

File No. 101150

Committee Item No. 6

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: October 13, 2010

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input 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 checked="" type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126                              |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input 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 checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement * *                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
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#### OTHER

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Completed by: Victor Young

Date: October 8, 2010

Completed by: Victor Young

Date: \_\_\_\_\_

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



1 [Agreement to Exchange Easements in Connection with the Bay Division Pipeline Reliability  
2 Upgrade Project – Bay Tunnel.]

3 **Resolution approving and authorizing an Agreement to Exchange Interests in Real**  
4 **Property to obtain an exclusive, subsurface easement from the Midpeninsula Regional**  
5 **Open Space District in exchange for a non-exclusive open space easement over real**  
6 **property owned by the City and County of San Francisco, for the purpose of**  
7 **constructing the San Francisco Public Utilities Commission Water System**  
8 **Improvement Program-Funded Project CUW36801, Bay Division Pipeline Reliability**  
9 **Upgrade – Bay Tunnel; adopting environmental findings under the California**  
10 **Environmental Quality Act (“CEQA”), CEQA Guidelines, and Administrative Code**  
11 **Chapter 31; adopting findings of consistency with City Planning Code Section 101.1;**  
12 **and authorizing the General Manager of SFPUC to execute documents, make certain**  
13 **modifications and take certain actions in furtherance of this resolution.**

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

22 WHEREAS, The objectives of the Project, together with other Bay Division Pipeline  
23 (“BDPL”) Reliability Upgrade projects; are to provide a seismically reliable conduit between  
24 Mission Boulevard in Fremont and the Pulgas Tunnel in San Mateo County, to size and  
25 configure the BDPL transmission system for transmission of water across the Bay distribution

1 to residents of San Mateo County and the City and County of San Francisco, ("CCSF" or the  
2 "City") to replenish local reservoirs, and to contribute toward meeting estimated average  
3 annual demand under conditions of both planned and unplanned facility outages; and,

4 WHEREAS, A Final Program Environmental Impact Report ("PEIR") was prepared for  
5 the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No.  
6 17734; and

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

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

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

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

16 WHEREAS, On July 14, 2009, the SFPUC, by Resolution No. 09-0120, a copy of  
17 which is on file with the Clerk of the Board of Supervisors of the City ("Board") in File  
18 No. 090979 and which is incorporated herein by this reference and is considered part of the  
19 record before this Board: (1) approved the Project; (2) adopted findings (CEQA Findings),  
20 including the statement of overriding considerations, and a Mitigation Monitoring and  
21 Reporting Program ("MMRP") required by CEQA; (3) authorized the General Manager to  
22 seek Board approval of, and if approved, to execute certain necessary agreements and  
23 deeds for acquisition of interests in specified parcels of real property, including the real  
24 property commonly known as San Mateo County Assessor's Parcels No. 063-590-060 and  
25

1 096-230-110 (the "Subject Property"), owned by Midpeninsula Regional Open Space  
2 District (the "District"); and

3 WHEREAS, The Project files, including the FEIR, PEIR and SFPUC Resolution No.  
4 09-0120 have been made available for review by the Board and the public, and those files  
5 are considered part of the record before this Board; and

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

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

15 WHEREAS, In Planning case 2009.0558R, the Department of City Planning found  
16 the acquisition of subsurface property interests for the Project to be in conformity with the  
17 General Plan and consistent with the Eight Priority Policies of City Planning Code Section  
18 101.1 to the extent applicable; and

19 WHEREAS, This Board, by Resolution No. 0471-09 adopted on November 24, 2009,  
20 (1) adopted findings of public necessity and other findings under California Code of Civil  
21 Procedure Sections 1240.030, 1240.510, 1240.610 and 1245.230, (2) authorized  
22 acquisition of subsurface tunnel easements in specified properties, including the Subject  
23 Property, by eminent domain, and (3) adopted CEQA Findings, including the statement of  
24 overriding considerations, and a Mitigation Monitoring and Reporting Program ("MMRP")  
25 required by CEQA, with respect to approval of such resolution; and

1           WHEREAS, The District agrees to grant the City an exclusive, subsurface easement  
2 through the Subject Property, required for the Project, in exchange for a non-exclusive  
3 open space easement on City-owned property to protect significant scenic and ecological  
4 values in San Mateo County; and,

5           WHEREAS, On July 14, 2010, the District's Board of Directors adopted Resolution  
6 No. 10-26 authorizing the exchange of easements between the District and the City and is  
7 on file with the Clerk of the Board of Supervisors under File No. 101150; and,

8           WHEREAS, A copy of the proposed Agreement to Exchange Interests in Real  
9 Property ("Agreement") between the District and the City is on file with the Clerk of the  
10 Board of Supervisors under File No. 101150, which is incorporated herein by this  
11 reference and is considered part of the record before this Board; now, therefore, be it

12           RESOLVED, The Board has reviewed and considered the FEIR and record as a whole,  
13 finds that the FEIR is adequate for its use as the decision-making body for the action taken  
14 herein and hereby incorporates by reference the CEQA findings contained in Resolution No.  
15 371-09; and be it

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

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

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

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

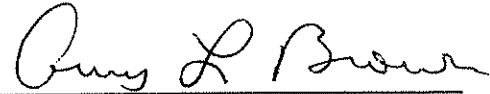
9 FURTHER RESOLVED, That the Board authorizes the Director of Property and/or  
10 the General Manager of the SFPUC to enter into any additions, amendments or other  
11 modifications to the Agreement (including, without limitation, the attached exhibits) that the  
12 Director of Property and/or the General Manager determines are in the best interest of the  
13 City, that do not materially increase the obligations or liabilities of the City, and are  
14 necessary or advisable to complete the transaction contemplated in the Agreement and  
15 effectuate the purpose and intent of this resolution, such determination to be conclusively  
16 evidenced by the execution and delivery by the Director of Property or the General  
17 Manager of the Agreement and any additions or amendments thereto; and, be it

18 FURTHER RESOLVED, That the Director of Property is hereby authorized and  
19 urged, in the name and on behalf of the City and County, to execute the Agreement for the  
20 exchange of easements with the District in accordance with the terms and conditions of the  
21 Agreement, and to take any and all steps (including, but not limited to, the execution and  
22 delivery of any and all certificates, agreements, notices, consents, escrow instructions,  
23 closing documents and other instruments or documents) as the Director of Property deems  
24 necessary or appropriate pursuant to the Agreement, or to otherwise effectuate the  
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purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Director of Property.

RECOMMENDED:



Amy L. Brown  
Director of Property



**FORM SFEC-126:  
NOTIFICATION OF CONTRACT APPROVAL  
(S.F. Campaign and Governmental Conduct Code § 1.126)**

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s):  Members, SF Board of Supervisors	City elective office(s) held:  Members, SF Board of Supervisors

<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: <b>Midpeninsula Regional Open Space District Board of Directors</b>	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i> See Attached	
Contractor address: 330 Distel Circle, Los Altos, CA	
Date that contract was approved:	Amount of contract: None
Describe the nature of the contract that was approved: Agreement to Exchange Interests in Real Property	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form (Mayor, Gavin Newsom)
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors  
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits  
  
Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: 415-554-5184
Address: 1 Dr. Carlton B Goodlett Pl, SF CA 94102	E-mail: Board.of.supervisors@sfgov.org

\_\_\_\_\_  
Signature of City Elective Officer (if submitted by City elective officer)

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

\_\_\_\_\_  
Date Signed



Midpeninsula Regional Open Space District

- [PRESERVES + MAPS](#)
- [ACTIVITIES](#)
- [ABOUT US](#)
- [PLANS + PROJECTS](#)
- [NEWS + NOTICES](#)
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## Board of Directors

The District is divided into seven geographic wards [PDF](#), each represented by an elected Board member for a four-year term. The Board members also comprise four standing and three ad hoc committees [PDF](#).

Current MROSD Board members are listed below with printable maps showing their respective wards.

**Ward 1: Pete Siemens**  
[\[Contact Pete\]](#)  
 Term end: 2010  
 Cupertino, Los Gatos, Monte Sereno, Saratoga  
[Ward 1 Map PDF](#)

**Ward 2: Mary Davey**  
[\[Contact Mary\]](#)  
 Term end: 2010  
 Cupertino, Los Altos, Los Altos Hills, Palo Alto, Stanford, Sunnyvale  
[Ward 2 Map PDF](#)

**Ward 3: Jed Cyr**  
[\[Contact Jed\]](#)  
 Term end: 2012  
 Sunnyvale  
[Ward 3 Map PDF](#)

**Ward 4: Curt Riffle**  
[\[Contact Curt\]](#)  
 Term end: 2012  
 Los Altos, Mountain View  
[Ward 4 Map PDF](#)

**Ward 5: Nonette Hanko**  
[\[Contact Nonette\]](#)  
 Term end: 2010  
 East Palo Alto, Menlo Park, Palo Alto, Stanford  
[Ward 5 Map PDF](#)

**Ward 6: Larry Hassett**  
[\[Contact Larry\]](#)  
 Term end: 2010  
 Atherton, La Honda, Loma Mar, Menlo Park, Pescadero, Portola Valley, Redwood City, San Gregorio, Woodside  
[Ward 6 Map PDF](#)

**Ward 7: Cecily Harris**  
[\[Contact Cecily\]](#)  
 Term end: 2012  
 El Granada, Half Moon Bay, Montara, Moss Beach, Princeton, Redwood City, San Carlos, Woodside  
[Ward 7 Map PDF](#)

You may also [\[send an email\]](#) to the entire Board of Directors and the District Clerk. To contact the General Manager or any District staff member via telephone, please call our administrative office at (650) 691-1200.

### Board Meetings

The Board holds public meetings on the second and fourth Wednesdays of each month at 7:00 p.m., at the District offices: 330 Distel Circle, Los Altos, CA.

The public is invited and encouraged to attend these meetings, and to participate in the

### ADDITIONAL INFORMATION

- [Agendas, Minutes + Reports](#)
- [Ward Boundaries Map PDF](#)
- [Board Committees PDF](#)
- [Ombudsperson](#)
- [General Manager](#)
- [Meet the Staff](#)
- [Policies](#)



View District Wards in the new Preserve Finder:



For general inquiries, please email: [info@openspace.org](mailto:info@openspace.org)



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



September 3, 2010

*File 101150*

PUC  
Agreement to Exchange Interests in Real  
Property with the Midpeninsula Regional  
Open Space District  
Bay Division Pipeline Reliability Upgrade Project  
Alameda and San Mateo Counties

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 an Agreement to Exchange Interests in Real Property between the Midpeninsula Regional Open Space District (District) and the City and County of San Francisco (City) acting by and through its Public Utilities Commission (PUC). A tunnel easement is required for the PUC's Bay Division Pipeline Reliability Upgrade Project to provide a seismically reliable transmission system between Mission Boulevard in Fremont and the Pulgas Tunnel in San Mateo County.

In exchange for the tunnel easement, the City is granting a non-exclusive open space easement to protect significant scenic and ecological values in San Mateo County. In November 2009, the Board adopted a Resolution authorizing the acquisition of the subsurface tunnel easements through eminent domain. However, eminent domain proceedings were not required because the City and District were able to negotiate the exchange of easements.

In addition to the Resolution, enclosed for the Board file are:

1. Agreement to Exchange Interests in Real Property between the Midpeninsula Regional Open Space District and the City and County of San Francisco.
2. Public Utilities Commission Resolution No. 09-0120 approving the acquisition of the necessary property rights and all other property interests for the project.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2010 SEP 10 AM 9:22  
BY \_\_\_\_\_  
AK

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.
4. Resolution No. 10-26 adopted by the Board of Directors of the Midpeninsula Regional Open Space District on July 14, 2010.
5. Resolution No. 0471-09 adopted by the Board of Supervisors authorizing the acquisition through eminent domain.

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,



Amy L. Brown  
Director of Real Estate

cc: Edwin M. Lee, City Administrator

w/ Resolution:  
Carolyn Stein, Deputy City Attorney  
PUC:  
Brian Morelli  
Gary Dowd

## 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.

---

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.

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<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.

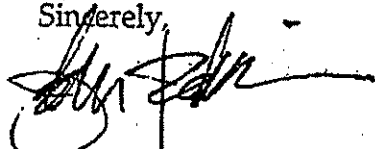
#### Environmental Review

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.*

*I:\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**

<b>Bay Division Pipeline Reliability Upgrade - Tunnel (San Mateo and Alameda Counties)</b>		
<b>OWNER</b>	<b>APN</b>	<b>County</b>
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	537-0551-001-01	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
<b>Bay Division Pipeline Reliability Upgrade - Pipeline</b>		
<b>OWNER</b>	<b>APN</b>	<b>County</b>
UPRR	525-0784-014-01 & 525-0784-015-00	Alameda
City of Menlo Park - Bay Road	NO APN	San Mateo



## AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY

This AGREEMENT TO EXCHANGE INTERESTS IN REAL PROPERTY (“**Agreement**”) is made by and between the Midpeninsula Regional Open Space District, a California regional open space district (“**District**”) and the City and County of San Francisco, a municipal corporation (“**City**”), acting by and through its Public Utilities Commission (“**SFPUC**”).

### RECITALS

WHEREAS, District owns certain real property located adjacent to the San Francisco Bay in the County of San Mateo, within the City of Menlo Park identified as Assessor's Parcels Number 096-230-110 (also known as 096-230-150) and 063-590-060, further described in the deed attached as **Exhibit A**, and being part of the Ravenswood Open Space Preserve (“**District Land**”); and

WHEREAS, City owns certain real property located adjacent to District Land in the County of San Mateo identified as Assessor's Parcels Number 093-590-030, 093-590-050 and 093-590-060 and further described in the deed attached as **Exhibit B** (“**City Land**”); and

WHEREAS, City desires to obtain from District an exclusive, subsurface easement through a portion of each of the two parcels comprising District Land, for construction of a portion of the SFPUC Bay Division Pipeline Reliability Upgrade (Bay Tunnel) Project (the “**Bay Tunnel Project**”) to provide a seismically reliable pipeline for delivery of drinking water that bypasses environmentally sensitive wetlands; and

WHEREAS, District desires to obtain from City a nonexclusive open space easement over portions of the three parcels comprising City Land to protect significant scenic and ecological values and to retain an open space corridor which, among other things, allows study of the feasibility of a future public trail corridor connecting existing sections of the San Francisco Bay Trail; and

WHEREAS, the San Francisco Planning Commission, acting as lead agency on behalf of City, certified a Final Environmental Impact Report (“**FEIR**”) for the Bay Tunnel Project (State Clearinghouse No. 2006062002) on July 9, 2009; and

WHEREAS, on July 14, 2009 the SFPUC approved the Bay Tunnel Project, and, in so doing, adopted findings under the California Environmental Quality Act (“**CEQA**”), Public Resources Code section 21000 et seq., including a statement of overriding considerations for the Bay Tunnel Project's significant and unavoidable impacts and adopted a mitigation monitoring and reporting program; and

WHEREAS, on July 14, 2010, the District independently considered the FEIR, adopted findings under CEQA as a responsible agency, adopted applicable portions of the mitigation monitoring and reporting program of the FEIR and adopted a statement of overriding



**RESOLUTION NO. 10-26**

**RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL  
OPEN SPACE DISTRICT AUTHORIZING OFFICER TO EXECUTE AGREEMENT  
TO EXCHANGE INTERESTS IN REAL PROPERTY, AUTHORIZING OFFICER OR  
GENERAL MANAGER TO EXECUTE GRANT OF TUNNEL EASEMENT,  
AUTHORIZING OFFICER OR GENERAL MANAGER TO EXECUTE CERTIFICATE  
OF ACCEPTANCE OF GRANT OF OPEN SPACE EASEMENT AND AGREEMENT  
TO DISTRICT, AND AUTHORIZING GENERAL MANAGER TO EXECUTE ANY  
AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF  
THIS TRANSACTION (RAVENSWOOD OPEN SPACE PRESERVE – LANDS OF THE  
CITY AND COUNTY OF SAN FRANCISCO)**

---

The Board of Directors of Midpeninsula Regional Open Space District does resolve as follows:

1. The Board of Directors of Midpeninsula Regional Open Space District does hereby accept the offer contained in that certain Agreement to Exchange Interests in Real Property between the City and County of San Francisco, a municipal corporation ("City") and Midpeninsula Regional Open Space District, a copy of which is attached hereto and by reference made a part hereof, and authorizes the President or other appropriate officer to execute this Agreement on behalf of the District.
2. The President of the Board of Directors, General Manager or other appropriate officer is authorized to execute the Grant of Tunnel Easement granting the real property interest being conveyed therein by the District.
3. The President of the Board of Directors, General Manager or other appropriate officer is authorized to execute the Certificate of Acceptance for the Grant of Open Space Easement and Agreement on behalf of the District.
4. The General Manager of the District or his designee shall cause to be given appropriate notice of acceptance to City. The General Manager and General Counsel are further authorized to approve any technical revisions to the attached Agreement and other transactional documents which do not involve any material change to any term of the Agreement or other transactional documents, which are necessary or appropriate to the closing or implementation of this transaction.
5. The General Manager of the District or his designee is authorized to expend up to \$5,000 to cover the cost of title insurance, escrow fees, and other miscellaneous costs related to this transaction.
6. The Board of Directors finds and determines that, pursuant to Section 5540.5 of the Public Resources Code of the State of California, the granting and acceptance of these easements is consistent with Public Resources Code 5540.5, that the interest in real property being acquired by the District is of equal or greater value than the interest in real property being transferred to the City, and is necessary to be acquired for open space purposes.

\* \* \* \* \*

RESOLUTION NO. 10-26

PASSED AND ADOPTED by the Board of Directors of the Midpeninsula Regional Open Space District on July 14, 2010 at a Special and Regular Meeting thereof, by the following vote:

AYES:           CYR, HANKO, HARRIS, HASSETT, RIFFLE, SIEMENS, AND DAVEY

NOES:           NONE

ABSTAIN:       NONE

ABSENT:        NONE

ATTEST:

  
\_\_\_\_\_

Secretary  
Board of Directors

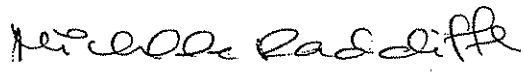
APPROVED:

  
\_\_\_\_\_

President  
Board of Directors

I, the District Clerk of the Midpeninsula Regional Open Space District, hereby certify that the above is a true and correct copy of a resolution duly adopted by the Board of Directors of the Midpeninsula Regional Open Space District by the above vote at a meeting thereof duly held and called on the above day.



  
\_\_\_\_\_

District Clerk



Midpeninsula Regional  
Open Space District

Meeting 10-17

**SPECIAL AND REGULAR MEETING  
BOARD OF DIRECTORS  
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT**

Wednesday, July 14, 2010

PUBLIC STUDY SESSION FOR COOLEY LANDING AD HOC COMMITTEE BEGINS AT 5:30 P.M.  
REGULAR MEETING OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT BEGINS AT 7:00 P.M.

330 Distel Circle  
Los Altos, California

**SPECIAL MEETING**

**5:30\* SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT –  
PUBLIC STUDY SESSION**

1. Presentation and Discussion of a Vision Plan Prepared by the City of East Palo Alto for the Cooley Landing Peninsula at Ravenswood Open Space Preserve – T. Hugg

**REGULAR MEETING**

**7:00\* REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT –  
PUBLIC SESSION**

ROLL CALL

PLEDGE OF ALLEGIANCE

\*\* ORAL COMMUNICATIONS – PUBLIC

\*\* ADOPTION OF AGENDA

**7:10\* CONSENT CALENDAR**

1. Approve Minutes of the Regular and Special Board Meeting of May 26, 2010
2. Approve Revised Claims Report
3. Approve Written Communications – None

**7:20\* BOARD BUSINESS**

4. Informational Presentation on Wildlife Corridor Research – G. Basson

7:20\* BOARD BUSINESS (CONTINUED)

- 6. Amendment to Board Appointees Employment Agreements – C. Riffle
- 7. Exchange of Easements with San Francisco Public Utilities Commission at Ravenswood – M. Reeves
- 8. Award of Contract with Ascent Environmental for Phase II CEQA/NEPA Environmental Document Preparation for the Mount Umunhum Site Planning Project – K. Lenington
- 9. Rename of Mills Creek – R. Jurgensen
- 10. Endowment for Memorial Benches – R. Jurgensen

INFORMATIONAL REPORTS – Reports on compensable meetings attended. Brief reports or announcements concerning activities of District Directors and staff; opportunity to refer public or Board questions to staff for factual information; request staff to report back to the Board on a matter at a future meeting; or direct staff to place a matter on a future agenda.

- A. Committee Reports
- B. Staff Reports
- C. Director Reports

ADJOURNMENT

\* *Times are estimated and items may appear earlier or later than listed. Agenda is subject to change of order.*

\*\* *TO ADDRESS THE BOARD: The Chair will invite public comment on agenda items at the time each item is considered by the Board of Directors. You may address the Board concerning other matters during Oral Communications. Each speaker will ordinarily be limited to three minutes. Alternately, you may comment to the Board by a written communication, which the Board appreciates.*

*Consent Calendar: All items on the Consent Calendar may be approved without discussion by one motion. Board members, the General Manager, and members of the public may request that an item be removed from the Consent Calendar during consideration of the Consent Calendar.*

In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, please contact the District Clerk at (650) 691-1200. Notification 48 hours prior to the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting.

Written materials relating to an item on this Agenda that are considered to be a public record and are distributed to Board members less than 72 hours prior to the meeting, will be available for public inspection at the District's Administrative Office located at 330 Distel Circle, Los Altos, California 94022.

**CERTIFICATION OF POSTING OF AGENDA**

I, Michelle Radcliffe, District Clerk for the Midpeninsula Regional Open Space District (MROSD), declare that the foregoing agenda for the Regular Meeting of the MROSD Board of Directors was posted and available for review on July 9, 2010, at the Administrative Offices of MROSD, 330 Distel Circle, Los Altos California, 94022. The agenda is also available on the District's web site at <http://www.openspace.org>.

Signed this 9<sup>th</sup> day of July, at Los Altos, California.

*Michelle Radcliffe*

District Clerk

July 9, 2010



Regional  
OpenSpace

| Midpeninsula Regional Open Space District

## Informational Note Regarding Agenda Item #7

The Midpeninsula Regional Open Space District manages over 58,000 acres of land in 26 open space preserves protected for public enjoyment, including the Ravenswood Open Space Preserve along the East Palo Alto and Menlo Park bayfront.

At a public meeting on July 14, 2010, the District Board of Directors will consider approval of an exchange of easements with the San Francisco Public Utilities Commission (SFPUC), which manages lands immediately north of the University Village neighborhood in East Palo Alto. The SFPUC is seeking to acquire a tunnel easement underneath the northeastern corner of Ravenswood Open Space Preserve to secure the right of way for a new transbay water pipeline. No disturbance of any private property will occur as a result of this project.

In exchange, the District would acquire a 50 foot wide open space easement across adjacent SFPUC lands in order to preserve a corridor for studying the feasibility of a future public trail linking Ravenswood Open Space Preserve with University Avenue as part of the San Francisco Bay Trail. This potential link in the Bay Trail is identified in the "East Palo Alto Bay Access Master Plan", part of East Palo Alto's General Plan. If approved, the District will study the most feasible route and design that is compatible with surrounding land uses, avoids or minimizes environmental impacts, and offers an enjoyable user experience. Trail planning will be discussed at a future public meeting. You will be notified of these meetings and we welcome your input.

For more information about the District's efforts to complete this link in the Bay Trail, please contact Michael Reeves with the Midpeninsula Regional Open Space District at (650) 691-1200. For more information about the East Palo Alto's bay access goals, please contact Sean Charpentier with the City of East Palo Alto at (650) 853-5906.







Midpeninsula Regional  
Open Space District

R-10-65  
Meeting 10-17  
July 14, 2010

## AGENDA ITEM 6

### AGENDA ITEM

Proposed Exchange of Easements with the City and County of San Francisco at Ravenswood Open Space Preserve in the Cities of East Palo Alto and Menlo Park, including Amendment of the existing Comprehensive Use and Management Plan to reflect the conveyance of a Tunnel Easement to the City and County of San Francisco, Adoption of a Preliminary Use and Management Plan for the Open Space Easement to be conveyed to the District, Consideration of the EIR certified by the San Francisco Public Utilities Commission, Adoption of a Statement of Overriding Considerations, and Determination that Acceptance of the Open Space Easement is Categorically Exempt in accordance with the California Environmental Quality Act (San Mateo County Assessor Parcel Numbers 063-590-060, 096-230-150, 093-590-030, 093-590-050, and 093-590-060)

### GENERAL MANAGER'S RECOMMENDATIONS

A handwritten signature in black ink, appearing to be "J. J. [unclear]".

1. As a Responsible Agency under the California Environmental Quality Act (CEQA), independently consider the Environmental Impact Report (EIR) certified by the San Francisco Public Utilities Commission (SFPUC); adopt applicable portions of the Mitigation Monitoring and Reporting Program of the Final EIR; adopt a Statement of Overriding Considerations as to one potential environmental impact; and, as Lead Agency under CEQA, determine that the acceptance of the Open Space Easement is categorically exempt from CEQA, all as more fully set forth in this staff report.
2. Adopt the attached Resolution approving the Agreement to exchange interests in real property with the City and County of San Francisco ("City") and authorize the President of the Board of Directors to execute the Agreement and the attached documents exchanging easement interests between the City and the District.
3. Adopt the Preliminary Use and Management Plan for the Open Space Easement being acquired and, as to the Tunnel Easement, amend the existing Comprehensive Use and Management Plan for the Ravenswood Open Space Preserve as set forth in this staff report.

### SUMMARY

An exchange of easements is proposed whereby the District would grant to the City a subsurface tunnel easement underneath Ravenswood Open Space Preserve for a new transbay water pipeline, and in exchange the City would grant to the District an open space easement across a

portion of adjacent City lands in order to preserve an unobstructed corridor for a future proposed public trail easement to close a critical gap in the San Francisco Bay Trail.

## **DISCUSSION**

### **Project Parameters**

On behalf of the City, the San Francisco Public Utilities Commission (SFPUC) is seeking to acquire a subsurface tunnel easement underneath the District's Ravenswood Open Space Preserve to secure the right of way for a new transbay water pipeline to be constructed as part of a major reliability upgrade project for the Hetch Hetchy regional water distribution system. The new transbay pipeline will be tunneled beneath San Francisco Bay from Fremont to Menlo Park, a distance of approximately five miles. The proposed alignment of the subsurface pipeline crosses the northeastern corner of Ravenswood Open Space Preserve (see site map attached as Exhibit A to this report). The desired tunnel easement would be approximately 1,925 feet in length and run beneath the surface of the Preserve at a depth between 42 and 119 feet below grade. The pipe itself will be ten feet in diameter, and would emerge to the surface on City lands immediately north of the Preserve near the SFPUC valve station that distributes water flowing through two existing surface pipelines that cross the bay. A tunnel boring machine will be used to construct the new transbay pipeline, and no surface rights are required by the SFPUC either to construct or maintain the pipeline.

### **Public Resources Code and Regional Planning**

Ravenswood Open Space Preserve has been dedicated by the District for open space purposes under Public Resources Code §5540. The District's enabling legislation sets forth specific requirements for conveying an interest in dedicated open space lands. PRC §5540.5 allows the District, by unanimous vote of the Board of Directors, to convey any real property or interest in real property dedicated for open space purposes in exchange for other real property or interest in real property of equal or greater value and necessary for open space purposes. The District has proposed that the City grant a public trail easement across City lands adjacent to Ravenswood Open Space Preserve in order to close a gap in the San Francisco Bay Trail between the preserve and University Avenue. The proposed trail easement would secure the right-of-way necessary to connect an existing section of the Bay Trail at Ravenswood Open Space Preserve to University Avenue and the bicycle lanes along the shoulders of this street. These bicycle lanes connect to a designated section of the Bay Trail along Highway 84. A future sidewalk along the east side of University Avenue between Purdue Avenue and Highway 84 is envisioned by the Bay Trail Project that would complete the pedestrian connection. Bay Trail advocates have long sought to create this multi-use trail link between Ravenswood Open Space Preserve and Highway 84, most recently during a 2004-05 Bay Trail feasibility study undertaken by the City of Menlo Park to evaluate the opportunities and constraints to creating this link. The City of East Palo Alto, the SFPUC, the District, and other stakeholder agencies and groups participated on the task force formed for this planning effort.

### **Open Space Easement and Trail Easement**

The City is receptive to the concept of a public trail easement that would help make this link in the Bay Trail possible. However, before the City is able to grant a trail easement to the District, further study is needed to determine a trail alignment and design that will not conflict with SFPUC's use and management of the City's lands or conflict with surrounding land uses, that will avoid or minimize environmental impacts, and that will offer an enjoyable user experience consistent with the goals of the San Francisco Bay Trail Project. Additionally, the City of East

Palo Alto is currently evaluating the potential for a future multi-modal loop road to the north of University Village that would connect the Ravenswood Business District with University Avenue and include a pedestrian and bicycle trail. The alignment of this potential new loop road follows a portion of the same route being considered for the public trail easement, and will also need to be considered in identifying an appropriate Bay Trail alignment and design.

In order to hold to its project timeline, the SFPUC must secure all necessary rights-of-way for the new pipeline within the next few months. As it will not be possible to complete the trail study and negotiate a trail easement acceptable to both the SFPUC and the District within the pipeline project timeline, the SFPUC has proposed granting an open space easement to the District that will preserve an unobstructed corridor across City lands within which a future trail easement can be located. The proposed 50 foot wide open space easement would run generally along the route of the proposed public trail easement as shown on the attached map (Exhibit A) and identified in the 2004-05 Bay Trail feasibility study. As contemplated in the exchange agreement, once a trail alignment and design acceptable to both parties has been identified, the District would quitclaim the open space easement back to the City, and in return the City would grant the public trail easement to the District.

#### **Resolution of Necessity**

Because of the scale and complexity of the Hetch Hetchy water system upgrade project, timely possession of the necessary rights-of-way along the proposed route of the new pipeline is critical to ensuring the project schedule does not slip. Consequently, the San Francisco Board of Supervisors adopted a Resolution of Necessity on November 24, 2009 to preserve the City's right to initiate condemnation proceedings against the District in the event the City and District are unable to complete the proposed exchange of easements in timely fashion. An Agreement to Toll the six month statute of limitations on bringing an action based on the Resolution of Necessity expires on July 15, 2010.

#### **USE AND MANAGEMENT**

##### **Planning Considerations**

The Comprehensive Use and Management Plan for Ravenswood Open Space Preserve, adopted on April 5, 1990 (see R-90-53), requires amendment to reflect the District's conveyance of a subsurface tunnel easement to the City for construction of the new transbay pipeline. The exchange of easements also requires adoption of a Preliminary Use and Management Plan for the open space easement as an addition to the Preserve. The open space easement does not convey rights of access or use by the general public nor does it convey any right or obligation to the District to patrol the easement area for public safety purposes. The easement permits the District to enter and monitor the easement area for compliance with the terms of the open space easement and for purposes of studying the feasibility of a future public trail easement.

Adoption of the Preliminary Use and Management Plan for the open space easement and adoption of the amendment of the Comprehensive Use and Management Plan for Ravenswood Open Space Preserve will both take effect at the close of escrow. Both plans will remain effective until further amended.

**Preliminary Use and Management Plan (Next Steps)**

The Preliminary Use and Management Plan for the open space easement represents a status quo approach to management. The easement area will continue to be owned, operated and managed by the City. The Preliminary Use and Management Plan includes the following elements:

Public Access:	No public access is conveyed by this easement.
Signs and Site Security:	No District signs will be installed.
Document Baseline Conditions:	Perform an initial inspection of the open space easement to photo document the existing conditions within the easement area at the time the easement is conveyed to the District.
Easement Monitoring:	Regular inspection of the open space easement area to be carried out by the District to ensure compliance.
Site Safety Inspection:	Preliminary site safety inspection has been conducted and there are no known safety hazards within the open space easement area.
Name:	Designate the open space easement as an addition to Ravenswood Open Space Preserve.
Dedication:	Indicate the Board's intention to withhold dedication of the open space easement for public open space purposes pending replacement of the open space easement with a public trail easement.
Subsequent Planning:	Conduct a feasibility study to identify a suitable trail alignment and design for the purposes of acquiring a public trail easement to secure the right-of-way for a future Bay Trail connection.

**CEQA COMPLIANCE****Project Description**

The project consists of the conveyance of a subsurface tunnel easement approximately 1,925 feet in length from the District to the City in exchange for the conveyance of a 50 foot wide open space easement approximately one-half mile in length from the City to the District. The proposed tunnel easement is further described in the SFPUC's Environmental Impact Report for the Bay Division Pipeline Reliability Upgrade Project, certified by the SFPUC on July 14, 2009. The project also includes the District's concurrent adoption of a Preliminary Use and Management Plan for the open space easement, which specifies that the easement conditions will be monitored and enforced by the District in order to maintain the easement area in its current unobstructed, open space condition, and the District's adoption of an amendment to the Comprehensive Use and Management Plan for the Preserve to reflect the granting of the Tunnel Easement.

The site of the proposed open space easement is located within the Ravenswood Valve Lot owned by the City and managed by the SFPUC, situated south of the Highway 84 approach to the Dumbarton Bridge and east of University Avenue in the cities of East Palo Alto and Menlo

Park (see Exhibit A attached to this staff report). The open space easement will run along the southern edge of the City's valve lot between the East Palo Alto residential community of University Village immediately to the south and the Dumbarton Rail right-of-way immediately to the north. A narrow, paved private service road maintained by the SFPUC travels through the western segment of the proposed open space easement, providing access from University Avenue to the valve station operated by SFPUC as part of its Hetch Hetchy regional water distribution system. The service road will be used for construction of the transbay water pipeline project. The vegetation in this area generally consists of low-growing non-native grassland species. The eastern segment of the open space easement crosses coastal saltwater marsh extending from Ravenswood Open Space Preserve along the perimeter of the City's lands.

### **CEQA Determination – Bay Tunnel Project**

The environmental impacts of the SFPUC transbay water pipeline project, including a subsurface tunnel across Ravenswood Open Space Preserve ("Bay Tunnel Project") were evaluated in the SFPUC's Environmental Impact Report for the Bay Division Pipeline Reliability Upgrade Project. On July 14, 2009, the SFPUC, as the Lead Agency, approved the Bay Tunnel Project, and, in so doing, adopted findings under CEQA, Public Resources Code section 21000 et seq., including a Statement of Overriding Considerations for the Project's four significant and unavoidable impacts (Aesthetics, Cultural Resources, Noise and Vibration, and Transportation and Traffic), and in addition adopted a Mitigation Monitoring and Reporting Program.

The District is a "Responsible Agency" under CEQA for the Bay Tunnel Project. A Responsible Agency means an agency, other than the Lead Agency, which has approval authority for a project. CEQA requires that the District, as a Responsible Agency, also adopt CEQA findings. Accordingly, the District, as to those parts of the Bay Tunnel Project that it is considering, independently concludes that the direct and indirect environmental effects of the Bay Tunnel Project were adequately addressed by the Final EIR. Based on substantial evidence, the District finds that:

- (1) Changes or alterations have been required in, or incorporated into, the Bay Tunnel Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR; and that
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the District. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

As a Responsible Agency under CEQA, the District also adopts, as to those parts of the Bay Tunnel Project applicable to its approval of the grant of tunnel easement, the Mitigation Monitoring and Reporting Program of the Final EIR, specifically Impact REC-2b (Advance Notification), which will permit the District to timely inform Preserve visitors of the potential for temporary deterioration of the quality of the recreational experience arising from project construction noise.

CEQA also requires both a Lead Agency and a Responsible Agency to balance the environmental and other benefits of a project with unavoidable potential environmental impacts when approving a project. If an agency determines that the environmental or other benefits of a project outweigh a potential adverse environmental impact, the agency may adopt a Statement of Overriding Considerations confirming this determination. Accordingly, the District further

finds, in conformity with the EIR and Statement of Overriding Considerations adopted by the SFPUC, that the Bay Tunnel Project would be excavated through Holocene period sediments, which may contain as yet undiscovered archaeological resources. Use of a tunnel-boring machine would prevent the possibility of monitoring and could adversely affect as yet undiscovered archaeological resources that may be present within the tunnel easement area. As a result, this potential impact on archaeological resources could be significant and unavoidable at both a project and cumulative level. The District concludes, on balance, that substantial evidence in the record supports the public objectives served by the Bay Tunnel Project and that such evidence overrides the potential for impacts to as yet unknown and undiscovered archaeological resources potentially lying within District lands.

The District's goal in undertaking its programs and projects is to, among other things, be alert and sensitive to the interests of stakeholders and all its constituents interested in District projects. Although the proposed tunnel easement under a portion of Ravenswood Open Space Preserve will be but a very small subsurface segment of the SFPUC's large-scale pipeline upgrade project, and although no archaeological resources are known to exist at the surface or at depth at the project site, CEQA requires the District to adopt the CEQA findings set out in this report in order to meet its statutory obligations as a Responsible Agency.

#### **CEQA Determination – Open Space Easement**

The District concludes that acceptance of the open space easement will not have a significant effect on the environment. It is categorically exempt from CEQA under Article 19, Section 15317 of the CEQA Guidelines as follows:

Section 15317 exempts the acceptance of easements or fee interests in order to maintain the open space character of the area. The District will acquire an open space easement interest that serves to restrict the SFPUC from constructing any permanent structures that would be incompatible with preserving the easement area in its unobstructed, open space condition. The District's Preliminary Use and Management Plan for the open space easement specifies that the District will periodically inspect the easement to ensure the SFPUC's compliance in maintaining the easement area in its current open space condition.

The City's Planning Department has also separately determined on May 13, 2010, that the grant of the open space easement to the District is categorically exempt from CEQA under Article 19, Section 15317 of the CEQA Guidelines.

#### **TERMS AND CONDITIONS**

Under the terms of the exchange agreement, the District will grant to the City a permanent, exclusive subsurface tunnel easement underneath Ravenswood Open Space Preserve along an alignment generally depicted in Exhibit A to this report, and comprising a horizontal plane approximately 2.14 acres in size. The subsurface tunnel easement will be at a depth between 42 and 119 feet below grade as it travels underneath the Preserve. No surface rights or rights to surface entry are granted in the tunnel easement.

In exchange, the City will grant to the District a permanent, non-exclusive open space easement 50 feet in width along an alignment generally depicted in Exhibit A to this report. The open space easement is approximately one-half mile in length and 2.88 acres in size. The open space easement will restrict the SFPUC from constructing any permanent structures that would be

incompatible with preserving the easement area in its current open space condition. The SFPUC is otherwise permitted to continue present uses of its property within the open space easement, in particular, the right to maintain, improve, expand or relocate the existing service road leading from University Avenue to SFPUC's valve station.

The exchange agreement includes a provision whereby both parties agree to cooperate on identifying a suitable alignment for a 20 foot wide public trail easement across City lands connecting Ravenswood Open Space Preserve to University Avenue. Upon any future grant of a public trail easement from the City to the District, the District would quitclaim and convey the open space easement back to the City.

Escrow costs to complete the exchange will be shared equally, and each party will obtain title insurance at its own election and cost.

### **BUDGET CONSIDERATIONS**

No purchase costs will be incurred by the District in acquiring the open space easement, which is of equal or greater value to the tunnel easement to be conveyed to the City. The only costs to be incurred by the District will be for survey work, escrow services and title insurance, estimated to be no more than \$4,000.

### **PUBLIC NOTICE**

Property owners and residents of land located adjacent to or surrounding the proposed open space easement and tunnel easement have been mailed the agenda for the Board meeting at which the proposed exchange of easements will be considered. The agenda has also been mailed to adjoining neighbors within the University Village community of East Palo Alto due to the proximity of the community to the proposed open space easement. The agenda and this report have been made available on the District's website. Accordingly, all public notice required by the Brown Act has been provided. In addition, the agenda and this report have been mailed to the San Francisco Bay Trail Project and supporting public agency stakeholders including the cities of East Palo Alto and Menlo Park, the San Mateo County Parks Department, and the U.S. Fish and Wildlife Service San Francisco Bay National Wildlife Refuge Complex.

### **NEXT STEPS**

Upon approval by the Board of Directors, the attached Exchange Agreement and Board Resolution will be transmitted to the City for consideration and approval as necessary by its Public Utilities Commission, Mayor's Office, and Board of Supervisors. In order to move forward in identifying a suitable route for a public trail easement to replace the open space easement, staff will proceed with soliciting proposals from qualified consultants to assist in evaluating trail alignment alternatives and completing the necessary environmental review. Staff will return to the Board in the near future for approval to award a contract to the consultant selected to assist staff on this project. The process to evaluate trail alignment alternatives and identify a preferred route for the trail easement will include consultation with interested public officials and agencies and opportunity for public input and involvement.

Attachments:

1. Resolution

2. Exhibit A – Site Map

Prepared by:

Michael Reeves, Real Property Specialist

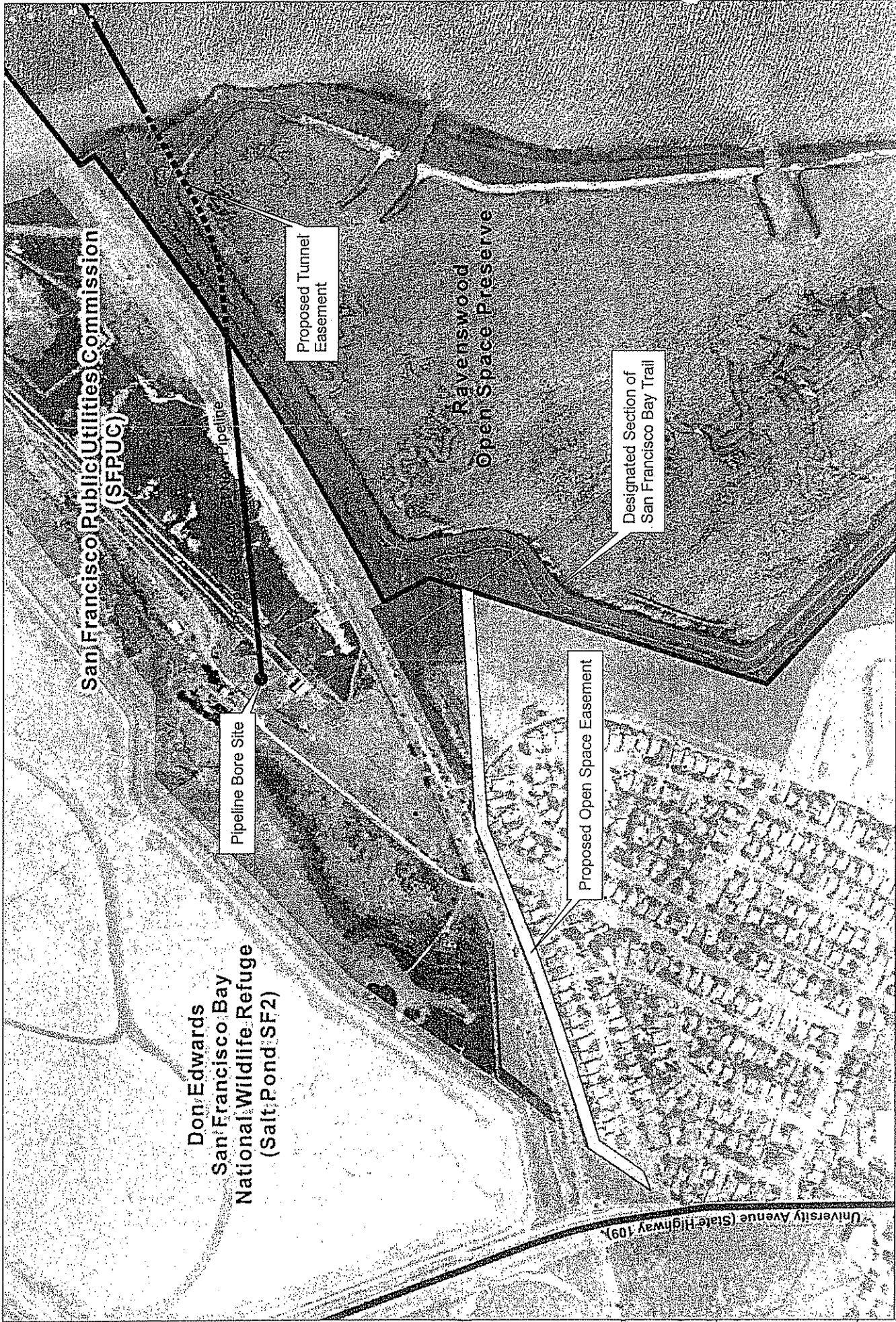
Contact person:

Michael Reeves, Real Property Specialist

Graphics prepared by:

Zachary Alexander, Planning Technician





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Midpeninsula Regional  
Open Space District

May 2010

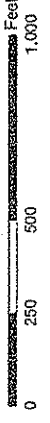


Exhibit A: Exchange of Easements with San Francisco Public Utilities Commission

- Proposed Open Space Easement
- Proposed Pipeline Route
- Existing Bay Trail

RESOLUTION NO. 10-\_\_\_\_\_

**RESOLUTION OF THE BOARD OF DIRECTORS OF MIDPENINSULA REGIONAL  
OPEN SPACE DISTRICT AUTHORIZING OFFICER TO EXECUTE AGREEMENT  
TO EXCHANGE INTERESTS IN REAL PROPERTY, AUTHORIZING OFFICER OR  
GENERAL MANAGER TO EXECUTE GRANT OF TUNNEL EASEMENT,  
AUTHORIZING OFFICER OR GENERAL MANAGER TO EXECUTE CERTIFICATE  
OF ACCEPTANCE OF GRANT OF OPEN SPACE EASEMENT AND AGREEMENT  
TO DISTRICT, AND AUTHORIZING GENERAL MANAGER TO EXECUTE ANY  
AND ALL OTHER DOCUMENTS NECESSARY OR APPROPRIATE TO CLOSING OF  
THIS TRANSACTION (RAVENSWOOD OPEN SPACE PRESERVE – LANDS OF THE  
CITY AND COUNTY OF SAN FRANCISCO)**

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The Board of Directors of Midpeninsula Regional Open Space District does resolve as follows:

1. The Board of Directors of Midpeninsula Regional Open Space District does hereby accept the offer contained in that certain Agreement to Exchange Interests in Real Property between the City and County of San Francisco, a municipal corporation ("City") and Midpeninsula Regional Open Space District, a copy of which is attached hereto and by reference made a part hereof, and authorizes the President or other appropriate officer to execute this Agreement on behalf of the District.
2. The President of the Board of Directors, General Manager or other appropriate officer is authorized to execute the Grant of Tunnel Easement granting the real property interest being conveyed therein by the District.
3. The President of the Board of Directors, General Manager or other appropriate officer is authorized to execute the Certificate of Acceptance for the Grant of Open Space Easement and Agreement on behalf of the District.
4. The General Manager of the District or his designee shall cause to be given appropriate notice of acceptance to City. The General Manager and General Counsel are further authorized to approve any technical revisions to the attached Agreement and other transactional documents which do not involve any material change to any term of the Agreement or other transactional documents, which are necessary or appropriate to the closing or implementation of this transaction.
5. The General Manager of the District or his designee is authorized to expend up to \$5,000 to cover the cost of title insurance, escrow fees, and other miscellaneous costs related to this transaction.
6. The Board of Directors finds and determines that, pursuant to Section 5540.5 of the Public Resources Code of the State of California, the granting and acceptance of these easements is consistent with Public Resources Code 5540.5, that the interest in real property being acquired by the District is of equal or greater value than the interest in real property being transferred to the City, and is necessary to be acquired for open space purposes.

\* \* \* \* \*