File No. 111372

Committee Item No. 7
Board Item No. 12

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules **Date** 1/19/11

Board of Supervisors Meeting **Date** 1/31/12

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Completed by: Linda Wong **Date** 1/13/11

Completed by: L.W. **Date** 1/24/12

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

[Settlement of Lawsuit – City to receive $3,170,000 for sale of parcel in San Mateo County.]

Ordinance authorizing settlement of a lawsuit filed by San Mateo County Transit District ("SamTrans") against the City and County of San Francisco and Artichoke Enterprises, Inc., a/k/a Artichoke Joe's; and Does 1 through 50, to condemn and take by right of eminent domain property owned by the City and County of San Francisco located in San Bruno, California, for $3,170,000; the lawsuit was filed April 13, 2010, in San Mateo County Superior Court, Case No. CIV 494013; entitled San Mateo County Transit District v. City and County of San Francisco, Artichoke Enterprises, Inc. a/k/a Artichoke Joe's; and Does 1 through 50, inclusive.

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

Section 1. The City Attorney is hereby authorized to settle the action entitled San Mateo County Transit District v. City and County of San Francisco, Artichoke Enterprises, Inc. a/k/a Artichoke Joe's; and Does 1 through 50, inclusive, San Mateo County Superior Court, Case No. CIV 494013 by the payment to the City and County of San Francisco ("City") in the amount of $3,170,000, the full appraised value, for real property located in San Bruno, California, and on such other material terms as are set forth in the Settlement Agreement with Mutual Releases and Exhibits, contained in Board of Supervisors File No. 111372.

Section 2. The above-named action was filed in San Mateo County Superior Court on April 13, 2010, and the following defendants were named in the lawsuit: City and County of San Francisco; Artichoke Enterprises, a/k/a Artichoke Joe's; and Does 1 through 50, inclusive.

Section 3. The San Francisco Public Utilities Commission approved this settlement by Resolution No. 11-0206 on December 13, 2011. A copy of that resolution is contained in Board of Supervisors File No. 111372 and is incorporated herein by reference.

Section 4. The San Francisco Planning Department staff has reviewed the proposed transfer of the property and concluded that the transfer is exempt from review under the California Environmental Quality Act ("CEQA") and that the transfer is in conformity with the City's General Plan and the Eight Priority Policies set forth in Planning Code Section 101.1(b).

Section 5. Competitive bidding or auction of the Property would be impractical in that the Property is the subject of the litigation and is encumbered by the lease.

Section 6: Because the public interest or necessity requires the approval of the transfer or property and because the public interest will not be inconvenienced, the transfer of property is approved.

APPROVED AS TO FORM AND RECOMMENDED:

DENNIS J. HERRERA, City Attorney

By: Thomas S. Lakritz
THOMAS S. LAKRITZ
Deputy City Attorney

RECOMMENDED:

SAN FRANCISCO REAL ESTATE DIVISION

By:
JOHN UPDIKE
Director

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 11-0206

WHEREAS, On December 13, 2011, the Public Utilities Commission met in Closed Session to consider the settlement of the action entitled *San Mateo County Transit District v. City and County of San Francisco, et al.*, San Mateo County Superior Court No. 494013 (the "Action"); and

WHEREAS, San Mateo County Transit District ("SamTrans") brought the action on April 13, 2010, seeking two pieces of real property (the "Eminent Domain Parcels") which are part of a larger parcel (the "Property") located in San Bruno, San Mateo County, owned by the City and County of San Francisco ("CCSF") under the jurisdiction of the San Francisco Public Utilities Commission ("SFPUC"); and

WHEREAS, Pursuant to Charter Section 8B.121(a) the SFPUC has exclusive charge of the real assets under its jurisdiction, and the Property is currently leased by SFPUC to Artichoke Joe's for parking and landscaping purposes, for a monthly rent of $21,231, with periodic increases, for a term that is scheduled to expire in 2037; and

WHEREAS, SamTrans seeks the Eminent Domain Parcels for a grade separation project ("Project") that SamTrans is undertaking pursuant to a cooperative agreement with the Peninsula Corridor Joint Powers Board ("JPB"), has obtained a court order for prejudgment possession of the Eminent Domain Parcels and is currently constructing the Project on the Eminent Domain Parcels; and

WHEREAS, SFPUC does not currently maintain any facilities on the Property and does not anticipate requiring the use of the Property for any SFPUC utility purposes in the future; and

WHEREAS, Plaintiff SamTrans and co-defendant Artichoke Joe's have agreed to a three-party settlement under which (a) CCSF will sell the Property in its as-is condition to Artichoke Joe's for the appraised value of $3,170,000, (b) Artichoke Joe's will concurrently trade the Eminent Domain Parcels to SamTrans and JPB in exchange for adjacent surplus JPB land, and (c) the SFPUC lease with Artichoke Joe's will terminate; and

WHEREAS, Competitive bidding of the Property would be impractical in that the Property is the subject of litigation and is encumbered by the lease; and

WHEREAS, CCSF Planning Department staff has reviewed the proposed transfer of the Property and has concluded that the transfer is exempt from review under the California Environmental Quality Act ("CEQA") (Class 3(d)), that the land conveyance is subject to a non-physical exemption from review pursuant to the CEQA Guidelines, and that the transfer is in conformity with the City's General Plan and the Eight Priority Policies set forth in Planning Code Section 101.1(b); and

WHEREAS, As lead agency on the Project, JPB determined that the Project is statutorily exempt from CEQA under Public Resources Code Section 21080.13 which provides exemption for "... any railroad grade separation project which eliminates an existing grade crossing or which reconstructs an existing grade separation", JPB filed a Notice with the San Mateo County Clerk reflecting this determination, and the SFPUC Bureau of Environmental Management confirmed the Exemption Determination and the General Plan Conformity Determination issued by the CCSF Director of Planning on December 6, 2006 are adequate for SFPUC's decision-making purposes, and concurred with the determination; now, therefore, be it

RESOLVED, Pursuant to Charter Section 8B.121(e), this Commission declares that the Property is surplus to the needs of any SFPUC utility, and that this Commission hereby approves the settlement of the action entitled *San Mateo County Transit District v. City and County of San Francisco, et al.*, San Mateo County Superior Court No. 494013, for Artichoke Joe's payment of $3,170,000, and on terms consistent with this Resolution, and such other terms as negotiated and approved by the City Attorney's Office, subject to approval of the settlement agreement by the Board of Supervisors.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of December 13, 2011.

Secretary, Public Utilities Commission

PLANNING DEPARTMENT

City and County of San Francisco • 1660 Mission Street, Suite 500 • San Francisco, California • 94103-2414

MAIN NUMBER (415) 558-6378 | DIRECTOR'S OFFICE PHONE: 558-6411 4TH FLOOR FAX: 558-6426 | ZONING ADMINISTRATOR PHONE: 558-6350 | PLANNING INFORMATION PHONE: 558-6377 5TH FLOOR FAX: 558-6409 | COMMISSION CALENDAR INFO: 558-6422 | MAJOR ENVIRONMENTAL FAX: 558-5991 | INTERNET WEB SITE WWW.SFGOV.ORG/PLANNING

December 6, 2006

Ms. Amy L. Brown
Director of Real Estate
Real Estate Division
Department of Administrative Services
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

Re: 2006.1120R
Former Market Street Railway Right of Way.
Proposed sale by the Public Utilities Commission of former Muni Railway Right of Way consisting of a long narrow strip of approximately 132,000 sq. ft. in San Bruno, San Mateo County.

Dear Ms. Brown,

We are responding to a request from your office, received on September 15, 2006, for a General Plan Referral on the proposed sale of a former Market Street Railway (MUNI) public right of way, owned by the Pubic Utilities Commission (PUC), in San Mateo County. The General Plan referral is pursuant to Section 4.105 of the City Charter and Section 2A.53 of the Administrative Code.

The land is currently leased to Artichoke Joe's Casino and is used as a surface parking lot for the casino. The property is a long, narrow piece of land that runs adjacent to a Caltrain right of way, and is across Huntington Avenue from the casino, as shown in Attachment 1. PUC came into possession of the railway right of way when MUNI and PUC were separated. The land had been held to allow for the BART airport extension, but the route was tunneled and this property is no longer needed for transit use. There are no PUC-related issues associated with the property.

While the subject property is owned by the City and County of San Francisco and is the PUC's jurisdiction, the site is located in San Bruno, San Mateo County.

Environmental Review

The project is exempt from Environmental Review under Class 3(d) of CEQA Guidelines and CEQA Guidelines Section 15060(c)(2) – Non Physical Exemption.

Re: 2006.1120R

Former Market Street Railway Right of Way.
Proposed sale by the Public Utilities Commission of former Muni Railway Right of Way consisting of a long narrow strip of approximately 132,000 sq. ft. in San Bruno, San Mateo County.

Findings Summary

The Project is on balance in conformity with the San Francisco General Plan, as detailed in the attached Case Report (Attachment 2). The Project is also consistent with Planning Code Section 101.1(b) General Plan Priority Policies, included as Attachment 3.

Sincerely,

Dean Macris

Dean L. Macris
Director of Planning

Att: 1. Parcel location map
2. Case report
3. Planning Code Section 101.1(b) Policies

cc: Larry Ritter, Real Estate Division w/att.
N. Hrushowy, PD

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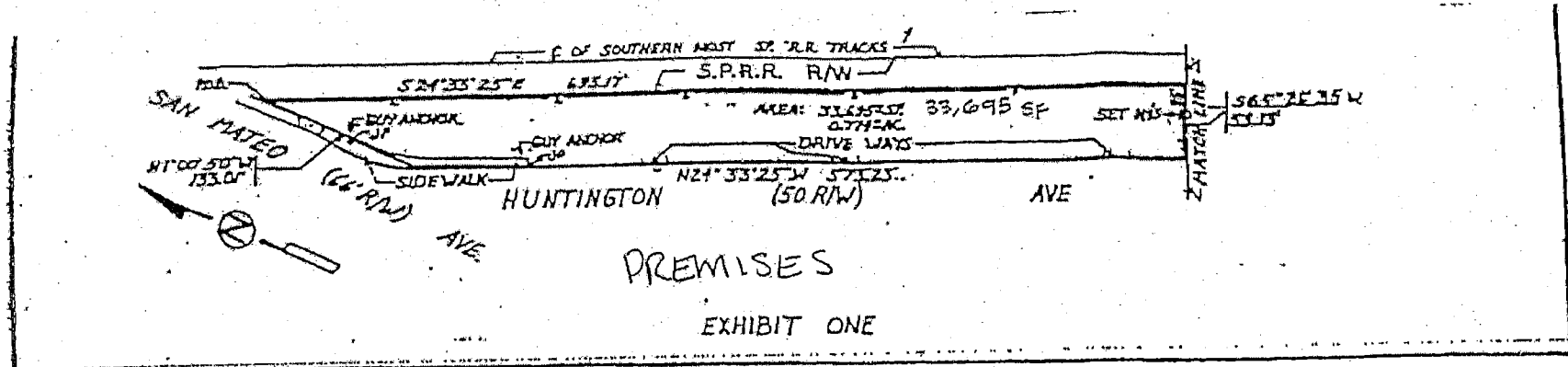

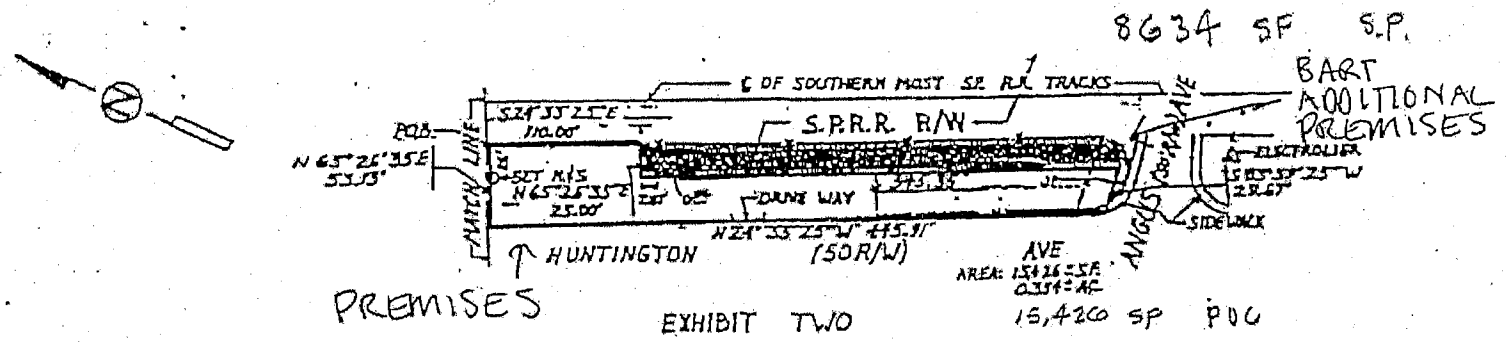

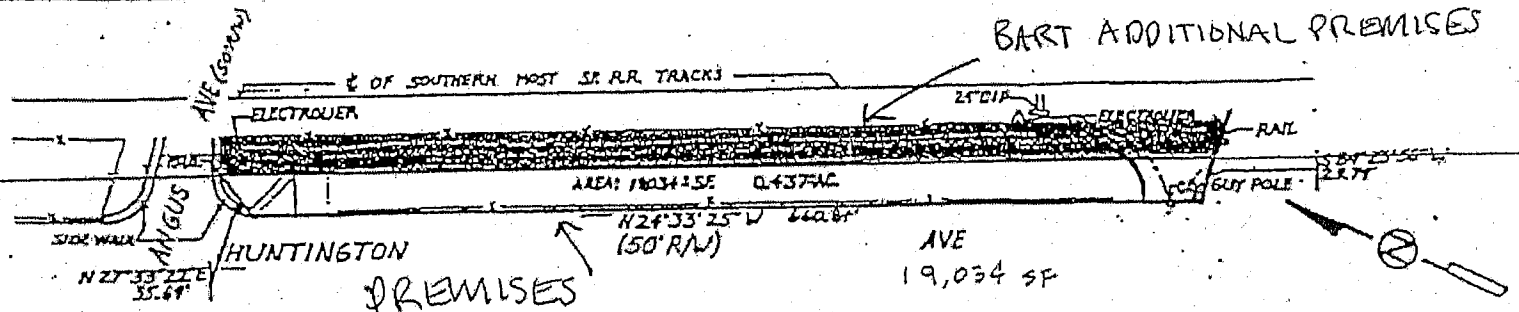

ROBERT C. HUTTON
LICENSED LAND SURVEYOR
SAN MATEO, CALIFORNIA (415) 341-3808

PLAT OF REVOCABLE PERMITS FOR COMMERCIAL PARKING
CITY OF SAN BRUNO, COUNTY OF SAN MATEO, CALIFORNIA

Attachment 1

GENERAL PLAN REFERRAL – Case Report **Attachment 2**

Case No.: **2006.1120R**
Description: **Former Market Street Railway Right of Way.**
Proposed sale by the Public Utilities Commission of former Muni Railway Right of Way consisting of a long narrow strip of approximately 132,000 sq. ft.

Location: **The City of San Bruno, San Mateo County**

PUC has requested to sell the piece of property; PUC has indicated that it has no further need of the property.

Staff Reviewer: Neil Hrushowy
Date: 12/6/2006

General Plan Policy Findings:
Note: General Plan Objectives and Policies are in **bold font**, General Plan text is in regular font, and staff comments are in *italic font*.

TRANSPORTATION ELEMENT

OBJECTIVE 1
MEET THE NEEDS OF ALL RESIDENTS AND VISITORS FOR SAFE, CONVENIENT AND INEXPENSIVE TRAVEL WITHIN SAN FRANCISCO AND BETWEEN THE CITY AND OTHER PARTS OF THE REGION WHILE MAINTAINING THE HIGH QUALITY LIVING ENVIRONMENT OF THE BAY AREA.

The property was originally purchased to as a transit right of way for MUNI. When MUNI was separated from PUC, the land remained under the jurisdiction of PUC. During the planning of the BART airport extension, the land was made available for the transit right of way. The BART extension was tunneled under the property, and not at or above grade. PUC no longer has any need for the property, and therefore, intends to sell the property.

*On balance, we find the proposal to be **in conformity** with the General Plan. Artichoke Joe's, the current lessee, intends to purchase the land and will maintain the existing use – a surface parking lot – into the future.*

The Proposal is, on balance, XX **in conformity** with the General Plan.

Planning Code Provisions- Eight Priority Policies **Attachment 3**

Planning Code Section 101.1(b) establishes the following eight priority planning policies and requires review of permits for consistency with said policies. The Project and this General Plan Referral application are consistent or inconsistent with each of these policies as follows:

1. That existing neighborhood-serving retails uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.

   The project would not affect neighborhood serving retail uses or opportunities for employment in or ownership of such businesses.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

   The Project would not affect the City's housing stock or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced.

   The Project would not affect the City's supply of affordable housing.

4. That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking.

   The Project would not affect Muni transit service, streets, or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

   The Project would not affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

   The Project would not affect preparedness against injury and loss of life in an earthquake and would comply with applicable safety standards.

7. That landmarks and historic buildings be preserved.

   The Project would not affect any of the City's historic resources.

8. That our parks and open space and their access to sunlight and vistas be protected from development.

   The Project would not have any adverse effect on the City's park system. The property is located in San Mateo County and is currently used as a surface parking lot by a leasee.