File No. 120337 Committee Item No. _____
Board Item No. 33

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: _____ **Date** _____

Board of Supervisors Meeting **Date** May 1, 2012

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

☐	☒*	(See "Index of Documents;" asterisked items only include the first page due to size)
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Completed by: _____ **Date** _____
Completed by: Alisa Miller **Date** April 26, 2012

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

[Acquisition of a Temporary Construction License by Eminent Domain - Central Subway/Third Street Light Rail Extension - 77 O'Farrell Street]

Resolution authorizing the acquisition of a temporary construction license at the real property commonly known as 77 O'Farrell Street, San Francisco, California, Assessor's Parcel Block No. 0328, Lot Nos. 003 and 004, by eminent domain for the public purpose of constructing the Central Subway/Third Street Light Rail Extension and other improvements; adopting environmental findings under the California Environmental Quality Act (CEQA), CEQA Guidelines, and Administrative Code Chapter 31; and adopting findings of consistency with the General Plan and City Planning Code Section 101.1.

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

WHEREAS, The Project's primary objectives are to provide direct rail service to regional destinations, including the City's Chinatown, Union Square, Moscone Convention Center, Yerba Buena, SoMa and AT&T Park neighborhoods; connect BART and Caltrain;

serve a low-auto-ownership population of transit customers; increase transit use and reduce travel time; reduce air and noise pollution and provide congestion relief; and

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

WHEREAS, The City requires a temporary construction license for the construction and improvement of the Project at the real property commonly known as 77 O'Farrell, San Francisco, California, Assessor's Parcel No. Block 0328, Lots 003 and 004 (the "Subject Property"), which license is more particularly described in Exhibit A (the "License") and shown in Exhibit B (the "Project Alignment"), copies of which are on file with the Clerk of the Board of Supervisors in File No. 120337, which is hereby declared to be a part of this resolution as if set forth fully herein; and

WHEREAS, On August 7, 2008, the City's Planning Commission certified that the Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report ("Final Supplemental EIS/EIR") for the Central Subway/Third Street Light Rail Phase 2 was in compliance with CEQA and the CEQA Guidelines in Planning Commission Motion No. 17668. The Final Supplemental EIS/EIR and Motion No. 17668 are on file with the Clerk of the Board of Supervisors in File No. 120337, which is hereby declared to be a part of this resolution as if set forth fully herein; and

WHEREAS, On August 19, 2008, the SFMTA's Board of Directors, by Resolution No. 08-150, approved the Project, adopted CEQA Findings, including a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program (MMRP) as required by CEQA. Resolution No. 08-150 is on file with the Clerk of the Board of Supervisors in File No. 120337, which is hereby declared to be a part of this resolution as if set forth fully herein; and

WHEREAS, On September 16, 2008, the City's Board of Supervisors (this "Board") adopted Motion No. 08-145, in Board File No. 081138, affirming the City's Planning Department decision to certify the Final Supplemental EIS/EIR. Motion No. 08-145 is on file with the Clerk of the Board of Supervisors in File No. 120337, which is hereby declared to be a part of this resolution as if set forth fully herein; and

WHEREAS, SFMTA staff obtained an appraisal of the License in compliance with California Government Code Section 7267 et seq. and all related statutory procedures for possible acquisition of the License, submitted an offer to the Subject Property owner of record to purchase the License as required by California Government Code Section 7267.2 on January 17, 2012, and continues to negotiate the possible acquisition of the License with the Subject Property owner of record; and

WHEREAS, On March 29, 2012, the City's Planning Department found the acquisition of the License for the Project to be consistent with the General Plan and the Eight Priority Policies of City Planning Code Section 101.1 to the extent applicable. On March 29, 2012, the Planning Department confirmed the May 4, 2009 determination; and

WHEREAS, On March 28, 2012, the City's Planning Department found 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 Final Supplemental EIS/EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant impacts; and there is no new information of substantial importance that was not known and could not have been known at the time the Final Supplemental EIS/EIR was certified, that shows either significant environmental effects not discussed in the Final Supplemental EIS/EIR, 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; and

WHEREAS, On March 20, 2012, the SFMTA's Board of Directors adopted Resolution No. 12-036, in which it found that (a) the Project will assist SFMTA in meeting the objectives of Goal No. 1 of the SFMTA Strategic Plan (to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy), of Goal No. 2 (to improve transit reliability), of Goal No. 3 (to improve economic vitality through improved regional transportation), and of Goal No. 4 (to ensure the efficient and effective use of resources); (b) the License is needed to construct and operate the Project; (c) SFMTA has limited any potential private injury by seeking to acquire only a license; and (d) the acquisition and use of the License for construction and operation of the Project is compatible with the existing uses of the Subject Property and the surrounding area; and

WHEREAS, On March 20, 2012, the SFMTA Board of Directors, by SFMTA Resolution No. 12-036, authorized the SFMTA Executive Director to request that this Board hold a duly noticed public hearing, as required by State law, to consider the adoption of a Resolution of Necessity for the acquisition of the License for its appraised fair market value and, if this Board adopts such Resolution of Necessity, to take such actions that are consistent with the City's Charter and all applicable law to proceed to acquire the License; and

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

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

1. The public interest and necessity require the proposed Project;

2. The proposed Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;

3. The License, the portion of the Subject Property sought to be acquired, is necessary for the Project;

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

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

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

FURTHER RESOLVED, That the City Attorney is hereby authorized and directed to take all necessary steps to commence and prosecute proceedings in eminent domain against the Subject Property owner of record and the owner or owners of any and all interests therein or claims thereto for the condemnation thereof for the public use of the City, to the extent such proceedings are necessary; together with the authorization and direction to take any and all actions or comply with any and all legal procedures to obtain an order for immediate or

permanent possession for all or a portion of the License as depicted in Exhibit A and Exhibit B, in conformity with existing or amended law; and, be it

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

FURTHER RESOLVED, That this Board finds 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 Final Supplemental EIS/EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant impacts; and there is no new information of substantial importance that was not known and could not have been known at the time the Final Supplemental EIS/EIR was certified, that shows either significant environmental effects not discussed in the Final Supplemental EIS/EIR, 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; and, be it

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

FURTHER RESOLVED, That this Board adopts as its own and incorporates by reference, as though fully set forth herein, each of the findings made by the SFMTA in

adopting Resolution No. 08-150 on August 19, 2008, and Resolution No. 12-036 on March 20, 2012.

Index of Documents in Administrative Record for Board File No. 120337

77 O'Farrell Street, Assessor's Block 0328, Lots 003 and 004

1. Memorandum from Edward D. Reiskin, Director of Transportation of the SFMTA to the Honorable Members of the Board of Supervisors

2. Central Subway Project/Real Estate Acquisitions for Right-of-Way and Stations PowerPoint presentation, July 27, 20 10

3. Legal Description of 77 O'Farrell Street (Assessor's Block 0328, Lots 003 and 004)

4. Map of Central Subway Project Alignment

✳ 5. Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Final SEIS/SEIR Volume I)

Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Response to Comments Volume II)

Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Response to Comments Volume II, Errata)

6. San Francisco City Planning Commission, Motion No. M-17668

7. San Francisco Municipal Transportation Agency Board of Directors, Resolution No. 08-150

8. San Francisco Board of Supervisors, Motion M08-145

9. Federal Transit Administration, Record of Decision, November 26, 2008

10. Determination from the San Francisco Planning Department Re: Central Subway Final Supplemental Environmental Impact Statement/Environmental Impact Report

✳ 11. General Plan Referral No. 2008.0849R, including Application for General Plan Referral

12. Determination from the San Francisco Planning Department Re: General Plan Referral No. 2008.0849R

13. San Francisco Municipal Transportation Agency Board of Directors, Resolution No. 12-036

14. Summary of Negotiator's Contacts

15. July 8, 2011 Letter from John Funghi, SFMTA to Stockton Street Properties Re: Notice of Intent to Appraise

16. January 17, 2012 Letter from Edward D. Reiskin, Director of Transportation to Stockton Street Properties, Inc. Re: Offer to Purchase

17. Notice of Public Hearing ("Public Hearing to consider Property Acquisition – Eminent Domain")

MEMORANDUM

Date: April 17, 2012

To: Honorable Members of the Board of Supervisors

From: Edward D. Reiskin
Director of Transportation

Subject: Request for Approval of Resolution Authorizing the Acquisition of a Temporary Construction License By Eminent Domain For Central Subway/Third Street Light Rail Extension

77 O'Farrell Street, San Francisco, Assessor's Block 0328, Lots 003 and 004

The San Francisco Municipal Transportation Agency (the "SFMTA") requests that the Board of Supervisors approve a Resolution authorizing the acquisition of a temporary construction license (the "License") in real property commonly known as 77 O'Farrell Street, San Francisco, Assessor's Block 0328, Lots 003 and 004 (the "Property") by eminent domain for the public purpose of constructing the Central Subway/Third Street Light Rail Extension and other improvements; adopting environmental findings under the California Environmental Quality Act (CEQA), CEQA Guidelines, and Administrative Code Chapter 31; and adopting findings of consistency with the General Plan and City Planning Code Section 101.1. This acquisition is part of the Central Subway Project/Third Street Light Rail Extension (the "Project").

Background

The Project is the second phase of the SFMTA's Third Street Light Rail Project, and will add 1.67 miles of light rail track north from the northern end of the new Third Street Light Rail at Fourth and King Streets to a terminal in Chinatown. The Project will serve regional destinations, including Chinatown (the most densely populated area of the city that is not currently served by modern rail transportation), Union Square, Moscone Convention Center, Yerba Buena, SoMa and AT&T Park. The Project will also connect with the Bay Area Rapid Transit (BART) and Caltrain (the Bay Area's two largest regional commuter rail services), serve a low auto ownership population of transit customers, increase transit use and reduce travel time, reduce air and noise pollution, and provide congestion relief. The buses currently serving

Chinatown are overcrowded and the corridor is severely congested. Projected travel time on the Central Subway is eight to ten minutes versus 20 minutes on the bus between Chinatown and the Caltrain station at 4th and Brannan. Thus, the public interest and necessity require the construction and operation of the Project to achieve such benefits.

The Project will include twin bore, subsurface tunnels to connect the Project's three subway stations and provide direct rail service to the Financial District and Chinatown. The tunnels will pass under the existing BART/Muni Market Street subway tunnels. The Project has been planned and located in a manner that will be most compatible with the greatest public good and the least private injury.

The SFMTA has completed utility relocation for the Project's portal and Moscone Station. Utility relocation for the Project's Union Square/Market Street Station ("UMS") location is under construction and scheduled to be complete by the Second Quarter of 2012. The contract for the construction of the Project's Chinatown Station is currently out to bid and the UMS and Moscone Station construction contracts will be out to bid by the Second Quarter of 2012. The start of revenue operation is scheduled for 2018.

On May 4, 2009, the Planning Department, in Planning Case No. 2008.084R, determined that the Project was consistent with the General Plan and the Eight Priority Policies of City Planning Code Section 101.1, to the extent applicable. On March 29, 2012, the Planning Department confirmed the May 4, 2009 determination, and concluded that no additional General Plan Referral was required for the License.

Acquisition Of The License

The Property is a 9,469 square foot lot and is improved with a retail building. The License would allow the installation of subsurface piles in an approximate 529 square foot area which would form a narrow rectangular strip below ground, along the western boundary of the subject property, and the installation of exterior and interior settlement monitoring equipment in the building located at the Property. The temporary piles would cross the Property line 99.7' below the ground surface. The bottoms of the piles are 155' below the ground surface. The headwall piles encroach 4' 8 3/8" onto the site along its Stockton Street frontage.

The SFMTA needs to acquire the License to construct the Central Subway tunnels and the UMS Station. The SFMTA is seeking to acquire the License for the installation of these temporary subsurface piles and settlement monitoring equipment. The existing commercial uses will not be disturbed by the Project. Thus, the acquisition and use of the License for construction of the Project is compatible with the existing surface uses of the Property and the surrounding area.

Although the SFMTA has made an offer to acquire the License through a negotiated agreement, no agreement has yet been reached. The SFMTA will continue to negotiate with the Property owner of record ("Owner") to attempt to acquire the License without the need for litigation. However, the SFMTA seeks a Resolution of Necessity because it must acquire the License to avoid delays in the construction of the Project. If the SFMTA and Owner do not timely agree to the purchase of the License, it will impair the SFMTA's ability to construct the Project tunnel and will cause Project delays, with the potential for increases in Project costs.

Environmental Review
A draft Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (SEIS/SEIR) was issued for the Project on October 17, 2007.

On August 7, 2008, the San Francisco Planning Commission certified the Final SEIS/SEIR as accurate and in compliance with the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA) and Chapter 31 of the San Francisco Administrative Code in Planning Commission Motion No. 17668.

On August 19, 2008, the SFMTA Board of Directors adopted Resolution No. 08-150, approving the Project, adopting CEQA Findings, a Statement of Overriding Considerations for the Project, and the Mitigation Monitoring and Reporting Plan for the Project.

On September 16, 2008, the Board of Supervisors unanimously adopted Motion No. 08-145, affirming the Planning Commission's decision to certify the Final SEIS/SEIR and rejected an appeal of the Planning Commission's certification of the Final SEIS/SEIR. A notice of determination was filed on September 18, 2008. The Record of Decision was issued by the Federal Transit Administration (FTA) on November 26, 2008, which determined that the proposed Project satisfied the requirements of NEPA.

On March 28, 2012, the Planning Department found that there have been no substantial changes proposed for the Project that would require major revisions to the Final SEIS/SEIR or that would result in significant environmental impacts that were not evaluated in the Final SEIS/SEIR; and no new information has become available that was not known and could not have been known at the time the Final SEIS/SEIR was certified as complete and that would result in significant environmental impacts not evaluated in the Final SEIS/SEIR.

SFMTA Proceedings
On November 17, 2011, the SFMTA obtained an independent real property appraisal, which determined the fair market value of the fee simple interest in the License to be $10,500. The SFMTA also obtained a review appraisal of the License by a second

licensed appraiser, which concurred with the valuation determined by the first appraiser.

Pursuant to Government Code Section 7267.2, the SFMTA sent a letter offering to purchase the License from the Owner for $10,500 on January 17, 2010. The offer was conditioned on the negotiation of a license agreement. The offer also notified the Owner of its rights to obtain its own independent appraisal of the fair market value of the License. As required under state law, the SFMTA agreed to reimburse the Owner up to $5,000 for such an independent appraisal if it met FTA appraisal requirements. At this time, the Owner has not indicated that it will seek an independent appraisal, nor has it requested specific FTA appraisal requirements from the SFMTA.

The SFMTA and its design engineers met with the Owner's representative on February 1, 2012 to review plans for the installation of subsurface piles and settlement monitors, and to discuss the temporary license agreement. The SFMTA provided additional engineering plans and details of the proposed installation of subsurface piles and exterior settlement monitors to Owner's representative on February 8, 2012. On February 14, 2012, the Owner's representative indicated a willingness to enter into a temporary license agreement with the SFMTA, provided that certain unspecified insurance issues are agreed upon. On March 9, 2012, the Owner's representative transmitted a redlined version of the license agreement. On April 4, 2012, the SFMTA provided its comments to redlined version of the license agreement to the Owner's representative for final review. On April 12, 2012, the SFMTA met with the Owner's representative at 77 O'Farrell to review the construction sequence and schedule for installation of subsurface piles.

On March 20, 2012, the SFMTA's Board of Directors adopted Resolution No. 12-036, in which it found that (a) the Project will assist SFMTA in meeting the objectives of Goal No. 1 of the SFMTA Strategic Plan (to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy), of Goal No. 2 (to improve transit reliability), of Goal No. 3 (to improve economic vitality through improved regional transportation), and of Goal No. 4 (to ensure the efficient and effective use of resources); (b) the License is needed to construct the Project; (c) SFMTA has limited any potential private injury by seeking to acquire only a temporary license; and (d) the acquisition and use of the License for construction of the Project is compatible with the existing uses of the subject Property and the surrounding area.

The SFMTA Board of Directors, by adopting SFMTA Resolution No. 12-036, also authorized the SFMTA Director of Transportation to request that this Board hold a duly noticed public hearing, as required by State law, to consider the adoption of a Resolution of Necessity for the acquisition of the License for its appraised fair market value and, if this Board adopts such Resolution of Necessity, to take such actions

that are consistent with the City's Charter and all applicable law to proceed to acquire the License.

Funding
The SFMTA intends to use State Prop: 1B funds for the acquisition of the License.

Resolution of Necessity
On April 13, 2012 a "Notice of Public Hearing of the Board of Supervisors of the City and County of San Francisco on the Temporary Construction License Acquisition – Eminent Domain" was given to each Owner whose name and address appears on the last Equalized Assessment Roll for the Property, notifying them that a hearing is scheduled for May 1, 2012, before the Board of Supervisors, to consider the adoption of a Resolution of Necessity determining the following issues and their right to appear and be heard on these issues:

1. Whether the public interest and necessity require the Project and acquisition of the License;

2. Whether the Project is planned and located in the manner that will be the most compatible with the greatest public good and the least private injury;

3. Whether the City's acquisition of the License is necessary for the Project; and

4. Whether the offer required by Government Code Section 7267.2 has been made to the Owner.

Adoption of the Resolution of Necessity would not determine the amount of compensation to be paid to the Owner. If the Resolution of Necessity is adopted, SFMTA staff will continue to make good faith efforts to negotiate with the Owner for an amicable acquisition of the License, even if the City files an eminent domain action. Only if no voluntary agreement is reached would a trial be necessary. In such proceedings, the Court or jury would determine the fair market value for the License.

Recommendation
The SFMTA recommends that the Board of Supervisors adopt a resolution:

(a) determining that the public interest and necessity require acquisition of the License; and

(b) making all findings required by state law; and

(c) authorizing and directing the City Attorney commence proceedings in eminent domain to acquire the License, apply for an order for possession before judgment, and to prosecute the action to final judgment.

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Central Subway Project

Real Estate Acquisitions for Right-of-Way and Stations

July 27, 2010

SFMTA | Municipal Transportation Agency

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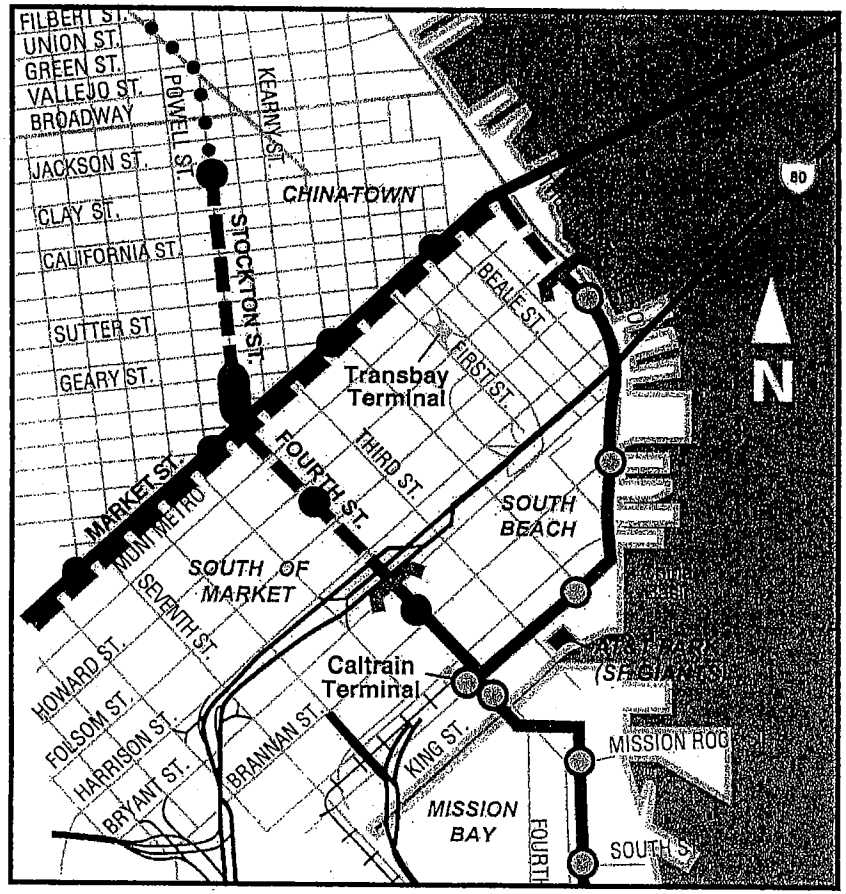
Why We Are Doing The Central Subway Project?



Community Connections:

- Improves regional connections to Caltrain, BART and Muni Metro
- Serves a transit dependent area
  - 26% increase in population
  - 61% increase in employment
  - 68% in Central Subway corridor are without a vehicle
- Improves T Third operation

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Key Steps for the Central Subway Project

- Federal Transit Administration (FTA) Record of Decision (ROD) on November 26, 2008
- Prepared appraisals for fee parcels and easements to be acquired in 2009; sent offers to property owners November 2009 – January 2010
- Obtained FTA Approval to enter Final Design on January 7, 2010
- Ground breaking of Utility Relocation for the future Moscone Station and Portal Tunnel on February 9, 2010
- Received recommendation for $20 million in New Starts funding to support ongoing design work for the project in February 2010
- FTA reviewed and concurred with the *Central Subway Relocation Impact Study and Last Resort Housing Plan, Handbook,* and *Brochure* on July 13, 2010
- Anticipate FTA Full Funding Grant Agreement in 3rd Quarter of 2011
- Anticipate Construction 2011 - 2018
- Anticipate Revenue Service 4th Quarter of 2018

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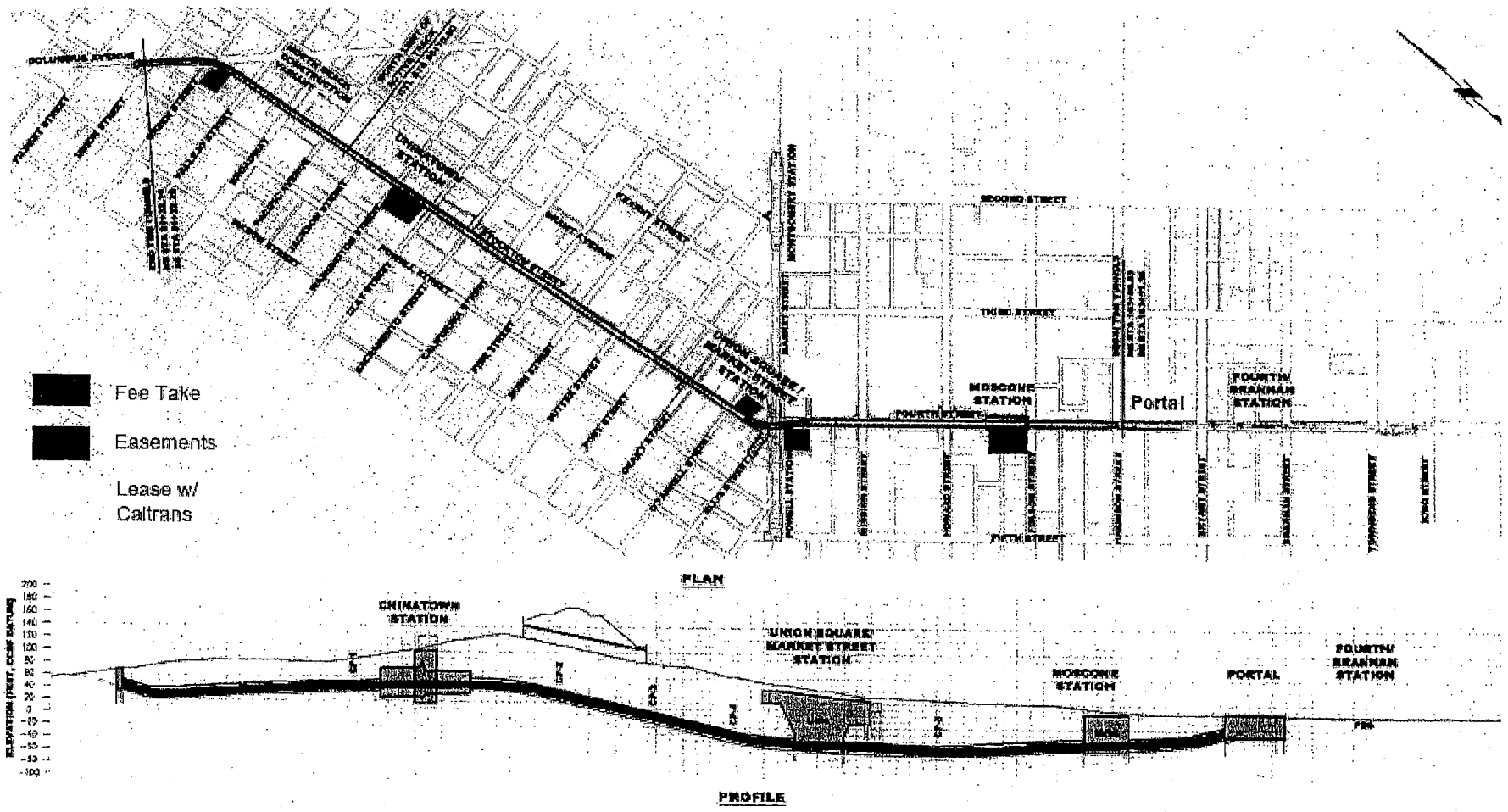
Right-of-Way Acquisition Parcels



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SFMTA's Central Subway Project Needs 5 Acquisitions

- **2 parcels in fee (full ownership) for 2 stations:**
  - ✓ Moscone Station – 266-286 4th Street
  - ✓ Chinatown Station – 933-949 Stockton Street

- **3 permanent underground easements for the tunnel (all of which will not interfere with the existing uses):**
  - ✓ Under 801 Market Street at 4th St. – 60' below surface
  - ✓ Under 790 Market Street at Stockton St. – 60' below surface
  - ✓ Under 1455 Stockton Street at Columbus Ave. - 30' below surface

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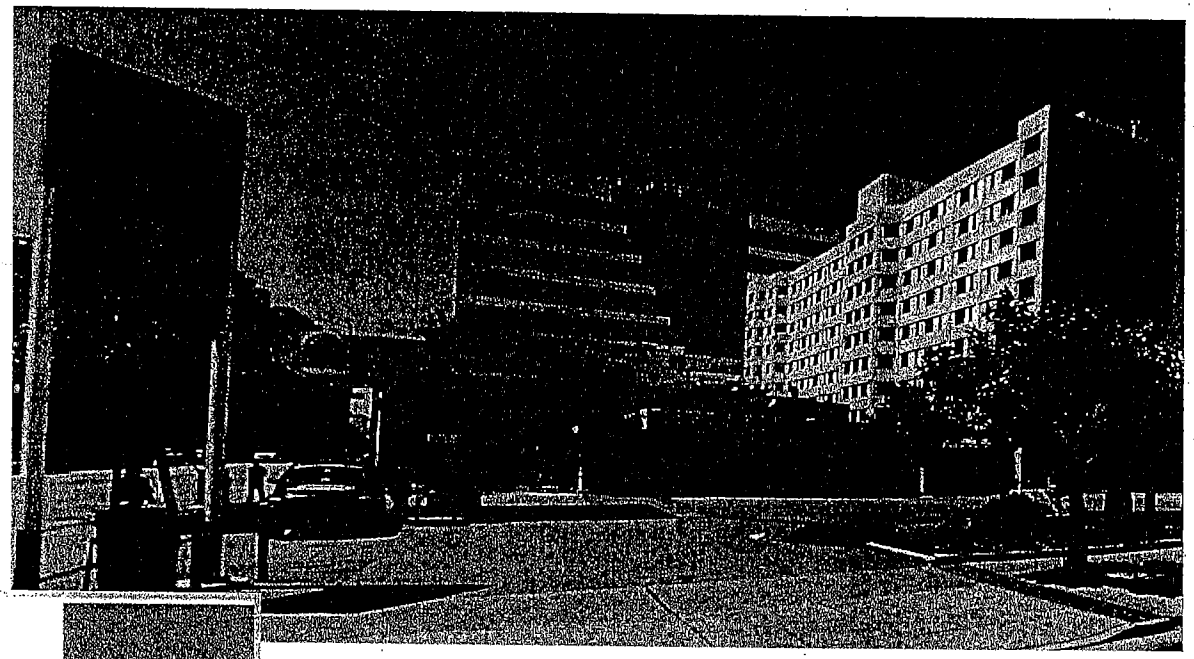
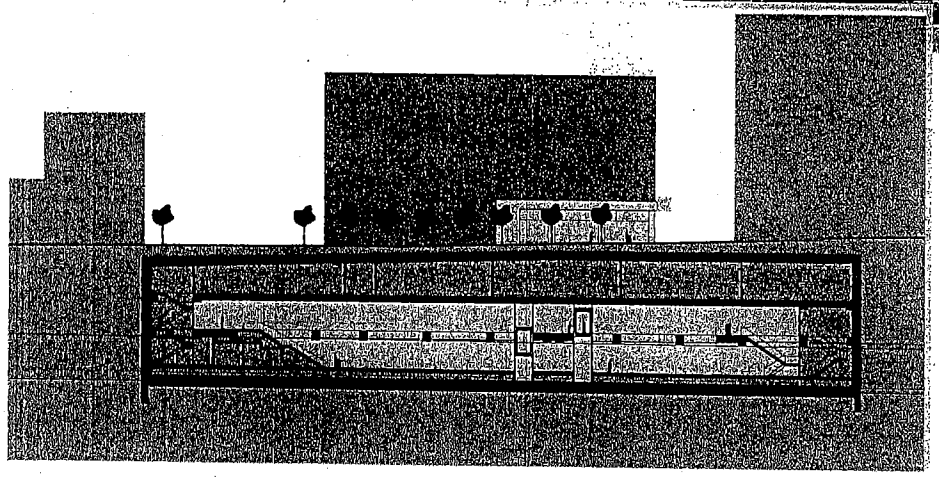
Proposed Moscone Station Site

The Moscone Station site is at 266-286 4th at Folsom Street in the Yerba Buena Neighborhood South of Market Street. It is owned by Convenience Retailers LLC, which operates a gas station. Negotiations are in progress.





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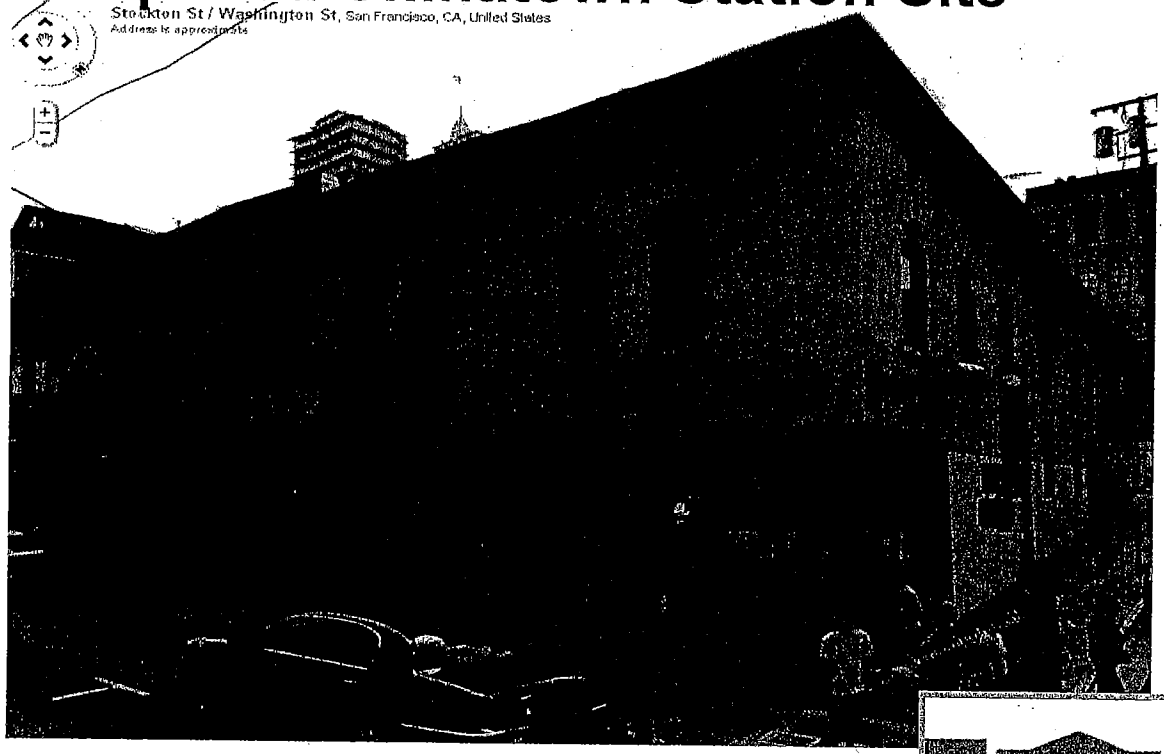
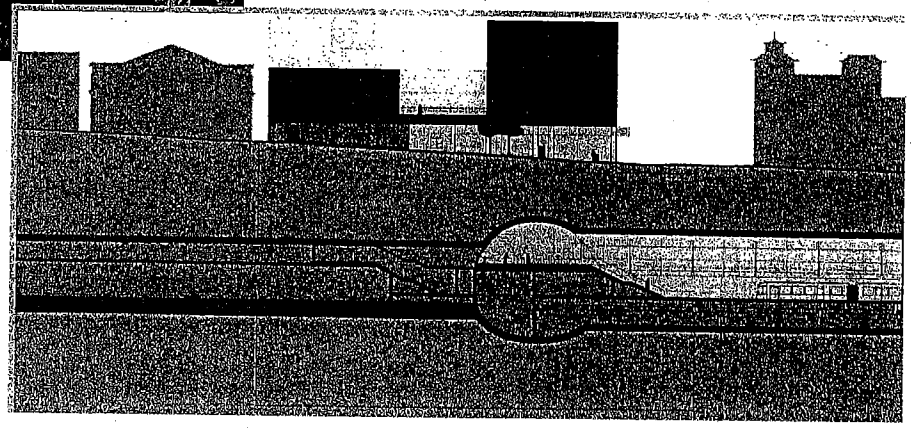
Proposed Chinatown Station Site



The Chinatown Station site is 933-949 Stockton at Washington Streets. This property is owned by Norman P. Chan, Inc., and contains retail tenants, a property management company, and residential units. Negotiations are in progress.



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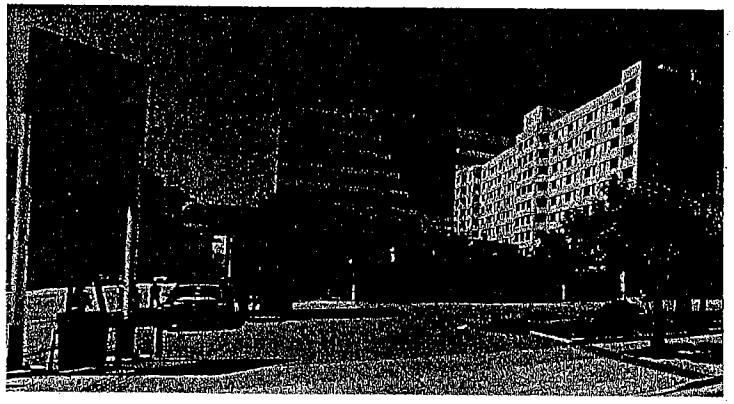
Why These 2 Station Sites and Not Other Locations?

Early in the Phase 2 planning process for the Central Subway, all stations access points for the Project were provided in sidewalk areas within the public right-of-way, studies were undertaken to evaluate the opportunities for locating station access points and to minimize disruption to the congested sidewalks and pedestrian traffic along the Project Corridor.

Moscone Station:



Four locations were identified and discussed with the public:

1. 266-286 Fourth between Howard and Folsom Streets – site selected ⇒
2. Fourth Street between Folsom and Harrison Streets
   - eliminated because of potential safety conflicts between vehicles and pedestrians at the freeway ramps and a lack of public support
3. Fourth Street between Howard and Folsom Streets with an additional subway station on Fourth Street south of Harrison Street
   - eliminated due to cost of an additional subway station
4. Fourth Street between Mission and Howard Streets
   - eliminated due to the conflict with a major 8-foot diameter sewer transport line on Fourth Street in this area between Howard and Mission Streets

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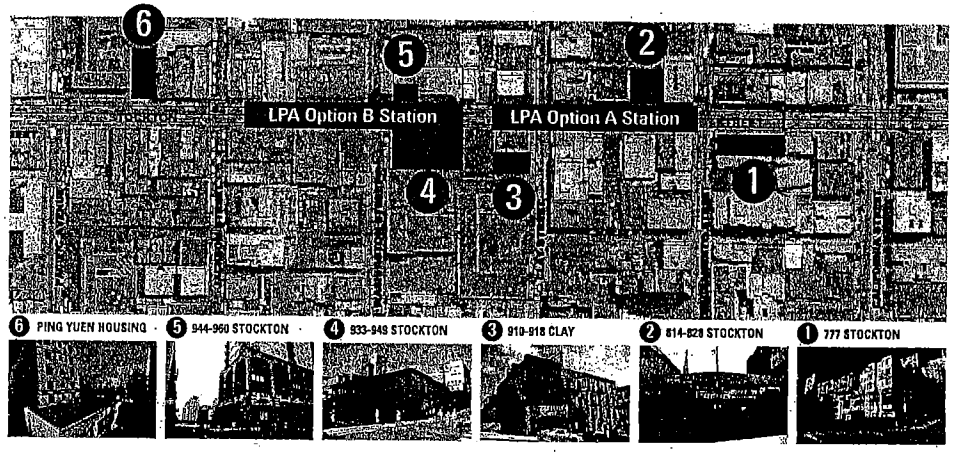
Chinatown Station: Early in the process of exploring off-street locations, the project team did a site walk of Chinatown with community members. At community meetings participants suggested that the Chinatown Station site be closer to the heart of the Chinatown business district.

1. **Southwest corner of Stockton and Sacramento Streets (777 Stockton Street)**
   - Eliminated 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
2. **East side of Stockton Street north of Sacramento Street (814-828 Stockton Street)**
   - Eliminated because of its small size, which restricted the ability to accommodate the station facilities and the vent shaft; the community organizations located in the building that would be affected; and because a new building might cast a shadow on a public park
3. **West of the Stockton Street intersection (910-918 Clay Street)**
   - The steep grades on Clay Street, in combination with the distance from Stockton Street, made this site less accessible to subway patrons than others under consideration
4. **The southwest corner of the Stockton and Washington Streets - 933-949 Stockton Street – is the chosen site**
5. **The east side of Stockton Street, south of Washington Street (944-960 Stockton Street)**
   - Eliminated as it only afforded limited access through the basement of the existing Mandarin Towers building constraining the amount of space available for station entrances/exits and vent shafts
6. **Mid-block on the east side of Stockton Street between Jackson and Pacific Streets (site located in Ping Yuen Housing Complex at 799 Pacific).**
   - Eliminated due to its location two blocks away from the station and beyond the established Study Area limit established for the Project



central T subway

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3 Easement Acquisitions for Tunnel:

- **801 Market Street** – provides an area for the tunnel to go from 4th St. under Market to Stockton St. Underneath a parcel with a mixed use building at 4th and Market Streets. Negotiations are in progress. Owner is Jamestown Pacific Place, LLP.

- **790 Market Street** – provides an area for the tunnel to go from 4th St. under Market to Stockton St. Underneath a parcel with a mixed use building at Market and Stockton Streets. Negotiations are in progress. The Owner is Stockton Street Properties, Inc.

- **1455 Stockton Street** – provides an area for the tunnel to go from Stockton St. to Columbus Ave. Underneath a family trust-owned parcel occupied by a Bank of America branch at Stockton Street and Columbus Avenue. Negotiations are in progress. The Owner is Sassus Trust.

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SFMTA's Central Subway Project's 5 Acquisitions: Next Steps

- **Negotiations continue with all property owners**
- **SFMTA Board approved requesting the Board of Supervisors for eminent domain on 2/26/10 (3 easements) and 4/20/10 (2 fee properties)**
- **Board of Supervisors hearing – Tuesday, 7/27/10**

  The SFMTA is asking for the Board of Supervisors to hold a public hearing for the acquisitions of the 5 properties. The Board must find that:

  (1) the public interest and necessity require CCSF to acquire the 3 subsurface easements and 2 fee properties;

  (2) the Project is planned and located in the manner that will be most compatible with the greatest public good and least private injury;

  (3) the 3 subsurface easements and 2 fee properties sought to be acquired are necessary for the Project; and

  (4) CCSF has made the offer(s) required by the California Government Code.

- **Court filings – up to 5 eminent domain actions, if unable to negotiate**

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF MARKET STREET, DISTANT THEREON 328 FEET AND 9-1/4 INCHES SOUTHWESTERLY FROM THE POINT FORMED BY THE INTERSECTION OF THE NORTHWESTERLY LINE OF MARKET STREET WITH THE WESTERLY LINE OF GRANT AVENUE; RUNNING THENCE NORTHERLY PARALLEL WITH STOCKTON STREET 117 FEET AND 9-3/8 INCHES; THENCE AT A RIGHT ANGLE WESTERLY AND PARALLEL WITH O'FARRELL STREET 29 FEET AND 2 INCHES; THENCE AT A RIGHT ANGLE NORTHERLY AND PARALLEL WITH STOCKTON STREET 4 FEET AND 8-3/8 INCHES; THENCE AT A RIGHT ANGLE WESTERLY AND PARALLEL WITH O'FARRELL STREET 12 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE SOUTHERLY AND PARALLEL WITH STOCKTON STREET 30 FEET AND 3 INCHES TO THE SOUTHEASTERLY CORNER OF THE LAND OWNED BY O.D. BALDWING AND CONVEYED TO HIM BY DEED FROM GEORGE R. MONROE, WHICH SAID DEED BEARS DATE February 24, 1891, AND WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, ON THE SAME DAY; THENCE AT A RIGHT ANGLE WESTERLY PARALLEL WITH O'FARRELL STREET ALONG THE SOUTHERLY LINE OF SAID LAND OWNED BY O.D. BALDWIN 75 FEET TO THE EASTERLY LINE OF STOCKTON STREET; THENCE AT A RIGHT ANGLE SOUTHERLY AND ALONG SAID EASTERLY LINE OF STOCKTON STREET 162 FEET AND 10 INCHES, MORE OR LESS, TO THE NORTHERLY LINE OF ELLIS STREET; THENCE EASTERLY ALONG SAID NORTHERLY LINE OF ELLIS STREET 18 FEET AND 7-3/4 INCHES TO A POINT WHERE THE NORTHWESTERLY LINE OF MARKET STREET INTERSECTS THE SAID NORTHERLY LINE OF ELLIS STREET; THENCE NORTHEASTERLY ALONG SAID NORTHWESTERLY LINE OF MARKET STREET 120 FEET AND 9-3/4 INCHES TO THE POINT OF BEGINNING.

Assessors Parcel No. : Lot 002, Block 0328

PARCEL B:

BEGINNING AT A POINT ON THE EASTERLY LINE OF STOCKTON STREET, DISTANT THEREON 82 FEET AND 6 INCHES SOUTHERLY FROM THE SOUTHERLY LINE OF O'FARRELL STREET; RUNNING THENCE SOUTHERLY ALONG SAID LINE OF STOCKTON STREET 30.25 FEET TO A POINT NORTHERLY 162.834 FEET FROM THE INTERSECTION OF SAID EASTERLY LINE OF STOCKTON STREET WITH THE NORTHERLY LINE OF ELLIS STREET; THENCE AT A RIGHT ANGLE, EASTERLY 75 FEET; THENCE AT A RIGHT ANGLE NORTHERLY, 30.25 FEET; THENCE AT A RIGHT ANGLE WESTERLY 75 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 50 VARA BLOCK NO. 122.

Assessors Parcel No. : Lot 003, Block 0328

PARCEL C:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF O'FARRELL STREET AND THE EASTERLY LINE OF STOCKTON STREET; THENCE EASTERLY ALONG SAID SOUTHERLY LINE OF O'FARRELL STREET, 87 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE, SOUTHERLY 82 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE, WESTERLY 87 FEET AND 6 INCHES TO THE EASTERLY LINE OF STOCKTON STREET; THENCE AT A RIGHT ANGLE NORTHERLY ALONG SAID EASTERLY LINE OF STOCKTON STREET, 82 FEET AND 6 INCHES TO THE POINT OF BEGINNING.

BEING A PORTION OF 50 VARA BLOCK NO. 122.

Assessors Parcel No. : Lot 004, Block 0328

EXHIBIT "A"

PROPERTY DESCRIPTION

For a portion of 77 O'Farrell Street, Assessor's Block 0328, Lots 003 and 004

The proposed acquisition comprises a license affecting a narrow underground rectangular strip along the western boundary of the subject property. The headwall piles cross the property line approximately 99.7 feet below the surface of the ground. The bottom of the pile is approximately 155 feet below the surface of the ground. The headwall pile encroaches approximately 4 feet 8.375 inches along the site's Stockton Street boundary.

Containing 529 square feet, more or less.

APN: 0328-003 and -004

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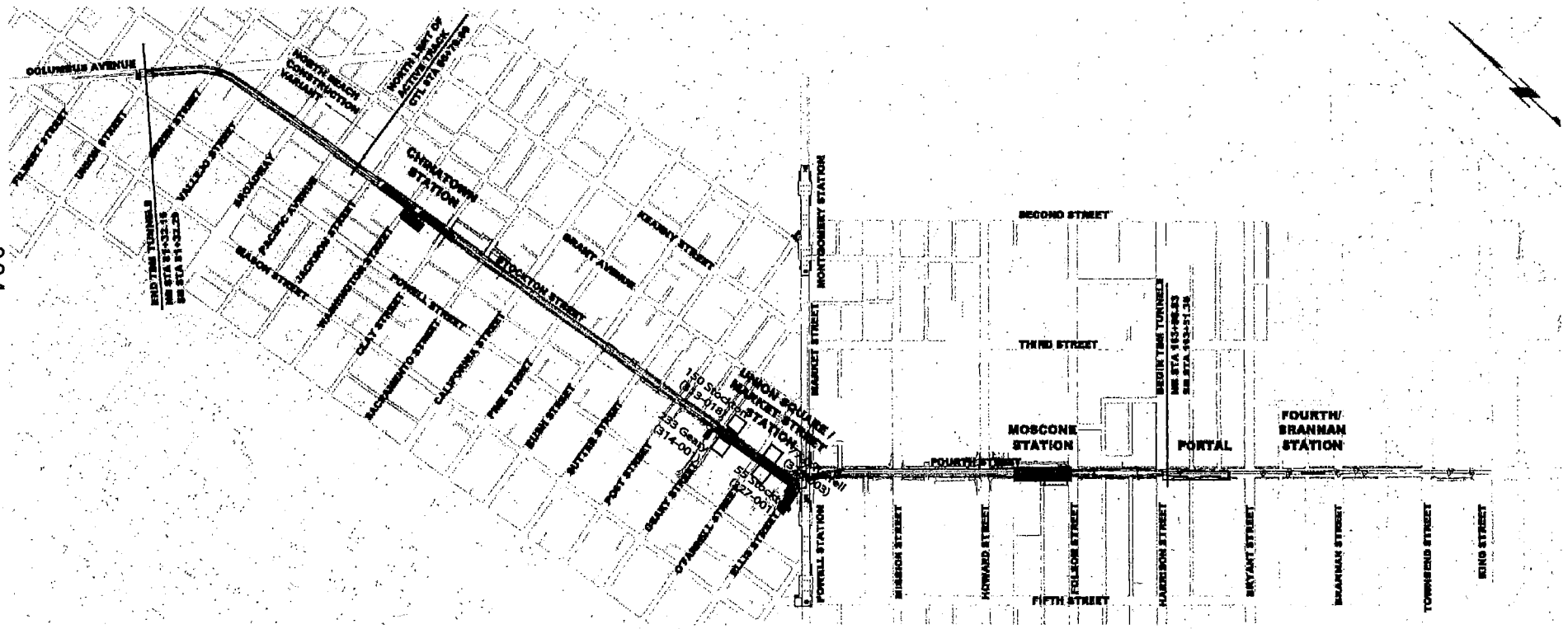


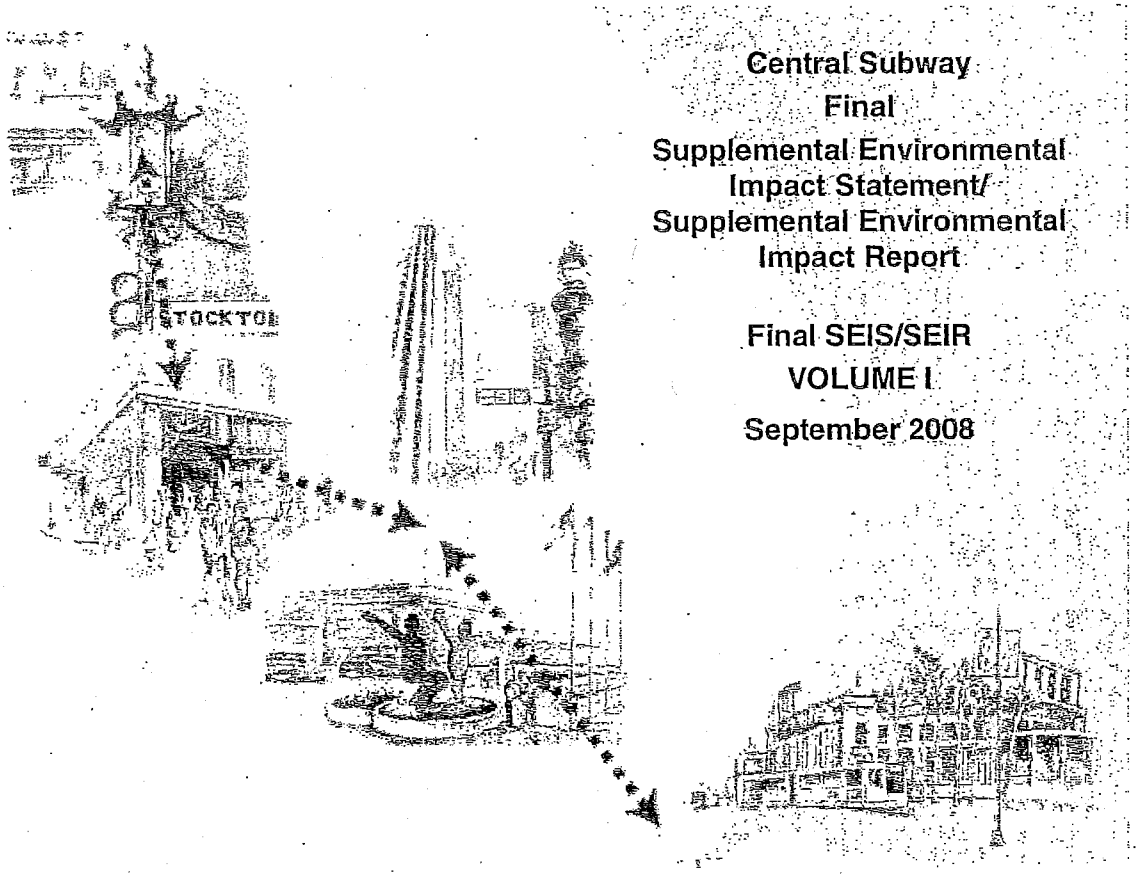
PLAN

SFMTA | Municipal Transportation Agency

904

EXHIBIT B

central T subway



Central Subway
Final
Supplemental Environmental Impact Statement/ Supplemental Environmental Impact Report

Final SEIS/SEIR
VOLUME I

September 2008

FEDERAL TRANSIT ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION

CITY AND COUNTY OF SAN FRANCISCO
PLANNING DEPARTMENT

Case No. 96.281E
State Clearinghouse No. #96102097

(*complete document in file "B")

August 7, 2008
File No. 1996.281E
Assessor's Block 3733, Lot 093;
Assessor's Block 0308, Lot 001(portion);
Assessor's Block 0211, Lot 001 and
various easements.

SAN FRANCISCO

CITY PLANNING COMMISSION

MOTION NO. M-17668

ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED CENTRAL SUBWAY PROJECT, LOCATED ALONG AND UNDER FOURTH STREET AND UNDER STOCKTON STREET IN THE DOWNTOWN, CHINATOWN AND NORTH BEACH AREAS WITH A SURFACE STATION AT FOURTH/BRANNAN AND UNDERGROUND STATIONS AT MOSCONE, UNION SQUARE/MARKET STREET AND CHINATOWN AND CONSTRUCTION TUNNEL UNDER COLUMBUS AVENUE TO WASHINGTON SQUARE.

MOVED, That the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as case file No. 96.281E – Central Subway (Phase 2 of the Third Street Light Rail) Project (hereinafter "Project") based upon the following findings:

1) The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 et. seq., (hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").

a. The Department determined that a Supplemental Environmental Impact Report (hereinafter "EIR") was required for Phase 2 of the Central Subway and provided public notice of that determination by publication in a newspaper of general circulation on June 11, 2005. As the original environmental document for the Third Street Light Rail Project (certified 1998) was a joint federal and state document, the supplemental is also a joint document, a Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report.

b. On October 17, 2007, the Department published the Draft Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (hereinafter "DSEIS/SEIR") and provided public notice in a newspaper of general circulation of the availability of the document for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.

c. Notices of availability of the DSEIS/SEIR and of the date and time of the public hearing were posted along the project site by staff on October 17, 2007. The Federal Transit Administration published a Notice of Availability of a Supplemental Environmental Impact Statement in the Federal Register on October 26, 2007.

d. On October 17, 2007, copies of the DSEIS/SEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.

e. The Notice of Completion for the DSEIR was filed with the State Secretary of Resources via the State Clearinghouse on October 15, 2007.

2) The Commission held a duly advertised public hearing on said Draft Supplemental Environmental Impact Report on November 15, 2007 at which time opportunity for public comment was given, and public comment was received on the DSEIS/SEIR. The period for acceptance of written comments ended on December 10, 2007.

3) The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 55-day public review period for the DEIR, prepared revisions to the text of the DSEIS/SEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DSEIS/SEIR. This material was presented in a "Draft Comments and Responses" document, published on July 11, 2008 was distributed to the Commission and to all parties who commented on the DEIR, to persons who had requested the document and was available to others upon request at Department offices.

4) A Final Environmental Impact Statement/Environmental Impact Report has been prepared by the Department, consisting of the Draft Environmental Impact Report, any consultations and comments received during the review process, any additional information that became available, and the Summary of Comments and Responses all as required by law.

5) On February 19, 2008, the San Francisco Municipal Transportation Agency (SFMTA) adopted as its preferred alternative the Locally Preferred Alternative (LPA) as described in the Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report as Alternative 3 Option B. The LPA would extend 1.7 miles north from the T-Third line terminus at Fourth and King Streets via Fourth and Stockton Streets to the Central Subway Terminus in Chinatown. Beginning at the existing T-Third station at Fourth and King Streets, the alignment would continue north on the surface of Fourth Street and go underground under the I-80 freeway to proceed in subway north under Fourth and Stockton Streets to Jackson Street in Chinatown. A construction option would continue the tunnels north of the Chinatown station under Stockton Street and Columbus Avenue to north of Union Street to allow for the removal of the tunnel boring machines. There would be one surface station on Fourth Street, north of Brannan Street and three subway stations at Moscone, Union Square/Market Street and Chinatown between Washington and Jackson Streets.

6) Project environmental files have been made available for review by the Commission and the public. These files are available for public review at the Department offices at 1650 Mission Street, and are part of the record before the Commission.

7) On August 7, 2008, the Commission reviewed and considered the Final Supplemental Environmental Impact Report and hereby does find that the contents of said report and the procedures through which the Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report was prepared, publicized and reviewed comply with the provisions of CEQA, the CEQA Guidelines and Chapter 31of the San Francisco Administrative Code.

8) The Planning Commission hereby does find that the Final Supplemental Environmental Impact Report concerning File No. 1996.281E – the Central Subway Project (Phase 2 of the Third Street Light Rail Project) reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant new information to the DSEIS/SEIR that would require recirculation under CEQA Guideline Section 15088.5, and hereby does CERTIFY THE COMPLETION of said Final Supplemental Environmental Impact Report in compliance with CEQA, the CEQA Guidelines and Chapter 31.

9) The Commission, in certifying the completion of said Final Supplemental Environmental Impact Report, hereby does find that the project described in the Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report and as adopted as the LPA by the San Francisco Municipal Transportation Agency, described as Alternative 3B in the Final Supplemental Environmental Impact Report would have the following significant unavoidable environmental impacts, which could not be mitigated to a level of non-significance:

a. A significant effect on the environment in traffic impacts to the following intersections (1) project-specific impacts at Third/King in the am peak hour; and (2) cumulatively considerable impacts at Third/King in the am and pm peaks; and Fourth and King in the pm peak.

b. A significant effect on the environment in housing and employment in that the project would displace 8 businesses and 17 residential units with the demolition at 933-949 Stockton Street.

c. A significant effect on the environment in cultural resources in that the project may affect archaeological deposits and would cause demolition of a contributing historic resource to the Chinatown historic district at 933-949 Stockton Street.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of August 7, 2008.

Linda Avery
Commission Secretary

AYES: Antonini, Borden, Lee, Sugaya,
NOES: Olague, Miguel, Moore
ACTION: Certification of EIR

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

FILE NO. 081138 MOTION NO. M08-145

[Affirm certification of Central Subway Project Final Supplemental EIR]

Motion affirming the certification by the Planning Commission of the Final Supplemental Environmental Impact Report for the Central Subway Project.

WHEREAS, The San Francisco Municipal Transportation Agency (the "Project Sponsor") is proposing to construct a continuation of the T-Third Light Rail Vehicle line from the Caltrain Station at Fourth and King Street to an underground station in Chinatown (the "Project"); and

WHEREAS, The Project Sponsor applied for environmental review of the Project, which is Phase 2 of the Third Street Light Rail Project for which the City certified a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) in 1998 (Planning Department Case File No 1996.281E); and

WHEREAS, The Planning Department for the City and County of San Francisco (the "Department") determined that a Supplemental EIS/EIR was required for the Project and provided public notice of that determination by publication in a newspaper of general circulation on June 11, 2005; and

WHEREAS, On October 17, 2007, the Department published the Draft Supplemental EIS/EIR and provided public notice in a newspaper of general circulation of the availability of the document for public review and comment and of the date and time of the Planning Commission public hearing on the Draft Supplemental EIS/EIR and mailed this notice to the Department's list of persons requesting such notice; and

WHEREAS, Notice of availability of the Draft Supplemental EIS/EIR and the date and time of the public hearing were posted along the project site on October 17, 2007 and on

October 26, 2007, the Federal Transit Administration published a notice of availability of the Supplemental EIS in the Federal Register; and

WHEREAS, On October 17, 2007, copies of the Draft Supplemental EIS/EIR were mailed or otherwise delivered to a list of persons requesting it, those noted on the distribution list in the Draft Supplemental EIS/EIR, and government agencies and a notice of completion was filed with the State Clearinghouse on October 15, 2007; and

WHEREAS, On November 15, 2007, the Planning Commission held a duly noticed public hearing on the Draft Supplemental EIS/EIR, at which time opportunity for public comment was received on the Draft Supplemental EIS/EIR, and written comments were received through December 10, 2007; and

WHEREAS, The Department prepared responses to comments received at the public hearing on the Draft Supplemental EIS/EIR and submitted in writing to the Department, prepared revisions to the text of the Draft Supplemental EIS/EIR and published a Draft Summary of Comments and Responses on July 11, 2008; and

WHEREAS, A Final Supplemental Environmental Impact Report ("Final Supplemental EIR") for the Project was prepared by the Department, consisting of the Draft Supplemental EIS/EIR, any consultations and comments received during the review process, any additional information that became available and the Draft Summary of Comments and Responses, all as required by law; and

WHEREAS, On August 7, 2008, the Commission reviewed and considered the Final Supplemental EIR and, by Motion No. M-17668, found that the contents of said report and the procedures through which the Final Supplemental EIR was prepared, publicized and reviewed complied with the provisions of the California Environmental Quality Act (CEQA), the State CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code; and

WHEREAS, By Motion No. M-17668, the Commission found the Final Supplemental EIR to be adequate, accurate and objective, reflected the independent judgment and analysis of the Department and the Commission and that the Summary of Comments and Responses contained no significant revisions to the Draft Supplemental EIS/EIR, adopted findings relating to significant impacts associated with the Project and certified the completion of the Final Supplemental EIR in compliance with CEQA and the State CEQA Guidelines; and

WHEREAS, On August 19, 2008, by Resolution No. 08-150, the San Francisco Municipal Transportation Agency Board of Directors approved the Project; and

WHEREAS, On August 20, 2008, John Elberling, President/CEO of Tenants and Owners Development Corporation, filed an appeal of the Final Supplemental EIR with the Clerk of the Board of Supervisors; and

WHEREAS, On August 27, 2008, Gerald Cauthen and Howard Wong filed an appeal of the Final Supplemental EIR with the Clerk of the Board of Supervisors; and

WHEREAS, On August 27, 2008, James W. Andrew, of Ellman, Burke, Hoffman & Johnson, on behalf of the owners of 800 Market Street, filed an appeal of the Final Supplemental EIR with the Clerk of the Board of Supervisors; and

WHEREAS, The Board of Supervisors held a public hearing on September 16, 2008, to review the decision by the Planning Commission to certify the Final Supplemental EIR; and

WHEREAS, The Final Supplemental EIR files and all correspondence and other documents have been made available for review by the Board of Supervisors, the Planning Commission and the public; these files are available for public review by appointment at the Planning Department offices at 1650 Mission Street, and are part of the record before the Board of Supervisors; and

WHEREAS, This Board has reviewed and considered the Final Supplemental EIR and heard testimony and received public comment regarding the adequacy of the Final Supplemental EIR; now, therefore, be it

MOVED, That this Board of Supervisors hereby affirms the decision of the Planning Commission in its Motion No. M-17668 to certify the Final Supplemental EIR and finds the Final Supplemental EIR to be complete, adequate and objective and reflecting the independent judgment of the City and in compliance with CEQA and the State CEQA Guidelines.

City and County of San Francisco

Tails

Motion

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 081138 **Date Passed:** September 16, 2008

Motion affirming the certification by the Planning Commission of the Final Supplemental Environmental Impact Report for the Central Subway Project.

September 16, 2008 Board of Supervisors — APPROVED

Ayes: 10 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin
Absent: 1 - Sandoval

File No. 081138

I hereby certify that the foregoing Motion was APPROVED on September 16, 2008 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

NOV 26 2008

Mr. Nathaniel P. Ford, Sr.
Executive Director/CEO
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, CA 94103

Re: Central Subway Record of Decision

Dear Mr. Ford:

This is to advise you that the Federal Transit Administration (FTA) has issued a Record of Decision (ROD) for the Central Subway Project. The comment period for the Final Environmental Impact Statement closed November 2, 2008. FTA's Record of Decision is enclosed.

Please make the ROD and supporting documentation available to affected government agencies and the public. Availability of the ROD should be published in local newspapers and should be provided directly to affected government agencies, including the State Inter-governmental Review contact established under Executive Order 12372. Please note that if a grant is made for this project, the terms and conditions of the grant contract will require that San Francisco Municipal Transportation Agency (SFMTA) undertake the mitigation measures identified in the ROD.

This ROD gives SFMTA authority to conduct residential and business relocations and real property acquisition activities in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act and its implementing regulation (49 CFR part 24). SFMTA should bear in mind that pre-award authority for property acquisition is not a commitment of any kind by FTA to fund the project, and all associated risks are borne by SFMTA.

Thank for your cooperation in meeting the NEPA requirements. If you have questions, please call Alex Smith at 415-744-2599

Sincerely,

Leslie T. Rogers
Regional Administrator

Enclosure

RECORD OF DECISION

CENTRAL SUBWAY PROJECT

Phase 2 of the Third Street Light Rail Project
City and County of San Francisco, California
By the
San Francisco Municipal Transportation Agency

Decision

The U.S. Department of Transportation (DOT), Federal Transit Administration (FTA) has determined that the requirements of the National Environmental Policy Act (NEPA) of 1969 have been satisfied for the Central Subway Project proposed by the San Francisco Municipal Transportation Agency (SFMTA). This FTA decision applies to Alternative 3B, Fourth/Stockton Alignment, which is described and evaluated in the Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Final SEIS/SEIR). The Response to Comments, Volume II of the Final SEIR was issued by the City and County of San Francisco in July 2008, and the Final SEIS/SEIR Volume I was issued by FTA in September 2008.

The Central Subway Project is Phase 2 of the Third Street Light Rail Project, which began operation in April 2007. The Project consists of a 1.7 mile extension, along Fourth and Stockton Streets, from the existing Third Street Light Rail Station at Fourth and King Streets to a new terminus in Chinatown at Stockton and Jackson streets. The Project would operate as a surface double-track light rail in a primarily semi-exclusive median on Fourth Street between King and Bryant streets. The rail would transition to a subway operation at a portal under the I-80 Freeway, between Bryant and Harrison streets, and continue underground along Fourth Street in a twin-tunnel configuration, passing under the BART / Muni Market Street tube and continuing north under Stockton Street to the Chinatown Station. The Project would have four stations: one surface station between Brannan and Bryant streets and three subway stations: Moscone, Union Square/Market Street, and Chinatown. Twin construction tunnels would extend under Stockton Street beyond the Chinatown Station, located under Stockton Street between Clay and Jackson streets, and continuing north under Stockton Street to Columbus Avenue in the vicinity of Washington Square. This temporary construction tunnel would be used for the extraction of the Tunnel Boring Machines. Alternative 3B was selected as the Locally Preferred Alternative (LPA) by the SFMTA on February 19, 2008

This Record of Decision covers final design and construction of the Phase 2, Central Subway Project, to complete the 7.1-mile long Third Street Light Rail Project. The Project was adopted by the SFMTA Board on August 19, 2008.

Background

The Bayshore System Planning Study completed by the San Francisco Municipal Railway in December 1993 was the first step in the planning process to implement major public transportation improvements in the southeastern quadrant of San Francisco. The study recommended implementation of light rail service along the Third Street Corridor, linking Visitacion Valley in the south with the Bayview Hunters Point, Mission Bay, South of Market, Downtown and Chinatown and promoting economic revitalization in these congested neighborhoods along the corridor within San Francisco.

The Federal environmental review process for the Third Street Light Rail Project, that included both the Phase 1 Initial Operating Segment, and the Phase 2 Central Subway, was initiated with a Notice of Intent published in the Federal Register on October 25, 1996 and the Final EIS/EIR was completed in November 1998. FTA issued a Record of Decision (ROD) for the Initial Operating Segment in March 1999. Approval of the Phase 2 Central Subway Project was deferred until the Third Street Light Rail was included in MTC's Regional Transportation Plan, which occurred in 2001 and made the Project eligible for federal funding. Preliminary engineering studies were initiated in 2003 to re-evaluate the feasibility of alignment and station alternatives, construction methods and tunnel portal locations. These studies were presented to the Community Advisory Group (CAG) beginning in 2003 and to the public beginning in 2004 and resulted in changes to the Project. As a result of these changes and with the approval of FTA, a Supplemental environmental review was initiated in 2005.

Public Opportunity to Comment

A Notice of Preparation (NOP) for the Supplemental Environmental Impact Report for The Central Subway Project was sent to the State Clearinghouse and was circulated by the San Francisco Planning Department in June of 2005. A second NOP was sent to all property owners and occupants within 300 feet of the alignment alternatives in September 2006. A Scoping meeting was held on June 21, 2005 and a Scoping Report was transmitted to FTA on November 27, 2006.

The Central Subway project has had an extensive public outreach program as a continuation of the outreach activities for the Initial Operating Segment (Phase 1) of the Third Street Light Rail. The outreach activities for the Central Subway, Phase 2 of the Project, include:

- Twenty-five community and Community Advisory Group meetings were held at various locations along the alignment to address issues of importance to local residents and businesses
- Over 150 presentations by SFMTA project staff to agencies, organizations and community groups throughout the City and the Bay Area.
- A project website, www.sfmta.com/central, was continually updated with the latest information.

- A project hotline, 415.701.4371, and an email address, central subway@sfmta.com, was provided for the submission of comments and questions about the Project.
- Project newsletters were written in English, Chinese and Spanish.
- A Community Advisory Group, with over 20 members representing major associations and stakeholder groups, was formed.
- A news conference was held on October 17, 2007, to announce the release of the Draft Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Draft SEIS/SEIR).
- A press conference was held by Mayor Gavin Newsom in Chinatown on February 19, 2008.
- The Project website incorporated an electronic version of the Draft SEIS/SEIR which increased the public's ability to review and comment on the document.
- Two widely publicized community meetings were held in the fall of 2007 immediately following the release of the Draft SEIS/SEIR.
- A Public Hearing on November 15, 2007 occurred to receive public input on the Draft Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Draft SEIS/SEIR).
- Presentations were made to several City agencies and Commissions.

The Draft Supplemental Environmental Impact Statement/Environmental Impact Report ("Draft SEIS/SEIR") was prepared and distributed to the public (affected agencies and organizations and individuals who had requested a copy of the document) on October 17, 2007. The Notice of availability of the Draft SEIS/SEIR was published in the San Francisco Examiner newspaper and was sent to a standard San Francisco Planning Department mailing list, including public libraries and persons requesting notification, and to those individuals expressing interest in the project. A Notice of Availability for the Draft SEIS was published in the Federal Register (Vol. 72, No 207, page 60847), October 26, 2007. The Notice of Availability was also posted in English and Chinese along the project corridor, including along both Third Street and Fourth Street beginning at King Street to Market Street and along Stockton Street to Washington Square. Newsletters were sent to the project mailing list announcing the availability of the Draft SEIS/SEIR. A postcard, announcing public meetings held on October 30, 2007 and November 8, 2007 to discuss the Draft SEIS/SEIR, were mailed to property owners and occupants within 300 feet of the project corridor. The Draft SEIS/SEIR was available for on-line review on the SFMTA web site. Over 160 copies in printed and compact disc versions, of the Draft SEIS/SEIR were mailed to agencies and individuals, including the State Clearinghouse.

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

- San Francisco Planning Department, 1660 Mission Street, First Floor Public Information Center;
- 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 State University Library, 1630 Holloway Street;
- Institute of Governmental Studies Library, Moses Hall, at University of California, Berkeley; 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 One 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. Forty written comments on the Draft SEIS/SEIR were received and 23 persons commented at the Public Hearing.

Alternatives Considered in the Supplemental EIS/EIR

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. 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 Transportation 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 (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 / No Build Alternative would result in reduced transit service reliability, increased transit travel times, increased energy consumption, and increased air pollution when compared to some or all of the Build Alternatives.

The No Build/TSM Alternative would also be less consistent than the Locally Preferred Alternative (LPA) 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, social, travel demand and other considerations set forth herein and in the Final SEIS/SEIR, the No Build Alternative is rejected as infeasible.

Under the Build Alternatives, Alternative 2 is the same alignment along King, Third, Fourth, Harrison, Kearny, Geary, and Stockton streets with a shallow subway crossing of Market Street as presented in the 1998 FEIS/FEIR, but 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.
- The Alternative 2 connection to the BART/Muni Market Street Subway at Montgomery Station involves a long narrow pedestrian walkway as compared to the more direct connection to the BART/Muni Market Street Subway at Powell Street Station for Alternatives 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 the intersections at Third and King streets and Sixth and Brannan Streets.

Alternative 3A is the same alignment as Alternative 3B (the LPA and the Proposed Project) but differs from Alternative 3B in the station locations and station platform size and tunnel length and has no surface station. 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.

Basis for the Record of Decision

The Central Subway Project has been the subject of a series of environmental and planning studies supported by preliminary engineering. 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 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).

The Fourth/Stockton Alignment 3B Alternative is selected as the LPA because it has the following major advantages:

- Lowest capital cost of all Build Alternatives and is the only Build Alternative that can be completed within the currently identified Project funding commitment.
- Least impact of the Build Alternatives 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 "de minimis" 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.
- Reduced construction duration and less surface disturbance and other construction-related impacts as compared to Alternative 2 as a result of using deep (TBM) tunneling methods.
- Reduced impacts associated with archaeological and historical resources, utility relocations, noise and vibration, and park and recreation facility impacts compared to the other Build Alternatives.
- Semi-exclusive right-of-way for light rail vehicles (similar to much of the N-Judah and the Third Street operation) on most of 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.

Measures to Minimize Harm

All mitigation measures set forth in the Final SEIS/SEIR are reproduced in Attachment 1, Mitigation Monitoring and Reporting Program (MMRP). None of the mitigation measures set forth in the Final SEIS/SEIR are rejected. Responsibility for implementation and monitoring are identified in the MMRP. FTA finds that the measures presented in the Final SEIS/SEIR and MMRP will mitigate, reduce, or avoid the significant environmental effects of the Project. The MMRP was adopted by SFMTA as part of Project approval on August 19, 2008. Mitigation measures will be incorporated into the final plans and specifications for the project and will be implemented by San Francisco City Departments (including SFMTA in cooperation with the Transbay Joint Powers Authority, the Golden Gate Bridge, Highway and Transportation District), with applicable jurisdiction as set forth in the MMRP.

The mitigation measures also include mitigation in the areas of traffic, freight and loading, socioeconomics, archaeological resources, geology and seismicity, hydrology and water quality, noise and vibration, hazardous materials during construction, air emissions, and visual/aesthetics during construction. SFMTA is responsible for making sure that all mitigation measures are implemented during construction and operation of the Project.

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

Final 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. The Final SEIS/SEIR and the Memorandum of Agreement (MOA) with the State Historic Preservation Officer (SHPO) includes mitigation for the demolition of this potentially historic resource that incorporates partial preservation of the building at 933-949 Stockton Street, which has been concurred with by the SFMTA. FTA thereby urges the City of San Francisco 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 final design, SFMTA and City of San Francisco Planning should work cooperatively with representatives of the Chinatown community in developing the final design and with the SF Landmarks Preservation Advisory Board and the SHPO as described in Attachment 2, Memorandum of Agreement. The final station design will undergo independent environmental review.

Determination and Findings

The environmental record for the Central Subway project is included in the Final SEIS, Volume II, dated July 11, 2008, and the Final SEIS, Volume I, dated September 23, 2008. These documents present the detailed statement required by NEPA and U.S.C. 5324(b) and include:

- The environmental impacts of the Project;
- The adverse environmental impacts that cannot be avoided should the Project be implemented; and,
- Alternatives to the proposed Project.

Comments Received on SFEIS within 30-day Comment Period

In response to the public notice of availability published in the Federal Register on October 3, 2008, the Federal Transit Administration received one response letter, from the United States Environmental Protection Agency (EPA), Region IX office (see Attachment 3). The letter noted EPA's ongoing support of several of the project's goals for minimizing environmental impacts, maximizing transit use, and meeting community needs. EPA also requested further clarification on whether the trucks removing excavated soil from the project site will be subject to the same air quality mitigation requirements as on-site construction vehicles. The air quality control measures, as outlined on pages 6-112 and 6-112a of the Central Subway Final SEIS/SEIR, Volume I September 2008 will be applied, where feasible, to soil haul trucks as well as to construction vehicles operating on-site to meet EPA standards. These control measures will be incorporated into the construction specifications and contract documents. With the implementation of these control measures, no significant air quality impacts were identified for the implementation of the Central Subway Project.

On August 7, 2008, the San Francisco Planning Commission certified the Final Supplemental Environmental Impact Report. The SFMTA adopted the Project Findings,

the Mitigation Monitoring and Reporting Program, and the Statement of Overriding Considerations on August 19, 2008. Three appeals of the Final SEIR certification by the Planning Commission were filed with the San Francisco Board of Supervisors; however two were withdrawn prior to the public hearing held before the Board of Supervisors on September 16, 2008. At the Board of Supervisors hearing, eleven individuals spoke in support of the appellant and nine individuals spoke in support of the certification for the environmental document. The Board of Supervisors voted to uphold the Planning Commission's certification of the Final SEIR (see Attachment 4).

On the basis of the evaluation of the social, environmental and economic impacts contained in the final SEIS and the written and oral comments offered by the public and other agencies, FTA has determined, in accordance with 49 U.S.C. 5324(b) that:

- Adequate opportunity was afforded for the presentation of views by all parties with vested economic, social or environmental interest in the Project and that fair consideration has been given to the preservation and enhancement of the environment and to the interests of the community in which the proposed Project is to be located; and
- All reasonable steps have been taken to minimize the adverse environmental effects of the proposed Project and where adverse environmental effects remain, no reasonable alternative to avoid or further mitigate such effects exists.

Conformity with Air Quality Plans

The Federal Clean Air Act, as implemented by 40 CFR Parts 51 and 93, as amended, requires that transportation projects conform with the State Implementation Plan's (SIP) purpose of eliminating or reducing the severity and number of violations of the national ambient Air Quality Standards (NAAQS) and of achieving expeditious attainment of such standards. The Environmental Protection Agency (EPA) regulation implementing this provision of the Clean Air Act establishes criteria for demonstrating that a transportation project conforms to the applicable air quality plans. The performance of the selected light rail project in meeting the conformity criteria contained in the EPA regulation was evaluated in the Draft and Final SEIS, Section 5.11. The Project meets the criteria in 40 CFR Parts 51 and 93 for projects from a conforming plan and Transportation Improvement Program (TIP) and conforms to air quality plans for the Bay Area Region and the Clean Air Act Amendments of 1990.

Section 4(f) Coordination and Determination

A total of three publicly-owned parks and recreation areas and one potentially historic property protected by Section 4(f) of the Department of Transportation Act of 1966, amended in 2005 as part of SAFETEA-LU (Section 6009(a)) to address "de minimis, or minor impacts and simplify the review and approval process, are addressed in the SEIS. FTA concurs with the San Francisco Recreation and Parks Department with the de minimis finding for impacts to Union Square, Willie "Woo Woo" Wong and Washington Square parks. Attachment 5 describes the San Francisco Recreation and Parks

unanimous vote to support a de minimis finding by FTA. Coordination and concurrence with San Francisco regarding the temporary impacts is found in the Final SEIS.

FTA's rule establishing procedures for determining that the use of a Section 4(f) property has a de minimis impact on the property is found at 23 CFR 771 and 774. In accordance with the provisions of 23 CFR Part 774.7 (b), FTA has determined there is sufficient supporting documentation to demonstrate that the impacts to Section 4(f) property, after avoidance, minimization, mitigation, or enhancement measures are taken into account, are de minimis as defined in Part 774.17 and the coordination required in Part 774.5 (b) has been completed.

Section 106

The Programmatic Agreement between FTA and the SHPO and SFMTA signed in 1998 for the Third Street Light Rail Project (that included the Phase 2 Central Subway), has been revised in a MOA (Attachment 2) to address the treatment plan and documentation and mitigation for the Central Subway, Alternative 3B. The MOA addresses both archaeological resources for the sub-surface excavation/tunneling, and the historic property for Transit Oriented Development (TOD) above the Chinatown Station at 933-949 Stockton Street. The final design for the TOD portion of the station will be under the jurisdiction of the San Francisco Planning Department and will include input from architectural historians, the Chinatown community, and the Landmarks Preservation Advisory Board consistent with the mitigation measures in the MOA and MMRP.

Based on the findings in the Final SEIS, and the MOA for the Section 106 properties, FTA and the California SHPO agree that a finding of adverse effect will occur at 933-949 Stockton Street SFMTA will abide by all MOA requirements.

Finding

On the basis of the determinations made in compliance with relevant provisions of federal law, FTA finds the Central Subway, Phase 2 of the Third Street Light Rail Project, has satisfied the requirements of the National Environmental Policy Act of 1969, the Clean Air Act of 1970, and the U.S. Department of Transportation Act of 1966, all as amended.

Leslie T. Rogers
Regional Administrator, Region IX

NOV 2 6 2008
Date

Re: FW: Central Subway SEIS/R Acknowledgement

Paul Maltzer to: Hollins, Guy 03/28/2012 01:05 PM
Cc: "Crossman, Brian", "Jacinto, Michael", Bill Wycko

History: This message has been replied to.

Guy

I have looked into the Final Supplemental EIS/EIR for Central Subway, regarding your question below about the need for temporary piling under properties along Stocton Street between Market Street and Geary (described in email below.) The Final Supplemental EIS/EIR does specifically describe and analyze impacts from temporary secant piles along Stockton Street between Market and Geary, for shoring purposes related to construction of the subway tunnel and Union Square Station. As such, the Final Supplemental EIS/EIR already addressed this potential construction activity and its potential impacts. Therefore no further environmental review is required.

The proposed Resolution language from the City Attorney's office (in email below) also looks fine.

Paul Maltzer

"Hollins, Guy" <Guy.Hollins@sfmta.com>

"Hollins, Guy"
<Guy.Hollins@sfmta.com>
03/28/2012 12:48 PM

To "Maltzer, Paul" <Paul.Maltzer@sfgov.org>, "Jacinto, Michael" <michael.jacinto@sfgov.org>
cc "Crossman, Brian" <Brian.Crossman@sfgov.org>
Subject FW: Central Subway SEIS/R Acknowledgement

Hi Paul and Michael –

I forgot to mention that the proposed language (in the Resolutions) from the City Attorney's Office reads:
"there have been no substantial changes proposed for the Project, and no substantial changes in Project circumstances, that would require major revisions to the Final Supplemental EIS/EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant impacts; and there is no new information of substantial importance that was not known and could not have been known at the time the Final Supplemental EIS/EIR was certified, that shows either significant environmental effects not discussed in the Final Supplemental EIS/EIR, 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"

Thanks,

Guy

From: Hollins, Guy
Sent: Wednesday, March 28, 2012 12:26 PM
To: Maltzer, Paul
Subject: FW: Central Subway SEIS/R Acknowledgement

Hi Paul –

Here is the email I just prepared for Michael Jacinto regarding the proposed work.

Thanks,

Guy Hollins
(415) 701-5266

From: Hollins, Guy
Sent: Wednesday, March 28, 2012 12:19 PM
To: Jacinto, Michael
Cc: Crossman, Brian
Subject: Central Subway SEIS/R Acknowledgement

Hi Michael –

As we discussed, the Central Subway project needs to move forward with Resolutions of Necessity at the Board of Supervisors to preserve our ability to do work at four properties in Union Square:

- Neiman Marcus located at 150 Stockton Street, San Francisco, Assessor's Block 0313, Lot 018
- Macy's located at 233 Geary Street, San Francisco, Assessor's Block 0314, Lot 001
- Crate & Barrel located at 55 Stockton Street, San Francisco, Assessor's Block 0327, Lots 001, 002, 003, and 020
- Barney's 77 O'Farrell Street, San Francisco, Assessor's Block 0328, Lots 003 and 004

The work in question is the installation of temporary piling under these properties for the tunnel and Union Square station contracts. Over the past few months, we have notified each property owner of the need to perform the work under a license agreement, appraised the value of these licenses, and made offers to the property owners in accordance with FTA requirements. Each of the property owners have responded to our correspondence(s) and we are in various stages of license negotiation with each property. We are pushing forward with these license negotiations, however; because the installation of these temporary pilings (also known as "Headwalls") are on the tunnel contractor's critical path, we cannot risk a delay to this project if one or more of the property owners does not sign the license agreement.

Please confirm that the actions described above are covered in the Central Subway Projects SEIS/R completed in 2008, and that no additional environmental review is needed. I've attached a previous email from Debra Dwyer sent in 2010 regarding a similar acknowledgement. If possible, can you provide this acknowledgement today or tomorrow since we are under a tight timeline to turn in documents to the Clerk of the Board.

I appreciate your help.

Thanks,

Guy Hollins
Central Subway Project
(415) 701-5266
[attachment "20120328120132292.pdf" deleted by Paul Maltzer/CTYPLN/SFGOV]

SAN FRANCISCO
PLANNING DEPARTMENT

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May 4, 2009

Mr. John Funghi
San Francisco Municipal Transportation Agency
One South Van Ness, 7th Floor
San Francisco, CA 94103

RE: **CASE NO. 2008.0849R**
CENTRAL SUBWAY PROJECT
Fourth and King Streets to Stockton and Jackson Streets

Dear Mr. Funghi:

On August 4, 2008, the Department received your request for a General Plan Referral as required by Section 4.105 of the Charter and Section 2A.53 of the Administrative Code.

PROJECT DESCRIPTION

The proposed Central Subway Project is the second phase of the San Francisco Municipal Transportation Agency's (SFMTA) Third Street Light Rail Project. The Central Subway Project will extend Muni transit service improvements from the present terminus of the Third Street Light Rail Line at Fourth and King Streets through South of Market, Downtown terminating in Chinatown.

The Central Subway project would extend rail operations 1.7 miles north from the Third Street Light Rail Line terminus (reviewed under Case No. 1996.281!ER) at Fourth and King Streets via Fourth Street and Stockton Street, terminating in Chinatown. Beginning at the existing T-Third station platform on Fourth at King Streets, a new surface light rail would be constructed north on Fourth Street, operating in a semi-exclusive right-of-way, to a double-track underground portal between Bryant and Harrison Streets under I-80. A double-track subway operation would continue north under Fourth Street to Market Street, continuing under Stockton Street to a terminus in the vicinity of Stockton and Jackson Streets. One new surface station at Fourth Street, north of Brannan Street, and three subway stations at Moscone Center, Union Square/Market Street, and Chinatown would be constructed (see Attachment 1). The new Union Square/Market Street would connect with the existing BART/MUNI Metro Powell Street Station)

To accommodate construction activities, the tunnel for the Central Subway would be extended north of the Chinatown Station approximately 2,000 feet to facilitate construction and extraction of the Tunnel Boring Machine (TBM). The construction tunnel would continue north on Stockton Street to a temporary shaft on Columbus Avenue near Washington Square Park where the TBM would be extracted and construction equipment and materials could be delivered. This section of

Attorney Client Privilege: Central Subway - RON Confirmation

Sarah Dennis-Phillips to: Hollins, Guy
Cc: "Crossman, Brian", Audrey Pearson

03/29/2012 09:06 AM

Hi Guy and Audrey-

All of the parcels you note below, with the exception of Block 0327, Lot 020, were considered in the referral 2008.0849R, attached. However, no work is actually happening beneath Block 0327, Lot 020, and it is just cited below as it is one of the lots the C&B building sits on.

Based on my reading of SEC. 4.105 of the Charter, the licenses and the installation of temporary pilings associated with subway construction do not constitute a separate project other than the overall "Subway" project, which was cleared in the referral attached. And as all properties under which the work is actually occuring were considered in that referral, no additional GPR is required for this work.

Audrey, please let us know if you concur, and if you believe I should draft something to this effect as a note to the file. I don't think it rises to that level?

And Guy, thanks for checking!

Sarah Dennis Phillips, AICP
Senior Planner
Manager, Plans and Programs

San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103-2479
415.558.6314
"Hollins, Guy" <Guy.Hollins@sfmta.com>

"Hollins, Guy"
<Guy.Hollins@sfmta.com>
03/28/2012 12:40 PM

To Sarah Dennis <Sarah.Dennis@sfgov.org>
cc "Crossman, Brian" <Brian.Crossman@sfgov.org>
Subject Central Subway - RON Confirmation

Hi Sarah -

As a follow up to my voicemail, the Central Subway project needs to move forward with Resolutions of Necessity at the Board of Supervisors to preserve our ability to do work at four properties in Union Square:

- Neiman Marcus located at 150 Stockton Street, San Francisco, Assessor's Block 0313, Lot 018
- Macy's located at 233 Geary Street, San Francisco, Assessor's Block 0314, Lot 001
- Crate & Barrel located at 55 Stockton Street, San Francisco, Assessor's Block 0327, Lots 001, 002, 003, and 020
- Barney's 77 O'Farrell Street, San Francisco, Assessor's Block 0328, Lots 003 and 004

The work in question is the installation of temporary piling under these properties to construct the tunnels and the Union Square station. Over the past few months, we have notified each property owner of the need to perform the work under a license agreement, appraised the value of these licenses, and made offers to the property owners in accordance with FTA requirements. Each of the property owners have responded to our correspondence(s) and we are in various stages of license negotiation with each property. We are pushing forward with these license negotiations, however; because the installation of these temporary pilings (also known as "Headwalls") are on the tunnel contractor's critical path, we cannot risk a delay to this project if one or more of the property owners does not sign the license agreement.

These license agreements are required for the tunnel construction as well as construction of Union Square Station. Can you confirm that the attached General Plan Referral suffices and that no additional GPR is required for this work?

I appreciate your help.

Thanks,

Guy Hollins
Central Subway Project
(415) 701-5266

GP.REFERRAL.PDF

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 12-036

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) intends to construct the Central Subway Project (Project) to provide rail service to the South of Market and Chinatown neighborhoods; and,

WHEREAS, The Project is the second phase of the SFMTA's Third Street Light Rail Project and the Project will add 1.67 miles of light rail track north from the northern end of the new Third Street Light Rail at Fourth and King Streets to a terminal in Chinatown, serve regional destinations, including Chinatown (the most densely populated area of the country that is not currently served by modern rail transportation), Union Square, Moscone Convention Center, Yerba Buena, SoMa and AT&T Park, connect BART and Caltrain (the Bay Area's two largest regional commuter rail services), serve a low auto ownership population of transit customers, increase transit use and reduce travel time, reduce air and noise pollution, and provide congestion relief; and,

WHEREAS, The public interest and necessity require the construction and operation of the Project to achieve such benefits; and,

WHEREAS, The Project will include four subway stations and connecting subsurface tunnels to provide direct rail service to the South of Market and Chinatown neighborhoods, and the Project has been planned and located in a manner that will be most compatible with the greatest public good and the least private injury; and,

WHEREAS, The Final Environmental Impact Statement / Environmental Impact Report ("SEIS/SEIR") for the Project was certified by the San Francisco Planning Commission on August 7, 2008 and a Record of Decision was issued by the Federal Transit Administration on November 26, 2008; and,

WHEREAS, There have been no substantial changes proposed for the Project which will 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 effects; no substantial changes have occurred with respect to the circumstances under which the Project is being undertaken which will require major revisions in the SEIS/SEIR; and no new information of substantial importance has become available which was not known and could not have been known at the time the SEIS/SEIR was certified as complete and that would result in either significant environmental effects not discussed in the SEIS/SEIR, a substantial increase in the severity of previously identified significant effects, or feasible mitigation measures or alternatives that would substantially reduce one of the significant effects but which have not been adopted; and,

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

WHEREAS, The property, located at 77 O'Farrell Street, San Francisco, Assessor's Block 0328, Lots 003 and 004 (Property), abuts the Project right-of-way and is owned by Stockton Street Properties, Inc. (Owner), however the Office of the Assessor-Recorder identifies Barney's, Inc. as the record owner (Record Owner) because it holds a long-term leasehold interest in the Property, so required notices shall be provided to both the Owner and Record Owner; and

WHEREAS, To construct the Project's Union Square/Market Street Station, the SFMTA needs to acquire a temporary construction license (License) to install subsurface piles within an approximate 529-square-foot, rectangular portion of the Property area, approximately 99.7' to 155' below the ground surface, and to install settlement monitoring equipment at the Property; and,

WHEREAS, The acquisition and use of the License is necessary to construct the Project's Union Square/Market Street Station; and,

WHEREAS, The Project has been planned and located in a manner that will be most compatible with the surrounding area, the greatest public good and interest, and the least private injury; and,

WHEREAS, The SFMTA has limited any potential private injury by seeking to acquire the License; and,

WHEREAS, The SFMTA has obtained an appraisal dated as of November 17, 2011, which determined that the fair market value of the License is $10,500; the SFMTA also obtained a review appraisal of the License that concurred that its fair market value is $10,500; and,

WHEREAS, The SFMTA mailed an offer to the Owner on January 17, 2012, to acquire the License for $10,500, subject to the negotiation of a license agreement, and the SFMTA is in discussions with the Owner to negotiate the License; and,

WHEREAS, If the SFMTA and Owner do not agree to the acquisition of the License the next two months, it would delay the construction of the Project and cause Project delays; and,

WHEREAS, Funding for the acquisition of the License, either by negotiation or by eminent domain, will be furnished from federal, state and local sources; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors requests the Board of Supervisors to consider adoption of a Resolution of Necessity for the acquisition of the License for the real property at 77 O'Farrell, San Francisco for its fair market value; and if the Board of Supervisors adopts such Resolution of Necessity, authorizes the Director of Transportation to take such actions that are consistent with the City's Charter and all applicable law, to proceed to acquire the License by eminent domain.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of March 20, 2012.

R. Boomer

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ATTACHMENT_____

OWNER:	PROJECT:
Stockton Street Properties	SFMTA Central Subway Project
Attn: Lori Coleman	San Francisco, California
Mailing Address:	APN: 0328-003
909 Montgomery Street, Suite 200	
San Francisco, CA 94133	Temporary License: Yes
	Approximate Square Footage: 529
Phone No.: 415-277-6836	
Property Address:	OWNER OCCUPIED: N/A
77 O'Farrell	TENANT: Barney's New York
San Francisco, CA 94108	

NEGOTIATOR'S DIARY

DATE:	REMARKS:	Copy
7/8/11	Notice of Intent to Appraise for Subsurface Encroachment and License Agreement for Building Inspection and Installation of Exterior Monitoring Equipment; attached was the City and County of San Francisco Real Estate Division, *"The Use of Eminent Domain by the City and County of San Francisco: A Summary of the Process and Property Owners' Rights".* Signed by John Funghi, Program Director. Sent USPS Certified Mail.	✓
7/12/11	USPS Certified Mail Receipt signed and returned to SFMTA Central Subway Project Office, 821 Howard Street, San Francisco, CA 94103.	✓
11/17/11	SFMTA obtained an independent real property appraisal for the temporary license.	
1/9/12	SFMTA obtained a review of the independent real property appraisal for the temporary license.	
1/17/12	Offer to Purchase a Temporary License Agreement at 77 O'Farrell Street Assessor's Parcel No. Block 328, Lot 003, San Francisco, CA 94108. Signed by Ed Reiskin, Director of Transportation. Sent USPS Certified Mail.	✓
No Date Provided on Receipt	USPS Certified Mail Receipt signed and returned to SFMTA Central Subway Project Office, 821 Howard Street, San Francisco, CA 94103.	✓
1/26/12	SFMTA transmitted plans for the temporary license scope to the Owner's representative for review.	

2/1/12	The SFMTA and its design engineers met with the Owner's representative to review plans for the installation of subsurface piles and exterior settlement monitors, and to discuss the temporary license agreement.	
2/7/12	The SFMTA provided information regarding the location of the headwall and inclined piles relative to the store entrance on Stockton Street.	
2/8/12	The SFMTA provided additional engineering plans and details of the proposed installation of subsurface piles and exterior settlement monitors to Owner's representative.	
2/14/12	The Owner's representative indicated a willingness to enter into a temporary license agreement with the SFMTA, provided that certain unspecified insurance issues are agreed upon and that outstanding punchlist items – related to the Central Subway's utility relocation project – were complete at the property.	
2/14/12	The SFMTA provided information to the Owner's representative regarding the settlement mitigation and monitoring during the Union Square Station construction; this scope of work will be part of a future temporary license agreement.	
3/9/12	The Owner's representative transmitted a redlined version of the license agreement and approved direct communication between the Owner's legal counsel and the City Attorney's Office.	
3/15/12	Guy Hollins, Central Subway Project, E-mailed Lori Coleman re: hearing to adopt a Resolution of Necessity to acquire the Property.	
3/20/12	SFMTA Board Resolution No. 12-036 adopted.	✓
3/28/12	SFMTA and Owner's representative met onsite to confirm that all outstanding punchlist items – related to the Central Subway's utility relocation project – have been completed. Owner's representative requests meeting with tunnel contractor to better understand schedule and sequence of work adjacent to 77 O'Farrell.	

central T subway

Connecting people. Connecting communities.

CS Letter No. 0886

July 8, 2011

Stockton Street Properties
909 Montgomery Street, Suite 200
San Francisco, CA 94133

Attn: To Whom It May Concern

Reference: Project No. M544.1, Contract No. CS-149, Final Design
Task No. 1-5.02 Encroachments and Right of Way

Subject: Notice of Intent to Appraise for Subsurface Encroachment and License Agreement for Building Inspection and Installation of Exterior Monitoring Equipment
Property Block No. 328 lot 003
77 O'Farrell Street
San Francisco, CA 94108

The City and County of San Francisco, acting through the San Francisco Municipal Transportation Agency ("SFMTA"), is planning a public construction project known as the Central Subway (the "Project"). The Project will extend light rail service from the Third Street Light Rail Station at Fourth and King Street to underground subway stations at Moscone Center, Market Street/Union Square and Chinatown.

According to the latest equalized county assessment roll, you own the property within the general area that may be affected by the construction of the Project tunnel. SFMTA will closely monitor this area before, during and after tunnel construction to detect any construction-related settlement.

To arrange for this comprehensive monitoring, SFMTA plans to conduct non-invasive building inspections of all buildings in the area and install exterior monitoring equipment on these buildings. The equipment for your building will consist of exterior mounted monitoring prisms. Schematic plans and specifications for the exterior mounted monitoring equipment are enclosed for your convenience. Once installed, SFMTA will remotely read the equipment and would only need further access to your property to the extent needed to maintain, repair and eventually remove the equipment.

The Project's tunnel contractor will contact you this fall to arrange a mutually-agreeable time to visually inspect your property and to discuss the exterior monitoring equipment to be installed at your building. If you have concerns about the proposed placement of the equipment at your building, our contractor will work with you to find an alternative location. The contractor will also work with you to find a mutually-agreeable time to install the equipment, which should take no more than one (1) day.

To facilitate construction of the Tunnel and Union Square/Market Street subway station, SFMTA will be installing subsurface jet grouting and drilled secant pile walls (together, the "Inclined Piles") in the City's right of way under Stockton Street. The jet grouting will mix existing soil material with grout to provide a more suitable ground condition for subsurface construction. The drilled secant piles will be comprised of reinforced concrete piles drilled at an angle to an approximate depth of 135 feet below ground surface. SFMTA anticipates that a portion of the Inclined Piles may encroach approximately four feet into your property at a depth of 100 to 135 feet below ground surface.

SFMTA may also be interested in installing subsurface horizontal grout pipes under your building to provide additional support during the station construction period. The grout pipes would be installed at approximately 30 to 40 feet below the ground surface of Stockton Street. SFMTA should know whether such grout pipes are needed once the station drawings are 90% completed (estimated to be in August of 2011).

Installing the Inclined Piles and any grout pipes should not impact normal operations at your building, due to the depth at which they would be installed. Once installed, they would need to remain in place until the station is fully constructed (anticipated to be September of 2016). You would be able to remove them for any future excavation work at your property after that point. Due to these factors, the encroaching Inclined Piles and any grout pipes under your building would have no discernable effect on the existing or future property improvements.

SFMTA is interested in obtaining a temporary license for any portion of the Inclined Piles that encroaches onto your property and for the possible installation of subsurface grout pipes ("Proposed License"). SFMTA believes the fair market value of the Proposed License is nominal, but SFMTA now intends to obtain a fair market value appraisal to confirm the value of the Proposed License.

If the appraised value of the Proposed License is more than SFMTA has anticipated and SFMTA wishes to use State or Federal funds to acquire the Proposed License, it would need to comply with the laws applicable to those funds. Pursuant to those laws, the purposes of this letter are to 1) inform you that SFMTA is considering acquiring the Proposed License for a public use, 2) inform you that the SFMTA has decided to obtain an appraisal to determine the fair market value of the Proposed License, and 3) provide you with information concerning the City's land acquisition procedures.

In addition, if the appraisal determines that the Proposed License has more value than previously anticipated by SFMTA and SFMTA still wishes to acquire the Proposed License, we will offer to acquire the Proposed License for an amount determined by SFMTA to be just compensation. In no event will the offer be for less than the appraised value reported in SFMTA's appraisal.

Finally, if SFMTA decides to acquire the Proposed License for the Project, it hopes to quickly reach mutual agreement with you on the fair market value of the Proposed License. SFMTA believes this will assure consistent treatment for all affected parties and is the best way to avoid litigation. In the event that the parties are unable to reach agreement, please refer to the enclosed pamphlet entitled "The Use of Eminent Domain By The City and County of San Francisco (A Summary Of the Process And Property Owners' Rights)".

If you have any questions in regard to the matters set forth in this letter, please contact David Greenaway at (415) 701-4237. Please note that this letter is only for the purposes mentioned

above, and it is not a notice to vacate or move from the property, a notice that SFMTA will or has decided to acquire the Proposed License. If SFMTA decides that it wishes to acquire the Proposed License, it will send you a separate letter with the relevant information at that time.

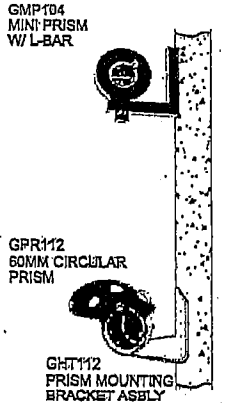
Sincerely,

John Funghi
Program Director
JF:gh

Attachments:
The Use of Eminent Domain by the City and County of San Francisco
Reflector Prism Installation System Plans and Specifications

Cc: David Greenaway, SFMTA (w/o attachments)
Guy Hollins, PMCM (w/o attachments)
CS File No. M544.1.5.1020

Leica Geosystems - when it has to be right



PRISMATIC REFLECTORS

INSTALLATION:

ALL PRISMS TO BE ATTACHED TO STRUCTURES USING LOCTITE MASONARY ADHESIVE PART NO. 82093

REMEDIATION:

ALL PRISMS TO BE REMOVED BY BREAKING THE ADHESIVE BOND WITH A CHISEL OR LIKE DEVICE REMOVING ANY REMAINING ADHESIVE FROM THE SURFACE AND REFINISHING AS REQUIRED (STUCCO/PAINT)

SFMTA | Municipal Transportation Agency

Geodetic Monitoring System
Plans and Specifications

Reflector Installation
Schmematic Designs

Job No.	
Date	
Scale	[NO SCALE]
Drawn / Chkd	

D
SHEET

Exhibit "B"

THE USE OF EMINENT DOMAIN BY THE CITY AND COUNTY OF SAN FRANCISCO

A SUMMARY OF THE PROCESS AND PROPERTY OWNERS' RIGHTS

CITY AND COUNTY OF SAN FRANCISCO
REAL ESTATE DIVISION
JANUARY 2009

ABOUT THIS PAMPHLET

SB 698, which went into effect on January 1, 2008 and amended Section 1255.410 of the California Code of Civil Procedure and Section 7267.2 of the California Government Code, requires that every property owner whose property may be the subject of an eminent domain action be given an "informational pamphlet" outlining the property owner's rights under the Eminent Domain Law of California.

The City and County of San Francisco has prepared this pamphlet based on the efforts of the following organizations:

League of California Cities

California State Association of Counties

Association of California Water Agencies

California Special Districts Association

California Redevelopment Association

INTRODUCTION

Eminent domain (sometimes called "condemnation") is the power of the government to purchase private property for a "public use" so long as the government pays the property owner "just compensation," which is the fair market value as determined by appraisal and which may ultimately be determined by a court. An owner's right to be paid just compensation in eminent domain is guaranteed by the Federal and State Constitutions and applicable State laws.

Whenever possible, the City tries to avoid eminent domain proceedings because of the added time, concern and cost to everyone. But if the City and a property owner cannot reach an agreement on the price for needed property, the City will consider whether to proceed with an eminent domain action.

The City decides whether to acquire private property for a public project only after a thorough public review of the project. That review process includes one or more public hearings, and, if required, environmental review for the project under the California Environmental Quality Act (CEQA). Ultimately, the City may not exercise its eminent domain power unless the San Francisco Board of Supervisors approves the action after a public hearing. Often, before the Board of Supervisors acts, a particular City commission with authority over the project also holds a public hearing to consider the proposed exercise of eminent domain.

This pamphlet provides general information about the eminent domain process under California law and the property owner's rights in that process.

IMPORTANT NOTE:

THIS PAMPHLET REFLECTS THE CURRENT LAW AS OF THE PUBLICATION DATE. BUT THE INFORMATION IN THIS PAMPHLET IS NOT, NOR SHOULD YOU CONSTRUE IT TO BE, LEGAL, FINANCIAL OR TAX ADVICE TO YOU. YOU SHOULD CONSULT WITH QUALIFIED LEGAL COUNSEL AND OTHER APPROPRIATE EXPERTS FOR LEGAL, FINANCIAL AND TAX ADVICE REGARDING YOUR SPECIFIC SITUATION, RATHER THAN RELYING ON THIS PAMPHLET AS A SUBSTITUTE FOR THAT ADVICE.

FREQUENTLY ASKED QUESTIONS AND ANSWERS

- What is a "public use"?

A "public use" is a use that confers public benefits, like the provision of public services or facilities or the promotion of public health, safety, and welfare. Public uses include a wide variety of projects, such as street and transportation improvements, parks, schools, construction of water pipelines or storage facilities, construction of civic buildings, open space and watershed preservation, and redevelopment of blighted areas. Some public uses are for private entities, such as universities, hospitals and public utilities, which serve the public. These are some examples of public uses. There are many other public purposes for which a public agency may use eminent domain.

Proposition 99, adopted by California's voters in June 2008, amended the California Constitution to prohibit the government from "acquiring by eminent domain an owner-occupied residence for the purpose of conveying it to a private person." Sections 19(c) and 19(d) of this law provide that the government is still allowed to use eminent domain to acquire owner-occupied residences if the purpose is related to public health and safety; preventing serious, repeated criminal activity; responding to an emergency; remedying hazardous environmental contamination that poses a threat to public health and safety; or for a public work or improvement.

- What is "just compensation"?

Just compensation is the fair market value of the property being acquired by the government. State law defines fair market value as "the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available."

THE EMINENT DOMAIN PROCESS AND THE PROPERTY OWNER'S RIGHTS

The eminent domain process begins with the creation of a public project. When selecting a project location, the City is guided by the goal of rendering the greatest public good and the least private injury and inconvenience. If the City determines that all or a portion of your property may be necessary for a public project, it will begin an appraisal process to determine the property's fair market value.

- **How is the fair market value of my property determined?**

The City will retain an independent, accredited appraiser familiar with local property values to appraise your property. The appraiser will invite you to come along during an inspection of your property. You may give the appraiser any information about improvements and any special features that you believe may affect the value of your property. It is in your best interest to provide the appraiser with all the useful information you can to ensure that nothing of value will be overlooked. If you are unable to meet with the appraiser, you may wish instead to have a person who is familiar with your property meet with the appraiser.

After the inspection, the appraiser will complete an appraisal that will include a determination of your property's fair market value and the information upon which the fair market value is based. The appraiser will provide the City with the appraisal. The City will then make a written offer to purchase your property, which will be for no less than the amount of the appraisal. The offer will also include a summary of the appraisal.

- **What factors does the appraiser consider in determining fair market value?**

Each parcel of real property is different. Therefore, no single formula can be used to appraise all properties. Factors an appraiser typically considers in estimating fair market value include the following:

- The location of the property;
- The age and condition of improvements on the property;
- How the property has been used;
- Whether there are any lease agreements relating to the property;
- Whether there are any environmental issues, such as contaminated soil;
- Applicable current and potential future zoning and land use requirements;
- How the property compares with similar properties in the area that have been sold recently;
- How much it would cost to reproduce the buildings and other structures, less any depreciation; and
- How much rental income the property produces, or could produce if put to its highest and best use.

- Will I receive a copy of the appraisal?

Before proceeding with eminent domain, the City must provide you with its purchase offer, a summary of the appraiser's opinion, and the basis for the City's offer, and give you a reasonable period to consider the offer. Among other things, the appraisal summary must include the following information:

- A general statement of the City's proposed use for the property;
- An accurate description of the property to be acquired;
- A list of the improvements covered by the offer;
- The amount of the offer; and
- The amount considered to be just compensation for each improvement that is owned by a tenant and the basis for determining that amount.

State law requires the City to show you a copy of the full appraisal only if your property is an owner-occupied residential property with four or fewer residential units. Otherwise, the City may, but is not required to, disclose its full appraisal during negotiations (though different disclosure requirements apply during the litigation process if the issue of fair market value goes to court).

- Can I have my own appraisal done?

Yes. You may decide to obtain your own appraisal of the property in negotiating the fair market value with the City. At the time of making its initial offer to you, the City must offer to reimburse you the reasonable costs, not to exceed $5,000, of an independent appraisal you obtain for your property. To be eligible for this reimbursement, you must have the independent appraisal conducted by an appraiser licensed by the State Office of Real Estate Appraisers.

- What advantages are there in selling my property to the City?

As a real estate transaction, a sale of property to the City is similar to a sale of property to a private buyer. But there may be certain financial advantages to selling to a public entity such as the City:

- You will not be required to pay for real estate broker commissions, preparation of sale documents, buyer's title insurance policy premiums or recording fees required in closing the sale. The City will pay any and all of these costs.
- Sales to the City are not subject to the local documentary transfer tax, which generally applies to sales of private property from one private owner to another. However, if the property is located within a charter city other than San Francisco, a sale to the City may be subject to the charter city's separate real estate transfer tax.
- The City cannot give you tax advice or direction. You might be eligible for certain real property tax and income tax advantages, and your tax liability may differ depending on where your property is located. You

should check with the Internal Revenue Service (IRS) and/or consult your personal tax advisor or lawyer for details.

- **If the City acquires only a portion of my property, will I be paid for the loss to my remaining property?**

In general, when the City needs only a part of your property for the project, it will make every reasonable effort to ensure you do not suffer a financial loss to the "remainder" property. The City will compensate you for any loss in value to your remaining property that is not offset by the benefits conferred by the project for which the City is taking your property. This compensation is often referred to as "severance damages."

Whether the City's purchase of a portion of your property will result in any loss in value to the remainder is a complex appraisal issue. If the appraiser concludes the proposed acquisition will have this effect, a City real estate representative will explain the effect to you.

Also, if any part your property that would remain after the City takes the portion it needs is of such a shape or condition as to be of little market value, the City will offer to acquire that remaining part (or remnant) from you, if you so wish.

- **Will I be compensated for loss of goodwill to my business?**

If you are the owner of a business that operates on the property being acquired, you may have a right to additional compensation for lost business goodwill if the loss is caused by the acquisition of the property. "Goodwill" consists of the economic value of a business, separate from the property on which the business is located, as a result of its location, reputation for dependability, skill or quality of the staff, services or merchandise, and any other circumstances that make the business attractive to existing and new patrons.

- **What will happen to the loan on my property?**

Where the City is acquiring the entire property, generally the compensation payable to the owner is first used to satisfy outstanding loans or liens, as in a typical real estate transaction. Where less than the entire property is being acquired, whether outstanding loans or liens are paid from the compensation will depend on the particular facts and circumstances.

- **Do I have to sell at the price offered?**

No. If you and the City are unable to reach an agreement on a mutually satisfactory price, you are not obligated to sign or accept an offer or enter into a purchase agreement.

- **If I agree to accept the City's offer, how soon will I be paid?**

If you reach a voluntary agreement to sell your property or an interest in the property to the City, the City will make its payment at a mutually acceptable time, generally within 60 to 90 days after you, the City (including any necessary boards and commissions), and any other required parties with ownership interests in the property agree to the sale and sign the purchase and sale contract.

- **What happens if we are unable to reach an agreement on the property's fair market value?**

The City will make every reasonable effort to acquire your property by negotiated purchase. But if the negotiations are unsuccessful, the City may either file an eminent domain action in a court located in the county where your property is located or abandon its intent to acquire the property. If the City abandons its intent to acquire, it will promptly notify you.

If the City proceeds with eminent domain, the first public step is for its staff to request authority from the San Francisco Board of Supervisors–the elected legislative body–to file an eminent domain action. The Board of Supervisors grants approval to proceed by adopting a "Resolution of Necessity." In considering whether to adopt the Resolution of Necessity, the Board of Supervisors must determine whether the public interest and necessity require the project, whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and whether your property is necessary for the project.

You will be given notice and an opportunity to appear before the Board of Supervisors when it considers whether to adopt the Resolution of Necessity. You may want to call an attorney or contact an attorney referral service right away. You or your representatives can raise any objections to the Resolution of Necessity and the proposed eminent domain either orally at the hearing on the Resolution of Necessity or in writing to the Board of Supervisors before that hearing.

The full Board of Supervisors, not just a committee of the Board, must conduct a public hearing before considering approval of the Resolution of Necessity. The Board of Supervisors must approve the Resolution of Necessity by a 2/3 vote–i.e., at least eight of its eleven members. If the Board of Supervisors approves the Resolution of Necessity, the Resolution is forwarded to the Mayor, who then has 10 days to either approve the Resolution by signing it; allow it to go into effect without signing it; or veto it. If the Mayor vetoes it, the Board of Supervisors can override the veto by a 2/3 vote.

If the Resolution of Necessity is adopted, the City can then file a complaint in court to acquire title to the property by eminent domain upon payment of the property's fair

market value. In that action, the City is the plaintiff. Anyone with a legal interest in the property, generally determined from a title report on the property (including tenants or mortgage holders), is named in the complaint as a defendant. Often, the City will also deposit with the State Treasurer of California the amount the City believes is the "probable amount of compensation." The City must make the deposit if it is seeking to acquire possession of the property before agreement is reached, or a judgment is entered, establishing the fair market value of the property.

- **Can the City acquire possession of my property before a court in the eminent domain lawsuit determines the property's fair market value?**

In some cases, the City may decide it needs possession of the property before a court finally determines the property's fair market value. This type of possession is commonly referred to as "immediate possession." In such a case, the City must apply to the court for an "order for possession" to allow it to take control of the property before a final determination of the property's fair market value. The City is required to schedule a hearing with the court on the proposed order for possession and to give you advance notice of the hearing. The City generally must send the notice at least 90 days before the hearing date if the property is occupied and 60 days before the hearing date if the property is unoccupied. A judge will decide whether the order for possession should be granted. As noted above, the City must deposit with the State Treasurer the probable amount of just compensation to obtain immediate possession of the property.

- **Can I oppose the motion for an order for possession?**

Yes. You may oppose the motion in writing by serving the City and the court with your written opposition within the period of time set forth in the notice from the City.

- **Can I rent the property from the City?**

If the City agrees to allow you or your tenants to remain on the property after it acquires possession, you or the tenants will be required to pay a fair market rent to the City. Generally, fair market rent is based on rent for the use of property similar to yours in a similar area.

- **Can I withdraw the amount deposited with the State Treasurer before the eminent domain action is completed, even if I don't agree that the amount reflects the fair market value of my property?**

Yes. Subject to the rights of any other persons having an interest in the property (such as a lender, tenant, or co-owner), you may withdraw the amount deposited with the State Treasurer before the eminent domain action is completed. If you withdraw the amount on deposit, you may still seek a higher fair market value during the eminent domain proceedings. But your withdrawal will mean that you may not

contest the City's right to acquire the property, meaning you waive any ability to contest that the acquisition of your property is for a public purpose or is otherwise legally improper.

You also have the right to ask the court to require the City to increase the amount deposited with the State Treasurer if you believe the amount the City has deposited less than the "probable amount of compensation."

- **Can I contest the City's acquisition of my property?**

Yes. As long as you have not withdrawn the amount deposited, you can challenge in court the City's legal right to acquire or condemn your property.

- **What happens in an eminent domain trial?**

The main purpose of an eminent domain trial is to determine the fair market value of your property, including compensable interests such as lost business goodwill caused by the taking or severance damages. The trial is usually conducted before a judge and jury. You (together with any others with interests in the property) and the City will have the opportunity to present evidence of your property's value. The jury will determine the property's fair market value. In cases where the parties choose not to have a jury, the judge will decide the property's fair market value. Generally, each party to the litigation must disclose its respective appraisals to the other parties before trial.

If you challenge the City's right to acquire the property, the eminent domain trial will also determine whether the City has the legal right to acquire the property. In such cases, the judge (not the jury) will make this determination before any evidence is presented concerning the property's fair market value.

If the Court concludes the City has the right to acquire the property, the jury will establish the fair market value and the judge will enter a judgment requiring the City to pay that amount. Once the City pays the amount of the judgment, the judge will enter a final order of condemnation. The City will record the final order with the County Recorder, and title to the property will then pass to the City.

- **Am I entitled to interest?**

Anyone receiving compensation in an eminent domain action is generally entitled to interest on that compensation from the date the condemning agency takes possession of the property until the person receiving the compensation has been fully paid. Formulas set by State law determine the rate and method of calculation of the interest.

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In an eminent domain action, you are entitled to be reimbursed by the City for your court costs, such as court filing fees. In some circumstances, you may also be entitled to be reimbursed by the City for your attorneys' fees in the lawsuit. Whether you are entitled to receive reimbursement for your attorneys' fees will depend on the particular facts and circumstances of the case and the offers and demand for compensation made in connection with the action.

- Will I receive assistance with relocation?

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CONTACT INFORMATION

We are available to answer your questions and to assist you in understanding the acquisition program and the eminent domain process. If you would like further information, please contact:

San Francisco Real Estate Division, General Services Agency
25 Van Ness Ave, Suite 400
San Francisco, CA 94102
(415) 554-9850

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909 Montgomery St., Suite 200
San Francisco, CA 94133

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909 Montgomery St., Suite 200
San Francisco, CA 94133

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CS Letter No. 1257

January 17, 2012

Stockton Street Properties, Inc., a Florida Corporation
909 Montgomery St., Suite 200
San Francisco, CA 94133

VIA CERTIFIED MAIL WITH RETURN RECEIPT

Subject: Offer to Purchase a Temporary License Agreement at 77 O'Farrell Street Assessor's Parcel No. Block 328, Lot 003 and 004, San Francisco, CA 94108

Dear Property Owner:

The City and County of San Francisco ("City"), acting through the San Francisco Municipal Transportation Agency ("SFMTA"), offers to purchase a temporary license agreement ("License") in your property at 77 O'Farrell Street , San Francisco, (Block 328, Lot 003 and 004) (the "Property") for $10,500 (the "Proposed Price"), subject to the negotiation of a mutually acceptable purchase agreement.

The City would use the License as part of a new public works project known as the Central Subway. The Central Subway, as currently planned, will extend light rail service (primarily by subway) from Fourth and King streets to serve the South of Market, Union Square and Chinatown neighborhoods. This letter comprises SFMTA's offer to purchase the License from you for this public project pursuant, to California Government Code Section 7267.2 and 49 Code of Federal Regulations (CFR) Section 24.102(d) and (e).

I have enclosed as Exhibit "A" an Appraisal Summary Statement, which provides the legal description of the License and the determination of the Proposed Price. In accordance with California Code of Civil Procedure Section 1263.320(a), the Proposed Price represents the full appraised fair market value of the License, as determined by an independent appraiser with a certified general license issued by the California Office of Real Estate Appraisers. For your reference, a pamphlet entitled "The Use of Eminent Domain by The City and County of San Francisco (A Summary Of the Process And Property Owners' Rights)" is also enclosed as Exhibit "B" for your review.

Under California Code of Civil Procedure Section 1263.025, if you wish to seek an independent appraisal of the fair market value of the License, the SFMTA will pay the reasonable costs of this appraisal, in an amount not to exceed $5,000. The independent appraisal must be conducted by an appraiser with a certified general license issued by the California Office of Real Estate Appraisers.

We would appreciate a response to this offer at your earliest possible convenience. Should you have any questions in regards to the matters set forth in this offer letter, please contact Kerstin Magary at (415) 701-4323.

Thank you for your prompt attention.

Sincerely,

Edward D. Reiskin
Director of Transportation

Enclosures:
The Use of Eminent Domain by the City and County of San Francisco
Appraisal Summary Report

cc: Sonali Bose, SFMTA
Kerstin Magary, SFMTA
John Funghi, SFMTA
Carol Wong, CCSF DCA
CS File No. M544.1.5.1090

City and County of San Francisco

APPRAISAL SUMMARY STATEMENT

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.

"Exhibit A"

Owner: Stockton Street Properties
909 Montgomery Street, Suite 200
San Francisco, CA 94133

Property Address: 77 O'Farrell St.
San Francisco, CA 94108
APN: 0328-003 and 0328-004

Property to be acquired: Temporary Construction License

Locale: San Francisco County, California

Site Area: 9,469 SF

Including Access Rights: Yes X No ☐

STATUTORY BASIS OF VALUATION

The market value for the property to be acquired by the City and County of San Francisco ("City") is based upon an appraisal prepared in accordance with accepted appraisal principles and procedures.

Code of Civil Procedure Section 1263.320 defines Fair Market Value as follows:

a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Code of Civil Procedure Section 1263.321 defines Fair Market Value as follows:

A just and equitable method of determining the value of nonprofit, special use property for which there is no relevant, comparable market is as set forth in Section 824 of the Evidence Code, but subject to the exceptions set forth in subdivision (c) of Section 824 of Evidence Code.

The market value for the property to be acquired by the City is based upon Code of Civil Procedure Section 1263.320 as defined above.

BASIC PROPERTY DATA

Interest valued:	Temporary Construction License
Date of valuation:	January 1, 2012
Applicable zoning:	C3R (Downtown Retail, Office, Residential, Entertainment, etc.)
License Area:	529 SF (between approximately 99.7 feet and 157 feet below existing ground surface for access and installation of Subsurface Pile Wall; Access to Site Area to install, maintain and eventually remove Exterior Monitoring Equipment)
Highest and best use:	Vertical Retail Development
Current use:	Vertical Retail Development

APPRAISAL SUMMARY STATEMENT (Cont.)

Value of the Site Area $ 7,100,000 (Rounded)

Value of the Temporary Construction License being acquired for Temporary Subsurface Pile Wall and Exterior Settlement Monitors

Land:	$ 10,500
Imps:	$ N/A

Fair Market Value of Temporary Construction License $ 10,500*

Severance Damages

Cost to Cure Damages: $ None

Incurable Damages: $ None

Total Damages: $ None

Construction Contract Work: $ None

Benefits: $ None

Net Damages: $ None

The amount of any other compensation: $ None

JUST COMPENSATION FOR ACQUISITION $ 10,500

Rounded To $ 10,500

THE FOLLOWING INFORMATION IS BASED ON THE ENTIRE SITE AREA

1. The Sales Comparison approach is based on the consideration of comparable land and improved sales.

Indicated value by Sales Comparison Approach $ 10,500
See attached sheet for principal transactions.

* The Temporary Construction License will not impact the historic or future commercial utility of the Site Area nor affect the existing use or any alternative use. The estimated value of the Site Area, in its highest and best use, will remain the same in the after condition as in the before condition and therefore there is no severance damages. The highest value for the Subsurface Pile Wall component of the Temporary Construction License Agreement is $10,500. The highest value for the Exterior Settlement Monitor component of the Temporary Construction License Agreement is $0.

LIST OF PRINCIPAL TRANSACTIONS

ADDRESS:	Sony Metreon Retail and Entertainment Center, San Francisco County
TRANSACTION DATE:	July 1995
SITE SIZE:	118,570 SF – Gross Land Area
TOTAL VALUE:	$24,900,000 (Includes Contingent Income/Percentage Rent)

ADDRESS:	The Ferry Building, San Francisco County
TRANSACTION DATE:	July 2000
SITE SIZE:	115,262 SF – Pier and Land Area
TOTAL VALUE:	$23,571,902 (Based on rentable area of approximately 232,194 SF)

ADDRESS:	The Elevated Shops, Union Square, San Francisco County
TRANSACTION DATE:	May 2000
SITE SIZE:	18,906 SF – Gross Site Area
TOTAL VALUE:	$28,800,000 (Based on a rentable area of approximately 113,400 SF)

ADDRESS:	Rincon Park Restaurants, Embarcadero, San Francisco County
TRANSACTION DATE:	Proposed Future Development Approved on June 2003 By Port Commission Resolution No. 03-40
SITE SIZE:	20,000 SF – Site Area
TOTAL VALUE:	$2,856,000 (Based on a rentable floor area of approximately 14,000 SF)

ADDRESS:	Mark Hopkins Hotel, Union Square, San Francisco County
TRANSACTION DATE:	May 2010
SITE SIZE:	56,715 SF – Site Area
TOTAL VALUE:	$22,625,000 (Based on a unit price per hotel room of approximately $59,200 for the 380 room hotel)

THE USE OF EMINENT DOMAIN BY THE CITY AND COUNTY OF SAN FRANCISCO

A SUMMARY OF THE PROCESS AND PROPERTY OWNERS' RIGHTS

CITY AND COUNTY OF SAN FRANCISCO
REAL ESTATE DIVISION
JANUARY 2009

ABOUT THIS PAMPHLET

SB 698, which went into effect on January 1, 2008 and amended Section 1255.410 of the California Code of Civil Procedure and Section 7267.2 of the California Government Code, requires that every property owner whose property may be the subject of an eminent domain action be given an "informational pamphlet" outlining the property owner's rights under the Eminent Domain Law of California.

The City and County of San Francisco has prepared this pamphlet based on the efforts of the following organizations:

League of California Cities

California State Association of Counties

Association of California Water Agencies

California Special Districts Association

California Redevelopment Association

INTRODUCTION

Eminent domain (sometimes called "condemnation") is the power of the government to purchase private property for a "public use" so long as the government pays the property owner "just compensation," which is the fair market value as determined by appraisal and which may ultimately be determined by a court. An owner's right to be paid just compensation in eminent domain is guaranteed by the Federal and State Constitutions and applicable State laws.

Whenever possible, the City tries to avoid eminent domain proceedings because of the added time, concern and cost to everyone. But if the City and a property owner cannot reach an agreement on the price for needed property, the City will consider whether to proceed with an eminent domain action.

The City decides whether to acquire private property for a public project only after a thorough public review of the project. That review process includes one or more public hearings, and, if required, environmental review for the project under the California Environmental Quality Act (CEQA). Ultimately, the City may not exercise its eminent domain power unless the San Francisco Board of Supervisors approves the action after a public hearing. Often, before the Board of Supervisors acts, a particular City commission with authority over the project also holds a public hearing to consider the proposed exercise of eminent domain.

This pamphlet provides general information about the eminent domain process under California law and the property owner's rights in that process.

IMPORTANT NOTE:

THIS PAMPHLET REFLECTS THE CURRENT LAW AS OF THE PUBLICATION DATE. BUT THE INFORMATION IN THIS PAMPHLET IS NOT, NOR SHOULD YOU CONSTRUE IT TO BE, LEGAL, FINANCIAL OR TAX ADVICE TO YOU. YOU SHOULD CONSULT WITH QUALIFIED LEGAL COUNSEL AND OTHER APPROPRIATE EXPERTS FOR LEGAL, FINANCIAL AND TAX ADVICE REGARDING YOUR SPECIFIC SITUATION, RATHER THAN RELYING ON THIS PAMPHLET AS A SUBSTITUTE FOR THAT ADVICE.

FREQUENTLY ASKED QUESTIONS AND ANSWERS

- **What is a "public use"?**

A "public use" is a use that confers public benefits, like the provision of public services or facilities or the promotion of public health, safety, and welfare. Public uses include a wide variety of projects, such as street and transportation improvements, parks, schools, construction of water pipelines or storage facilities, construction of civic buildings, open space and watershed preservation, and redevelopment of blighted areas. Some public uses are for private entities, such as universities, hospitals and public utilities, which serve the public. These are some examples of public uses. There are many other public purposes for which a public agency may use eminent domain.

Proposition 99, adopted by California's voters in June 2008, amended the California Constitution to prohibit the government from "acquiring by eminent domain an owner-occupied residence for the purpose of conveying it to a private person." Sections 19(c) and 19(d) of this law provide that the government is still allowed to use eminent domain to acquire owner-occupied residences if the purpose is related to public health and safety; preventing serious, repeated criminal activity; responding to an emergency; remedying hazardous environmental contamination that poses a threat to public health and safety; or for a public work or improvement.

- **What is "just compensation"?**

Just compensation is the **fair market value** of the property being acquired by the government. State law defines fair market value as "the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available."

THE EMINENT DOMAIN PROCESS AND THE PROPERTY OWNER'S RIGHTS

The eminent domain process begins with the creation of a public project. When selecting a project location, the City is guided by the goal of rendering the greatest public good and the least private injury and inconvenience. If the City determines that all or a portion of your property may be necessary for a public project, it will begin an appraisal process to determine the property's fair market value.

- **How is the fair market value of my property determined?**

The City will retain an independent, accredited appraiser familiar with local property values to appraise your property. The appraiser will invite you to come along during an inspection of your property. You may give the appraiser any information about improvements and any special features that you believe may affect the value of your property. It is in your best interest to provide the appraiser with all the useful information you can to ensure that nothing of value will be overlooked. If you are unable to meet with the appraiser, you may wish instead to have a person who is familiar with your property meet with the appraiser.

After the inspection, the appraiser will complete an appraisal that will include a determination of your property's fair market value and the information upon which the fair market value is based. The appraiser will provide the City with the appraisal. The City will then make a written offer to purchase your property, which will be for no less than the amount of the appraisal. The offer will also include a summary of the appraisal.

- **What factors does the appraiser consider in determining fair market value?**

Each parcel of real property is different. Therefore, no single formula can be used to appraise all properties. Factors an appraiser typically considers in estimating fair market value include the following:

  - The location of the property;
  - The age and condition of improvements on the property;
  - How the property has been used;
  - Whether there are any lease agreements relating to the property;
  - Whether there are any environmental issues, such as contaminated soil;
  - Applicable current and potential future zoning and land use requirements;
  - How the property compares with similar properties in the area that have been sold recently;
  - How much it would cost to reproduce the buildings and other structures, less any depreciation; and
  - How much rental income the property produces, or could produce if put to its highest and best use.

- **Will I receive a copy of the appraisal?**

Before proceeding with eminent domain, the City must provide you with its purchase offer, a summary of the appraiser's opinion, and the basis for the City's offer, and give you a reasonable period to consider the offer. Among other things, the appraisal summary must include the following information:

  - A general statement of the City's proposed use for the property;
  - An accurate description of the property to be acquired;
  - A list of the improvements covered by the offer;
  - The amount of the offer; and
  - The amount considered to be just compensation for each improvement that is owned by a tenant and the basis for determining that amount.

State law requires the City to show you a copy of the full appraisal only if your property is an owner-occupied residential property with four or fewer residential units. Otherwise, the City may, but is not required to, disclose its full appraisal during negotiations (though different disclosure requirements apply during the litigation process if the issue of fair market value goes to court).

- **Can I have my own appraisal done?**

Yes. You may decide to obtain your own appraisal of the property in negotiating the fair market value with the City. At the time of making its initial offer to you, the City must offer to reimburse you the reasonable costs, not to exceed $5,000, of an independent appraisal you obtain for your property. To be eligible for this reimbursement, you must have the independent appraisal conducted by an appraiser licensed by the State Office of Real Estate Appraisers.

- **What advantages are there in selling my property to the City?**

As a real estate transaction, a sale of property to the City is similar to a sale of property to a private buyer. But there may be certain financial advantages to selling to a public entity such as the City:

  - You will not be required to pay for real estate broker commissions, preparation of sale documents, buyer's title insurance policy premiums or recording fees required in closing the sale. The City will pay any and all of these costs.
  - Sales to the City are not subject to the local documentary transfer tax, which generally applies to sales of private property from one private owner to another. However, if the property is located within a charter city other than San Francisco, a sale to the City may be subject to the charter city's separate real estate transfer tax.
  - The City cannot give you tax advice or direction. You might be eligible for certain real property tax and income tax advantages, and your tax liability may differ depending on where your property is located. You

should check with the Internal Revenue Service (IRS) and/or consult your personal tax advisor or lawyer for details.

- **If the City acquires only a portion of my property, will I be paid for the loss to my remaining property?**

In general, when the City needs only a part of your property for the project, it will make every reasonable effort to ensure you do not suffer a financial loss to the "remainder" property. The City will compensate you for any loss in value to your remaining property that is not offset by the benefits conferred by the project for which the City is taking your property. This compensation is often referred to as "severance damages."

Whether the City's purchase of a portion of your property will result in any loss in value to the remainder is a complex appraisal issue. If the appraiser concludes the proposed acquisition will have this effect, a City real estate representative will explain the effect to you.

Also, if any part your property that would remain after the City takes the portion it needs is of such a shape or condition as to be of little market value, the City will offer to acquire that remaining part (or remnant) from you, if you so wish.

- **Will I be compensated for loss of goodwill to my business?**

If you are the owner of a business that operates on the property being acquired, you may have a right to additional compensation for lost business goodwill if the loss is caused by the acquisition of the property. "Goodwill" consists of the economic value of a business, separate from the property on which the business is located, as a result of its location, reputation for dependability, skill or quality of the staff, services or merchandise, and any other circumstances that make the business attractive to existing and new patrons.

- **What will happen to the loan on my property?**

Where the City is acquiring the entire property, generally the compensation payable to the owner is first used to satisfy outstanding loans or liens, as in a typical real estate transaction. Where less than the entire property is being acquired, whether outstanding loans or liens are paid from the compensation will depend on the particular facts and circumstances.

- **Do I have to sell at the price offered?**

No. If you and the City are unable to reach an agreement on a mutually satisfactory price, you are not obligated to sign or accept an offer or enter into a purchase agreement.

- **If I agree to accept the City's offer, how soon will I be paid?**

If you reach a voluntary agreement to sell your property or an interest in the property to the City, the City will make its payment at a mutually acceptable time, generally within 60 to 90 days after you, the City (including any necessary boards and commissions), and any other required parties with ownership interests in the property agree to the sale and sign the purchase and sale contract.

- **What happens if we are unable to reach an agreement on the property's fair market value?**

The City will make every reasonable effort to acquire your property by negotiated purchase. But if the negotiations are unsuccessful, the City may either file an eminent domain action in a court located in the county where your property is located or abandon its intent to acquire the property. If the City abandons its intent to acquire, it will promptly notify you.

If the City proceeds with eminent domain, the first public step is for its staff to request authority from the San Francisco Board of Supervisors–the elected legislative body–to file an eminent domain action. The Board of Supervisors grants approval to proceed by adopting a "Resolution of Necessity." In considering whether to adopt the Resolution of Necessity, the Board of Supervisors must determine whether the public interest and necessity require the project, whether the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and whether your property is necessary for the project.

You will be given notice and an opportunity to appear before the Board of Supervisors when it considers whether to adopt the Resolution of Necessity. You may want to call an attorney or contact an attorney referral service right away. You or your representatives can raise any objections to the Resolution of Necessity and the proposed eminent domain-either orally at the hearing on the Resolution of Necessity or in writing to the Board of Supervisors before that hearing.

The full Board of Supervisors, not just a committee of the Board, must conduct a public hearing before considering approval of the Resolution of Necessity. The Board of Supervisors must approve the Resolution of Necessity by a 2/3 vote–i.e., at least eight of its eleven members. If the Board of Supervisors approves the Resolution of Necessity, the Resolution is forwarded to the Mayor, who then has 10 days to either approve the Resolution by signing it; allow it to go into effect without signing it; or veto it. If the Mayor vetoes it, the Board of Supervisors can override the veto by a 2/3 vote.

If the Resolution of Necessity is adopted, the City can then file a complaint in court to acquire title to the property by eminent domain upon payment of the property's fair

market value. In that action, the City is the plaintiff. Anyone with a legal interest in the property, generally determined from a title report on the property (including tenants or mortgage holders), is named in the complaint as a defendant. Often, the City will also deposit with the State Treasurer of California the amount the City believes is the "probable amount of compensation." The City must make the deposit if it is seeking to acquire possession of the property before agreement is reached, or a judgment is entered, establishing the fair market value of the property.

- **Can the City acquire possession of my property before a court in the eminent domain lawsuit determines the property's fair market value?**

In some cases, the City may decide it needs possession of the property before a court finally determines the property's fair market value. This type of possession is commonly referred to as "immediate possession." In such a case, the City must apply to the court for an "order for possession" to allow it to take control of the property before a final determination of the property's fair market value. The City is required to schedule a hearing with the court on the proposed order for possession and to give you advance notice of the hearing. The City generally must send the notice at least 90 days before the hearing date if the property is occupied and 60 days before the hearing date if the property is unoccupied. A judge will decide whether the order for possession should be granted. As noted above, the City must deposit with the State Treasurer the probable amount of just compensation to obtain immediate possession of the property.

- **Can I oppose the motion for an order for possession?**

Yes. You may oppose the motion in writing by serving the City and the court with your written opposition within the period of time set forth in the notice from the City.

- **Can I rent the property from the City?**

If the City agrees to allow you or your tenants to remain on the property after it acquires possession, you or the tenants will be required to pay a fair market rent to the City. Generally, fair market rent is based on rent for the use of property similar to yours in a similar area.

- **Can I withdraw the amount deposited with the State Treasurer before the eminent domain action is completed, even if I don't agree that the amount reflects the fair market value of my property?**

Yes. Subject to the rights of any other persons having an interest in the property (such as a lender, tenant, or co-owner), you may withdraw the amount deposited with the State Treasurer before the eminent domain action is completed. If you withdraw the amount on deposit, you may still seek a higher fair market value during the eminent domain proceedings. But your withdrawal will mean that you may not

contest the City's right to acquire the property, meaning you waive any ability to contest that the acquisition of your property is for a public purpose or is otherwise legally improper.

You also have the right to ask the court to require the City to increase the amount deposited with the State Treasurer if you believe the amount the City has deposited less than the "probable amount of compensation."

- **Can I contest the City's acquisition of my property?**

Yes. As long as you have not withdrawn the amount deposited, you can challenge in court the City's legal right to acquire or condemn your property.

- **What happens in an eminent domain trial?**

The main purpose of an eminent domain trial is to determine the fair market value of your property, including compensable interests such as lost business goodwill caused by the taking or severance damages. The trial is usually conducted before a judge and jury. You (together with any others with interests in the property) and the City will have the opportunity to present evidence of your property's value. The jury will determine the property's fair market value. In cases where the parties choose not to have a jury, the judge will decide the property's fair market value. Generally, each party to the litigation must disclose its respective appraisals to the other parties before trial.

If you challenge the City's right to acquire the property, the eminent domain trial will also determine whether the City has the legal right to acquire the property. In such cases, the judge (not the jury) will make this determination before any evidence is presented concerning the property's fair market value.

If the Court concludes the City has the right to acquire the property, the jury will establish the fair market value and the judge will enter a judgment requiring the City to pay that amount. Once the City pays the amount of the judgment, the judge will enter a final order of condemnation. The City will record the final order with the County Recorder, and title to the property will then pass to the City.

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Any person, business, or farm operation displaced as a result of the property acquisition is typically entitled to relocation advice and financial assistance for eligible relocation expenses, such as moving expenses. The amount of relocation compensation will be determined on a case-by-case basis in accordance with prescribed law. The City will work with you to help you obtain relocation assistance and benefits.

CONTACT INFORMATION

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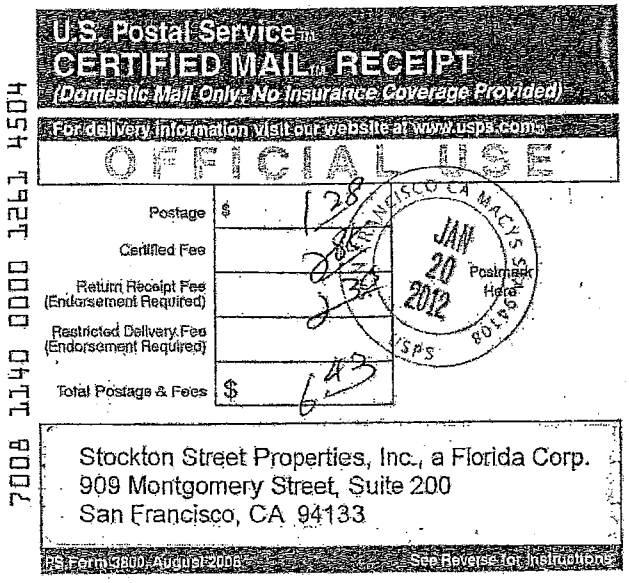
San Francisco Real Estate Division, General Services Agency
25 Van Ness Ave, Suite 400
San Francisco, CA 94102
(415) 554-9850



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a Florida Corp.
909 Montgomery Street, Suite 200
San Francisco, CA 94133

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X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

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2. Article Number (Transfer from service label) 7008 1140 0000 1261 4504

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BOARD of SUPERVISORS

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NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

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

Date: **Tuesday, May 1, 2012**

Time: **3:00 p.m.**

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

Subject: **Public Hearing to consider Property Acquisition - Eminent Domain, interest in real property: a temporary construction license at the real property commonly known as 77 O'Farrell Street, San Francisco, California, Assessor's Parcel Block No. 0328, Lot Nos. 003 and 004, for the public purpose of constructing the Central Subway/Third Street Light Rail Extension and other improvements.**

Said public hearing will be held to make findings of whether public interest and necessity require the City and County of San Francisco to acquire, by eminent domain, the following interests in real property: a temporary construction license at the real property commonly known as 77 O'Farrell Street, San Francisco, California, Assessor's Parcel Block No. 0328, Lot Nos. 003 and 004, for the public purpose of constructing the Central Subway/Third Street Light Rail Extension and other improvements; adopting environmental findings under the California Environmental Quality Act (CEQA), CEQA Guidelines, and Administrative Code Chapter 31; and adopting findings of consistency with the General Plan and City Planning Code Section 101.1. A description of the real property is set forth in **Exhibits A** and **B**, available in the official file for review in the Office of the Clerk of the Board.

The purpose of said hearing is to hear all persons interested in the matter. You have a right to appear and be heard on the matters referred to in California Code of Civil Procedure Section 1240.030, including, but not limited to, whether: (I) the public interest and necessity require the project and acquisition of the temporary construction license identified above; (2) the project is planned and located in the manner that will be most

compatible with the greatest public good and the least private injury; (3) the City's acquisition of the temporary construction license is necessary for the proposed project; and (4) the City has made the required offers to the owners of the property.

Persons who have been notified of such public hearing and who, within fifteen (15) days after the mailing of such notice, have filed a written request to do so, may appear and be heard at the public hearing.

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

At the close of the public hearing, a vote will be made on a resolution entitled:

"Resolution authorizing the acquisition of a temporary construction license at the real property commonly known as 77 O'Farrell Street, San Francisco, California, Assessor's Parcel Block No. 0328, Lot Nos. 003 and 004, by eminent domain for the public purpose of constructing the Central Subway/Third Street Light Rail Extension and other improvements; adopting environmental findings under the California Environmental Quality Act (CEQA), CEQA Guidelines, and Administrative Code Chapter 31; and adopting findings of consistency with the General Plan and City Planning Code Section 101.1."

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on these matters may submit written comments prior to the time the hearing begins. These comments will be made part of the official public record in these matters and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information relating to this matter will be available for public review on Thursday, April 26, 2012.

Angela Calvillo, Clerk of the Board

DATED: April 11, 2012
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