

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

### LAND USE & ECONOMIC DEVELOPMENT COMMITTEE

### SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Eric Mar, Chair  
Land Use & Economic Development Committee

FROM: Alisa Somera, Committee Clerk

DATE: January 25, 2011

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**  
Tuesday, January 25, 2011

The following file should be presented as **COMMITTEE REPORT** at the Board meeting, Tuesday, January 25, 2011. These items were acted upon at the Committee Meeting on January 24, 2011 at 1:00 p.m., by the votes indicated.

**Item No. 27                      File No. 110001**

Resolution approving and authorizing acceptance of a Right of Way Easement deed for a 50-year, exclusive, subsurface easement, at no charge, from United States Department of the Interior, for the purpose of constructing the San Francisco Public Utilities Commission Water System Improvement Program-Funded Project CUW36801, Bay Division Pipeline Reliability Upgrade - Bay Tunnel; adopting environmental findings under the California Environmental Quality Act (CEQA), CEQA Guidelines, and Administrative Code Chapter 31; adopting findings of consistency with City Planning Code Section 101.1; and authorizing the General Manager of SFPUC to execute documents, make certain modifications and take certain actions in furtherance of this resolution.

#### RECOMMENDED AS COMMITTEE REPORT

Vote: Supervisor Eric Mar - Aye  
Supervisor Malia Cohen - Aye  
Supervisor Scott Wiener - Aye

c: Board of Supervisors  
Angela Calvillo, Clerk of the Board  
Rick Caldeira, Deputy Legislative Clerk  
Cheryl Adams, Deputy City Attorney

File Nos. 110001

Committee Item Nos. 1

Board Item No. 27

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date January 24, 2011

Board of Supervisors Meeting

Date January 25, 2011

#### Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form (for hearings)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

#### OTHER

(Use back side if additional space is needed)

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Right-Of-Way Easement
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Public Utilities Commission Resolution No. 09-0120
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Planning Department's General Plan Referral Letter, dtd 11/23/09
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	

Completed by: Alisa Somera

Date January 21, 2011

Completed by: Alisa Somera

Date January 25, 2011

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

1 [Agreement to Acquire Easement in Connection with the Bay Division Pipeline Reliability  
2 Upgrade Project - Bay Tunnel]

3 **Resolution approving and authorizing acceptance of a Right of Way Easement deed for**  
4 **a 50-year, exclusive, subsurface easement, at no charge, from United States**  
5 **Department of the Interior, for the purpose of constructing the San Francisco Public**  
6 **Utilities Commission Water System Improvement Program-Funded Project CUW36801,**  
7 **Bay Division Pipeline Reliability Upgrade - Bay Tunnel; adopting environmental**  
8 **findings under the California Environmental Quality Act (CEQA), CEQA Guidelines, and**  
9 **Administrative Code Chapter 31; adopting findings of consistency with City Planning**  
10 **Code Section 101.1; and authorizing the General Manager of SFPUC to execute**  
11 **documents, make certain modifications and take certain actions in furtherance of this**  
12 **resolution.**

13  
14 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) plans to  
15 construct Project CUW36801 Bay Division Pipeline Reliability Upgrade Project-Bay Tunnel  
16 (the Project) under the Water System Improvement Program (WSIP) for improvements to the  
17 regional water supply system, a public use, and in connection therewith will require interests  
18 in certain real property described herein; and,

19 WHEREAS, The objectives of the Project, together with other Bay Division Pipeline  
20 (BDPL) Reliability Upgrade projects, are to provide a seismically reliable conduit between  
21 Mission Boulevard in Fremont and the Pulgas Tunnel in San Mateo County, to size and  
22 configure the BDPL transmission system for transmission of water across the Bay for  
23 distribution to residents and businesses in San Mateo County and the City and County of San  
24 Francisco (the City), to replenish local reservoirs, and to contribute toward meeting estimated  
25

1 average annual demand under conditions of both planned and unplanned facility outages;  
2 and,

3 WHEREAS, A Final Program Environmental Impact Report (PEIR) was prepared for  
4 the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No.  
5 17734; and

6 WHEREAS, Thereafter the SFPUC approved the WSIP and adopted findings and a  
7 Mitigation Monitoring and Reporting Program as required by the California Environmental  
8 Quality Act (CEQA) on October 30, 2008 by Resolution No. 08-0200; and

9 WHEREAS, An environmental impact report (EIR) as required by CEQA was  
10 prepared for the Project in Planning Department File No. 2005.01 64E; and

11 WHEREAS, The Final EIR (FEIR) for the Project was certified by the San Francisco  
12 Planning Commission on July 9, 2009 by Motion No. 17918; and

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

15 WHEREAS, On July 14, 2009, the SFPUC, by Resolution No. 09-0120, a copy of  
16 which is on file with the Clerk of the Board of Supervisors of the City (Board) in File  
17 No. 090979 and which is incorporated herein by this reference and is considered part of the  
18 record before this Board: (1) approved the Project; (2) adopted findings (CEQA Findings),  
19 including the statement of overriding considerations, and a Mitigation Monitoring and  
20 Reporting Program (MMRP) required by CEQA; (3) authorized the General Manager to  
21 seek Board approval of, and if approved, to execute certain necessary agreements and  
22 deeds for acquisition of interests in parcels of federal land under the jurisdiction of the U.S.  
23 Fish and Wildlife Service, including the real property commonly known as Alameda County  
24 Assessor's Parcels No. 537-0551-014-06, 537-0551-014-03, 537-0601-007-03, 537-0601-  
25 008 and 537-0601-009-02 (together, the Subject Property); and

1 WHEREAS, The Project files, including the FEIR, PEIR and SFPUC Resolution No.  
2 09-0120 have been made available for review by the Board and the public, and those files  
3 are considered part of the record before this Board; and

4 WHEREAS, The Board has reviewed and considered the information and findings  
5 contained in the FEIR, PEIR and SFPUC Resolution No. 09-0120, and all written and oral  
6 information provided by the Planning Department, the public, relevant public agencies,  
7 SFPUC and other experts and the administrative files for the Project; and

8 WHEREAS, This Board, by Resolution No. 371-09 adopted on September 22, 2009,  
9 a copy of which is on file with the Clerk of the Board in File No. 090979 and which is  
10 incorporated herein by this reference and considered part of the record before this Board,  
11 adopted findings under CEQA related to the Project, including the statement of overriding  
12 considerations and the MMRP; and

13 WHEREAS, In Planning case 2009.0558R, the Department of City Planning found  
14 the acquisition of subsurface property interests in specified properties, including the Subject  
15 Property, for the Project to be in conformity with the General Plan and consistent with the  
16 Eight Priority Policies of City Planning Code Section 101.1 to the extent applicable; and

17 WHEREAS, A copy of the proposed Right of Way Easement deed (the Agreement)  
18 between the United States Department of the Interior, U.S. Fish and Wildlife Service, as  
19 Grantor, and the City as Grantee, is on file with the Clerk of the Board of Supervisors under  
20 File No. 110001, which is incorporated herein by this reference and is considered part of  
21 the record before this Board; now therefore, be it

22 RESOLVED, The Board has reviewed and considered the FEIR and record as a whole,  
23 finds that the FEIR is adequate for its use as the decision-making body for the action taken  
24 herein and hereby incorporates by reference the CEQA findings contained in Resolution No.  
25 371-09; and be it

1 FURTHER RESOLVED, The Board finds that the Project mitigation measures adopted  
2 by the SFPUC will be implemented as reflected in and in accordance with the MMRP; and be  
3 it

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

10 FURTHER RESOLVED, That the Board hereby adopts as its own and incorporates  
11 by reference herein, as though fully set forth, the findings of the Planning Department that  
12 acquisition of subsurface property interests in Alameda County for the Project is consistent  
13 with the Eight Priority Policies of City Planning Code Section 101.1; and, be it

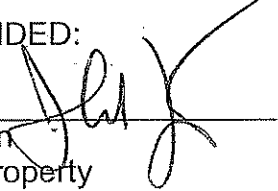
14 FURTHER RESOLVED, That in accordance with the recommendations of the Public  
15 Utilities Commission and the Director of Property, the Board of Supervisors hereby  
16 approves the Agreement and the transaction contemplated thereby in substantially the form  
17 of such Agreement presented to the Board; and, be it

18 FURTHER RESOLVED, That the Board authorizes the Director of Property and/or  
19 the General Manager of the SFPUC to enter into any additions, amendments or other  
20 modifications to the Agreement (including, without limitation, the attached exhibits) that the  
21 Director of Property and/or the General Manager determines are in the best interest of the  
22 City, that do not materially increase the obligations or liabilities of the City, and are  
23 necessary or advisable to complete the transaction contemplated in the Agreement and  
24 effectuate the purpose and intent of this resolution, such determination to be conclusively  
25

1 evidenced by the execution and delivery by the Director of Property or the General  
2 Manager of the Agreement and any additions or amendments thereto; and, be it

3 FURTHER RESOLVED, That the Director of Property is hereby authorized and  
4 urged, in the name and on behalf of the City and County, to execute the Agreement for the  
5 purchase of easements in accordance with the terms and conditions of the Agreement, and  
6 to take any and all steps (including, but not limited to, the execution and delivery of any and  
7 all certificates, agreements, notices, consents, escrow instructions, closing documents and  
8 other instruments or documents) as the Director of Property deems necessary or  
9 appropriate pursuant to the Agreement, or to otherwise effectuate the purpose and intent of  
10 this resolution, such determination to be conclusively evidenced by the execution and  
11 delivery by the Director of Property.

12 RECOMMENDED:

13   
14 Amy L. Brown  
15 Director of Property  
16  
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25



*Amy L. Brown*  
*Director of Real Estate*



December 27, 2010

PUC  
Subsurface Easement  
Bay Division Pipeline Reliability  
Upgrade Project  
Alameda County

Through Edwin M. Lee  
City Administrator

Honorable Board of Supervisors  
City & County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

Dear Board Members:

Enclosed for your consideration is a Resolution authorizing a Right of Way Easement between the United States Department of the Interior, under the jurisdiction of the United States Fish and Wildlife Service ("Grantor"), and the City and County of San Francisco ("City") acting by and through its Public Utilities Commission ("PUC") for a term of fifty (50) years. The exclusive, subsurface easement through Grantor's property is required for the PUC's Bay Division Pipeline Reliability Upgrade Project to provide a seismically reliable water transmission system between Mission Boulevard in the City of Fremont and the Pulgas Tunnel in San Mateo County.

The subsurface easement is necessary for construction of the Bay Tunnel and a 9-foot diameter water transmission pipeline within the tunnel, under the San Francisco Bay. The subsurface easement will be conveyed to the City at no charge.

In addition to the Resolution, enclosed are:

1. Right of Way Easement
2. Public Utilities Commission Resolution No. 09-0120 approving the acquisition of the subsurface easements and all other property interests for the project.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2010 DEC 28 PM 3:43  
BY *PC*



3. City Planning's letter dated November 23, 2009 stating that the proposed acquisition of all the necessary property interests for the project are in conformity with the general plan and consistent with the Eight Priority Policies of Planning Code Section 101.1. In addition, an environmental impact report for the project was certified by the Planning Commission and subsequently approved by the Board by Resolution No. 371.09

Should you have any questions or need additional information, do not hesitate to call Marta Bayol of our office at 554-9865.

Very truly yours,

  
for Amy L. Brown  
Director of Real Estate

cc: Edwin M. Lee, City Administrator

w/ Resolution;  
Carolyn Stein, Deputy City Attorney  
Brian Morelli, PUC  
Gary Dowd, PUC  
Nathan Purkiss, PUC

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Pat Arnold  
U.S. Fish and Wildlife Service  
California/Nevada Realty Office  
2800 Cottage Way, W-1832  
Sacramento, California 95825

## RIGHT-OF-WAY EASEMENT

THE SECRETARY OF THE INTERIOR, through his authorized representative, the Regional Director, U.S. Fish and Wildlife Service, herein designated as the "**Grantor**", in accordance with applicable authorities, and in accordance with regulations published December 19, 1969, in 50 CFR 29.21, does hereby quitclaim and convey to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, herein designated as the "**Grantee**", an easement for right-of-way (the "**Right-of-Way**") to construct, operate and maintain an underground tunnel containing a nine-foot diameter water pipeline (the "**Project**"), located underground at varying levels between approximately -19 to -106 feet North American Vertical Datum of 1988, for a period of fifty years, commencing on February 1, 2011, and expiring on January 31, 2061, over, across, in, and upon lands of the United States, described as Tracts 11P, 6P, 108P, more particularly described in Exhibits A-1, A-2, A-3 and A-4 and depicted on Exhibits B-1, B-2, B-3 and B-4, attached hereto and made a part hereof (collectively, the "**Easement Area**").

A. By accepting the Right-of-Way, the Grantee agrees to the following terms and conditions:

(1) To comply with State and Federal laws applicable to the project within which the Right-of-Way is granted, and to the lands which are included in the Easement Area, and lawful existing regulations thereunder.

(2) To clear and keep clear the lands within the Easement Area to the extent and in the manner directed by the Project Leader (as defined below); and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the Project in such a manner as to decrease the fire hazard and also in accordance with such instructions as the Project Leader may specify.

(3) To prevent the disturbance or removal of any public land survey monument or project boundary monument unless and until the Grantee has requested and received from the Manager, California/Nevada Operations Office, approval of measures the Grantee will take to perpetuate the location of aforesaid monument.

(4) To take such soil and resource conservation and protection measures, including weed control on the land covered by the Right-of-Way, as the Project Leader may request.

(5) To do everything reasonably within their power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near

lands to be occupied under the Easement Area, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(6) To rebuild and repair such roads, fences, structures, and trails, as may be destroyed or altered by construction work, and to build necessary and suitable crossings for all roads and trails that intersect the works constructed, or operated under the Right-of-Way.

(7) To pay the United States the full value for all damages to the lands or other property of the United States caused by the Grantee or its employees, contractors, or agents of the contractors, and to indemnify the United States against any liability for damages to life, person, or property arising from the occupancy or use of the lands under the Right-of-Way by the Grantee or its employees, contractors, or agents of the contractors, except where the Right-of-Way is granted hereunder to a state or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages.

(8) That all or any part of the Right-of-Way granted may be terminated by the Grantor for failure to comply with any or all of the terms and conditions of this Right-of-Way, or for non-use for a 2 year period, or abandonment of the Right-of-Way granted. In the event of noncompliance or abandonment, the Grantor will notify the Grantee in writing of the corrections needed, and the Grantee shall have a period of 60 days from the date of the notice, to complete corrective action. However, in the event of extenuating circumstances, such as adverse weather conditions, disturbance of wildlife during periods of peak concentration, or other compelling reasons, the Grantor, may grant an extension of time which in his/her judgment is reasonably necessary. In the event of termination of an easement or permit for noncompliance, nonuse, or abandonment, a written notice of termination will be furnished to the Grantee.

(9) To restore the land to its original condition to the entire satisfaction of the Grantor, so far as it is reasonably possible to do so upon revocation and termination of the Right-of-Way, unless the requirement is waived in writing.

(10) To keep the Grantor's Project Leader at D.E. San Francisco Bay NWR ("Project Leader") informed at all times of the Grantee's address, and, in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers. The initial notice address and phone number of Grantor's Project Leader is as follows:

U.S. Fish and Wildlife Service  
Manager, D.E. San Francisco Bay National Wildlife Refuge Complex  
9500 Thornton Avenue, Newark, CA 94560  
(510) 792-0222 Extension 123

If Grantee determines that this address or phone number is no longer effective, at Grantee's request, Grantor's Refuge Manager for the San Francisco Bay National Wildlife Refuge or Grantor's Regional Director in Sacramento shall provide in writing the current contact information for the Project Leader.

(11) That in the construction, operation, and maintenance of the Project, the Grantee shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(12) That the allowance of the Right-of-Way shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the land affected thereby, and that the applicant agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the Right-of-Way not actually occupied and required by the applicant for the purpose of the granted rights or the full and safe utilization thereof. Grantee also agrees that authorized representatives of the United States ("**Agents**") shall have the right of access to the Easement Area for the purpose of making inspections and monitoring the construction, operation, and maintenance of facilities (each such access, an "**Inspection**"), subject to the following terms and conditions:

(a) Grantor acknowledges that the Easement Area is completely subterranean, with no access from the surface of Grantor's land. Grantee's tunnel will be constructed by a tunnel-boring machine ("**TBM**"), starting at a shaft in Menlo Park and ending at a shaft east of Grantor's land, in Newark. Prior to completion of tunnel construction (which is currently anticipated to occur in 2015), access to the Easement Area within Grantor's property will be available only from the western shaft, through the tunnel, and only when tunnel boring has progressed as far as Grantor's property.

(b) The Project's tunnel-boring operations are currently anticipated to commence in the Spring of 2011. If Grantor requests it in writing after March 31, 2011, SFPUC will provide a good faith estimate of when the TBM will reach the Easement Area. If Grantor desires to have its Agents inspect the tunnel at the time the TBM approaches or passes through the Easement Area, then at least 60 days in advance of the desired Inspection date, Grantor shall provide a written request for the desired Inspection, to SFPUC Bureau of Project Management, Attention: Bay Tunnel Project Manager, 1145 Market Street, 3rd Floor, San Francisco, CA 94103.

(c) Grantor agrees that SFPUC will have the right to designate the date of the Inspection (which may be a weekend day), taking into consideration Grantor's desired Inspection date, but also considering the availability of Grantee personnel, the potential impact on Project schedule and operations, safety considerations and the nature and location of construction operations anticipated to be occurring at that time. Recognizing the significant cost to SFPUC of providing access to the tunnel for inspections and the potential impact on Project operations, Grantor agrees that Grantee shall have the right to consolidate inspections by various agencies and to limit the number of agents of each agency (including Grantor's Agents) who may participate in a given inspection. Grantor may reschedule a previously scheduled Inspection, as needed to accommodate changes in the Project schedule or unanticipated events such as unscheduled service interventions for the TBM.

(d) Only those Grantor Agents who have received SFPUC's safety and environmental briefing, approximately one to two hours in length, may participate in an Inspection. Grantee shall schedule such a briefing for Grantor's Agents for a date and time prior to a scheduled Inspection.

(e) Grantor's Agents must be accompanied by a SFPUC representative at all times when at the Project site, whether on the surface at the shaft location, in the shaft or in the tunnel. Agents shall not direct the conduct of SFPUC's contractor or employees or otherwise interfere with Project operations. Agents must comply with all instructions given by SFPUC representatives, all applicable laws, codes and regulations of any public authority having jurisdiction over Grantee's use of the Easement Area, and all health and safety rules promulgated

by SFPUC. Without limiting the foregoing, Grantor's Agents shall wear the hard hats and any other safety clothing and equipment required by SFPUC when at the Project site.

(f) Grantee shall not be required to provide access for more than three Inspections by Grantor during the course of Project construction.

(g) Grantor acknowledges that once the water pipeline has been placed in service within the tunnel, it will be impossible for any person to access the tunnel except when the pipeline is taken out of service and drained for periodic maintenance or for emergency repairs. If Grantor desires to have its Agents inspect the Easement Area during such a shut-down period, Grantee shall accommodate such request if it can be done safely without interfering with or delaying repairs or maintenance or otherwise impairing operations. Grantor shall direct requests for such Inspections to SFPUC's Assistant General Manager for Operations, whose initial address for purposes of this Right of Way is SFPUC, Attn: Assistant General Manager for Operations, 1155 Market Street, 11th Floor, San Francisco, California 94103. Grantee shall not be required to provide access for more than one Inspection by Grantor during any temporary shutdown period. Any such Inspection shall be subject to the terms and conditions in subparagraphs (c) through (e) above.

(13) That the Right-of-Way herein granted shall be subject to the express covenant that any facility constructed thereon will be modified or adapted if such is found by the Grantor, to be necessary without liability or expense to the United States, so that such facility will not conflict with the use and occupancy of the land for any authorized works which may be constructed thereon under authority of the United States. Any such modification will be planned and scheduled so as not to interfere unduly with or to have minimal effect upon continuity of energy and delivery requirements.

(14) That the Right-of-Way granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the Right-of-Way unless approved by the Grantor.

(15) In connection with the construction and operation of the underground water pipeline within the Easement Area, the Grantee shall work in a manner that minimizes damage to wildlife and habitat in the Easement Area.

B. The term of this Right-of-Way easement is for a fifty (50) year term, beginning on the date set forth above, and may be extended for additional periods, subject to approval by the Grantor.

C. Notwithstanding the terms and conditions set forth in **Paragraph A(8)** above, Grantor shall not terminate the Right-of-Way granted herein for non-use for a 2 year period if such non-use by Grantee is temporary (i.e. temporary shut down of the underground water pipeline due to upgrade of such underground water pipeline or Grantee's water system), or is due to an emergency or such non-use occurs while Grantee is actively engaged in constructing portions of Grantee's Project located outside of Grantor's Property.

D. Notwithstanding the terms and conditions set forth in **Paragraph A(9)** above, upon revocation and termination of the Right-of-Way, Grantee shall have no obligation to remove the underground water pipeline within the Easement Area.

E. The parties hereto agree that Paragraph A(13) in referring to "any authorized works which may be constructed thereon under authority of the United States" refers to authorized works which may be constructed on the surface above the Easement Area and further agree that Paragraph A(13) shall not apply to the Grantee's facilities so long as such facilities do not affect the surface above the Easement Area.

F. This instrument may be executed in separate identical counterparts, each of which shall be deemed an original, and when executed, separately or together, shall constitute a single original instrument, effective in the same manner as if the parties had executed one and the same copy.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties have executed this Right-of-Way Easement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**GRANTOR:**

UNITED STATES DEPARTMENT OF THE INTERIOR  
U.S. Fish and Wildlife Service

By \_\_\_\_\_,  
Regional Director

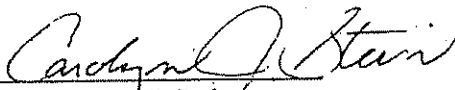
**GRANTEE:**

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By \_\_\_\_\_  
Amy Brown, Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By   
Carolyn J. Stein  
Deputy City Attorney

### CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this deed dated \_\_\_\_\_ from the grantor to the City and County of San Francisco, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

AMY L. BROWN  
Director of Property



ACKNOWLEDGMENT

State of California        }  
                                  ss  
County of                    }

On \_\_\_\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, Regional Director, U.S.  
Fish and Wildlife Service, California Region personally known to me or proved to me on the  
basis of satisfactory evidence to be the persons whose names are subscribed to the within  
instrument and acknowledged to me that they executed the same in their capacities, and that by  
their signatures on the instrument, the persons, or the entity upon behalf of which the persons  
acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Notarial Seal)

ACKNOWLEDGMENT

State of California

}

ss

County of

}

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Notarial Seal)



ENGINEERS  
SURVEYORS  
PLANNERS

December 16, 2010

**EXHIBIT "A-1"**  
**LEGAL DESCRIPTION**  
**Property I.D. No. HH18-02**  
**SFPUC Bay Division Pipeline**  
**Subsurface Tunnel Easement**

All that real property situate in the City of Fremont, County of Alameda, State of California, being a portion of Tract 108 of the land described by Leslie Salt Co., et.al., to the United States of America by "DECLARATION OF TAKING" recorded July 11, 1977, in Reel 4949 Image 313, said county records, more particularly described as follows:

**BEGINNING** at the intersection of the Central Pacific Surveyed "A" Line with the westerly line of Hickory Street as shown on Sheet 15 of that certain Record of Survey filed August 23, 1976, in Book 10 of Records of Survey at page 29, said County records; thence along said "A" Line, South 68°15'05" West (South 68°14'57" West), 4018.52 feet to the northwesterly prolongation of the westerly line of Parcel 2 as shown on Parcel Map Number 7505 filed September 8, 2000, in Book 252 of Maps at Pages 81-82, said County records; thence leaving said "A" Line along said prolongation, South 23°56'09" East, 50.04 feet to the northwesterly corner of said Parcel 2; thence along the westerly lines of said Parcel 2, also being the westerly lines of the City of Newark as said lines are shown on Sheet 2 of that certain Map entitled "City of Fremont Resolution No. 4505" filed April 6, 1979, in Map Book 90 at pages 48-49, Records of said County, the following two (2) courses: South 23°56'09" East (South 23°56'17" East), 420.04 feet and South 21°51'36" East (South 21°51'44" East), 155.09 feet to the **TRUE POINT OF BEGINNING** of this description;

thence continuing along said westerly line, South 21°51'36" East, 52.40 feet;

thence leaving said westerly line, South 50°44'18" West, 3645.38 feet to the northerly line of "PARCEL ONE" of "Parcel Q" of the land described by Leslie Salt Co. to the State of California by deed recorded February 1, 1968, in Reel 2119 Image 305, said County records;

thence along said northerly line, South 89°11'44" West (North 89°11'36" East), 34.85 feet;

thence continuing along said northerly line, South 86°22'16" West, 48.63 feet;

thence leaving said northerly line, North 50°44'18" East, 3727.86 feet to the **TRUE POINT OF BEGINNING**.

Containing 184,289 sq. ft. or 4.23 acres, more or less, portion of APN 537-0551-014-06, Tract 108p.

The above described easement shall be vertically limited to only that portion of land lying between the elevations of -19.5 feet and -94.5 feet, North American Vertical Datum of 1988 (NAVD 88).

255 Shoreline Drive  
Suite 200  
Redwood City  
California 94065  
phone 650.482.6300  
fax 650.482.6399  
www.bkf.com

J:\Sur06\060212-03\Plats & Legals\HH18-02\HH18-02 Legal.doc

SHEET 1 OF 2



**ENGINEERS  
SURVEYORS  
PLANNERS**

Exhibit "A-1" continued:

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

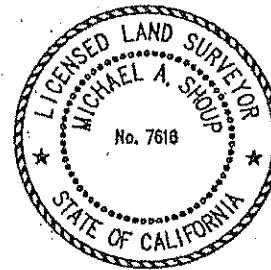
expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B-1".

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

 12-16-10

Michael A. Shoup, PLS 7616



END OF DESCRIPTION



ENGINEERS  
SURVEYORS  
PLANNERS

December 16, 2010

EXHIBIT "A-2"  
LEGAL DESCRIPTION  
Property I.D. No. HH20-02  
SFPUC Bay Division Pipeline  
Subsurface Tunnel Easement

All that real property situate in the City of Fremont, County of Alameda, State of California, being a portion of Tract 108 of the land described by Leslie Salt Co., et.al., to the United States of America by "DECLARATION OF TAKING" recorded July 11, 1977, in Reel 4949 Image 313, said county records, more particularly described as follows:

**BEGINNING** at Point 1785 as shown on Sheet 20 of 57 Sheets of that certain Record of Survey filed August 23, 1976, in Book 10 of Records of Survey at Page 29, said county records; thence along the southerly line of "PARCEL ONE" of "Parcel Q" of the land described by Leslie Salt Co. to the State of California, by deed recorded February 1, 1968, in Reel 2119 Image 305, said county records, South 70°06'09" West (South 70°06'01" West), 58.14 feet to the **TRUE POINT OF BEGINNING** of this description;

thence leaving said southerly line, South 50°44'18" West, 547.02 feet;

thence North 00°00'00" East, 64.58 feet;

thence North 50°44'18" East, 363.89 feet to said southerly line;

thence along said southerly line, North 70°06'09" East, 150.80 feet to the **TRUE POINT OF BEGINNING**.


Containing 22,773 sq. ft. or 0.52 acres, more or less, portion of APN 537-0551-014-03, Tract 108p.

The above described easement shall be vertically limited to only that portion of land lying between the elevations of -23.5 feet and -98.5 feet, North American Vertical Datum of 1988 (NAVD 88).

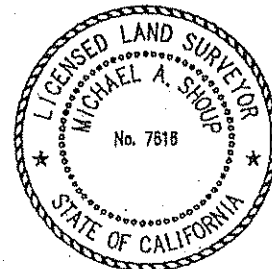
All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD 83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B-2".

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

 12-16-10

Michael A. Shoup, PLS 7616



END OF DESCRIPTION

255 Shoreline Drive  
Suite 200  
Redwood City  
California 94065  
phone 650.482.6300  
fax 650.482.6399  
www.bkf.com



ENGINEERS  
SURVEYORS  
PLANNERS

December 16, 2010

EXHIBIT "A-3"  
LEGAL DESCRIPTION  
Property I.D. No. HH21-02  
SFPUC Bay Division Pipeline  
Subsurface Tunnel Easement

All that real property situate in the City of Fremont, County of Alameda, State of California, being a portion of Tract 108 of the land described by Leslie Salt Co., et.al., to the United States of America by "DECLARATION OF TAKING" recorded July 11, 1977, in Reel 4949 Image 313, said county records, more particularly described as follows:

**BEGINNING** at Point 2761 as shown on Sheet 20 of 57 Sheets of that certain Record of Survey filed August 23, 1976, in Book 10 of Records of Survey at Page 29, said county records, said point being the **TRUE POINT OF BEGINNING** of this description;

thence along the easterly line of "PARCEL ONE" of "Parcel Q" of the land described by Leslie Salt Co., to the State of California, by deed recorded February 1, 1968, in Reel 2119 Image 305, said county records, North 06°40'27" West (South 06°40'35" East), 45.46 feet;

thence leaving said easterly line, North 50°44'18" East, 2049.36 feet;

thence South 00°00'00" West, 64.58 feet;

thence South 50°44'18" West, 2009.18 feet to the southerly line of said Tract 108;

thence along said southerly line, South 76°55'10" West, 26.51 feet to the **TRUE POINT OF BEGINNING**.

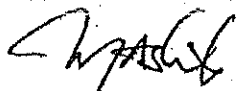
Containing 102,063 sq. ft. or 2.34 acres, more or less, portion of APN 537-0601-007-03, Tract 108p.

The above described easement shall be vertically limited to only that portion of land lying between the elevations of -25.5 feet and -100.5 feet, North American Vertical Datum of 1988 (NAVD 88).

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 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B-3".

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

 12-16-10

Michael A. Shoup, PLS 7616



END OF DESCRIPTION

255 Shoreline Drive  
Suite 200  
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California 94065  
phone 650.482.6300  
fax 650.482.6399  
www.bkf.com

J:\Sur06\060212-03\Plats & Legals\HH21-02\HH21-02 Legal.doc

SHEET 1 OF 1



ENGINEERS  
SURVEYORS  
PLANNERS

December 16, 2010

**EXHIBIT "A-4"**  
**LEGAL DESCRIPTION**  
**Property I.D. No. HH24-02**  
**SFPUC Bay Division Pipeline**  
**Subsurface Tunnel Description**

A 50 foot wide strip of land situate in the City of Fremont, County of Alameda, State of California, being a portion of the parcel described in the Corporation Grant Deed to the United States of America recorded September 7, 1983, as Document Number 83-165823, Official Records of Alameda County, and a portion of the parcel described in the Quitclaim Deed to the United States of America recorded April 28, 1981, as Document Number 81-067902, Official Records of Alameda County, lying 25 feet on each side of the following described centerline:

**BEGINNING** at the southwesterly terminus of the course South 65°56'03" West (South 65°55'55" West), 441.37 feet described in the Corporation Grant Deed to the United States of America recorded September 7, 1983, as Document Number 83-165823, Official Records of Alameda County,

thence North 65°56'03" East, 158.12 feet to a point on the southerly boundary of the parcel described in said Document Number 83-165823, said point being the **TRUE POINT OF BEGINNING** of this description;

thence leaving said southerly boundary, North 62°34'22" East, 1,693.26 feet to the beginning of a tangent curve concave northwesterly;

thence along said curve having a radius of 1,000.00 feet, through a central angle of 11°35'52" and an arc length of 202.42 feet to the point of termination on the line between points 3600 and 3601 as shown on Sheet 20 of 57 Sheets of that certain Record of Survey filed August 23, 1976, in Book 10 of Records of Survey at Page 29, Records of Alameda County, distant along said line, South 00°58'25" West, 614.13 feet from said point 3600.

Containing 93,426 sq. ft. or 2.14 acres, more or less, portion of APN 537-0601-009-02, Tract 6p and portion of APN 537-0601-008, Tract 11p.

**EXCEPTING THEREFROM** any portion lying bayward of the low water mark of the San Francisco Bay.

Sidelines of said 50 foot strip are to be lengthened or shortened as to terminate at the southerly boundary of the parcel described in said Document Number 83-165823 and at the easterly boundary of the parcel described in said Document Number 81-067902.

The above described description shall be vertically limited to that space lying 52.5 feet above and 22.5 feet below the following described plane: A plane commencing at an elevation of -83.89 feet along the westerly line of the above described parcel and terminating at an elevation of -81.62 feet along the easterly line of the above described parcel, North American Vertical Datum of 1988 (NAVD 88).

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.

255 Shoreline Drive  
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SHEET 1 OF 2



ENGINEERS  
SURVEYORS  
PLANNERS

December 16, 2010

Exhibit "A-4" continued:

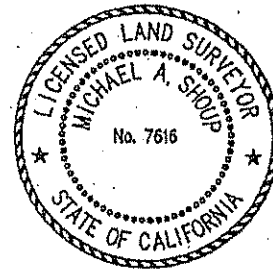
All distances shown hereon are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B-4".

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

*Michael A. Shoup* 12.16.10

Michael A. Shoup, PLS 7616



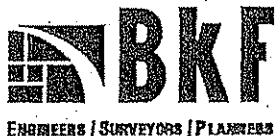
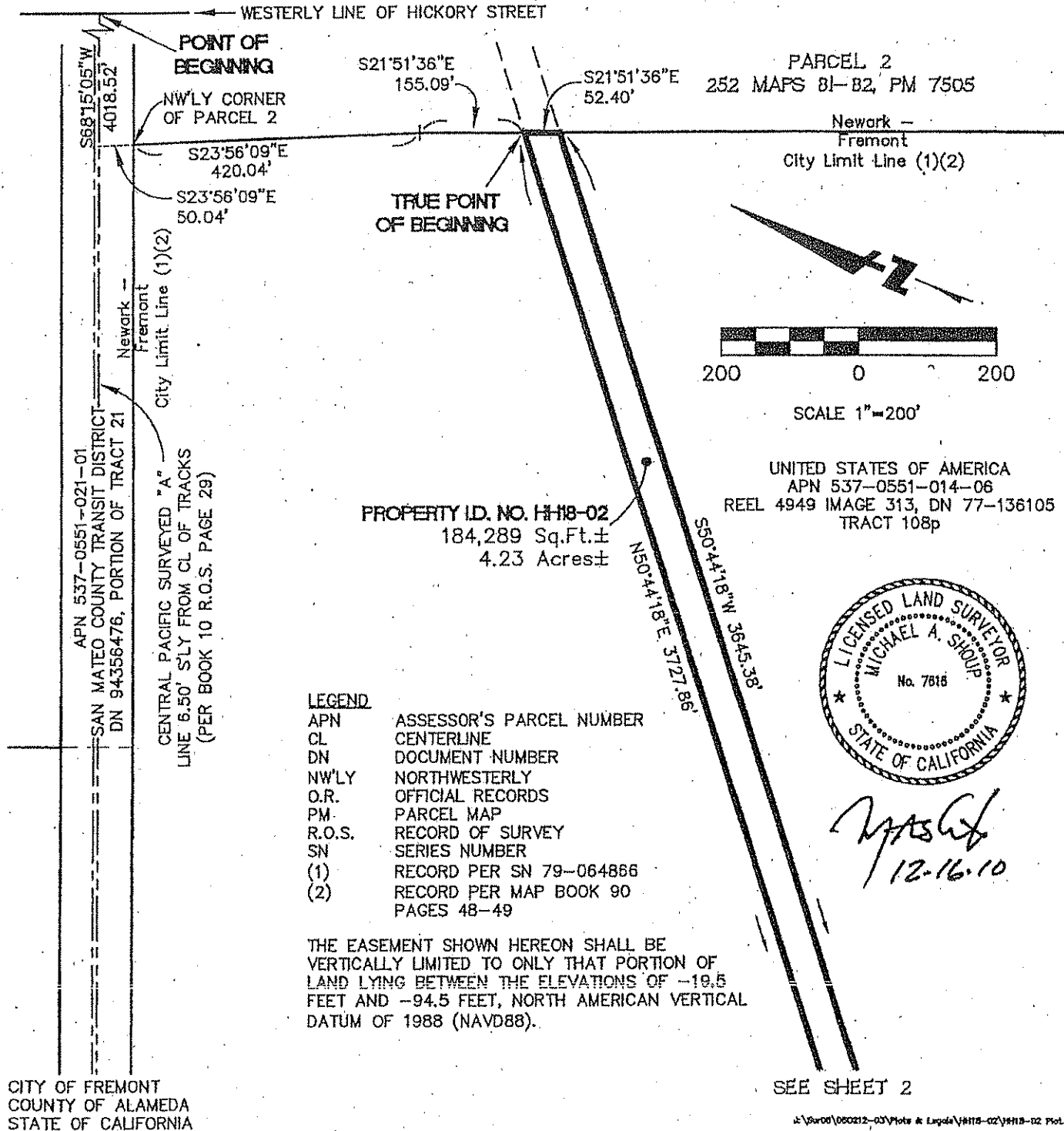
END OF DESCRIPTION



**NOTE:**

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

**EXHIBIT "B-1"**  
**SUBSURFACE TUNNEL EASEMENT**



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

Subject **HETCH HETCHY CORRIDOR**  
Property I.D. No. **HH18-02**

Job No. **20060212-03**

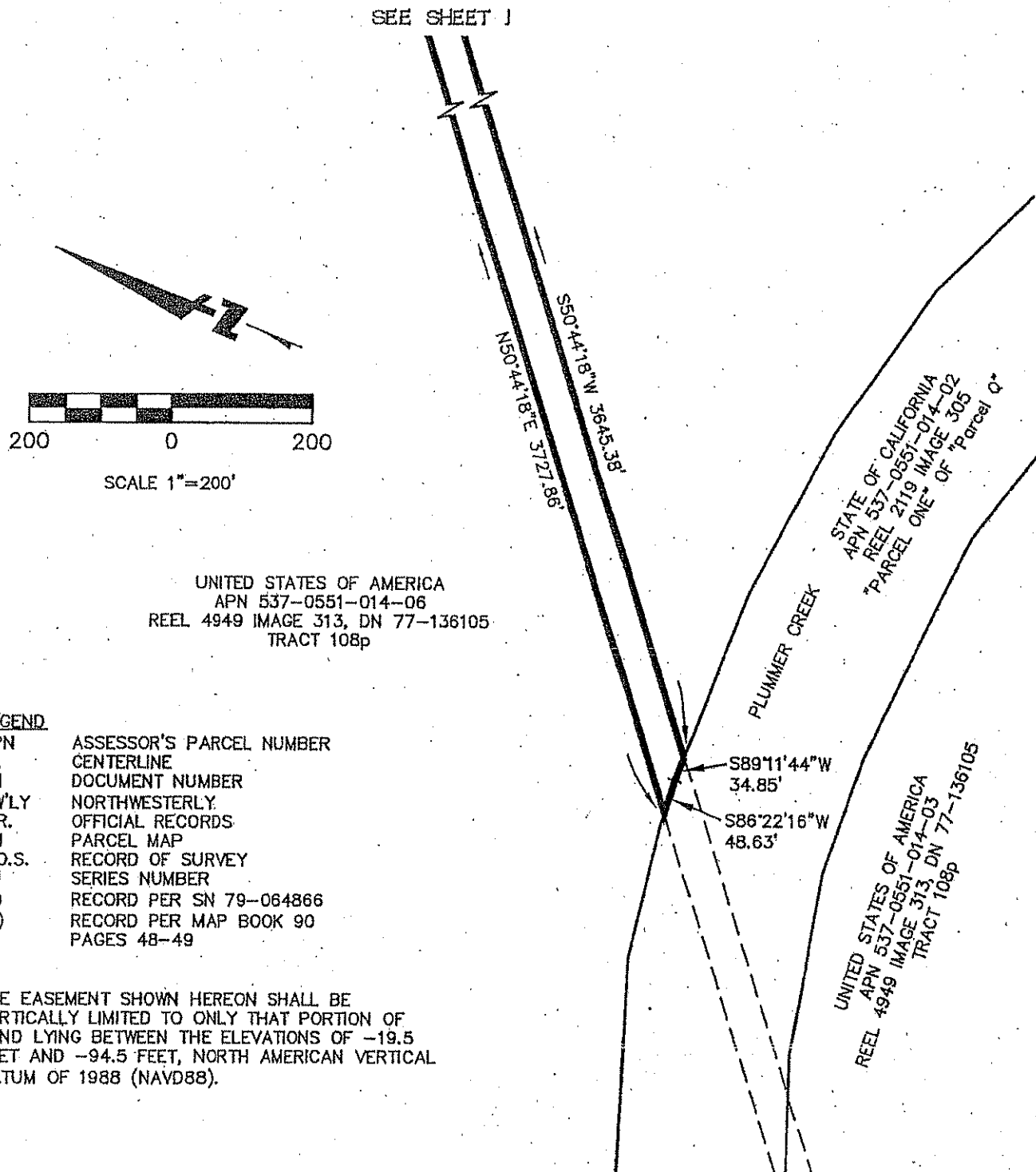
By **CRM/AMC** Date **12-16-10** Chkd. **MAS**

SHEET **1** OF **2**

**NOTE:**

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.0001177.

**EXHIBIT "B-1"**  
**SUBSURFACE TUNNEL EASEMENT**



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

Subject **HETCH HETCHY CORRIDOR**  
Property I.D. No. **HH18-02**

Job No. **20080212-03**

By **CRM/AMC** Date **12-16-10** Chkd. **MAS**  
SHEET **2** OF **2**

**NOTE:**

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

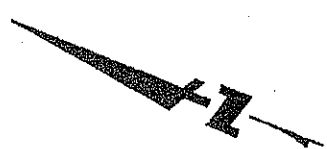
**EXHIBIT "B-2"**  
**SUBSURFACE TUNNEL EASEMENT**

UNITED STATES OF AMERICA  
APN 537-0551-014-08  
REEL 4949 IMAGE 313, DN 77-136105  
TRACT 108p

UNITED STATES OF AMERICA  
APN 537-0551-014-03  
REEL 4949 IMAGE 313, DN 77-136105  
TRACT 108p

THE EASEMENT SHOWN HEREON SHALL BE VERTICALLY LIMITED TO ONLY THAT PORTION OF LAND LYING BETWEEN THE ELEVATIONS OF -23.5 FEET AND -98.5 FEET, NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).

STATE OF CALIFORNIA  
APN 537-0551-014-02  
REEL 2119 IMAGE 305  
"PARCEL ONE" OF "Parcel Q"



200 0 200  
SCALE 1"=200'

POINT OF BEGINNING (POINT 1785)

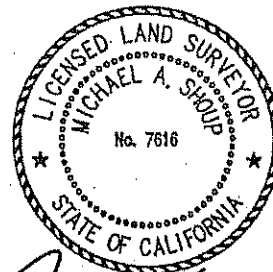
S70°06'09"W  
58.14'

TRUE POINT OF BEGINNING

N70°06'09"E  
150.80'

CALCULATED AP LINE

UNITED STATES OF AMERICA  
APN 537-0601-007-02  
REEL 4949 IMAGE 313, DN 77-136105  
TRACT 108p



*Michael A. Shoup*  
12-16-10

PROPERTY I.D. NO. HH20-02  
22,773 Sq.Ft.± 0.52 Acres±

**LEGEND**

AP ASSESSOR'S PARCEL  
APN ASSESSOR'S PARCEL NUMBER  
R.O.S. RECORD OF SURVEY  
O.R. OFFICIAL RECORDS

STATE OF CALIFORNIA  
APN 537-0601-007-01  
REEL 2119 IMAGE 305  
"PARCEL ONE" OF "Parcel Q"

N50°44'18"E  
363.88'

N00°00'00"E  
64.58'

UNITED STATES OF AMERICA  
APN 537-0601-007-03  
REEL 4949 IMAGE 313, DN 77-136105  
TRACT 108p

CITY OF FREMONT  
COUNTY OF ALAMEDA  
STATE OF CALIFORNIA

J:\Bk08\080212-03\Notes & Legals\#120-02\#120-02 Plot.dwg



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

Subject **HETCH HETCHY CORRIDOR**  
Property I.D. No. **HH20-02**

Job No. **20080212-03**

By **CRM/AMC** Date **12-16-10** Chkd. **MAS**

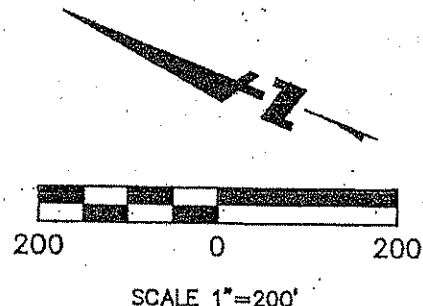
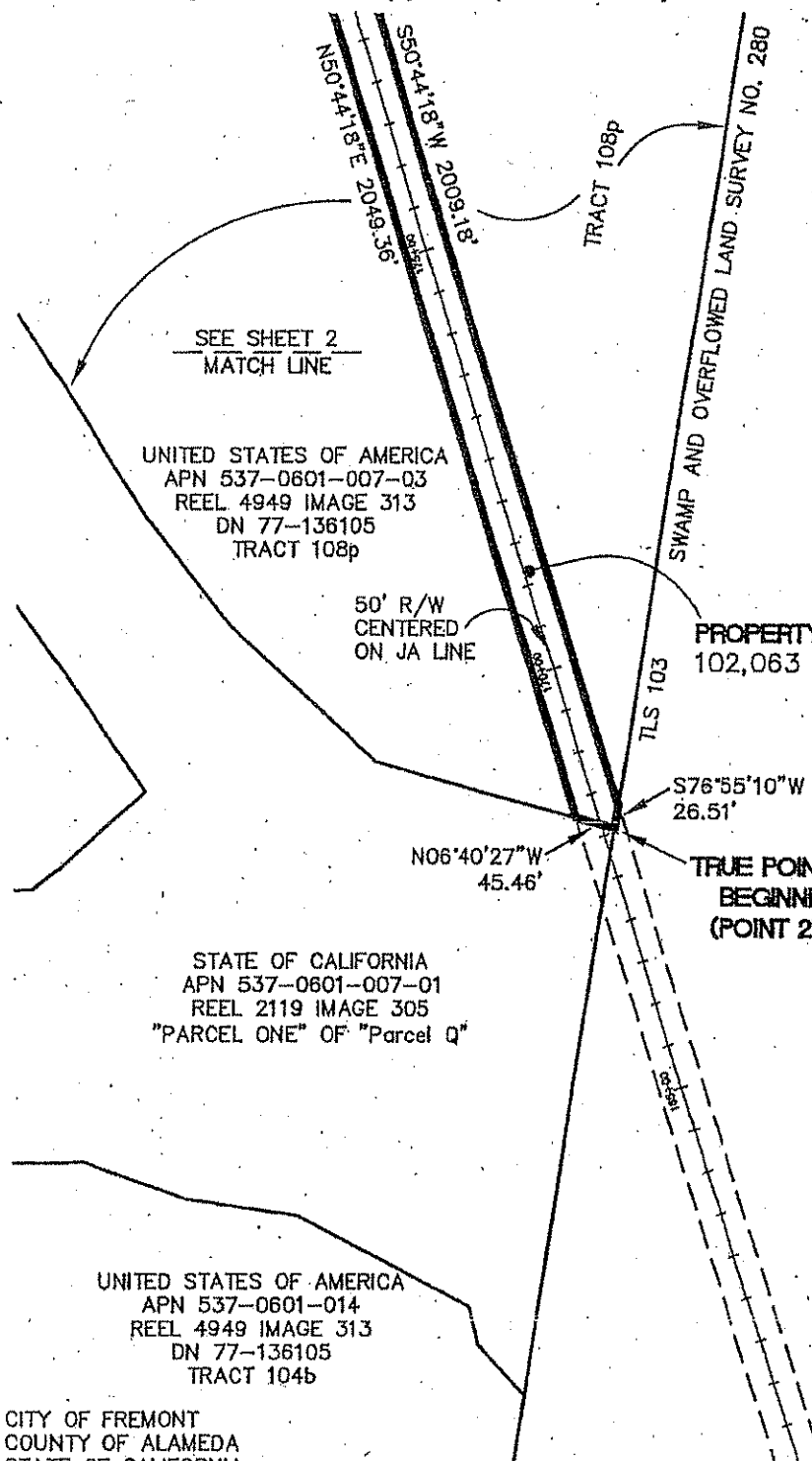
SHEET **1** OF **1**

**NOTE:**

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177

# EXHIBIT "B-3"

## SUBSURFACE TUNNEL EASEMENT



STATE OF CALIFORNIA  
APN 537-0651-001-01  
DN 85-245711, EXHIBIT E, TLS 103

PROPERTY I.D. NO. HH21-02  
102,063 Sq.Ft.± 2.34 Acres±



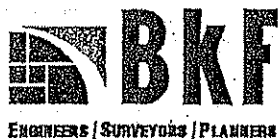
*Handwritten signature and date: 12.16.10*

**LEGEND**

APN	ASSESSORS PARCEL NUMBER
O.R.	OFFICIAL RECORDS
R.O.S.	RECORD OF SURVEY
R/W	RIGHT-OF-WAY
TLS	TIDE LAND SURVEY

THE EASEMENT SHOWN HEREON SHALL BE VERTICALLY LIMITED TO ONLY THAT PORTION OF LAND LYING BETWEEN THE ELEVATIONS OF -25.5 FEET AND -100.5 FEET, NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).

CITY OF FREMONT  
COUNTY OF ALAMEDA  
STATE OF CALIFORNIA



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

Subject **HETCH HETCHY CORRIDOR**  
Property I.D. No. **HH21-02**

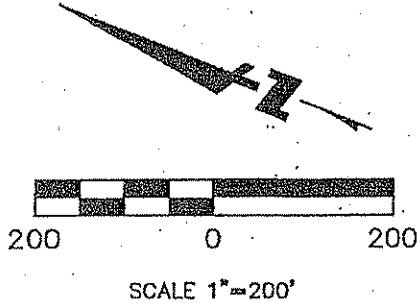
Job No. **20080212-03**

By **AMC** Date **12-16-10** Chkd **MAS**  
SHEET **1** OF **2**

**NOTE:**

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177

**EXHIBIT "B-3"**  
**SUBSURFACE TUNNEL EASEMENT**



UNITED STATES OF AMERICA  
APN 537-0601-007-02  
REEL 4949 IMAGE 313, DN 77-136105  
TRACT 108p

THE EASEMENT SHOWN HEREON  
SHALL BE VERTICALLY LIMITED TO  
ONLY THAT PORTION OF LAND  
LYING BETWEEN THE ELEVATIONS  
OF -25.5 FEET AND -100.5 FEET,  
NORTH AMERICAN VERTICAL  
DATUM OF 1988 (NAVD88).

**LEGEND**

APN	ASSESSORS PARCEL NUMBER
O.R.	OFFICIAL RECORDS
R.O.S.	RECORD OF SURVEY
R/W	RIGHT-OF-WAY

CITY OF FREMONT  
COUNTY OF ALAMEDA  
STATE OF CALIFORNIA

STATE OF CALIFORNIA  
APN 537-0601-007-01  
REEL 2119 IMAGE 305  
"PARCEL ONE" OF "Parcel Q"

PLUMMER CREEK

50' R/W  
CENTERED  
ON JA LINE

S00°00'00"W  
64.58'

UNITED STATES OF AMERICA  
APN 537-0551-014-03  
REEL 4949 IMAGE 313, DN 77-136105  
TRACT 108p

CALCULATED AP LINE

PROPERTY I.D. NO. HH21-02  
102,063 Sq.Ft.± 2.34 Acres±

UNITED STATES OF AMERICA  
APN 537-0601-007-03  
REEL 4949 IMAGE 313, DN 77-136105  
TRACT 108p

MATCH LINE  
SEE SHEET 1

S50°44'18"E 2049.3'±  
S50°44'18"W 2003.13'



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

Subject **HETCH HETCHY CORRIDOR**  
Property I.D. No. **HH21-02**

Job No. **20080212-03**

By **AMC** Date **12-16-10** Chkd. **MAS**  
SHEET **2** OF **2**

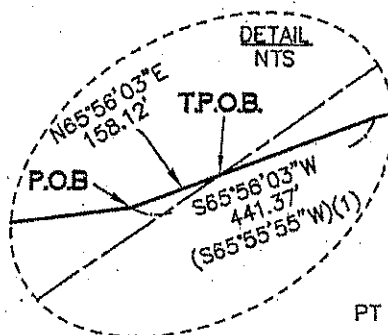
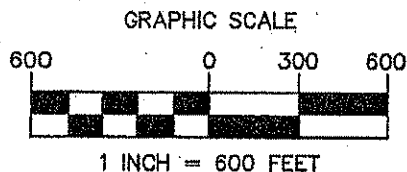
A:\ar06\080212-03\Title & Layout\HH21-02\Plot.dwg

**NOTE:**

All bearings and distances shown on this Exhibit are based upon the North American Datum of 1983 (NAD83), California Coordinate System, Zone III, Epoch 1991.35. All distances shown are grid distances. To convert to ground distance, multiply expressed distances by 1.000055883. Areas shown are calculated using grid distances. To convert to ground area, multiply the expressed area by 1.00011177.

# EXHIBIT "B-4"

## SUBSURFACE TUNNEL EASEMENT



STATE OF CALIFORNIA  
APN 537-0601-007-01  
"PARCEL ONE" OF "Parcel Q"  
REEL 2119 IMAGE 305

UNITED STATES OF AMERICA  
APN 537-0601-014  
REEL 4949 IMAGE 313  
DN 77-136105, TRACT 104b

SWAMP AND OVERFLOWED  
LAND SURVEY 280

POINT OF TERMINATION

UNITED STATES OF AMERICA  
APN 537-0601-008  
DN 81-067902,  
TRACT 11p

STATE OF CALIFORNIA  
APN 537-0651-001-01  
DN 85-245711,  
EXHIBIT E, TLS 103

UNITED STATES OF AMERICA  
APN 537-0601-009-02  
DN 83-165823,  
TRACT 8p

N65°56'03"E 158.12'

TRUE POINT OF BEGINNING

POINT OF BEGINNING

N62°34'22"E 1693.26'

R=1000.00'  
Δ=11°35'52"  
L=202.42'

C/L OF 50'  
WIDE STRIP

PROPERTY I.D. NO. HH24-02  
93,426 Sq.Ft.±  
2.14 Acres±

SEE "DETAIL"  
THIS SHEET

PT 3601(2)

**LEGEND**

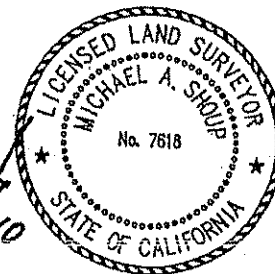
APN ASSESSOR'S PARCEL NUMBER  
C/L CENTERLINE  
DN DOCUMENT NUMBER  
NTS NOT TO SCALE  
P.O.B. POINT OF BEGINNING  
ROS RECORD OF SURVEY  
TLS TIDE LAND SURVEY  
T.P.O.B. TRUE POINT OF BEGINNING

STATE OF CALIFORNIA  
APN 537-0651-001-01  
DN 85-245711,  
EXHIBIT E, TLS 103

COUNTIES OF SAN MATEO AND ALAMEDA  
STATE OF CALIFORNIA

**RECORD REFERENCES**

- (1) DOCUMENT NO. 83-165823,  
ALAMEDA COUNTY RECORDS
- (2) 10 ROS 29, ALAMEDA COUNTY RECORDS



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

Subject **HETCH HETCHY CORRIDOR**  
Property I.D. No. **HH24-02**

Job No. **20060212-03**

By **AMC/RAB** Date **12-16-10** Chkd. **MAS**  
SHEET **1** OF **1**

## PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 09-0120

WHEREAS, San Francisco Public Utilities Commission ("SFPUC") staff have developed a project description for Projects CUW36801 Bay Division Pipeline Reliability Upgrade Project-Tunnel ("Bay Tunnel"), CUW36802 Bay Division Pipeline Reliability Upgrade Project-Pipeline ("Pipeline"), and CUW36803 Bay Division Pipeline Reliability Upgrade Project-Relocation of BDPL Nos. 1 & 2 ("Relocation") (collectively, the "Projects") under the Water System Improvement Program ("WSIP") for improvements to the regional water supply system; and

WHEREAS, The objectives of the Projects are to provide a seismically reliable conduit between Mission Boulevard in Fremont and the Pulgas Tunnel in San Mateo County, to size and configure the Bay Division Pipeline (BDPL) transmission system for carrying water across the Bay for distribution to customers and to replenish local reservoirs, and to contribute toward meeting estimated average annual demand under conditions of both planned and unplanned facility outages; and

WHEREAS, On July 9, 2009, the Planning Commission reviewed and considered the Final Environmental Impact Report ("Final EIR") in Planning Department File No. 2005.0146E, consisting of the Draft EIR and the Comments and Responses document, 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 the California Environmental Quality Act ("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, and 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. \_\_\_\_\_; 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. 2005.0146E 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 this Commission for the Commission's review, consideration, and action; and

WHEREAS, The Projects are capital improvement projects 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 MMRP as required by CEQA on October 30, 2008 by Resolution No. 08-200; and

WHEREAS, The Final EIR prepared for the Projects tiers 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 (a) acquisition of interests in real property in: (1) Assessor's Parcels # 525-0784-018-00, 525-0784-015-00, and 525-0784-014-01 owned by the City of Fremont for the Pipeline, and real property owned by FMC Corporation, located adjacent to City and County of San Francisco ("City") fee-owned parcels west of Willow Street in the City of Newark; and (2) Assessor's Parcel # 537-0852-008, 537-0551-028 owned by Cargill, Incorporated, Assessor's Parcels 063-590-060, 096-230-110, owned by Midpeninsula Regional Open Space District, and Assessor's Parcel # 537-0551-021-01 in Alameda County and property located in San Mateo County where the SFPUC right of way crosses the SAMTRANS right of way at Ravenswood, east of University Avenue, both owned by SAMTRANS, for the Bay Tunnel; and (b) long-term Lease Agreements with United States Fish and Wildlife Service ("USFWS") and California State Lands Commission ("CSLC") for property within each agency's jurisdiction for the Bay Tunnel. The total combined purchase price for the acquisition of these property interests is estimated to not exceed \$500,000.; and

WHEREAS, A portion of the Pipeline Project will be located beneath a segment of Bay Road in Menlo Park, in lieu of following the alignment of Bay Division Pipeline Nos. 1 and 2 in that area, and SFPUC staff will seek to negotiate and enter into easement agreements with Menlo Park and San Mateo County with respect to that portion of the alignment; and

WHEREAS, The Pipeline Project includes work located in the Cities of Fremont, Newark, East Palo Alto, Menlo Park, and Redwood City, the County of San Mateo, and on SFPUC property either leased or under permit or license to the Fremont Unified School District, the Newark Unified School District, the Ravenswood City Elementary School District, and the Redwood City School District, and SFPUC staff will 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 (as further described in the proposed term sheets on file with the Commission Secretary), (b) cooperative procedures and fees relating to local permits, inspections, and communications to the public concerning Pipeline construction, (c) the form of necessary encroachment permits or other property licenses for Project construction, and (d) the parties' respective indemnification and insurance obligations; and

WHEREAS, The Projects will require the SFPUC General Manager to apply for and execute various necessary permits and encroachment permits with the City of Fremont, City of Newark,



City of East Palo Alto, City of Menlo Park, City of Redwood City, and County of San Mateo, which 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 construction of the Bay Tunnel will require the construction of a new substation that will connect to Pacific Gas and Electric's ("PG&E") 115 KV transmission line between the cities of Mountain View and Menlo Park, and SFPUC staff is negotiating an amendment to a Letter Agreement with PG&E, a draft of which is on file with the Commission Secretary; and

WHEREAS, 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, and it may be necessary for the Project for the General Manager to (a) exercise rights under any such deed, lease, permit, or license or (b) negotiate and execute new or amended lease, permit, license, or encroachment removal agreements (each, a "Use Instrument") with owners or occupiers of property on, or adjacent to, City property; 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 State Lands Commission, 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, finds that the Final EIR 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 Attachment A and incorporated herein as part of this Resolution by this reference thereto, and adopts the MMRP attached to this Resolution as Attachment 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 Nos. CUW36801 Bay Division Pipeline Reliability Upgrade Project-Tunnel, CUW36802 Bay Division Pipeline Reliability Upgrade Project-Pipeline, and CUW36803 Bay Division Pipeline Reliability Upgrade Project-Relocation of BDPL 1 & 2, and authorizes staff to proceed with actions necessary to implement the Projects; and be it,

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to undertake the process, in compliance with Government Code Section 7260 et seq., with the San Francisco Charter and all applicable laws, for possible: (a) acquisition of interests in real property in (1) Assessor's Parcels # 525-0784-018-00, 525-0784-015-00, and 525-0784-014-01 owned by the City of Fremont for the Pipeline, and real property owned by FMC Corporation,

located adjacent to City and County of San Francisco ("City") fee-owned parcels west of Willow Street in the City of Newark; and (2) Assessor's Parcel # 537-0852-008, 537-0551-028 owned by Cargill, Incorporated; Assessor's Parcels 063-590-060, 096-230-110, owned by Midpeninsula Regional Open Space District, and Assessor's Parcel # 537-0551-021-01 in Alameda County and property located in San Mateo County where the SFPUC right of way crosses the SAMTRANS right of way at Ravenswood, east of University Avenue, both owned by SAMTRANS, for the Bay Tunnel; and (b) long term lease agreements with the United States Fish and Wildlife Service (USFWS) and California State Lands Commission (CSLC) for property within each agency's jurisdiction for the Bay Tunnel project, and to work with the Director of Real Estate to seek Board of Supervisors' approval of, and if approved, 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, That this Commission hereby authorizes the General Manager to negotiate and seek Board of Supervisors' approval of, and if approved, to accept and execute easement agreements with the City of Menlo Park and County San Mateo, as necessary to allow a portion of the Pipeline Project to be located beneath the segment of Bay Road described in the documents on file with the Commission Secretary, in lieu of following the alignment of Bay Division Pipeline Nos. 1 and 2 in that area, which easement agreements shall be in such form, approved by the City Attorney, that the General Manager determines is in the public interest, is acceptable, necessary or advisable to effectuate the purposes and intent of this Resolution and is in compliance with the Charter and all applicable laws, and shall include SFPUC indemnity obligations only if such obligations have been reviewed and approved by the San Francisco Risk Manager; 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 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 with the City of Fremont, City of Newark, City of East Palo Alto, City of Menlo Park, City of Redwood City, County of San Mateo, Fremont Unified School District, Newark Unified School District, Ravenswood City Elementary School District, and Redwood City School District (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 will 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 the City of Fremont, City of Newark, City of East Palo Alto, City of Menlo Park, City of Redwood City and County of San Mateo, 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 to execute an amendment to the letter agreement with PG&E that is substantially similar to the form of the draft amendment on file with the Commission Secretary, providing for the construction of a new substation that will connect to PG&E's 115 KV transmission line between the cities of Mountain View and Menlo Park, with such amendments that the General Manager determines, in consultation with the City Attorney, are in the public interest and acceptable, necessary and advisable to effectuate the purposes and intent of this Resolution; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to exercise any right as necessary under any Use Instrument and negotiate and execute new or amended Use Instruments, if necessary for the Project, with owners or occupiers of property interests on, or adjacent to, 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 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 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 State Lands Commission, 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, 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

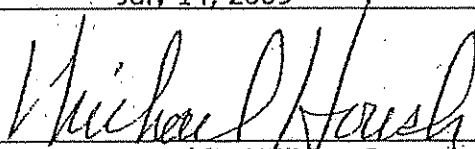
FURTHER RESOLVED, That this Commission authorizes the General Manager to work with the Director of Real Estate to seek Board approval, and if approved, to accept and execute the real property agreements authorized herein; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager to enter into any subsequent additions, amendments or other modifications to the permits, licenses, encroachment removal agreements, pipeline crossing agreements, leases, easements and other

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.

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*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of* July 14, 2009

  
\_\_\_\_\_  
*Secretary, Public Utilities Commission*



## SAN FRANCISCO PLANNING DEPARTMENT

November 23, 2009

Mr. Larry Ritter  
Department of Real Estate  
25 Van Ness Ave, Ste 400  
San Francisco, CA 94102

RE: Case No. 2009.0558R

*Note: This supersedes a general plan referral findings letter issued on October 30<sup>th</sup>. It clarifies that the project includes acquisition of temporary construction easements as well as permanent easements for installation of PUC pipelines/tunnels.*

Acquisition of permanent subsurface easements and temporary construction easements from several private and public property owners in San Mateo and Alameda Counties. These easements are necessary as part of the PUC's Water System Improvement program to repair, replace and upgrade the system's pipelines and tunnels.

Dear Mr. Ritter,

We are responding to your request for a General Plan Referral for the acquisition of permanent subsurface easements and temporary construction easements from several private and public property owners in San Mateo and Alameda Counties for the purpose of maintaining San Francisco Public Utility Commission's water system. While the initial application was scoped to also cover easements for the New Irvington Tunnel, we are in receipt of your request that these easements be considered separately upon the completion of the environmental review of that project. This referral, then, deals only with the easements associated with the Bay Division Pipeline. As these two projects are substantively the same for referral purposes, a separate letter will be issued on the New Irvington Tunnel following the completion of its environmental review.

### Project Description

The project is the Bay Division pipeline reliability upgrade, entailing 21 miles of new pipeline, including a five mile sub-bay portion. The referral is for the temporary easements associated with construction, as well as the permanent easements for the tunnel and pipeline conduits. The properties in question are in San Mateo and Alameda counties and thus outside the geographic boundaries of San Francisco.<sup>1</sup> The Bay Division Tunnel & Pipeline affects 8 ownerships.

<sup>1</sup> See Attachment 3 for a list of the parcels in question.

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

Mr. Larry Ritter  
Case No. 2009.0558R  
Nov. 23, 2009

#### Jurisdiction and Decision

The General Plan Referral is conducted pursuant to San Francisco Charter § 4.105 and § 2A.53 of the Administrative Code. We find the proposed project of temporary and permanent easements to be, on balance, in conformity with the General Plan as described in the attached Case Report.

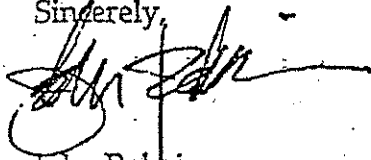
#### Environmental Review

An environmental impact report for the Bay Division Reliability Upgrade Project (BDPL No. 5) was certified by the San Francisco Planning Commission on July 9, 2009, per motion number 17918.

#### Planning Code Section 101.1 Priority Policies

The project has been reviewed for consistency with the Eight Priority Policies of the Planning Code Section 101.1 and the findings are attached.

Sincerely,



John Rahaim  
Director of Planning

#### Attachments:

1. Case Report including General Plan Referral Findings
2. Planning Code Section 101.1 Priority Policies Findings
3. List of Affected Parcels

Cc: Aksel Olsen, Planning  
Brian Morelli, PUC

General Plan Referral—Case ReportAttachment 1

Case Number: 2009.0558R  
Location: San Mateo County, Alameda County  
Description: Acquisition of permanent subsurface easements and temporary construction easements from several private and public property owners  
Staff reviewer: Aksel Olsen  
Date: 11/23/2009

**GENERAL PLAN POLICY FINDINGS**

Note: General Plan Objectives are in **BOLD CAPS**, and Policies are in bold font, General Plan text is in regular font, and staff comments are in *italic font*.

**Environmental Protection Element****OBJECTIVE 5**

**ASSURE A PERMANENT AND ADEQUATE SUPPLY OF FRESH WATER TO MEET THE PRESENT AND FUTURE NEEDS OF SAN FRANCISCO.**

Hetch Hetchy and the Water Department should continue their excellent planning program to assure that the water supply will adequately meet foreseeable consumption demands. To this end, the City should be prepared to undertake the necessary improvements and add to the Hetch Hetchy/Water Department system in order to guarantee the permanent supply. Furthermore, San Francisco should continually review its commitments for the sale of water to suburban areas in planning how to meet future demand.

*The pipeline extension is consistent with this objective.*

**POLICY 5.2**

**Exercise controls over development to correspond to the capabilities of the water supply and distribution system.**

*Securing permanent easements will afford SFPUC the present and future ability to maintain its pipeline system in order to supply drinking water to San Francisco.*

**POLICY 5.3**

**Ensure water purity.**

*On balance, the proposal is in conformity with the General Plan. Any development schemes proposed for the subject parcels after acquisition of the easements for the SFPUC for construction of water supply pipeline and related facilities will be subject to separate General Plan Referrals to the Planning Department. Any development proposals would also have to comply with local ordinances and policies.*

*\\Cases\2009\2009.0558\2009.0558r\_BayDivisionPipeline\_amended\_subsurface.doc*

## General Plan Referral—Case Report

## Attachment 2

### PLANNING CODE SECTION 101.1 PRIORITY POLICIES FINDINGS

*Note: The priority policies have little bearing on issues such as acquiring temporary construction easements and subsurface pipeline easements in other counties, for which reason the N/A rating has been used throughout.*

The following Priority Policies are hereby established. They shall be included in the preamble to the General Plan and shall be the basis upon which inconsistencies in the General Plan are resolved:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

N/A

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

N/A

3. That the City's supply of affordable housing be preserved and enhanced;

N/A

4. That commuter traffic not impede Muni transit services or overburden our streets or neighborhood parking;

N/A

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

N/A

6. That the City achieve the greatest possible preparedness to protect against injury and the loss of life in an earthquake.

N/A



7. That landmarks and historic buildings be preserved; and

N/A

8. That our parks and open space and their access to sunlight and vistas be protected from development.

N/A

## List of Affected Parcels

## Attachment 3

Bay Division Pipeline Reliability Upgrade - Tunnel (San Mateo and Alameda Counties)		
OWNER	APN	County
SAMTRANS	537-0551-020	Alameda
SAMTRANS	537-0551-021-01	Alameda
Leslie Salt Co.	537-0551-028	Alameda
Leslie Salt Co.	537-0852-008	Alameda
USFW	537-0551-014-003	Alameda
USFW	537-0601-007-03	Alameda
CSLC	537-0601-007-1	Alameda
CSLC	537-0651-001-01	Alameda
USFW	537-0601-008	Alameda
USFW	537-0601-009-02	Alameda
CSLC	537-0601-009-01	Alameda
CSLC	537-0601-010	Alameda
CSLC	537-0601-011	Alameda
CSLC	096-220-150	San Mateo
CSLC	096-220-130	San Mateo
CSLC	096-220-170	San Mateo
CSLC	096-220-110	San Mateo
CSLC	096-230-140	San Mateo
Mid Peninsula Open Space	096-230-110	San Mateo
Mid Peninsula Open Space	063-590-060-8	San Mateo
SAMTRANS	Unidentified	San Mateo
Bay Division Pipeline Reliability Upgrade - Pipeline		
OWNER	APN	
UPRR	525-0784-014-01 & 525-0784-015-00	Alameda
City of Menlo Park - Bay Road	NO APN	San Mateo