

File No. 120981

Committee Item No. 2

Board Item No. 17

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date October 15, 2012

Board of Supervisors Meeting Date October 23, 2012

Cmte Board

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- Municipal Transportation Agency Board Resolution No. 08-150
- CEQA Findings
- _____
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- _____
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- _____
- _____
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- _____

Completed by: Alisa Miller Date October 12, 2012

Completed by: Alisa Miller Date October 17, 2012

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

1 [Approval of Construction of Structures in Union Square Park for Central Subway Project]

2
3 **Resolution approving, under Charter Section 4.113, construction of surface and**
4 **subsurface structures in Union Square Park for the Central Subway Project's Union**
5 **Square Market Street Station.**

6
7 WHEREAS, The San Francisco Recreation and Park Department (RPD) maintains and
8 operates real property in the City and County of San Francisco (City) bounded by Geary,
9 Powell, Post and Stockton Streets known as "Union Square Park"; and

10 WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is
11 undertaking construction of the Central Subway Project (the Project), which is designed to
12 address mobility and transit deficiencies in the northeastern part of San Francisco by
13 improving connections from the northeastern part of the City to communities in the
14 southeastern part for the City and improving reliability of transit services; and

15 WHEREAS, The Project will include the construction of three subway stations,
16 including one with an entrance in Union Square Park, known as the Union Square Market
17 Street (UMS) Station; and

18 WHEREAS, The San Francisco Planning Commission on August 7, 2008, certified the
19 Final Environmental Impact Statement / Environmental Impact Report (SEIS/SEIR) for the
20 Project, and on August 19, 2008, the San Francisco Municipal Transportation Agency Board
21 of Directors approved the Project in Resolution No. 08-150, which can be found in Board of
22 Supervisors file No. 081138, which resolution included findings under the California
23 Environmental Quality Act (CEQA), and

24 WHEREAS, The Planning Department staff has reviewed the current status of the
25 Central Subway Project, including the UMS Station design, and in a memorandum to the file

San Francisco Municipal Transportation Agency
BOARD OF SUPERVISORS

1 dated September 12, 2012, which can be found in Board of Supervisors' File No. 120981,
2 has confirmed that there have been no substantial changes proposed for the Project, and no
3 substantial changes in Project circumstances, that would require major revisions to the
4 SEIS/SEIR due to the involvement of new significant environmental effects or a substantial
5 increase in the severity of previously identified significant impacts; and that there is no new
6 information of substantial importance that was not known and could not have been known at
7 the time the SEIS/SEIR was certified, that shows significant environmental effects not
8 discussed in the SEIS/SEIR, a substantial increase in the severity of previously examined
9 significant effects, or that unadopted mitigation measures or alternatives previously found not
10 to be feasible, would be feasible and capable of substantially reducing one or more of the
11 significant effects of the Project; and

12 WHEREAS, SFMTA staff presented the Recreation and Park Commission with its final
13 plans for the construction of structures required for the UMS Station in the southeastern
14 corner of Union Square Park, consisting of an escalator, stairs, two elevators, emergency
15 ventilation equipment, glass deck (public space) and ancillary components such as overhead
16 doors to close off the station entrance, as shown in Exhibit 1 on file with the Clerk of the Board
17 of Supervisors in File No. 120981, which is hereby declared to be a part of this motion as if set
18 forth fully herein; and

19 WHEREAS, The SFMTA has designed the UMS Station Entrance, which is the only
20 visible portion of the UMS Station in the Park, to be as compact as possible in both plan and
21 elevation to preserve open space, and to blend in with its surroundings by mimicking the
22 existing retaining walls and planter terraces and by incorporating existing treatments,
23 materials and finishes; and

24 WHEREAS, Approximately 2,135 square feet of exterior park space, which is less than
25 two percent of the 2.6-acre (113,256 square feet) Union Square Park, will be redesigned or

1 used in some respect for UMS Station facilities, and 1,410 square feet of that 2,135 square
2 feet will continue to be some form of pedestrian open space or landscaped area; and

3 WHEREAS, Although the Union Square Station Entrance will displace approximately
4 1,200 feet of terraced seating on the surface of the Park, the roof of the station entrance will
5 incorporate approximately 950 square feet of a translucent glass walk-on roof deck, resulting
6 in a net loss of only 250 square feet of the open space that was previously occupied by
7 terraced seating; and

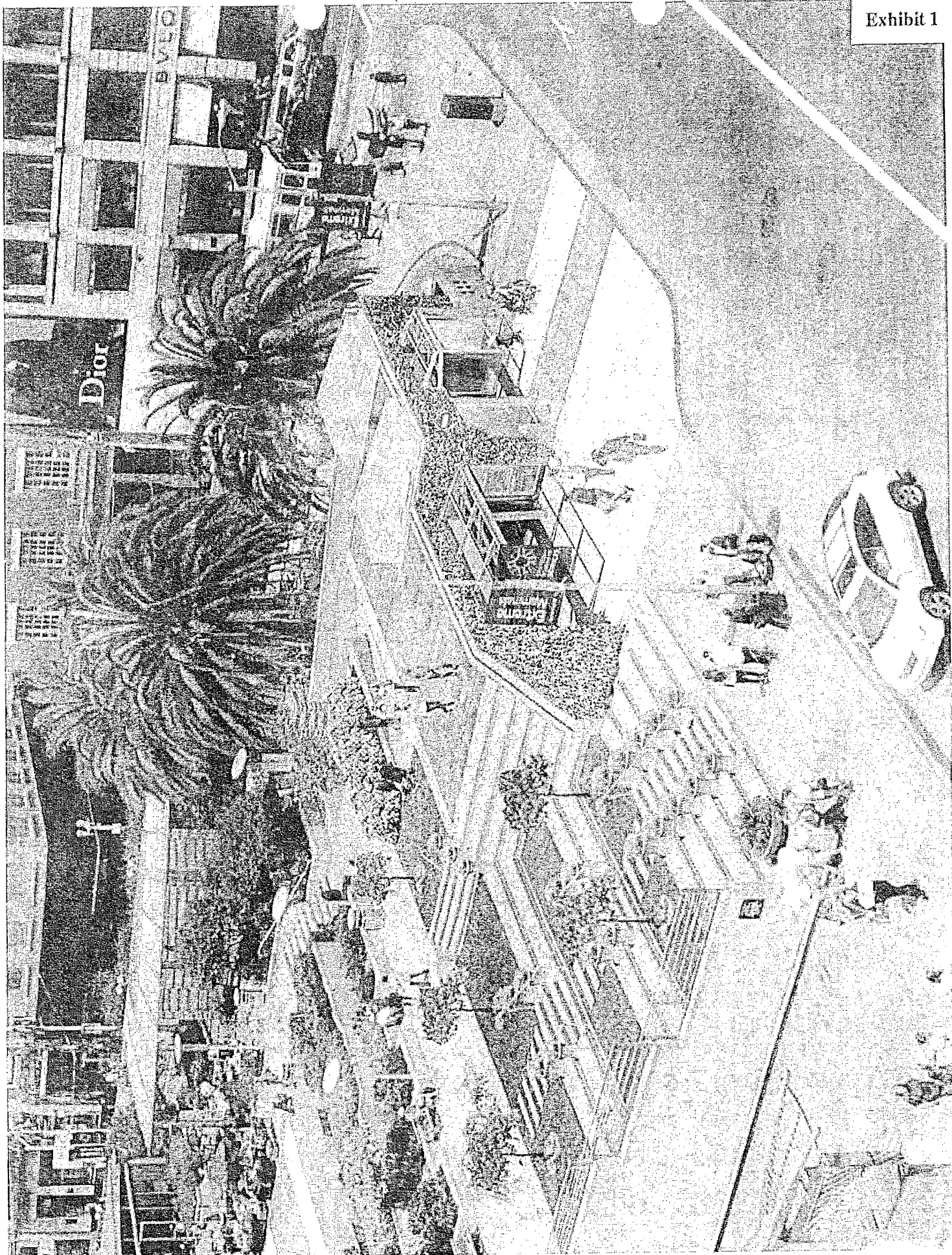
8 WHEREAS, At its meeting on September 20, 2012, the Recreation and Park
9 Commission found that the construction of the surface and subsurface structures in Union
10 Square Park for the UMS Station is consistent with and supportive of a recreational purpose
11 as required by Charter Section 4.113 because the proposed use (1) will occupy an
12 insubstantial portion of the surface area of the Park and impact less than 2 percent of the
13 Park's total square footage; (2) will not substantially impair or interfere with the use and
14 enjoyment of the Park for recreational purposes because of the location and dimension of the
15 proposed structures, and the nature and existing use of the affected park area; and (3) will
16 substantially improve public access to and from the Park, thereby enhancing the Park's use
17 and enjoyment by the public; and

18 WHEREAS, Under Charter Section 4.113, the construction of buildings or structures in
19 Union Square Park generally requires approval by a vote of two-thirds of the Board of
20 Supervisors; and

21 WHEREAS, On September 20, 2012, the Recreation and Park Commission adopted
22 Resolution No. 1209-005, in which it approved the construction of the surface and subsurface
23 structures in Union Square Park for the UMS Station in substantially the same form as set
24 forth in the aforementioned Exhibit 1 and recommended that the Board of Supervisors
25 similarly approve such construction; now, therefore, be it

1 RESOLVED, That the Board of Supervisors adopts and incorporates by reference
2 herein the CEQA findings adopted in SFMTA Resolution No. 08-150, and further finds that
3 that there have been no substantial changes proposed for the Project, including construction
4 of the surface and subsurface structures for the UMS Station of the Project, and no
5 substantial changes in Project circumstances, that would require major revisions to the
6 SEIS/SEIR due to the involvement of new significant environmental effects or a substantial
7 increase in the severity of previously identified significant impacts; and that there is no new
8 information of substantial importance that was not known and could not have been known at
9 the time the SEIS/SEIR was certified, that shows significant environmental effects not
10 discussed in the SEIS/SEIR, a substantial increase in the severity of previously examined
11 significant effects, or that unadopted mitigation measures or alternatives previously found not
12 to be feasible, would be feasible and capable of substantially reducing one or more of the
13 significant effects of the Project; and be it

14 FURTHER RESOLVED, That the Board of Supervisors approves the construction of
15 the surface and subsurface structures in Union Square Park for the UMS Station in
16 substantially the same form as set forth in Exhibit 1.
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Edwin M. Lee | Mayor
 Tom Nolan | Chairman
 Cheryl Brinkman | Vice-Chairman
 Leona Bridges | Director
 Malcolm Heinicke | Director
 Jerry Lee | Director
 Joël Ramos | Director
 Cristina Rubke | Director
 Edward D. Reiskin | Director of Transportation

September 28, 2012

Angela Calvillo, Clerk of the Board
 Board of Supervisors
 City and County of San Francisco
 1 Carlton B. Goodlett Place, Room 244
 San Francisco, California 94102

RE: Central Subway Project Design Reconfiguration of Union Square/Market Street Station in Union Square Park

Dear Ms. Calvillo:

Attached please find an original and four copies of the proposed ^{resolution} ordinance for Board of Supervisors' consideration. The ^{resolution} ordinance requests authorization, under Charter Section 4.113, to construct surface and subsurface structures in Union Square Park, including an escalator, stairs, two elevators and ventilation equipment, required for the UMS Central Subway Station.

In addition to the resolution, please find enclosed the following attachments:

1. Briefing Letter
2. Proposed Resolution
3. SFMTA Board Resolution 08-150 and CEQA findings
4. Planning Department Memo re: Central Subway Project Alternative 3B (Modified Locally Preferred Alternative)

Please contact Jane Wang of my staff at 415.701.4287 if you have any questions regarding this matter.

Sincerely,



Edward D. Reiskin
 Director of Transportation

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Tom Nolan | Chairman
Cheryl Brinkman | Vice-Chairman
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Malcolm Heinicke | Director
Jerry Lee | Director
Joél Ramos | Director
Cristina Rubke | Director
Edward D. Reiskin | Director of Transportation

September 28, 2012

Honorable Board of Supervisors
City and County of San Francisco
1 Carlton B. Goodlett Place, Room 244
San Francisco, California 94102

**RE: Central Subway Project Design Reconfiguration of Union Square/Market Street
Station in Union Square Park**

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) requests that the Board of Supervisors approve a Resolution authorizing, under Charter Section 4.113, construction of surface and subsurface structures in Union Square Park, including an escalator, stairs, two elevators and ventilation equipment, required for the UMS Central Subway Station.

Background

The Central Subway Project is the second phase of the Third Street Light Rail Project and would provide Muni service from the present terminus of the T-Third Line at Fourth and King streets along Fourth Street through South of Market with a surface station at Fourth and Brannan streets and an underground station at Moscone Center, through Downtown at Union Square with connections to BART and SFMTA Powell Station, and under Stockton Street to Chinatown, with a station between Clay and Jackson streets.

In 1998, SFMTA completed a Final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) to describe and summarize the environmental and transportation impacts for both the Initial Operating Segment and Central Subway phases of the project, along with measures to improve, avoid, minimize or mitigate impacts for both phases of the project.

In February 2009, SFMTA completed a Supplemental EIS/EIR to update information in the Central Subway Project study area and address impacts focused on changes to the Central Subway portion of the Third Street Light Rail Project that occurred since the 1998 environmental document. These changes included a new segment along Fourth and Stockton streets between Brannan and Geary streets; extensions of the planning year from 2015 to 2030; aboveground emergency vent shafts for the subway; a need to locate station entries off sidewalks, where possible; use of tunnel boring equipment rather than cut-and-cover construction to minimize surface disruption during construction; and a potential construction tunnel extension to Columbus and Union streets to extract the tunnel boring equipment.

There are seven San Francisco Recreation and Park Department parks within two blocks of the alignment: South Park, Yerba Buena Gardens, Union Square, Willie Woo Woo Wong Playground, Woh Hei Yuen Recreation Center, Portsmouth Square, and Washington Square. Only Union Square would be directly affected by the construction.

San Francisco Municipal Transportation Agency
One South Van Ness Avenue, Seventh Fl. San Francisco, CA 94103
Tel: 415.701.4500 | Fax: 415.701.4430 | www.sfmta.com



Approvals Needed

Under Federal Law enacted as part of the Department of Transportation Act of 1966, known as Section 4(f), an assessment must be prepared when a transportation project affects a public park or recreation area, wildlife or waterfowl refuges, or significant historic sites. The SFMTA prepared a Section 4(f) assessment for this project and concluded that the impacts on the parks would be de minimus under Section 4(f) – in other words, they would not adversely affect the activities, features and attributes of the parks. Additionally, under Section 4(f), the landholder of the Section 4(f) resource (San Francisco Recreation and Park Department) had to concur with the findings of the assessment prior to approval of the Supplemental EIS/EIR. On February 21, 2008, the Recreation and Park Commission unanimously adopted Resolution No. 0802-011, supporting the Federal Transit Administration's finding of de minimus impacts on Union Square for SFMTA's Central Subway Project Preferred Alternative 3B, which includes a station entrance at the southeast corner of Union Square – stairs and escalators along Geary Street, and two elevators along Stockton Street.

Since certification of the SEIS/SEIR in 2008, there have been no substantial changes to the Project as it was described and analyzed in the SEIS/SEIR (see Wycko memo). A number of design developments have resulted in the need to revisit the layout of the station entrance at Union Square Garage and Plaza, Yerba Buena/Moscone Station, and the Chinatown Station. Most importantly, the Union Square/Market Street Station is substantially the same as it was presented in the 2008 SEIS/SEIR, particularly in terms of impacts on Union Square from both construction and operation. Design development summary updates to the Central Subway stations are as follows:

Union Square/Market Street Station

- On August 19, 2008, the SFMTA Board of Directors approved Resolution No. 08-150 adopting the Central Subway Project Alternative 3B, Fourth/Stockton Alignment and directing staff to continue with otherwise necessary approvals and to carry out the actions to implement the project.
- In May 2009, SFMTA presented the Central Subway Project for Phase 1 Civic Design Review, and it was suggested that the elevators be relocated to the same plaza area as the escalators at Union Square.
- In July 2010, SFMTA approved an engineering change proposal that changes the fan configuration for the emergency ventilation system, resulting in a reduction of the vent shaft requirements (from two 250-sq. ft. shafts to a single 300-sq. ft shaft).
- On December 2, 2010, the Recreation and Parks Commission unanimously adopted Resolution No. 1012-005 to support the SFMTA's proposal to reconfigure the Central Subway's station entrance at Union Square and to locate the emergency ventilation shaft within the terraces along Stockton Street with the condition that the final financial mitigation package be brought back to the Commission for approval.
- On March 3, 2011, SFMTA, the Mayor's Office of Disability, and the Union Square Business Improvement District reached programmatic agreement on the station configuration (single escalator, dual elevators, access to plaza).
- On June 17, 2011, the Mayor's Office of Disability accepted the dual elevator scheme without elevator access to the plaza.
- On August 15, 2011, the UMS Station received Phase 2 Design Approval from the San Francisco Arts Commission.

- On April 16, 2012, the UMS Station received Phase 3 Design Approval from the San Francisco Arts Commission (Resolution No. 0402-12-099).
- On June 20, 2012, the Union Square Entrance received design approval from the Historic Preservation Committee (Motion No. 0162, Case No. 2012.0136H).
- On September 12, 2012, Bill Wycko from the Planning Department issued a memo to the file finding that there have been no major changes to the project since certification of the SEIS/SEIR that would necessitate further environmental review.
- On September 20, 2012, the Recreation and Park Commission approved, under Charter Section 4.113, construction of surface and subsurface structures in Union Square Park.

Structures in Union Square Park:

The Union Square entrance is the visible portion of the UMS Station, a new underground light rail transit station that will be more than 700 feet long and nearly 100 feet deep under Stockton Street. At the south end, the station will connect to the Muni/BART Powell Station below Market Street, and at the north end it will emerge at Union Square on Geary Boulevard near Stockton Street. The station entrance has been designed to be as compact as possible in both plan and elevation to minimize operational impacts, to preserve open space, and to blend in with its surroundings by matching the existing plaza features and by incorporating existing treatments, materials, and finishes. The roof of the station entrance functions as a walk-on glass deck, optimizing the open space of the plaza.

On the west side of the station entrance, stepped terraces will match the finish and composition of the existing terraced seating; on the east side, a new enclosure wall will rise behind the existing palm trees; on the south side along Geary Street, the station entrance will be framed by concrete walls transitioning to a parapet. The concrete surfaces of the south and east facades of the station entrance will be treated to match the finish of the existing retaining walls within the plaza; these surfaces will eventually be covered with vines planted at the base of the walls.

At the surface, the station entrance will permanently displace approximately 1,200 square feet of terraced seating. However, the roof of the station entrance will incorporate approximately 950 square feet of translucent glass walk-on roof deck, resulting in a net loss of only 250 square feet of open space. The roof deck will be accessible from a short ramp at Union Square's intermediate plaza level and via the terraced seating along the west edge of the deck.

Within the parking garage, an existing vehicular ramp must be reconfigured and the garage structure must be altered to accommodate the station entrance and a portion of the station's concourse below. Approximately 80 parking spaces will be permanently impacted by the station entrance. To minimize the impacts to parking garage operations during station construction, the contract documents stipulate reconfiguration of the vehicular ramp as the first order of work and impose schedule constraints for work related to restoration of the garage.

The structures to be constructed in Union Square Park under the final design are as follows:

1. Escalator
2. Stairs
3. Two elevators
4. Emergency ventilation equipment
5. Glass deck (public space)
6. Ancillary components such as overhead doors to close off station entrance.



Figure 1 - Rendering of UMS Union Square Entrance

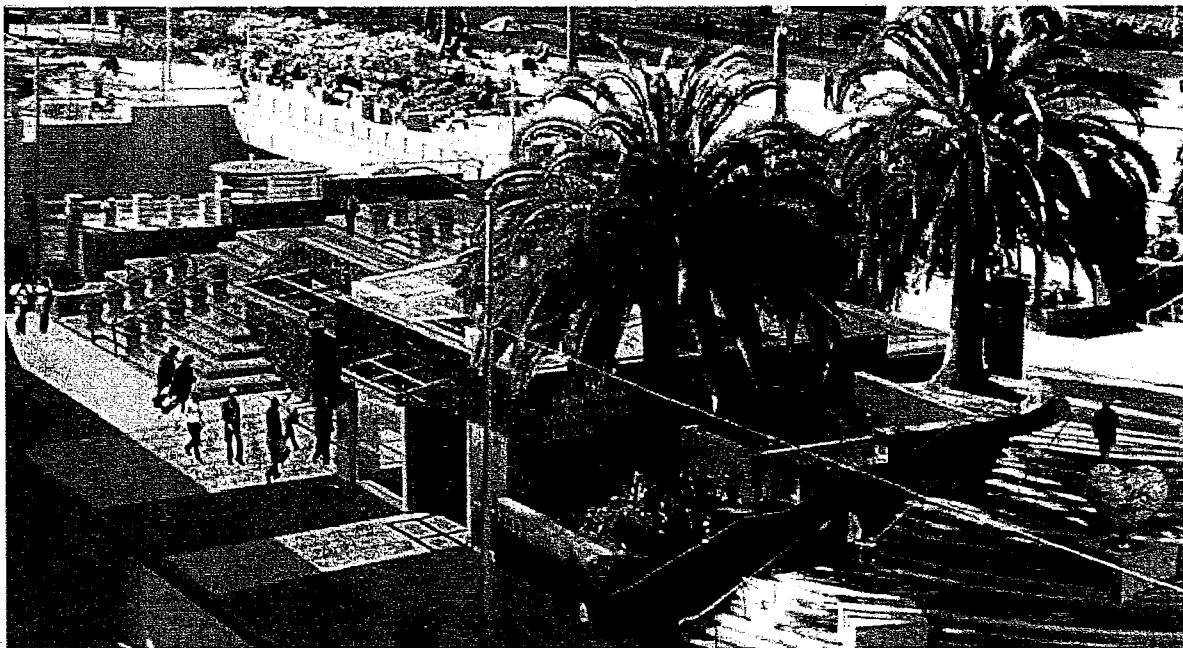


Figure 2 - Union Square Entrance: South and East Façades

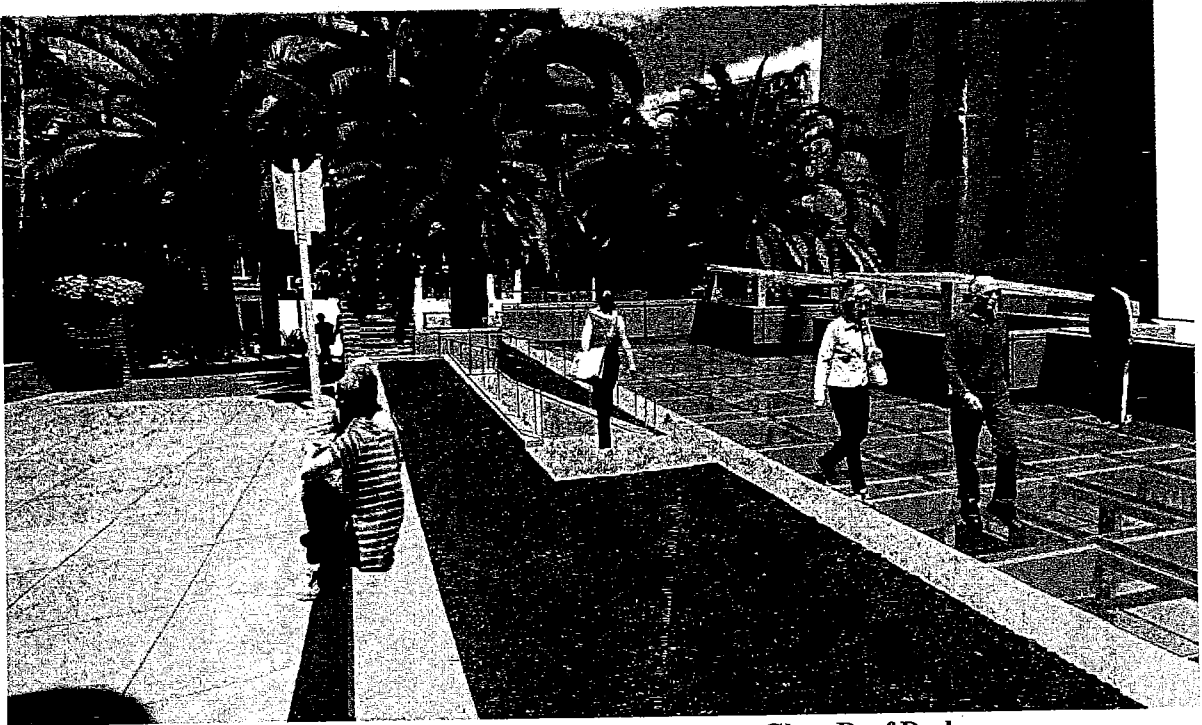


Figure 3 - Union Square Entrance: Translucent Glass Roof Deck

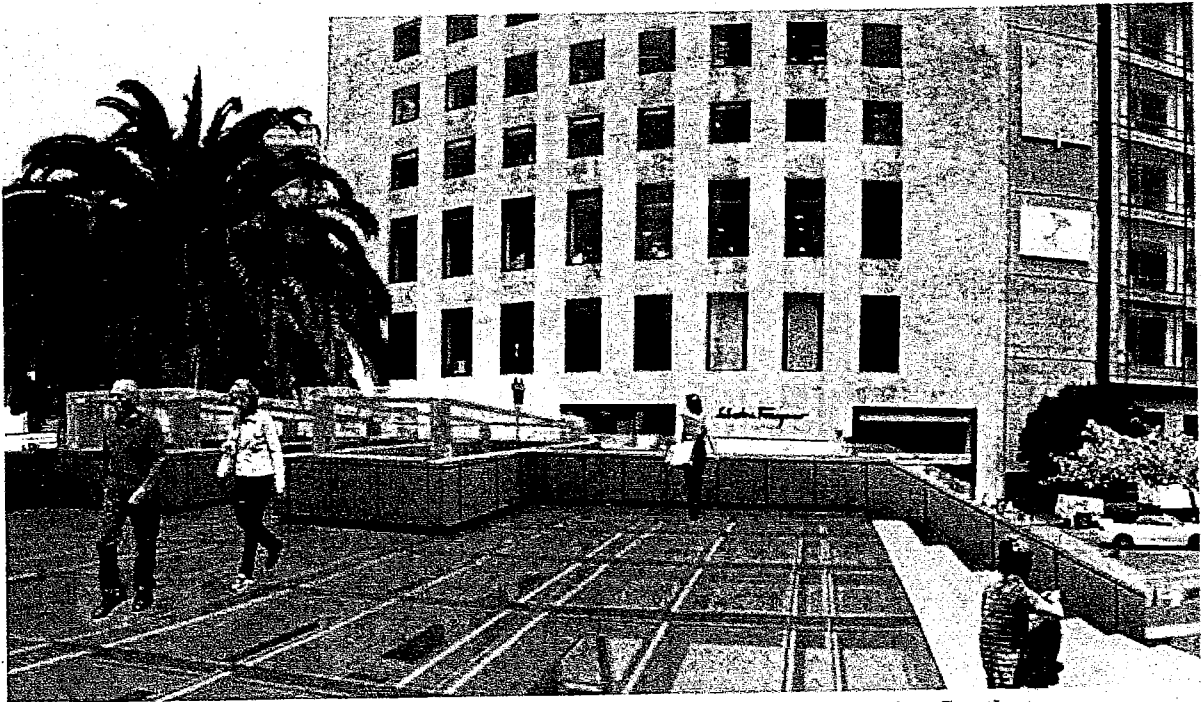


Figure 4 - Union Square Entrance: View from Roof Deck Looking South

Community Outreach on Design Refinements

Below is a summary of meetings and presentations related to the Union Square Entrance:

<u>Description</u>	<u>Date(s)</u>
Meetings/Briefings with Union Square Business Improvement District	9/22/10; 9/29/10; 11/4/10; 11/5/10; 11/12/10; 11/17/10; 11/18/10; 1/13/11; 2/22/11; 3/3/11; 3/24/11; 4/18/11; 4/26/11; 5/12/11
Meetings/Briefings with Recreation and Parks Department	9/8/10; 9/14/10; 11/16/10; 12/2/10; 2/7/11; 8/29/11
SFMTA Community Advisory Group Meeting	11/18/10
Meetings with Mayor's Office of Disability	2/1/11; 2/7/11; 2/23/11; 3/3/11; 3/14/11; 3/24/11
Presentations to San Francisco Arts Commission (Phase 2 and 3 Approvals)	3/21/11; 5/2/11; 5/16/11; 6/20/11; 7/18/11; 8/15/11; 4/16/12
Presentations to San Francisco Planning Department	1/12/12, 2/9/12, 4/11/12
Presentation to San Francisco Historic Preservation Commission	6/20/12
Recreation and Park Commission Approval of Resolution	9/20/12

Cost and Source Funding

The capital cost of the Central Subway Project including the purchase of four vehicles, is estimated at \$1.578 billion. Funding comes from a combination of federal New Starts funds (\$948 million), State Transportation funds (\$375 million) and Local Transportation funds (\$255 million).

Schedule

The Central Subway Project's UMS Station construction contract is anticipated to be awarded in the first quarter of 2013. Construction of Union Square/Market Street Station will take approximately four and a half years to complete.

Recommendation

The SFMTA recommends that the Board of Supervisors adopt this Resolution. If you have any questions, please contact Jane Wang of my staff at 701-4287.

Sincerely,



Edward D. Reiskin
Director of Transportation

Enclosures: SFMTA Board Resolution No. 08-150 and CEQA findings
 Planning Department Memo re: Central Subway Project Alternative 3B (Modified Locally Preferred Alternative)

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 08-150

WHEREAS, The Third Street Light Rail Project Final Environmental Impact Statement/Environmental Impact Report (FEIS/FEIR) was certified in November 1998; and,

WHEREAS, On January 19, 1999, the Public Transportation Commission approved Resolution No. 99-009, which adopted the environmental findings for the Third Street Light Rail Project, including mitigation measures set forth in the 1998 FEIS/FEIR and Mitigation Monitoring Report; and,

WHEREAS, The Federal Transit Administration issued a Record of Decision on the 1998 FEIS/FEIR for the IOS on March 16, 1999; and,

WHEREAS, The Central Subway is the second phase of the Third Street Light Rail Project; and,

WHEREAS, Studies undertaken subsequent to the Final EIS/EIR certification identified a new Fourth/Stockton Alignment to be evaluated for the Central Subway Project; and,

WHEREAS, On June 7, 2005, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted Resolution 05-087, selecting the Fourth/Stockton Alternative (Alternative 3A) as the Locally Preferred Alternative (LPA) to be carried through the Supplemental EIS/EIR (SEIS/SEIR) and the federal New Starts process; and,

WHEREAS, Alternative 3B, Fourth/Stockton Alignment, was developed as a modified LPA in response to comments received through the public scoping process for the SEIS/SEIR initiated in June 2005 and also as a result of preliminary cost estimates identifying the need for Project cost savings; and,

WHEREAS, On October 17, 2007, SFMTA released for public comment a Draft SEIS/SEIR for the Central Subway Project, which evaluated a reasonable range of alternatives including: No Build/TSM (Alternative 1); Enhanced EIS/EIR Alternative (Alternative 2); Fourth/Stockton Alignment, LPA (Alternative 3A); and Fourth/Stockton Alignment, Modified LPA (Alternative 3B) with semi-exclusive surface right-of-way and mixed-flow surface operation options; and,

WHEREAS, The semi-exclusive surface right-of-way option for Alternative 3B, Fourth/Stockton Alignment, Modified LPA, would improve surface rail operations on Fourth

Street and reduce travel times for Central Subway patrons when compared to the mixed-flow option; and,

WHEREAS, The majority of comments received during the public comment period that concluded on December 10, 2007 supported construction of the Central Subway Project, and support was greater for Alternative 3B as the LPA; and,

WHEREAS, The SEIS/SEIR concluded that Alternative 3B will have significant unavoidable environmental impacts to traffic, historic resources and socioeconomics; and,

WHEREAS, The SEIS/SEIR identified Alternative 3B as the environmentally superior Build Alternative and the only fully funded alternative; and,

WHEREAS, The three other alternatives analyzed in the SEIS/SEIR, including a No Project/TSM Alternative, an Enhanced EIS/EIR Alignment (Alternative 2) and a Fourth/Stockton Alignment (Alternative 3A), are addressed, and found to be infeasible, in the CEQA Findings attached as Enclosure 3, which are incorporated herein by reference as though fully set forth. The CEQA Findings also set forth the benefits of the project that override its unavoidable significant impacts to traffic, historic resources and socioeconomics; and,

WHEREAS, The Final SEIS/SEIR was prepared to respond to comments on the Draft SEIS/SEIR and was distributed on July 11, 2008; and,

WHEREAS, the San Francisco Planning Commission certified the SEIS/SEIR as adequate, accurate and objective and reflecting the independent judgment of the Commission on August 7, 2008; and,

WHEREAS, The SFMTA Board has reviewed and considered the information contained in the SEIS/SEIR; and,

WHEREAS, the Central Subway project will assist SFMTA in meeting the objectives of Strategic Plan Goal No. 1 to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; Goal No. 2 to improve transit reliability; Goal No. 3 to improve economic vitality through improved regional transportation; and Goal No. 4 to ensure the efficient and effective use of resources; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors adopts the Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street and a construction variant to extend the tunnel another 2,000 feet north of Jackson Street to extract the Tunnel Boring Machine in a temporary shaft on Columbus Avenue near Union Street; and be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of

Directors adopts the CEQA Findings and Statement of Overriding Considerations for the SEIS/SEIR attached as Enclosure 3, and adopts the Mitigation Monitoring and Reporting Plan attached as Enclosure 4; and be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to direct staff to continue with otherwise necessary approvals and to carry out the actions to implement the project.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of AUG 19 2008

R. Boomer

Secretary, San Francisco Municipal Transportation Agency Board

CENTRAL SUBWAY/THIRD STREET LIGHT RAIL PHASE 2

FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT MUNICIPAL TRANSPORTATION AGENCY

I. INTRODUCTION

The following Findings are hereby adopted by the San Francisco Municipal Transportation Agency Board ("SFMTA Board") with respect to the Central Subway/Third Street Light Rail Phase 2 Final Supplemental Environmental Impact Statement/Final Supplemental Environmental Impact Report ("SEIS/SEIR") pursuant to the requirements of the National Environmental Policy Act of 1969, §102 (42 U.S.C. §4332); Federal Transit Laws (49 U.S.C. §5301(e), §5323(b) and §5324(b)); Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. §303); National Historic Preservation Act of 1966, §106 (16 U.S.C. §470f); 40 CFR Parts 1500-1508; 23 CFR Part 771; Executive Order 12898 (Environmental Justice); and California Environmental Quality Act, California Public Resources Code Sections 21000 et seq. ("CEQA"), the Guidelines for Implementation of CEQA, 14 California Code of Regulations Sections 15000 et seq., (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code.

This document is organized as follows:

Article II describes the Project.

Article III describes the actions to be taken by the SFMTA Board.

Article IV provides the basis for approval of the Project (the Locally Preferred Alternative identified in the Final SEIS/SEIR), a description of each alternative, and the economic, legal, social, technological, and other considerations which lead to the rejection of such alternatives as infeasible.

Article V sets forth Findings as to the disposition of each of the mitigation measures proposed in the Final SEIS/SEIR. Mitigation measures are grouped in the following categories:

- (1) Measures which are within the jurisdiction and responsibility of another governmental agency and which are recommended by the SFMTA Board for adoption by that agency;
- (2) Measures which are within the jurisdiction and responsibility of the City and County of San Francisco and which are proposed for adoption by the SFMTA Board.

Article VI identifies the location and custodians of the records for the Central Subway Final SEIS/SEIR.

Article VII identifies the unavoidable, significant adverse impacts of the Project which have not been mitigated to a level of insignificance by the adoption of mitigation measures as provided in Article V.

Article VIII contains a Statement of Overriding Considerations, setting forth specific reasons in support of the SFMTA Board's actions in light of the significant unavoidable impacts discussed in Article VII.

Exhibit 1, attached to these Findings, contains the Mitigation Monitoring and Reporting Program ("MMRP"). It provides a table summarizing the mitigation measures, grouped by subject, in the order that they are proposed and analyzed in the Final SEIS/SEIR; specifies the agency responsible for implementation of each measure; and establishes monitoring actions and a monitoring schedule.

II. PROJECT DESCRIPTION

A. Project Approvals

The Project consists of a series of approvals that together define the terms under which the Project will occur. The Project Sponsor is the San Francisco Municipal Transportation Agency ("SFMTA"). The City and County of San Francisco's Board of Supervisors, the San Francisco Transportation Authority, the San Francisco Planning Commission, Caltrans, the California Public Utilities Commission, the Bay Area Rapid Transit District and other governmental agencies and districts will be taking various approval actions related to the Project. The Project is composed of the following major permits and approvals, and related and collateral actions:

1. CPUC permit for all at-grade or grade-separated railroad, highway, street and pedestrian crossings (CPUC Code Section 1200);
2. Caltrans Encroachment permit for use of right-of-way;
3. BART amendment of existing MUNI/BART Joint Station Maintenance Agreement for Powell Street Station and approval of Station Improvement Coordination Plan;
4. Board of Supervisors initiation and approval of acquisition and eminent domain of properties; use of city right-of-way, including easements, for stations or track alignments; use of park property at Union Square Park; and adoption of San Francisco Planning Code amendments to allow demolition of residential uses in Chinatown at 933-949 Stockton Street;
5. Planning Commission adoption of General Plan Consistency/Planning Code § 101.1 findings in regard to various actions and Transit Oriented Development at stations and recommendation of San Francisco Planning Code amendments for demolition of residential uses in Chinatown at 933-949 Stockton Street;
6. Recreation and Parks Commission approval of Section 4(f) findings of de minimis impacts to Union Square (approval granted Resolution 0802-011, February 21, 2008);
7. Advisory Council on Historic Preservation and California State Historic Preservation Officer (SHPO) concurrence with Findings of Effect and Historic Property Survey Report

and approval of Cultural Resources Memorandum of Agreement with SFMTA and FTA describing procedures for protection and mitigation of impacts to historic and cultural resources pursuant to Section 106 of the National Historic Preservation Act;

8. SF Landmarks Preservation Advisory Board concurrence with findings of Historic Properties Architecture Report and Mitigation Monitoring and Reporting Program;
9. SF Department of Public Works approval of construction in, and changes to, City Streets and sidewalks;

These approvals, along with implementation actions related thereto, are referred to collectively herein as the "Project."

B. Detailed Project Description/Relationship to the Final SEIS/SEIR

The following is a description of the uses contemplated by the Project and the Project's relationship to the Final SEIS/SEIR.

A Draft Supplemental Environmental Impact Statement/Environmental Impact Report ("Draft SEIS/SEIR") was prepared and distributed to the public on October 17, 2007. Notice of availability of the Draft SEIS/SEIR was published in the San Francisco Independent newspaper and posted at the San Francisco Planning Department. A Notice of Availability for the Draft SEIS was published in the Federal Register (Vol. 72, No 207, page 60847), October 26, 2007. Newsletters were sent to the project mailing list announcing the availability of the Draft SEIS/SEIR, and a letter was sent directly to property owners whose properties could be directly affected by the Project. Announcements were posted throughout the Project area, including along Fourth Street beginning at King Street to Market Street and along Stockton Street to Washington Square (in both English and Chinese). Notices were sent to all property owners within 300 feet of the Project boundary. The Draft SEIS/SEIR was available for on-line review on the SFMTA web site. Over 160 copies, both printed and compact disc versions, of the Draft SEIS/SEIR were mailed to agencies and individuals.

The document was also available for review at the following locations:

- SFMTA Central Subway project office at 821 Howard Street, 2nd floor
- San Francisco Central Library, 100 Larkin Street;
- Hastings College of Law Library, 200 McAllister Street;
- Chinatown Library, 1135 Powell Street;
- North Beach Library, 2000 Mason Street;
- San Francisco Planning Department, 1660 Mission Street, First Floor Public Information Center; and
- Stanford University Libraries, Stanford, CA.

In addition to the public meetings held over the course of the project, three community meetings

to share information about the Draft SEIS/SEIR were held in 2007 (October 30 at the Pacific Energy Center at 851 Howard Street; November 8, at the Gordon J. Lau Elementary School in Chinatown, and November 13 at 1 South Van Ness with the Community Advisory Group). The Public Hearing on the Draft SEIS/SEIR was held on November 15, 2007 at the San Francisco Planning Commission in San Francisco City Hall.

The Project, described below, is based on the Alternative 3B description contained in the Final SEIS/SEIR. The SFMTA Board, after a duly noticed public hearing on February 19, 2008 adopted the Fourth and Stockton Alignment 3B as the new Locally Preferred Alternative. The Project would be located in the northeastern section of San Francisco, from downtown to Chinatown, and has the following major features:

- 1.7-mile extension of T-Third LRT at Fourth and King Streets as Phase 2 of the project primarily in a semi-exclusive right of way along surface alignment on Fourth Street to a portal between Bryant and Harrison Streets where it transitions to twin bore tunnels proceeding under Fourth and Stockton Streets to the Central Subway terminus in Chinatown located near Stockton and Jackson Streets;
- One surface station on Fourth Street, north of Brannan Street, and three subway stations at Moscone Center on Fourth Street between Folsom and Howard Streets, Union Square/Market Street on Stockton Street between Market and Geary Streets, and Chinatown on Stockton between Clay and Jackson Streets;
- The Moscone Station located between Folsom and Howard Streets would have mezzanine and concourse levels and a platform level that would serve both northbound and southbound trains. The main station entrance (escalators, stairs, and tow elevators) would be in the off-street property at 266 Fourth Street. An emergency exit would be provided on the west side of Fourth Street mid-block between Folsom and Howard Streets. Ventilation shafts would be located on the west side of the station entrance.
- A deep crossing under the Market Street Subway and BART tunnels and an easement under buildings at 790 and 798 Market Street and 2 Stockton Street to a combined Union Square/Market Street Station.
- A combined Union Square/Market Street Station would be located on Stockton Street between Geary and Market Streets, and would have a platform centered on O'Farrell Street with a connecting concourse to BART and one platform level that would serve both northbound and southbound Central Subway trains. The south end of the Union Square/Market Street Station would connect to the BART/Muni Metro Market Street Subway at the Powell Street Station using existing and improved pedestrian entrances on Market Street and at the northeast corner entrance on Stockton and Ellis Streets. Potential improvements to the existing station access/egress on Ellis Street may require a bulb-out of the sidewalk and potential elimination of three parking spaces and a street tree. At the north end of the station the main entrance would be located at the southeast corner of Union Square Park on Geary Street just west of Stockton Street. The entry would include new escalators and stairs. Up to two elevators would be constructed off Stockton Street near the corner at Geary Street. Up to 34 parking spaces in the Union Square garage would be displaced. Emergency exits would be located on O'Farrell Street. Ventilation shafts are located in the Ellis/O'Farrell garage.

- The Chinatown Station would be located on Stockton Street between Clay and Jackson Streets and would have a mezzanine and concourse and one platform level for north and southbound trains. The main pedestrian entrance would be in a building that Muni would construct on the west side of Stockton Street south of Washington Street (933-949 Stockton Street) requiring the demolition of the existing building to accommodate escalators, stairs, two elevators, and two emergency ventilation shafts. SFMTA would acquire the parcel and one building and relocate eight businesses and 17 residential units. Existing zoning would allow for a 65-foot high building above the station entry. Twin storage tracks, capable of storing two-car trains, would extend north of the underground station, about 60 feet beyond Jackson Street. An emergency exit is provided on the west side of Stockton Street, between Washington and Jackson Streets. Ventilation shafts would be located in the southwest corner of the station entrance property.
- An approximately 2,000 foot tunnel would extend north of Jackson Street to facilitate extraction of the Tunnel Boring Machine in a temporary shaft under the middle two lanes of Columbus Avenue near Washington Square Park.

III. ACTIONS

The SFMTA Board is taking various actions in furtherance of the Project. The Actions of the Board in connection with the Project include the following:

1. Adoption of the Project;
2. Adoption of CEQA Findings, including a statement of overriding considerations, mitigation measures, and a mitigation monitoring and reporting program;
3. Approval of surface street changes, traffic operation changes, traffic control measures, and on-street parking changes.

IV. ALTERNATIVES CONSIDERED BUT ELIMINATED

Design options and alternatives considered for the Central Subway Project, but eliminated from further review during the SEIS/SEIR process are described below.

Tunnel Construction Methods

During conceptual engineering, a deep crossing of the BART/Muni Metro Market Street Subway at Third Street using a Tunnel Boring Machine (TBM) to bore the northbound and southbound tunnels was considered for the Enhanced EIS/EIR Alignment (Alternative 2) as compared to the shallow tunnel alignment proposed in the 1998 FEIS/FEIR. In this scheme the TBM would have been deployed between the single portals on Third and Fourth Streets and the intersection of Stockton and Geary Streets. This alignment would have passed under several properties between Third Street at Market Street and Stockton Street at Geary Street thus allowing for a straighter alignment compared to the shallow tunnel construction alignment. From that point northward

the Sequential Excavation Method (SEM) of tunneling would have been used to reach the Chinatown terminus. The potential for incorporation of a deep Market Street crossing into the Enhanced EIS/EIR Alignment was evaluated in the "Special Alignment and Validation Studies." The Third Street deep tunnel under Market Street was found to have a longer construction schedule and greater tunnel construction impacts to a sewer main, and higher costs, than a deep crossing on the Fourth/Stockton Alignment. These factors were discussed at public meetings in the summer and fall of 2004. The Alternative 2-Enhanced EIS/EIR Alignment was subsequently eliminated from further consideration and the Fourth/Stockton Alignment was selected by the SFMTA Board as the Locally Preferred Alternative (LPA). A deep crossing of Market Street is proposed, as part of the Alternative 3 – Fourth/Stockton Alignment.

The use of a mega tunnel with a single large diameter bore for tunnels and stations was explored as an alternative to the twin tunnel construction method. Station access and ventilation shafts would be constructed via cut-and-cover techniques from the surface. The mega tunnel would require stacked stations that would push the platform levels to even greater depths. This tunneling concept was eliminated from further consideration because soil conditions are not optimal and settlement concerns would be greater with this approach, the larger TBM radii turns would impact more right-of-way requiring more costly right-of-way acquisition, and the platform depths would result in longer station access times for patrons. In addition, the deeper alignment under the BART/Muni Metro Market Street Subway would force the relocation of the Union Square/Market Street Station (UMS) for the Fourth/Stockton Alignment further north, creating a longer walk for passengers transferring to UMS from the BART/Muni Metro Powell Street Station.

Station Locations

The station locations and the northern boundary of the Phase 2, Central Subway were initially established early in the Third Street Light Rail planning process as part of the **Bayshore Transit Study** completed in 1993 and incorporated into the **Four Corridor Study** prepared by the San Francisco Transportation Authority in 1995. The northern limit of the Third Street Light Rail Corridor was originally at California Street (**Four Corridor Plan**) and was later extended to Jackson Street, the northern project boundary analyzed in the 1998 EIS/EIR. The study limit of Jackson Street, established in the 1998 EIS/EIR, was important in distinguishing funding priorities for transportation corridors in the City and also for establishing the Project eligible for federal funding.

As studied in the 1998 EIS/EIR, all station access points for the Project were provided in sidewalk areas within the public right-of-way. Early in the Phase 2 planning process for the Central Subway, station location and access studies were undertaken to evaluate the opportunities for locating station access points out of the public right-of-way to minimize disruption to the congested sidewalks and pedestrian traffic along the Project Corridor. At the same time, an alternative with a more direct alignment for the rail corridor, the Fourth/Stockton Alignment, was also being studied. When the Notice of Preparation (NOP) was issued in June 2005, off-street station access locations had been incorporated in several locations into both the Enhanced EIS/EIR Alignment alternative and the Fourth/Stockton Alignment alternative.

Further refinement of the station locations occurred between June of 2005 and summer of 2006 when the environmental process was reactivated. The northern boundary for the Project remained fixed at Jackson Street consistent with the 1998 EIS/EIR.

During conceptual engineering and public outreach discussed above, the San Francisco Planning Department and members of the public expressed concerns about the location of the Moscone Station on the Fourth/Stockton Alignment. Three locations for a Moscone Station were identified and discussed with the public at meetings in 2004 and 2005. The options included 1) Fourth Street between Howard and Folsom Streets, 2) Fourth Street between Folsom and Harrison Streets, and 3) Fourth Street between Howard and Folsom Streets with an additional subway station on Fourth Street south of Harrison Street. A member of the public and the cost reduction panel suggested a fourth option locating the station on Fourth Street between Mission and Howard Streets. The second and third options were developed in response to the Planning Department's concern about serving the anticipated development on Fourth Street, south of Harrison Street and north of the Fourth/King Station. The second Moscone Station location on Fourth Street between Folsom and Harrison Streets was eliminated from further consideration in this SEIS/SEIR because of potential safety conflicts between vehicles and pedestrians at the ramps leading to the I-80 freeway and a lack of public support expressed at meetings in the summer and fall of 2004.¹ The third option was eliminated due to the cost of an additional subway station on Fourth Street between Brannan and Bryant Streets, however, when Fourth/Stockton Alignment Option B (Modified LPA) was developed a surface station was added at that location. The fourth option between Mission and Howard Streets was eliminated due to the conflict with a major sewer line on Fourth Street in this area, and station spacing concerns given the proximity of the Moscone Station between Mission and Howard Streets and a Union Square/Market Street Station between Ellis and O'Farrell Streets.

In Union Square, merchants expressed concerns in meetings held during 2004 and 2005 about the narrowing of sidewalks in the busy retail core and the potential impacts on businesses adjacent to subway entrances. The redesigned Union Square Plaza was identified for potential access to the Union Square Station for the Enhanced EIS/EIR Alignment and was favorably received by the business community and civic organizations. This station access proposal was incorporated into the Fourth/Stockton Alignment Option A and later refinements to Union Square Station access were incorporated into Alternative 3B.2³

Four potential off-site locations were identified for locating an entrance to the Chinatown station centered on Clay Street: 1) the southwest corner of Stockton and Sacramento Streets intersection (777 Stockton Street); 2) the east side of Stockton Street north of Sacramento Street (814-828 Stockton Street); 3) the north side of Clay Street, west of the Stockton Street intersection (910-918 Clay Street); and 4) mid-block on the east side of Stockton Street between Jackson and Pacific Streets (site located in Ping Yuen Housing Complex at 799 Pacific). These sites were

1 PB/Wong and San Francisco Municipal Railway, "Working Paper Task 1.60-11 Additional Station Location and Access Studies, Revision", May 24, 2005.

2 Ibid.

3 PB/Wong and San Francisco Municipal Railway, "Summary Report Task 1.60-4 Special Alignment and Validation Studies" Revision 0, June 30, 2005.

identified and evaluated based on factors such as building size and heights (one to two-story buildings were preferred to minimize neighborhood disruption to multi-story residential buildings), ability to accommodate station facilities and vent shafts, overall accessibility, constructability, business and residential displacement, development potential, possible environmental impacts, and consistency with previous planning studies such as the Four Corridors Plan. The 814-828 Stockton Street site emerged as the preferred site. The parking structure at 777 Stockton Street was eliminated from consideration because of its small size, which restricted the ability to accommodate the station entrance/exits and the vent shafts and to retain existing residential uses on the property. The 910-918 Clay Street site was eliminated from further consideration also because of its small size, which restricted the ability to accommodate station facilities and the vent shaft, the number of community organizations located in the building that would be affected, and because of its distance to the station at Stockton Street relative to other station location options. The steep grades on Clay Street, in combination with the distance from Stockton Street, made this site less accessible than others under consideration. The Ping Yuen site was eliminated as a station entrance due to its relative distance from the next closest station (Union Square/Market Street) and its location beyond the established study area in the Third Street Light Rail EIS/EIR and the Four Corridor Plan. Further restrictions on this site included a 12-foot drop from street level to the site with no access from the street level for construction equipment and staging areas, displacement of an existing child care center on the site, and construction impacts to residents of the public housing occupying the site.

In community meetings that were held subsequent to the publication of the initial NOP in 2005, the meeting participants suggested that the Chinatown Station site be moved closer to the heart of the Chinatown business district. Based on further assessments and screening, two additional access points were evaluated at that time in conjunction with a subway station site between Clay and Washington Streets at the southwest corner of the Stockton and Washington Streets intersection (933-949 Stockton Street) and the east side of Stockton Street, south of Washington Street (944-960 Stockton Street). The 944-960 Stockton Street site was eliminated from further consideration as it only afforded limited access through the basement of the existing Mandarin Towers building making the provision of station entrances/exits and vent shafts difficult. Thus only the 933-949 Stockton Street site was incorporated into the Fourth/Stockton Alignment, Option B. Both the two story building at 933-949 Stockton Street, near Washington Street, and the two story building at 814-828 Stockton Street near Sacramento Street are analyzed in the SEIS/SEIR.

The purpose of the SEIS/SEIR is to examine alternative transit improvements in the Central Subway Corridor in terms of their potential environmental and social-economic impacts and to compare the alternatives based on the following Project goals: 1) improve travel and mobility for transit riders; 2) improve transit access to employment opportunities and to other areas of the City and region; 3) enhance physical environment while minimizing adverse environmental impacts; 4) ensure compatibility with transit-supportive policies; 5) implement a financially feasible project and 6) gain community acceptance and support from City officials. The Project's Final SEIS/SEIR presents more details on selection and rejection of alternatives.

A. Reasons for Selecting the Project Set Forth in the Project Approvals:

As noted in Article II above, the Project is based generally on the Project Description of Alternative 3B – Fourth/Stockton Alignment Option B presented in Chapter 2 of the Final SEIS/SEIR.

In approving the aspects of the Project within the SFMTA Board's jurisdiction, the SFMTA Board has carefully considered the attributes and environmental effects of the Project and the Alternatives discussed in the Final SEIS/SEIR. This consideration, along with the reports from staff and considerable public testimony, has resulted in the Project. The Project represents the combination of features which, in the opinion of the SFMTA Board, most closely meets the Project's purpose and need as set forth in Chapter 1 of the Final SEIS/SEIR and summarized as follows.

As the Project Sponsor, SFMTA's objective for the proposed Project is to complete the second phase of the Third Street Light Rail Project and provide Muni transit improvements in the Central Subway Corridor. SFMTA is seeking federal funding assistance to construct the proposed Central Subway Project. In 2003 SFMTA began conceptual engineering on the 1998 Phase 2 Central Subway alignment that used King, Third, Harrison, Kearny, and Geary Streets, as well as Fourth and Stockton Streets, and included a shallow tunnel crossing of Market Street at Third Street. In response to a series of community meetings and two years of conceptual engineering and design refinement efforts, a new alignment was identified to avoid, minimize, or mitigate potential impacts described in the 1998 FEIS/FEIR. On June 8, 2005, the SFMTA Board designated the new alignment that was entirely located on Fourth and Stockton Streets, as the Central Subway Locally Preferred Alternative (LPA). This alternative was developed to avoid surface impacts along King, Third, Harrison, Kearny, and Geary Streets and to use a deep tunnel crossing of Market Street to avoid the existing sewer system on Mission Street.

In June 2005 the City circulated an NOP to notify the public of the preparation of a Supplemental EIS/EIR (SEIS/SEIR) to evaluate the Central Subway alternatives. FTA will determine if the preferred alternative meets their transit investment objectives and decide whether to recommend federal funding for the Project. Transit investment objectives include:

- Achieve transit service and mobility goals, while minimizing social, economic, and environmental impacts;
- Increase transit use and reduce travel time at a reasonable cost;
- Link public transportation investments with land use planning and community revitalization;
- Have strong public and political support and compatibility with local, regional, and state planning initiatives; and
- Enhance and preserve the environment, particularly in terms of reduced air and noise pollution and congestion relief.

The Central Subway Project would help to address mobility and transit deficiencies in the northeastern part of San Francisco by improving connections to communities in the southeastern part of the City and improving reliability of transit services. Transit deficiencies include those that exist at present and those that are anticipated to exist during the 20-year plus planning

horizon (2030). The Central Subway Project is also intended to serve as a key infrastructure improvement to help ease congestion in the Study Area; improve transit service to the large transit-dependent population that resides along the Corridor; accommodate the increasing number of residents in the South of Market area; and serve mobility needs for the new jobs that are expected to be created in the Study Area.

PROJECT GOALS AND OBJECTIVES

The goals and objectives for the Central Subway Project are based on the goals originally established in the **Bayshore Transit Study for the Third Street Light Rail Project**.⁴ These goals are also consistent with the San Francisco **Downtown Plan** and **General Plan** and the San Francisco County Transportation Authority's **Four Corridor Plan**.⁵ ⁶ They also conform to FTA guidelines for evaluating the worthiness of proposed major transit capital investment projects. Prior to 1991, FTA evaluated major transit investment projects primarily on their cost effectiveness and their degree of local financial support. The FTA guidelines have been subsequently updated as part of the 1991 federal Intermodal Surface Transportation and Efficiency Act (ISTEA) and the 2005 SAFETEA-LU to include performance measures as major considerations in the evaluation of proposed capital investment for transit projects. Further modifications to FTA guidelines were initiated in 1997 and again in 2006 as part of the Section 5309 New Starts Criteria. The guidelines added access and mobility improvements, environmental benefits (particularly air quality and energy use reduction), cost-effectiveness, transit system operating efficiencies, such as changes in operating cost per passenger mile, transit-supportive land use, promotion of economic development, and local financial commitment. Measures are developed for each criterion for the purpose of comparing project alternatives.

The seven principal goals, that Muni identified for the overall Third Street Light Rail Project to guide the evaluation of alternatives, are still applicable to the Phase 2 Central Subway Project. They are:

1. Travel and Mobility Goal Improve transit service to, from, and within the Central Subway Corridor, thereby enhancing the mobility of Central Subway Corridor residents, business people and visitors.
2. Equity Goal. Bring transit service in the Central Subway Corridor to the level and quality of service available in other sections of the City.
3. Economic Revitalization/Development Goal Design transportation improvements that support economic revitalization and development initiatives within the South of Market, Downtown and Chinatown Study Area.
4. Transit-supportive Land Use Goal Ensure compatibility with City land use plans and policies and transportation improvements so that transit ridership can be maximized and the number of auto trips reduced.

4 San Francisco Municipal Railway, **Bayshore Transit Study Final Report**; December 1993. Available in Project File 96.281E at the San Francisco Planning Department, 1650 Mission Street, San Francisco.

5 San Francisco Planning Department, **General Plan** and San Francisco Planning Department, **Downtown Plan**, last amendment May, 2005.

6 San Francisco Transportation Authority, June 1995, **Four Corridor Plan**; available for review in Project File 96.281E at the San Francisco Planning Department, 1650 Mission Street, San Francisco.

5. Environmental Goal Provide transit improvements that enhance and preserve the social and physical environment and minimize potential negative impacts during construction and operation of the line.
6. Financial Goal Implement transit improvements that provide for the efficient use of limited financial resources and are cost-effective.
7. Community Acceptance and Political Support Goal Provide a transportation system that reflects the needs and desires of Central Subway Corridor residents and business people and is compatible with the City's planning initiatives.

B. Rejection of the No Project/No Build/Transportation System (TSM) Management Alternative

The No Project / No Build/TSM Alternative consists of the existing T-Third LRT and existing Muni bus service with projects programmed in the financially constrained Regional Transportation Plan. This alternative is described on pages 2-3 to 2-9 of the Final SEIR/SEIS. It includes growth and proposed development in San Francisco in the 2030 horizon year. Under this alternative it is assumed that bus service would increase by about 80 percent by 2015 to meet demand and increased frequencies on the 30-Stockton and 45-Union bus line would be among bus changes.

The No Build/TSM Alternative is rejected for the following reasons:

- Fails to Accommodate Year 2030 Transit Demand of 99,600 weekday bus passengers, an increase over existing ridership of 30,900 bus passengers.
- Fails to complete the Third Street LRT (T-Line) as described in the 1998 EIR/EIS, and is not consistent with the 1995 **Four Corridor Plan** or **Regional Transit Plan**.
- Fails to Create a Transit Oriented Development – The No Build Alternative will not facilitate the development of high density mixed use development south of Market Street (Moscone Station) or in the Chinatown area that would encourage the use of environmentally friendly transportation thereby reducing transportation impacts of the development.
- The No Project Alternative would result in increased future congestion at some intersections, reduced transit service reliability, increased transit travel times, increased energy consumption, and increased air pollution when compared to the Build Alternatives.

The No Build/TSM Alternative would also be less consistent than the Preferred Project with many of the policies and goals of the **General Plan** including, but not limited to: transit services would not keep pace with future travel demand in the Study Area. As the quality and efficiency of public transit service deteriorates users could be attracted to alternative modes of transportation, including use of private vehicles. For this reason, the No Project/TSM Alternative would be inconsistent with transportation policies contained in Area Plans that encourage accommodating future employment and population growth in San Francisco through

transit, rather than private automobiles.

For the economic, legal, social, technological, and other considerations set forth herein and in the Final SEIS/SEIR, the No Build Alternative is rejected as infeasible.

C. Rejection of Alternative 2 and Alternative 3A

Alternative 2 is the same alignment along King, Third, Harrison, Kearny, Geary, Fourth and Stockton Streets as presented in the 1998 FEIS/FEIR, but with a shallow subway crossing of Market Street and with the addition of above-ground emergency ventilation shafts, off-sidewalk subway station entries where feasible, and the provision of a closed barrier fare system. This alternative includes one surface platform at Third and King Streets and four subway stations at Moscone, Market Street, Union Square, and Chinatown. Alternative 2 is rejected for the following reasons:

- The Community Advisory Group (CAG) and public input did not prefer this alternative; and in particular, the residents along Third Street expressed concern that the Third Street surface alignment portion of this alternative would significantly disrupt their neighborhood.
- The split alignment (along a section of Third Street and Fourth Street) made operation of the T-Third/Central Subway system less efficient for operation than the straight alignment of Alternative 3A and 3B. Alternative 2 has the highest incremental cost per hour of transportation system-user benefit of all of the build alternatives (+\$9 per hour over 3A and 3B) and would be assigned a low cost effectiveness rating based on FTA criteria.
- Because of the longer pedestrian corridors within the Montgomery Station, this alternative has longer passenger transfer connections with BART and Muni at Market Street than Alternative 3A and 3B.
- The Capital Cost of this Alternative would be \$1,685 million in the year of expenditure (YOE) dollars which is higher than either Alternative 3A (\$1,407 million) or 3B (\$1,235 million).
- This alternative would not offer fewer environmental impacts than Alternatives 3A or 3B and would impact Union Square with vent shafts and visual changes to the eastern stairway of the Park; would displace 59 off-street parking spaces; would result in impacts (shadow and visual) to Willie "Woo Woo" Wong Park from the station at 814-828 Stockton Street in Chinatown; would displace 10 small businesses compared with eight small businesses in Alternative 3B; would potentially impact 14 highly sensitive prehistoric archaeological sites, three sensitive historical archaeological sites, and three historical architectural properties [as compared to seven highly sensitive prehistoric archaeological properties for Alternative 3B LPA]; and would have significant traffic impacts at Third/King and Sixth/Brannan Streets intersections.

Alternative 3A is the same alignment as Alternative 3B (the Locally Preferred Alternative and the Proposed Project) but differs from Alternative 3B in the station locations and station platform size. Alternative 3A is rejected for the following reasons:

- The Capital Cost of this alternative would be \$1,407 million (YOE) compared with the cost of Alternative 3B at \$1,235 million (YOE), a \$172 million difference.
- The Chinatown station located at 814-828 Stockton Street is one block further from the core of Chinatown retail district than the Chinatown station in Alternative 3B.
- The property at 814-828 Stockton Street would need to be demolished for the station, and this building has been identified as potentially historic (built in 1923) and a contributor to the potential Chinatown Historic District.
- This alternative would displace ten small business compared with eight for Alternative 3B..
- The Chinatown station at 814-828 Stockton would have significant impacts to the Willie “Woo Woo” Wong Park to the east including visual, shadow, pedestrian traffic, and noise impacts during construction. This alternative is not preferred by the Recreation and Park Commission.
- The station at Union Square/Market Street would have a vent shaft in Union Square and the entry to the station in the middle of the steps along the east side (Stockton Street) of the Park; this was not preferred by the Recreation and Park Commission when compared with Alternative 3B because of the vent shafts in the Park and the cross-park pedestrian traffic to the entry on the Stockton Street side of the Park.

D. Alternatives Proposed by Members of the Public

The SFMTA Board acknowledges and approves the Fourth/Stockton Alignment Alternative 3B described above below as the Locally Preferred Project (LPA) because the SFMTA Board finds that there is substantial evidence of specific economic, legal, social, technological, and other considerations that make the LPA desirable as the Preferred Project.

The SFMTA Board also rejects all the Alternatives other than that identified as the LPA in the Final SEIS/SEIR, because the Board finds that there is substantial evidence of specific passenger service, economic, legal, social, technological and other considerations that make such Alternatives less desirable than the LPA for the reasons outlined above below and in the Project’s Final SEIS/SEIR.

During the public comment period, various property owners and commenter’s proposed alternatives to the preferred Project. These alternatives were described and analyzed in the Final SEIS/SEIR and Volume II of the Final SEIS/SEIR, Responses to Public Comments. These alternatives are rejected as infeasible for the passenger service, economic, legal, social, technological and other considerations set forth in the Final SEIS/SEIR at the above mentioned citations. (See Station Alternatives considered and rejected by SFMTA described in Section IV above)

E. Preferred Project and Reasons for Selection

This section describes the Preferred Project and the reasons for selection.

As outlined in Chapter 2, Section 2.4 of the Final SEIS/SEIR, the Central Subway Project has

been the subject of a series of environmental, engineering, and planning studies and community meetings. These studies were used to help identify a series of alternatives for evaluation in the SEIS/SEIR planning process that began in early 2004.

The Draft SEIS/SEIR presented a complete analysis of the environmental impacts of these alternatives. During the Draft SEIS/SEIR comment period members of the public and agencies suggested several additional alternatives or refinements to the existing alternatives. These alternatives and refinements were considered by the SFMTA and used to help define the Locally Preferred Alternative (LPA).

On February 19, 2008, the SFMTA Board, following Federal Transit Administration guidelines and regulations, adopted the Project Modified LPA for inclusion in the Final EIS/EIR. The SFMTA LPA staff report described the characteristics, advantages and disadvantages regarding each of the alternatives. The SFMTA Board selected the Fourth Street Alternative 3B as the LPA. The Final SEIS/SEIR describes the impacts from the LPA in detail.

The SFMTA Board acknowledges and approves the Preferred Project because the SFMTA Board finds that there is substantial evidence of specific service, economic, legal, social, technological, and other considerations that make the Preferred Project desirable.

The SFMTA Board acknowledges and approves the Fourth/Stockton Alignment 3B Alternative as the Preferred Project. This alternative is fully described in Final SEIS/SEIR Section 2. The Fourth/Stockton Alignment 3B Alternative is selected for the Preferred Project because it has the following major advantages:

- Lower capital cost of all alternatives and is the only Build Alternative that can be completed within the currently identified New Starts project funding commitment.
- The best connections with BART and Muni at Market Street;
- The least impact to Union Square Park because the station entry would be on the Geary Street terraced side of the Square, not in the middle of the steps to the plaza on the east side of the park on Stockton Street. This alternative has been approved to have "di minimus" impacts to Section 4(f) resources by the San Francisco Recreation and Park Commission. No shadow impacts would result from the Geary Street station entry on Union Square Park because the station entry would be incorporated into the terraced edge of the Park below the Park plaza and visual impacts would be less-than-significant.
- Reduces the construction duration and uses a TBM construction method to minimize surface disturbance and other construction-related impacts.
- Minimizes the impacts associated with archaeological and historical resources, utility relocations, noise and vibration, and park and recreation facility impacts compared to the other Build Alternatives.
- Provides a semi-exclusive right-of-way for light rail vehicles (similar to much of the N-Judah and the Third Street operation) on the surface portion of the rail line, thereby improving rail operations by reducing potential delays associated with traffic congestion on Fourth Street and improving travel times for Central Subway patrons on the surface portion of the rail line.
- Provides for extraction of the tunnel boring machine in North Beach.

In addition, the Preferred Project is consistent with the goals and policies of the San Francisco General Plan and area plan contained within the General Plan which goals and policies are aimed at improving transit service in corridors with high potential ridership, and with the Downtown Plan's "Transit First" policy and with the SFTA Strategic Plan and **Four Corridor Plan** and the **MTC Regional Transportation Plan**.

Many members of the public expressed their support for Alternative 3B as part of their comments on the Draft SEIS/SEIR. SFMTA received 39 comment letters, and 23 people representing 20 organizations, provided comments at the Planning Commission public hearing held on November 15, 2007. At the public hearing, 19 speakers expressed support for the Project and one opposed the Project. Of those responding in writing during the public comment period, five (including the Recreation and Parks Department) expressed support specifically for Alternative 3B. Of the comment letters received, 13 supported the Project, four opposed the Project.

V. FINDINGS REGARDING MITIGATION MEASURES

The California Environmental Quality Act (CEQA) requires agencies to adopt mitigation measures that would avoid or substantially lessen a project's identified significant impacts or potential significant impacts if such measures are feasible.

The SFMTA Board finds that, based on the record before it, the measures proposed for adoption in the Final SEIS/SEIR are feasible, and that they can and should be carried out by the affected City departments at the designated time. The SFMTA Board also acknowledges that as part of its project approval action, specific mitigation measures related to the Union Square/Market Street Station require an amendment to the existing Muni/BART Joint Station Maintenance Agreement (1986) and development and adoption of a separate Station Improvement Coordination Plan to minimize potential construction and station capacity impacts and to establish the protocol and procedures for the two agencies to work together to resolve issues and negotiate responsibilities and costs for changes to the existing station as final design proceeds and implementation is monitored. The SFMTA Board acknowledges that if such measures are not adopted and implemented, the Project may result in significant unavoidable impacts. For this reason, and as discussed in Section VI, the SFMTA Board is adopting a statement of Overriding Considerations as set forth in Section VII.

All improvement and mitigation measures set forth in the Final SEIS/SEIR are summarized in Exhibit 1 to this document. None of the improvement and mitigation measures set forth in the Final SEIS/SEIR are rejected. Responsibility for implementation and monitoring the measures has been established pursuant to the Mitigation Monitoring and Reporting Program set forth in Exhibit 1 to this document. Exhibit 1 is attached hereto and incorporated by reference as though fully set forth.

A. Mitigation Measures Recommended by the SFMTA Board for Adoption By Other

City Departments.

The SFMTA Board finds that the following measure presented in the Final SEIS/SEIR will reduce, the significant environmental effects to historic resources due to the demolition of 933-949 Stockton Street . This measure is hereby recommended for adoption and implementation by the San Francisco Planning Department as set forth below.

1. Historic Architectural Resources

Final approval of the design of the proposed Transit Oriented Development above the Chinatown Station at 933-949 Stockton Street will be under the jurisdiction of the San Francisco Planning Department. Implementation of the station will be the responsibility of the SFMTA. The Final SEIS/SEIR includes mitigation for the demolition of this potentially historic resource that incorporates partial preservation of the building at 933-941 Stockton Street, which has been concurred with by the State Historic Preservation Office. SFMTA therefore urges Planning, in approving any new development of the parcel, to require the incorporation of historic elements of the building façade into the design of the station. In proposing the final design, SFMTA and Planning should work cooperatively with representatives of the Chinatown community in developing the final design and with the SF Landmarks Preservation Advisory Board. This measure will reduce, but not avoid, the significant impacts to historic resources due to the demolition of 933-949 Stockton Street.

B. Findings on Mitigation Measures Within the Jurisdiction of the SFMTA That the SFMTA Board Has Adopted and Incorporated into the Project.

The SFMTA Board adopts all the mitigation measures within its jurisdiction and incorporates such measures into the Project as set forth in the Mitigation Monitoring and Reporting Program (“MMRP”), as required by State law, attached as Exhibit 1. Consequently, the SFMTA Board finds that all mitigation measures within the jurisdiction of the SFMTA have been incorporated into the Project and determines that said measures can and will be implemented. This SFMTA Board further finds that such measures will mitigate, reduce, or avoid the Project’s significant environmental effects, except as noted herein. The measures include mitigation in the areas of traffic, freight and loading, socioeconomics, archaeological resources, historic architectural resources, geology and seismicity, hydrology and water quality, noise and vibration, hazardous materials during construction, air emissions, and visual/aesthetics during construction.

C. Property Acquisition/Relocation

The City and County of San Francisco, in accordance with federal and state law, and to the extent it is within its jurisdiction, will mitigate the impacts of property acquisition and relocations required by the Project providing information and relocation assistance to those as set forth therein. Future development of the Moscone and Chinatown stations with retail space and low-income housing units will further reduce impacts of relocated businesses and residents.

D. Findings on Adoption of a Mitigation Monitoring and Reporting Program

The SFMTA Board finds that the Mitigation Monitoring and Reporting Program attached hereto as Exhibit 1 (the “Program”), is designed to ensure compliance during Project implementation. The SFMTA Board further finds that the Program presents measures that are appropriate and feasible for adoption and the Program should be adopted and implemented as set forth herein and in Exhibit 1.

VI. LOCATION AND CUSTODIAN OF RECORD

The public hearing transcript, a copy of all letters regarding the Final EIS/EIR received during

the public review period, the administrative record, and background documentation for the Final SEIS/SEIR are located at the Planning Department, 1650 Mission Street, San Francisco. The Planning Commission Secretary, Linda Avery, is the custodian of records for the Planning Department and Planning Commission. Susan MacKenzie, is the custodian of records for the SFMTA Central Subway project office. The SFMTA records are located at the project offices at 821 Howard Street, Second Floor, San Francisco.

VII. SIGNIFICANT ENVIRONMENTAL IMPACTS

The Project includes many aspects and features that reduce or eliminate environmental impacts, which could otherwise be significant. In particular, the mitigation measures described or referred to above would reduce to a level of less-than-significant impacts in the following areas, as described in the Final SEIS/SEIR sections: Noise and Vibration, Geology and Seismicity, Hydrology, Utilities, Cultural Resources, Visual Resources, and Hazardous Materials, and Air Quality.

As outlined above, the SFMTA Board has incorporated all of the identified mitigation measures within its jurisdiction into the Preferred Project. Even under full implementation of all the mitigation measures described above in Article V, some significant unavoidable impacts remain in the areas of traffic, historic resources, and socioeconomics. These are described in more detail below.

1. Traffic Impacts

The Project would remove travel lanes that would result in adding substantial numbers of vehicles to some movements that determine overall traffic level-of-service (LOS) performance. Specifically, the Project would add vehicles to movements that represent a considerable contribution to the baseline plus Project traffic conditions and the Project would have an adverse impact on these intersections.

The Project's contribution to the following intersections would be considered adverse under 2030 cumulative conditions, and these are the same intersections that would experience adverse effects under the 2030 plus Project condition at: Third and King Streets in the a.m. and p.m. peak hours and at Fourth and King Streets in the p.m. peak hour. For these intersections, the Project would add substantial numbers of vehicles to some movements that determine overall LOS performance. Therefore, the Project would add vehicles to those movements that would represent a considerable contribution to the cumulative conditions and the Project would have an adverse impact on these intersections.

In summary, the Project would result in adverse impacts at two intersections under both the baseline plus project and cumulative conditions. No improvements have been identified at these two individual intersections to mitigate operating conditions to less than significant levels.

2. Historic Impacts

Construction of a new Central Subway station at 933-949 Stockton Street would require demolition of the existing building identified as potentially eligible as a contributor to the Chinatown Historic District (not listed) for the National Register of Historic Places (NRHP). This property is described in Section 4.4.3 of the Final SEIS/SEIR. This demolition would constitute a significant adverse effect under CEQA.

While the Project would have significant adverse impacts to historic resources under CEQA, the Project also proposes a comprehensive program for mitigating the loss of historic buildings. This program as described in Exhibit 1 under the heading of Cultural Resources, is set forth in a Memorandum of Agreement among the Federal Transit Administration and California State Historic Preservation Officer and the SFMTA. (This Memorandum also is included as Appendix C of the Final SEIS/SEIS in its entirety). The program includes documenting the historic buildings that must be demolished, working with interest groups to salvage and preserve elements of the demolished buildings for display to the public, integration of a historic interpretation center into the new terminal, and funding an exhibition describing the Chinatown building history.

3. Socioeconomic Impacts

Acquisition of one parcel for the Chinatown station would cause the displacement of eight small businesses and 17 residential units in a predominantly minority and low income neighborhood. The construction of new ground floor retail would not mitigate to a less-than-significant level the disruption to existing small businesses associated with the temporary dislocation as new units are constructed.

VIII. STATEMENT OF OVERRIDING CONSIDERATIONS.

Notwithstanding the significant effects noted above, pursuant to CEQA Section 21081(b), the CEQA Guidelines Section 15093, and Chapter 31 of the San Francisco Administrative Code, the SFMTA Board finds, after considering the Final SEIS/SEIR and based on substantial evidence in said document and as set forth herein, that specific overriding economic, legal, social, and other considerations outweigh the identified significant effects on the environment. In addition, the SFMTA Board finds that those Project Alternatives rejected above are also rejected for the following specific economic, social, or other considerations, in and of themselves, in addition to the specific reasons discussed in Article IV above:

1. The Project fulfills the mandates of San Francisco's Transit First Policy as set forth in San Francisco Charter Section 16.102, and is consistent with the **Regional Transportation Plan** and the **Four Corridor Plan**.
2. The Central Subway project will complete the Third Street Light Rail Project as the second phase of the project analyzed in the 1998 EIS/EIR by extending the existing T-Third to Chinatown.

3. The Project will significantly improve transit access between Bay View Hunters Point, Mission Bay and Chinatown and will improve transfers between Caltrain and BART with an underground pedestrian link to the BART Powell Street Station.
4. The Project minimizes, to the extent feasible, impacts to historic resources. Where such impacts will occur, the Project includes historic documentation and exhibits designed to commemorate the historic buildings and structures.
5. The Project will provide thousands of person-years of construction work and in the process enhance the economic vitality of San Francisco.
6. The Project is seen as a key to reestablishing a high level of regional and citywide access to Chinatown and an opportunity to reinvigorate Stockton Street after the loss of the Embarcadero Freeway that was damaged by the 1989 earthquake.
7. The Project is fully supportive of citywide and area plans and would accommodate the growth anticipated in the corridor with enhanced transit service.
8. The Project would encourage revitalization in the Central Subway Corridor by providing more reliable and direct transit service to most of the major activity centers in the corridor.
9. Transit Oriented Development opportunities would be made available by SFMTA at the Moscone and Chinatown stations and would provide opportunity for affordable housing and retail space at these location.

Having considered these Project benefits, including the benefits discussed in Article IV.A above, the SFMTA Board finds that the Project's benefits outweigh the unavoidable adverse environmental effects, and that the adverse environmental effects are therefore acceptable.



SAN FRANCISCO PLANNING DEPARTMENT

MEMORANDUM

To: File 96.281E

From: Bill Wycko, Environmental Review Officer

Re: Central Subway Project Alternative 3B (Modified Locally Preferred Alternative)

Date: September 12, 2012

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

The Planning Department Environmental Review Officer has received from the San Francisco Municipal Transportation Agency (SFMTA) a Phase 2 Central Subway Project Milestones 2007-2012 Report, dated September 10, 2012. This report documents (among other things) that the Central Subway Project currently being constructed by SFMTA is the same project described in the Central Subway Project Final Supplemental EIS/EIR ("SEIS/SEIR") as Alternative 3B and the North Beach Construction Variant ("the Project") with regard to all pertinent physical environmental aspects analyzed. The Project as described in the SEIS/SEIR, approved by the SFMTA in August 2008, and the Project currently being constructed are substantially the same in terms of physical design details such as subway tunnel alignment, location and construction methods, as well as subway station locations, footprints, building envelopes and construction requirements.

While architectural details regarding subway station design have been advanced subsequent to completion of the SEIS/SEIR, including final design details of the Union Square/Market Street Station and the Chinatown Station, this subsequent design activity was contemplated in the SEIS/SEIR and the current subway station design details fall within the parameters previously described and analyzed in the SEIS/SEIR (e.g., station location, building envelope, impacts upon historic districts.)¹

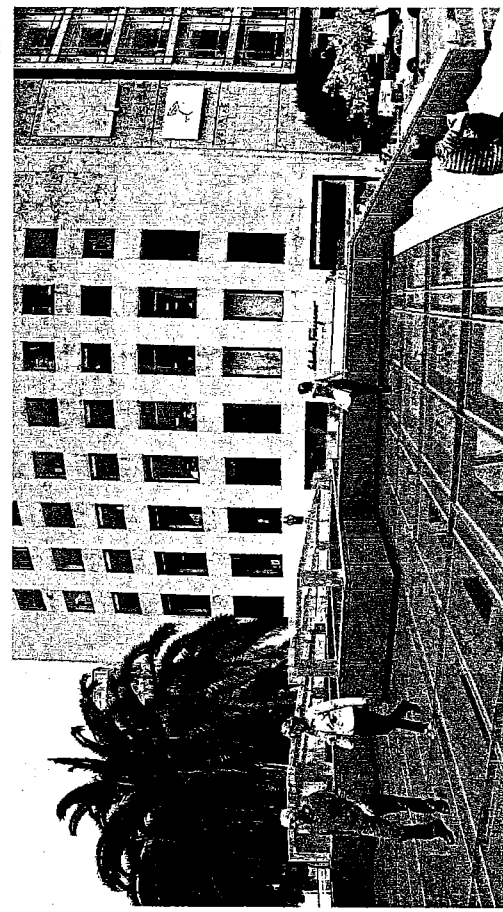
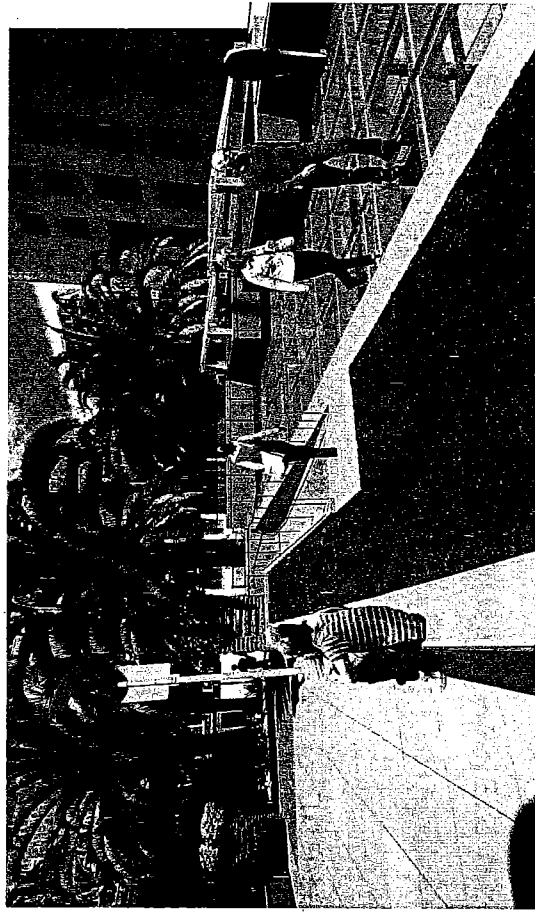
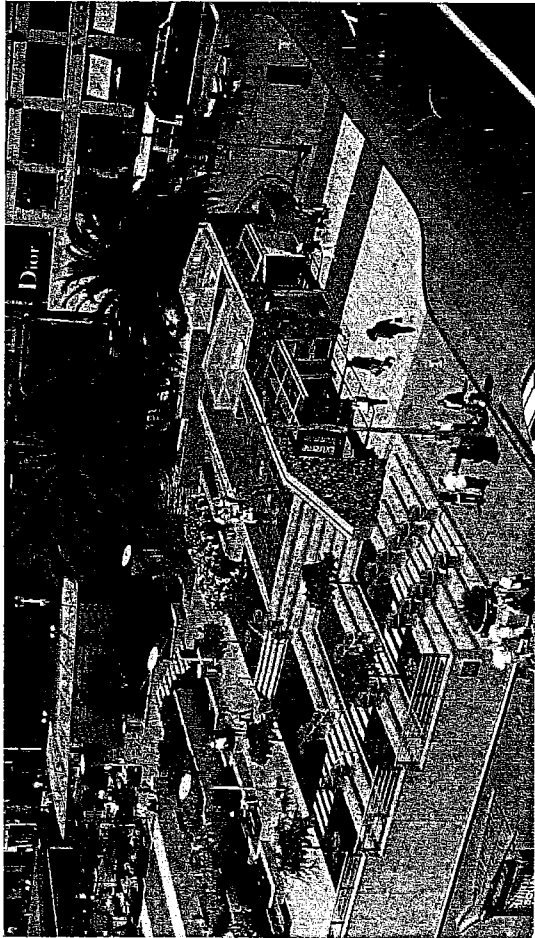
Based on this information, including a review of the final station designs, the Planning Department Environmental Review Officer has determined that there have been no substantial changes proposed for the Project, and no substantial changes in Project circumstances, that would require major revisions to the SEIS/SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant

¹ As for the Chinatown Station, the Planning Department prepared a note to the file consistent with this conclusion on January 19, 2012.

impacts; and there is no new information of substantial importance that was not known and could not have been known at the time the SEIS/SEIR was certified, that shows significant environmental effects not discussed in the SEIS/SEIR, a substantial increase in the severity of previously examined significant effects, or that unadopted mitigation measures or alternatives previously found not to be feasible, would be feasible and capable of substantially reducing one or more of the significant effects of the Project.

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Land Use Committee Hearing



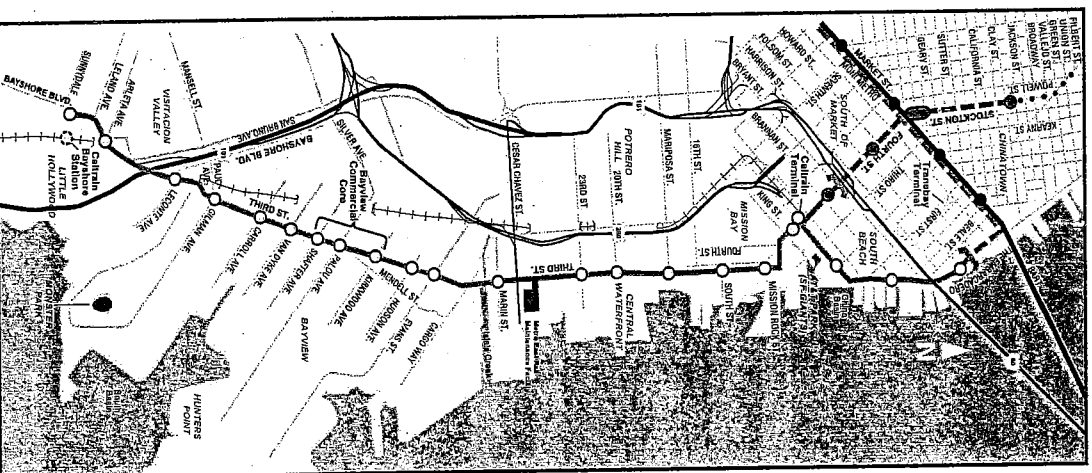
central T subway

Union Square / Market St. Station

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SFMTA T-Third Light Rail Project

- Supports City's Transit First Policy
- Serves transit dependent populations
- Improves regional connections to Caltrain, BART and Muni Metro
- 76,000 daily boarding in overall corridor in 2030
- 17,000 new weekday boarding system wide with Central Subway in 2030
- Reduces travel time from 20 to 7 minutes from 4th and King streets to Chinatown
- Enhances and preserves the environment
- Reduces air and noise pollution
- Reduces existing surface congestion
- Start of revenue service in 2019

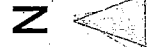
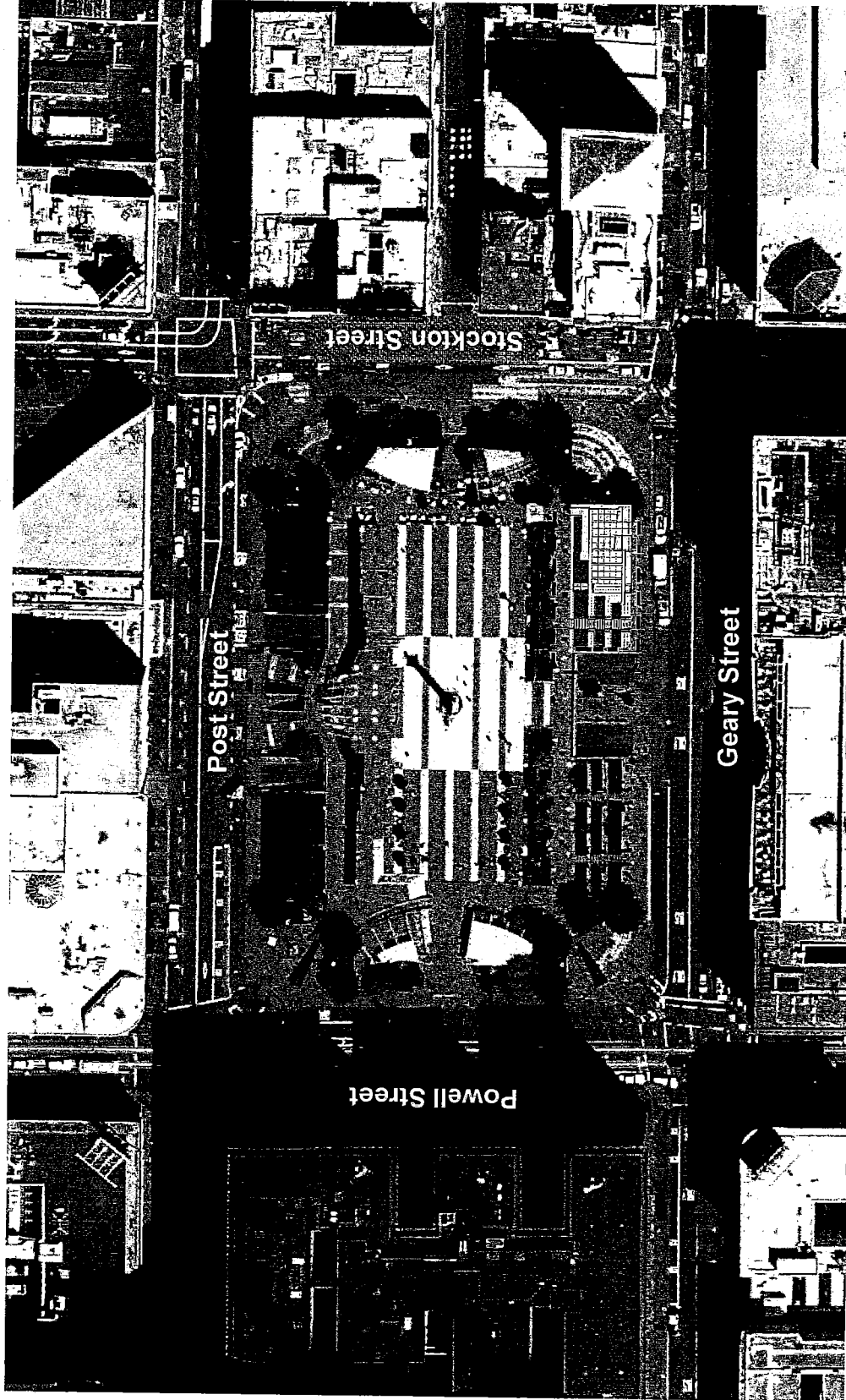


central T subway

Union Square / Market St. Station

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Union Square Entrance

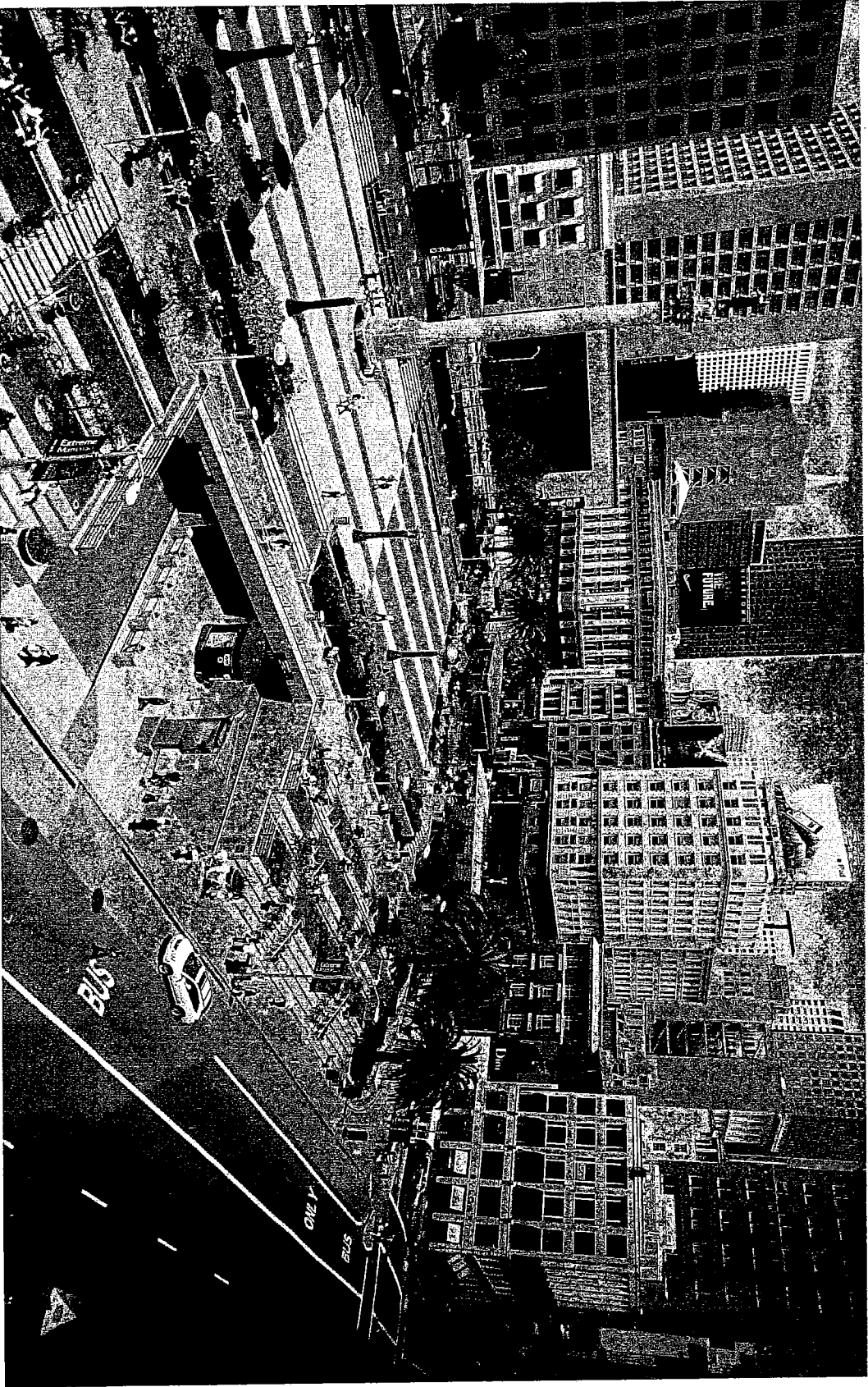


central T subway

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Union Square / Market St. Station

Union Square Today

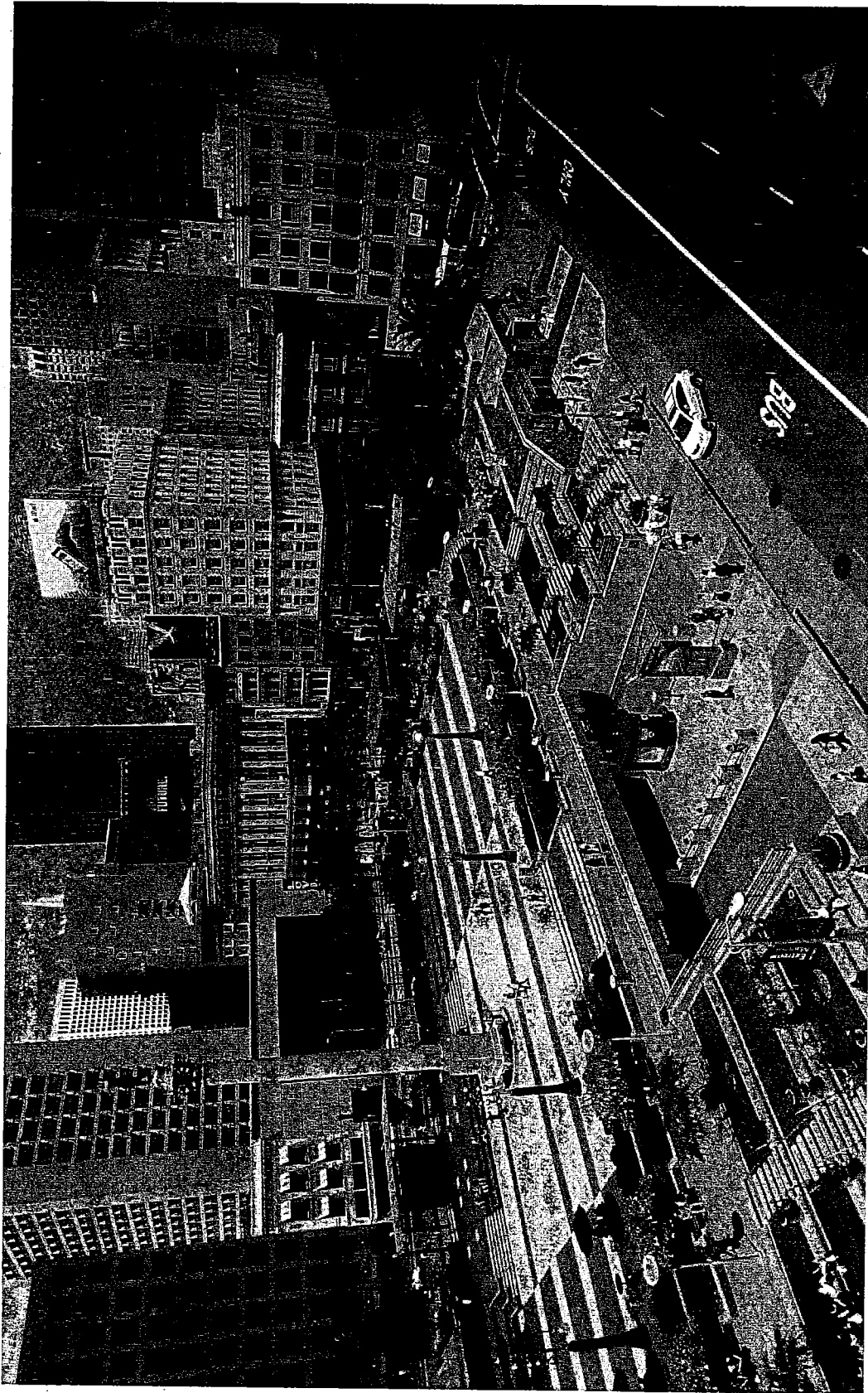


central **T** subway

Union Square / Market St. Station

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North Entrance at Union Square

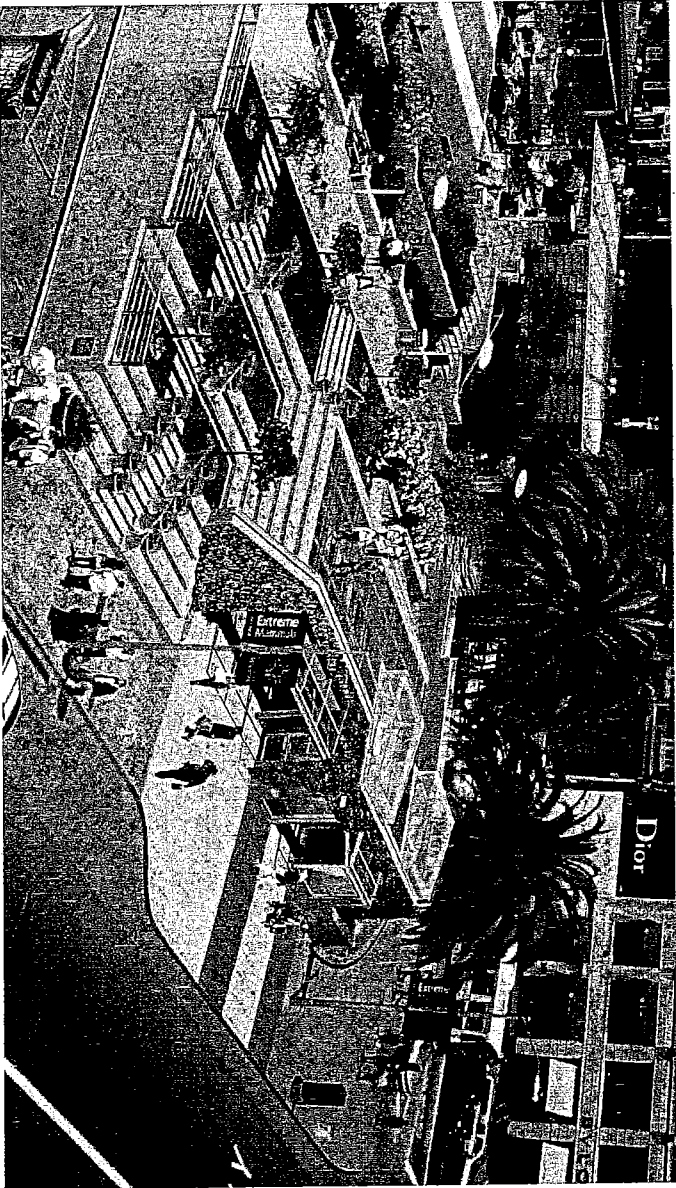


central T subway

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Union Square / Market St. Station

North Entrance at Union Square



- Entrance fully integrated with existing plaza
- Articulated façade is sculptural and relates to existing stepped planters
- Set-back fascia over entry creates a buffer from sidewalk
- Integration of façade with terraces invites circulation between levels
- Fully glazed elevators promote security and safety
- Glass roof deck and glazed elevators provide opportunity for public art

central T subway

Union Square / Market St. Station

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North Entrance at Union Square

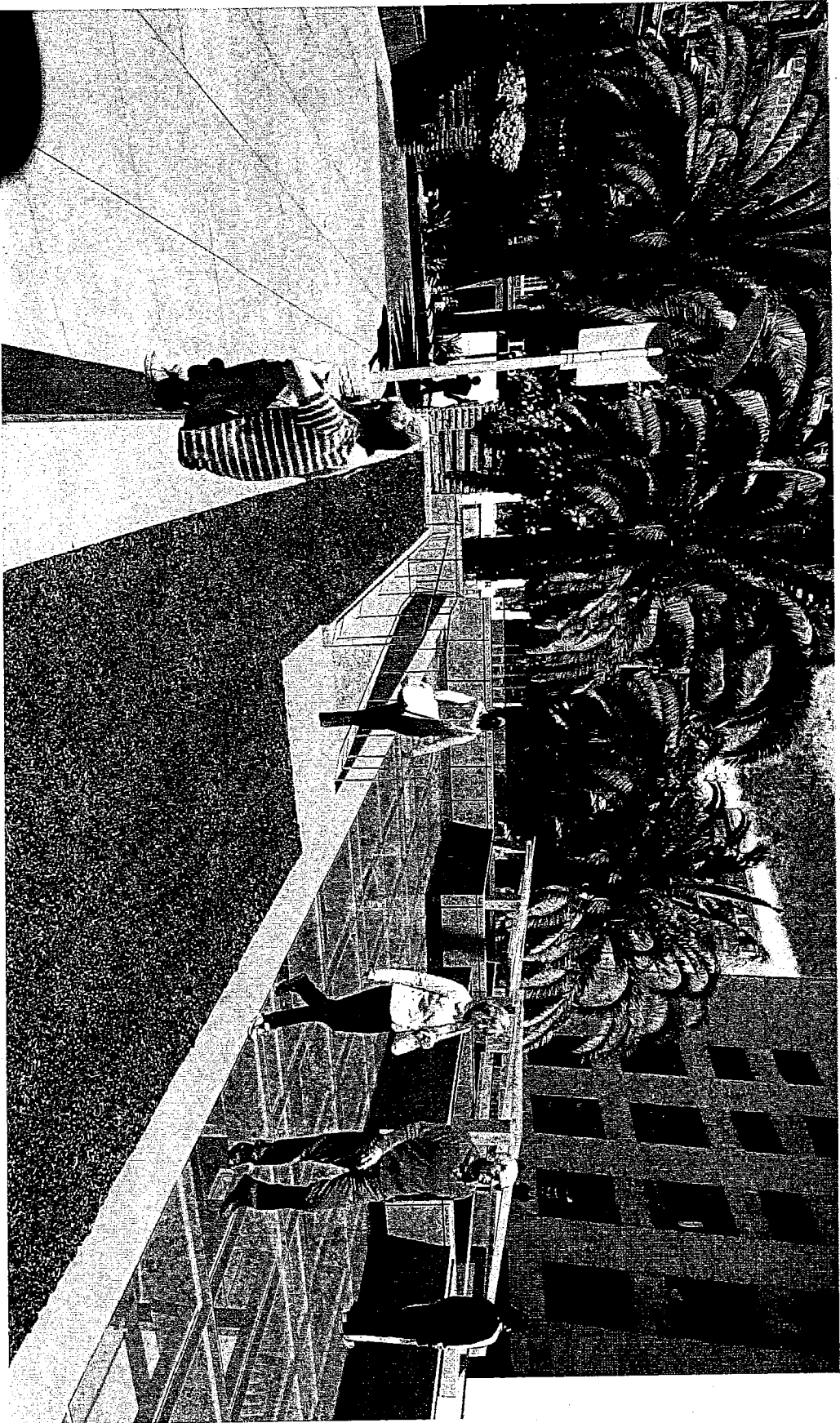


central T subway

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Union Square / Market St. Station

North Entrance at Union Square

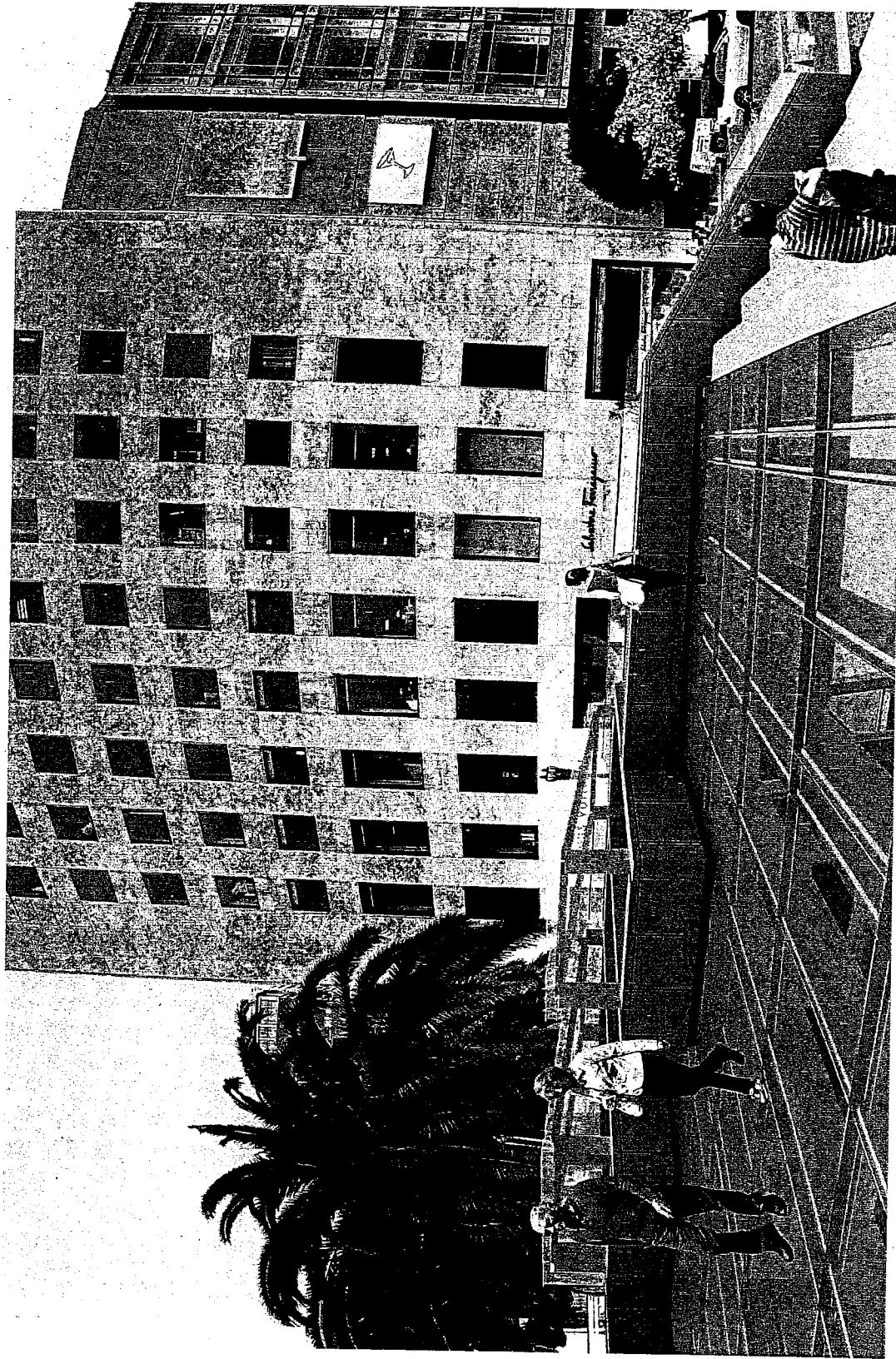


central T subway

Union Square / Market St. Station

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North Entrance at Union Square

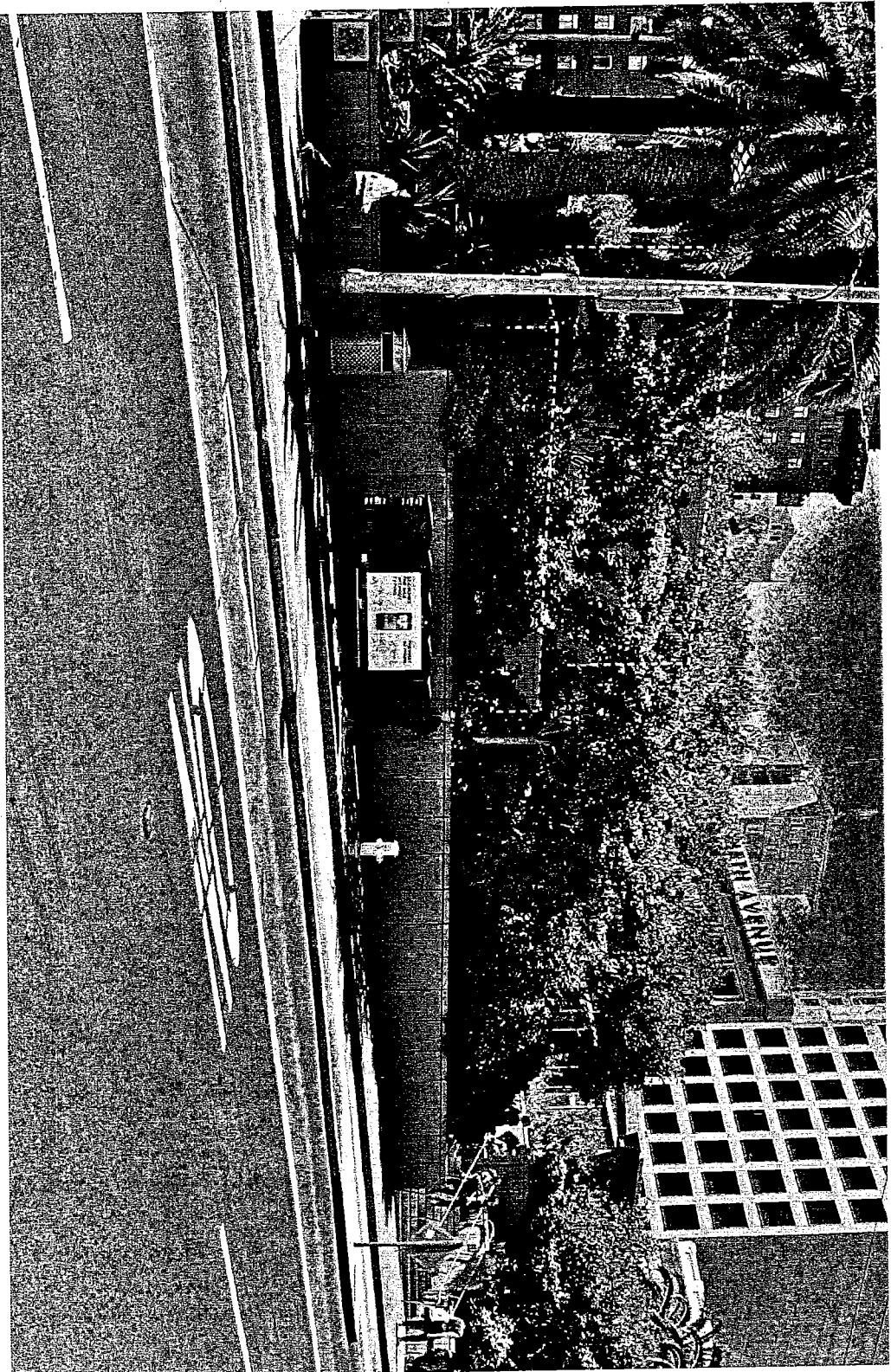


central T subway

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Union Square / Market St. Station

Planting @ Union Square



Emergency Vent Location Along Stockton Street

- October 2006 – Present:*
Meetings and Briefings with the Union Square Business Improvement District
- May 2007 – April 2012:*
Presentations and Design Approvals from the S.F. Arts Commission (Phase 2 & 3)
- August 2007 – September 2012:*
Meetings with and Design Approvals from the Recreation and Parks Commission
- October 2007 – June 2012:*
Presentation and Design Approvals from the S.F. Historic Preservation Committee
- November 2007 – April 2012:*
Presentations and Design Approvals from to the S.F. Planning Department
- February 2011 – March 2012:*
Meetings with the Mayor's Office on Disability

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Thomas N. Lippe
Brian Gaffney
Keith G. Wagner
Kelly A. Franger

October 15, 2012

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

**Re: October 15, 2012 Meeting of the Land Use and Economic Development
Committee, Agenda Item 2, File No. 120981: Approval of Construction of
Structures in Union Square Park for Central Subway Project**

Dear Honorable Members of the Board of Supervisors and Land Use and Economic
Development Committee:

This office represents Howard Wong and SaveMuni.com with respect to the construction of the Central Subway Union Square Market Street Station (“UMS Station”). SaveMuni.com is an unincorporated volunteer organization forming a broad-based coalition of transit activists, environmentalists, neighborhood leaders, and citizens advocating for the improvement and responsible planning of San Francisco’s Municipal Railway. SaveMuni.com objects to the resolution approving, under City Charter section 4.113, construction of the surface and subsurface structures in the Union Square Park (“Union Square”) for the UMS Central Subway on the grounds set forth below. Indeed, Mr. Wong and Savemuni.com have already filed suit to enforce Charter section 4.113’s requirement that this project be put to a vote before construction commences. (See Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate, San Francisco Superior Court No. CGC-12-525059, attached hereto as Exhibit 2.)

**1. Adoption of this Resolution Violates the San Francisco City Charter Section
4.113(2) Because the Action Has Not Been Approved by a Vote of the Electors**

Section 4.113(2) of the City Charter, in relevant part, states: “No park land may be sold or leased for non-recreational purposes, nor shall any structure on park property be built, maintained or used for non-recreational purposes, unless approved by a vote of the electors.”

On September 20, 2012, the Recreation and Park Commission (“Commission”) considered a proposal by the San Francisco Municipal Transportation Agency (“MTA”) for the construction of structures in Union Square. The MTA’s proposal to the Commission for the UMS Station structures in Union Square included an escalator, stairs, two elevators, emergency ventilation equipment, a glass deck that would displace terraced grass and concrete seating, and other components such as overhead doors at the station entrance. At that meeting, the Commission adopted Resolution 1209-005, in which it purportedly approved, under Charter section 4.113, construction of the above-listed structures. The Commission refused to require that the issue be put to a vote of the San Francisco electorate.

Presently, the MTA is bringing the same proposal to the Board of Supervisors (the "Board") seeking the Board's two-thirds approval to build the above-listed structures, as required under Charter section 4.113(1). This proposal is now under consideration by the Land Use and Economic Development Committee (the "Committee"). Although both the MTA and the Commission ignored or misunderstood the requirements of Charter section 4.113(2), SaveMuni.com urges the Committee and the Board not to make that same mistake.

A plain reading of section 4.113(2) clarifies that before the Commission, this Committee, or the Board can approve the construction of the structures required for the UMS Station in Union Square, the City Charter requires that the issue be placed before the San Franciscan voters. The proposed surface structures, including a glass deck and ventilation equipment, are structures. Union Square Park is a city park, and a subway station structure is non-recreational. Thus, Charter section 4.113(2) requires the San Francisco electorate to approve these structures before they can be built.

The Board or this Committee may be tempted to rely on a thirty year old opinion by the City Attorney of San Francisco, Opinion No. 81-6 ("Opinion") to avoid the necessity of a public vote. Such reliance would be grossly misguided. The City Attorney's Opinion interprets section 7.403(b) of the City Charter in force in 1981, and suggests, according to that provision of the former Charter, that the electorate need not vote before the city builds structures in its parks if: (1) the structure on the park does not withdraw a substantial portion of the park from public use; and (2) the structure is at least tangentially beneficial to the public and does not substantially disrupt the park's uses.

While at first blush this may appear to provide a loophole around the need for a public vote over the proposed structures for Union Square, the Opinion's analysis does not apply to the structures proposed at Union Square's UMS Station. The Opinion interprets a different section of a past version of the City Charter and is not legal precedent regarding section 4.113(2), the relevant part of the current City Charter today. Previous section 7.403(b) involved a Municipal Corporation's ability to "abandon or discontinue the use of land for park purposes." (S.F. Charter § 7.403(b)[repealed].) The current section 4.113(2) involves the building, maintenance, or use of structures on park property for non-recreational purposes. These two Charter provisions are not the same, and the City Attorney's analysis from 1981 does not apply to the language of Charter section 4.113(2).

Moreover, even if the Opinion did correctly state the law regarding section 4.113(2), the structures necessary for the current UMS Station design do not meet the Opinion's supposed requirements. The MTA, however, in its proposed resolution to the Commission on September 20, 2012, and again to this Committee on October 15, 2012, appears to suggest that the project does meet the Opinion's requirements, stating: "... the proposed use (1) will occupy an insubstantial portion of the surface area of the Park and impact less than 2 percent of the Park's total square footage; (2) will not substantially impair or interfere with the use and enjoyment of the Park for recreational purposes . . . ; and (3) will substantially improve public access to and from the Park, thereby enhancing the Park's use and enjoyment by the public." Given the nature

of the proposed changes to Union Square Park these assertions are false; the Committee and the Board should not be deceived.

The two-percent figure is misleading and functionally inaccurate. Based on the computer-generated images released by MTA, it appears that the glass deck and subway entrance would replace roughly one-quarter of the south-facing grass and concrete terraces over Geary Street. The terraces over Geary street are the only terraces in the Park, and constitute the vast majority of all of the grass in Union Square. Glass cannot replace grass. While it may be technically accurate for MTA to claim that its proposal will only alter a small percentage of Union Square's surface, replacing roughly one-quarter of the only terraced seating on the surface of the park with a walk-on roof deck would withdraw a substantial portion of Union Square from public use. MTA's first claim is thus inaccurate. Regarding MTA's second claim, given the substantial portion of the terraces that will be altered, it follows that the glass deck will indeed substantially disrupt Union Square's uses. Finally, MTA's claim that public access to the park will improve should be discounted by the degradation of the nature and quality of Union Square based on the loss of the grass terraces if these proposals are adopted.

Thus, even if the Opinion regarding a previous section in a past Charter were applicable to section 4.113(2), the proposed construction does not meet its putative requirements. Section 4.113(2) requires public participation in decisions such as this that so intimately affect the public's use and enjoyment of San Francisco parks. An outdated City Attorney's Opinion cannot change the City Charter.

2. Approval of this Resolution Violates CEQA's Requirement for a Subsequent or Supplemental Environmental Impact Report

The California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 et seq.) has two purposes: environmental protection and informed self-government. (*Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 690-691.) To achieve environmental protection, CEQA requires agencies to "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state." (Pub. Resources Code, § 21001(a).) Further, CEQA mandates that the guiding criterion in public decisions must be the "long-term protection of the environment." (Pub. Resources Code, § 21001(d); *No Oil, Inc. v. Los Angeles* (1974) 13 Cal.3d 68, 74.)

Additionally, "[p]ublic participation is an essential part of the CEQA process." (Cal. Code Regs., tit. 14, ch. 3, ("Guidelines") § 15201.). See also Guidelines, § 15002(j); *Concerned Citizens of Costa Mesa v. 32nd District Agricultural Assn.* (1986) 42 Cal.3d 929, 935-936.) "Public review provides the dual purpose of bolstering the public's confidence in the agency's decision and providing the agency with information from a variety of experts and sources." (*Schoen v. Cal. Dept. of Forestry and Fire Protection* (1997) 58 Cal.App.4th 556, 574.)

In this way, "[t]he EIR process protects not only the environment but also informed self-government." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988)

47 Cal.3d 376, 392.) If the Board approves this Resolution without preparing a subsequent of supplemental environmental impact report, however, it will violate these tenets of CEQA.

To protect the environment and the public's right to informed self-government, CEQA requires an agency to prepare a subsequent or supplemental EIR if "[s]ubstantial changes are proposed in the project which will require major revisions of the environmental impact report." (Pub. Resources Code, § 21166.) The CEQA Guidelines, elaborating on this requirement, explain that a subsequent or supplemental EIR is necessary when a project will have new significant environmental effects or a substantial increase in the severity of previously identified significant effects. (Guidelines, §§ 15162(a)(1), 15163.) An additional EIR shall be given the same kind of notice and public review as a draft EIR under section 15087. (*Id.* §§ 15162(d), 15163(c).)

The project in Union Square that the Committee and the Board are now considering approving constitutes substantial changes from the project and alternatives examined in past CEQA documents for the Central Subway. These changes include: removing roughly one-quarter of the grass and concrete terraced seating in Union Square Park and replacing it with a glass walkway; permanently impacting 80 parking spaces in the Union Street Garage; moving the location of two elevators; and changing the placement of the ventilation equipment and shafts. These changes create new significant environmental effects in Union Square, effects that have neither been analyzed nor disclosed to the public. Thus, CEQA requires an additional EIR. (Pub. Resources Code, § 21166; Guidelines, §§ 15162(a)(1), 15163.)

In the last CEQA study for this project, the Final Supplemental Environmental Impact Statement/Environmental Impact Report ("FSEIS/EIR") completed in September of 2008, the MTA examined environmental impacts of a project in Union Square that is substantially different from the project being proposed today. For example, in Alternative 3, Option A, the MTA analyzed the environmental impact of placing the main station entrance on the east side of Union Square near the existing stairway and café. This alternative displaced only 29 parking spaces in the Union Square Garage and roughly six truck parking spaces on the street.

Under this alternative, the terraced grass seating in Union Square remained mostly or entirely undisturbed and available for public use. This is substantially different from the proposal today that replaces much of the grass with a glass deck. Likewise, an analysis of displacing 29 parking spaces in the garage cannot substitute for an analysis of replacing 80 parking spaces.

Similarly, Alternative 3, Option B, selected as the Local Preferred Alternative by the MTA Board in February of 2008, also does not include an analysis of the glass deck or the loss of 80 parking spaces in the Union Square Garage. That alternative included an entrance with a site for as many as two elevators on the southeast corner of Stockton Street and Geary Street. Although the FSEIS/EIR analyzed the visual impact of the entrance built into the terraced concrete, it included no analysis of the spatial impact on Union Square. (*See* pages 9-8 and 9-9 of the FSEIS/EIR.) Additionally, the analysis made no mention of a glass deck like the one in

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File No. 120981: Approval of Construction of Structures in Union Square Park
October 15, 2012
Page 5 of 5

today's proposal. (*Id.*) This deck will have both a larger visual impact and spatial impact than the alternative examined in the last CEQA study.

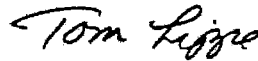
Furthermore, in the selected alternative, to minimize the visual impacts to the plaza, the vent shafts were located in the Ellis/O'Farrell garage, rather than in the Park. (*Id.* at 9-9) In today's proposal, these vent shafts are directly in Union Square, again increasing both the visual and spatial impacts in the park.

Finally, the selected alternative displaced only 34 parking spaces in the Union Square Garage and 25 parking spaces in the Ellis/O'Farrell Garage. Today's proposal displaces 80. Given the nature of these changes and importance of Union Square to the public, these changes trigger an additional EIR under CEQA section 21166. (Pub. Resources Code, § 21166; Guidelines, §§ 15162(a)(1), 15163.)

Additionally, the importance of Union Square Park to the public and its sensitivity to adverse environmental harm I demonstrated by past EIRs involving Union Square and measures adopted by the San Francisco public. For example, the Draft EIR for the Transit Towers project states that increasing the annual shadow load on Union Square by a mere 0.2 percent could not be permitted. (Transit Center District Plan and Transit Tower DEIR, at pages 509-510 [relevant pages of the DEIR are attached hereto as Exhibit 1].) This is because the voters of San Francisco adopted Proposition K in 1984 to protect the public spaces under the Commission's jurisdiction from shadowing by new structures. In turn, the Commission adopted criteria for city parks, including a 0.1% Absolute Cumulative Limit for additional shadow on Union Square. The length the City and its citizens have gone to protect the sunshine in Union Square Park clearly demonstrates the importance of this city park and its sensitivity to impacts that in other locations might not be considered significant.

Thank you for your careful attention to this matter.

Very Truly Yours,



Thomas N. Lippe

EXHIBIT 1



DRAFT ENVIRONMENTAL IMPACT REPORT

**Transit Center District Plan
and Transit Tower**

PLANNING DEPARTMENT
CASE NO. 2007.0558E and 2008.0789E

STATE CLEARINGHOUSE NO. 2008072073



**SAN FRANCISCO
PLANNING
DEPARTMENT**

Draft EIR Publication Date:	SEPTEMBER 28, 2011
Draft EIR Public Hearing Date:	NOVEMBER 3, 2011
Draft EIR Public Comment Period:	SEPTEMBER 28 THROUGH NOVEMBER 14, 2011

Written comments should be sent to:
Environmental Review Officer | 1650 Mission Street, Suite 400 | San Francisco, CA 94103

J. Shadow

This section describes shadow effects on publicly accessible areas, including public parks, publicly-accessible private open spaces, and sidewalks.

Setting

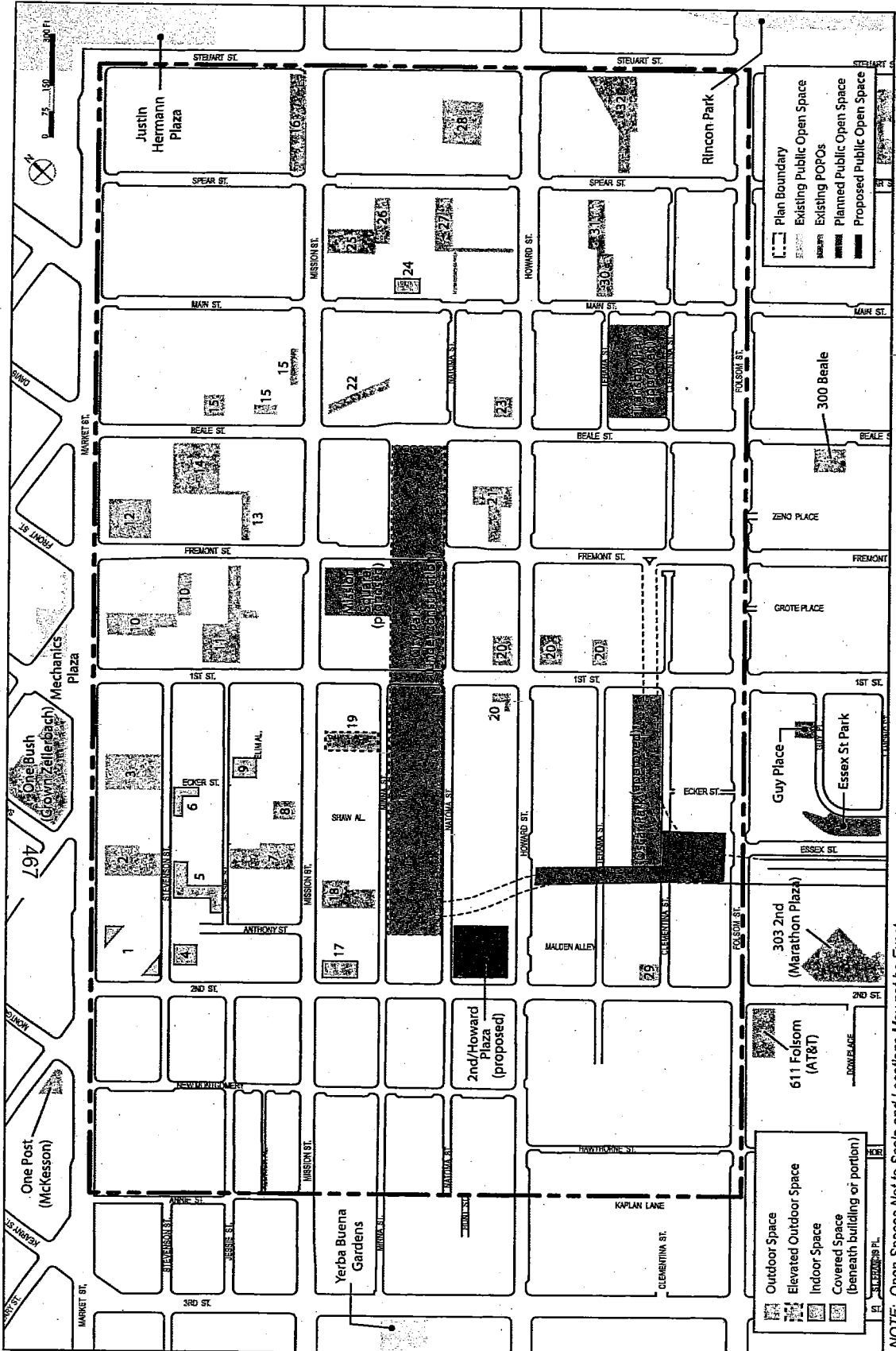
Open space in the Plan area is limited. Generally, the open space that exists nearby is in the form of publicly accessible, privately owned open space developed, in accordance with the Downtown Plan and *Planning Code*, in conjunction with newer office buildings. Figure 59 depicts open spaces in the Plan area. There are no public parks or other public open spaces in the immediate project vicinity. The nearest public open space is Yerba Buena Gardens, a San Francisco Redevelopment Agency property, at Third and Howard Streets, one block west of the project site. Across Mission Street to the north of Yerba Buena Gardens is Jessie Square, an open space south of the Contemporary Jewish Museum. The new Transit Center will include a public park ("City Park") located on the roof of the terminal, approximately 70 feet above grade level. Rincon Park, a Redevelopment Agency property, is located along the Embarcadero between Mission and Harrison Streets.²⁹⁰ Ferry Plaza is a Port-owned public open space on the Bay side of the Ferry Building. Smaller public open spaces include Hallidie Plaza at Powell and Market Streets and the Mechanics Plaza at Battery, Bush, and Market Streets. The Plan area and vicinity also contains numerous privately owned publicly accessible open spaces (sometimes known as POPOS) that have been developed in conjunction with office towers built over approximately the last 40 years. These open spaces are shown on Figure 59.

Regulatory Framework

Sunlight Ordinance

Section 295 of the *Planning Code*, the Sunlight Ordinance, was adopted through voter approval of Proposition K in November 1994 to protect certain public open spaces from shadowing by new structures. Section 295 generally prohibits the issuance of building permits for structures or additions to structures greater than 40 feet in height that would shade property under the jurisdiction of or designated to be acquired by the Recreation and Park Commission, during the period from one hour after sunrise to one hour before sunset. Section 295(b) states that the Planning Commission, following a public hearing, "shall disapprove" any project governed by this section that would have an "adverse effect" due to shading of a park subject to Section 295, "unless it is determined that the impact would be insignificant." The Planning Commission's decision under Section 295 cannot be made "until the general manager of the Recreation and Park Department in consultation with the Recreation and Park Commission has had an opportunity to review and comment to the City Planning Commission upon the proposed project." None of the open spaces in the Plan area identified above is subject to Section 295.

²⁹⁰ This park contains two buildings housing restaurants that occupy much of the park south of Folsom Street.



NOTE: Open Spaces Not to Scale and Locations May not be Exact

- 1 595 Market Street
- 2 555 - 575 Market Street (former Chevron buildings)
- 3 525 Market Street
- 4 55 Second Street
- 5 71 Stevenson Street
- 6 49 Stevenson Street
- 7 560 Mission Street
- 8 Golden Gate University
- 9 26 Ecker Street
- 10 425 Market Street
- 11 50 Fremont Street (Fremont Center Plaza)
- 12 333 Market Street
- 13 45 Fremont Street
- 14 50 Beale Street (Bechtel Plaza)
- 15 PG&E (77 Beale Street)
- 16 One Market Plaza
- 17 101 Second Street
- 18 555 Mission Street
- 19 100 First Street Plaza
- 20 Foundry Square
- 21 199 Fremont Street
- 22 201 Mission Street
- 23 301 Howard Street
- 24 135 Main Street
- 25 123 Mission Street
- 26 Spear Street
- 27 180 Howard Street
- 28 Rincon Center
- 29 235 Second Street (CNet/CBS Interactive)
- 30 211 Main Street
- 31 221 Main Street
- 32 201 Spear Street (Gap Building)

SOURCE: San Francisco Planning Department; ESA

Case Nos. 2007.0558E and 2008.0789E: Transit Center District Plan and Transit Tower - 207439
Figure 59
 Open Space in Plan Area

In 1989, the two Commissions adopted shadow criteria for 14 downtown parks, including an Absolute Cumulative Limit for new shadow for each open space and qualitative criteria for assessing new shadow. The sunlight on a park is measured in terms of "square-foot-hours" of sunlight, while the shadow load is measured in terms of "shadow-foot-hours." A square-foot-hour of sunlight is one hour of sunlight on one square foot of ground, while a shadow-foot-hour represents one hour of shade on one square foot of ground. For projects that would affect parks for which a quantitative limit was established, shadow impacts have typically been judged less than significant if the project would not exceed the Absolute Cumulative Limit. In establishing the Absolute Cumulative Limits for the downtown parks, the commissions generally relied upon the following guidelines: for smaller parks (of less than two acres) on which more than 20 percent of the potential "Prop. K" sunlight was in shadow under then-existing conditions, no additional shadow was to be permitted. (This standard was applied to nine downtown parks.) For larger parks (of two acres or more) with between 20 percent and 40 percent existing shadow, the Absolute Cumulative Limit was to be set at 0.1 percent; that is, an additional 0.1 percent new shadow, measured in shadow-foot-hours, would be permitted beyond existing conditions.²⁹¹ The increment permitted as the Absolute Cumulative Limit—0.1 percent, in this case—is measured as a percentage of the theoretical annual available sunlight.²⁹² For larger parks shadowed less than 20 percent of the time,²⁹³ an additional 1.0 percent new shadow was to be permitted.²⁹⁴ No guideline was provided for parks of less than two acres that have less than 20 percent existing shadow.²⁹⁵

There are no parks subject to Section 295 within the Plan area. Yerba Buena Gardens, just west of the Plan area, is under the jurisdiction of the San Francisco Redevelopment Agency and is not subject to Section 295. The nearest parks subject to Section 295 are Union Square; Justin Herman Plaza, at the foot of Market Street; St. Mary's Square, on Pine Street near Kearny Street; Portsmouth Square, at Clay and Kearny Streets; Willie "Woo Woo" Wong Playground (formerly Chinese Playground), between Sacramento and Clay Streets and Stockton Street and Grant Avenue; Chinese Recreation Center, a partially indoor facility at Washington and Mason Streets (under renovation and scheduled to reopen in 2012); Woh Hei Yuen Recreation Center and Park, on Powell Street between Jackson Street and Pacific Avenue; Maritime Plaza, an elevated park between Battery and Davis Streets and Clay and Washington Streets; Sue Bierman Park, between the Embarcadero and Drumm Streets at Clay Street; Boeddeker Park, on the block bounded by Ellis, Eddy, Jones, and Taylor Streets; Huntington Park, between California and

²⁹¹ This criterion applied to Union Square and Embarcadero Plaza II (Justin Herman Plaza). Two other parks, Washington Square and North Beach Playground, were not permitted new shadow because height limits precluded the possibility of new shadow on those parks.

²⁹² The theoretical annual available sunlight is the amount of sunlight, measured in square-foot-hours, that would fall on a given park during the hours covered by Section 295. It is computed by multiplying the area of the park by 3,721.4, which is the number of hours in the year subject to Section 295. Thus, this quantity is not affected by shadow cast by existing buildings, but instead represents the amount of sunlight that would be available with no buildings in place. Theoretical annual available sunlight calculations for each downtown park were used by the Planning and Recreation and Park Commissions in establishing the allowable Absolute Cumulative Limit for downtown parks in 1989.

²⁹³ Civic Center Plaza was the only park in this category.

²⁹⁴ The guidelines for new shadow were presented in a memorandum to the Planning and Recreation and Parks Commissions, from their staffs, dated February 3, 1989, and referred to in Joint Resolution 11595 of the two commissions, adopted February 7, 1989.

²⁹⁵ None of the 14 downtown parks for which Absolute Cumulative Limits were established met these criteria.

Sacramento Streets and Taylor and Mason Streets; Gene Friend Recreation Center, at Sixth and Folsom Street; and South Park, in the center of the block bounded by Second, Third, Bryant, and Brannan Streets. The latter two parks, because they are well south of the Plan area, would not be affected by shadows from development in the Plan area.

Other Planning Code Regulations

Planning Code Section 146(a), applicable to certain streets in the C-3 zoning districts, requires that buildings and additions fit within an envelope defined by a plane sloping away from the street at a prescribed angle above a prescribed height "in order to maintain direct sunlight on public sidewalks in certain downtown areas during critical periods of use." In the Plan area, Section 146(a) applies to the west side of New Montgomery Street and the west side of Second Street (to a point 300 feet south of Folsom Street), specifying that buildings be within an envelope that slopes away from the street at an angle of 62 degrees from horizontal beginning at 132 feet above grade. Section 146(a) also applies to portions of Bush, Sutter, Post, Geary, O'Farrell, Ellis, Powell, Stockton, and Kearny Streets and Grant Avenue. Under Section 146(b), an exception to the foregoing may be granted, pursuant to the procedures of Section 309, Permit Review in C-3 Districts, if no new shadow is created, or if "the shadow created by the penetration of the plane is deemed insignificant because of the limited extent or duration of the shadow or because of the limited public use of the shadowed space." Section 146(c) states that, on other streets in the C-3 districts, "New buildings and additions to existing buildings shall be shaped, if it can be done without creating an unattractive design and without unduly restricting the development potential of the site in question, so as to reduce substantial shadow impacts on public sidewalks." A determination of compliance with Section 146(c) is made as part of the Section 309 project consideration process.

Planning Code Section 147, applicable to the C-3, RSD, SLR, SLI, or SSO zoning districts, where height limits are greater than 40 feet, requires that all new development and additions to existing structures where the height exceeds 50 feet must be shaped to minimize shadow on public plazas or other publicly accessible open spaces other than those protected by Section 295, "in accordance with the guidelines of good design and without unduly restricting the development potential of the property." The following factors must be taken into account in determining compliance with this criterion: the amount of area shadowed, the duration of the shadow, and the importance of sunlight to the type of open space being shadowed. A determination of compliance with Section 147 is made as part of the Section 309 project consideration process.

Impacts

Significance Criteria

The proposed project would have a significant shadow impact if it were to create new shadow in a manner that would:

- Affect, in an adverse manner, the use of any park or open space under the jurisdiction of the Recreation and Park Department; or

- Substantially affect the usability of other existing publicly accessible open space or outdoor recreation facilities or other public areas.

Plan Analysis

Impact SH-1: The draft Plan would adversely affect the use of various parks under the jurisdiction of the Recreation and Park Department and, potentially, other open spaces. (Significant and Unavoidable)

Shadow effects of the draft Plan were analyzed by computer generation of shadows that would be cast by the proposed Transit Tower as well as shadows that would be cast by other buildings that could be built with implementation of the draft Plan, as described in the discussion of Analysis Assumptions at the start of Chapter IV (p. 72). For potential future buildings other than the Transit Tower, shadows analyzed are based on massing models representative of potential future development in the Plan area. Each individual development project that is proposed in the Plan area would be subject to *Planning Code* Sections 295, 146, and 147, and therefore project-specific shadow impacts would be analyzed at such a time as a subsequent project is being reviewed by the Planning Department.

As described below and depicted in Figures 60 – 62, shadow from several potential future Plan area buildings at 500 feet in height or greater would reach a number of parks subject to Section 295 controls, including Union Square, Justin Herman Plaza, Portsmouth Square, St. Mary's Square, Maritime Plaza, and Boeddeker Park. Figures 60 through 62 depict shadow from the proposed project for representative times of day during the four seasons: in December, on the winter solstice, the midday sun is at its lowest and shadows are at their longest, while on the summer solstice in June, the midday sun is at its highest and shadows are at their shortest. Shadows are also shown at the spring equinox, when shadows are midway through a period of shortening, and at the fall equinox, when shadows are midway through a period of lengthening. Shadows on any other day of the year would be within the range of shadows presented in Figures 60 through 62. In some cases, new shadow would fall on parks during times not portrayed in the figures. Table 41, p. 523, summarizes shadow impacts on the affected parks.

With one exception, shadow from any given potential building would cover part of any affected Section 295 park for less than 45 minutes per day over a period of time ranging from 4 to 12 weeks (one to three months) per year; the exception would be that Union Square would be newly shaded by up to about one hour per day, over a period of six months, by a 600-foot tower addition to the southwest corner of the Palace Hotel on New Montgomery Street.²⁹⁶ Most new shadow on Section 295 parks would be in the early morning hours, except that Justin Herman Plaza would be newly shaded in the early afternoon in late fall and early winter.

²⁹⁶ A project on file at this location (Case No. 2005.1101E) proposes a 710-foot-tall residential tower at this location. This project is discussed under Alternative C, Developer-Proposed Scenario, in Chapter VI, p. 665.

TABLE 41
SHADOW ON SECTION 295 PARKS FROM DEVELOPMENT IN THE PLAN AREA

Open Space	Existing Shadow ¹	Permitted Shadow ²	Shaded By: ³	Plan Shadow ⁴	Shadow w/Plan ⁵	Time/Date of Net New Shadow	Maximum Shadow ⁶
Union Square ⁷	38.30%	0.1% (0.098%)	Pal, 50 F, TT, GGU, 181 Frmt.	0.24%	38.5%	mid-July - late September; mid-March - late May - 7:20 - 8:50 a.m."	24.5% (8:00 am, early Apr. & early Sept.))
St. Mary's Square ⁸	51.90%	0.0%	TT, 50 F, GGU	0.09%	52.0%	mid-Sep - mid-October; late February - late March - 8:40 - 9:10 a.m.	26.3% (8:45 am, mid-Mar. & late Sept.)
Portsmouth Square	39.00%	0.0%	TT, 50 F ^{1st}	0.24%	39.2%	mid-October - early December; early January - late February - 8:00 - 9:10 a.m."	42.5% (8:30 am, mid-Jan. & late Nov.)
Justin Herman Plaza ⁹	37.60%	0.1% (0.007%)	TT, 50 F, 350 Msh.	0.09%	37.7%	early November - early February - 1:00 - 2:40 p.m."	10.1% (1:15 pm, early Jan. & early Dec.)
Willie "Woo Woo" Wong Plgrd.	52.80%	0.0%	P-F; GGU	0.03%	52.83%	early November - early December; January - 8:00 - 8:20 a.m.	15.1% (8:15 am, mid-Jan. & late Nov.)
Maritime Plaza	68.40%	0.0%	Transit Tower	<0.01%	68.4%	early to mid-December; late December- early January - 10:40 to 11:05 a.m."	1.9% (10:45 am, late December)
Woh Hei Yuen Park ¹⁰	n/a	n/a	Transit Tower	0.07%	n/a	Early November and early February, approximately 7:45 a.m.	87.7% (7:44 am, * late Jan. & early Nov.)
Chinese Recreation Ctr.	n/a	0.0%	Transit Tower	<0.01%	n/a	Mid-October and mid-February, approximately 8:25 a.m.	36.5% (8:23 am, * late Feb. & mid-Oct.)
Boeddeker Park ¹¹	37.70%	0.244% (0.000%)	Transit Tower	<0.01%	37.70%	early June - early July, from 6:50 to 7:00 a.m.	2.9% (6:47 am, * late June)

1 Existing Shadow is the existing amount of shadow cast by existing buildings, measured by the percentage of theoretical annual available sunlight (TAAS) that would be available if no existing buildings were present (based on 1989 Planning Department analysis). TAAS is computed by multiplying the area of each park by 3,721.4 (number of hours covered by Sec. 295), n/a - Not Available

2 Permitted Shadow is the additional amount of net new shadow allowed (the Absolute Cumulative Limit) under Sec. 295 for each park. This includes any changes that have occurred since 1989. Bottom figure (in parentheses) indicates remaining budget available, if applicable.

3 Shaded By: indicates Plan area buildings that would shade each park: TT - Transit Tower; Pal - Palace Hotel tower addition; 50 F - 50 First Street; 181 Frmt. - 177 - 187 Fremont; GGU - Golden Gate University site tower; P-F - TJPA Parcel F; 350 Msh. - 350 Mission Street tower (at 700 feet, in accordance with the draft Plan height; this is taller than the 375-foot-tall approved project at this site).

4 Plan Shadow is the amount of net new shadow, given as an approximate percentage of the theoretical annual available sunlight, that would be cast on each park on an annual basis.

5 Shadow w/Plan is the percentage of theoretical annual available sunlight that would be shaded by existing building plus the proposed project, on an annual basis. Top number is entire Transit Tower; bottom number excludes rooftop element.

6 Maximum Shadow is the greatest amount of each park that would be newly shaded by Plan area buildings at any one moment. Percent of park area that would be shaded is given first column; dates and time in parentheses). Asterisk (*) indicates time is first minute subject to Section 295.

7 The shadow budget remaining within the Absolute Cumulative Limit (ACL) for Union Square has been partially reduced since 1989. In 2004, 69,540 square foot hours was allocated to a project at 690 Market Street, which rehabilitated and expanded the historic De Young (Chronicle) Building, now the Four Seasons Residences, reducing the 0.1 percent budget by 0.02 percent.

8 Existing sunlight and existing shadow coverage for St. Mary's Square, as calculated by the Planning Department, assumed future expansion of this park.

9 The shadow budget remaining within the Absolute Cumulative Limit (ACL) for Justin Herman Plaza has been reduced since 1989, when an ACL for this park was established at 0.1 percent, by the allocation of most of the shadow budget. In 2000, the Planning Commission allocated more than nine-tenths of the available shadow under the 0.1 percent ACL to the Hotel Vitale at Spear and Mission Streets, reducing the remaining available shadow to 0.008 percent of theoretical annual available sunlight. In 2008, the Commission allocated an additional 0.001 percent of the available shadow to a proposed vertical expansion of an office building at 100 California Street (Case No. 2008.0660K), reducing the remaining available shadow to 0.007 percent of theoretical annual available sunlight. This latter project has not been constructed.

10 No Absolute Cumulative Limit has been established for Woh Hei Yuen Park.

11 The Absolute Cumulative Limit (ACL) for Boeddeker Park has been adjusted three times since 1989, to accommodate the Emporium/Bloomington project (amendment to the Yerba Buena Center Redevelopment Project, for which the ACL was increased from 0.0% to 0.007%); the Tenderloin Neighborhood Development Center (TNDC) Curran House residential project at 145 Taylor Street (0.087%); and, most recently, in 2008, the TNDC Eddy & Jones Family Housing Project (0.244%). This latter project has not yet been constructed.

SOURCE: San Francisco Planning Department; CADP; Environmental Science Associates

Among Recreation and Park Department parks, development pursuant to the draft Plan would most substantially affect Union Square, Portsmouth Square, and St. Mary's Square, both in terms duration (time of day and year) and amount of shadow (increased shadow coverage).

Union Square

Union Square would be newly shaded by up to five potential projects—the Transit Tower and private developments including the Palace Hotel residential tower, a mixed-use project consisting of two towers at 50 First Street, and a residential-office tower at 181 Fremont Street (also known as 177 – 187 Fremont Street)—applications are on file for all of these sites—as well as potential development of a 700-foot-tall building at the existing location of Golden Gate University, on Mission Street between First and Second Streets, as called for in the draft Plan.²⁹⁷ Because of the location of Union Square relative to the Plan area and to the position of the sun in the sky, shadow from development in the Plan area would fall on Union Square from late March through late September, about 6 months in all, between about 7:10 a.m. and 8:40 a.m.; on any given day during that period, new shadow would fall on Union Square for between a few minutes and about one hour, with the duration being less than 30 minutes on most days except between late August and mid-September and between late March and mid-April, when shadows would last up to about one hour. Most of the new shadow on Union Square would be cast by the Palace Hotel tower, which is proposed for a site that is considerably closer to Union Square than other development in the Plan area.

New shadow from potential Plan area buildings would eliminate less than 0.2 percent of the theoretical annual available sunlight from Union Square, increasing the annual shadow load from approximately 38.3 percent to about 38.5 percent. Under the criteria adopted by the Planning and Recreation and Park Commissions in 1989, Union Square has an Absolute Cumulative Limit of 0.1 percent, meaning that one-tenth of one percent of additional shadow may be permitted, relative to theoretical annual available sunlight. Union Square has had the most development activity relative to the creation of net new shadow of any of the parks that would be affected by tall buildings in the Plan area. Changes have included the addition to the Macy's store facing Union Square at 235-281 Geary Street (Case No. 1996.228K; approved November 21, 1996), which involved the demolition of two six-story buildings and construction of a new eight-story structure of the south side of Geary Street between Powell and Stockton Streets; because of setbacks at the upper story, this project resulted in a net decrease in shadow on Union Square during the hours covered by *Planning Code* Section 295 of approximately 194,293 shadow-foot-hours; however, this amount was not formally "added back" to Union Square's shadow budget. New shadow was added to Union Square by the vertical expansion of the historic DeYoung (Chronicle) Building at 690 Market Street for development of the Ritz-Carlton Residences project (Case No. 2004.0584K; approved March 18, 2004). That project added approximately 69,540 shadow-foot-hour hours of new shade on Union Square, approximately 17.7 percent of the annual shadow hours available for use under the absolute cumulative limit. Therefore, in order for Plan area buildings that would add new shadow to Union Square to be

²⁹⁷ No application is on file for the Golden Gate University site, although it is assumed in this analysis to be redeveloped in the future.

approved, the Absolute Cumulative Limit would have to be increased—as part of individual building approvals—to approximately 0.2 percent, if all Plan area buildings were to be approved.²⁹⁸

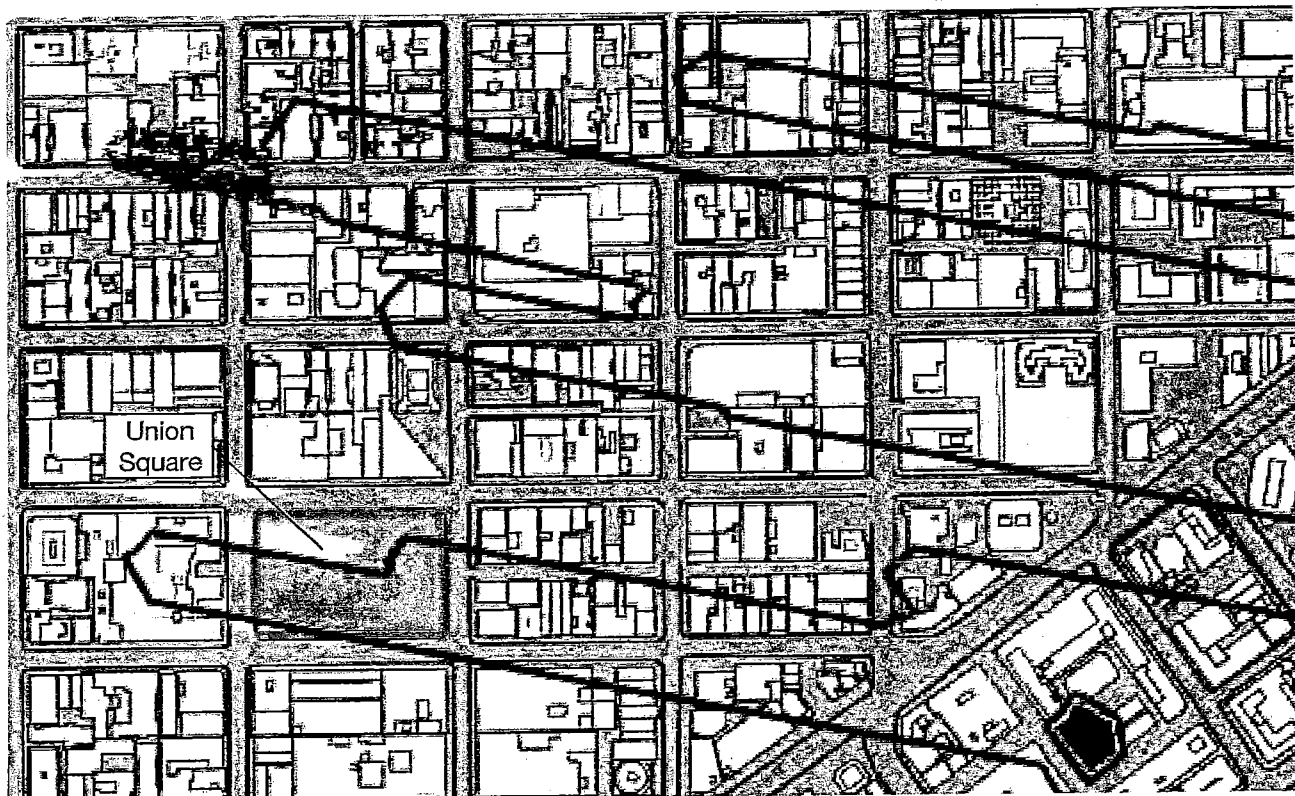
The greatest area of net new shadow at any one time would be approximately 27,500 square feet (about 24.5 percent of the total area of Union Square), at 8:00 a.m. in early September and early April, from the Palace Hotel tower (see **Figure 63**). At these times, shadow on Union Square would increase from about 67 percent shadow coverage to over 90 percent shading. Because most of the Plan area buildings (with the exception of the Palace Hotel tower) that would shade Union Square would do so in the very early morning, additional shadow would generally be cast on Union Square when the park is already three-fourths or more shaded, and often when existing shadow covers more than 90 percent of the park; in some instances, new shadow would complete the shading of Union Square, although for only a few minutes per day. The Palace Hotel tower, being farther west than the other building sites, would add shadow to Union Square when the park is as little as one-third in shadow under existing conditions, and would never result in full shading of the park.

Portsmouth Square

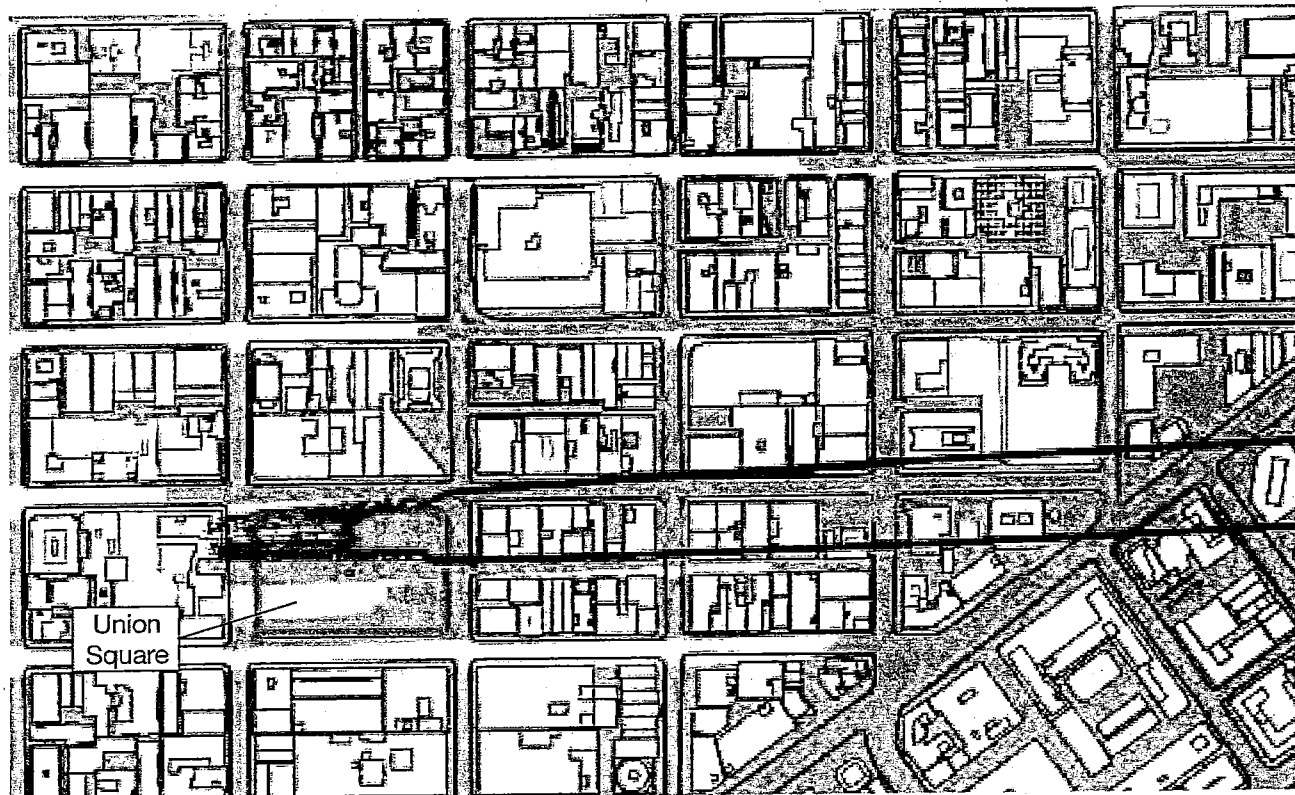
Two potential buildings (the Transit Tower and the project at 50 First Street) would newly shade Portsmouth Square. The park's location to the northwest of these project sites means that new shadow would fall on Portsmouth Square in the late fall and early winter, when shadows are longer. New shadow would reach Portsmouth Square between mid-October and early December, and between early January and late February (almost 4 months in all), from about 8:00 a.m. until just after 9:00 a.m. Because of the locations of the Transit Tower and the 50 First Street tower relative to Portsmouth Square, shadow from these two projects would fall on the park in sequence during November and early December and again during January and early February. For these approximately 10 weeks, shadow from the First Street project would begin to fall on Portsmouth Square just as shadow from the Transit Tower is leaving the park, meaning that new shadow would be cast for about one hour each morning between about 8:00 and 9:00 a.m. On any given day during the rest of the time when Portsmouth Square would be newly shaded, new shadow would last less than 30 minutes. The greatest area of net new shadow at any one time would be approximately 27,600 square feet (about 43 percent of the total area of Portsmouth Square), at 8:30 a.m. in late November and mid-January, from the project at 50 First Street; at these times, shadow on Portsmouth Square would increase from about 50 percent to more than 90 percent shadow coverage (see **Figure 64**).

New shadow from potential Plan area buildings would eliminate about 0.24 percent of the theoretical annual available sunlight from Portsmouth Square, increasing the annual shadow load from approximately 39 percent to about 39.2 percent. Under the criteria adopted by the Planning and Recreation and Park Commissions in 1989, Portsmouth Square has an Absolute Cumulative Limit of

²⁹⁸ A pending case, 706 Mission Street (Case No. 2008.1084), proposes to exhaust the remaining shadow budget for Union Square, and to increase the budget by 0.004 percent. Should this project be approved, additional adjustments in the Absolute Cumulative Limit would be necessary to accommodate Plan area buildings.



Maximum Extent of New Shadow on Union Square (Draft Plan) - April 5 / September 6, 8:00 a.m.



Maximum Extent of New Shadow on Union Square (Transit Tower) - May 10 / August 2, 7:45 a.m.

Net New Shadow
 Shadow Outline from New Buildings
 Existing Shadow

SOURCE: CADP

Case No. 2007.0558E: Transit Center District Plan and Transit Tower . 207439

Figure 63

Maximum Extent of New Shadow on Union Square

EXHIBIT 2

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2012 OCT 10 AM 1:11

CLERK OF THE COURT
BY: ELIAS BUI
DEPUTY CLERK

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10 HOWARD WONG

11
12
13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

15 SAVEMUNI.COM, an unincorporated association
16 of individuals; HOWARD WONG, a San
17 Francisco, California resident and taxpayer,

18 Plaintiffs,

19 vs.

20 SAN FRANCISCO RECREATION AND PARK
21 COMMISSION; DENNIS KERN, in his official
22 capacity as Director of Operations of the San
23 Francisco Recreation and Park Department; CITY
24 AND COUNTY OF SAN FRANCISCO; MAYOR
25 EDWIN M. LEE, in his official capacity as Mayor
26 of San Francisco; BOARD OF SUPERVISORS
27 OF THE CITY AND COUNTY OF SAN
28 FRANCISCO; SAN FRANCISCO MUNICIPAL
29 TRANSPORTATION AGENCY; EDWARD D.
30 REISKIN, in his official capacity as Director of
Transportation of the San Francisco Municipal
Transportation Agency; SAN FRANCISCO
COUNTY TRANSPORTATION AUTHORITY;
DAVID CAMPOS, in his official capacity as Chair
of the Authority Board of the San Francisco
County Transportation Authority; and DOES 1
through 20,

Defendants.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE**

CGC-12-525059

1 Plaintiffs SAVEMUNI.COM and HOWARD WONG allege as follows:

2 **Introduction**

3 1. San Francisco City Charter section 4.113(2) states, in part: "No park land may be sold or leased for
4 non-recreational purposes, nor shall any structure on park property be built, maintained or used for
5 non-recreational purposes, unless approved by a vote of the electors." (S.F. Charter, § 4.113(2)). Despite
6 this clear procedural prerequisite to building structures in City parks, the City and County of San Francisco,
7 by and through its Municipal Transportation Agency and Recreation and Park Commission, proposes to
8 build structures in Union Square as part of the new Central Subway project without obtaining approval by
9 a vote of the electors. Plaintiffs bring this action to enforce this procedural requirement of the City Charter.

10 **Parties**

11 2. Plaintiff SaveMuni.com is an unincorporated association of individuals, forming a broad-based
12 coalition of transit activists, environmentalists, neighborhood leaders, and citizens, working for better San
13 Francisco Municipal Railway ("Muni") transit service to Chinatown, northeastern San Francisco and
14 throughout San Francisco. SaveMuni.com is a membership organization with over 35 founding members
15 and was created to develop and advance ideas and proposals designed to bring Muni up to its full potential
16 in terms of operations, efficiency, maintenance effectiveness, and financial viability. Since its inception in
17 2010, SaveMuni.com has worked closely with other San Francisco civic, environmental, and neighborhood
18 organizations to oppose the Central Subway project on the grounds that the Central Subway will worsen
19 transportation within San Francisco by disconnecting Market Street's BART/Metro Stations for thousands
20 of local and regional riders and drain much-needed funds from the rest of San Francisco's public
21 transportation system. While the poorly conceived Central Subway Project was the impetus for the group's
22 founding, SaveMuni.com's White Papers and scholarly activism have addressed citywide Muni practices,
23 advocating for the improvement and responsible planning of San Francisco's Muni.

24 3. Plaintiff Howard Wong is a founding and active member of SaveMuni.com.

25 4. Defendant San Francisco Recreation and Park Commission ("Commission") is a seven-member
26 policy-making body created by Charter section 4.113 to govern the management of the over 220 parks,
27 playgrounds, and open spaces in San Francisco by the San Francisco Recreation and Park Department.

28 5. Defendant Dennis Kern is the Director of Operations of the San Francisco Recreation and Park
29 Department.

30 6. Defendant San Francisco Municipal Transportation Agency ("SFMTA") is an agency created by

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1 Charter section 8A.101, charged with ensuring reliable, safe, timely, frequent, and convenient transit service
2 to all neighborhoods in San Francisco. SFMTA is the San Francisco agency in charge of the Central Subway
3 project.

4 7. Defendant Edward D. Reiskin is the Director of Transportation of the SFMTA.

5 8. Defendant City and County of San Francisco ("City") is a municipal corporation and a chartered city
6 and county which was created, organized, and exists under its Charter and the Constitution and laws of the
7 State of California.

8 9. Defendant Mayor Edwin M. Lee is the Mayor of the City and County of San Francisco.

9 10. Defendant Board of Supervisors of the City and County of San Francisco is the legislative branch
10 of the City created by Charter section 2.100, and at all times relevant to this proceeding has been the
11 legislative body responsible for the operation of the City.

12 11. Defendant San Francisco County Transportation Authority ("CTA") is the legal entity responsible
13 for the allocation, administration, and oversight of the San Francisco Proposition K half-cent local
14 transportation sales tax program, as established in Article 14 of the San Francisco Business and Tax
15 Regulations Code. Part of the revenue from this sales tax program funds the Central Subway project.

16 12. Defendant David Campos is the Chair of the Authority Board of the San Francisco County
17 Transportation Authority.

18 13. Plaintiffs do not know the true names and capacities of Defendants fictitiously named herein as
19 DOES 1 through 20, inclusive. Plaintiffs are informed and believe, and thereon allege, that such fictitiously
20 named Defendants are responsible in some manner for the acts or omissions complained of or pending
21 herein. Plaintiffs will amend this Complaint to allege the fictitiously named Defendants' true names and
22 capacities when ascertained.

23 14. At all times relevant to this action, each and every defendant was the agent and employee of each
24 and every other defendant and in doing the acts herein alleged was acting within the course and scope of
25 such agency and employment, and with the consent, permission, and authorization of each of the remaining
26 defendants. All actions of each defendant herein alleged were ratified and approved by the officers and
27 managing agents of every other defendant.

28 Factual Background

29 15. The San Francisco City Charter was adopted by the San Francisco electorate in November of 1995.
30 Despite the Charter's clear language that residents of the City of San Francisco have the right to vote on

1 whether or not structures may be built, maintained, or used for non-recreational purposes in city parks, the
2 Defendants named herein have attempted to sidestep this legal requirement.

3 16. In 1998, the San Francisco Municipal Railway agency, the transit agency that later became part of
4 the SFMTA, decided to carry out the Third Street Light Rail project, which included the Initial Operating
5 Segment along Third Street and a brief description of the future Central Subway project.

6 17. In 2003 the voters of San Francisco adopted Proposition K, which authorized the City to continue
7 to collect the existing \$0.005 sales tax for the implementation of a New Transportation Expenditure Plan
8 that partially funded the Central Subway project. At that time, the Voter's Handbook listed the projected cost
9 of the Central Subway at \$647 million. The Federal Transportation Administration ("FTA") now estimates
10 the cost of the Central Subway at \$1,578.3 million. No details regarding the structures or specific locations
11 of the Central Subway stations were included in Proposition K.

12 18. In August of 2008 the SFMTA adopted the Central Subway Project Alternative 3B, which included
13 a station entrance at the southeast corner of Union Square, stairs and escalators along Geary Street, and
14 elevators along Stockton Street.

15 19. Since SFMTA adopted the Central Subway Project Alternative 3B in 2008, The SFMTA has made
16 a number of changes to the design of the Central Subway Union Square Market Street Station ("UMS
17 Station"), including:

18 a. On December 2, 2010, the Recreation and Parks Commission adopted Resolution No. 1012-
19 005 to support the Municipal Transportation Agency's proposal to reconfigure the Central Subway's
20 station entrance at Union Square and to locate the emergency ventilation shaft within the terraces
21 along Stockton Street with the condition that the final financial mitigation package would be brought
22 to the Commission for approval. SFMTA has informed the Commission that it will propose an offer
23 of financial mitigation to the Recreation and Park Department after it completes and reviews an
24 appraisal of the taking of parking spaces in the Union Square Garage and the FTA has concurred in
25 the amount of the proposed offer.

26 b. On March 3, 2011, the SFMTA and the Mayor's Office of Disability reached programmatic
27 agreement on the UMS Station configuration of a single escalator, dual elevators, and access to the
28 Union Square plaza.

29 c. On June 17, 2011, the Mayor's Office of Disability accepted the dual elevator scheme
30 without elevator access to the plaza.

1 20. In September of 2012, the SFMTA asked the Commission to approve Resolution No. 1209-005,
2 which in its introduced form provided that: (1) the SFMTA staff presented the Commission on September
3 20, 2012 with its final plans for the construction of structures required for the UMS Station in the
4 southeastern corner of Union Square consisting of an escalator, stairs, two elevators, emergency ventilation
5 equipment, ancillary components and a glass deck; (2) the final plans will require the redesign and/or use
6 of approximately 2,135 square feet of exterior park space for the UMS Station facilities; (3) the Union
7 Square Station Entrance will displace approximately 1,200 feet of terraced grass and concrete seating on the
8 surface of Union Square Park; and (4) a walk-on glass deck covering 950 feet that would replace the 1,200
9 feet of open space terraced grass and concrete seating in the park. By this resolution, SFMTA apparently
10 sought the Commission's approval of construction of the Central Subway station at Union Square,
11 purportedly under Charter section 4.113.

12 21. The language of SFMTA's resolution noted that Charter section 4.113(2) requires a vote by the San
13 Francisco electorate before structures can be built in Union Square, stating: "WHEREAS, Under Charter
14 Section 4.113, the construction of buildings or structures in Union Square Park generally requires approval
15 by a vote of two-thirds of the Board of Supervisors, *and no structure may be built on park property for non-*
16 *recreational purposes without voter approval*" (emphasis added).¹ Nevertheless, the proposed resolution
17 included language by which the Commission, rather than the electorate, would purportedly approve the
18 erection of structures in Union Square.

19 22. When the Commission met on September 20, 2012 to consider adopting Resolution No. 1209-005,
20 the SFMTA proposed a revised version that deleted the italicized language quoted in the previous paragraph.

21 23. At the Commission's September 20, 2012 meeting, Plaintiff Howard Wong, on behalf of
22 SaveMuni.com, presented the Commission with a letter outlining the requirements of Charter section
23 4.113(2) and the necessity of a vote by the San Francisco electorate to approve the erection of UMS Station
24 structures in Union Square.

25 24. On September 20, 2012, the Commission voted to adopt Resolution No. 1209-005, the entire final
26 text of which reads:

27 "RESOLVED, That this Commission does approve, under Charter Section 4.113,
28 _____

29 ¹It is noteworthy that the design for the station as SFMTA proposed it to the Commission on
30 September 20, 2012 differs substantially from the designs disclosed to the public in the EIR for the project
in 2008 and had never been fully disclosed to the public previously.

1 construction of surface and subsurface structures in Union Square Park, including an
2 escalator, stairs, two elevators and ventilation equipment, required for the UMS Central
Subway Station.”

3 25. At no time in the history of this Project has any agency of the City determined that the proposed
4 placement of Central Subway Project structures in Union Square must be approved by the electors of San
5 Francisco before they are built. Indeed, Defendants’ conduct demonstrates that they have no intention of
6 doing so before commencing construction of this project.

7 26. Plaintiffs therefore request declaratory and injunctive relief against Defendants so that the non-
8 recreational structures for the Central Subway UMS Station cannot be built in Union Square unless and until
9 approved by San Francisco voters. Plaintiffs also request a writ of mandate to set aside the Commission’s
10 Resolution on the grounds that the Commission acted in excess of its jurisdiction and in violation of Charter
11 section 4.113(2).

12 Standing

13 27. Plaintiff SaveMuni.com brings this action both on behalf of itself and its adversely affected members.
14 Plaintiff SaveMuni.com’s members regularly use, and will continue to use, the Muni public transportation
15 system in San Francisco. Within the past year, Plaintiff SaveMuni.com has paid sales tax to the State of
16 California and to the City and County of San Francisco via San Francisco’s half-cent sales tax to support
17 the City’s Transportation Expenditure Plan. Additionally, many of SaveMuni.com’s members are taxpaying
18 residents of San Francisco and have within the past year paid income and sales taxes to the State of
19 California and the City and County of San Francisco.

20 28. Plaintiff Howard Wong, a member of SaveMuni.com, has used and advocated for the Muni system
21 in San Francisco for years, and within the past year and for many previous years, Mr. Wong has paid income
22 and sales taxes to the State of California and the City and County of San Francisco.

23 29. Plaintiffs and SaveMuni.com’s members are beneficially interested in Defendants’ full compliance
24 with the Charter before Defendants build structures in Union Square. Plaintiffs rely on Defendant to comply
25 fully with the Charter section 4.113(2), which assures that the San Francisco electorate will have a say,
26 through their vote, as to whether a non-recreational structure, such as the Central Subway UMS Station, can
27 be built in a city park such as Union Square.

28 30. Plaintiffs also suffer procedural injuries connected to their interests in the San Francisco Muni system
29 through the Commission’s violation of Charter section 4.113(2). Plaintiffs rely on this Charter provision
30 that ensures San Francisco voters have a voice in the future of Union Square as an essential tool in Plaintiff’s

1 advocacy efforts to improve Muni and assure that the ill-conceived Central Subway project does not severely
2 damage San Francisco public transportation. The actions of Defendants have led to, are leading to, and will
3 continue to lead to the irreparable injury of further denial of legal procedures in San Francisco, which could
4 be avoided if the Defendants complied with the mandatory requirements of the Charter section 4.113(2).

5 31. Defendant Commission owed a mandatory duty to comply with the Charter in adopting Resolution
6 1209-005. Plaintiffs have the right to enforce the mandatory duties that the Charter imposes on Defendants.

7 32. Furthermore, Plaintiffs, as resident taxpayers, have standing under California Code of Civil
8 Procedure section 526a to prevent the illegal expenditure of public funds that will occur if the Central
9 Subway UMS Station is built in Union Square without first being put to a vote of the San Francisco
10 electorate. (See *Blair v. Pitchess*, (1971) 5 Cal.3d 258, 267 [noting that resident taxpayers may obtain
11 judgments to prevent and restrain the illegal expenditure of public funds].)

12 Jurisdiction and Venue

13 33. Plaintiffs file this Complaint for Declaratory and Injunctive relief under California Code of Civil
14 Procedure sections 1060 and 526a and the Petition for Writ of Mandate pursuant to Article VI, section 10
15 of the California Constitution and sections 1085, 1086, 1088 or 1094.5 of the Code of Civil Procedure.

16 34. Venue is proper in City and County of San Francisco under Code of Civil Procedure section 394,
17 subdivision (a), because Defendants are the City and County of San Francisco, City agencies, City Officials,
18 and the CTA, and venue is proper in any county in which those Defendants are located. All Defendants are
19 located in San Francisco, California.

20 Private Attorney General Doctrine

21 35. Plaintiffs bring this action as private attorneys general pursuant to Code of Civil Procedure section
22 1021.5, and any other similar legal theory, to enforce important rights affecting the public interest. Issuance
23 of the relief requested will confer a significant benefit on a large class of persons by ensuring that
24 Defendants do not deny every single San Francisco voter his or her legal right to take part in the decision
25 of whether or not Union Square Park should be encumbered with non-recreational structures for a subway
26 project of extremely questionable benefit to the City. The Charter specifically places the power in the people
27 to help determine the outcomes of their city parks. Denying San Francisco residents the opportunity to vote
28 on this matter denies them that legal right. Therefore, this private enforcement action benefits all residents
29 of and visitors to San Francisco by ensuring that decisions that effect the historic and unique Union Square
30 Park are made by an educated electorate, as required by law.

1 **First Cause of Action**

2 **(Declaratory Relief, Cal. Const., Art. VI, § 10; Code Civ. Proc. § § 526a, 1060)**

3 36. Plaintiffs hereby re-allege and incorporate the preceding paragraphs of this Complaint as though set
4 forth herein in full.

5 37. Plaintiffs seek a judicial determination and declaration that Defendants are violating Charter section
6 4.113(2) by failing to place the construction of the Central Subway UMS Station at Union Square on the
7 ballot for a vote of approval by the electorate.

8 38. An actual controversy has arisen and now exists between Plaintiffs and Defendants relating to the
9 legality of the manner in which Defendants are proceeding to construction of the Central Subway UMS
10 Station at Union Square, as described herein under Charter section 4.113(2). Plaintiffs are informed and
11 believe, and based thereon allege, that Defendants dispute these contentions and contend that the Project may
12 be built without placing the construction of the Central Subway UMS Station at Union Square on the ballot
13 for a vote of approval by the electorate.

14 **Second Cause of Action**

15 **(Injunctive Relief: Code Civ. Proc., § 526a)**

16 39. Plaintiffs hereby re-allege and incorporate the preceding paragraphs of this Complaint as though set
17 forth herein in full.

18 40. Defendants are already expending and, unless enjoined, will continue to expend taxpayer funds to
19 implement and build the Central Subway UMS Station at Union Square without approval by the electorate,
20 in violation of Charter section 4.113(2).

21 41. Under Code of Civil Procedure section 526a, Charter section 4.113(2) renders illegal any further
22 expenditure of public funds related to the construction of Central Subway structures in Union Square.

23 **Third Cause of Action**

24 **(Mandamus; Code Civ. Proc. §§ 1085 or 1094.5)**

25 42. Plaintiffs hereby re-allege and incorporate the preceding paragraphs of this Petition as though set
26 forth herein in full.

27 43. Plaintiffs have exhausted all available administrative remedies in that Defendant Commission's
28 adoption of resolution 1209-005 is final and not subject to further administrative appeal procedures.

29 44. The Charter nowhere grants the Commission the authority to adopt this Resolution, and the
30 Resolution violates section 4.113(2) of the Charter.

1 45. Therefore, Plaintiffs seek a writ of mandate to require that the Commission void its approval of
2 Resolution 1209-005.

3 46. Plaintiffs have no other plain, speedy, and adequate remedy in the ordinary course of law and will
4 suffer irreparable injury unless this Court issues the relief requested in this Complaint and Petition.

5 **Prayer for Relief**

6 WHEREFORE, Plaintiffs pray for the following relief:

7 1. For a judicial declaration that Defendants are violating Charter section 4.113(2) by failing to place
8 the construction of the Central Subway UMS Station at Union Square on the ballot for a vote of approval
9 by the electorate before proceeding with the construction and expending public funds on the construction
10 and that such construction of the UMS Station cannot proceed unless and until approved by the San
11 Francisco electorate;

12 2. For preliminary and permanent injunctive relief prohibiting Defendants from building or spending
13 funds to build any Central Subway UMS Station structures in Union Square unless and until such actions
14 are approved by vote of the San Francisco electorate;

15 3. For a writ of mandate compelling the Commission to void its adoption of Resolution 1209-005;

16 4. For an order retaining the Court's jurisdiction over this matter until Defendants comply with the writ
17 of mandate;

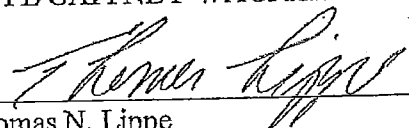
18 5. For an order compelling Defendants to pay Plaintiffs' costs of suit;

19 6. For an order compelling Defendants to pay Plaintiffs' reasonable attorneys fees related to these
20 proceedings pursuant to Code of Civil Procedure § 1021.5; and

21 7. For such other relief as the Court may deem proper.

22 DATED: October 10, 2012

LIPPE GAFFNEY WAGNER LLP

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24 _____
25 Thomas N. Lippe
26 Attorneys for Plaintiffs
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VERIFICATION

SaveMuni.com, et al. v. San Francisco Recreation and Park Commission, et al.,


San Francisco County Superior Court

I, Howard Wong, declare that:

1. I am a founding member of SaveMuni.com, a Plaintiff in this action. I am duly authorized by Plaintiffs to sign this verification on Plaintiffs' behalf.

2. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and know the contents thereof; the factual allegations therein are true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on October 10, 2012 at San Francisco, California.


Howard Wong

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