

# Aaron Peskin

470 COLUMBUS AVENUE, SUITE 211 • SAN FRANCISCO, CA • 94133 • 415/986-7014 • aaron.peskin@earthlink.net

---

May 28, 2013

*VIA EMAIL & U.S. MAIL*

Mr. Edward Reiskin  
Executive Director  
San Francisco Municipal Transportation Agency  
One South Van Ness, 7<sup>th</sup> Floor  
San Francisco, CA 94103

Re: Central Subway: North Beach Tunnel/Pagoda Extension Project

Dear Ed,

I truly appreciated the opportunity to work with you in my capacity as a member of the San Francisco Board of Supervisors when you were first hired as the head of the City's Department of Public Works. I write to respectfully request that you consider the entirety of this letter before proceeding with Central Subway Project's North Beach Tunnel Construction Variant and Relocation of the Tunnel Boring Machine Retrieval Site to the Pagoda Theater (Pagoda Extension).

The San Francisco Municipal Transportation Agency (MTA) cannot proceed with the Pagoda Extension absent a new or amended MTA Board of Directors resolution without exposing you and the agency to liability and criticism for an ultra vires act for the following reasons:

1. In order to be effective, the lease with Joel Campos, the owner of the Pagoda property, requires a Federal Transit Administration (FTA) finding that no additional environmental review is needed under the National Environmental Policy Act (NEPA).
2. In addition, there must be a valid resolution from the MTA Board of Directors authorizing the Pagoda Extension to proceed. The Board's February 19, 2013 resolution places a \$6 million ceiling on the amount that can be spent for the increased demolition, design and construction costs associated with the Pagoda Extension, excluding the payments required by the agreement with the Pagoda Palace property owner.<sup>1</sup>
3. The cost estimate submitted by BIHJV, the tunneling contractor, on March 1, 2013, in the amount of \$10.6 million specifically excludes a number of items that will significantly increase the final cost of the Pagoda Extension beyond all estimates.

---

<sup>1</sup> The resolution reads: "RESOLVED, That the SFMTA Board of Directors approves total expenditures resulting from use of the Property to facilitate tunnel construction in an amount not to exceed \$9,150,000,

Mr. Edward Reiskin

May 28, 2013

Page 2 of 12

4. When asked at the community meeting in North Beach on April 17, 2013 about BIHJV's \$10.6 million estimate, you stated that you do not intend to go back to the MTA Board prior to proceeding with the Pagoda Extension because you were confident that BIHJV would perform the work for \$6 million or less.
5. In fairness to the MTA Board members, when they approved the resolution to proceed with the Pagoda Extension on February 19, 2013, they were presumably unaware of BIHJV's \$10.6 million estimate, with its numerous potentially costly caveats and exclusions. In addition, they could not have known that only two months after their vote to approve the Pagoda Extension, the entire Central Subway Project would suffer an unanticipated \$120 million increase in project costs as a result of the final bid on the stations contract – CS Contract No. 1300.

Your failure to return to the MTA Board for additional authority for the Pagoda Extension is deeply concerning, particularly given your statements at the community meeting on April 14<sup>th</sup> that: (1) Muni will likely be reimbursed for additional costs of the Pagoda Extension from Project contingency funds, and (2) you believed the final cost of the Pagoda Extension would not exceed the \$6 million authorization. A videotape of that meeting can be provided to you if you so desire.

#### Contingency Funds and Cost Overruns

As you know, the FTA has consistently expressed concern regarding the MTA's ability to successfully complete the Central Subway Project given its enormous complexity and duration, MTA's lack of experience with such projects and the agency's poor track record on completing capital projects, regardless of size, on time or within budget. Due to such concerns, FTA insisted in March 2009 that the MTA establish a contingency for the Project in the amount of \$330 million. With the award last week of the CS Contract No. 1300 to Tutor Perini, that contingency is now \$65 million at the most – and more likely in the \$30 to \$45 million range. In addition, according to the report from the Project Management Oversight Consultant (PMOC), dated May 15, 2013, the best-case scenario for the cost contingency is \$100 million below the federally required minimum. Furthermore, with 6 years of construction remaining, most of which is to be done by a contractor with a documented history of inflating its final billing<sup>2</sup>, there will be *no* contingency left by the end of the project. All MTA funds spent on the Pagoda Extension will adversely affect the entire Muni system, inevitably requiring additional service cuts and/or fare increases.

It would appear that MTA's requests to the FTA for permission to fund the Pagoda Extension from federal project funds were denied. I say this because in the description of the options offered by MTA to the mid-Columbus extraction TBM extraction site, the Pagoda option reads in pertinent part as follows:

---

<sup>2</sup> <http://www.sfexaminer.com/local/development/2013/05/little-wiggle-room-muni-trusting-controversial-contractor-central-subway-w>

“This option will increase the Project budget by approximately \$3 million dollars and require the appropriation of additional local (non-federal) funds to purchase or otherwise secure access rights for the property from the current owner.”

It is incumbent upon MTA to explain to the public why it initially intended to use project funds for the Pagoda Extension, but are now planning to use Muni “reserves.” Did MTA seek FTA approval to use federal project funds? If the Pagoda Extension is an insignificant variation on the approved Project -- a mere “change order” – as MTA claims for CEQA and NEPA purposes, why isn’t it appropriate to pay for it with federal project funds? On behalf of the public and my former constituents I would greatly appreciate an explanation of this apparent inconsistency.

As referenced above, when the MTA initially floated the Pagoda Extension, it estimated the increase in cost for design, demolition and construction at \$3 million. Shortly thereafter the cost estimate was increased to \$6 million. Subsequently, three months ago, on March 1, 2013, BIHJV provided an estimate in the amount of \$10.6 million, which estimate specifically excluded a number of potentially costly additions, including:

- Damage to properties in the area
- Treatment of hazardous materials
- Restrictions on work hours
- Accommodation of adjacent businesses
- Problems or complications with the use of compensation grouting<sup>3</sup>
- Dealing with buried manmade structures
- Any geotechnical findings that have not been identified by the borings to date

The only item in the BIHJV estimate that MTA has publicly scrutinized to date is the cost of demolition of the Pagoda Palace building at 1731 Powell Street, which BIHJV estimated at \$350,000. MTA staff subsequently estimated the cost at \$150,000 higher than BIHJV’s estimate.<sup>4</sup> Today we learned that the low bid (by Ace Drilling) was \$595,000, which would add an additional, unbudgeted \$245,000 to the Pagoda Extension, further exceeding the “not to exceed \$6 million” authorization granted by MTA’s Board of Directors.

In view of the above-referenced BIHJV exclusions (impacts to historic building, local businesses, etc.), the higher than estimated demolition cost, the problems MTA is currently experiencing with the secant piles and other unknowns, including the potential of having to remove contaminated water with Baker tanks, there is no credible way that MTA can know how high the final cost of the Pagoda Extension will actually be albeit

---

<sup>3</sup> <http://www.sfweekly.com/2013-04-17/news/central-subway-fracking-douglas-ahlers-lawrence-karp-paul-rose/>

<sup>4</sup> See Bid Document No. 1277 – Pagoda Palace Demolition estimated by SFMTA to be \$499,884 vs. BIHJV’s estimate of \$350,000.

you have the obligation to inform the MTA Board that costs will be in excess of the \$6 million that they authorized.

#### Project History: Lack of Staff Oversight, Qualifications, and Experience

Given my positive, professional experience with you personally, I can only assume that your belief that the Pagoda Extension can be completed within the authorized amount of \$6 million must be based on information provided to you by MTA staff -- specifically Project Manager John Funghi. I am concerned that Mr. Funghi may not be sufficiently qualified to manage a project of this scope and magnitude. I have no personal animus towards Mr. Funghi. He has always been appropriate and respectful to me in our interactions. This belief is based on an objective analysis of his training and professional experience, and the history of this Project to date, including the following:

- It was initially estimated that the cost of the Central Subway Project would be \$647 million. The current estimate is now \$1.6 billion. A report prepared by CGR Management Consultants at the request of the City recently concluded that the final cost of the project would most likely be \$2 billion – a \$422 million shortfall for which MTA will be responsible.
- It was initially estimated by MTA that daily ridership on the Central Subway would be 93,000. The current estimate is 35,100, with that figure dropping to approximately 24,100 boardings per day (only a few thousand of which will be new riders) once CalTrain is extended to the Transbay Transit Center. This represents an actual ridership of a mere 26% of his initial forecast. It does however, appear consistent with the MTA's incorrect ridership forecasts for Phase 1 of the T-Line Project, which I understand currently has a daily ridership of 15,100 – 19% of the original estimate (of 80,060 boardings per day by 2015).
- MTA initially projected that the Central Subway Project would save Muni \$23.8 million annually in O&M expense. However, MTA's filings with FTA over the last three years indicate that the Subway Project will increase Muni's annual O&M expense in the amount of \$15.2 million – an error of \$39 million per year.
- MTA estimated that the contract for Project Management services would not exceed \$82 million. The final contract with AECOM, in the amount of \$147 million, is \$65 million over the estimate.<sup>5</sup>
- The total dollar amount of the three capital projects Mr. Funghi managed for Muni in the 7 years before assuming his oversight role on the Central Subway Project was approximately \$80.5 million.
- Mr. Funghi appears to be engaged in a private home building business on the San Francisco Peninsula as John O. Funghi Construction. His business is currently licensed and bonded and his income from that activity was estimated to be approximately \$160,000 in 2011.<sup>6</sup>

<sup>5</sup> <http://sfappeal.com/2009/03/central-subways-147-million-tab-hits-budget-hard/>

<sup>6</sup> <http://www.buildzoom.com/contractor/john-o-funghi-construction>;

<http://companies.findthecompany.com/l/3496997/John-O-Funghi-Construction-in-Burlingame-CA>

- Mr. Funghi continues to have a mid-level Civil Service engineering classification while receiving premium pay to manage the Central Subway Project.
- MTA consistently avoids responding to legitimate concerns regarding the pedestrian distance (approximately 1,100 feet) between Powell and Union Square/Market (USM) Stations by saying the plans include people movers to assist those transferring to and from the Subway.
- Mr. Funghi insisted that utility work in North Beach had to commence in the summer of 2012, and claimed work could not be stopped during the congestion of Fleet Week due to mid-November 2012 deadlines crucial to the construction of the North Beach retrieval shaft which *had* to begin in January 2013. It is now apparent that construction of the North Beach retrieval shaft won't begin until July or August at the earliest thereby calling into question the veracity of his earlier statements.
- MTA estimated that the contract for construction of the stations, the guideways and the systems would be in the range of \$720 to \$750 million, but the lowest bid received was from Tutor Perini in the amount of \$840 million representing a significant underestimate of approximately \$120 million.
- Mr. Funghi has consistently claimed that the project is "on time and on budget" which is clearly no longer true given the recent PMOC report that shows for federal purposes the project is neither on time nor within budget - the project is \$100 million below, and 5.3 months behind, the minimum federal requirements.
- According to the PMOC's report dated May 15, 2013: (1) the cost and schedule contingencies are well below federal minimums; (2) the tunneling contractor is experiencing "great difficulty" installing the secant piles – which will adversely affect the schedule contingency; (3) Mr. Funghi has failed to produce a report regarding project deficiencies – a report that was requested seven months ago by the PMOC; (4) Mr. Funghi has failed to fill a number of important positions, including a number of Resident Engineers who should be on site preparing for scheduled construction, and has allowed the project to be without a Project Controls Manager for a period of 9 months.
- When questioned about the geotechnical concerns expressed by Lawrence Karp, PE, and others regarding the installation of secant piles at the Pagoda site, Mr. Funghi has consistently stated that the planned procedure is "tried and true" and is being employed with "great success" at the areas of the project currently under construction. However, a review of the PMOC's report indicates that the contractor is experiencing "great difficulties" installing the piles at UMS – difficulties that have the potential of creating more serious and costly delays for the Project.
- It is apparent that MTA has mismanaged the award of the most significant contract on the Project – CS Contract No. 1300 – the contract for construction of the stations, the trackway and the train control systems. While I am attempting to learn the details involved in the advertisement and bidding of this contract, I know: (1) The PMOC has major concerns with the extremely short period between award of the contract and the Notice to Proceed (NTP). (2) In view of the MTA's

- statement that the four contracts were combined in October 2012 for cost containment and additional local business participation (LBE), it raises the fundamental question as to why these contracts weren't combined earlier. (3) Given that design work was completed early last year there appears to be no reason the contract(s) couldn't have been awarded last October or November, which would have reduced costs and have provided for adequate time between award and NTP. (4) MTA delayed the due date for CS Contract No. 1300 bids for a period of 6 months. While the consolidated contract was advertised on October 23, 2012, with an original due date of January 13, 2013, that date was extended 3 times before the bids were finally opened on April 18, 2013. These continuances increased the final cost and caused the dangerously short timeframe from award to NTP. (5) As reported in the press, numerous city residents and businesses are outraged that they were excluded from participating in this \$840 million contract. For example, a number of Asian contractors and business representatives accused MTA of dishonesty in its "outreach" saying Muni used them for FTA support and then shut them out of the benefits. (6) The CS Contract No. 1300 represents more than half of the \$1.6 billion estimated cost of the project, yet its presentation to the MTA Board for approval was delayed to the point that the members had no alternative to approve it as submitted by Tutor Perini<sup>7</sup>. Both you and Mr. Funghi advised the Board that any delay in approval would adversely affect the already deficient cost and schedule contingencies, which would impact the MTA's obligations under its nearly \$1 billion grant agreement with the FTA. As a matter of good governance, a contract of this magnitude deserves at least a modicum of consideration with respect to price, inclusion of minority businesses and other important negotiating terms.
- The most recent example of Mr. Funghi's questionable veracity occurred at the SFMTA board meeting on May 21, 2013 when confronted with questions as to the PMOC's report warning that the project had fallen dangerously below the federally required minimums both as to funding and schedule contingencies. You will recall that his answer was that the PMOC report in question was "dated" and that he was confident that the project would be completed on time and within budget. I would be very troubled were I his supervisor, given that the report is not "dated". The report was issued May 15th (6 days before the SFMTA meeting) and it references the \$840 million bid submitted by Tutor Perini days before. Thus, the PMOC had all the current information available at the time the report was written. In addition, a fact that wasn't mentioned at the meeting is that the PMOC is critical of Mr. Funghi for his failure to submit a report detailing Muni's plans for the project deficiencies in question – a report that is now 7 months overdue.

---

<sup>7</sup> Tom Nolan, president of the transit agency's board said "This is far from perfect, but putting this out to bid again would have put us way behind schedule". See: <http://www.sfexaminer.com/local/development/2013/05/little-wiggle-room-muni-trusting-controversial-contractor-central-subway-w>

### Faux Community Meetings

As a former elected official and community representative, I note that many members of the community have been less than satisfied with what they perceive as Mr. Funghi's evasive answers and less than forthright willingness to answer legitimate questions. By way of example, he has been asked on virtually every occasion why MTA refuses to consider burying the Tunnel Boring Machines (TBM) cutting heads in Chinatown at a location beneath or to the side of the right-of-way to the north of the Chinatown Station – a procedure that has been employed on countless projects throughout the world. The answer that he consistently states is that doing so will prevent or impede future extensions of the line due to the prohibitive cost of removing the entombed machines.

The MTA's latest insult to the North Beach community was the "Dear Neighbor" letter sent to the attendees at the April 17 meeting "thanking" them for attending and suggesting that they had been provided with a thorough explanation of the Pagoda Extension and that all their questions and concerns had been answered. In truth, none of the legitimate questions posed at the meeting were answered in a meaningful or intellectually honest way. I have reviewed the 22 questions sent by the neighborhood representatives to you and MTA Board president Tom Nolan on March 14, 2013 and I attended the April 17, 2013 meeting. Only one question answered satisfactorily, and the remaining 21 questions went unanswered.

### North Beach Tunnel Construction Variant

In response to my assertion at the April 17 meeting that the MTA is attempting to predetermine a future third Phase with Phase 2 approvals, you accurately stated that MTA is precluded at this stage from making any decisions with respect to an extension of the line past Chinatown. However, a review of the record reveals that is precisely what MTA is doing with its plan to tunnel to North Beach.

I know you weren't involved with MTA at the time, but when the current Central Subway alignment was being proposed, SPUR was opposed to the plan due to its serious design flaws (including the lack of "connection" to the Market Street transit lines and the inadequate platform dimensions) and the fact that it terminated in Chinatown. In response, MTA inserted the little-noticed 16-line "North Beach Variant" in the phonebook-size EIR, following which SPUR gave its blessing to the Project.

While MTA justified the North Beach Variant as a construction necessity for the delivery of materials to construction sites to the south, I know as a former member of the Board of Supervisors that it was a political accommodation to cement SPUR's support. At the April 17<sup>th</sup> meeting you will recall that Stephen Taber, speaking on behalf of SPUR, said this in response after my comments:

“The big problem we have is this city has been completely incapable of doing advanced planning. If we had been able to do that, many of the questions raised here would have been answered. We would know where this subway is going. Many years ago they drew a line at Jackson Street and said "we're not going to plan anything further," and that has caused us all the problems. If you lived in Washington DC when they started their Metro system, you would have seen the entire lines, all the lines, laid out on a map from the very beginning of that system, and everybody knew that they were going to get service at a particular time and on a particular schedule. Here we build one segment without having the faintest idea of where the next one's going. Now the problem is that we have to live with it. Now I'm representing here, by the way, both SPUR and Russian Hill Neighbors and we are committed to doing a planning process for Phase 3 that will get service to North Beach and Fisherman's Wharf. We are very, very frustrated and Aaron mentioned that back in, what, 2007 we were pushing for that and we got a little piece of it by getting the tunnel [to North Beach] but we legally were precluded from entering these discussions. It has been very frustrating to us and we're hoping we get some support here for continuing, or starting, these discussions, fast tracking them, so we get service here."

Mr. Taber subsequently reiterated this position at an invitation-only event sponsored by SPUR and the MTA on April 13, 2013<sup>8</sup>. Mr. Tabor's comments at the community meeting, together your statement that MTA does not intend to use the tunnels to North Beach for the delivery of materials, is clear evidence that the Pagoda Extension has nothing to do with the Phase 2 construction, but is in fact Phase 3 infrastructure, in clear violation of state (CEQA) and federal (NEPA) law. When, in the future, the issue as to whether the subway should be extended northerly is properly and publicly addressed, the existence of the Pagoda Extension will virtually establish the preferred alignment – an alignment selected by MTA with no input from the public – other than SPUR – which organization is arguably more of an agent of MTA and the City than an independent think tank.<sup>9</sup>

### The TBM Extraction Options

MTA's presentation and analysis of its alternatives to the mid-Columbus TBM extraction plan has been referred to by members of the public as a "charade". I have to agree. When MTA's outreach to North Beach was found to be woefully inadequate (as characterized by Board of Supervisor's President David Chiu) MTA scrambled to quiet the outrage of the community while at the same time holding firm to its plan to embark on an unanalyzed, unplanned and unfunded Phase 3 extension while relying on dubious Phase 2 approvals.

---

<sup>8</sup> The invitation-only event held on April 13 at Planning Commission President Rodney Fong's Wax Museum was attended by approximately 50 people -- approximately 20 were SPUR staff and members, and 20 were MTA and Planning Department staff. I attended this event, although uninvited.

<sup>9</sup> With the money the city pays annually to SPUR, it is more of a city agent than an independent think tank.



The MTA put forth only one alternative to the TBM extraction in the middle of Columbus Avenue – burial of the parts near the Chinatown Station - which it summarily dismissed with a vague, ambiguous and disingenuous analysis. There are other viable options for the TBMs, which will save tens of millions in project costs, will not affect future extensions of the line, will not impact North Beach, and will eliminate the risk of costly liability for inverse condemnation damages and other claims with respect to properties in North Beach.

MTA staff took the Pagoda Extension to the MTA Board with a patently disingenuous presentation claiming that a majority of attendees at a sparsely attended community meeting selected the Pagoda Extension option. In truth, the smattering of attendees chose the Pagoda option over the mid-Columbus option, but a supermajority preferred burying or extracting the TBMs near the Chinatown Station. The MTA did a “sleight-of-hand” maneuver that prevented the people of North Beach from expressing their true preference while implying that they would be the beneficiaries of a North Beach Station. I have the videos of the January 22, 2013 and the April 17, 2013 meetings and am happy to share them with you.

Ed, you know that the selection of the Pagoda Extension was not community driven. It is being imposed on the neighborhood by the MTA in order to maintain SPUR’s support for the project. Political support is no longer the imperative. Now the question is whether you will recommend cost cutting measures and project modifications to save the project as a whole so that it doesn’t go down in American history as another wasteful “Big Dig”.

#### The Options for Dealing With the TBMs That Have Been Ignored

The ultimate proof that the North Beach Variant has nothing to do with Phase 2 construction, but rather represents Phase 3 infrastructure being constructed to satisfy the concerns of SPUR, can be found in the facts surrounding the 3 options currently available to MTA for dealing with the TBMs in Chinatown, as follows:

1. The approved EIR/EIS includes a Chinatown variant involving the removal of the TBM cutting heads and shields by crane through the shaft or head house of Chinatown Station. According to the EIR, this operation can be completed in a few weeks time and would only require the rental of a heavy-duty crane for the weeks involved. Mr. Funghi has given conflicting statements as to why this option has been rejected, including his claim that the shaft is too deep, that the machines cannot be disassembled and that there has been a design change to the tunnels, which would prevent the positioning of the TBMs at the bottom of the station shaft. Frankly, recognized TBM experts are at a loss to understand these explanations. The depth of the shaft is irrelevant, as it would only affect the length of the cables to be employed. As to the tunnel excuse, no documents have been

- produced that support the alleged change in tunnel design.<sup>10</sup> Furthermore, MTA has recently released photographs of the disassembled sections of the first TBM to arrive in SF being craned into the launch box on 4<sup>th</sup> Street. The largest of these sections is 22 feet long and 15 feet wide, making it abundantly clear that the machines can be disassembled and extracted near the Chinatown Station.
2. A second option is to disassemble the TBMs and retrieve them through their point of entry at the 4<sup>th</sup> Street portal. The TBM shields and cutting heads can be disassembled and pulled in reverse for extraction at the 4<sup>th</sup> Street tunnel portal. The machine parts were manufactured and fully assembled in China and were then disassembled for shipment to San Francisco. Upon arrival, they are to be transported to the 4<sup>th</sup> Street portal where the parts will be craned into the launch box for assembly underground. It is obvious that this process, despite Mr. Funghi's denials, can be reversed in Chinatown for retrieval on 4<sup>th</sup> Street, and for confirmation of this you can contact your TBM expert, Richard Redmond, or MTA Director Cheryl Brinkman's husband, Rich Coffin, as they both were involved on the Second Ave. subway project in New York City – where a TBM much larger than MTA's TBMs was disassembled at the end of the tunneling and retrieved through its point of entry.<sup>11</sup>
  3. A third option is to entomb the TBM parts in concrete. Despite Mr. Funghi's steadfast refusal to address the issue, the TBM parts can be entombed in concrete near the Chinatown Station parked to the side or below the right-of-way to the north, as has been done on numerous tunneling projects throughout the world. As to the cost involved, Mr. Funghi has declared that the resale value of each TBM after construction is approximately \$2.2 million. Therefore, if the decision is made to bury all the parts of the TBMs that cannot fit within the lumen of the constructed tunnels without being disassembled, the combined loss of resale for both machines would be less than \$3 million.

To summarize the options available, consider this excerpt from a recent SF Weekly article on this subject:

The concept of digging an additional few thousand feet for the sake of extracting boring machines puzzled experienced engineers. "It's surprising to me it would be worth taking them out," says Douglas Hamilton, the engineering geologist for the Devil's Slide project. Why not, he asks, simply mothball the machines at a point in Chinatown past where future trains will go? Why not bury them beneath the right-of-way? Or why not scrap them and haul out the pieces the way they came in?<sup>12</sup>

### Disingenuous Statements Expressing Concern for the Adjacent Businesses

---

<sup>10</sup> On 5/7/13 a FOIA/Sunshine request was served on SFMTA asking for the production of any and all documents that evidence the depth and tunnel design impediments to removing the TBMs by crane in Chinatown. The SFMTA response dated 5/15/13 was "No responsive documents."

<sup>11</sup> <http://new.mta.info/tunneling-second-avenue-subway-complete>

<sup>12</sup> <http://www.sfweekly.com/2013-02-27/news/muni-central-subway-plan-strains-credulity/>

I find the City's treatment of the owners of the businesses adjacent to the Pagoda property to be particularly disturbing. Time and time again I have witnessed MTA staff state publicly that the MTA, along with the staff of the City's Office of Economic and Workforce Development (OEWD), are working closely with the businesses that will be adversely impacted.

In truth, the business owners with whom I have been in contact have been told that the city cannot and will not do anything to help them beyond sweeping their sidewalks and washing their windows, which in all probability means their businesses will fail. So the MTA is willing to cause the failure of a number of small businesses while enriching the owner of the Pagoda site<sup>13</sup> with \$3.15 million of Muni funds for a project that already is going to be over budget and behind schedule.

### Conclusion

I have heard you say on a number of occasions that you consider the Pagoda plan for TBM retrieval to be a "win-win" situation because it will save North Beach from the disruption of the mid-Columbus plan and cause the elimination of the Pagoda eyesore.

I respectfully disagree. Your payment to Mr. Campos for the use of his property includes \$1.5 million to compensate him for the two-year delay of the commencement of his condo project. Presumably you agreed to pay that amount because he convinced you he was about to begin construction. Therefore, if MTA were to abandon its tunneling to North Beach, Mr. Campos would pursue his project forthwith and it would take approximately one year to complete. Since his approved plan called for a retention of the existing building instead of its demolition, his construction would be far less disruptive than MTA's demolition, deep excavation and major construction, which combined with Mr. Campos' subsequent construction will result in a minimum of three years of disruption and the inevitable closing of the adjacent businesses.

So to summarize, if you bury or extract the TBMs near the Chinatown Station you will achieve:

- Savings of approximately \$80 to \$100 million in Central Subway Project funds and at least \$13.8 million in Muni funds, which will be sorely needed to help offset the cost overruns on the Project.
- Elimination of months of construction, which will reduce the deficit in schedule contingency.
- Reduction of the risk to the City of costly inverse condemnation damages to zero.
- Reduction of the risk of damage to historic structures in North Beach to zero.

---

<sup>13</sup> Mr. Campos has neglected the Pagoda property for years, despite the fact that he has had his land use entitlements for over four years.

Mr. Edward Reiskin  
May 28, 2013  
Page 12 of 12

- Saving North Beach businesses from extinction.
- Elimination of detrimental impacts to parks and open space.
- Leaving all businesses and residents in North Beach unaffected.
- Reduction of the disruption of construction activity at the Pagoda site from three or more years to one year.

As you know, two of the most important goals of professional construction management are cost containment and risk reduction. I submit that, viewed in this light and taking into consideration the points above, the Pagoda Extension option is a lose-lose.

In your Op Ed that appeared in the Examiner on May 1, 2013 you admit that Muni is in a state of disrepair, that it is not able to meet its charter-mandated performance levels, is currently underfunded and can only identify one half of the \$10.2 billion it will need over the next 20 years. As to funding, you stated that finding it “will be neither simple or quick” but you assured readers that “in the meantime, we at the transit agency will continue to use the resources we have today as strategically as we can.” Likewise, in a recent article regarding the past misuse of Prop. A funds and your intent to ask the voters for additional funds next year, Chair Nolan stated “the transit agency needs to use the next 18 months to convince voters that it can be trusted to properly use taxpayer dollars.”

In closing, if you and the MTA actually believe that spending \$80 to \$100 million on tunnels that will be of no use or benefit for decades is “using your limited resources strategically” and will help convince the voters that you can be trusted to use their dollars “properly,” I submit that the MTA is in need of systemic changes with regard to both its management structure and personnel.

Sincerely,



Aaron Peskin

cc: SFMTA Board Members ([mtaboard@sfmta.com](mailto:mtaboard@sfmta.com)/[roberta.boomer@sfmta.com](mailto:roberta.boomer@sfmta.com))  
Dennis Herrera, City Attorney ([cityattorney@sfgov.org](mailto:cityattorney@sfgov.org))  
Brett Gladstone, Esq. ([BGladstone@hansonbridgett.com](mailto:BGladstone@hansonbridgett.com))  
Peter Rogoff, Administrator, FTA ([peter.rogoff@fta.dot.gov](mailto:peter.rogoff@fta.dot.gov))  
Leslie Rogers, Regional Administrator, FTA ([leslie.rogers@dot.gov](mailto:leslie.rogers@dot.gov))  
James Sampson, PMOC ([james.sampson@stvinc.com](mailto:james.sampson@stvinc.com))  
Calvin L. Scovel III, Office of the Inspector General ([hotline@oig.dot.gov](mailto:hotline@oig.dot.gov))  
Gabriel Metcalf, Executive Director, SPUR ([gmetcalf@spur.org](mailto:gmetcalf@spur.org))