

# PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 13-0173

WHEREAS, The San Francisco Public Utilities Commission (SFPUC) is constructing the New Irvington Tunnel, Project No. CUW35901 (Project) a key project that is part of the Water System Improvement Program (WSIP); and

WHEREAS, An environmental impact report ("EIR") as required by the California Environmental Quality Act ("CEQA") was prepared for the Project; and the Final EIR ("FEIR") was certified by the San Francisco Planning Commission on November 5, 2009 by Motion No. M-17972, (Planning Department File No. 2005.0162E). The FEIR prepared for the Project is tiered from the Water System Improvement Program Environmental Impact Report ("PEIR") adopted by the San Francisco Public Utilities Commission in Resolution No. 08-200 dated October 30, 2008, as authorized by and in accordance with CEQA and the CEQA Guidelines. On November 10, 2009, this Commission, by Resolution No. 09-0190, (1) approved the Project; and (2) adopted findings (CEQA Findings), including a statement of overriding considerations, and a Mitigation Monitoring and Reporting Program (MMRP) required by CEQA. The Project files, including the FEIR, PEIR and SFPUC Resolution No. 09- 0190 have been made available for review by the Commission and the public, and those files are considered part of the record before this Commission; and

WHEREAS, Kenneth Paul Mackin and Janice Mackin (the Sellers) own approximately 84 acres of improved agricultural land located at 7484 Sheridan Road in Sunol, California (Property); and

WHEREAS, In 2011, Sellers and the SFPUC entered into a 24-month temporary construction easement (Temporary Easement) across a portion of the Property, allowing the SFPUC to drill and operate 23 dewatering wells for the Project; and

WHEREAS, The 23 dewatering wells are necessary to promote tunnel integrity and worker safety; and

WHEREAS, The SFPUC needs to continue using the dewatering wells until approximately April of 2015; and

WHEREAS, The Temporary Easement expired on September 30, 2013; and

WHEREAS, Sellers are unwilling to extend the Temporary Easement but are willing to sell the Property to the SFPUC; and

WHEREAS, Loss of the current dewatering wells would result in significant construction delays and increased Project costs to identify and implement suitable alternatives to the dewatering wells; and

WHEREAS, In Resolution No. 09-0190, the San Francisco Public Utilities Commission delegated to the SFPUC General Manager authority to negotiate and execute agreements for acquisition of interests (temporary or permanent) in the Property as needed for the Project, subject to compliance with California Government Code Sections 7260 et seq. regarding relocation assistance; and

WHEREAS, SFPUC staff has complied with California Government Code Sections 7260 et seq.; and

WHEREAS, SFPUC staff and Sellers have negotiated proposed terms and conditions of an Agreement of Purchase and Sale for Real Estate (Purchase Agreement), a copy of which is

attached to this resolution, pursuant to which SFPUC would acquire the Property for \$3,721,500 and, following close of escrow, lease the Property to the Sellers for a term of up to 18 months under the terms of a Residential Lease (Lease), the form of which is an exhibit to the Purchase Agreement; and

WHEREAS, Funds for this purchase will be available from WSIP construction funds; and

WHEREAS, A City-hired independent appraiser issued an appraisal of the Property on July 30, 2013, and SFPUC staff and the City Real Estate Division reviewed the appraisal in August, 2013; and

WHEREAS, The City Planning Department by letter dated November 4, 2013, a copy of which is part of the record before this Commission, found that the proposed purchase of the Property would be consistent with the City's General Plan and with the Eight Priority Policies of City Planning Code Section 101.1; and

WHEREAS, Acquisition of the Property would serve the objectives of the Project; and

WHEREAS, On October 23, 2013, under the Delegation Agreement with the San Francisco Planning Department, the SFPUC Bureau of Environmental Management has determined that since the FEIR was finalized, there have been no substantial project changes and no substantial changes in Project circumstances that would require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FEIR, and that there would be no physical change in the environment associated with acquisition of the Property; and

WHEREAS, The Commission has reviewed and considered the information contained in the FEIR, the findings contained in SFPUC Resolution No. 09-0190 and all written and oral information provided by the Planning Department, the public, relevant public agencies, SFPUC and other experts and the administrative files for the Project; now, therefore, be it

RESOLVED, The Commission has reviewed and considered the FEIR and record as a whole, finds that the FEIR is adequate for its use as the decision-making body for the action taken herein to authorize acquisition of the Property and incorporates the CEQA findings contained in Resolution No. 09-190, including the Statement of Overriding Considerations by this reference thereto as though set forth in this Resolution; and be it

FURTHER RESOLVED, The Commission further finds that since the FEIR was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FEIR, and that there would be no physical change in the environment associated with acquisition of the Property; and be it

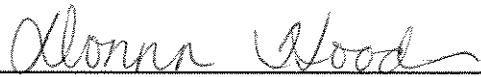
FURTHER RESOLVED, That this Commission hereby ratifies, approves and authorizes all actions heretofore taken by any City official in connection with the Purchase Agreement; and be it

FURTHER RESOLVED, That this Commission hereby authorizes and directs the SFPUC General Manager or the City Director of Property to execute the Purchase Agreement and to perform all actions necessary to implement the Purchase Agreement and protect the City's interests under that agreement, including without limitation conducting the due diligence investigations and approving, disapproving or waiving conditions precedent, and upon closing,

authorizes and directs the Director of Property to execute the Certificate of Acceptance for the deed to the Property, and authorizes and directs the General Manager or the Director of Property to execute the Lease and any other documents or agreements reasonably necessary to consummate the transaction contemplated under the Purchase Agreement, in the form approved by the General Manager or Director of Property, in consultation with the City Attorney; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the General Manager and the Director of Property to enter into any amendments or modifications to the Purchase Agreement, including without limitation, the exhibits, that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City; do not materially increase the obligations or liabilities of the City; are necessary or advisable to effectuate the purposes and intent of the Purchase Agreement or this resolution; and are in compliance with all applicable laws, including the City Charter.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of November 12, 2013.*



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*Secretary, Public Utilities Commission*

