

File No. 111373

Committee Item No. 16

Board Item No. 9

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 1/19/11

Board of Supervisors Meeting

Date 2/7/12

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" 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 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 |
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| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>BOS Resolution No. 471-09</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PUC Resolution Nos. 09-020 and 09-176</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>** Stipulation for Entry of Judgement in Condemnation</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Linda Wong

Date 1/13/11

Completed by: L. Wong

Date 1/24/12

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

1 [Settlement of Lawsuit – City to Pay \$238,000 for Subsurface Easement in Alameda County]

2
3 **Ordinance authorizing settlement of a lawsuit filed by the City and County of San**
4 **Francisco against San Mateo County Transit District; Union Pacific Railroad Company;**
5 **State of California, Department of Transportation; Union Sanitary District for the**
6 **County of Alameda, State of California; and Does 1 through 100, to condemn and take**
7 **by right of eminent domain a permanent subsurface easement of approximately 69,609**
8 **square feet in property owned by San Mateo County Transit District, located in Newark,**
9 **California, commonly known as APNs 537-0551-020 and 537-0551-021-01; filed June 3,**
10 **2010, in Alameda County Superior Court, Case No. RG 10518243; entitled City and**
11 **County of San Francisco v. San Mateo County Transit District; Union Pacific Railroad**
12 **Company; State of California, Department of Transportation; Union Sanitary District for**
13 **the County of Alameda, State of California; and Does 1 through 100.**

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. The City Attorney is hereby authorized to settle the action entitled City and
16 County of San Francisco v. San Mateo County Transit District; Union Pacific Railroad
17 Company; State of California, Department of Transportation; Union Sanitary District for the
18 County of Alameda, State of California; and Does 1 through 100, Alameda County Superior
19 Court, Case No. RG 10518243 by the payment by the City and County of San Francisco
20 (“City”) to Defendant State of California, Department of Transportation of \$238,000 for a
21 permanent subsurface easement of approximately 69,609 square feet on property owned by
22 San Mateo County Transit District, located in Newark, California, commonly known as APNs
23 537-0551-020 and 537-0551-021-01, and in accordance with other material terms as set forth
24 in the Stipulation for Entry of Judgment in Condemnation contained in Board of Supervisors
25 File No. 111373, or such amended terms as do not materially increase the City's

1 obligations or decrease the City's benefits, for the purpose of constructing the San Francisco
2 Public Utilities Commission's Water System Improvement Program-Funded Project
3 CUW36801, Bay Division Pipeline Reliability Upgrade—Tunnel. The payment of \$238,000 to
4 Defendant State of California, Department of Transportation shall be made from the
5 appropriation in Water System Improvement Program-Funded Project CUW36801, Bay
6 Division Pipeline Reliability Upgrade—Tunnel.

7
8 Section 2. The above-named action was filed in Alameda County Superior Court on
9 June 3, 2010, and the following defendants were named in the lawsuit: San Mateo County
10 Transit District; Union Pacific Railroad Company; State of California, Department of
11 Transportation; Union Sanitary District for the County of Alameda, State of California; and
12 Does 1 through 100.

13
14 APPROVED AS TO FORM AND
15 RECOMMENDED:
16 DENNIS J. HERRERA, City Attorney

17 By: Thomas S. Lakritz
18 THOMAS S. LAKRITZ
Deputy City Attorney

RECOMMENDED:
SAN FRANCISCO REAL ESTATE DIVISION

19 By: John Updike
20 JOHN UPDIKE
Director

21 FUNDS AVAILABLE:
22 B. Rosenfield
23 BEN ROSENFELD
Controller
Index Code: 736846
Sub-object Code: 05314

471-09

FILE NO. 091279

Clerical Correction
11/24/09

RESOLUTION NO.

1 [Resolution To Acquire Real Property Interests By Eminent Domain—Water System
2 Improvement Program-Funded Bay Division Pipeline Reliability Upgrade - Tunnel.]

3
4 **Resolution authorizing acquisition of subsurface tunnel easements in real property in**
5 **Alameda County and San Mateo County, consisting of portions of Alameda County**
6 **Assessor's Parcels 537-0551-028, 537-0551-020 and 537-0551-021-01 in the City of**
7 **Newark, Alameda County Assessor's Parcel 537-0852-008 in the City of Fremont, San**
8 **Mateo County Assessor's Parcels 063-590-060 and 096-230-110 in the City of Menlo**
9 **Park, and in real property owned by San Mateo County Transit District in the City of**
10 **Menlo Park, located east of University Avenue between Assessor's Parcels 093-600-010**
11 **and 063-590-060, by eminent domain, for the public purpose of constructing the Public**
12 **Utilities Commission Water System Improvement Program-Funded Project CUW36801,**
13 **Bay Division Pipeline Reliability Upgrade - Tunnel; adopting environmental findings**
14 **under the California Environmental Quality Act ("CEQA"), CEQA Guidelines, and**
15 **Administrative Code Chapter 31, and adopting findings of consistency with the General**
16 **Plan and under City Planning Code Section 101.1.**

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

23 WHEREAS, The objectives of the Project, together with other Bay Division Pipeline
24 ("BDPL") Reliability Upgrade projects, are to provide a seismically reliable conduit between
25 Mission Boulevard in Fremont and the Pulgas Tunnel in San Mateo County, to size and

1 configure the BDPL transmission system for transmission of water across the Bay for
2 distribution to residents of San Mateo County and the City and County of San Francisco,
3 ("CCSF") to replenish local reservoirs, and to contribute toward meeting estimated average
4 annual demand under conditions of both planned and unplanned facility outages; and,

5 WHEREAS, California Government Code §37730 authorizes CCSF to acquire real
6 property by eminent domain for purposes of obtaining water, water rights, reservoir sites,
7 rights of way for pipes, aqueducts, flumes, or other conduits, and all other property and
8 appliances suitable and proper to supply water for the use of CCSF and its inhabitants; and,

9 WHEREAS, California Government Code § 1240.125 authorizes a local public entity to
10 acquire property by eminent domain outside its territorial limits for water, gas or electric supply
11 purposes, or for drainage or sewer purposes; and,

12 WHEREAS, California Government Code §25350.5 and §37350.5 authorize the Board
13 of Supervisors to acquire by eminent domain any property necessary to carry out any of the
14 powers or functions of CCSF; and,

15 WHEREAS, CCSF requires subsurface tunnel easements in certain real property in
16 Alameda County and San Mateo County, consisting of portions of Alameda County
17 Assessor's Parcels 537-0551-028, 537-0551-020 and 537-0551-021-01 in the City of Newark,
18 Alameda County Assessor's Parcel 537-0852-008 in the City of Fremont, San Mateo County
19 Assessor's Parcels 063-590-060 and 096-230-110 in the City of Menlo Park, and in real
20 property owned by San Mateo County Transit District in the City of Menlo Park, located east
21 of University Avenue between Assessor's Parcels 093-600-010 and 063-590-060 (the
22 "Subject Properties"), which subsurface easements are more particularly described in
23 Exhibit A (the "Subsurface Easements"), a copy of which is on file with the Clerk of the Board
24 of Supervisors in File No. 090-979 and incorporated herein by this reference, for the
25 construction and improvement of the Project; and,

1 WHEREAS, On July 9, 2009, the Planning Commission reviewed and considered the
2 Final Environmental Impact Report ("Final EIR") for the BDPL Reliability Upgrade Projects in
3 Planning Department File No. 2005.0146E, consisting of the Draft EIR and the Comments and
4 Responses document, and found that the contents of said report and the procedures through
5 which the Final EIR was prepared, publicized, and reviewed complied with the provisions of
6 the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and Chapter 31 of
7 the San Francisco Administrative Code and found further that the Final EIR reflects the
8 independent judgment and analysis of the City and County of San Francisco, and is adequate,
9 accurate, and objective, and that the Comments and Responses document contains no
10 significant revisions to the Draft EIR, and certified the completion of said Final EIR in
11 compliance with CEQA and the CEQA Guidelines in its Motion No. 17918; and,

12 WHEREAS, On July 14, 2009, the SFPUC, by Resolution No. 09-120, approved the
13 Project, adopted CEQA Findings, including a Statement of Overriding Considerations, and a
14 Mitigation Monitoring and Reporting Program ("MMRP") as required by CEQA; and,

15 WHEREAS, On July 14, 2009, the SFPUC, by Resolution No. 09-120, authorized the
16 SFPUC General Manager to commence the process, in compliance with Government Code
17 Section 7260 et seq., the San Francisco Charter and all applicable laws, for possible
18 acquisition of the Subsurface Easements; and,

19 WHEREAS, This Board adopted Resolution No. 0371-09, in Board file no. 090979, on
20 September 22, 2009, adopting the CEQA Findings, including the Statement of Overriding
21 Considerations, and the MMRP for the Project, signed by the Mayor on September 29, 2009;
22 and,

23 WHEREAS, The SFPUC staff obtained appraisals in compliance with California
24 Government Code Section 7267 et seq. and all related statutory procedures for possible
25 acquisition of the Subsurface Easements, and on July 24, 2009 and July 28, 2009, submitted

1 offers to each of the owners of the Subject Properties to purchase the Subsurface Easements
2 as required by California Government Code Section 7267.2, and continues to negotiate the
3 possible acquisition of those interests with those owners; and,

4 WHEREAS, In Planning case 2009.0558R, the Department of City Planning found the
5 acquisition of the Subsurface Easements to be in conformity with the General Plan and
6 consistent with the Eight Priority Policies of City Planning Code Section 101.1 to the extent
7 applicable; and,

8 WHEREAS, On October 27, 2009, the SFPUC adopted Resolution No. 09-0176 in
9 which the SFPUC found that (a) the public interest and necessity require the proposed Project
10 in order to meet the adopted WSIP levels of service of seismic and delivery reliability, (b) the
11 proposed Project, which includes the construction of a 5-mile tunnel under San Francisco Bay
12 and surrounding salt marsh, is planned and located in the manner that will be most compatible
13 with the greatest ~~pubic~~ public good and the least private injury, based on significant evidence
14 of economic, legal, environmental, social, technological and other considerations indicating
15 that the proposed project is superior to other alternatives to the Project or the Project location,
16 the fact that CCSF would acquire only subsurface easements, not the entire fee, and that the
17 proposed tunnel itself would be located at a depth below the surface of the ground of the
18 Subject Properties not less than approximately 60 feet, and (c) the Subsurface Easements are
19 necessary for the Project, because although the shafts would be located on property owned
20 by CCSF in Menlo Park and Newark, the tunnel portions between the two shafts would be
21 primarily located outside the properties currently owned by CCSF; and,

22 WHEREAS, The acquisition and use of the Subsurface Easements for construction of
23 the subsurface Bay Tunnel is compatible with the existing uses of the Subject Properties for
24 railroad, salt pond and open space purposes; and,
25

1 WHEREAS, On October 27, 2009, by Resolution No. 09-0176, the SFPUC authorized
2 the SFPUC General Manager (a) to request that the Board of Supervisors hold a hearing to
3 consider adoption of a Resolution of Necessity to acquire the Subsurface Easements, and
4 (b) if the Board adopts said Resolution of Necessity, to take such actions that are consistent
5 with the Charter and all applicable law, to proceed to acquire the Subsurface Easements; and
6 (c) in any event, to continue to discuss the acquisition with the owners of the Subject
7 Properties; and,

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

12 RESOLVED, By at least a two-thirds vote of this Board under Code of Civil Procedure
13 Sections 1240.030 and 1245.230, that this Board finds and determines each of the following:

- 14 1. The public interest and necessity require the proposed Project;
- 15 2. The proposed Project is planned or located in the manner that will be most
16 compatible with the greatest public good and the least private injury;
- 17 3. The Subsurface Easements in the Subject Properties sought to be acquired are
18 necessary for the Project;
- 19 4. The offer required by Government Code Section 7267.2 has been made to the
20 owner of record of each of the Subject Properties; and, be it

21 FURTHER RESOLVED, That to the extent that any portion of the Subsurface
22 Easements in the Subject Properties sought to be acquired is presently appropriated to a
23 public use, the purpose for which the acquisition and use of the Subsurface Easements is
24 sought, namely, for construction and operation of the Bay Tunnel, is a more necessary public
25 use under Section 1240.610 of the California Code of Civil Procedure; and, be it

1 FURTHER RESOLVED, That to the extent that any portion of the Subject Properties is
2 presently appropriated to a public use, the purpose for which the acquisition and use of the
3 Subsurface Easements is sought, namely, for construction and operation of the new Bay
4 Tunnel, is a compatible public use under Section 1240.510 of the California Code of Civil
5 Procedure; and, be it

6 FURTHER RESOLVED, That the City Attorney is hereby authorized and directed to
7 commence proceedings in eminent domain against each owner of the Subject Properties and
8 any and all interests therein or claims thereto for the condemnation thereof for the public use
9 of CCSF; together with the authorization and direction to file any actions or comply with any
10 legal procedures to obtain an order for immediate possession for all or a portion of the
11 Subsurface Easements as depicted in Exhibit A, in conformity with existing or amended law;
12 and, be it

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

17 FURTHER RESOLVED, That the Board of Supervisors, in exercising its independent
18 judgment, adopts and incorporates by reference all prior CEQA Findings adopted by the San
19 Francisco Public Utilities Commission and this Board of Supervisors for the Project including,
20 without limitation, the CEQA Findings, including the Statement of Overriding Considerations,
21 set forth in the San Francisco Public Utilities Commission Resolution No. 09-0120 and this
22 Board's findings in Resolution No. 371-09 with respect to the approval of this Resolution in
23 conformance with CEQA; and, be it

24 FURTHER RESOLVED, That the Board of Supervisors finds that since the Final EIR
25 was finalized, there have been no substantial Project changes and no substantial changes in

1 Project circumstances that would require major revisions to the Final EIR due to the
2 involvement of new significant environmental effects or an increase in the severity of
3 previously identified significant impacts, and there is no new information of substantial
4 importance that would change the conclusions set forth in the Final EIR; and, be it

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

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

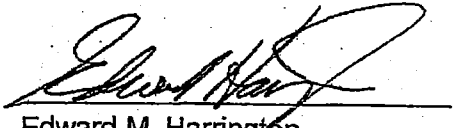
13 FURTHER RESOLVED, That the Board of Supervisors adopts as its own and
14 incorporates by reference herein, as though fully set forth, each of the findings made by the
15 SFPUC in adopting Resolution No. 09-0176 on October 27, 2009; and, be it,

16
17 FURTHER RESOLVED, That the cost of acquiring the Subsurface Easements shall be
18 paid from Project funds appropriated in Appropriation Ordinance No. 0311-08, adopted by this
19 Board on December 16, ~~2009~~ 2008, and signed by the Mayor on December 19, 2008.

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RECOMMENDED:

PUBLIC UTILITIES COMMISSION



Edward M. Harrington

General Manager

Pursuant to PUC
Resolution No. 09-0176 _____

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

By: 
Carolyn J. Stein
Deputy City Attorney



City and County of San Francisco

Tails
Resolution

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

File Number: 091279

Date Passed: November 24, 2009

Resolution authorizing acquisition of subsurface tunnel easements in real property in Alameda County and San Mateo County, consisting of portions of Alameda County Assessor's Parcels 537-0551-028, 537-0551-020 and 537-0551-021-01 in the City of Newark, Alameda County Assessor's Parcel 537-0852-008 in the City of Fremont, San Mateo County Assessor's Parcels 063-590-060 and 096-230-110 in the City of Menlo Park, and in real property owned by San Mateo County Transit District in the City of Menlo Park, located east of University Avenue between Assessor's Parcels 093 600-010 and 063-590-060, by eminent domain, for the public purpose of constructing the Public Utilities Commission Water System Improvement Program-Funded Project CUW36801, Bay Division Pipeline Reliability Upgrade - Tunnel; adopting environmental findings under the California Environmental Quality Act ("CEQA"), CEQA Guidelines, and Administrative Code Chapter 31, and adopting findings of consistency with the General Plan and under City Planning Code Section 101.1.

November 24, 2009 Board of Supervisors - ADOPTED

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

I hereby certify that the foregoing Resolution was ADOPTED on 11/24/2009 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom

Date

11-23-09

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

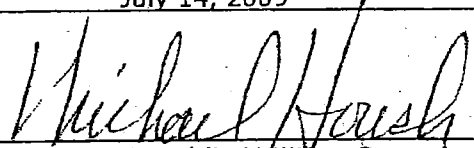
FURTHER RESOLVED, That this Commission authorizes the General Manager to consult with, or apply for, and, if necessary, seek Board of Supervisors' approval, and if approved, to accept and execute permits or required approvals by state and federal regulatory agencies, including but not limited to: U.S. 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

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 09-0176

WHEREAS, San Francisco Public Utilities Commission ("SFPUC") staff have developed a project description for Project CUW36801 Bay Division Pipeline Reliability Upgrade Project-Tunnel ("Bay Tunnel"), (the "Project") under the Water System Improvement Program ("WSIP") for improvements to the regional water supply system; and

WHEREAS, The objectives of the Project, together with other Bay Division Pipeline ("BDPL") Reliability Upgrade projects, is to provide a seismically reliable pipeline between Mission Boulevard in Fremont and the Pulgas Tunnel in San Mateo County, to size and configure the BDPL transmission system for transmission of 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") for the BDPL Reliability Upgrade Projects 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. 17918; 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 Final 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, 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 Mitigation Monitoring and Reporting Program ("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 public and this Commission, and is part of the record before this Commission; and

WHEREAS, SFPUC staff prepared proposed findings, as required by CEQA ("CEQA Findings") in Attachment A to this Resolution and a proposed MMRP in Attachment B to this Resolution, which material was made available to the public and this Commission for the Commission's review, consideration, and action, and on July 14, 2009, by its Resolution No. 09-0120, this Commission approved the Project and adopted the CEQA Findings, including the Statement of Overriding Considerations, and the MMRP, and Resolution No. 09-0120 and supporting documents are incorporated into this Resolution by this reference; and

WHEREAS, The Board of Supervisors adopted a Resolution, in Board file no. 090979, on September 22, 2009, adopting the CEQA Findings, including the Statement of Overriding Considerations; and the MMRP for the Project; and

WHEREAS, The SFPUC staff has obtained appraisals in compliance with Government Code Section 7267 et seq. and all related statutory procedures for possible acquisition of permanent, subsurface tunnel easements (collectively, the "Real Property Interests") in the following real property (collectively, the "Subject Properties"): (1) Alameda County Assessor's Parcels 537-0852-008 and 537-0551-028 owned by Cargill, Incorporated, (2) San Mateo County Assessor's Parcels 063-590-060, 096-230-110, owned by Midpeninsula Regional Open Space District, and (3) Alameda County Assessor's Parcel 537-0551-021-01 in Newark, and property located in San Mateo County where the SFPUC right of way crosses the San Mateo County Transit District ("SAMTRANS") right of way at Ravenswood, east of University Avenue, both owned by SAMTRANS, for the Bay Tunnel (which Real Property Interests are more particularly described in Exhibit A); and

WHEREAS, On July 24, 2009 and July 28, 2009, the SFPUC staff submitted offers to the owners of the Subject Properties to purchase the Real Property Interests, as required by California Government Code Section 7267.2, and continues to negotiate the possible acquisition of those interests with those owners; and

WHEREAS, The SFPUC staff advertised the Project on July 31, 2009, and set the date for the submittal of bids to November 10, 2009, and anticipates that a recommendation to award the construction contract could be before the Commission at its December 8, 2009 meeting. The nature of that Project is such that considerable advance lead time is required for procurement of equipment related to tunnel construction, and any delay in the award would materially affect the Project schedule; and

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

WHEREAS, The proposed Project, which includes the construction of a 5-mile tunnel under the San Francisco Bay and surrounding salt marsh between Menlo Park and Newark, is planned and located in the manner that will be most compatible with the greatest public good and the

least private injury, based on significant evidence of economic, legal, environmental, social, technological and other considerations indicating that the proposed project is superior to other alternatives to the project or the project location, the fact that the City would acquire only subsurface easements, not the entire fee, and that the proposed tunnel itself would be located at a depth below the surface of the ground of the Subject Properties not less than approximately 60 feet; and

WHEREAS, The Real Property Interests are necessary for the Project, because although the shafts would be located on property owned by the City in Menlo Park and Newark, the tunnel portions between the two shafts would be primarily located outside the properties owned by the City; and

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

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

RESOLVED, The Commission has reviewed and considered the Final EIR and record as a whole, finds that the Final EIR is adequate for its use as the decision-making body for the action taken herein, authorizing the General Manager to request the Board of Supervisors to hold a hearing to consider adoption of a Resolution of Necessity to acquire the Real Property Interests, and incorporates the CEQA findings contained in Resolution No. 09-120, including the Statement of Overriding Considerations, and the MMRP, by this reference thereto as though set forth in this Resolution; and be it further

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

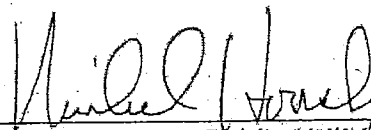
RESOLVED, The Commission requests that the Board of Supervisors make each of the following findings and determinations:

- (a) The public interest and necessity require the proposed Project;
- (b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;

- (c) The Real Property Interests described in Exhibit A are necessary for the proposed Project; and
- (d) Pursuant to Section 1245.230(4) of the California Code of Civil Procedure, the offer required by Section 7267.2 of the California Government Code has been made to each owner of record of the Subject Properties; and be it further

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

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of October 27, 2009



Secretary, Public Utilities Commission