's fair market value and any damages incurred as a result of unreasonable
18 precondemnation activity by the TJPA.¹ Before then, Brown cannot state a claim for damages
19 under *Klopping*.

20 The two cases cited by Brown in which courts upheld the award of *Klopping* damages are
21 not to the contrary. (Brown Opp. at 4.) In *People ex re. Department of Public Works v.*
22 *Peninsula Enterprises, Inc.*, the court upheld precondemnation damages awarded *as part of an*
23 *eminent domain action.* (*People ex re. Department of Public Works v. Peninsula Enterprises,*
24 *Inc.* (1979) 91 Cal.App.3d 332, 339.) In *Tilem v. City of Los Angeles*, the city had brought an

25 _____
26 ¹ Moreover, as the Court notes in *Klopping* (8 Cal.3d at 49-50), state law also requires that the
27 valuation of property acquired by the government must disregard any decrease in value caused
28 by existence of the project. (Code Civ. Proc. § 1263.330(a).)

1 eminent domain action to condemn the property at issue, but abandoned that action before trial.
2 (*Tilem v. City of Los Angeles* (1983) 142 Cal.App.3d 694, 699.) Moreover, the court found the
3 city's actions in that case had rendered the property "virtually useless"—meeting the standard
4 for a regulatory taking. (*Id.* at 704.)

5 Brown also cites *Toso v. City of Santa Barbara* (1980) 101 Cal.App.3d 934 and *Jones v.*
6 *People ex rel. Department of Transportation* (1978) 22 Cal.3d 144. However, the *Toso* court
7 denied *Klopping* damages because, "there was no resolution of condemnation, there was no
8 announcement of intent to condemn, nor was there any official act by the city towards acquiring
9 the property." (*Toso*, 101 Cal.App.3d at 957.) In *Jones*, the court did not reach the issue of
10 whether plaintiffs were entitled to *Klopping* damages because the agency's action "substantially
11 impaired" the plaintiffs' access to their property and thus entitled them to compensation for a
12 "de facto" taking. (*Jones*, 22 Cal.3d at 151.)

13 Thus, none of these cases suggests that precondemnation damages are appropriate where
14 the agency has never actually condemned the property at issue.

15 **II. BROWN HAS NOT ALLEGED ANY OFFICIAL ACT BY THE TJPA**
16 **NOTIFYING HER OF ITS INTENT TO CONDEMN THE PROPERTY.**

17 Even if condemnation were not a prerequisite to *Klopping* damages, Brown's complaint
18 still fails to state a claim because she has not and cannot allege that the TJPA has issued an
19 official announcement of its intent to condemn her property. (*Terminals Equipment Co. v. City*
20 *and County of San Francisco* (1990) 221 Cal.App.3d 234, 245; *Toso*, 101 Cal.App.3d at 957;
21 *Guinnane v. City and County of San Francisco* (1987) 197 Cal.App.3d 862, 866.) Brown has
22 not alleged that the TJPA has adopted a "resolution of necessity"—the only way a public agency
23 may initiate condemnation proceedings (Code Civ. Proc. § 1245.220)—and appears to concede
24 that she cannot make such an allegation. (Brown Opp. at 3.)

25 Nor can any of the other facts alleged by Brown be construed as an "official act or
26 expression of intent to acquire" Brown's property. Statements made by Harry Quinn
27 (Complaint for Inverse Condemnation ("Compl.") at ¶ 12), a member of TJPA's staff, cannot
28 constitute not an official expression of the TJPA's intent to acquire the property because Mr.

1 Quinn has no authority to bind the TJPA. (*Cambria Spring Co. v. City of Pico Rivera* (1985)
2 171 Cal.App.3d 1080, 1096 [conversation between property owner's agent and agency staff
3 person who was not empowered to bind the agency, was not official announcement of intent to
4 acquire].) Brown also alleges that other property owners in her building "have been notified, in
5 writing, that TJPA now intends to condemn the entire building as part of Phase 1" of the Project.
6 (Compl. ¶ 25.) Notably, this allegation does not state who wrote the notice, much less that the
7 notice was issued by the TJPA's Board of Directors. And, in fact, no such notice has been
8 issued by the TJPA Board. The allegation also fails to show anything more than that the TJPA's
9 current plans for developing the Transbay Transit Center call for the eventual acquisition of 85
10 Natoma. Courts have repeatedly held that this type of planning activity does not trigger
11 *Klopping* damages. (See *Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110,
12 117-18; *Guinnane*, 197 Cal.App.3d at 867; *Contra Costa Water District v. Vaquero Farms, Inc.*
13 (1997) 58 Cal.App.4th 883, 896, 903; *Terminals*, 221 Cal.App.3d at 246; see also *City of*
14 *Walnut Creek v. Leadership Housing Systems, Inc.* (1977) 73 Cal.App.3d 611, 622 ["The right
15 of a governmental body to plan for the acquisition of property is unquestioned."].)

16 Brown's allegation that the TJPA "proceeded with acquisition of properties directly
17 adjacent to hers, and is proceeding with construction plans that threaten to, and will, directly
18 impact her property" also falls short of demonstrating an official announcement of intent to
19 condemn. (Brown Opp. at 4; Compl. ¶ 16.) Nearly identical allegations were found to be
20 insufficient to state a claim for damages in *Johnson v. California* (1979) 90 Cal.App.3d 195. In
21 that case, the State of California planned to construct a freeway near the plaintiffs' property.
22 (*Id.* at 196-97.) The State and participating municipalities constructed a portion of the freeway
23 and proceeded to acquire several parcels near plaintiffs' property for the project. (*Id.* at 197).
24 Due to funding cutbacks, construction plans were delayed. (*Id.*) Under the revised schedule,
25 plaintiff's property was not required until the third and final phase of freeway construction,
26 which would not take place for another ten to twenty years. (*Id.*) The court in that case
27 sustained a demurrer to the plaintiffs' complaint for inverse condemnation and *Klopping*
28 damages, reasoning:

1 The actions described in the pleadings are part of the legitimate
2 planning process for a public improvement Until design has
3 been completed, environmental considerations have been accounted
4 for, and actual condemnation resolutions are issued, it cannot be said
5 with any certainty what property will be required for a project. . . .
[¶] Any incidental impairment of plaintiffs' property rights as a
result of the inevitable public knowledge of the state's proposed
highway project is not such as to entitle them to compensation under
Klopping

6 (*Id.* at 198-99.) Similarly, the actions described in Brown's complaint are simply part of the
7 legitimate planning process for a public improvement. As such, she cannot state a claim for
8 damages under *Klopping*.

9 Brown also cites the closed session agenda item from the TJPA's March 12, 2009
10 meeting as evidence that the TJPA has moved from the "planning" stage to the "acquisition"
11 stage of the Project. However, the cited agenda item shows only that the TJPA was considering
12 negotiating the purchase of Brown's property—hardly a surprise given that Brown *asked* the
13 TJPA to acquire her property ahead of schedule due to financial hardship. (Compl. ¶ 23.) It
14 simply cannot be the case that a public agency becomes liable for damages simply by
15 considering the request made by a property owner to purchase that property ahead of schedule.
16 Rather, numerous courts have denied *Klopping* damages despite allegations that a public agency
17 attempted to negotiate the purchase of the property. (*See, e.g., Terminals*, 221 Cal.App.3d at
18 240; *Toso*, 101 Cal.App.3d at 941 [no *Klopping* damages where city appraised property and
19 placed a successful proposition on ballot asking voters if the city should purchase property].)
20 There is no authority to support Brown's argument that a public agency's mere appraisal of
21 property and negotiations for a voluntary purchase, without an official announcement of an
22 intent to condemn or other interference with the use of the property, constitutes the type of
23 unreasonable conduct that could give rise to precondemnation liability.

24 Finally, Brown cites *Terminals* for the proposition that a public agency may become
25 liable for precondemnation damages when "the public agency's activities have gone beyond the
26 planning stage to reach the 'acquiring stage.'" (Brown Opp. at 4; *Terminals*, 221 Cal.App.3d at
27 246.) The implication that *Terminals* established a blurry balancing test to determine liability
28 for precondemnation damages is inaccurate. In fact, *Terminals* holds "where there has been 'no

1 official action amounting to an announcement of intent to condemn, there [can] be no liability
2 based upon unreasonable delay following such an announcement.” (*Terminals*, 221 Cal.App.3d
3 at 245 [citing *Cambria Spring Co.*, 171 Cal.App.3d at 1098].) Again, none of the facts alleged
4 or cited by Brown—including that the TJPA discussed the possible purchase of Brown’s
5 property by negotiated sale in closed session—is an announcement of an intent to *condemn*.

6 Moreover, the *Terminals* court actually sustained a demurrer to a complaint for
7 precondemnation damages suffering from many of the same failings as Brown’s complaint: it
8 failed to allege that any condemnation had taken place or that the public agency had performed
9 any official act or made any official expressions of intent to condemn the property. (*Id.* at 246.)
10 Although the complaint alleged that “City and Agency officials have on ‘numerous occasions ...
11 assured’ appellants that the Property would eventually be acquired by negotiation or through the
12 power of eminent domain at some future date . . .” (*id.* at 240-41), the court held that such
13 allegations did not show any official act by the agency toward acquiring the property. (*Id.* at
14 246.) Under the reasoning of *Terminals*, Brown’s complaint should be dismissed.

15 **III. BROWN HAS NOT ALLEGED ANY UNREASONABLE CONDUCT BY THE**
16 **TJPA ENTITLING HER TO DAMAGES.**

17 Brown’s claim appears to be that the TJPA has unreasonably delayed the acquisition of
18 her property after issuing an official notice of TJPA’s intent to condemn. Courts have
19 recognized the availability of *Klopping* damages when a public entity unreasonably delays
20 commencing an eminent domain action after the governing body adopted a resolution of
21 necessity (“RON”) stating its intent to acquire property by eminent domain. (*City and County of*
22 *San Francisco v. Golden Gate Heights Investments* (1993) 14 Cal.App.4th 1203, 1207, 1212.)
23 Here, the TJPA has not adopted a RON, and thus, logically, cannot have “delayed”
24 commencement of an eminent domain action after doing so. In the absence of a RON, Brown
25 has alleged that other property owners in her building “have been notified, in writing, that TJPA
26 now intends to condemn the entire building as part of Phase 1” of the Project. (Compl. ¶ 25.)
27 However, this alleged notice was issued *less than two weeks* before Brown filed her complaint.
28 (*Id.*) Thus, even if this notice could be interpreted as an official expression of the TJPA’s intent

1 to condemn Brown's property, it fails to show that the TJPA has unreasonably delayed an
2 eminent domain action.

3 Nor has the TJPA interfered with Brown's use of her property. (See *Barthelemy v.*
4 *Orange County Flood Control District* (1998) 65 Cal.App.4th 558, 565 ["Absent a formal
5 resolution of condemnation, the public entity's conduct must have 'significantly invaded or
6 appropriated the use or enjoyment of' the property" to entitle the owner to damages.].) In fact,
7 the Brown's complaint indicates that she has been able to use the Property without interference
8 from the TJPA, by living at the property in 2005-2006, and leasing the property to various
9 tenants. (Compl. ¶¶ 12, 13, 21.) For this reason, as well, Brown's complaint should be
10 dismissed.

11 **CONCLUSION**

12 For all of the foregoing reasons, the TJPA respectfully requests that the Court dismiss the
13 complaint without leave to amend.

14 DATED: October 5, 2009

SHUTE, MIHALY & WEINBERGER LLP

15
16 By: 
17 _____

WINTER KING

18 Attorneys for Defendant
19 TRANSBAY JOINT POWERS AUTHORITY

20 P:\TJPA\ROW\85 Natoma\Brown v. TJPA\wk010(Reply Brief).doc
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST
Terri Brown v TJPA, et al.
CGC-09-490878
San Francisco County Superior Court

Jonathan S. O'Donnell
Dwight C. Donovan
MBV Law LLP
855 Front Street
San Francisco, CA 94111
Tel: 415-781-4400
Fax: 415-989-5143
Emails: jon@mbvlaw.com
dwight@mbvlaw.com
Attorneys for Plaintiff Terri Brown

Ann M. Asiano
Bradley, Curley, Asiano, Barrabee & Gale
One Embarcadero Center, 5th Floor
San Francisco, CA 94111
Tel: (415) 464-8888
Fax: (415) 464-8887
Email: aasiano@professionals-law.com
Attorney for Defendant Redevelopment
Agency

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jonathan S. O'Donnell (State Bar # 100051) Dwight C. Donovan (State Bar # 114785) MBV Law LLP 855 Front Street, San Francisco, CA 94111 TELEPHONE NO.: (415) 781-4400 FAX NO. (Optional): (415) 989-5143 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Terri Brown, Plaintiff	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, California 94102 BRANCH NAME:	
PLAINTIFF/PETITIONER: Terri Brown DEFENDANT/RESPONDENT: Transbay Joint Powers Authority, et al.	
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify) : Inverse Condemnation	CASE NUMBER: CGC-09-490878
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -	

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1) With prejudice (2) Without prejudice
 - b. (1) Complaint (2) Petition
 - (3) Cross-complaint filed by (name):
 - (4) Cross-complaint filed by (name):
 - (5) Entire action of all parties and all causes of action
 - (6) Other (specify):*

on (date):
on (date):

2. (Complete in all cases except family law cases.)

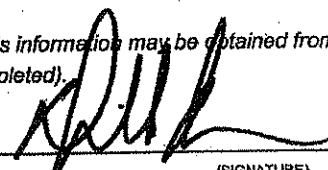
Court fees and costs were waived for a party in this case. (This information may be obtained from the clerk. If this box is checked, the declaration on the back of this form must be completed).

Date:

DWIGHT C. DONOVAN

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.



 (SIGNATURE)
 Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

 (SIGNATURE)
 Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

(To be completed by clerk)

- 4. Dismissal entered as requested on (date):
- 5. Dismissal entered on (date): as to only (name):
- 6. Dismissal not entered as requested for the following reasons (specify):
- 7. a. Attorney or party without attorney notified on (date):
- b. Attorney or party without attorney not notified. Filing party failed to provide a copy to be conformed means to return conformed copy

Date: _____ Clerk, by _____ Deputy

PLAINTIFF/PETITIONER: Terri Brown	CASE NUMBER:
DEFENDANT/RESPONDENT: Transbay Joint Powers Authority, et al.	CGC-09-490878

Declaration Concerning Waived Court Fees

The court has a statutory lien for waived fees and costs on any recovery of \$10,000 or more in value by settlement, compromise, arbitration award, mediation settlement, or other recovery. The court's lien must be paid before the court will dismiss the case.

1. The court waived fees and costs in this action for (name):
2. The person in item 1 (check one):
 - a. is not recovering anything of value by this action.
 - b. is recovering less than \$10,000 in value by this action.
 - c. is recovering \$10,000 or more in value by this action. (If item 2c is checked, item 3 must be completed.)
3. All court fees and costs that were waived in this action have been paid to the court (check one): Yes No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

(TYPE OR PRINT NAME OF ATTORNEY PARTY MAKING DECLARATION)

(SIGNATURE)

MBV LAW LLP
855 FRONT STREET
SAN FRANCISCO CA 94111

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Re: **Terri Brown v. TransBay Joint Powers Authority, et al.**
(San Francisco Superior Court, Case No. CGC-09-490878)

PROOF OF SERVICE

I, MAXINE E. RUBIN, declare as follows:

I am a citizen of the United States, over the age of eighteen (18) years, employed in the City and County of San Francisco at the law offices of MBV LAW LLP, 855 Front Street, San Francisco, CA 94111, and not a party to the within action.

On October 19, 2009, I served the following document(s):

**REQUEST FOR DISMISSAL
(Without Prejudice)**

By Mail: by placing true and correct copies of the document(s) listed above in envelope(s) addressed as set forth below. I sealed said envelope(s), with postage thereon fully prepaid, to be deposited with the United States Postal Service on this day following ordinary business practices. I am readily familiar with office procedure and practice for collection and processing of correspondence for mailing.

By Fax: by transmitting via facsimile, and received and retained confirmation of successful transmission, the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

By Overnight Service: by placing the document(s) listed above in a sealed envelope for overnight delivery via *Federal Express, Express Mail*, or other overnight service, with fees fully prepaid, and deposited for same-day pick-up by an authorized representative.

By Hand Delivery: by placing the document(s) listed above in a sealed envelope(s) and submitting such envelope(s) to a messenger service with instructions to the messenger service representative that the envelope(s) be delivered as set forth below before 5:00 p.m., and that said messenger service provide my office with confirmation of such delivery(ies).

Andrew Schwartz, Esq.
Winter King, Esq.
Shute Mihaly & Weinberger
396 Hayes Street
San Francisco, CA 94102
Counsel for Defendant
TRANSBAY JOINT POWERS AUTHORITY

James Morales, Esq.
Redevelopment Agency of the
City and County of San Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
General Counsel for REDEVELOPMENT
AGENCY OF THE CITY AND COUNTY
OF SAN FRANCISCO

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on October 19, 2009, at San Francisco, California.



MAXINE E. RUBIN

Paper copies of documents in the following categories are located in the Master Binders:

Studies and Reports

NEPA/CEQA

Transbay Legislation

File Nos. 101432 and 101433	60 Tehama (3736-088)
File Nos. 101435 and 101436	564 Howard (3721-019)
File Nos. 101438 and 101439	568 Howard (3721-020)
File Nos. 101408 and 101409	85 Natoma #1 (3721-109)
File Nos. 101411 and 101412	85 Natoma #2 (3721-110)
File Nos. 101414 and 101415	85 Natoma #3 (3721-111)
File Nos. 101417 and 101418	85 Natoma #4 (3721-112)
File Nos. 101420 and 101421	85 Natoma #5 (3721-113)
File Nos. 101423 and 101424	85 Natoma #7 (3721-115)
File Nos. 101426 and 101427	85 Natoma #9 (3721-117)
File Nos. 101429 and 101430	85 Natoma #C1 (3721-118)
File Nos. 101441 and 101442	13 parking easement interests benefitted parcels: Block 3721, Lots 093-105 burdened parcels: Block 3721, Lots 109-118



March 2004

CITY AND COUNTY OF SAN FRANCISCO,
PENINSULA CORRIDOR JOINT POWERS BOARD, AND
SAN FRANCISCO REDEVELOPMENT AGENCY

and the

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

by the

DRAFT ENVIRONMENTAL IMPACT STATEMENT/
DRAFT ENVIRONMENTAL IMPACT REPORT AND
DRAFT SECTION 4(f) EVALUATION

RESPONSES TO PUBLIC COMMENTS ON THE

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

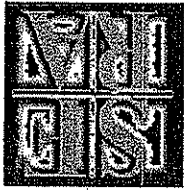
2010 NOV 24 AM 10:29

BY

**TRANSBAY TERMINAL /
CALTRAIN DOWNTOWN EXTENSION /
REDEVELOPMENT PROJECT**
in the City and County of San Francisco
**FINAL ENVIRONMENTAL IMPACT STATEMENT/
ENVIRONMENTAL IMPACT REPORT AND
SECTION 4(f) EVALUATION**

VOLUME II

SCH No. 95063004
City Project No. 2000.048E



March 2004

CITY AND COUNTY OF SAN FRANCISCO,
PENINSULA CORRIDOR JOINT POWERS BOARD, AND
SAN FRANCISCO REDEVELOPMENT AGENCY

and the

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

by the

WRITTEN PUBLIC COMMENTS AND
PUBLIC HEARING TRANSCRIPTS ON THE
DRAFT ENVIRONMENTAL IMPACT STATEMENT/
DRAFT ENVIRONMENTAL IMPACT REPORT AND
DRAFT SECTION 4(f) EVALUATION

FINAL ENVIRONMENTAL IMPACT STATEMENT/
ENVIRONMENTAL IMPACT REPORT AND
SECTION 4(f) EVALUATION

in the City and County of San Francisco

**TRANSBAY TERMINAL /
CALTRAIN DOWNTOWN EXTENSION /
REDEVELOPMENT PROJECT**

VOLUME III

SCH No. 95063004
City Project No. 2000.048E



U.S. Department
of Transportation
Federal Transit
Administration

Mr. Michael J. Scanlon
Executive Director
Peninsula Corridor Joint Powers Board
1250 San Carlos Ave
San Carlos, CA 94070

Re: Record of Decision; Transbay Terminal / Caltrain
Downtown Extension / Redevelopment Project

Dear Mr. Scanlon:

This is to advise you that the Federal Transit Administration has issued a Record of Decision (ROD) for the Transbay Terminal / Caltrain Downtown Extension / Redevelopment Project. The comment period for the Final Supplemental Environmental Impact Statement closed May 4, 2004. The Federal Transit Administration's (FTA) Record of Decision (ROD) is enclosed.

Please make the ROD and supporting documentation available to affected government agencies and the public. Availability of the ROD should be published in local newspapers and should be provided directly to affected government agencies, including the State Inter-governmental Review contact established under Executive Order 12372.

Please note that if a grant is made for this project, the terms and conditions of the grant contract will require the grantee undertake the mitigation measures identified in the ROD.

Thank for your cooperation in meeting the NEPA requirements. If you have questions about our review, please call Mr. Jerome Wiggins at (415) 744-2819.

Sincerely,

Leslie T. Rogers
Regional Administrator

FEB 8 2005

RECEIVED FEB 21 2005

201 Mission Street
Suite 2210
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

BY *[Signature]*

2010 NOV 24 AM 10:28

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

RECORD OF DECISION

Transbay Terminal / Caltrain Downtown Extension / Redevelopment Project
San Francisco, California

DECISION

The U.S. Department of Transportation, Federal Transit Administration (FTA), has determined that the requirements of the National Environmental Policy Act of 1969 (NEPA) have been satisfied for the Transbay Terminal / Caltrain Downtown Extension / Redevelopment Project (Project) in San Francisco, California. The Project to which this Record of Decision (ROD) applies consists of the design, construction, and future operation of a multimodal transportation terminal, underground rail access tunnel to the terminal, and redevelopment of the surrounding area.

The Project consists of three main components: a multimodal transportation terminal designed to serve local and regional buses as well as commuter rail and proposed high speed rail, an approximately 1.3 mile underground passenger rail extension from the existing Fourth and Townsend Caltrain Station to the new terminal, and transit oriented redevelopment of the area surrounding the terminal. The Project also includes support components such as a temporary bus terminal facility to be used during construction, a new, permanent off-site bus storage/layover facility, reconstructed bus ramps leading to the west end of the new Transbay Terminal, and a redesigned Caltrain storage yard.

The Project was adopted as the Locally Preferred Alternative by the Transbay Joint Powers Authority (TJPA) and was evaluated as the Refined West Loop Terminal / Second-to-Main Tunnel Alignment / Turning Option / Full Build Redevelopment in the Project's Final Environmental Impact Statement/Report (Final EIS/EIR) issued in March 2004. That Final EIS/EIR provides the complete description of the Project, which is the subject of this ROD. EPA published the Notice of Availability for the Final EIS/EIR on April 2, 2004; in the Federal Register. The local lead agencies for the Project are the City and County of San Francisco, and the Peninsula Corridor Joint Powers Board. The TJPA is the Project's sponsoring agency for all project components other than the Redevelopment Plan and will be responsible for building, operating, and maintaining the Project components related to the Transbay Terminal.

AGREEMENTS

FTA and TJPA have executed a Project Development Agreement (PDA) to set forth their intentions for compliance with FTA's Record of Decision and program requirements that will govern the Transbay Terminal / Caltrain Downtown Extension / Redevelopment Project. FTA and TJPA acknowledge that this agreement may be modified from time to time to accommodate statutory or regulatory changes, changes to the Project, or changes to TJPA's project management or financing plans, as necessary or appropriate. The executed PDA is attached (Appendix D).

TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS

Resolution No. 06-011

WHEREAS, In April 2004, the Transbay Terminal/Catrain Downtown Extension/Redevelopment Project Final Environmental Impact Statement/ Environmental Impact Report ("Final EIS/EIR") (SCH#95063004) was certified by the City and County of San Francisco, the Peninsula Corridor Joint Powers Board, and the San Francisco Redevelopment Agency; and

WHEREAS, In April 2004 the Board of Directors of the Transbay Joint Powers Authority ("TJPA") approved the Locally Preferred Alternative ("LPA") of the Transbay Transit Center Program ("TTCP"); and

WHEREAS, The TJPA Board desires to refine the design and phasing of the Transbay Terminal/Catrain Downtown Extension component of the LPA (the "Refined Project"); and

WHEREAS, In December 2005, Staff presented the Recommended Program Implementation Strategy of the Refined Project to the TJPA Board, on March 16 and May 25, 2006; Staff again provided the TJPA Board with the Recommended Program Implementation Strategy, and the Final Massing Study for the Transit Center Building that further documented the Refined Project; and

WHEREAS, Pursuant to Section 15164 of the California Environmental Quality Act ("CEQA," Pub. Res. Code §§ 21000 *et seq.*) and the CEQA Guidelines, the TJPA has prepared an Addendum to the Final EIS/EIR, which contains an analysis of the environmental impacts that may result from the proposed refinement of the LPA; and

WHEREAS, The Refined Project would not trigger the need for subsequent environmental review pursuant to Section 21166 of the Public Resources Code and Section 15162 of the CEQA Guidelines; and

WHEREAS, The Refined Project would not require major revisions of the Final EIS/EIR due to new or substantially increased significant environmental effects; and

WHEREAS, No substantial changes have occurred with respect to the circumstances under which the revisions to the Refined Project would be undertaken that would require major revisions of the Final EIS/EIR due to new or substantially increased significant environmental effects; and

WHEREAS, There has been no discovery of new information of substantial importance that would trigger or require major revisions of the Final EIS/EIR due to new or substantially increased significant environmental effects; and

WHEREAS, The TJPA Board has considered the Final EIS/EIR along with the Addendum to the Final EIS/EIR; now, therefore, be it

RESOLVED, That the TJPA Board:

1. Certifies that the Addendum to the Final EIS/EIR has been completed in compliance with CEQA and reflects the independent judgment of the TJPA; and
2. Adopts the Addendum to the Final EIS/EIR.

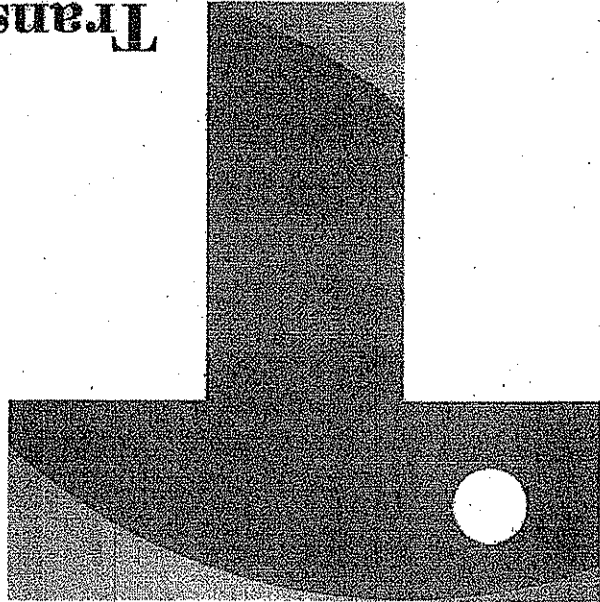
I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 2, 2006.

R. Brown
Secretary, Transbay Joint Powers Authority

**Addendum for the Transbay
Terminal/Downtown
Extension/Redevelopment
Project**

**Final Environmental Impact
Statement/Report**

May 25, 2006

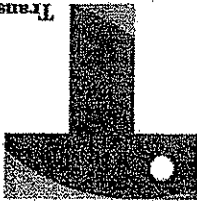


Transbay Transit Center

URS

In association with
Hatch Mott MacDonald & EPC Consultants
Consultants to the Transbay Joint Powers Authority

Transbay Transit Center



May 2010

Updating the Transbay Program 2004 Final EIS for Adoption by
the Federal Railroad Administration

Transbay Program Final EIS Reevaluation

U.S. Department
of Transportation
Federal Railroad
Administration



FEDERAL RAILROAD ADMINISTRATION
RECORD OF DECISION
FOR THE
TRANSBAY TRANSIT CENTER TRAINBOX

DECISION

The United States Department of Transportation, Federal Railroad Administration (FRA) has determined that the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq., have been satisfied for the train box at the Transbay Transit Center ("TTC") or "Transit Center" in San Francisco, California.

This decision has been made in accordance with the provisions of NEPA, which requires Federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions, reasonable alternatives to those actions, and integrating public participation into the process. This document sets forth the Record of Decision of FRA for the granting of Federal funds for the train box at the TTC. In making this decision, FRA considered the entire record, including the information, analysis, and public comments contained in the portions of the Final Environmental Impact Statement/Environmental Impact Report ("2004 EIS") for the Transbay Terminal/Caltrain Downtown/Extension Redevelopment Project ("Transbay Program") that cover Phase I of the Transbay Program, which was completed by the Federal Transit Administration ("FTA"). In addition, FRA prepared and has relied upon the May 28, 2010 Transbay Program Final EIS Reevaluation ("Environmental Reevaluation") of the Phase I portions of the 2004 EIS. Through the analysis contained in both the 2004 EIS and the Environmental Reevaluation, FRA has taken the requisite "hard look" at potential environmental impacts and has identified and independently evaluated the potential environmental effects associated with the project's alternatives.

This ROD has been drafted in accordance with NEPA, the Council on Environmental Quality (CEQ) Regulations implementing NEPA (most specifically 40 C.F.R. § 1505.2), and FRA's Procedures for Considering Environmental Impacts, 64 Fed. Reg. 28545 (May 26, 1999).

INTRODUCTION

FRA's proposed action is to provide up to \$400 million of funding under the American Recovery and Reinvestment Act of 2009 ("Recovery Act") to the Transbay Joint Powers Authority ("TJPA") to fund construction of a train box to accommodate future high-speed train ("HST") service at the TTC, which is an element of Phase I of the Transbay Program.

FRA and TJPA prepared the 2004 EIS as a joint environmental impact statement/environmental impact report to satisfy both the requirements of NEPA and the California Environmental

¹ An Environmental Impact Report (EIR) is an environmental document required under the California Environmental Quality Act (CEQA).

Caltrain Downtown Extension and Transbay
Ridership Analysis



final

report

prepared for

Transbay Joint Powers Authority

prepared by

Cambridge Systematics, Inc.

September 2007

Final Relocation Impact Study



TRANSBAY JOINT POWERS AUTHORITY



January 2010

Final Relocation Impact Study II

TRANSBAY JOINT POWERS AUTHORITY





Relocation Assistance Brochure

Rights and Benefits Under the TJPA's
Relocation Assistance Program for Businesses
and Nonprofit Organizations

This brochure summarizes the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. Section 4601 et seq., and its implementing regulations, 49 Code of Federal Regulations (CFR) Part 24, and the California Relocation Act, Govt. Code Section 7260 et seq., and its implementing regulations, 25 Cal. Code Regs. Section 6000 et seq.

Much of the content of this brochure was provided by The United States Department of Transportation, Federal Highway Administration, Office of Real Estate Services, Publication Number FHWA-HEP-05-031.



TRANSBAY JOINT POWERS AUTHORITY



Residential Relocation Assistance Brochure

Rights and Benefits under the TJPA's Relocation
Assistance Program for Residential Occupants

This brochure summarizes the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. Section 4601 et seq.; and its implementing regulations, 49 Code of Federal Regulations (CFR) Part 24, and the California Relocation Act, Govt. Code Section 7260 et seq., and its implementing regulations, 25 Cal. Code Regs. Section 6000 et seq.

The Members intend to operate and manage the new transit terminal and related facilities (including but not limited to necessary bus storage/staging facilities and connecting ramps)

F.

The Members intend to develop and construct a new transportation terminal on the Site, direct access ramps, links to regional transportation systems which includes the downtown extension of Caltrain from 4th and Townsend Streets to the new transportation terminal, a temporary terminal for use during construction of the new terminal, bus storage, and other facilities needed to develop the Site and/or property adjacent to the Site to its highest and best use.

H.

The Members desire to jointly participate in the construction, development and operation of a new regional transit hub and related structures and ramps which will provide expanded bus and rail service and direct access to transit located in a new terminal building on the Site and/or property adjacent to the Site including bus storage/staging facilities in the vicinity of the Site, together with all necessary and essential ramps for access to and from the San Francisco-Oakland Bay Bridge from the new terminal building and to and from the bus storage/staging facilities, as well as a temporary bus facility with access to and from the San Francisco-Oakland Bay Bridge, all of which is more efficient and convenient for buses, trains, and the passengers using those systems.

D.

Pursuant to Chapter 5, Division 7, Title 1 of the Government Code of the State of California the Members may jointly exercise any power common to them.

C.

The Members recognize that the Old Transbay Terminal is underutilized and blighted, and can be developed to provide for regional, seamless, intermodal transit connections.

B.

The State of California Department of Transportation currently operates and manages a bus transportation terminal in the City commonly known as the Transbay Terminal (the "Old Transbay Terminal") located on the site described in Exhibit A (the "Site").

A.

Recitals

The City and County of San Francisco, a municipal corporation and charter city and county duly organized and existing under its Charter and the Constitution of the State of California (the "City") and the Alameda-Contra Costa Transit District, a transit district duly organized and created in accordance with the Public Utilities Code of the State of California (commencing with Section 24501) (the "District") and the Peninsula Corridor Joint Powers Board-Caltrain, a joint exercise of powers agency comprised of the City and County of San Francisco, San Mateo County Transit District, and Santa Clara Valley Transportation Authority, duly created and organized in accordance with the Government Code of the State of California (commencing with Section 6500) (the "JPB"), all of which entities shall be referred to herein collectively as the "Members," hereby enter into this Joint Powers Agreement (this "Agreement") creating the Transbay Joint Powers Authority (the "Authority"). All Members are public entities organized and operating under the laws of the State of California and each is a public agency as defined in Section 6500 of the Government Code of the State of California.

TRANSBAY JOINT POWERS AUTHORITY

creating the

JOINT POWERS AGREEMENT

Check the back cover
of this
pamphlet for your
polling place address.

Consolidated Municipal Election
November 2, 1999

City and County of San Francisco
Voter Information Pamphlet
and Sample Ballot

SR
E45
#1
11/2/99
(9901)



Sales Tax for Transportation

PROPOSITION K



Shall the City implement a 30-year New Transportation Expenditure Plan directing transportation sales tax funds to improved maintenance of local streets, transportation for the elderly and disabled, the Central Subway, a citywide network of fast and reliable buses, the Caltrain Extension to a new Transbay Terminal, improvements to pedestrian and bicycle safety and other projects and continue the existing half-cent sales tax during implementation of the New Transportation Expenditure Plan and future Plan updates?

Digest

by the Ballot Simplification Committee

THE WAY IT IS NOW: The City charges a one-half cent sales tax to help pay for the transportation projects described in a spending plan approved by the voters in 1989. This tax will expire on April 1, 2010. The San Francisco Transportation Authority directs use of the sales tax money. It can spend up to \$160,000,000 per year for the approved transportation projects, and can issue up to \$742 million (\$742,000,000) in bonds.

THE PROPOSAL: Proposition K is an ordinance that would continue the one-half cent sales tax, and replace the current transportation spending plan with a new, 30-year plan. Under the new plan, the money would be used for:

- Maintenance of local streets;
- Transportation for the elderly and disabled;
- Construction of a Central Subway;
- Upgrades to the bus system, including new buses, stations and dedicated lanes;
- A Caltrain extension to a new Transbay Terminal;
- Projects to improve pedestrian and bicycle safety;
- Support for regional transportation systems (BART, Caltrain, and ferries); and
- Replacing the roadway to Golden Gate Bridge (Doyle Drive).

A two-thirds majority vote is required to approve this measure. A "YES" VOTE MEANS: If you vote "Yes," you want to continue the one-half cent sales tax to pay for transportation projects described in a new 30-year spending plan, or future plans, and increase the amount of money the Transportation Authority may spend and borrow to pay for these projects.

A "NO" VOTE MEANS: If you vote "No," you do not want to make these changes.

How "K" Got on the Ballot

City Controller Edward Harrington has issued the following statement on the fiscal impact of Proposition K:

On July 29, 2003 the Board of Supervisors voted 11 to 0 to place Proposition K on the ballot.

The Supervisors voted as follows:
 Yes: Supervisors Amiano, Daly, Duffy, Gonzalez, Hall, Maxwell, McGoldrick, Newsom, Peskin, and Sandoval.

Should the proposed ordinance be approved by the voters, the City would continue to collect an existing one-half cent sales tax dedicated to transportation projects. Revenue from this tax would also be used to match federal, state and regional transportation funding. The current authorization for this tax expires March 31, 2010. The proposed ordinance would replace the current authorization with a new 30-year authorization effective April 1, 2004 through March 31, 2034. The additional sales tax revenue which would be generated is approximately \$2.5 billion over the 30 year period.

THIS MEASURE REQUIRES 66% AFFIRMATIVE VOTES TO PASS.

ARGUMENTS FOR AND AGAINST THIS MEASURE IMMEDIATELY FOLLOW THIS PAGE. THE FULL TEXT BEGINS ON PAGE 151.



Regional Measure 2

REGIONAL MEASURE 2

Shall voters authorize a Regional Traffic Relief Plan that does the following:

YES NO

1. Directs revenues generated through the collection of bridge tolls to provide the following projects:

a. Expand and extend BART.

b. New transbay commuter rail crossing south of the San Francisco-Oakland Bay Bridge.

c. Comprehensive Regional Express bus network.

d. New expanded ferry service.

e. Better connections between BART, buses, ferries, and rail.

2. Approves a one dollar (\$1) toll increase effective July 1, 2004, on all toll bridges in the bay area, except the Golden Gate Bridge?

ARGUMENTS FOR AND AGAINST THIS MEASURE IMMEDIATELY FOLLOW THIS PAGE

THIS MEASURE REQUIRES 50%+1 AFFIRMATIVE VOTES TO PASS.

ARGUMENTS FOR AND AGAINST THIS MEASURE IMMEDIATELY FOLLOW THIS PAGE.

C A L I F O R N I A

GENERAL ELECTION

TUESDAY, NOVEMBER 4, 2008

The statutory deadline for placing legislative and initiative measures on the ballot was June 26. However, a new state law that passed after the deadline requires that Proposition 1 be removed from the ballot and be replaced by Proposition 1A. Therefore, although you are receiving information about both measures in the two state voter guides, only Proposition 1A will appear on your November 4, 2008, General Election ballot.

OFFICIAL VOTER INFORMATION GUIDE

Certificate of Correctness

I, Debra Bowen, Secretary of State of the State of California, do hereby certify that the measure included herein will be submitted to the electors of the State of California at the General Election to be held throughout the State on November 4, 2008, and that this guide has been correctly prepared in accordance with the law. Witness my hand and the Great Seal of the State in Sacramento, California, on this 18th day of September, 2008.

Debra Bowen



Debra Bowen
Secretary of State

SUPPLEMENTAL
This guide contains information regarding one additional measure that has qualified for the November ballot.

An act to add Chapter 20 (commencing with Section 2704) to Division 3 of the Streets and Highways Code, relating to financing a high-speed passenger train system by providing the funds necessary therefor through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds.

[Approved by Governor September 19, 2002. Filed with Secretary of State September 19, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1856, Costa. Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century.

Existing law creates the High-Speed Rail Authority with the responsibility of directing the development and implementation of intercity high-speed rail service.

This bill would enact the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, which, subject to voter approval, would

provide for the issuance of \$9.95 billion of general obligation bonds, \$9 billion of which would be used in conjunction with available federal funds for the purpose of funding the planning and construction of a high-speed train system in this state pursuant to the business plan of the authority. Nine hundred fifty million dollars of the bond proceeds would be available for capital projects on other passenger rail lines to provide connectivity to the high-speed train system and for capacity enhancements and safety improvements to those lines. Bonds for the high-speed train system would not be issued earlier than January 1, 2006.

The bill would provide for the submission of the bond act to the voters at the general election on November 2, 2004.

The people of the State of California do enact as follows:

SECTION 1. (a) In light of the events of September 11, 2001, it is very clear that a high-speed passenger train network as described in the High-Speed Rail Authority's Business Plan is essential for the transportation needs of the growing population and economic activity of this state.
(b) The initial high-speed train network linking San Francisco and the Bay Area to Los Angeles will serve as the backbone of what will become

Senate Bill No. 916

CHAPTER 715

An act to amend Section 14531 of the Government Code, to amend Sections 182.5, 188.3, 188.4, 188.10, 3010.1, 3010.8, 3011.3, 3060.0, 3060.1, 3060.4, 3060.6, 3075.0, 3075.1, 3076.0, 3076.1, 3079.1, 3088.4, 3088.5, 3088.7, 3088.9.3, 3089.1, 3089.4, 3091.0, 3091.2, 3091.3, 3091.5, 3091.6, 3091.8, 3091.9, 3092.0, 3095.0, 3095.0.1, 3095.0.2, 3095.0.3, 3095.0.4, 3095.3, 3095.8, 3096.0, 3096.1, 3100.0, 3101.0, and 3107.1 of, to amend and renumber Section 188.10 of, to add Sections 188.53, 3088.1, 30910.5, 30914.5, and 30922 to, and to repeal Sections 3060.3, 3060.5, 3060.8.2, 3075.2, 3075.3, 3075.4, 3075.5, 3075.6, 3075.7, 3076.2, 3076.2.5, 3076.3, 3076.4, 3076.5, 3076.6, 3076.7, 3079.1.7, 3079.2, 3079.2.2, 3079.3, 3079.4, 3079.5, 3088.6, 3088.8, 3088.9, 3089.6, and 3095.6 of, to repeal Article 5 (commencing with Section 30200) and Article 7 (commencing with Section 30350) of Chapter 1 of Division 17 of, to repeal and add Sections 30102.5, 3089.0, 3091.1, 3091.4, 3091.7, 3092.1, and 3095.1 of, the Streets and Highways Code, and to amend Section 5205.5 of the Vehicle Code, and to amend Section 5 of Chapter 898 of the Statutes of 1997 relating to transportation, and making an appropriation therefor.

[Approved by Governor October 8, 2003. Filed with Secretary of State October 9, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 916, Perata. Toll bridge revenues: Treasure Island Development Authority.

Existing law generally makes the California Transportation Commission responsible for establishing the rates charged vehicles for crossing the state-owned toll bridges. Under existing law, the Metropolitan Transportation Commission (MTC) is authorized to adopt a toll schedule in lieu of the one adopted by the California Transportation Commission for the state-owned toll bridges in the San Francisco Bay Area. Existing law makes the MTC and the Bay Area Toll Authority (BATA), which is defined as the same body as the MTC, responsible for the programming, administration, and allocation of the revenue from the base toll charge collected from these bridges. Under existing law, a portion of this revenue is continuously appropriated to the Controller who is required to disburse these funds to the MTC to expend for purposes that reduce vehicular congestion on the bridges.

