

File No. 100843*

Committee Item No. _____

Board Item No. 45

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date 07/27/10

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget Analyst Report
- Legislative Analyst Report
- Introduction Form (for hearings)
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Award Letter
- Application
- Public Correspondence

OTHER

(Use back side if additional space is needed)

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

Completed by: Joy Lamug

Date 07/22/10

Completed by: _____

Date _____

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

[Authorizing the Acquisition of Subsurface Real Property Easement By Eminent Domain for Central Subway/Third Street Light Rail Extension - 801 Market Street]

Resolution authorizing the acquisition of a subsurface easement in real property commonly known as 801 Market Street, San Francisco, California, Assessor's Parcel No. Block 3705, Lot 48A, 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

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

4 WHEREAS, The City requires a subsurface easement in the real property commonly
5 known as 801 Market Street, San Francisco, California, Assessor's Parcel No. Block 3705 Lot
6 48A (the "Subject Property"), which easement is more particularly described in Exhibit A (the
7 "Subsurface Easement") and shown in Exhibit B (the "Project Alignment"), copies of which are
8 on file with the Clerk of the Board of Supervisors in File No. 100843 and incorporated
9 herein by this reference, for the construction and improvement of the Project; and

10 WHEREAS, On August 7, 2008, the City's Planning Commission certified that the Final
11 Supplemental Environmental Impact Report ("Final Supplemental EIR") for the Central
12 Subway/Third Street Light Rail Phase 2 was in compliance with CEQA and the CEQA
13 Guidelines in Planning Commission Motion No. 17668. Motion No. 17668 is on file with the
14 Clerk of the Board of Supervisors in File No. 100843 and is incorporated by reference;
15 and

16 WHEREAS, On August 19, 2008, the SFMTA's Board of Directors, by Resolution
17 No. 08-150, approved the Project, adopted CEQA Findings, including a Statement of
18 Overriding Considerations and a Mitigation Monitoring and Reporting Program (MMRP) as
19 required by CEQA. Resolution No. 08-150 is on file with the Clerk of the Board of Supervisors
20 in File No. 100843 and is incorporated by reference; and

21 WHEREAS, On September 16, 2008, the City's Board of Supervisors (this "Board")
22 adopted Motion No. 08-145, in Board File No. 081138, affirming the City's Planning
23 Department decision to certify the Final Supplemental EIR. Motion No. 08-145 is on file with
24 the Clerk of the Board of Supervisors in File No. 100843 and is incorporated by
25 reference; and

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

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

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

18 WHEREAS, On February 26, 2010, the SFMTA's Board of Directors adopted
19 Resolution No. 10-026, in which it found that (a) the Project will assist SFMTA in meeting the
20 objectives of Goal No. 1 of the SFMTA Strategic Plan (to provide safe, accessible, clean,
21 environmentally sustainable service and encourage the use of auto-alternative modes through
22 the Transit First policy), of Goal No. 2 (to improve transit reliability), of Goal No. 3 (to improve
23 economic vitality through improved regional transportation), and of Goal No. 4 (to ensure the
24 efficient and effective use of resources); (b) the Subsurface Easement is needed to construct
25 and operate the Project; (c) SFMTA has limited any potential private injury by seeking to

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

5 WHEREAS, On February 26, 2010, the SFMTA Board of Directors, by SFMTA
6 Resolution No. 10-026, authorized the SFMTA Executive Director/CEO to request that this
7 Board hold a duly noticed public hearing, as required by State law, to consider the adoption of
8 a Resolution of Necessity for the acquisition of the Subsurface Easement for its appraised fair
9 market value and, if this Board adopts such Resolution of Necessity, to take such actions that
10 are consistent with the City's Charter and all applicable law to proceed to acquire the
11 Subsurface Easement; and

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

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

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

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

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

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

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

20 FURTHER RESOLVED, That this Board has reviewed and considered the Final
21 Supplemental EIR and record as a whole, finds that the action taken herein is within the scope
22 of the Project and activities evaluated in the Final Supplemental EIR, and that the Final
23 Supplemental EIR is adequate for its use by the decision-making body for the action taken
24 herein; and, be it
25

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

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

12 FURTHER RESOLVED, That this Board adopts as its own and incorporates by
13 reference herein, as though fully set forth, each of the findings made by the SFMTA in
14 adopting Resolution No. 10-026 on February 26, 2010.

15
16 **RECOMMENDED:**

17 SAN FRANCISCO MUNICIPAL
18 TRANSPORTATION AGENCY

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

22 Pursuant to SFMTA
23 Resolution No. 10-026
24
25

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

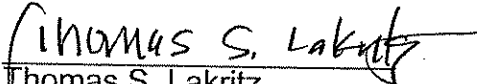
3 By: 
4 Thomas S. Lakritz
5 Deputy City Attorney
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT "A"

LEGAL DESCRIPTION

For a portion of 801 Market Street, Assessor's Block 3705, Lot 048

All that certain real property situate in the City and County of San Francisco, State of California, being a vertical portion of a parcel of land, said parcel being a portion of that certain parcel of land as shown on the Parcel Map recorded on June 18, 1992 in Book 41 of Parcel Maps at Pages 44 and 45, Official Records of the Assessor-Recorder of the City and County of San Francisco, the upper elevation being defined by a plane of -30.70 feet, City of San Francisco Datum (intended to be 60.00 feet below existing ground surface) and the lower elevation defined by the center of the earth, said property more particularly described as follows:

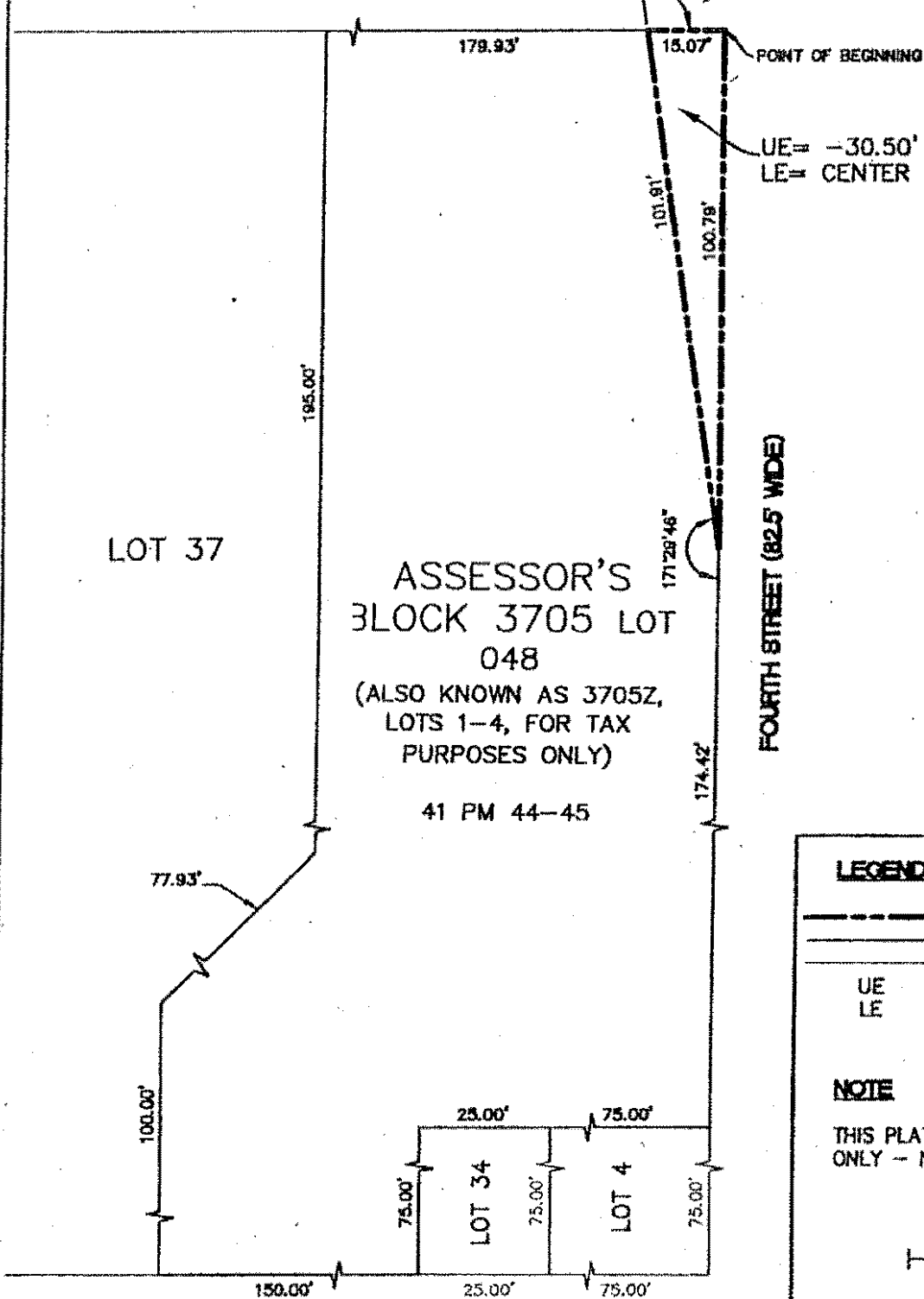
Beginning at the intersection of the southwesterly line of Fourth Street with the southeasterly line of Market Street; thence southeasterly 100.79 feet along said southwesterly line of Fourth Street; thence northwesterly 101.91 feet along a line having a deflection angle to the right of $171^{\circ}29'46''$, to a point on the said southeasterly line of Market Street; thence northeasterly 15.07 feet along said southeasterly line of Market Street, said line having a deflection angle to the right of $98^{\circ}30'14''$, to the point of beginning.

Being a portion of 100 Vara Block No. 371

Containing 759 square feet, more or less.

APN: 3705-048 (also known as 3705Z, Lots 1-4, for tax purposes only)

MARKET STREET
(19.14' WIDE PER D-G-13)



LOT 37

ASSESSOR'S
BLOCK 3705 LOT
048
(ALSO KNOWN AS 3705Z,
LOTS 1-4, FOR TAX
PURPOSES ONLY)

41 PM 44-45

FOURTH STREET (82.5' WIDE)

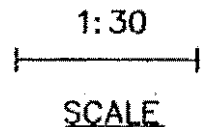
JESSIE STREET (40.0' WIDE)

LEGEND

- EASEMENT BOUNDARY LINE
- ===== LOT LINE
- BOUNDARY LINE
- UE - UPPER ELEVATION
- LE - LOWER ELEVATION

NOTE

THIS PLAT FOR APPRAISAL PURPOSES
ONLY - NOT FOR CONVEYANCE.



CITY AND COUNTY OF SAN FRANCISCO,
STATE OF CALIFORNIA

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

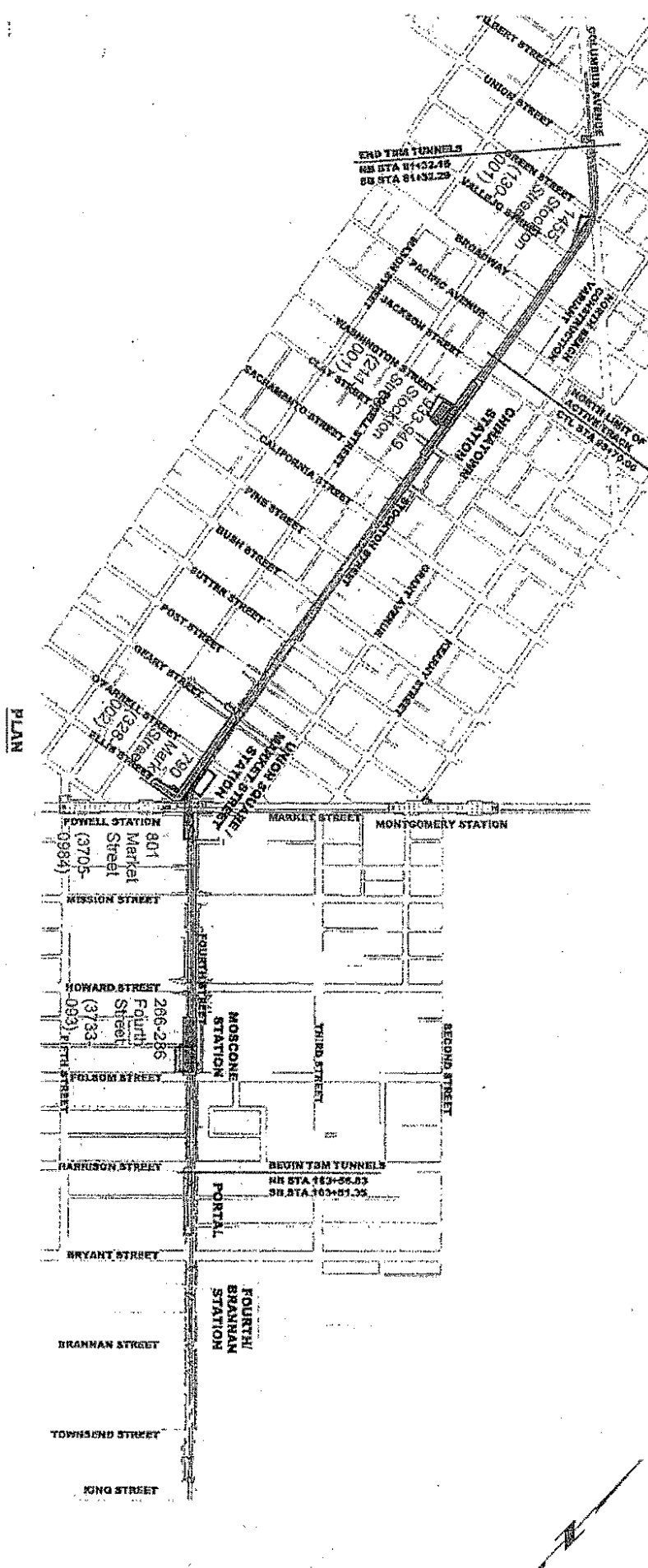


MUNICIPAL TRANSPORTATION AUTHORITY
CENTRAL SUBWAY EASEMENT PARCEL
AB 3705 LOT 048

MAY 2009

entral subway

connecting people. connecting communities.



PLAN

EXHIBIT B

SFMTA

Municipal Transportation Agency

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

Gavin Newsom | Mayor

Tom Nolan | Chairman

Jerry Lee | Vice-Chairman

Cameron Beach | Director

Malcolm Heinicke | Director

Bruce Oka | Director

Nathaniel P. Ford Sr. | Executive Director/CEO

Index of Documents in Administrative Record for Board File No. 100843

801 Market Street, Assessor's Parcel No. Block 3705, Lot 48A

1. July 20, 2010 Memorandum from Nathaniel P. Ford Sr., Executive Director/CEO of the SFMTA to the Honorable Members of the Board of Supervisors
2. Central Subway Project/Real Estate Acquisitions for Right-of-Way and Stations PowerPoint presentation, July 27, 2010
3. Map of Central Subway Project Alignment
4. Legal Description and diagram of Subsurface Easement needed at 801 Market Street (Assessor's Parcel No. Block 3705, Lot 48A)
5. Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Final SEIS/SEIR Volume I)

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

Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Response to Comments Volume II/Errata)
6. San Francisco City Planning Commission, Motion No. M-17668
7. San Francisco Municipal Transportation Agency Board of Directors, Resolution No. 08-150
8. San Francisco Board of Supervisors, Motion M08-145
9. Federal Transit Administration, Record of Decision, November 26, 2008
10. April 15, 2010 Determination from the San Francisco Planning Department RE: Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report

San Francisco Municipal Transportation Agency

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

11. May 4, 2009 Determination from the San Francisco Planning Department, in Planning Case No. 2008.084R (General Plan Referral), including Application for General Plan Referral
12. April 9, 2010 Determination from the San Francisco Planning Department, in Planning Case No. 2008.084R (General Plan Referral)
13. San Francisco Municipal Transportation Agency Board of Directors, Resolution No. 10-026
14. February 24, 2009 Letter from John Funghi to Jamestown Pacific Place, L.P., with Property Acquisition Information Brochure ("The Use of Eminent Domain By the City and County of San Francisco")
15. November 20, 2009 Letter from Nathaniel P. Ford Sr., Executive Director/CEO of the SFMTA, to Jamestown Pacific Place, L.P., offering to purchase a subsurface easement at 801 Market Street, with Appraisal Summary Statement, Legal Description, and Property Acquisition Information Brochure ("The Use of Eminent Domain By the City and County of San Francisco")
16. December 21, 2009 Letter from David Tripp, General Manager, Jamestown Management Corporation, to Kerstin Magary
17. January 6, 2010 Letter from Kerstin Magary to David Tripp, General Manager, Jamestown Management Corporation
18. January 19, 2010 Letter from Kerstin Magary to David Tripp, General Manager, Jamestown Management Corporation, including information about the Central Subway Project
19. January 29, 2010 Letter from Kerstin Magary to David Tripp, General Manager, Jamestown Management Corporation, including preliminary engineering drawings for the Central Subway Project
20. April 9, 2010 Letter from Kerstin Magary to David Tripp, General Manager, Jamestown Management Corporation, including draft Easement Deed, draft Easement Purchase and Sale Agreement, and draft License Agreement
21. July 12, 2010 Letter from Alexander J. Pugh, Gibson, Dunn & Crutcher LLP, to Kerstin Magary, responding to the SFMTA's offer to purchase a subsurface easement at 801 Market Street, including Appraisal of subsurface easement at 801 Market Street
22. Notice of Public Hearing ("Public Hearing to consider Property Acquisition – Eminent Domain"), including Proof of Service