

File No. 100222*

Committee Item No. _____
Board Item No. 28

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date 05/18/10

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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Completed by: Joy Lamug

Date 05/13/10

Completed by: _____

Date _____

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



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1 [Authorizing the Acquisition of Real Property Interests by Eminent Domain—Water System
2 Improvement Program-CUW 35901, New Irvington Tunnel Project]

3
4 **Resolution authorizing acquisition of the following interests in real property in**
5 **Alameda County: (1) a temporary construction easement in a portion of Assessor's**
6 **Parcel #513-0065-011-02 in Fremont, owned by Malik A. Alarab, Trustee, and Barbara E.**
7 **Alarab, Trustee, (2) a temporary construction easement in a portion of Assessor's**
8 **Parcel # 096-0001-020-03 in Sunol, owned by Kenneth and Janice Mackin, and (3) a**
9 **temporary construction easement and a permanent subsurface soil nail easement in**
10 **portions of Assessor's Parcel # 096-0080-004 in Sunol, owned by Carolyn Marie Garcia**
11 **and Stanley A. Garcia, Trustees, by eminent domain, for the public purpose of**
12 **constructing the San Francisco Public Utilities Commission Water System**
13 **Improvement Program-Funded Project CUW35901, New Irvington Tunnel Project;**
14 **adopting environmental findings under the California Environmental Quality Act**
15 **(CEQA), CEQA Guidelines, and Administrative Code Chapter 31; and adopting findings**
16 **of consistency with the General Plan and under City Planning Code Section 101.1.**

17
18 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) plans to
19 construct Project CUW35901 New Irvington Tunnel Project (the "Project"), under the Water
20 System Improvement Program (WSIP), for improvements to the regional water supply system,
21 a public use, and in connection therewith will require interests in certain real property
22 described herein; and,

23 WHEREAS, The objectives of the Project are to:
24
25

1 Within 24 hours after a major earthquake on the Calaveras fault, allow for
2 reliable transmission of a minimum of 120 mgd of water between SFPUC facilities in
3 the Sunol Valley and the Bay Division Pipeline (BDPL) transmission system starting
4 in the City of Fremont;

5 Within 24 hours after a major earthquake on the San Andreas or Hayward
6 fault, allow for reliable transmission of a minimum of 229 mgd of water between
7 SFPUC facilities in the Sunol Valley and the BDPL transmission system starting in
8 the City of Fremont;

9 Within 30 days after a major earthquake on the Calaveras fault, allow for a
10 reliable transmission of a minimum of 160 mgd of water between the Sunol Valley
11 and the BDPL transmission system;

12 Increase delivery reliability by providing operational flexibility to allow for
13 planned shutdowns of the existing Irvington Tunnel for inspection, maintenance, and
14 repair while providing for a maximum capacity of 320 mgd monthly average flow;

15 Increase delivery reliability by allowing for a planned outage of the existing
16 Irvington Tunnel (e.g., shutdown for maintenance) concurrent with an unplanned
17 outage (e.g., emergency outage due to facility failure) of any of the BDPLs or San
18 Joaquin Pipelines while delivering a maximum flow of about 246 mgd between the
19 Sunol Valley and BDPL transmission system during the outages; and

20 WHEREAS, The Project is a capital improvement project approved by the SFPUC as
21 part of WSIP; and

22 WHEREAS, A Final Program Environmental Impact Report ("PEIR") was prepared for
23 WSIP and certified by the Planning Commission on October 30, 2008 by Motion No. 17734;
24 and
25

1 WHEREAS, Thereafter, the SFPUC approved WSIP and adopted findings and a
2 Mitigation Monitoring and Reporting Program ("MMRP") as required by California
3 Environmental Quality Act ("CEQA") on October 30, 2008 by Resolution No. 08-200; and

4 WHEREAS, The PEIR has been made available for review by the SFPUC and the
5 public, and is part of the record before this Board of Supervisors of the City and County of San
6 Francisco (this "Board" or the "Board of Supervisors"); and

7 WHEREAS, The Final Environmental Impact Report ("Final EIR") prepared for the
8 Project is tiered from the PEIR, as authorized by and in accordance with CEQA; and

9 WHEREAS, On November 5, 2009, the Planning Commission reviewed and
10 considered the Final EIR for the Project in Planning Department File No. 2005.0162E,
11 consisting of the Draft EIR and the Comments and Responses document and Errata Sheet(s),
12 and found that the contents of said report and the procedures through which the Final EIR
13 was prepared, publicized, and reviewed complied with the provisions of CEQA, the CEQA
14 Guidelines and Chapter 31 of the San Francisco Administrative Code and found further that
15 the Final EIR reflects the independent judgment and analysis of the City and County of San
16 Francisco, is adequate, accurate, and objective, and that the Comments and Responses
17 document and Errata Sheet(s) contains no significant revisions to the Draft EIR, and certified
18 the completion of said Final EIR in compliance with CEQA and the CEQA Guidelines in its
19 Motion No. M-17972; and,

20 WHEREAS, On November 10, 2009, the SFPUC, by Resolution No. 09-0190, adopted
21 CEQA Findings for the Project, including a Statement of Overriding Considerations, and a
22 Mitigation Monitoring and Reporting Program ("MMRP") as required by CEQA, and approved
23 the Project; and,

24 WHEREAS, On December 15, 2009, this Board adopted Resolution No. 505-09, a
25 copy of which is on file with the Clerk of the Board in File No. 091326, adopting the CEQA

1 Findings, including the Statement of Overriding Considerations, and the MMRP for the
2 Project, signed by the Mayor on December 18, 2009; and,

3 WHEREAS, The Project and Final EIR files have been made available for review by
4 the SFPUC and the public in File No. 2005.0162E, at 1650 Mission Street, Fourth Floor, San
5 Francisco, California; and those files are part of the record before this Board; and

6 WHEREAS, California Code of Civil Procedure §1240.125 authorizes a local public
7 entity to acquire property by eminent domain outside its territorial limits for water, gas or
8 electric supply purposes, or for drainage or sewer purposes if it is authorized to acquire
9 property by eminent domain for the purposes for which the property is to be acquired; and,

10 WHEREAS, California Government Code §38730 authorizes a city to acquire real
11 property by eminent domain for purposes of obtaining water, water rights, reservoir sites,
12 rights of way for pipes, aqueducts, flumes, or other conduits, and all other property and
13 appliances suitable and proper to supply water for the use of such city and its inhabitants;
14 and,

15 WHEREAS, California Government Code §25350.5 authorizes the board of supervisors
16 of any county to acquire by eminent domain any property necessary to carry out any of the
17 powers or functions of the county; and,

18 WHEREAS, California Government Code §37350.5 authorizes any city to acquire by
19 eminent domain any property necessary to carry out any of the powers or functions of such
20 city; and,

21 WHEREAS, California Code of Civil Procedure §1240.030 authorizes the acquisition of
22 property by eminent domain for a proposed project only if all of the following are established:

- 23 1. The public interest and necessity require the project;
24 2. The project is planned or located in the manner that will be most compatible with the
25 greatest public good and the least private injury; and

1 3. The property sought to be acquired is necessary for the project.

2 WHEREAS, The City and County of San Francisco ("CCSF") requires for the
3 construction and improvement of the Project acquisition of the following interests in real
4 property in Alameda County: (1) a temporary construction easement in a portion of
5 Assessor's Parcel #513-0065-011-02 in Fremont, owned by Malik A. Alarab, Trustee, and
6 Barbara E. Alarab, Trustee, (2) a temporary construction easement in a portion of Assessor's
7 Parcel # 096-0001-020-03 in Sunol, owned by Kenneth and Janice Mackin, and (3) a
8 temporary construction easement and a permanent subsurface soil nail easement in portions
9 of Assessor's Parcel # 096-0080-004 in Sunol, owned by Carolyn Marie Garcia and Stanley A.
10 Garcia, Trustees (such easements referred to herein collectively as the "Easements" and
11 such Assessor's Parcels referred to herein collectively as the "Subject Properties"), which
12 Easements are more particularly described in Schedule 1, a copy of which is on file with the
13 Clerk of the Board of Supervisors in File No. [] and incorporated herein by this
14 reference; and,

15 WHEREAS, On November 10, 2009, the SFPUC, by Resolution No. 09-0190,
16 authorized the SFPUC General Manager to commence the process, in compliance with
17 Government Code §§7260 et seq., the San Francisco Charter, and all applicable laws, for
18 possible acquisition of the Easements; and,

19 WHEREAS, The SFPUC staff obtained appraisals in compliance with California
20 Government Code §§7267 et seq. and all related statutory procedures for possible acquisition
21 of the Easements, and on November 11, 2009 and November 20, 2009, submitted offers to
22 each of the owners of the Subject Properties, and on April 7, 2010, submitted an amended
23 offer to the owner of Assessor's Parcel #096-0080-004, to purchase the Easements as
24 required by California Government Code §7267.2, and continues to negotiate the possible
25 acquisition of those interests with those owners; and,

1 WHEREAS, The SFPUC will provide the owners of the Subject Properties thirty (30)
2 days advance written notice identifying the date upon which activities in the Easement area
3 will commence ("Commencement Date"), with the expectation that the temporary Easements
4 will expire on the last day of the fifty first (51st) full calendar month after the Commencement
5 Date, unless extended by agreement of the parties, based upon SFPUC payment of the then
6 fair market value of the Easement as extended, but in no case less than the rate paid for the
7 initial term, prorated on a monthly basis; and

8 WHEREAS, In Planning Case 2009.0558R, the Department of City Planning found the
9 acquisition of the Easements to be in conformity with the General Plan and consistent with the
10 Eight Priority Policies of City Planning Code Section 101.1 to the extent applicable; and,

11 WHEREAS, On April 13, 2010, the SFPUC adopted Resolution No. 10-0057 in which
12 the SFPUC found that (a) the public interest and necessity require the proposed Project in
13 order to meet the adopted WSIP levels of service of seismic and delivery reliability, (b) the
14 proposed Project, which includes the construction of a 3.5-mile tunnel, with finished diameter
15 between 8.5 and 10.5 feet, located 30 feet to 700 feet underground largely within real property
16 interests already owned by CCSF, will be constructed using conventional mining excavation,
17 heavy groundwater inflow control, reinforced concrete tunnel lining, buried portal structures,
18 large pipe lining reinforcement inside the tunnel, pipe connections at both ends of the tunnel,
19 a 120-foot deep temporary shaft for construction access at Vargas Road/Highway I-680,
20 temporary and permanent bridge crossings of Alameda Creek, other site improvements, and
21 environmental mitigation work, is planned and located in the manner that will be most
22 compatible with the greatest public good and the least private injury, based on significant
23 evidence of economic, legal, environmental, social, technological and other considerations
24 indicating that the proposed project is superior to other alternatives to the Project or the
25 Project location, and (c) the Easements are necessary for the Project, because the alignment

1 for the new tunnel must be in proximity to the existing Irvington Tunnel in order to facilitate
2 connection with the existing infrastructure for the regional water distribution system at both
3 ends of the tunnel, and for the reasons reflected in the Final EIR for the Project, as well as in
4 the CEQA Findings, and although the new tunnel and both of the portals would be located
5 within property already owned by the City (either as permanent easements or fee interests) in
6 Fremont and the Sunol Valley, one temporary shaft, some essential temporary construction
7 areas, and a permanent subsurface easement for construction related reinforcement, must be
8 located on adjacent properties in order to perform the construction; and,

9 WHEREAS, The acquisition and use of the Easements for construction of the Project is
10 compatible with the existing public uses of the Subject Properties for drainage and water
11 pipeline purposes and electric tower purposes; and,

12 WHEREAS, On April 13, 2010, by Resolution No. 10-0057, the SFPUC authorized the
13 SFPUC General Manager (a) to request that the Board of Supervisors hold a hearing to
14 consider adoption of a Resolution of Necessity to acquire the Easements, (b) if the Board
15 adopts said Resolution of Necessity, to take such actions that are consistent with the Charter
16 and all applicable law, to proceed to acquire the Easements; and (c) in any event, to continue
17 to discuss the acquisition with the owners of the Subject Properties; and,

18 WHEREAS, Notice of this Board's intention to adopt this Resolution of Necessity was
19 duly given as required by law and owners of the Subject Properties were provided a
20 reasonable opportunity to appear and be heard on the matters referred to in California Code
21 of Civil Procedure §1240.030 and copies of the notices delivered to such owners (each, a
22 "Notice") are on file with the Clerk of the Board of Supervisors in File No. [] and
23 incorporated herein by this reference; and
24
25

1 WHEREAS, On [_____], 2010, by Motion No. [_____], the Board of Supervisors
2 moved to hold a public hearing on adopting this Resolution of Necessity on this date and at
3 this time; and

4 WHEREAS, Owners of the Subject Properties who filed a written request within the
5 time specified in the Notice were provided an opportunity to be heard on the matters referred
6 to in California Code of Civil Procedure §1240.030; and

7 WHEREAS, The Project is one of the regional projects to be completed as part of
8 WSIP that will allow the SFPUC to reduce the vulnerability of the system to damage in the
9 event of a major earthquake; now, therefore, be it

10 RESOLVED, This Board finds and determines that notice of its intention to adopt this
11 Resolution of Necessity was duly given as required by law, and on the date and at the time
12 and place fixed for hearing, this Board did hear and consider all of the evidence presented;
13 and, be it

14 FURTHER RESOLVED, This Board finds and determines that owners of the Subject
15 Properties who filed a written request within the time specified in the Notice were provided an
16 opportunity to be heard on the matters referred to in California Code of Civil Procedure
17 §1240.030; and, be it

18 FURTHER RESOLVED, By at least a two-thirds vote of all the members of this Board
19 as required under California Code of Civil Procedure §1245.240, this Board finds and
20 determines, as required under California Code of Civil Procedure §§1240.030 and 1245.230,
21 each of the following:

- 22 1. The public interest and necessity require the proposed Project;
- 23 2. The proposed Project is planned or located in the manner that will be most
24 compatible with the greatest public good and the least private injury;
- 25 3. The Easements sought to be acquired are necessary for the Project;

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

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

8 FURTHER RESOLVED, That to the extent that any portion of the Easements is
9 presently appropriated to public use, the purpose for which the acquisition and use of the
10 Easements is sought, namely, for construction and operation of the Project, will not
11 unreasonably interfere with or impair the continuance of the public use as it then exists or may
12 reasonably be expected to exist in the future, as required by California Code of Civil
13 Procedure §1240.510; and, be it

14 FURTHER RESOLVED, That the City Attorney is hereby authorized and directed to
15 commence proceedings in eminent domain against each owner of the Subject Properties and
16 any and all interests therein or claims thereto for the condemnation thereof for the public use
17 of CCSF; together with the authorization and direction to file any actions or comply with any
18 legal procedures to obtain an order for immediate possession for all or a portion of the
19 Easements as depicted in Schedule 1, in conformity with existing or amended law; and, be it

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

24 FURTHER RESOLVED, That the Board of Supervisors, in exercising its independent
25 judgment, adopts and incorporates by reference all prior CEQA Findings adopted by the San

1 Francisco Public Utilities Commission and this Board for the Project including, without
2 limitation, the CEQA Findings, including the Statement of Overriding Considerations, set forth
3 in the San Francisco Public Utilities Commission Resolution No. 09-0190 and this Board's
4 findings in Resolution No. 505-09, with respect to the approval of this Resolution in
5 conformance with CEQA; and, be it

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

12 FURTHER RESOLVED, That the Board of Supervisors finds that the Project mitigation
13 measures set forth in the Final EIR and the MMRP and adopted by the San Francisco Public
14 Utilities Commission and this Board will be implemented as reflected in and in accordance
15 with the MMRP; and, be it

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

20 FURTHER RESOLVED, That the Board of Supervisors adopts as its own and
21 incorporates by reference herein, as though fully set forth, each of the findings made by the
22 SFPUC in adopting Resolution No. 10-0057 on April 13, 2010; and, be it,

23 FURTHER RESOLVED, That the cost of acquiring the Easements shall be paid from
24 Project funds appropriated in Appropriation Ordinance No. 0311-08, adopted by this Board on
25 December 16, 2008, and signed by the Mayor on December 19, 2008.

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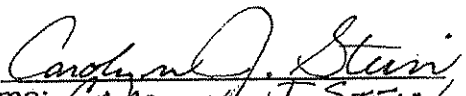
RECOMMENDED:

PUBLIC UTILITIES COMMISSION

Edward M. Harrington, General Manager

Pursuant to SFPUC Resolution No. 10-0057

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

By: 
Name: CAROLYN M. J. STEIN
Deputy City Attorney

SCHEDULE 1

Legal Descriptions and Plats of Real Property Interests

See the following pages for legal descriptions and plats of:

SFPUC Parcel IV06-03 (portion of APN 513-0065-011-02), Malik A. Alarab, Trustee, and Barbara E. Alarab, Trustee

SFPUC Parcel IV16-03 (portion of APN 096-0001-020-03), Kenneth and Janice Mackin

SFPUC Parcel IV19-03 (portion of APN 096-0080-004), Carolyn Marie Garcia and Stanley A. Garcia, Trustees

SFPUC Parcel IV19-04 (portion of APN 096-0080-004), Carolyn Marie Garcia and Stanley A. Garcia, Trustees



ENGINEERS
SURVEYORS
PLANNERS

February 9, 2009

EXHIBIT "A"
LEGAL DESCRIPTION
Property I.D. No. IV06-03
SFPUC NEW IRVINGTON TUNNEL
Temporary Construction Easement

All that real property situate in the City of Fremont, County of Alameda, State of California, more particularly described as follows:

Being all of the land described first in that certain Director's Deed recorded on July 8, 1969 in Reel 2436 of Official Records at image 468, Alameda County, excepting therefrom all the land described in that certain Grant Deed to the State of California recorded on August 2, 1973 in Reel 3479 of Official Records at image 198, Alameda County, State of California, more particularly described as follows:

BEGINNING at the northeasterly corner of said land described first in that certain deed recorded on July 8, 1969 in Reel 2436 of Official Records at image 468, Alameda County, being a point on a curve to the right, from which point a radial line, from the curve to the radius point, bears North 84°39'13" West;

thence southwesterly along the easterly line of last said land described first in that certain deed recorded on July 8, 1969 in Reel 2436 of Official Records at image 468, Alameda County, the following two courses, along said curve having a radius of 2469.99 feet, through a central angle of 14°03'25", and an arc length of 605.99 feet;

thence continuing along said easterly line, South 27°05'44" West, 85.64 feet to the southeast corner of said lands described in Reel 3479 of Official Records at image 198;

thence along the northerly and easterly lines of said land described in Reel 3479 of Official Records at image 198 the following five courses, South 43°44'27" West, 27.58 feet to the beginning of a tangent curve to the right;

thence along said curve having a radius of 90.00 feet, through a central angle of 155°10'22", and an arc length of 243.74 feet to a point of compound curvature;

thence along said curve having a radius of 2936.98 feet, through a central angle of 3°56'04", and an arc length of 201.68;

thence North 23°44'46" East, 191.34 feet;

thence North 35°03'24" East, 286.10 feet to the northerly line of said land described in Reel 2436 of Official Records at image 468;

thence along last said northerly line, South 84°05'22" East, 24.66 feet to the **POINT OF BEGINNING**, containing an area of 109,489 square feet or 2.51 acres, more or less.

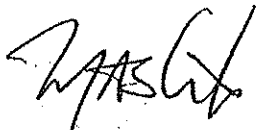


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All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.0000877. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.0001754.

A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B".

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.


 02-09-09

Michael A. Shoup, PLS 7616
License Expires 12/31/2010



END OF DESCRIPTION

EXHIBIT "B"

LEGEND
 APN ASSESSORS PARCEL NUMBER
 C&CSF CITY AND COUNTY OF SAN FRANCISCO
 DOC NO DOCUMENT NUMBER
 O.R. OFFICIAL RECORDS
 P.O.B. POINT OF BEGINNING
 (R) RADIAL
 RE IM REEL IMAGE
 NON-ACCESS RIGHTS 

LANDS OF TELLES
 7492 O.R. 449

LANDS OF
 C&CSF
 3082 O.R. 37

"T"-LINE HETCH
 HETCHY AQUEDUCT

LANDS OF ALARAB
 RE 2436 IM 468
 APN 513-0065-011-02


LANDS OF STATE OF
 CALIFORNIA
 RE 3479 IM 198

P.O.B.

1"=100'

LANDS OF TELLES
 DOC NO 95230354
 APN 513-0065-008-02

IV06-03
 TEMPORARY
 CONSTRUCTION
 EASEMENT
 AREA = 109,489
 SQ.FT. ±
 AREA = 2.51 ACRES
 ±


 100' 0 100'
 SCALE 1"=100'

LANDS OF LO
 DOC NO 2005316066
 146 PM 67-68
 APN 513-0065-008-04,
 513-0065-008-05



STATE ROUTE 680

PICO ROAD

VARGAS ROAD

PROPOSED NEW LINE
 HETCH HETCHY AQUEDUCT



255 SHORELINE DR
 SUITE 200
 REDWOOD CITY, CA 94065
 650-482-6300
 650-482-6399 (FAX)

590

Subject **HETCH HETCHY CORRIDOR**
 PROPERTY I.D. **IV06-03**
 Job No. **20080212-04**
 By **RCS** Date **2-09-09** Chkd. _____
 SHEET **1** OF **1**



ENGINEERS
SURVEYORS
PLANNERS

February 9, 2009

EXHIBIT "A"
LEGAL DESCRIPTION
Property I.D. No. IV16
SFPUC NEW IRVINGTON TUNNEL
Temporary Construction Easement

IV16-03 Temporary Construction Easement

All that real property situate in the City of Sunol, County of Alameda, State of California, more particularly described as follows:

Being a portion of the land described in that certain Grant Deed recorded on September 19, 1990 as Document Number 90249385, Official Records, Alameda County, State of California, being a 100 foot wide strip of land 50 feet on each side of the following described centerline:

BEGINNING at a post marked "V No. 3" at the northwesterly corner of Survey "V" of the official connected plat of the Ex-Mission of San Jose, granted to James Ferrater, by patent dated December 27, 1867, recorded February 17, 1868, in Book "A" of patents, page 269, Alameda County Records;

thence along the northerly line of said Survey "V", South $88^{\circ}14'20"$ East, 213.84 feet to the intersection with the northeasterly right-of-way line of Sheridan Road, being also known as Alameda County Road Number 2640, said intersection being the northwest corner of the land described in said deed recorded on September 19, 1990 as Document Number 90249385, Official Records, Alameda County;

thence along the northeasterly right-of-way line of said road the following two courses, South $26^{\circ}13'30"$ East, 247.40 feet;

thence South $37^{\circ}50'10"$ East, 289.11 feet to the **TRUE POINT OF BEGINNING**, of said centerline;

thence leaving said northeasterly right-of-way line, North $80^{\circ}02'32"$ East, 826.30 feet;

the side lines of said strip of land to be lengthend or shortend to terminate in said northeasterly right-of-way line of Sheridan Road, Containing an area of 82,630 square feet or 1.90 acres, more or less.

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.0000877. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.0001754.

A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B".

Exhibit "A"
Page 1 of 2



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This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.

Michael A. Shoup 02-09-09

Michael A. Shoup, PLS 7616
License Expires 12/31/2010



END OF DESCRIPTION

EXHIBIT "B"

P.O.B.
NORTHWEST CORNER
OF SURVEY "V", POST
MARKED "V NO. 3"

LANDS OF ROSE ANDRADE AND HACHMAN
DOC NO 2001157290
APN 096-0001-019

S88°14'20"E
213.84'

LANDS OF
LOEFFLER
RE 3863 IM
254 DOC NO
95135359
APN
096-0001-020-26

S 26°13'30" E
247.40'

"T"-LINE HETCH
HETCHY AQUEDUCT

S 37°50'10" E
289.11'

T.P.O.B.

N 80°02'32" E 826.30'

100' WIDE TEMPORARY
CONSTRUCTION EASEMENT
AREA = 82,630 SQ.FT. ±
AREA = 1.90 ACRES ±

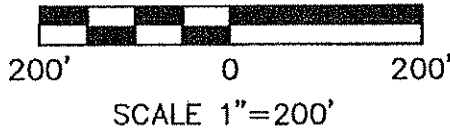
PROPOSED C/L OF
NEW IRVINGTON TUNNEL

100' 50'

LANDS OF PHELPS
DOC NO 98162323
APN 096-0001-020-27

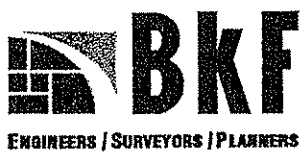
SHERIDAN ROAD
COUNTY ROAD
2640 (40' WIDE)

LANDS OF MACKIN
DOC NO 90249385
APN 096-0001-020-03



LEGEND	
APN	ASSESSORS PARCEL NUMBER
C/L	CENTERLINE
DOC NO	DOCUMENT NUMBER
O.R.	OFFICIAL RECORDS
P.O.B.	POINT OF BEGINNING
T.P.O.B.	TRUE POINT OF BEGINNING
RE IM	REEL IMAGE

Michael A. Shoup
102-09-09



255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (FAX)

Subject **HETCH HETCHY CORRIDOR**
PROPERTY I.D. IV16-03
Job No. **20060212-04**
By **RCS** Date **2-09-09** Chkd. _____
SHEET **1** OF **1**



ENGINEERS
SURVEYORS
PLANNERS

May 11, 2009

EXHIBIT "A"
LEGAL DESCRIPTION
Property I.D. No. IV19
SFPUC NEW IRVINGTON TUNNEL

IV19-03 Temporary Construction Easement

All that real property situate in the City of Sunol, County of Alameda, State of California, more particularly described as follows:

Being a portion of the land described in that certain Grant Deed recorded on January 4, 1995 as Document Number 95001815 of Official Records, Alameda County, State of California and being more particularly described as follows:

BEGINNING at the northwest corner of said land described in said deed;

thence along the northerly line of last said land, thence North $80^{\circ}43'26''$ East, 542.71 feet;

thence South $24^{\circ}14'07''$ East, 179.71 feet to the beginning of a tangent curve to the right;

thence along said curve having a radius of 85.00 feet, through a central angle of $6^{\circ}14'37''$, and an arc length of 9.26 feet;

thence South $17^{\circ}59'30''$ East, 62.51 feet;

thence South $80^{\circ}43'26''$ West, 509.82 feet to the westerly line of said land described in said deed;

thence along last said westerly line, North $29^{\circ}37'17''$ West, 260.73 feet to the **POINT OF BEGINNING**, containing an area of 129,328 square feet or 2.97 acres, more or less.

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.0000877. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.0001754.

A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B".

Exhibit "A"
Page 1 of 2

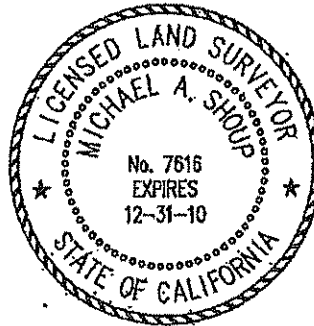


ENGINEERS
SURVEYORS
PLANNERS

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.

Michael A. Shoup 05-11-09

Michael A. Shoup, PLS 7616
License Expires 12/31/2010



END OF DESCRIPTION

J:\Sur06\060212-04\Plats&Legals\IV19\ (05-11-09)IV19-03 Legal.doc

Exhibit "A"
Page 2 of 2

EXHIBIT "B"

LEGEND

APN ASSESSORS PARCEL NUMBER
 C&CSF CITY AND COUNTY OF SAN FRANCISCO
 DOC NO DOCUMENT NUMBER
 O.R. OFFICIAL RECORDS
 P.O.B. POINT OF BEGINNING
 BK PG BOOK AND PAGE

LANDS OF C&CSF, BK 2297 O.R. PG 377.
 FIRST DESCRIBED PARCEL
 APN 0096-0080-007

(S 79°59'00" W 759'±)(R2)
 (S 80°32'00" W 706.82')(R3)
 N 80°43'26" E 727.97'

N 80°43'26" E 542.71'

229.98'(230')(R2)

124.29'

S 24°40'7" E 179.71'

(N10°15'00" W)(R1)
 N 09°10'08" W

ALAMEDA CREEK

(N10°15'00" W)
 (235.79±)(R3)

P.O.B.

IV19-03
 TEMPORARY CONSTRUCTION EASEMENT
 AREA = 129,328 SQ.FT. ±
 || = 2.97 ACRES ±

R = 85.00'
 Δ = 6°14'37"
 L = 9.26'

LANDS OF C&CSF APN 096-0080-006-02

N 29°37'17" W 280.73'

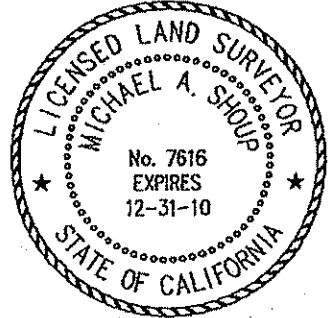
(S 31°00'00" E)(R1)(R5)
 (S 31°30'00" E)(R2)
 S 29°37'17" E

S 80°43'26" W 509.82'

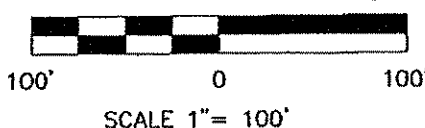
S 17°56'30" E
 S 17°56'30" E

LANDS OF GARCIA
 DOC NO 95001815
 APN 096-0080-004
 6503 CALAVERAS RD
 SUNOL, CA

Handwritten signature and date: 05-11-09



REFERENCES
 R1 BK 2700 DEEDS PG 321
 R2 BK 2297 OR PG 377
 R3 DOC NO 95001815



CITY OF SUNOL COUNTY OF ALAMEDA STATE OF CALIFORNIA



255 SHORELINE DR
 SUITE 200
 REDWOOD CITY, CA 94065
 650-482-6300
 650-482-6399 (FAX)

Subject HETCH HETCHY CORRIDOR
 PROPERTY I.D. IV19-03
 Job No. 20060212-04
 By RCS Date 05-11-09 Chkd. _____
 SHEET 1 OF 1



ENGINEERS
SURVEYORS
PLANNERS

March 17, 2010

EXHIBIT "A"
LEGAL DESCRIPTION
Property I.D. No. IV19-04
SFPUC NEW IRVINGTON TUNNEL

IV19-04

All that real property situate in the City of Sunol, County of Alameda, State of California, more particularly described as follows:

Being a portion of the land described in that certain Grant Deed recorded on January 4, 1995 as Document Number 95001815 of Official Records, Alameda County, State of California and being more particularly described as follows:

BEGINNING at the northwest corner of said land described in said deed;

thence along the northerly line of last said land, thence North 80°43'26" East, 35.00 feet;

thence South 31°51'38" West, 37.35 feet to the westerly line of said land described in said deed;

thence along said westerly line, North 29°37'17" West, 30.00 feet to the **POINT OF BEGINNING**, containing an area of 492 square feet or 0.01 acres, more or less.

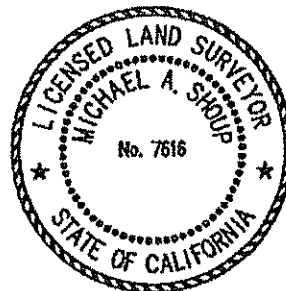
All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.0000877. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.0001754.

A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B".

This description was prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.

Michael A. Shoup 03.17.10

Michael A. Shoup, PLS 7616



END OF DESCRIPTION

Exhibit "A"
Page 1 of 1

EXHIBIT "B"

LEGEND
 APN ASSESSORS PARCEL NUMBER
 C&CSF CITY AND COUNTY OF SAN FRANCISCO
 DOC NO DOCUMENT NUMBER
 O.R. OFFICIAL RECORDS
 P.O.B. POINT OF BEGINNING
 BK PG BOOK AND PAGE

LANDS OF C&CSF, BK 2297 O.R. PG 377,
 FIRST DESCRIBED PARCEL
 APN 0096-0080-007

(S 79°59'00" W 759'±)(R2)
 (S 80°32'00" W 706.82')(R3)
 N 80°43'26" E 727.97'

(N10°15'00" W)(R1)
 N 09°10'08" W

ALAMEDA CREEK

(N10°15'00" W)
 (235.79'±)(R3)

229.98'(230')(R2)

P.O.B.



IV19-04

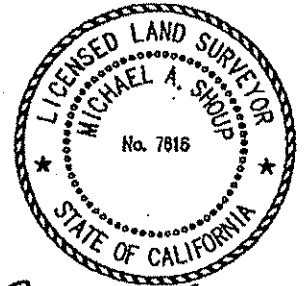
AREA = 482 SQ. FT. ±
 AREA = 0.01 ACRES ±

LINE TABLE		
LINE	LENGTH	BEARING
L1	35.00'	N80°43'26"E
L2	37.35'	S31°51'38"W
L3	30.00'	N29°37'17"W

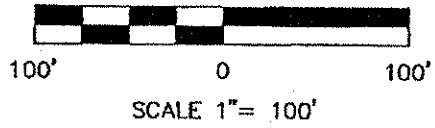
(S 29°37'17" E)(R2)
 (S 31°30'00" E)(R2)
 (S 31°00'00" E)(R1)(R3)

LANDS OF GARCIA
 DOC NO 95001815
 APN 096-0080-004
 6503 CALAVERAS RD
 SUNOL, CA

LANDS OF C&CSF
 APN 096-0080-006-02



REFERENCES
 R1 BK 2700 DEEDS PG 321
 R2 BK 2297 OR PG 377
 R3 DOC NO 95001815



CITY OF SUNOL COUNTY OF ALAMEDA STATE OF CALIFORNIA 03-17-10



255 SHORELINE DR
 SUITE 200
 REDWOOD CITY, CA 94065
 650-482-6300
 650-482-6399 (FAX)

Subject HETCH HETCHY CORRIDOR
 PROPERTY I.D. IV19-04
 Job No. 20060212-04
 By RAB Date 03-17-10 Chkd. MAS
 SHEET 1 OF 1



AGENDA ITEM
Public Utilities Commission
City and County of San Francisco



DEPARTMENT Infrastructure Division AGENDA NO. 20
 MEETING DATE April 13, 2010

Authorize Request for Resolution of Necessity for Acquisition of Real Property: Regular Calendar
 Project Manager: David F. Tszoo

Project CUW35901, New Irvington Tunnel Project

<p>Summary of Proposed Commission Action:</p>	<p>In connection with the Water Enterprise Water System Improvement Program ("WSIP")-funded Project CUW35901-New Irvington Tunnel Project (the "Project"), starting at the Alameda West Portal near Calaveras Road in Alameda County and ending in Fremont near Mission Boulevard, authorize the General Manager to request the Board of Supervisors to hold a public hearing to consider adopting a Resolution of Necessity to acquire temporary or permanent real property interests in the following real properties, all located in Alameda County: (1) Assessor's Parcel #513-0065-011-02 in Fremont, owned by Malik A. Alarab, Trustee, and Barbara E. Alarab, Trustee, (2) Assessor's Parcel # 096-0080-004 in Sunol, owned by Carolyn Marie Garcia and Stanley A. Garcia, Trustees, and (3) Assessor's Parcel # 096-0001-020-03 in Sunol, owned by Kenneth and Janice Mackin, while continuing negotiations with the owners.</p>
<p>Background & Description of Project Action:</p>	<p>Background: The Project is one of the regional projects to be completed as part of the WSIP that will allow the SFPUC to reduce the vulnerability of the system to damage in the event of a major earthquake.</p> <p>On November 10, 2009, the Commission adopted California Environmental Quality Act (CEQA) Findings, the Mitigation Monitoring and Reporting Program (MMRP) and a Statement of Overriding Considerations, approved the Project, and authorized the General Manager to proceed to implement the Project, including commencing the process, in compliance with Government Code Section 7260 et seq., the Charter and all applicable laws, for possible acquisition of the Real Property Interests in the Subject Properties</p>

APPROVAL:

DEPARTMENT /
BUREAU

[Signature]

FINANCE

Todd L. Rydstrom

COMMISSION
SECRETARY

Mike Housh

GENERAL
MANAGER

Ed Harrington

[Signature]

	<p>identified above. SFPUC staff has completed appraisals, submitted offers, and continue to pursue discussions with the owners of the Subject Properties to acquire those interests.</p> <p>The SFPUC has advertised the proposed Project construction contract and anticipates that the staff could present to the Commission a request to award that contract as soon as May 25, 2010. The SFPUC staff will continue to diligently pursue negotiations to achieve acquisition of the Real Property Interests in the Subject Properties by mutual agreement of the parties. However, the General Manager recommends that the Commission authorize a request to the Board of Supervisors to hold a public hearing to consider a Resolution of Necessity, in order to minimize the delay to the Project if the negotiations, which began in November, are unsuccessful. The Resolution of Necessity is an essential step in order to file an eminent domain action and obtain a court order of possession – a process that can take several months. Significant Project delays would jeopardize critical timelines to prepare for pre-scheduled shutdowns to connect the new tunnel to the existing Bay Division Pipelines downstream of the tunnel. If the Project misses the initial shutdown, it would mean a one-year postponement of the scheduled shutdowns and a one-year delay in completion of the Project. The delay could in turn result in cost increases in the order of \$12 Million.</p> <p>Description of Project Action: The Resolution authorizes the General Manager to recommend to the Board of Supervisors that it conduct a duly noticed public hearing, as required pursuant to California State law, to consider the adoption of a Resolution of Necessity for the acquisition of Real Property Interests in the Subject Properties. The total combined purchase price for the acquisition of these Real Property Interests in the Subject Properties is estimated to not exceed \$1,200,000.</p>
<p>Result of Inaction:</p>	<p>The SFPUC's ability to proceed with plans to implement the Project depends on the timely acquisition of the required real property interests. A delay in property acquisition activities will leave the system vulnerable to a seismic event for a longer period of time.</p>
<p>Environmental Review:</p>	<p>The San Francisco Planning Commission certified a Final Environmental Impact Report for Project No. CUW35901-New Irvington Tunnel Project, on November 5, 2009. The Commission on November 10, 2009, in Resolution 09-0190, approved the Project and adopted CEQA Findings, the MMRP and Statement of Overriding Considerations. On December 15, 2009, the Board of Supervisors adopted the CEQA Findings, the MMRP and Statement of Overriding Considerations related to Project appropriations. Copies of the Resolution and the CEQA Findings adopted in Resolution No. 09-0190, are attached. No additional environmental review is required related to the actions contemplated herein.</p>

Project No: CUW35901 - New Irvington Tunnel
Commission Meeting Date: April 13, 2010

Recommendation:	SFPUC staff recommends that the Commission adopt the attached Resolution.
Attachments:	<ol style="list-style-type: none">1. SFPUC Resolution2. NIT GIS Map for Agenda Item3. Attachment A: CEQA Findings NIT4. Attachment B: MMRP NIT5. Alarab GIS Map6. Alarab Plat and Legal7. Garcia GIS Map8. Garcia Legal and Plat9. Mackin GIS Map10. Mackin Legal and Plat11. SFPUC Resolution No. 09-0190

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. [10-_____]

WHEREAS, San Francisco Public Utilities Commission ("SFPUC") staff have developed a project description for Project CUW35901-New Irvington Tunnel Project (the "Project") under the Water System Improvement Program ("WSIP") for improvements to the regional water supply system; and

WHEREAS, The objectives of the Project are to:

Within 24 hours after a major earthquake on the Calaveras fault, allow for reliable transmission of a minimum of 120 mgd of water between SFPUC facilities in the Sunol Valley and the Bay Division Pipeline (BDPL) transmission system starting in the City of Fremont;

Within 24 hours after a major earthquake on the San Andreas or Hayward fault, allow for reliable transmission of a minimum of 229 mgd of water between SFPUC facilities in the Sunol Valley and the BDPL transmission system starting in the City of Fremont;

Within 30 days after a major earthquake on the Calaveras fault, allow for a reliable transmission of a minimum of 160 mgd of water between the Sunol Valley and the BDPL transmission system;

Increase delivery reliability by providing operational flexibility to allow for planned shutdowns of the existing Irvington Tunnel for inspection, maintenance, and repair while providing for a maximum capacity of 320 mgd monthly average flow; and

Increase delivery reliability by allowing for a planned outage of the existing Irvington Tunnel (e.g., shutdown for maintenance) concurrent with an unplanned outage (e.g., emergency outage due to facility failure) of any of the BDPLs or San Joaquin Pipelines while delivering a maximum flow of about 246 mgd between the Sunol Valley and BDPL transmission system during the outages; and

WHEREAS, The Project is a capital improvement project approved by this Commission as part of the WSIP; and

WHEREAS, A Final Program EIR ("PEIR") was prepared for the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No. 17734; and

WHEREAS, Thereafter, this Commission approved the WSIP and adopted findings and a Mitigation, Monitoring, and Reporting Program ("MMRP") as required by the California Environmental Quality Act ("CEQA") on October 30, 2008 by Resolution No. 08-200; and

WHEREAS, The PEIR has been made available for review by the SFPUC and the public, and is part of the record before this Commission; and

WHEREAS, The Final Environmental Impact Report prepared for the Project ("Final EIR") tiers from the PEIR, as authorized by and in accordance with CEQA; and

WHEREAS, On November 5, 2009, the Planning Commission reviewed and considered the Final EIR in Planning Department File No. 2005.0162E, consisting of the Draft Environmental Impact Report ("Draft EIR"), the Comments and Responses document and Errata Sheet(s), and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized, and reviewed complied with the provisions of CEQA, the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and found further that the Final EIR 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 revisions to the Draft EIR, and certified the completion of said Final EIR in compliance with CEQA and the CEQA Guidelines in its Motion No. M-17972; and

WHEREAS, This Commission has reviewed and considered the information contained in the Final EIR, 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 and the EIR; and

WHEREAS, The Project and Final EIR files have been made available for review by the SFPUC and the public, in File No. 2005.0162E at 1650 Mission Street, Fourth Floor, San Francisco, California, and those files are part of the record before this Commission; and

WHEREAS, SFPUC staff prepared proposed findings, as required by CEQA ("CEQA Findings") in Attachment A to this Resolution and a proposed MMRP in Attachment B to this Resolution, which material was made available to the public and the Commission for the Commission's review, consideration, and action, and on November 10, 2009, by its Resolution No. 09-0190, this Commission approved the Project and adopted the CEQA Findings, including the Statement of Overriding Considerations, and the MMRP, and Resolution No. 09-0190 and supporting documents are incorporated into this Resolution by this reference; and

WHEREAS, On December 15, 2009, the Board of Supervisors of the City and County of San Francisco (the "Board") adopted Resolution No. 505-09, a copy of which is on file with the Clerk of the Board in File No. 091326, adopted the CEQA Findings, including the Statement of Overriding Considerations, and the MMRP for the Project; and

WHEREAS, The SFPUC staff has obtained appraisals in compliance with Government Code Section 7267 et seq. and all related statutory procedures for possible acquisition of temporary or permanent real property interests (collectively, the "Real Property Interests") in the following real properties, all located in Alameda County (collectively, the "Subject Properties"):

(1) Assessor's Parcel #513-0065-011-02 in Fremont, owned by Malik A. Alarab, Trustee, and Barbara E. Alarab, Trustee, (2) Assessor's Parcel # 096-0080-004 in Sunol, owned by Carolyn Marie Garcia and Stanley A. Garcia, Trustees, and (3) Assessor's Parcel # 096-0001-020-03 in Sunol, owned by Kenneth and Janice Mackin (which Real Property Interests in the Subject Properties are more particularly described in Exhibit A attached to this Resolution); and

WHEREAS, On November 11, 2009, November 20, 2009, and April 6, 2010, the SFPUC staff submitted offers to the owners of the Subject Properties to purchase the Real Property Interests, as required by California Government Code Section 7267.2, and continues to negotiate the possible acquisition of those interests with those owners; and

WHEREAS, The SFPUC staff advertised the Project on January 4, 2010, and set the date for the submittal of bids to April 1, 2010, and anticipates that a recommendation to award the construction contract could be before the Commission at its May 25, 2010 meeting. The nature of the Project and the schedule of shutdowns required for connecting the new tunnel to the existing BDPLs is such that any delay in the award would materially affect the Project schedule; and

WHEREAS, The public interest and necessity require the proposed Project in order to meet the adopted WSIP levels of service of seismic and delivery reliability; and

WHEREAS, The proposed Project includes the construction of a 3.5-mile tunnel with finished diameter between 8.5 and 10.5 feet, located 30 feet to 700 feet underground largely within real property interests already owned by the City; and

WHEREAS, The proposed Project will be constructed using conventional mining excavation, heavy groundwater inflow control, reinforced concrete tunnel lining, buried portal structures, large pipe lining reinforcement inside the tunnel, pipe connections at both ends of the tunnel, a 120-foot deep temporary shaft for construction access at Vargas Road/Highway I-680, temporary and permanent bridge crossings of Alameda Creek, other site improvements, and environmental mitigation work; and

WHEREAS, 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, based on significant evidence of economic, legal, environmental, social, technological and other considerations indicating that the proposed project is superior to other alternatives to the project or the project location; and

WHEREAS, The Real Property Interests in the Subject Properties are necessary for the Project, because the alignment for the new tunnel must be in proximity to the existing Irvington Tunnel in order to facilitate connection with the existing infrastructure for the regional water transmission system at both ends of the tunnel, and for the reasons reflected in the Alternatives Analysis Report, Conceptual Engineering Report, and Final EIR for the Project, as well as in the CEQA Findings, and although the new tunnel and both of the portals would be located within property already owned by the City (either as permanent easements or fee interests) in Fremont and the Sunol Valley, one temporary shaft and some essential temporary construction staging areas must be located on adjacent properties in order to perform the construction; and

WHEREAS, The General Manager recommends that the Commission authorize a request to the Board to hold a public hearing to consider a Resolution of Necessity to acquire the Real Property Interests in the Subject Properties. Although the City reserves the right, after award, to terminate the construction contract for convenience, or otherwise authorize a change in the specifications for the Project, obtaining the Board's approval of a Resolution of Necessity would permit SFPUC to complete the Project in the alignment as currently proposed; and

WHEREAS, The Project is one of the regional projects to be completed as part of the WSIP that will allow the SFPUC to reduce the vulnerability of the system to damage in the event of a major earthquake; now, therefore, be it

RESOLVED, The Commission has reviewed and considered the FEIR and record as a whole, finds that the FEIR and the record as a whole is adequate for its use as the decision-making body for the action taken herein, authorizing the General Manager to request the Board of Supervisors to hold a hearing to consider adoption of a Resolution of Necessity to acquire the Real Property Interests in the Subject Properties, and incorporates the CEQA Findings contained in Resolution No. 09-0190, including the Statement of Overriding Considerations, and the MMRP, by this reference thereto as though set forth in this Resolution; and, be it

FURTHER RESOLVED, The Commission 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, be it

FURTHER RESOLVED, The Commission requests that the Board of Supervisors make each of the following findings and determinations:

- (a) The public interest and necessity require the proposed Project;
- (b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;
- (c) The Real Property Interests in the Subject Properties described in Exhibit A are necessary for the proposed Project; and
- (d) Pursuant to California Code of Civil Procedure Section 1245.230, the offer required by California Government Code Section 7267.2 has been made to each owner of record of the Subject Properties; and, be it

FURTHER RESOLVED, The Commission authorizes the General Manager to request that the Board of Supervisors hold a hearing to consider adoption of a Resolution of Necessity to acquire the Real Property Interests in the Subject Properties, and if the Board adopts said Resolution of Necessity, to take such actions that are consistent with the Charter and all applicable law, to proceed to acquire the Real Property Interests in the Subject Properties; and in any event, to continue to discuss the acquisition with the owners of the Subject Properties.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of _____ *April 13, 2010*

Secretary, Public Utilities Commission

**EXHIBIT A
TO
RESOLUTION**

**Legal Descriptions and Plats of
Real Property Interests in the Subject Properties**

See the following pages for legal descriptions and plats of:

- SFPUC Parcel IV06-03 (Malik A. Alarab, Trustee, and Barbara E. Alarab, Trustee)
- SFPUC Parcels IV 19-03 and Parcel IV 19-04 (Carolyn Marie Garcia and Stanley A. Garcia, Trustees)
- SFPUC Parcel IV16-03 (Kenneth and Janice Mackin)

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 10-0057

WHEREAS, San Francisco Public Utilities Commission ("SFPUC") staff have developed a project description for Project CUW35901-New Irvington Tunnel Project (the "Project") under the Water System Improvement Program ("WSIP") for improvements to the regional water supply system; and

WHEREAS, The objectives of the Project are to:

Within 24 hours after a major earthquake on the Calaveras fault, allow for reliable transmission of a minimum of 120 mgd of water between SFPUC facilities in the Sunol Valley and the Bay Division Pipeline (BDPL) transmission system starting in the City of Fremont;

Within 24 hours after a major earthquake on the San Andreas or Hayward fault, allow for reliable transmission of a minimum of 229 mgd of water between SFPUC facilities in the Sunol Valley and the BDPL transmission system starting in the City of Fremont;

Within 30 days after a major earthquake on the Calaveras fault, allow for a reliable transmission of a minimum of 160 mgd of water between the Sunol Valley and the BDPL transmission system;

Increase delivery reliability by providing operational flexibility to allow for planned shutdowns of the existing Irvington Tunnel for inspection, maintenance, and repair while providing for a maximum capacity of 320 mgd monthly average flow; and

Increase delivery reliability by allowing for a planned outage of the existing Irvington Tunnel (e.g., shutdown for maintenance) concurrent with an unplanned outage (e.g., emergency outage due to facility failure) of any of the BDPLs or San Joaquin Pipelines while delivering a maximum flow of about 246 mgd between the Sunol Valley and BDPL transmission system during the outages; and

WHEREAS, The Project is a capital improvement project approved by this Commission as part of the WSIP; and

WHEREAS, A Final Program EIR ("PEIR") was prepared for the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No. 17734; and

WHEREAS, Thereafter, this Commission approved the WSIP and adopted findings and a Mitigation, Monitoring, and Reporting Program ("MMRP") as required by the California Environmental Quality Act ("CEQA") on October 30, 2008 by Resolution No. 08-200; and

WHEREAS, The PEIR has been made available for review by the SFPUC and the public, and is part of the record before this Commission; and

WHEREAS, The Final Environmental Impact Report prepared for the Project ("Final EIR") tiers from the PEIR, as authorized by and in accordance with CEQA; and

WHEREAS, On November 5, 2009, the Planning Commission reviewed and considered the Final EIR in Planning Department File No. 2005.0162E, consisting of the Draft Environmental Impact Report ("**Draft EIR**"), the Comments and Responses document and Errata Sheet(s), and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized, and reviewed complied with the provisions of CEQA, the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and found further that the Final EIR 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 revisions to the Draft EIR, and certified the completion of said Final EIR in compliance with CEQA and the CEQA Guidelines in its Motion No. M-17972; and

WHEREAS, This Commission has reviewed and considered the information contained in the Final EIR, 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 and the EIR; and

WHEREAS, The Project and Final EIR files have been made available for review by the SFPUC and the public, in File No. 2005.0162E at 1650 Mission Street, Fourth Floor, San Francisco, California, and those files are part of the record before this Commission; and

WHEREAS, SFPUC staff prepared proposed findings, as required by CEQA ("**CEQA Findings**") in **Attachment A** to this Resolution and a proposed MMRP in **Attachment B** to this Resolution, which material was made available to the public and the Commission for the Commission's review, consideration, and action, and on November 10, 2009, by its Resolution No. 09-0190, this Commission approved the Project and adopted the CEQA Findings, including the Statement of Overriding Considerations, and the MMRP, and Resolution No. 09-0190 and supporting documents are incorporated into this Resolution by this reference; and

WHEREAS, On December 15, 2009, the Board of Supervisors of the City and County of San Francisco (the "**Board**") adopted Resolution No. 505-09, a copy of which is on file with the Clerk of the Board in File No. 091326, adopted the CEQA Findings, including the Statement of Overriding Considerations, and the MMRP for the Project; and

WHEREAS, The SFPUC staff has obtained appraisals in compliance with Government Code Section 7267 et seq. and all related statutory procedures for possible acquisition of temporary or permanent real property interests (collectively, the "**Real Property Interests**") in the following real properties, all located in Alameda County (collectively, the "**Subject Properties**"):

(1) Assessor's Parcel #513-0065-011-02 in Fremont, owned by Malik A. Alarab, Trustee, and Barbara E. Alarab, Trustee, (2) Assessor's Parcel # 096-0080-004 in Sunol, owned by Carolyn Marie Garcia and Stanley A. Garcia, Trustees, and (3) Assessor's Parcel # 096-0001-020-03 in Sunol, owned by Kenneth and Janice Mackin (which Real Property Interests in the Subject Properties are more particularly described in **Exhibit A** attached to this Resolution); and

WHEREAS, On November 11, 2009, November 20, 2009, and April 6, 2010, the SFPUC staff submitted offers to the owners of the Subject Properties to purchase the Real Property Interests, as required by California Government Code Section 7267.2, and continues to negotiate the possible acquisition of those interests with those owners; and

WHEREAS, The SFPUC staff advertised the Project on January 4, 2010, and set the date for the submittal of bids to April 1, 2010, and anticipates that a recommendation to award the construction contract could be before the Commission at its May 25, 2010 meeting. The nature of the Project and the schedule of shutdowns required for connecting the new tunnel to the existing BDPLs is such that any delay in the award would materially affect the Project schedule; and

WHEREAS, The public interest and necessity require the proposed Project in order to meet the adopted WSIP levels of service of seismic and delivery reliability; and

WHEREAS, The proposed Project includes the construction of a 3.5-mile tunnel with finished diameter between 8.5 and 10.5 feet, located 30 feet to 700 feet underground largely within real property interests already owned by the City; and

WHEREAS, The proposed Project will be constructed using conventional mining excavation, heavy groundwater inflow control, reinforced concrete tunnel lining, buried portal structures, large pipe lining reinforcement inside the tunnel, pipe connections at both ends of the tunnel, a 120-foot deep temporary shaft for construction access at Vargas Road/Highway I-680, temporary and permanent bridge crossings of Alameda Creek, other site improvements, and environmental mitigation work; and

WHEREAS, 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, based on significant evidence of economic, legal, environmental, social, technological and other considerations indicating that the proposed project is superior to other alternatives to the project or the project location; and

WHEREAS, The Real Property Interests in the Subject Properties are necessary for the Project, because the alignment for the new tunnel must be in proximity to the existing Irvington Tunnel in order to facilitate connection with the existing infrastructure for the regional water transmission system at both ends of the tunnel, and for the reasons reflected in the Alternatives Analysis Report, Conceptual Engineering Report, and Final EIR for the Project, as well as in the CEQA Findings, and although the new tunnel and both of the portals would be located within property already owned by the City (either as permanent easements or fee interests) in Fremont and the Sunol Valley, one temporary shaft and some essential temporary construction staging areas must be located on adjacent properties in order to perform the construction; and

WHEREAS, The General Manager recommends that the Commission authorize a request to the Board to hold a public hearing to consider a Resolution of Necessity to acquire the Real Property Interests in the Subject Properties. Although the City reserves the right, after award, to terminate the construction contract for convenience, or otherwise authorize a change in the specifications for the Project, obtaining the Board's approval of a Resolution of Necessity would permit SFPUC to complete the Project in the alignment as currently proposed; and

WHEREAS, The Project is one of the regional projects to be completed as part of the WSIP that will allow the SFPUC to reduce the vulnerability of the system to damage in the event of a major earthquake; now, therefore, be it

RESOLVED, The Commission has reviewed and considered the FEIR and record as a whole, finds that the FEIR and the record as a whole is adequate for its use as the decision-making body for the action taken herein, authorizing the General Manager to request the Board of Supervisors to hold a hearing to consider adoption of a Resolution of Necessity to acquire the Real Property Interests in the Subject Properties, and incorporates the CEQA Findings contained in Resolution No. 09-0190, including the Statement of Overriding Considerations, and the MMRP, by this reference thereto as though set forth in this Resolution; and, be it

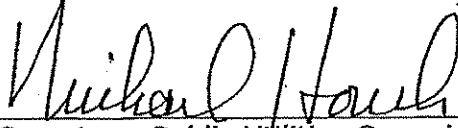
FURTHER RESOLVED, The Commission finds that since the FEIR was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in 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, be it

FURTHER RESOLVED, The Commission requests that the Board of Supervisors make each of the following findings and determinations:

- (a) The public interest and necessity require the proposed Project;
- (b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;
- (c) The Real Property Interests in the Subject Properties described in Exhibit A are necessary for the proposed Project; and
- (d) Pursuant to California Code of Civil Procedure Section 1245.230, the offer required by California Government Code Section 7267.2 has been made to each owner of record of the Subject Properties; and, be it

FURTHER RESOLVED, The Commission authorizes the General Manager to request that the Board of Supervisors hold a hearing to consider adoption of a Resolution of Necessity to acquire the Real Property Interests in the Subject Properties, and if the Board adopts said Resolution of Necessity, to take such actions that are consistent with the Charter and all applicable law, to proceed to acquire the Real Property Interests in the Subject Properties; and in any event, to continue to discuss the acquisition with the owners of the Subject Properties.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of _____ *April 13, 2010*



Secretary, Public Utilities Commission

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 09-0190

WHEREAS, San Francisco Public Utilities Commission (SFPUC) staff have developed a project description under the Water System Improvement Program (WSIP) for the improvements to the regional water supply system, otherwise known as Project No. CUW35901, New Irvington Tunnel Project; and

WHEREAS, The objectives of the Project are to:

Within 24 hours after a major earthquake on the Calaveras fault, allow for reliable transmission of a minimum of 120 mgd of water between SFPUC facilities in the Sunol Valley and the Bay Division Pipeline (BDPL) transmission system starting in the City of Fremont;

Within 24 hours after a major earthquake on the San Andreas or Hayward fault, allow for reliable transmission of a minimum of 229 mgd of water between SFPUC facilities in the Sunol Valley and the BDPL transmission system starting in the City of Fremont;

Within 30 days after a major earthquake on the Calaveras fault, allow for reliable transmission of a minimum of 160 mgd of water between the Sunol Valley and the BDPL transmission system;

Increase delivery reliability by providing operational flexibility to allow for planned shutdowns of the existing Irvington Tunnel for inspection, maintenance, and repair while providing for a maximum capacity of 320 mgd monthly average flow;

Increase delivery reliability by allowing for a planned outage of the existing Irvington Tunnel (e.g., shutdown for maintenance) concurrent with an unplanned outage (e.g., emergency outage due to facility failure) of any of the BDPLs or San Joaquin Pipelines while delivering a maximum flow of about 246 mgd between the Sunol Valley and BDPL transmission system during the outages; and

WHEREAS, On November 5, 2009, the Planning Commission reviewed and considered the Final Environmental Impact Report (FEIR) in Planning Department File No. 2005.0162E, consisting of the Draft EIR, the Comments and Responses document and Errata Sheet(s), and found that the contents of said report and the procedures through which the FEIR was prepared, publicized and reviewed complied with the provisions of the California Environmental Quality Act (CEQA), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and found further that the FEIR 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 revisions to the Draft EIR, and certified the completion of said FEIR in compliance with CEQA and the CEQA Guidelines in its Motion No. M-17972; and

WHEREAS, This Commission has reviewed and considered the information contained in the FEIR, 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 and the FEIR; and

WHEREAS, The Project and FEIR files have been made available for review by the SFPUC and the public in File No. 2005.0162E, at 1650 Mission Street, Fourth Floor, San Francisco, California; and those files are part of the record before this Commission; and

WHEREAS, SFPUC staff prepared proposed findings, as required by CEQA, (CEQA Findings) in Attachment A to this Resolution and a proposed Mitigation, Monitoring and Reporting Program (MMRP) in Attachment B to this Resolution, which material was made available to the public and the Commission for the Commission's review, consideration and action; and

WHEREAS, The Project is a capital improvement project approved by this Commission as part of the Water System Improvement Program (WSIP); and

WHEREAS, A Final Program EIR (PEIR) was prepared for the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No. 17734; and

WHEREAS, Thereafter, the SFPUC approved the WSIP and adopted findings and a MMRP as required by CEQA on October 30, 2008 by Resolution No. 08-200; and

WHEREAS, The FEIR prepared for the Project is tiered from the PEIR, as authorized by and in accordance with CEQA; and

WHEREAS, The PEIR has been made available for review by the SFPUC and the public, and is part of the record before this Commission; and

WHEREAS, The SFPUC staff will comply with Government Code Section 7260 et seq. statutory procedures for possible acquisition of interests (temporary or permanent) in the following real property in Alameda County: (1) Assessor's Parcel # 513-0065-011-02 in Fremont, owned by Malik A. and Barbara E. Alarab, (2) Assessor's Parcel # 513-0065-008-05 in Fremont, owned by David C. Lo, (3) Assessor's Parcel # 096-0080-004 in Sunol, owned by Stanley and Carolyn Garcia, (4) Assessor's Parcel # 525-1667-001 in Fremont, owned by J.P. Mobasher and Daphne Huey, (5) Assessor's Parcel # 513-0461-001 in Fremont, owned by J.P. Mobasher, and (6) Assessor's Parcel # 096-0001-020-03 in Sunol, owned by Kenneth and Janice Mackin. The total combined purchase price for the acquisition of these property interests is estimated to not exceed \$1,200,000; and

WHEREAS, The Project includes work located in the City of Fremont and Alameda County, and SFPUC staff may seek to enter into Memoranda of Agreement ("MOAs") with these local jurisdictions, addressing such matters as (a) SFPUC's commitments to restore or replace, pursuant to agreed specifications, certain

improvements owned by the respective local jurisdictions, (b) cooperative procedures and fees relating to local permits, inspections, and communications to the public concerning Project construction, (c) the form of necessary encroachment permits or other property agreements for Project construction, and (d) the parties' respective indemnification and insurance obligations; and

WHEREAS, The Project may require the SFPUC General Manager to apply for and execute various necessary permits and encroachment permits with CalTrans, Alameda County or the City of Fremont, and those permits shall be consistent with SFPUC existing fee or easement interests, where applicable, and will include terms and conditions including, but not limited to, maintenance, repair and relocation of improvements and possibly indemnity obligations; and

WHEREAS, The SFPUC has issued leases, permits, or licenses to certain parties to use for various purposes portions of City-owned property along the SFPUC right of way where the Project work will occur, and in some instances, there is apparent use of City-owned property by other parties for which there is no evidence of SFPUC authorization, or other parties hold property rights or interests on lands along, over, adjacent to or in the vicinity of the right of way, and it may be necessary for the Project for the General Manager, or his designee, to (a) exercise rights under any such deed, lease, permit, or license or (b) negotiate and execute new or amended leases, permits, licenses, or encroachment removal or other project related agreements (each, a "Use Instrument") with owners or occupiers of property interests or utility facilities or improvements on, along, over, adjacent to or in the vicinity of, City property with respect to uses and structures, fences, and other above-ground or subterranean improvements or interests, orchards, trees, or other vegetation, or to implement Project mitigation measures or accommodate Project construction activities and schedule; and

WHEREAS, Implementation of the Project mitigation measures will involve consultation with, or required approvals by, state and federal regulatory agencies, including but not limited to the following: U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, California Department of Transportation, State Historic Preservation Officer, California Department of Fish and Game, San Francisco Bay Regional Water Quality Control Board, and Bay Area Air Quality Management District; now, therefore, be it

RESOLVED, This Commission has reviewed and considered the Final EIR (FEIR), finds that the FEIR is adequate for its use as the decision-making body for the actions taken herein, and hereby adopts the CEQA Findings, including the Statement of Overriding Considerations, attached hereto as Exhibit A and incorporated herein as part of this Resolution by this reference thereto, and adopts the MMRP attached to this Resolution as Exhibit B and incorporated herein as part of this Resolution by this reference thereto, and authorizes a request to the Board of Supervisors to adopt the same CEQA Findings, Statement of Overriding Considerations and MMRP; and be it

FURTHER RESOLVED, That this Commission hereby approves Project No. CUW35901 New Irvington Tunnel Project and authorizes staff to proceed with actions

necessary to implement the Project consistent with this Resolution, including advertising for construction bids, provided, however, that staff will return to seek Commission approval for award of the construction contract; and be it,

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager and/or the Director of Real Estate to undertake the process, in compliance with Government Code Section 7260 et seq., with the San Francisco Charter and all applicable laws, for possible acquisition of interests (temporary or permanent) in the following real property in Alameda County: (1) Assessor's Parcel # 513-0065-011-02 in Fremont, owned by Malik A. and Barbara E. Alarab, (2) Assessor's Parcel # 513-0065-008-05 in Fremont, owned by David C. Lo, (3) Assessor's Parcel # 096-0080-004 in Sunol, owned by Stanley and Carolyn Garcia, (4) Assessor's Parcel # 525-1667-001 in Fremont owned by J.P. Mobasher and Daphne Huey, (5) Assessor's Parcel # 513-0461-001 in Fremont, owned by J.P. Mobasher, and (6) Assessor's Parcel # 096-0001-020-03 in Sunol, owned by Kenneth and Janice Mackin, and to seek Board of Supervisors' approval if necessary, and provided that any necessary Board approval has been obtained, to accept and execute final agreements, and any other related documents necessary to consummate the transactions contemplated therein, in such form, approved by the City Attorney; and be it

FURTHER RESOLVED, The General Manager will confer with the Commission during the negotiation process on real estate agreements as necessary, and report to the Commission on all agreements submitted to the Board of Supervisors for approval; and notwithstanding the authority granted in this Resolution, the General Manager is not authorized to enter into an agreement to dispose of any real property interests under the jurisdiction of this Commission, in any manner, including by sale, exchange or transfer ("Transfer"), without this Commission approving such Transfer by Resolution setting forth findings required by Charter Section 8B121(e) and subject to Board of Supervisors' approval under Charter section 9.118; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the General Manager to negotiate and execute Memoranda of Agreement to facilitate and coordinate the Project work, if necessary, with the City of Fremont and Alameda County (collectively the "Project MOAs") in a form that the General Manager determines is in the public interest and is acceptable, necessary, and advisable to effectuate the purposes and intent of this Resolution, and in compliance with the Charter and all applicable laws, and approved as to form by the City Attorney. The Project MOAs may address such matters as (a) SFPUC's commitments to restore or replace, pursuant to agreed specifications, certain improvements owned by the respective local jurisdictions, (b) cooperative procedures and fees relating to local permits, inspections, and communications to the public concerning Project construction, (c) the form of necessary encroachment permits or other property licenses required to permit Project construction, and (d) the parties' respective indemnification and insurance obligations, subject to the San Francisco Risk Manager's approval; and, be it

FURTHER RESOLVED, That this Commission authorizes the General Manager,

or his designee, to apply for and execute various necessary permits and encroachment permits with CalTrans, City of Fremont and Alameda County, which permits shall be consistent with SFPUC's existing fee or easement interests, where applicable. To the extent that the terms and conditions of the permits will require SFPUC to indemnify the respective jurisdictions, those indemnity obligations are subject to review and approval by the San Francisco Risk Manager. The General Manager is authorized to agree to such terms and conditions, including but not limited to those relating to maintenance, repair and relocation of improvements, that are in the public interest, and in the judgment of the General Manager, in consultation with the City Attorney, are reasonable and appropriate for the scope and duration of the requested use as necessary for the Project; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager, or his designee, to exercise any right as necessary under any deed or Use Instrument and negotiate and execute new or amended Use Instruments, if necessary for the Project, with owners or occupiers of property interests or utility facilities or improvements on, along, over, adjacent to, or in the vicinity of the SFPUC right of way, in a form that the General Manager determines is in the public interest and is acceptable, necessary, and advisable to accommodate Project construction activities and schedule, carry out Project related mitigation measures, and to otherwise effectuate the purposes and intent of this Resolution, in compliance with the Charter and all applicable laws, and in such form approved by the City Attorney; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager, or his designee, to consult with, or apply for, and, if necessary, seek Board of Supervisors' approval, and if approved, to accept and execute permits or required approvals by state and federal regulatory agencies, including but not limited to: U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, California Department of Transportation, State Historic Preservation Officer, California Department of Fish and Game, and San Francisco Bay Regional Water Quality Control Board, including terms and conditions that are within the lawful authority of the agency to impose, in the public interest, and, in the judgment of the General Manager, in consultation with the City Attorney, are reasonable and appropriate for the scope and duration of the requested permit or approval, as necessary for the Project; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to work with the Director of Real Estate to seek Board approval if necessary, and provided any necessary Board approval is obtained, to accept and execute the real property agreements authorized herein; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager, or his designee, to enter into any subsequent additions, amendments or other modifications to the permits, licenses, encroachment removal agreements, leases, easements and other Use Instruments or real property agreements, or amendments thereto, as described herein, that the General Manager, in consultation with the Commercial Land Manager and the City Attorney, determines are in the best interests of the SFPUC and the City, do not materially decrease the benefits to the SFPUC or the

City, and do not materially increase the obligations or liabilities of the SFPUC or the City, such determination to be conclusively evidenced by the execution and delivery of any such additions, amendments, or other modifications.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of November 10, 2009

A handwritten signature in cursive script, appearing to read "Michael Housh".

Secretary, Public Utilities Commission

1 [CEQA Findings for SFPUC New Irvington Tunnel Project in Alameda County and Fremont.]

2
3 **Resolution adopting findings under the California Environmental Quality Act ("CEQA"),**
4 **including the adoption of a mitigation monitoring and reporting program and a statement**
5 **of overriding considerations related to the New Irvington Tunnel Project, CUW 35901;**
6 **and directing the Clerk of the Board of Supervisors to notify the Controller of this action.**

7
8 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) has developed a
9 project description for the New Irvington Tunnel Project, a water infrastructure project included
10 as part of the Water System Improvement Program (also commonly referred to as the NIT
11 Project and herein as the "Project"). The Project is located in Alameda County and City of
12 Fremont, beginning at the Alameda West Portal near Calaveras Road in Alameda County and
13 ending in Fremont near Mission Boulevard. The Project includes, among other related
14 features, the installation of a 3.5-mile-long tunnel, with a finished internal diameter between
15 8.5 to 10.5 feet, 30 feet to 700 feet underground, reinforced concrete lining, buried portal
16 structures, large diameter pipe lining reinforcement, manifold pipe connections, a 120 feet
17 deep temporary access shaft, temporary and permanent bridge crossing of Alameda Creek,
18 access road and other site improvements, acquisition of necessary temporary and permanent
19 property interests, and environmental mitigation work; and

20 WHEREAS, The objectives of the Project are to improve seismic and delivery reliability
21 of the water system, and provide operational flexibility to allow for planned shutdowns of the
22 existing Irvington Tunnel for inspection and maintenance; and

23 WHEREAS, An environmental impact report ("EIR") as required by the California
24 Environmental Quality Act ("CEQA") was prepared for the Project; and

1 WHEREAS, The Final EIR ("FEIR") was certified by the San Francisco Planning
2 Commission on November 5, 2009 by Motion No. M-17972; and

3 WHEREAS, The FEIR prepared for the Project is tiered from the Water System
4 Improvement Program Environmental Impact Report ("PEIR") adopted by the San Francisco
5 Public Utilities Commission in Resolution No. 08-200 dated October 30, 2008, as authorized
6 by and in accordance with CEQA and the CEQA Guidelines; and

7 WHEREAS, On November 10, 2009, the San Francisco Public Utilities Commission
8 (SFPUC), by Resolution No. 09-190, a copy of which is included in Board of Supervisors File
9 No. 091326 and which is incorporated herein by this reference: (1) approved the Project;
10 and (2) adopted findings (CEQA Findings), including a statement of overriding considerations,
11 and a Mitigation Monitoring and Reporting Program (MMRP) required by CEQA; and

12 WHEREAS, The Project files, including the FEIR, PEIR and SFPUC Resolution No. 09-
13 190 have been made available for review by the Board and the public, and those files are
14 considered part of the record before this Board; and

15 WHEREAS, The Board of Supervisors has reviewed and considered the information
16 and findings contained in the FEIR, PEIR and SFPUC Resolution No. 09-190, and all written
17 and oral information provided by the Planning Department, the public, relevant public
18 agencies, SFPUC and other experts and the administrative files for the Project; and

19 WHEREAS, This Board of Supervisors adopted Ordinance No. 311-08 that placed
20 Water System Improvement Program appropriated funds on Controller's Appropriation
21 Reserve, by project, making release of appropriation reserves by the Controller subject to the
22 prior occurrence of: (1) the SFPUC's and the Board's discretionary adoption of CEQA
23 Findings for each project, following review and consideration of completed project-related
24 environmental analysis, pursuant to CEQA, the State CEQA Guidelines, and Chapter 31 of
25 the San Francisco Administrative Code, where required, and (2) the Controller's certification

1 of funds availability, including proceeds of indebtedness. The ordinance also placed any
2 project with costs in excess of \$100 million on Budget and Finance Committee reserve
3 pending review and reserve release by that Committee. Therefore, the SFPUC has sent a
4 letter to the Budget and Finance Committee requesting review and release of the portion of
5 those funds necessary for the New Irvington Tunnel Project; now, therefore, be it

6 RESOLVED, That the Board of Supervisors has reviewed and considered the FEIR
7 and record as a whole, finds that the FEIR is adequate for its use as the decision-making
8 body for the action taken herein including, but not limited to, approval of the Project and
9 adopts and incorporates by reference as though fully set forth herein the CEQA Findings,
10 including the statement of overriding considerations, and the MMRP contained in Resolution
11 No. 09-190; and be it

12 FURTHER RESOLVED, That the Board finds that the Project mitigation measures set
13 forth in the FEIR and the MMRP and adopted by the SFPUC and herein by this Board will be
14 implemented as reflected in and in accordance with the MMRP; and be it

15 FURTHER RESOLVED, The Board finds that since the FEIR was finalized, there have
16 been no substantial project changes and no substantial changes in Project circumstances that
17 would require major revisions to the FEIR due to the involvement of new significant
18 environmental effects or an increase in the severity of previously identified significant impacts,
19 and there is no new information of substantial importance that would change the conclusions
20 set forth in the FEIR; and be it

21 FURTHER RESOLVED, That the Board directs the Clerk of the Board to forward this
22 Resolution to the Controller.
23
24
25



City and County of San Francisco
Tails
Resolution

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

File Number: 091326

Date Passed: December 15, 2009

Resolution adopting findings under the California Environmental Quality Act (CEQA), including the adoption of a mitigation monitoring and reporting program and a statement of overriding considerations related to the New Irvington Tunnel Project, CUW 35901; and directing the Clerk of the Board of Supervisors to notify the Controller of this action.


December 15, 2009 Board of Supervisors - ADOPTED

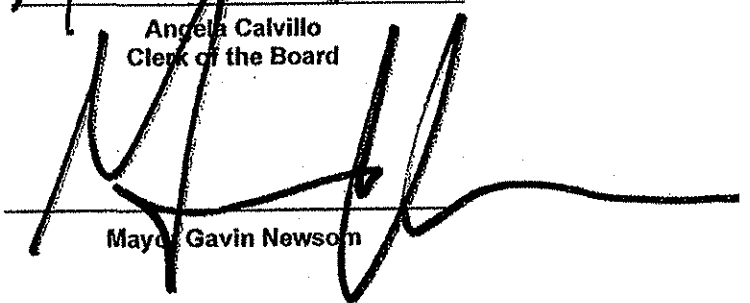
Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

File No. 091326

I hereby certify that the foregoing Resolution was ADOPTED on 12/15/2009 by the Board of Supervisors of the City and County of San Francisco.

18 December 2009
Date Approved



Angela Calvillo
Clerk of the Board


Mayor Gavin Newsom



DENNIS J. HERRERA
City Attorney

VICTORIA WONG
Deputy City Attorney

DIRECT DIAL: (415) 554-4721
E-MAIL: victoria.wong@sfgov.org

MEMORANDUM

TO: Clerk of the Board of Supervisors
FROM: Victoria Wong
Deputy City Attorney
DATE: May 13, 2010
RE: File No. 100222—Index of Administrative Record Documents

Enclosed for Board File No. 100222 are the following documents:

1. Memorandum to Julie Labonte from David Tsztoo, May 13, 2010, re: Information Memo for Board of Supervisors Resolution to Acquire Real Property Interests by Eminent Domain—Water System Improvement Program (WSIP)-Funded New Irvington Tunnel
2. Letter to Kenneth and Janice Mackin from Brian Morelli, November 11, 2009 re: offer to purchase interest in property, with attachments
 - a. Summary Statement Relating to Purchase of Real Property or an Interest Therein
 - b. Appraisal Summary Statement and Summary of the Basis of Just Compensation
 - c. Agreement for Purchase and Sale of Real Property
 - d. Easement Deed
 - e. Property Acquisition Information Brochure
3. Letter to Kenneth and Janice Mackin from Brian Morelli, December 14, 2009, re: Right of Entry Agreement
 - a. Right of Entry Agreement
4. Letter to Malik Alarab and Barbara Alarab from Brian Morelli, November 11, 2009, re: offer to purchase interest in property, with attachments
 - a. Summary Statement Relating to Purchase of Real Property or an Interest Therein
 - b. Appraisal Summary Statement and Summary of the Basis of Just Compensation
 - c. Agreement for Purchase and Sale of Real Property
 - d. Easement Deed
 - e. Property Acquisition Information Brochure

Memorandum

TO: Clerk of the Board of Supervisors
DATE: May 13, 2010
PAGE: 2
RE: File No. 100222—Index of Administrative Record Documents

5. Letter to Associated Right of Way Services, Inc. from Allan Alarab, December 3, 2009, re: 42155 Vargas Road, Fremont, CA
6. Letter from Kathy Wood to Malik and Barbara Alarab, c/o Allan Alarab, January 20, 2010 re: Proposed Acquisition—Temporary Construction Easement, 42155 Vargas Road, Fremont, CA, with attachments
 - a. Summary of Exploratory Borings (excerpt)
 - b. Construction maps
7. Letter to Malik and Barbara Alarab, c/o Allan Alarab from Brian Morelli, January 25, 2010, re: Right of Entry Agreement, with attachment
 - a. Right of Entry Agreement
8. Letter to Malik and Barbara Alarab, c/o Allan Alarab from Kathy Wood, February 24, 2010, re: Amended Agreement for Purchase and Sale of Real Estate, 42155 Vargas Road, Fremont, California, with attachment
 - a. Agreement for Purchase and Sale of Real Estate
9. Letter to Kathy Wood from Steven Geller, March 10, 2010, re: San Francisco Public Utilities Commission (SFPUC) New Irvington Tunnel Project, Proposed Acquisition—Temporary Construction Easement, 42155 Vargas Road, Fremont, CA
10. [no document]
11. Letter to Stanley and Carolyn Garcia from Brian Morelli, November 20, 2009, re: Offer to purchase easement, Site Address: 6503 Calaveras Road, Sunol, CA 94586, APN: 096-0080-004, with attachments
 - a. Summary Statement Relating to Purchase of Real Property or an Interest Therein
 - b. Appraisal Summary Statement and Summary of the Basis of Just Compensation
 - c. Agreement for Purchase and Sale of Real Property
 - d. Easement Deed
 - e. Property Acquisition Information Brochure
12. Letter to Carolyn Garcia from Brian Morelli, November 20, 2009, re: Right of Entry Agreement, Site: Portion of 6503 Calaveras Road, Sunol, CA 94586 (APN 096-0080-004), with attachment
 - a. Right of Entry Agreement
13. Letter to Carolyn Garcia from Brian Morelli, April 6, 2010, re: Amended offer to purchase easements, Site Address: 6503 Calaveras Road, Sunol, CA 94586, APN: 096-0080-004, with attachments

Memorandum

TO: Clerk of the Board of Supervisors
DATE: May 13, 2010
PAGE: 3
RE: File No. 100222—Index of Administrative Record Documents

- a. Summary Statement Relating to Purchase of Real Property or an Interest Therein
 - b. Appraisal Summary Statement and Summary of the Basis of Just Compensation
 - c. Agreement for Purchase and Sale of Real Property
14. Letter to Carolyn Garcia from Brian Morelli, April 7, 2010, re: Easement Deeds, with attachments
- a. Easement Deed (Temporary Construction Easement)
 - b. Easement Deed (Soil Nail Easement)
15. Letter to Brian Morelli from Michael Kyle, April 21, 2010, re: Carolyn Garcia, Successor Trustee, Eminent Domain, Our File No.: G0592.002
16. Faxed cover sheet and letter to Brian Morelli from Michael Kyle, May 3, 2010, re: Carolyn Garcia, Successor Trustee, Eminent Domain, Our File No. G0592.002
17. Letter to Michael Kyle from Carolyn Stein, May 10, 2010, re: Request for Public Records, SFPUC's Proposed New Irvington Tunnel Project (the "Project"), with attachments
- a. Phase I Environmental Site Assessment
 - b. Shallow Soil Investigation
18. Letter to Larry Ritter, Department of Real Estate, from John Rahaim, San Francisco Planning Department, re: Case No. 2009.0558R New Irvington Tunnel [General Plan Consistency Determination], with attachments
- a. Attachment 1, General Plan Referral—Case Report
 - b. Attachment 2, General Plan Referral—Case Report
 - c. Attachment 3, List of Affected Parcels
19. Map of New Irvington Tunnel Alignment
20. Map of Area of Temporary Construction Easement on Property of Mackin
21. Map of Area of Temporary Construction Easement on Property of Alarab
22. Map of Area of Temporary Construction Easement and Permanent Easement on Property of Garcia
23. Schedule 1- Legal Descriptions and Plats of Real Property Interests
- Also included in this file is the Final Environmental Impact Report, New Irvington Tunnel, Vols. 1 & 2

Date: May 13, 2010
To: Julie Labonte, Director, Water System Improvement Program, SFPUC
From: David F. Tsztoo, Senior Project Manager, SFPUC *D F Tsztoo*
Through: Surinderjeet Bajwa, Project Management Bureau Manager
Subject: Information Memo for Board of Supervisors Resolution to Acquire Real Property Interests by Eminent Domain—Water System Improvement Program (WSIP)-Funded New Irvington Tunnel

INTRODUCTION

This memorandum provides background and supporting facts with respect to a resolution authorizing acquisition of the following interests in real property in Alameda County: (1) a temporary construction easement in a portion of Assessor's Parcel #513-0065-011-02 in Fremont, owned by Malik A. Alarab, Trustee, and Barbara E. Alarab, Trustee; (2) a temporary construction easement in a portion of Assessor's Parcel # 096-0001-020-03 in Sunol, owned by Kenneth and Janice Mackin; and (3) a temporary construction easement and a permanent subsurface soil nail easement in portions of real property in Alameda County known as Assessor's Parcel # 096-0080-004 in Sunol, owned by Carolyn Marie Garcia and Stanley A. Garcia, Trustees, by eminent domain, for the public purpose of constructing the San Francisco Public Utilities Commission Water System Improvement Program-Funded Project CUW35901, New Irvington Tunnel Project; 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 under City Planning Code Section 101.1.

RECOMMENDATION

Adoption of a resolution:

- (a) determining that the public interest and necessity require acquisition of a temporary construction easement in a portion of real property located in the City of Fremont, County of Alameda, commonly known as APN 513-0065-011-02, fee owners Malik A. Alarab, Trustee, and Barbara E. Alarab, Trustee; a temporary construction easement in a portion of real property located in Sunol, County of Alameda, commonly known as APN 096-0001-020-03, fee owner Kenneth and Janice Mackin; and a temporary construction easement and a permanent subsurface easement in a portion of real property located in the City of Sunol, County of Alameda commonly known as APN 096-0080-004, fee owner Carolyn Marie Garcia and Stanley A. Garcia, Trustees (such easements are referred to herein collectively as the "Easements" and such parcels are referred to herein collectively as the "Subject Properties"); and
- (b) authorizing and directing the City Attorney to file suit in eminent domain to acquire such property interests, and to apply for an order for possession before judgment, and to prosecute the action to final judgment.

EXECUTIVE SUMMARY

The purpose of this memorandum is to recommend adoption of a resolution determining that the public interest and necessity require the acquisition of the temporary construction easements and the permanent subsurface easement referenced above for purposes of constructing the New Irvington Tunnel Project (the "Project") on schedule without delay. Negotiations with the affected property owners have been ongoing since November 2009. The proposed resolution is a critical step in the process to acquire the needed easements by eminent domain in case the negotiations cannot be completed in a timely manner despite staff's continuing efforts. Delaying the award of the construction contract could delay the Project by as much as a year, as it could cause the contractor to miss the window for work that must be performed during dry months under environmental laws and cause the Project to miss the complex system shutdown schedule for connecting the new tunnel to the existing system. A major seismic event prior to completion of the Project could interrupt the delivery of water from Hetch Hetchy and the Alameda Watershed to the SFPUC's Bay Area pipelines and reservoirs for an extended period. The filing of eminent domain actions is recommended for ensuring adherence to the Project schedule. The SFPUC staff will continue to negotiate with each of the property owners with the goal of achieving a negotiated agreement to avoid the need for a trial.

BACKGROUND

1. Project Description And Objectives

In order to continue to provide reliable water service to its customers, the San Francisco Public Utilities Commission (SFPUC) is implementing a regional Water System Improvement Program (WSIP). The basic goals of the WSIP are to increase the reliability of the system to provide for water quality, seismic response, water delivery, and water supply to meet estimated water demands in the service area through the year 2030. The Project is one of the key components of the WSIP. The Project is a capital improvement project approved by the SFPUC as part of WISP.

Built between 1928 and 1930, the existing Irvington Tunnel has served a steadily increasing number of Bay Area residents to the point that the tunnel cannot be taken out of service for repairs or maintenance without adversely impacting water supply to customers. Given the tunnel's age and the limited ability to perform maintenance on it, the reliability of the Irvington Tunnel cannot be assured in the event of a major earthquake on the nearby Hayward and Calaveras Faults. The Irvington Tunnel is a crucial component in the water transmission system because in addition to transporting water from Hetch Hetchy, it is the only facility that transports water from the Alameda watershed reservoirs into the Bay Area. Because there is no system redundancy in this portion of the system, earthquake damage to the tunnel or other failure due to lack of maintenance would severely impair the SFPUC's ability to meet customer demand and to provide emergency water for health and fire protection for any extended period of time.

The Project would address these vulnerabilities. The Project is designed using modern engineering techniques to withstand a major earthquake, thereby allowing the SFPUC to provide

water to customers after an earthquake. The new tunnel will also provide much-needed system redundancy, so that the existing tunnel can be taken out of service and repaired, as well as long-term operational flexibility, including regular maintenance of both tunnels. The Project objectives include:

- Within 24 hours after a major earthquake on the Calaveras fault, allow for reliable transmission of a minimum of 120 million gallons per day (mgd) of water between SFPUC facilities in the Sunol Valley and the Bay Division Pipeline (BDPL) transmission system starting in the City of Fremont.
- Within 24 hours after a major earthquake on the San Andreas or Hayward fault, allow for reliable transmission of a minimum of 229 mgd of water between SFPUC facilities in the Sunol Valley and the BDPL transmission system starting in the City of Fremont.
- Within 30 days after a major earthquake on the Calaveras fault, allow for reliable transmission of a minimum of 160 mgd of water between the Sunol Valley and the BDPL transmission system.
- Increase delivery reliability by providing operational flexibility to allow for planned shutdowns of the existing Irvington Tunnel for inspection, maintenance, and repair while providing for a maximum capacity of 320 mgd monthly average flow.
- Increase delivery reliability by allowing for a planned outage of the existing Irvington Tunnel (e.g., shutdown for maintenance) concurrent with an unplanned outage (e.g., emergency outage due to facility failure) of any of the BDPLs or San Joaquin Pipeline while delivering a maximum flow of about 246 mgd between the Sunol Valley and BDPL transmission systems during the outages.
- Continue to provide reliable transmission of high-quality water from the Sunol Valley to the BDPL transmission system through a gravity-operated system.
- Ensure that the new and existing facilities meet security requirements.

The Project is located just south of and approximately parallel to the existing Irvington Tunnel within the SFPUC's existing easements for the existing tunnel, which reserved rights to build a second tunnel. The Project would originate at a new Alameda West Portal on the west side of the Sunol Valley, extend westward under the Diablo Range, and terminate at a new Irvington Portal near Mission Boulevard in Fremont. The Project will include conventional mining excavation, heavy groundwater inflow control, reinforced concrete tunnel lining, buried portal structures, large pipe lining reinforcement inside the tunnel, pipe connections at both ends of the tunnel, temporary and permanent bridge crossings of Alameda Creek, other site improvements, and environmental mitigation work. The new tunnel would be approximately 3.5 miles long with a finished diameter between 8.5 feet and 10.5 feet, and would range from approximately 30 feet to 700 feet below the ground surface. The new tunnel portal structures are located on SFPUC property adjacent to the existing portals in order to facilitate connecting the new tunnel

to the existing Alameda Siphons on the east end of the tunnel and the existing Bay Division Pipelines on the west end of the tunnel.

The Project will also construct a temporary intermediate shaft, approximately 40 feet in diameter by 120 feet deep, on unimproved private property near Vargas Road and Highway I-680 for construction access. I have reviewed the Vargas Road Area Existing Conditions (1 & 2) in the construction plans for the Project, which identify Caltrans easements for drainage and water pipeline purposes that exist on portions of this property, and I have determined that the proposed use would be compatible with Caltrans' uses—the drainage would not be affected by the Project construction and the water pipeline would be temporarily relocated during the Project construction.

To expedite construction and thereby minimize costs and community and environmental effects, the Project will be mined in four different directions simultaneously along the tunnel alignment: from Alameda West Portal westward, from the Vargas Road shaft both to the east and west, and from Irvington Portal eastward (limited to 550 feet to minimize construction impacts to nearby residences). Additionally, the Project proposes a temporary construction staging area on private property off of Sheridan Road near Andrade Road for approximately 20 groundwater wells to remove water from the tunnel construction's path in an area of high groundwater. Tony Durkee, SFPUC's Chief Surveyor, and I have reviewed aerial easements held by PG&E that overlap with our proposed use on the Sheridan Road property and, after consulting with him, I have confirmed that the proposed use would be compatible with the existing use of the property for overhead PG&E power lines.

The majority of spoils (excess soil and rock) from tunnel excavation will be deposited in two areas on SFPUC property along Calaveras Road near Highway I-680 in the Sunol Valley. Limited quantities of soil will be used to backfill open excavations near the tunnel portals and at the Vargas Shaft. Spoils could also be disposed of at a classified landfill site should hazardous materials be encountered. (Although SFPUC's advance research and investigations have found no evidence of contaminated soils or naturally occurring asbestos in the Project vicinity, for bidding purposes SFPUC has estimated a quantity of contaminated spoils for special handling by the contractor.)

In Planning Case 2009.0558R, the Department of City Planning found the acquisition of the Easements to be in conformity with the General Plan and consistent with the Eight Priority Policies of City Planning Code Section 101.1, to the extent applicable.

2. Environmental Review

A final Program Environmental Impact Report ("PEIR") was prepared for the WSIP and was certified by the Planning Commission on October 30, 2008 by Motion No. 17734. Thereafter, the SFPUC approved the WSIP and adopted findings and a Mitigation Monitoring and Reporting Program (the "MMRP") as required by CEQA on October 30, 2008 by Resolution No. 80-200. The PEIR was made available for review by the SFPUC and the public.

A Final Environmental Impact Report ("Final EIR") prepared for the Project was tiered from the PEIR, as authorized by and in accordance with CEQA. On November 5, 2009, the Planning

Commission reviewed and considered the Final EIR for the Project in Planning Department File No. 2005.0162E, consisting of the Draft EIR, the Comments and Responses document and the Errata Sheet(s) and found that the contents of the report and the procedures through which the Final EIR was prepared, publicized and reviewed complied with the provisions of CEQA, the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code. The Planning Commission further found that the Final EIR 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 and Errata Sheet(s) contains no significant revisions to the Draft EIR, and therefore certified the completion of said Final EIR in its Motion No. M-17972.

On November 10, 2009, the SFPUC, by Resolution No. 09-0190, adopted CEQA Findings for Project, including a Statement of Overriding Considerations, and a MMRP as required by CEQA, and approved the Project.

On December 15, 2009, this Board adopted Resolution No. 505-09, a copy of which is on file with the Clerk of the Board in File No. 091326 adopting the CEQA Findings, including the Statement of Overriding Considerations and the MMRP for the Project, signed by the Mayor on December 18, 2009.

The Project and Final EIR files have been made available for review by the SFPUC and the public in File No. 2005.0162E, at 1650 Mission Street, 4th Floor, San Francisco, California.

3. SFPUC Proceedings

The SFPUC staff obtained appraisals in compliance with California Government Code Sections 7267 *et seq.* and, on November 11, 2009 and November 20, 2009, submitted offers to each of the above-referenced property owners and then on April 7, 2010, submitted an amended offer to the owner of APN 096-0080-004, all in compliance with California Government Code Section 7267.2. The SFPUC staff continue to pursue negotiations with each of these property owners.

On April 13, 2010, the SFPUC adopted Resolution No. 10-0057 in which the SFPUC found that (a) the public interest and necessity require the proposed Project in order to meet the adopted WSIP levels of service and seismic and delivery reliability, (b) the proposed Project which includes the construction of a 3.5 – mile tunnel, with finished diameter between 8.5 and 10.5 feet located 30-700 feet underground largely within real property interests already owned by the City, will be constructed using conventional mining excavation, heavy groundwater inflow control, reinforced concrete tunnel lining, buried portal structures, large pipe lining reinforcement inside the tunnel, pipe connections at both ends of the tunnel, a 120-foot deep temporary shaft for construction access at Vargas Road/Highway I-680, temporary and permanent bridge crossings of Alameda Creek, other site improvements, and environmental mitigation work, is planned and located in the manner that will be most compatible with the greatest public good and the least private injury, based on significant evidence of economic, legal, environmental, social, technological and other considerations indicating that the proposed Project is superior to other alternatives to the Project or the Project location and (c) the Easements are necessary for the Project, because the alignment for the new tunnel must be in proximity to the existing Irvington Tunnel in order to facilitate connection with the existing infrastructure for the regional water

distribution system at both ends of the tunnel, and for the reasons reflected in the Final EIR for the Project, as well as in the CEQA findings, and although the new tunnel and both of the portals would be located within property already owned by the City (either as permanent easements or fee interest) in Fremont and the Sunol Valley, one temporary shaft, some essential temporary construction areas, and a permanent subsurface easement for construction related re-enforcement, must be located on adjacent properties in order to perform the construction. A further finding was made that the acquisition and use of the Easements for construction of the Project is compatible the existing public uses of the Subject Properties for drainage and water pipeline purposes and electrical tower purposes.

On April 13, 2010, by Resolution No. 10-0057, the SFPUC authorized the SFPUC General Manager (a) to request that the Board of Supervisors hold a hearing to consider adoption of a Resolution of Necessity to acquire the Easements, (b) if the Board adopts said Resolution of Necessity, to take such actions that are consistent with the Charter and all applicable laws, to proceed to acquire the Easements, and (c) in any event, to continue to discuss the acquisition with the owners of the Subject Properties.

RESOLUTION OF NECESSITY

On April 28, 2010, a Notice of Public Hearing of the Board of Supervisors of the City and County of San Francisco on the Property Acquisition--Eminent Domain was given to each person whose property is to be acquired by eminent domain and whose name and address appears on the last Equalized County Assessment Roll, notifying them that a hearing is scheduled for May 18, 2010, before the Board of Supervisors, to consider the adoption of a Resolution of Necessity determining the following issues and of their right to appear and be heard on these issues:

1. Whether the public interest and necessity require the Project;
2. Whether the proposed use is planned or located in the manner that would be the most compatible with the greatest public good and least private injury;
3. Whether the property described in the Resolution is necessary for the Project; and
4. Whether the offer required by Section 7267.2 of the Government Code has been made to the owner of record of each of the Subject Properties.

Adoption of the Resolution of Necessity would not determine the amount of compensation to be paid to the owners of the Subject Properties. If the Resolution is adopted, SFPUC Right-of-Way staff would continue to make good faith efforts to negotiate with the property owners for an amicable settlement, even after the City files eminent domain actions. 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 compensation for the Easements.

Upon filing the eminent domain action for each property interest, the City would deposit with the State Treasurer's Condemnation Fund the City's estimated compensation for the property interest. The deposit would be based on the appraisal prepared by the City's consultant.

FUNDING

Funding for the acquisition of the Easements is available from Water System Improvement Program-funded Project CUW 35901—New Irvington Tunnel, duly appropriated by the Board of Supervisors and approved by the Mayor.

cc: S. Bajwa
N. Ambrose, Office of City Attorney
C. Stein, Office of City Attorney
V. Wong, Office of City Attorney
B. Morelli
D. Wade